



# TRAINING MANUAL FOR OIL AND GAS COMMUNITIES

CENTER FOR PUBLIC INTEREST LAW



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## MISSION STATEMENT OF CEPIL

To continually strive for justice and fairness especially for the poor and marginalized in society by working to improve democratic governance, rule of law and ensuring Accountability of public and private actors through advocacy, litigation, social mobilization and research.

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# LIST OF ACRONYMS AND ABBREVIATIONS

<b>ABFA</b>	Annual Budget Funding Amount
<b>ADR</b>	Alternative Dispute Resolution
<b>CEDAW</b>	Convention on the Elimination of Discrimination against Women
<b>CEMAG</b>	Community Environmental Monitoring and Advocacy Groups
<b>CEMP</b>	Coordinated Environmental Monitoring Programme
<b>CEPIL</b>	Center for Public Interest Law
<b>CHRAJ</b>	Commission for Human Rights and Administrative Justice
<b>C I</b>	Condition Index
<b>CSO</b>	Civil Society Organization
<b>DA</b>	District Assemblies
<b>EBSAs.</b>	Ecologically or Biologically Significant Marine Areas
<b>EPA</b>	Environmental Protection Agency
<b>EIA</b>	Environmental Impact Assessment
<b>EIS</b>	Environmental Impact Statement
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FoN</b>	Friends of the Nation
<b>FPSO</b>	Floating Production Storage Offloading
<b>GNPC</b>	Ghana National Petroleum Corporation
<b>GI</b>	Growth Index
<b>GHF</b>	Ghana Heritage Fund
<b>GSF</b>	Ghana Stabilization Fund
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic Social Cultural Rights
<b>LI</b>	Legislative Instrument
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>NORAD</b>	Norwegian Agency for Development Cooperation
<b>OfD</b>	Oil for Development
<b>PAHs</b>	Polycyclic Aromatic Hydrocarbons
<b>PHF</b>	Petroleum Holding Fund
<b>PIAC</b>	Interest and Accountability Committee
<b>PRMA</b>	Petroleum Revenue Management Act, 2011
<b>TA</b>	Tradition Authority
<b>THC</b>	Total Hydrocarbon
<b>UDHR</b>	Universal Declaration on Human Rights
<b>WBM</b>	Water Based Drillings Mud



# INTRODUCTION

Ghana has made notable strides, since the discovery of oil and gas. Ghana has put in place policies and a new legal framework to govern the oil and gas sector. Some of the policies and legal framework for the oil and gas sector are, the Petroleum (Exploration and Production) Act 2016 (ACT 919), the Petroleum Revenue Management Act (PRMA) of 2011, the Local Content Policy 2010, the Petroleum (Local Content and Local Participation) Regulations 2013 LI 2204 and policies to ensure transparency and accountability in the governance of the petroleum sector, in addition to the establishment of the petroleum Commission under the Petroleum Commission Act of 2011 to govern the upstream petroleum exploration.

While these positive achievements are significant, there is still a notable knowledge gap, particularly with communities and the citizens in general of these policies and basic laws governing the sector. As a result of the knowledge gap citizens and communities are left at a disadvantaged position with rarely any ease of leverage to assert their rights and to hold policy makers accountable for the management and utilization of the natural resources, especially petroleum and gas. Also, as it stands now communities and citizens engagement is relatively weak in oil and gas sectors especially at the local government level. Ingrained in the 1992 Constitution of Ghana is the right to information which is fundamental for transparency in the governance process. This Training Manual is intended to narrow this knowledge gap particularly in the management of natural resources by providing communities and citizens the relevant information on oil and gas laws and policies to enable citizens and communities engage with duty bearers.

The Training Manual grows out of experiences of CEPIL and its staff in providing trainings for oil and gas communities and civil society groups in Ghana. Numerous trends run throughout the manual. First, the language is graphic, and as much as possible, free from legal jargon.

The manual is designed to:

- To provide communities and citizens an understanding of the enacted basic legal framework and policies to facilitate social accountability in the oil and gas sector.
- Provide citizens and communities with an overview of fundamental human rights principles
- To inform communities and citizens on the interface of the oil and gas sector with environmental governance and communities can monitor environmental impacts of the off shore oil and gas production.
- Introduce the communities and citizens to the Ghanaian Constitution, International and Regional human rights instruments
- To introduce to communities and citizens the rights of women to property and the differential impact of the extractive sector on women.
- To offer practical lessons for citizen government engagement as well as community mobilization for engagement.
- To provide communities and citizens an understanding of the judicial system and the various forms communities and citizens can access justice.
- The approach to manual is to stress on both the theoretical and practical aspects of areas and subjects covered.

# Module I

## KEY STAKEHOLDERS IN THE PETROLEUM SECTOR

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### Introduction

*The key stakeholders in the oil and gas sector in Ghana are basically made up of the government and its agencies and institutions, the Traditional Authorities, Communities likely to be affected by oil and gas and the oil and gas companies inclusive of Ghana National Petroleum Company and the Ghana Gas Company.*

### Objective

*This module builds participants' appreciation and understanding of the key stakeholders in the Oil and gas industry. It encompasses topics such as the role of government as facilitator and regulator of all oil and gas activities; and also the role the district assemblies, traditional rulers and citizens in oil and gas affected communities can play in the oil and gas sector.*

### Role Government it's Agencies and Institutions in Oil and Gas activities

The government and its agencies and institutions are made up of the Ministry of Energy, Petroleum Commission, the Parliamentary Select Committee on Mines and Energy, the Environmental Protection Agency (EPA) and the District Assemblies. The Government is the overall facilitator and regulator of all oil and gas activities in Ghana. The function of the government is to create the enabling environment for oil and gas exploration to take place in Ghana. It is also the responsibility of government to put in place the right policies, laws, and regulations in the country that will attract investors to the oil and gas sector and regulate their activities. Indeed Government has enacted laws and regulations such as the Petroleum (Exploration & Production) Act 2016 (ACT 919), and the Local Content Policy and regulations to govern the oil and gas sector.

Government is also responsible for the provision of infrastructure and other services such as water, electricity and good roads and rail linkages to the oil and gas areas and communities. The government performs these responsibilities through various ministries departments and agencies. The Ministry of Energy and other government agencies such as the Petroleum Commission, the Environmental Protection Agency are the key government ministry and agencies that regulates the oil and gas activities in Ghana.

The Ministry of Energy has responsibility for the petroleum

sector and is the government ministry in charge of policy formulation monitoring and evaluation of the oil and gas sector.

Also, the Petroleum Commission was established in July 2011 by an Act of Parliament, Act 821, to regulate and manage the exploitation of petroleum resources and to co-ordinate the policies in relation to them. The petroleum Commission is the regulator of Ghana's upstream petroleum sector and is mandated to regulate, manage and co-ordinate all activities in this sector for the overall benefit and welfare of Ghanaians.

Similarly, the Environmental Protection Agency (EPA) is an agency of the Ministry of Environment, Science Technology and Innovation dedicated to improving, conserving and promoting the country's environment and striving for environmentally sustainable development. The Environmental Protection Agency (EPA) is responsible for the protection of air, soil, water and citizens from pollution by oil and gas activities. The EPA supervises the preparation of the Environmental Impact Assessment of the oil and gas companies and is responsible for the issuance of an environmental permit which is a prerequisite for the operation of oil and gas activities by a company. It is also responsible for the monitoring of the implantation of the EIA and the decommissioning plans on the environment prepared by the companies.

The Parliamentary Select Committee on Mines and Energy is a committee of parliament with oversight responsibility to deal with issues in the mining and energy sector.

The District Assembly (DA) is the key host institution to petroleum companies, and activities. Though Ghana's current oil exploration is carried out off shore, some District Assemblies are close to these offshore activities and thus host these oil and gas companies and their other operations. By this closeness to the operators in the oil and gas industry they play very important roles of monitoring and supervising the activities of these companies.

## Role of Chiefs by custom and by law

Chiefs and traditional authorities play a very important role in the decentralized governance process in Ghana. Traditional authorities (TAs) or chiefs remain the first points of call in the hierarchy of community entry. As tradition demands, chiefs usually serve as the first point of contact upon the entry into every community by government and its agencies and oil and gas companies. As a result, they serve as a very importance stake holder in the sector. By passing the local chief in any social, economic or political endeavor could be a starting point to failure.

The Constitution of Ghana recognizes the chieftaincy institution and its traditional councils as entities established by customary law. In Ghana, chiefs serve as custodians of stool lands and enforcers of local customs and norms. Chiefs represent the traditions, customs and beliefs of ethnic groups and hold the symbol of authority for that ethnic group and are revered.

Traditional rulers particularly chiefs from the six oil and gas districts in the country play very important roles in the oil and gas sector. In fact some chiefs from these areas have been advocating for greater transparency in the oil and gas governance and also advocating for the allocation of some of the oil revenues for development projects that will benefit their people.

## Role of Oil and Gas Communities

Active communities are very important stakeholders in the extractive sector. Whether communities within the Oil and gas exploration area will either be affected negatively or positively will depend upon their level of involvement in the activities in the oil and gas sector. The development of an oilfield on land requires a certain area of land and therefore,

consultations should be carried out with local communities living on and using that land. Some of the affected local communities may have to be relocated to enable development to take place. Similarly offshore development of oilfields may also affect communities along the coast such as fisher folks.

In this regard how active communities are, in ensuring that proper laws and regulations are put in place to govern the sector is very important. In addition, the communities' active participation in the consultation stages, such as the environmental impact assessment processes is vital in ensuring that the negative impact from the sector affects them as minimal as possible.

Also, how the revenues accruing from the sector are utilized to the benefit of communities and the country as a whole are critical issues that all oil and gas communities must be interested in.

Thus being a responsible oil and gas community will be to ensure transparency, accountability and responsiveness in the oil and gas sector.

## Role of Civil Society

Since the discovery of oil and gas in commercial quantities in Ghana, Civil Society Organizations (CSOs) in Ghana have been at the forefront campaigning for good governance and transparency in Ghana's oil and gas sector. For example The Africa Center on Energy Policy has also been in the forefront

of championing accountability and transparency in the oil and gas sector. CSOs have also made the effort towards educating communities, and socially excluded groups on how to tackle oil and gas related issues. Civil society groups along with their coalitions and networks such as the Oil and Gas Platform have been assisting in building the capacities of communities and individuals from the six oil and gas districts in the country. NGOs such as the Centre for Public Interest Law (CEPIL) have been providing free legal services to communities affected by the establishment of the gas facilities and pipelines in the Western Region and together with Friends of the Nation built the capacity of community groups in the oil and gas districts on the law and the environment. This complemented the efforts of the Friends of the Nation (FoN) which has been building the capacity of fisher folks on oil and gas issues.

## The Oil and Gas Companies

The oil and gas companies are the principal stakeholders in the oil and gas sector. The Oil and gas companies are usually the ones granted the oil and gas contracts by government. It is also the activities of these companies that will either negatively or positively impact the communities in which they operate and the country as a whole. Therefore, how these companies conduct their community entry, how they conduct their operations and how they relate with affected communities will determine the extent of their impact, and thus, one of the critical stakeholders in the oil and gas sector.

# Module II

## THE LAWS GOVERNING PETROLEUM SECTOR IN GHANA

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### Introduction

*The laws governing upstream petroleum operations and the management of the petroleum revenues in Ghana are the Petroleum (Exploration and Production) Act 2016 (Act 919) and the Petroleum Revenue Management Act 2011 (Act 815). Also, the Local Content (Local participation regulations has been passed to give effect to the local content policy in the oil and gas sector).*

### Objective

*The objective of this module is to provide:*

- *The participation of Ghanaian citizens in the upstream oil and gas sector in the country;*
- *The participants with an understanding of a basic but relevant communities' aspect of the laws that governs oil and gas exploration and production in the country;*
- *To let participants understand the legal framework for the collection, allocation and distributions of revenue for oil and gas;*

- *Create awareness among the participants of the existence of the local content policy, law and regulations;*
- *Get participants to understand some of the basic but important aspects of the local content provisions in the oil and gas sector.*

### 1. THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT 2016 (ACT 919)

The Petroleum (Exploration and Production) Act 2016 (Act 919) was enacted to provide for and ensure safe, secure sustainable and efficient exploitation of Ghana's petroleum resources for the benefit and welfare of the people of Ghana. The purpose of the passage of Act 919 is to tighten up the existing legal framework in view of the lessons learnt over the years as well as modern trends to provide a robust framework for the exploration and production of petroleum in Ghana.

## Ownership and Jurisdiction of Ghana

The authority of Ghana to exploit petroleum resources in their natural state extends to any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea and the continental shelf. All these areas are the property of the Republic of Ghana and are vested in the President on behalf of, and in trust for the people of Ghana.



## Incidents of ownership

The Republic of Ghana as the owner of natural resources in its jurisdiction has the right to explore, develop and produce oil and gas without recourse to any other authority. It also has the right to license other persons to explore, develop and produce oil and gas within its jurisdiction and the right to royalties or share of oil and gas from persons conducting oil and gas operations.

## How to acquire an Oil rights

Petroleum activities can only be carried out in an area open for the conduct of petroleum activities and by a company who has been granted a petroleum licence or has entered into a petroleum agreement in accordance with the law.

## Opening of an Area for Petroleum Activities

Under the Petroleum (Exploration and Production) Act 2016, the Minister for Energy has the sole right to decide to open an area for petroleum activities. Before opening up an area for petroleum activities, the Minister is required in collaboration with the Petroleum Commission and other agencies to undertake an evaluation of the various interests in the relevant areas and to prepare a report on the evaluation. The report shall contain

- The impact of the petroleum activities on local communities;
- The impact of the petroleum activities on the environment, trade, fisheries, shipping, maritime and other industries and the risk of pollution;
- The potential economic and social impact of the petroleum activities.

The report is to be published in the Gazette and two state-owned daily newspapers or other medium of public communication and any person who has an interest in the area shall within sixty days after the publication present views to the minister. The Minister is required to take due consideration of public views when deciding whether to open an area for petroleum development. It states that the Minister is further required to publish the decision to open an area for petroleum activities in the Gazette and at least two state-owned daily newspapers and other medium of public communication.

## Petroleum Agreement

A company can only carry out or engage in the exploration, development and production of petroleum in Ghana only in accordance with the terms of a petroleum agreement entered into between the company and the Republic of Ghana. The petroleum agreement often contains the statutory as well as the negotiated terms and conditions

particularly the fiscal and other terms that will govern the petroleum operations. As such, section 10 of Act 919 stipulates the procedure for securing a petroleum agreement. Of particular importance are sub-sections 10(3), (4) and (5) of Act 919. These subsections address the processes for issuing petroleum agreements. A petroleum agreement shall only be entered into following an open, transparent, and competitive public tender process. However, the Minister of Energy has power for stated reasons not to enter into a petroleum agreement after the tender process.

The Minister also has the power to engage in direct negotiations for an area if the Minister determines it is in the public interest to do so. The Minister is however, required to publish the invitation for direct negotiations in the Gazette and in at least two state-owned daily newspapers and other medium of public communication. Where more than one company expresses interest in the direct negotiations for the area, the Minister must resort to an open transparent, and competitive public tender process.

Opening up the areas for competition between competent and qualified petroleum companies for exploration and development rights in Ghana's petroleum sector has the advantage of delivering maximum benefits to the Republic. Also requiring the Minister to state the reasons for which the Minister has decided not to enter into a petroleum agreement after the competitive and transparent public tender process will provide some clarity, transparency and good governance in the grant of petroleum contracts.

All petroleum agreements entered into by the Minister must be ratified by Parliament.

## Restrictions on flaring

Generally under the law, petroleum companies are not allowed to flare or vent gas. However, a company is allowed to flare or vent gas where the Petroleum Commission in consultation with the Environmental Protection Agency authorises the flaring or venting of gas. It is only under the following circumstances a company may be allowed to

flare or vent gas:

- Where it is necessary in the interest of normal operational safety of the petroleum activities
- Where it is necessary in order to comply with a requirement imposed under the Act
- Where it is warranted by exceptional circumstances

Also in an emergency situation the company may flare or vent gas without authorization from the petroleum commission but is required to immediately inform the Minister, the Petroleum Commission and the Environmental Protection Agency of the event.

## Payment of Royalties

A petroleum company is required to pay royalties on the gross volume of petroleum produced and saved to Ghana. The rate of the royalty is to be prescribed but where it is not prescribed, the royalty is to be paid in accordance with the terms of the petroleum agreement.

## Environmental Principles and Protection

Companies operating in petroleum activities are required to comply with the environmental principles prescribed by laws of the country. They are required to take necessary measures or steps to ensure that their petroleum activities are conducted in a safe and secured manner free from accidents, waste dumping and pollution. Also, they are required to establish and implement effective and safe systems for the disposal of waste and the prevention of pollution resulting from the petroleum activities and establish a system that track the source, transport and destination of potential waste from the petroleum activities.

## Impact Assessment

A company cannot also carry out petroleum activities in an area unless the company has conducted an environmental impact assessment in accordance with the requirements

of the environmental laws and regulations in place in the country and also complied with any other statutory environmental requirements. Petroleum activities such as reconnaissance, exploration drilling, production and operations, construction of transportation, treatment and storage facilities, decommissioning plugging and abandonment of the well shall have environmental impact assessment of these activities carried out.

The Petroleum Law also requires that strategic impact assessment be undertaken before the opening up of an area for petroleum activities.

## Liability for Pollution Damage

A company is held strictly liable for any damage caused by or resulting from its petroleum activities. Where several companies are involved in the pollution damage, they are to be held jointly or severally for the damage caused.

## Compensation for Pollution Damage

Where there are several parties to a petroleum agreement, any claim for compensation for pollution damage shall be initially made to the party that is carrying on with the operations. Where one party fails to pay the share of the compensation, the other parties shall be responsible for the payment of the unpaid amount in the proportion of their participating interest.

In the case of an act of God, the Minister is required to assess the pollution damage taking the following into consideration,

- The scope of the activity
- The measures taken to avoid or mitigate the act of God
- The situation of the party that has sustained the damage as a result of the event
- The insurances put in place by the party.

On the above basis, the Minister shall determine the compensation to be paid by the party.

## Compensation for interference with lawful activities and access to land

In the case of the conduct of petroleum activities that are likely to affect, social interest or activities of the inhabitants of the area, the Petroleum Commission is to negotiate for permission from the relevant authority or interested person and the company pays the agreed compensation negotiated by the Petroleum Commission.

If there is any hindrance in the acquisition of the property, the property may be acquired for GNPC under the States Lands Act, 1962 (Act 125) and GNPC shall bear the cost.

## Decommission plan

Every company operating a facility is required to submit a decommissioning plan to the Minister for Energy who shall seek the advice of the Petroleum Commission on the plan submitted. The decommissioning plan which shall contain detailed proposals on the shutdown of operations and disposal of petroleum facilities or further use of the facility for petroleum activities is to be submitted to the Minister not more than five years or later than two years of the petroleum facility to which the decommission plan is made is expected to cease operation or the petroleum agreement or licence to which the plan is made is to expire. In case of the termination of the petroleum agreement, the decommissioning plan is to be submitted as soon as it is practicable or not later than ninety days of the termination of the petroleum agreement.

The Minister is enjoined to approve the decommissioning plan and set out a schedule for the implementation of the plan or disapprove it and notify the company in writing the reasons for the disapproval and request the company to satisfy certain conditions or redo a new plan or amend the old plan.

In making the decision to approve or disapprove the decommissioning plan, the Minister shall take into consideration, the various interests involved including the impact of the decision on local communities, agriculture,



fisheries, and other affected interests and the environment, safety, technical and economic consequence of the disposal alternatives.

Every petroleum company operating in the country is required to establish a Decommission Fund.

## Offence

Any company that contravenes the provisions of the Petroleum Exploration and Production Law commits an offence and is liable on summary conviction to a fine of penalty units ranging from one thousand to eight hundred thousand penalty units or term of imprisonment ranging for one year to five years.

## 2. THE LOCAL CONTENT PARTICIPATION IN THE OIL AND GAS SECTOR

In the context of exploiting the country's oil and gas endowment sustainably, there is the need to maximize the benefits of oil and gas wealth by the generation of a comprehensive local content policy to maximize the use of local expertise, goods and services among other things. In this regard, Ghana developed a Local Content Policy in 2010, and also enacted the Petroleum (Exploration and Production) Act 2016 (ACT 919) which has some provisions on local content and the Local Content (Local Participation) Regulations of 2013 LI 2204 to provide for the participation of indigenous Ghanaian citizens and businesses in the oil and gas value chain in the country.

The Petroleum Local Content and Local Participation Law and Regulations provides a platform to achieve goals of the country in the oil and gas industry and also provides the encouragement of active participation of all citizens in taking advantage of the opportunity offered by the nascent oil and gas industry. The aim of the Local Content is to promote the maximization of value-addition

and job-creation in the petroleum sector through the use of local expertise, goods and services and also act as a mechanism for the coordination, transparent monitoring and governance of Ghanaian content.

Though the broader policy guidelines on local content are contained in the Petroleum Exploration and Production law, the policy is deeply fleshed out in the implementation regulations called the Local Content (Local Participation) Regulations 2013 LI 2204.

The purpose of the Local Content and (local participation) Regulations as contained in section 1 of LI 2204 is to:

- a. *"promote the maximization of value addition and job creation through the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country;*
- b. *develop local capacities in the petroleum industry value chain through education, skills transfer and expertise development, transfer of technology and knowhow and active research and development programmes;*
- c. *achieve the minimum local employment level and in country spend for the provision of the goods and services in the petroleum industry value chain as specified in the First Schedule;*
- d. *increase the capability and international competitiveness of domestic businesses;*
- e. *create petroleum and related supportive industries that will sustain economic development;*
- f. *achieve and maintain a degree of control for Ghanaians over development initiatives for local stakeholders;*
- g. *provide for a robust and transparent monitoring and reporting system to ensure delivery of local content policy objectives;*
- h. *provide for the submission of the local content plan and related sub plans by*

*contractors, subcontractors, licensees and any other allied entity involved in the petroleum industry including:*

- (i) the provision of goods and services; the transfer to the Corporation or the*
- (ii) Commission and Ghanaians of advanced technology and skills related to petroleum activities;*
- (iii) a recruitment and training programme; and*
- i. supervision, coordination, implementation and monitoring of local content.*

It is therefore a requirement for every company and other allied entities carrying out a petroleum activity in the country to ensure that local content is a component of the petroleum activities engaged in by that company or other allied entity. Under the Regulations, "local content" means *the quantum or percentage of locally produced materials, personnel, financing, goods and services rendered in the petroleum industry value chain and which can be measured in monetary terms.*

## **Interest of a citizen of Ghana in Petroleum Exploration, Development and Production**

Government is to ensure that Ghanaian citizens participate in the ownership of businesses in the oil and gas industry. The objective is to give consideration first to Ghanaian independent operators in the award of oil blocks, oil field licenses, and oil lifting licenses subject to the fulfilment of certain specified conditions. This means all regulatory authorities, companies or any other entities involved in any project, operations, activity in Ghanaian Oil and Gas Industry are required to consider local content as an important element in the project development and project execution.

It is also a requirement that in the case of non-Ghanaian ownership and operations, the entity must provide for the participation of a citizen of Ghana in an interest of at least

five percent in the exploration and production activities under petroleum licenses. The interest of the citizen of Ghana shall not be transferable to a non-citizen of Ghana. The Regulation thus stipulates how an indigenous Ghanaian company can participate in the petroleum sector in section 4 of the Regulations. Parts of Section 4 of the Local Content Regulations states;

- 1. An indigenous Ghanaian company shall be given first preference in the grant of a petroleum agreement or a licence with respect to petroleum activities subject to the fulfilment of the conditions specified in these Regulations.*
- 2. There shall be at least a five percent equity participation of an indigenous Ghanaian company other than "GNPC" to be qualified to enter into a petroleum agreement or a petroleum licence.*
- 3. The interest of an indigenous Ghanaian company arising from a petroleum agreement or a petroleum licence is not transferable to a non-indigenous Ghanaian company.*
- 4. A non - indigenous Ghanaian company which intends to provide goods or services to a company or 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".*
- 5. A contractor, subcontractor, licensee or other allied entity shall before the commencement of petroleum activities submit a plan to the Commission specifying*
  - a. the role and responsibilities of the indigenous Ghanaian company;*
  - b. the equity participation of the indigenous Ghanaian company; and*
  - c. the strategy for the transfer of technology and knowhow to the indigenous Ghanaian company.*

## Use of local Goods and Services

In order to ensure increased financial benefits to Ghanaians, and the Ghanaian state, all operators in the oil and gas industry, shall as far as practicable use goods and services produced by or provided in Ghana for their operations in preference to foreign goods and services. The Operators shall give priority to and purchase from citizens of Ghana local products and services that are competitive in terms of price, quality and timely availability. It includes machinery equipment, consumer goods, legal services, financial services, insurance services etc

## Local Content Plan

Every project, operation, activity or transaction must have a Local Content Plan approved by the Petroleum Commission. The local content plan shall include how the company will fulfil the applicable Ghanaian content requirement with respect to the provision of goods and services, how to transfer technological knowhow and skills and the annual recruitment and training programme. Following from the above sub-plans such as Employment and Training Sub-Plan and Succession Plan, Technology Transfer Sub-Plans are to be made.

## Employment and Training of Ghanaians

A company in the petroleum sub-sector shall ensure that opportunities are given as far as is possible for the employment of Ghanaians having the requisite expertise or qualifications in the various levels of the operations. A petroleum company is required, within twelve months after the grant of a licence (or effective date of a Petroleum Agreement), to submit to the Petroleum Commission for approval, a detailed Annual Recruitment and Training Programme for recruitment and training of citizens of Ghana in all job classifications and in all aspects of

petroleum activities, which may be carried out in or outside the country.

To enhance transparency and effectiveness in the implementation of the policy on employment, every petroleum company is required to publicly advertise and give preference to the employment of citizens of Ghana who have the requisite qualification, competence and experience required to carry out the required work. With respect to employee training, the operator is enjoined to prepare a scheme for the training of its Ghanaian employees. For the effectiveness of this policy the scheme shall be submitted to the Petroleum Commission for approval as part of the Annual Recruitment and Training Programme.

As regards middle and junior level positions, a company is under an obligation to employ only Ghanaians in junior level or middle level positions. A "junior or middle level positions" includes the position of foreman, supervisor or any corresponding position designated as such.

## Succession plan

As part of the Employment and Training Sub-Plan, a petroleum company is also required to submit to the Petroleum Commission a succession plan for any employment position that is occupied by a non-Ghanaian to ensure that the minimum local content levels provided in the law are met. The succession plan shall therefore make provision for and require Ghanaians to understudy the requirements of the position held by a non-Ghanaian for a period determined by the Petroleum Commission on a case -by- case basis after which the position occupied by the non-Ghanaian shall be assumed by the Ghanaian.

Below are the local content levels to be attained from date of effectiveness of licence or petroleum agreement of a company.

ITEM	START	5 years	10 years
1. Goods and services	10%	50%	60%-90%
2 . Recruitment and training			
(a) Management staff	30%	50%-60%	70%-80%
(b) Technical core staff	20%	50%-60%	70%-80%
(c) Other staff	80%	90%	100%

## Technology transfer

The company, while carrying out petroleum operations, is required to prepare and implement plans for the transfer of technological know-how and skills relating to petroleum operations to Ghanaians and to establish in the country any necessary facility for technical work and technology transfer. The Petroleum Commission is thus enjoined to encourage and facilitate the formation of joint ventures and partnerships and development of licensing agreements between indigenous Ghanaian companies and foreign contractors and suppliers.

## Local Capability Development

In order to ensure competitiveness of Ghanaians in the provision of the full range of services required in the oil and gas industry, the local training and technical institutions will be supported by both Government and the petroleum operators to develop the requisite capacity to international standards to be able to train Ghanaians to comparable high levels as required by the industry in drilling and support services, marine, catering and housekeeping, supplies and other support services.

## Technology Transfer Sub-Plan

The Local Content Regulations require companies to submit to the Petroleum Commission a sub-plan on how

the company intends to transfer technology it is using in its operations to Ghanaian companies. Section 24 of the Regulations States that . "A Technology Transfer Sub-Plan submitted by a contractor, sub-contractor, licensee or other allied entity shall include a programme of planned initiatives aimed at promoting the effective transfer of technologies from the contractor, subcontractor, licensee or other allied entity to a Ghanaian indigenous company or citizen."

The Regulations also require the companies enter into joint venture with indigenous Ghanaian companies or citizens and to provide support for technology transfer to indigenous Ghanaian companies. It states in 25.(1) as follows: " A contractor, subcontractor, licensee or other allied entity shall support and facilitate technology transfer as regards the formation of joint ventures, partnering of licensing agreements between indigenous Ghanaian companies or citizens and foreign contractors and service companies or supply companies."

## Operation of Bank Account in Ghana

Every company or contractor, subcontractor, licensee or other allied entity is to maintain a bank account with an indigenous Ghanaian bank and transact business through banks in the country. For this purpose, "an indigenous Ghanaian bank" means a bank that has one hundred percent Ghanaian or a majority Ghanaian shareholding.

## Establishment of a Local Content Fund

A local content fund is to be established with the main object to provide financial resources for citizens and indigenous Ghanaian companies engaged in petroleum activities. Moneys from the fund can be given as loans to small and medium scale enterprises to support their participation in petroleum activities or used for education, training, research and development in petroleum activities for Ghanaian citizen's, indigenous Ghanaian companies and institutions of learning.

The sources of the funds for the local content Fund will include contribution from Licensed Operators at amounts specified in the applicable Petroleum Agreements, contributions from sub-contractors, moneys approved by parliament and grants and other support from Ghana's Development Partners.

## Gender in Oil and Gas sector

The policy of Government is to provide equal opportunities for all citizens of the Republic of Ghana, however, the participation of women in the oil and gas industry is to be actively encouraged.

## Public education

The Commission is required to ensure that public education activities are undertaken to educate contractors, subcontractors, licensees and other allied entities, the public and industry stakeholders about the local content policy and philosophy.

## Local Content Committee

It is required that a Local Content Committee established by the Petroleum Commission. The Committee is to oversee the implementation of the local content such as coordinating, and managing the development of local content; preparing guidelines; to include targets and formats for local content plans and reporting; setting minimum standard requirements for local content in local content plans where applicable; Undertake local content monitoring and audit and public education; among other functions.

## Establishment of local Content office

Where practicable, a company before carrying out any work or activity in the petroleum industry shall establish a project office within the district where the project is located.

## Complaints to the Minister

A person aggrieved by the decision of the Petroleum Commission in relation to the implementation of the local content laws can lodge a complaint with the Minister who shall within thirty days of receipt of the complaint make a decision on it.

## Offence

To ensure that Ghanaians do not front for foreign companies, the law has made fronting an offence and a citizen who acts as a front or connives with a foreign citizen or company to deceive the Commission as representing an indigenous Ghanaian company to achieve the local content requirement, commits an offence and is liable on summary conviction to a fine of not less than one hundred thousand penalty units and not more than two hundred and fifty thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Equally a foreigner who connives with a citizen or an indigenous Ghanaian company to deceive the Commission as representing an indigenous Ghanaian company to achieve the local content requirement also commits an offence and is liable on summary conviction to a fine of not less than one hundred thousand penalty units and not more than two hundred and fifty thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

### 3. PETROLEUM REVENUE MANAGEMENT LAW

For Ghana to maximize the benefits of its oil revenues it is essential that they be managed in a transparent and intelligent manner. The Petroleum Revenue Management Act (PRMA) 2011, (Act 815) is one of the laws passed by parliament to govern the transparent use of revenues accruing from petroleum exploration. Act 815 is further amended by Petroleum Revenue Management (Amendment) Act 2015 (Act 893). The law provides a framework for the collection, allocation and management of petroleum revenue in a responsible, transparent, accountable and sustainable manner for the benefit of all citizens of Ghana.

Types of Funds Created by the Law

1. Petroleum Holding Fund (PHF)
2. The Ghana Petroleum Funds (GPF)
  - i. Stabilization fund
  - ii. Heritage Fund
3. Annual Budget Funding Amount (ABFA)
4. Infrastructure Development Fund

#### Petroleum Holding Fund

The law provides for the creation of a Petroleum Holding Fund (PHF) at the Bank of Ghana to receive and disburse petroleum revenue due the country. Petroleum revenue paid into the Petroleum Holding Fund are not to be treated as part of the normal tax revenues or used as the basis for the determination of any statutorily earmarked funds.

#### Petroleum Holding Fund Receipts

All revenues accruing to the country from oil and gas are to be paid into the petroleum Holding Fund. The following are the streams of petroleum revenues that the law requires to be paid into the Petroleum Holding fund:

- Royalties from oil and gas;
- Additional oil entitlements;
- Surface rentals;

- other receipts from any petroleum operations and from the sale or export of petroleum;
- Any amount received from direct or indirect participation of Government in Petroleum Operations;
- Corporate income taxes in cash from upstream and midstream petroleum companies;
- Any amount payable by the national oil company as corporate tax, royalty, dividends, or any other amount due in accordance with the laws of Ghana; and
- Any amount received by Government directly or indirectly from petroleum resources not covered by paragraphs above including where applicable, capital gains tax derived from the sale of ownership of exploration, development and production rights.

#### Disbursement from Petroleum Holding Fund

The law mandates disbursements from the PHF in the following:

- The national oil company (GNPC)
- The Consolidated Fund in support of the national budget
- The Ghana Petroleum Funds
- Exceptional purposes

#### The Ghana Petroleum Funds

The Ghana Petroleum Fund is made up of the Stabilization Fund and Heritage Fund. The law requires that not less than thirty percent (30%) of the benchmark revenue is to be paid into the Ghana Petroleum Funds. On the depletion of oil and gas in the country the stabilization and heritage funds will be put together as the Ghana Petroleum Funds.

##### 1. Ghana Stabilization Fund (GSF)

The aim of Ghana Stabilization Fund (GSF) is to cushion the impact on the budget or sustain public expenditure capacity during periods of unanticipated revenue shortfalls. A percentage of the petroleum revenue in the PHF approved by Parliament will be transferred to the GSF.

Transfers from the stabilization fund should be for the

purposes of alleviating shortfalls in actual petroleum revenues. Transfers to the stabilization fund can also be made to the contingency fund and for debt repayment. The transfer from the stabilization fund is not to exceed 75% of the balance standing to the credit of the stabilization fund.

## 2. Ghana Heritage Fund (GHF)

The Ghana Heritage Fund is meant to support development for future generations when the petroleum reserves in the country are depleted. The Fund is to be invested in financial instruments with the advice of an Investment Advisory Committee. The Fund is to receive not less than 30% of the revenue from oil transferred to Ghana Petroleum Funds.

## Annual Budget Funding Amount (ABFA)

This Annual Budget Funding Amount (ABFA) is the amount of petroleum revenue which will be disbursed into the Consolidated Fund to support the annual budget. According to the law, The ABFA is not to be more than 70% of estimated petroleum revenue for the year. The allocation to the ABFA is to be guided by the medium term development strategy aligned with a long-term national development plan. The ABFA will be considered part of national budget and hence its use will be subject to the same budget processes such as approval by parliament.

## Distribution of Petroleum Receipts, 2011 – 2016

	2011 GHc	2012 GHc	2013 GHc	2014 GHc	2015 GHc	2016 GHc	Total GHc	Total USD Exchange rate as at 2016 (Ghc4.00)
GNPC	207,960,000	230,950,000	222,320,000	180,710,000	126,860,000	88,500,000	1,057,300,000	264,325,264.33
ABFA	166,960,000	286,550,000	273,200,000	409,070,000	239,30 0000	98,380,000	1,473,460,000	339,506,912.45
GSF	54,810,000	16,880,000	245,730,000	27,760,000	15,170,000	29,510,000	633,860,000	146,050,691.25
GHF	14,400,000	7,240,000	105,310,000	116,470,000	6,500,000	12,650,000	262,570,000	60,500,000.00

Source: Annual Report on Petroleum Funds for the 2016 Fiscal Year

## Areas for the utilization of ABFA

The use of the ABFA is to be for the maximization of rate of economic development, promote equal economic opportunity to ensure the well-being of citizens of Ghana and to undertake even and balanced development of the regions. As noted from the preceding paragraph the utilization of the ABFA is to be guided by a medium-term expenditure framework aligned with a long-term national development plan but where the long-term national development plan is not in place, the ABFA may be spent on a wide range of infrastructure and public service activities, including:

- Agriculture and Industry
- Education, Science And Technology
- Water and Sanitation,
- Telecommunications, roads, railways and ports

- Health and Housing
- Environmental protection and sustainable utilization and protection of natural resources
- Rural Development
- Energy
- Public Safety and security
- Social welfare and the protection of the handicapped and disadvantaged citizens
- Strengthening institution of government

A minimum of 70% of ABFA is to be used for public investment expenditure consistent with the long-term development plan and where there is no long-term development plan and in order to maximise the impact of the petroleum revenue, the Minister of Finance is to within the above stated areas determine four activity areas that will be prioritized for funding and support over a three-year period from the ABFA.

### Disbursement of ABFA to priority areas 2011 to 2014

Priority Area	2011	2012	2013	2014	Total	Total in USD	%
	GHC	GHC	GHC	GHC	GHC	Exchange rate as at 2014 (Ghc3.00)	
Expenditure and Amortization of Loans for Oil and Gas	20,000,000	100,000,000	137,920,847	163,084,572	421,005,419	<b>140,335,139.67</b>	<b>22.69</b>
Agriculture Modernization	13,147,652	72,471,824	13,604,329	170,624,180	269,848,985	<b>89,949,661.66</b>	<b>14.42</b>
Road and Other Infrastructure	227,641,768	232,403,269	372,074,147	215,691,357	1,047,810,541	<b>349,270,180.34</b>	<b>55.99</b>
Capacity Building (including oil and gas)	750,000	111,959,738	20,183,359	-	132,893,097	<b>44,297,699.00</b>	<b>6.90</b>
<b>Total</b>	<b>261,539,420</b>	<b>516,834,831</b>	<b>543,782,682</b>	<b>549,400,109</b>	<b>1,871,558,042</b>	<b>623852680.67</b>	<b>100</b>

Source: Ministry of Finance

### Priority areas for 2015 and 2016

	2015 (Cedis)	USD (Rate3.55)	2016 (Cedis)	USD (Rate 4.00)
Expenditure and Amortization of Loans for Oil and Gas Infrastructure	390,517,533.49	110,004,939.02	-	-
Road and Other Infrastructure	451,586,162.80	127,207,369.31	199,447,492.13	49,861,873.04
Agriculture Modernization	27,043,457.48	76,17875.35	27,671,280.88	6,917,820.22
Capacity Building (including Oil and Gas	135,948,665.69	38,295,398.79	83,037,283.91	20,759,320.98
<b>Total Spending in Priority Areas</b>	<b>1,005,095,819.46</b>	<b>283,125,582.47</b>	<b>310,156,056.92</b>	<b>77,539,014.24</b>

Priority Area				
Transfers to the Public Interest and Accountability Committee	-	-	967,000.00	241,750.00
<b>Total ABFA Spending</b>	<b>1,005,095,819.46</b>	<b>283,125,582.47</b>	<b>311,123,056.92</b>	<b>77,780,764.24</b>

Source: Ministry of Finance



## Infrastructure Development Fund

The Ghana Infrastructure Investment Fund has been established under the Ghana Infrastructure Investment (GIIF) Act, Act 877 of 2014 with a mandate to provide financial resources; to manage, coordinate and invest in a diversified portfolio of infrastructure projects in Ghana for national development. The PRMA provides for the allocation of funds from the ABFA to the Ghana Infrastructure Investment Fund. The allocation from the ABFA to GIIF is not to be more than 25% of the ABFA allocated for public investment expenditure.

## Transparency and Accountability

The law enjoins that the management of petroleum revenue and savings should always be carried out with the highest internationally accepted standards of transparency and good governance. Aside the law establishes committees to ensure transparency and accountability in the management and utilization of the oil and gas revenues. One of such is the The Public Interest and Accountability Committee. The Public Interest and Accountability Committee (PIAC) The Act also, provides a stronger framework for public accountability through disclosures of public expenditures and regular scrutiny. The law thus established the Public Interest and Accountability Committee with diverse membership to monitor and evaluate compliance with the law by government and relevant institutions and provide an independent assessment of the use and management of the petroleum revenues.

The Accountability Committee will publish semi-annual and annual reports in two state owned newspapers, publish copies of the report on the Committee's website and hold meetings twice a year to discuss the reports with the public.

## Investment Advisory Committee

In order to ensure that the savings in the Ghana Heritage fund are properly invested and managed, the law established the Investment Advisory Committee to advise

the Minister and monitor the management of the Ghana Petroleum Funds. The committee is to formulate and propose to the Minister, investment policy and advise on broad investment guidelines and overall management strategies to the petroleum funds.

## Royalties

Where the petroleum operations are carried out onshore, the appropriate royalties will be determined and paid in accordance with the relevant laws. This means that if the petroleum activity takes place on land, a portion of the royalty will be paid to the Administrator of Stool Lands for onward distribution in accordance with the constitution where such royalty is distributed between the traditional authorities in the area concerned and the relevant District Assemblies.

## Payment of Compensation

Where the petroleum operations adversely affect a community, appropriate compensation will be paid for the benefit of the community and in accordance with the relevant laws.

## Reporting

The Act provides for reporting on various levels either monthly, quarterly, semi-annually or annually. The reporting Authorities include:

- The Ghana Revenue Authority
- The Ministry of Finance and Economic Planning
- The Bank of Ghana
- The Investment Advisory Committee
- The Auditor-General
- The Public Interest and Accountability Committee

## **Other Institutions providing Oversight Responsibilities for the oil and Gas Revenues**

- The Committee will also submit a copy of its semi-annual and annual reports to the President and to Parliament.
- 1. The Auditor-General provides external audits of the Petroleum Funds each year, while Bank of Ghana conducts internal audits with the Governor submitting quarterly reports
- 2. The Ministry responsible for the implementation of the PRMA is the Ministry of Finance and Economic Planning.

# Module III

## A. ENVIRONMENTAL IMPACT ASSESSMENT IN THE OIL AND GAS SECTOR

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### Introduction

*The operations of Oil and gas companies create environmental impacts. Oil and gas operations have major potential hazards for the environment, and may impact it at different levels: air, water, soil. Notable consequence of the oil and gas activities is pollution. Pollution is associated with virtually all stages of oil and gas production, from exploratory activities to refining. Wastewater, gas emissions, solid waste and others generated during drilling, production, are possible sources of pollution. Other environmental impacts include acid rain and the destruction of ecosystems. Therefore, all oil and gas activities will be required to comply with environmental standards and guidelines put in place by the Environmental Protection Agency.*

### Objective of Module

*The objective of this module is to provide:*

- *To get Participants understand the environmental impact processes*

- *To get participants to appreciate the types of projects that require an environmental impact assessment.*
- *Provide participants with basic understanding and tools to monitor pollution of the environment.*

### The Environmental Protection Agency

One important institution or agency that regulates the oil and gas sector is the Environmental Protection Agency (EPA). The legal framework that set up the EPA is the Environmental Protection Agency Act 1994, Act 490. The role of the EPA is to advise the Minister responsible for Environment on the formulation of policies on the environment and in particular make recommendations for the protection of the environment and prescribe standards and guidelines relating to the pollution of air, water, land and any other forms of environmental pollution including the discharge of waste and the control of toxic substances.

The governing board of the Agency is appointed taking into consideration the knowledge, expertise and experience of the persons in matters relating to the environment. In

addition, three other persons who are knowledgeable in finance or commerce are to be appointed with at least one of them being a woman. Since its establishment, the board is always constituted with at least one woman as a member.

The EPA is the agency responsible for ensuring that companies comply with the laws and regulations on the environment. Specifically, Oil and gas companies are required to obtain environmental permits from the EPA as a basis for the grant of licence by the Petroleum Commission. Thus, the EPA supervises the conduct of the Environmental Impact Assessment by oil and gas companies. It is also the EPA that monitors the environmental compliance of oil and gas companies and other companies in the country through its regional and district offices.

## Environmental Assessment Regulations 1999, LI 1652

In accordance with the EPA Act, the Environmental Assessment Regulations 1999, LI 1652 was enacted which among other things set out the processes and procedure for obtaining an environmental permit. The Environmental Assessment Regulations govern the processes for the conduct of environmental impact assessments (EIA) and thus the acquisition of the environmental permit in the country. The EIAs are specifically aimed at an attempt to reduce the negative environmental impact arising from oil and gas exploration.

## Environmental Permit

Companies whose activities will affect the environment are required to obtain an environmental permit. Every oil and gas company requires an environmental permit to commence operations. An environmental permit is a prerequisite to obtaining a permit to carry out oil and gas activities. No permit is issued unless an EIA is conducted. The Environmental permit is obtained by an application made to the EPA.

## What is an Environmental Impact Assessment (EIA)?

An EIA is a planning and decision making tool applied to a proposed project, the implementation and development of which may have a significant impact on the environment.

What does the Environmental Impact Assessment involves? The EIA process involves the gathering and analysis of all relevant information on a proposed project to determine the likely consequences if implemented in a given area. It also provides the mitigating and alternative measures to be put in place to lessen the negative impacts on the environment.

## Key Actors in Environmental Impact Assessment

The key actors involved in the EIA process include

- Proponent( Investor, Prospective Developer, oil& Gas Company etc)
- Environmental Protection Agency (EPA)
- Relevant Metropolitan/Municipal/District Assembly
- Relevant Ministry and departments
- Interested Parties (including communities, civil society organizations) etc

## Projects that require Environmental Impact Assessment

Generally, the following activities require an environmental impact assessment to be conducted.

• Transportation(airport, roads, highways harbours etc)	• Agriculture( Irrigation, land(40 hectares)
• Health(Hospitals)	• Mining(gold diamond etc)
• Energy (Oil & Gas fields)	• Tourism(Hotels)
• Manufacturing(Chemicals)	• Forestry/wildlife
• National parks	

## Oil and gas fields

With particular reference to the oil and gas fields, an EIA must be conducted on the following oil and gas activities:

- oil and gas fields development;
- construction of off-shore and on-shore pipelines;
- construction of oil and gas separation, processing, handling and storage facilities.
- construction of oil refineries;
- construction of product depots for the storage of petrol, gas or diesel which are located within 3 kilometres of any commercial, industrial or residential areas.

## Environmental Impact Assessment Procedures

- Registration
- Screening
- Scoping
- EIS Study
- EIS Review
- Decision Making

## Levels of Assessment for Offshore Upstream oil and gas Activities

Registration	
Surveys	Preliminary Environmental Assessment
Drilling of Wells	Full EIA
Petroleum Production	Full EIA
Construction of off-shore and on-shore pipelines	Full EIA
Decommissioning/ Abandonment Plan	Full EIA
Decommissioning and Abandonment	Full EIA

## Registration

Any activity which has or is likely to have adverse effects on the environment or public health has to be registered by the EPA and an environmental permit obtained before the commencement of operations.

## Screening

Application for Environmental Permit shall include a report indicating the environmental, health and safety impact of the project; a clear commitment to avoid adverse environmental effects; commitment to address unavoidable environmental and health impacts and necessary steps for their reduction and the alternatives to the project.

The application for environmental permit will be initially assessed and screened taking into consideration:

- the location, size & likely output
- the technology intended to be used
- the concern of the public
- land use
- other factors

After screening the application the EPA will issue a screening report indicating if the project is

- Approved or ;
- Objected to or;
- Requires preliminary environmental report or
- Environmental impact statement

In respect of oil and gas operations, an EIA is mandatory. As a result, the EPA will require the company to prepare an EIS. The EPA will first request for the preparation of a Scoping Report by the company.

## Scoping Report

The scoping report shall set out the scope and extent of the EIA to be carried out which shall include draft terms of reference indicating the essential issues to be addressed by the EIS. This should include:

A description of the project;	An analysis of the need of the project;
Alternative to project;	Reasons for selecting site
Identification of existing environmental, social & economic concerns.	Information on negative and positive impacts of the project
The potential impact on health of people	Proposal to mitigate negative impact
Proposal to monitor the impact	Contingency plans
Consultation with the public	Provisional environmental management plan
Maps, tables, graphs etc	Proposal for payment of compensation

On the submission of the scoping report the EPA has 25 days to accept or reject the scoping report. If the scoping report is accepted, the applicant will submit the EIS based on the scoping report. If the scoping report is not accepted, the applicant will have to revised the report and re-submit.

## Scoping Notice

The Applicant is to give notice of the project to the relevant Ministries, Metropolitan Municipal or District Assemblies. Also the applicant is to advertise the scoping notice in a national newspaper circulating in the locality. The applicant is also required to make available for inspection by the public copies of the scoping report. Usually copies of the report are placed at the District Assembly and the Chief's Palace.

## Environmental Impact Statement (EIS)

The EIS is required if the EPA is satisfied with the scoping report prepared by the company.

The EIS on the proposed project may contain information such as the potential impact on the health of the people, and information on the possible health effect of the project on persons within and around the vicinity of the proposed project. The EIS shall indicate a clear assessment of the project based on the scoping report and shall address the possible direct and indirect impacts of the project on the

environment at:

- Pre-construction stage
- Construction stage
- Operation/Production
- Decommissioning
- Post decommissioning stages.

The EIS should also among others address the possible direct and indirect impact of the project on:

Concentration of pollutants in the environment( air, water ,land)	Direct ecological changes from the pollutants on communities, vegetation
Provision of infrastructure e.g. roads, water, electricity etc	Reasons for selecting site
Vehicular traffic	Immigration and demographic changes
Direct and indirect employment generation	Noise and vibration levels
Potential land use	Conflict and tourism
Possible health effects	Mitigation measures
Reclamation plan	

## Public Hearing

As part of EIA process, a public hearing will have to be conducted by the EPA on the proposed project under any of the following three circumstances;

- where there is great adverse public reaction to the commencement of the proposed undertaking;
- where the undertaking will involve the dislocation, relocation or resettlement of communities; or
- where EPA itself considers that the undertaking will have extensive or far reaching effect on the environment.

The EPA is to constitute a panel of not less than three (3) or more than five (5) persons.

At least a third of the members of the panel must be residents of the geographical area and reflect varied opinion. The Chairperson is to be appointed by EPA and must not be a resident of the locality where the project is to be situated. The Panel is responsible for organizing the public hearing and will receive submissions from bodies of persons and

consider all the submissions and make recommendations to EPA within 15 days after the end of the public hearing.

## How citizens/communities can participate in the public hearing

The public hearing presents opportunities during an environmental assessment process where members of the public can make contribution to the implementation or otherwise of the intended project. Depending upon the level of the assessment process, the participation of citizens and communities can range from submitting written comments or memoranda to making a presentation at a public hearing.

Ideally, citizens should participate in an EIA process as early as possible starting from the screening stage through to the scoping process to ensure that significant issues are identified and alternative ways of implementing the project are considered.

Public hearing gives the communities and citizenry an opportunity to evaluate and assess the proposed project and to make proposals regarding the impacts and measures that are to be put in place to avert these impacts, or to oppose the project altogether. Therefore citizens should strive to engage as fully and effectively as possible in the EIA process especially the public hearings.

Experience has shown that public hearings organized by extractive companies are rather turned into public relations forums by the companies. Instead of educating the communities to be affected by the project both the positive and negative impacts of intended operations, such occasions are often used by the companies and other officials to extol and eulogize the benefits that the community will derive from the operations to the neglect of the negative.

In participating in the public hearing, citizens and communities must ask questions relating to

1. The impact of the proposed project on their existing water bodies
2. The impact of the project on the environment as a

whole

3. The impact of the project on their present economic livelihood
4. The impact of the project on their general health
5. The concrete measure the company has put in place to avoid these impacts.
6. The mitigation measures put in place or are to be put in place to mitigate the impacts

The communities/citizens have the power through the EIA process in general and the public hearing in particular, to influence the outcome and implementation of the project through their participation in the process and can even disapprove the project and get the EPA to stop the project from being implemented or request for a relocation of the project to another site.

## Review of EIS after Public Hearing

The draft EIS is to be reviewed by EPA after receipt of the public hearing recommendations and if the EIS is acceptable, the applicant will be issued with the environmental permit. Where the draft EIS is not acceptable the applicant will be required to resubmit a revised EIS or will be required to conduct further studies determined by EPA and if the EIS is acceptable after further work has been done on it, the environmental permit will be issued and it will be valid for 18 months. All companies are required to submit annual environmental reports to the EPA.

## Reclamation Bond

A reclamation bond is to be posted based on the approved work plan for the reclamation of the project.

### Complaints

A person aggrieved with a decision of the EPA may submit a complaint in writing to the Minister within 30 days.

The Minister within 14 days must set up a panel comprising a representatives of:

- Ministry of Environment

- Attorney-General's department
- Ministry responsible for the project
- Two other persons with specialization in the relevant field

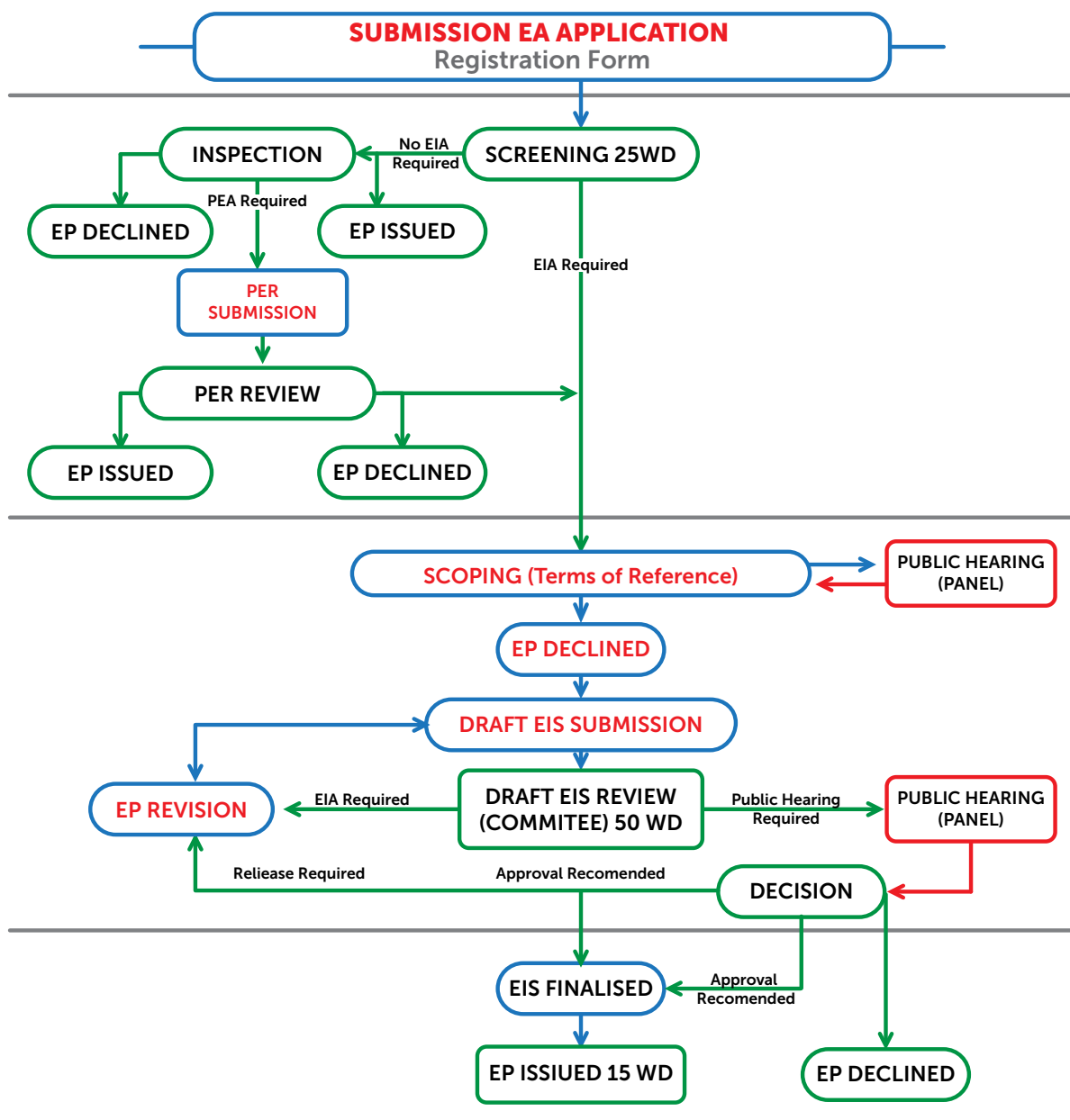
The panel will hear the complaint and report their decision to the Minister within 60 days

## Offence & Penalty

It is an offence to:

- Commence operations without an environmental permit
- Fail to conduct EIA
- Provide false information
- Fails to submit annual environmental report
- Contravenes provisions of LI 1652.

## ADMINISTRATIVE FLOW CHART OF THE EA PROCEDURE



EIA - Environmental Impact Assessment  
 EPS - Environmental Impact Statement  
 PER - Preliminary Environmental Report  
 PEA - Preliminary Environmental Assessment

PH - Public Hearing  
 WD - Working Days Required for Review  
 EA - Environmental Assessment  
 EP - Environmental Permit

EPA Action  
 Pre Action  
 Public



# Module III

## B. OPPORTUNITIES FOR CEMAGS TO CONTRIBUTE TO A MARINE AND COASTAL ENVIRONMENTAL MONITORING AND ASSESSMENT PROGRAMME <sup>1</sup>

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### *Introduction*

*Environmental monitoring can be described as the systematic approach to observing and studying conditions of the environment over time and space. To distinguish it from surveillance, it typically involves impact assessment: collecting samples and specimens from the air, water and land to determine if any physical or biological factors are negatively impacting species assemblages, natural ecosystems and habitats as compared to baseline or reference values or established environmental standards.*

*Impact assessment is a critical component of any monitoring programme and indispensable for the management of human activities in the ocean. It allows us to establish trends over time which may call for action if these changes indicate a potentially adverse environmental impact and/or occur over a relatively short period of time. A monitoring programme designed for detecting short term changes in environmental conditions is called an Early Warning System.*

*A good example of environmental monitoring is OSPAR's Coordinated Environmental Monitoring*

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*Programme (CEMP) which aims to deliver comparable data from across the OSPAR maritime area (<https://www.ospar.org/work-areas/cross-cutting-issues/cemp>). OSPAR stands for the Convention for the Protection of the Marine Environment of the North-East Atlantic (the 'OSPAR Convention'). The Convention has been signed and ratified by all of the Contracting Parties to the original Oslo or Paris Conventions (Belgium, Denmark, the European Union, Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland) along with Luxembourg and Switzerland (<https://www.ospar.org/convention>). The OSPAR Convention has an equivalent in Africa which is the Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region (Abidjan Convention in short), it covers a marine area from Mauritania to South Africa which has a coastline of just over 14,000 km. For years, particularly from 1985 to 1999, the Abidjan Convention made slow progress. Today, however, the Convention is revitalized, gaining an increasing number of ratified countries, greater payments to its Trust Fund, holding regular meetings and implementing a number of planned activities (<http://abidjanconvention.org/>).*

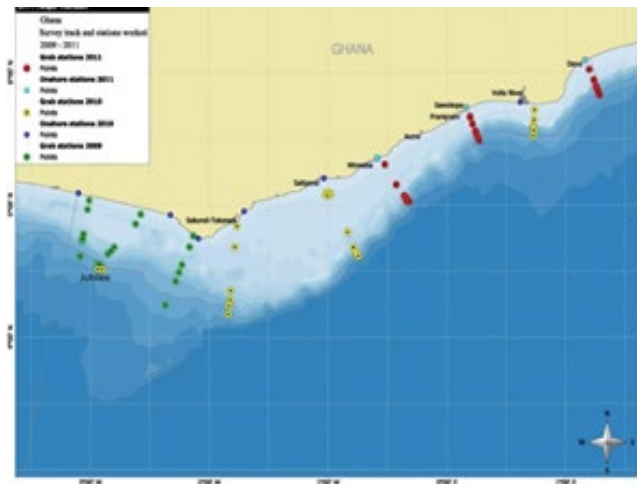
*The slow start of the Abidjan Convention thus far has prevented the development of its own Coordinated Environmental Monitoring Programme. Therefore, to date, OSPAR's CEMP remains the main source of inspiration for the development of marine and coastal monitoring programmes in the Convention area. Examples of such OSPAR inspired programmes can be found in Mauritania (PBGP in press) and in Ghana (<http://epaoilandgas.org/epa.html>).*

## Monitoring of the marine environment in Ghana

The Ghana Environmental Protection Agency (EPA) uses environmental monitoring to set policy that protects human health and the environment. The agency also conducts surveillance and compliance monitoring (environmental permits, EIS) and requires (oil) industry to do the same (Environmental Management Plans). Offshore oil production started in Ghana in December 2010 and there were concerns that the activity might have negative impact on the marine resources including loss of marine biodiversity. The problems with pollution and transport of pollutants are complex and transboundary. With the possible impacts on the ecosystem and on the different users of the sea it is important to provide as good documentation as possible of the environmental conditions in the area before and during the exploitation for oil and gas (FAO 2013).

According to FAO (2013), a programme of baseline/monitoring surveys was put into place by the Environmental Protection Agency (EPA) with technical and financial assistance of the EAF-Nansen project (involving the Food and Agriculture Organization of the United Nations (FAO) and the Institute of Marine Research of Norway), the Norad Oil for Development (OfD) programme and Tullow Oil, one of the oil extraction companies operating in Ghana. Other national institutions, notably the University of Ghana, University of Cape Coast, Survey Department, and the Marine Fisheries Research Division participated in the programme. The three surveys conducted between 2009 and 2011 using the research vessel Dr Fridtjof Nansen were the first investigations focusing on environmental monitoring of the Ghanaian continental shelf in relation to oil and gas. The area from the beach/littoral zone and out to 1 200 m depth has been sampled along 9 transects (Fig. 1). Sediment grabs were typically taken in water depths of

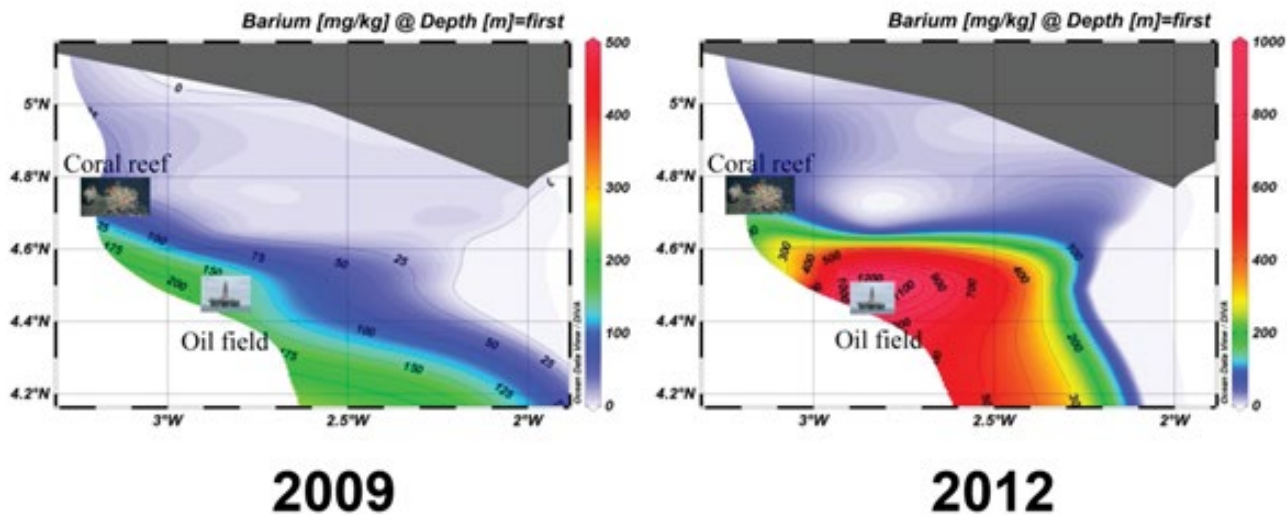
25, 50, 100, 250, 500 and 1200m. Samples on a depth of 10m were later added operating from the beach and using local canoes.



**Figure 1.** The research vessel Dr Fridtjof Nansen in Tema, September 2017, and nine transects surveyed for sediments, fish stocks and benthic fauna between 2009 and 2011 (from Serigstad 2013). In the Western Region it consisted of a station grid surrounding the Jubilee oil Field and three transects; Ghana West (GW) which is close to the border to Cote d'Ivoire and started from New Town, GP (along the proposed location for a pipeline from the Jubilee field to shore) and GE which begins close to Princes Town (Norad 2010).

A special video grab designed to collect sediment samples down to 2 500 m water depth, was deployed. The videograb also provides oceanographic information and high resolution pictures and videos. A full set of data from the sediments off the coast has been collected and analysed according to the OSPAR guidelines for environmental monitoring in oil producing areas and these have provided the baseline for environmental monitoring which started in 2012.

Although Ghana, together with Mauritania, are the only African countries that established good environmental baselines prior to the start of substantial oil activities, the frequency of the monitoring surveys in Ghana which started in 2012 is unknown and some summary results of the 2012 survey were only presented to the press on 16th March 2017, or five years after they had been collected (Serigstad 2017). In 2012, the monitoring regime consisted of seven transects spanning from New Town in the Western Region to Denu in the east (Volta Region) (<http://epaoilandgas.org/epa.html>). The presentation given by one of the principal scientists responsible for data collection on the Fridtjof Nansen (Serigstad 2017) shows that in just two years time the oil industry has already left a significant footprint on the ocean bottom as shown by barium levels in sediments, stretching over an area of ca. 150 km diameter (Fig.2). Barium can be considered as a marker for drilling fluids and drilling mud/drill cuttings discharged onto the ocean floor. Although the highest levels are in the immediate surroundings of the Jubilee field, measurable concentrations in sediments travel mainly in SE direction and in the deepest water depths sampled. Although Barium itself is not of the greatest toxicological concern, it shows that discharges of other and more toxic compounds may have impacts that stretch well beyond the 500m radius surrounding installations, such as FPSOs. Therefore the lack of a consistently executed monitoring programme should lead to questions asked to the relevant authorities.



*Figure 2. Barium levels (mg/kg Dry Weight) in sediments sampled before (2009) and after (2012) the start of the oil production in the Jubilee field (After Serigstad 2017). It shows that oil exploitation has already left a significant footprint on the ocean floor.*

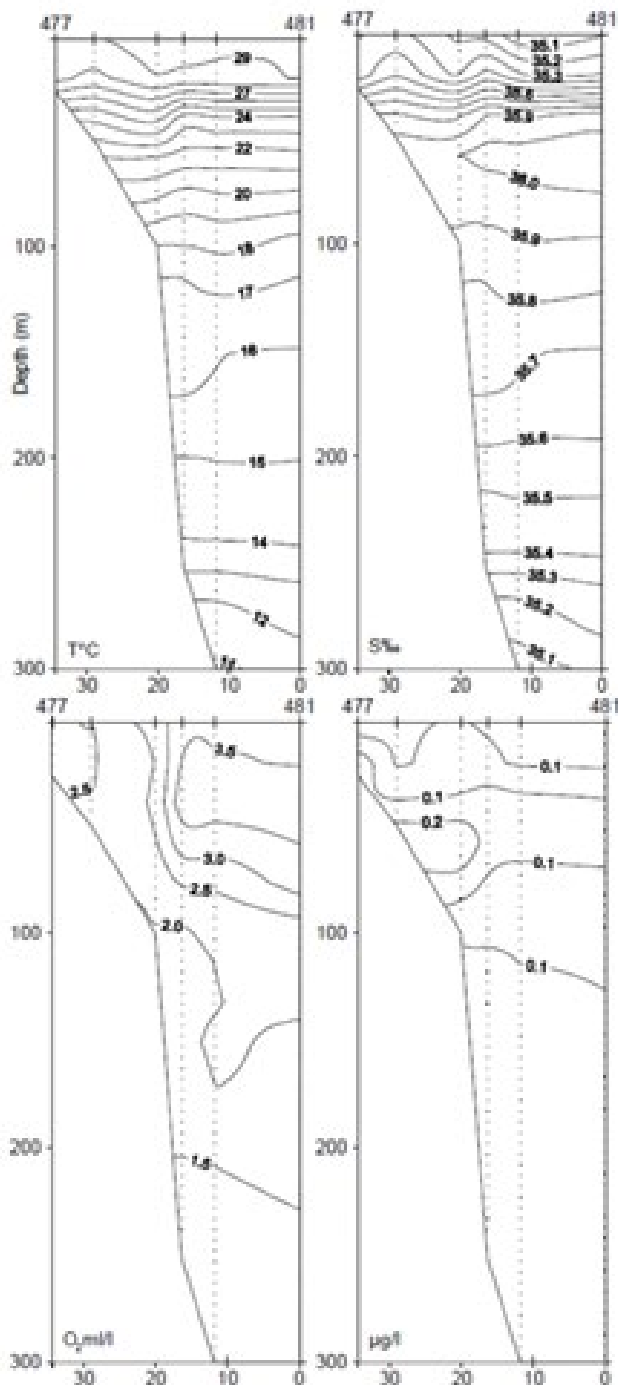
The full set of data which are supposedly stored in the NANSIS software package and database, are currently not publicly available, leaving civil society in general and coastal communities in particular uninformed about potential changes in the marine environment that could affect the resources on which they depend for their livelihoods. Only the report of the 2009 survey (Norad 2010) can be downloaded ([www.imr.no/filarkiv/2010/07/report\\_ghana\\_2009-26\\_may\\_2010.pdf/en](http://www.imr.no/filarkiv/2010/07/report_ghana_2009-26_may_2010.pdf/en)). The other reports are either said to have restricted access or are not available at all. It is therefore encouraging that the Head of the EPA Petroleum Department in a presentation on 28 November 2017 in Takoradi announced the intentions of the EPA for a better transparency and the availability in 2018 of a website containing all data from monitoring activities, including compliance monitoring.

According to the EPA (<http://epaoilandgas.org/epa.html>), the EAF- Nansen Project of FAO and the EPA jointly organized a NANSIS training and applications workshop in

Sogakope from 25 February -7th March 2015. A total of 13 participants from the EPA and Fisheries Scientific Survey Division, were trained. The objective of the workshop was to train participants in the use of the Nansis software including using the fishery survey data to map out ecologically or Biologically Significant Marine Areas (EBSAs). It would be highly relevant if representatives of civil society could also access the Nansis software and database and receive adequate training to manipulate the data.

## Chemical, physical and biological analysis

General descriptions of the various chemical, physical and biological analysis is modified and adapted from Trabucco et al. (2012), whereas examples from Ghana are taken from the Marine Environmental Survey of Bottom Sediments in Ghana in May 2009 in the Western Region (Norad 2010)



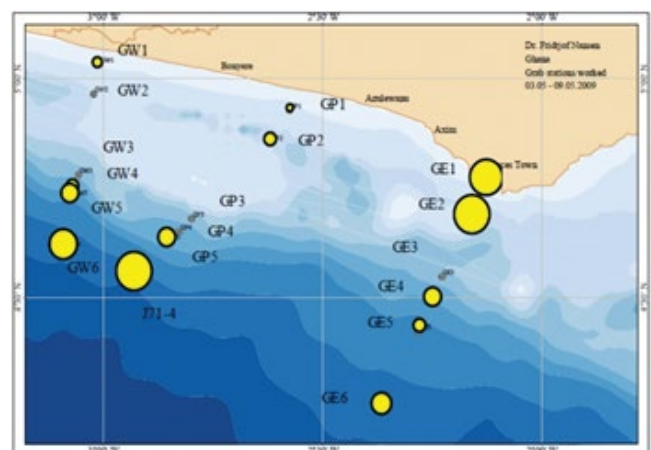
**Figure 3.** Vertical sections of temperature, salinity and oxygen at some sampling sites on the transects of the Western Region in May 2009 (from Norad 2010).

**Physico-chemical parameters** - Temperature, transparency, turbidity, dissolved oxygen, pH and salinity are all factors that affect biota and any changes can have far reaching consequences. Rising Sea Surface Temperatures (SST) give information on global warming but also on local

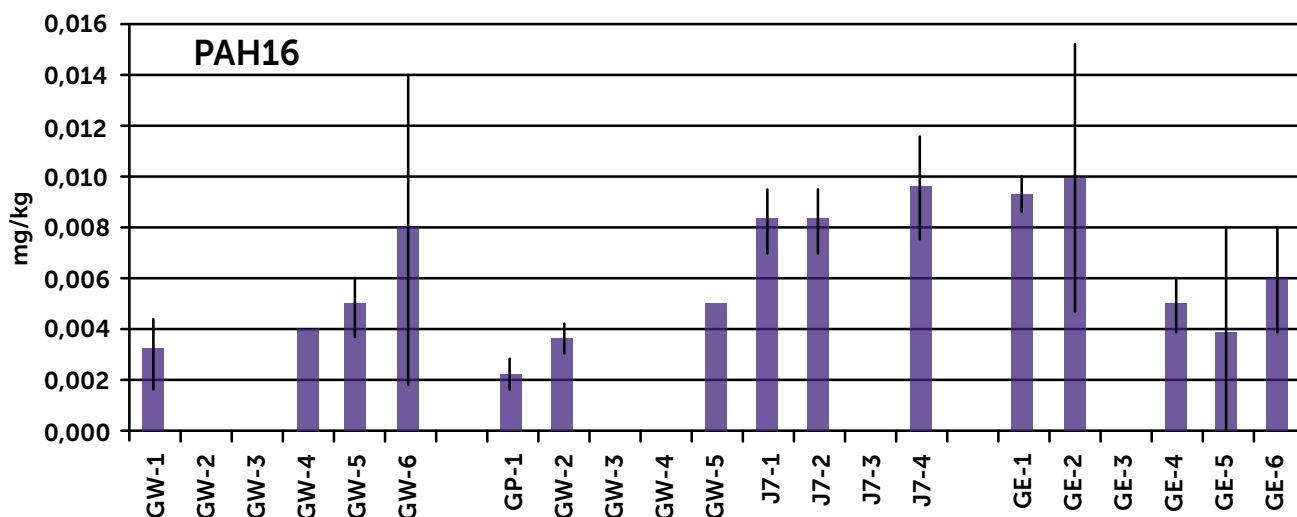
discharges of warm water and the transparency of the water determines the degree of light penetration which is essential for the growth of algae which in turn serve as food for many organisms. Changes in turbidity indicate discharges of dissolved materials such as drill cuttings from platforms offshore or from galamsey activities upstream of estuaries and is an important indicator for the mixing and transport of nutrients and changes in the pH of the water can change the toxicity of dissolved contaminants, whereas salinity and dissolved oxygen determine the limits within which certain species can survive.

Currents and wind are equally important parameters as they affect direction and dispersion of the plume of discharges for an offshore installation such as an FPSO and are critically important for determining the potential impact of spills from ships or offshore installations.

**Chemical analysis** - Chemical analysis allows for identification and quantification of different single compounds, potentially responsible for environmental contamination. The presence of offshore platforms may cause chemical alteration of the marine ecosystem in which it is present, especially if the platform discharges produced water (PFW).



**Figure 4A.** Distribution of PAH16 along the transects of Ghana west (GW), Ghana east (GE), Ghana pipeline (GP) including the Jubilee sites (J) in 2009. The different sizes of the circles in the map illustrate the amount of sum PAH16 (From Norad 2010).



**Figure 4B.** Distribution of PAH16 (average and stdev) along the transects of Ghana west (GW), Ghana east (GE), Ghana pipeline (GP) including the Jubilee sites (J) in 2009. Missing data are below detection limit (From Norad 2010).

Discharges entering the sea through rivers or point sources, often industrial, may equally affect the marine environment. A number of compounds are of particular importance when dealing with offshore oil and gas. Among these are Polycyclic Aromatic Hydrocarbons (PAHs) and certain trace metals. Chemical analysis requires specialized analytical equipment and experienced personnel. They are generally (very) expensive, and some require even more sophisticated equipment.

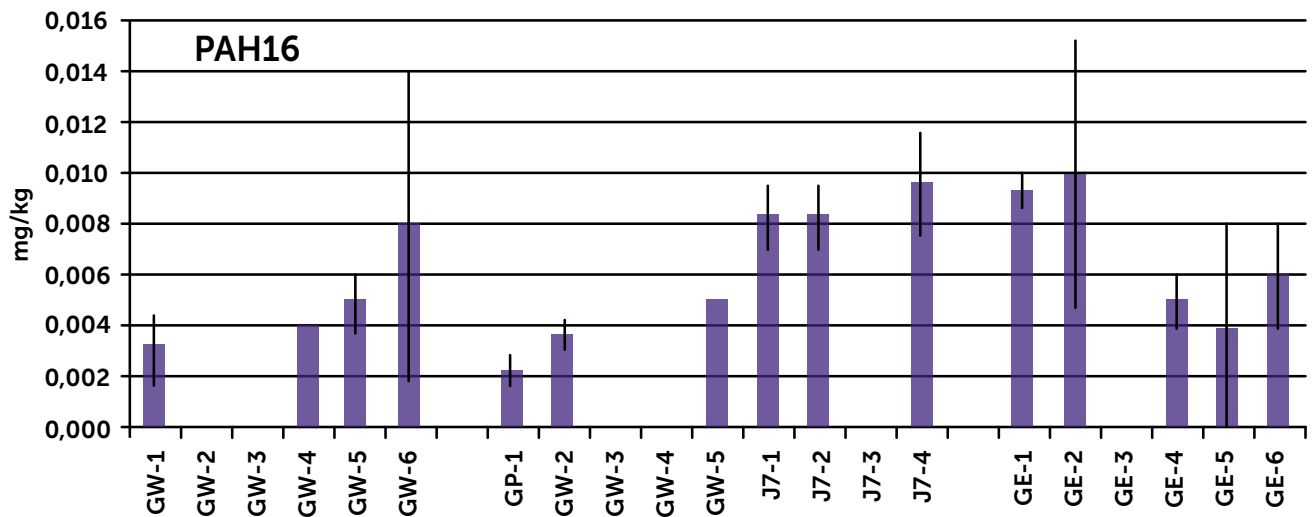
Despite major advances in chemical analysis, the Limits of Quantification are sometimes higher than toxic levels for certain sensitive organisms or their embryo-larval stages.

During the 2009 baseline survey of the Dr Fridtjof Nansen research vessel, The concentrations of hydrocarbons were low at all sites and several compounds of PAH (polyaromatic hydrocarbons) and NPD (naphthalene, phenanthrene and dibenzothiophene) were below the detection limits (Figs. 4A and 4B). The highest concentration of total hydrocarbon (THC) was found at the site J7-1 which is close to the

former drilling site J7. Similar concentrations were detected at the sites GE-5 and GE-6 far from the Jubilee field, and may indicate natural variation in THC concentration. The GW transect is characterized by low concentrations of hydrocarbons.

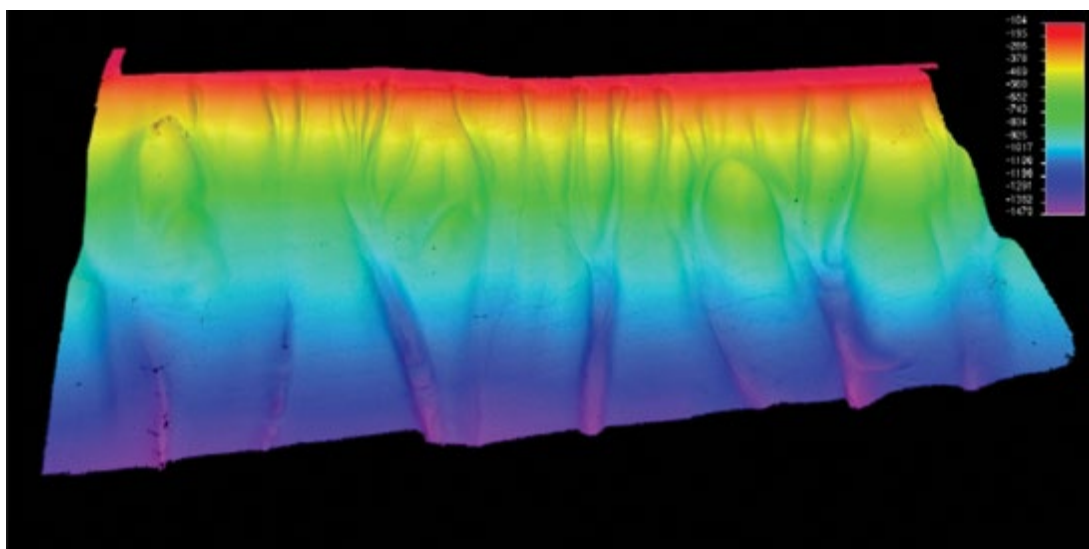
**Sedimentology** - Grain size is the most fundamental physical property of sediment. Sediments consist of grains of different sizes and are mainly categorized as sand, silt or clay; they are classified according to the size and size distribution of their grains in the categories described in the Wentworth classification. Grain sizes below 63 micrometer (0.063 mm) are categorized as pelite. This is the fraction in which most contaminants are concentrated. The information on sediment grain size allows us to study trends in surface processes related to the dynamic conditions of transportation and deposition. Moreover, sediments are the ultimate sink for contaminants in the marine environment. The results of the 2009 sediment grain size analysis as far as pelite is concerned



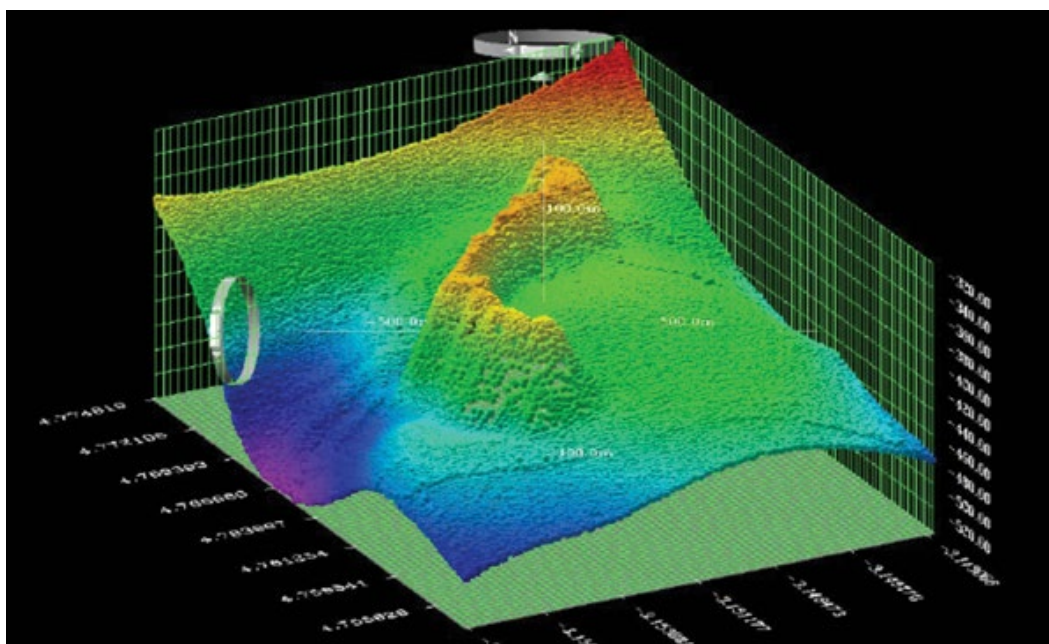


**Figure 5.** Content of pelite along the three transects Ghana west, Ghana east, Ghana pipeline and at the Jubilee field in 2009. The size of the circles in the map illustrate the amount of pelite (from Norad 2010).

**Geomorphology** - The use of geophysical devices such as a Side Scan Sonar Multibeam echosounder) allows us to study the morphological characteristics of the sea bottom. This kind of investigation represents an essential tool for the effective management of the marine environment and to study accurately the impact of man activities on the seabed (Kenny et al., 2003, Collier & Brown, 2005). See Fig. 7 for the bathymetry as revealed by the multibeam echosounder of the Fridtjof Nansen during the May 2009 cruise.



**Figure 7.** Bathymetrical image showing the continental slope from the boarder of the Ivory Coast and eastward to the location of the Jubilee oil field. The colour scale to the right explains the distribution of depths (From NORAD 2010). For details of the structure visible in the NW corner of the image see Fig. 6 (From Norad 2010).



**Figure 8.** An undisturbed live coral reef of 400m long and 50 m high was detected at 450 m water depth was detected in the western part of the area being studied (From Norad 2010).

According to FAO (2013) in the course of the surveys a live deepwater coral reef was found. The reef, 400 m long 50 m high, is located at 500 m water depth (Fig. 8). From data and information gathered with the video grab there appears to be a very rich biodiversity on and around the reef. This is a clear indication that marine spatial planning would be a necessity to safeguard these precious marine resources from either deep sea trawling or oil and gas exploration and exploitation.

## Biological analysis

### Macrozoobenthic community structure -

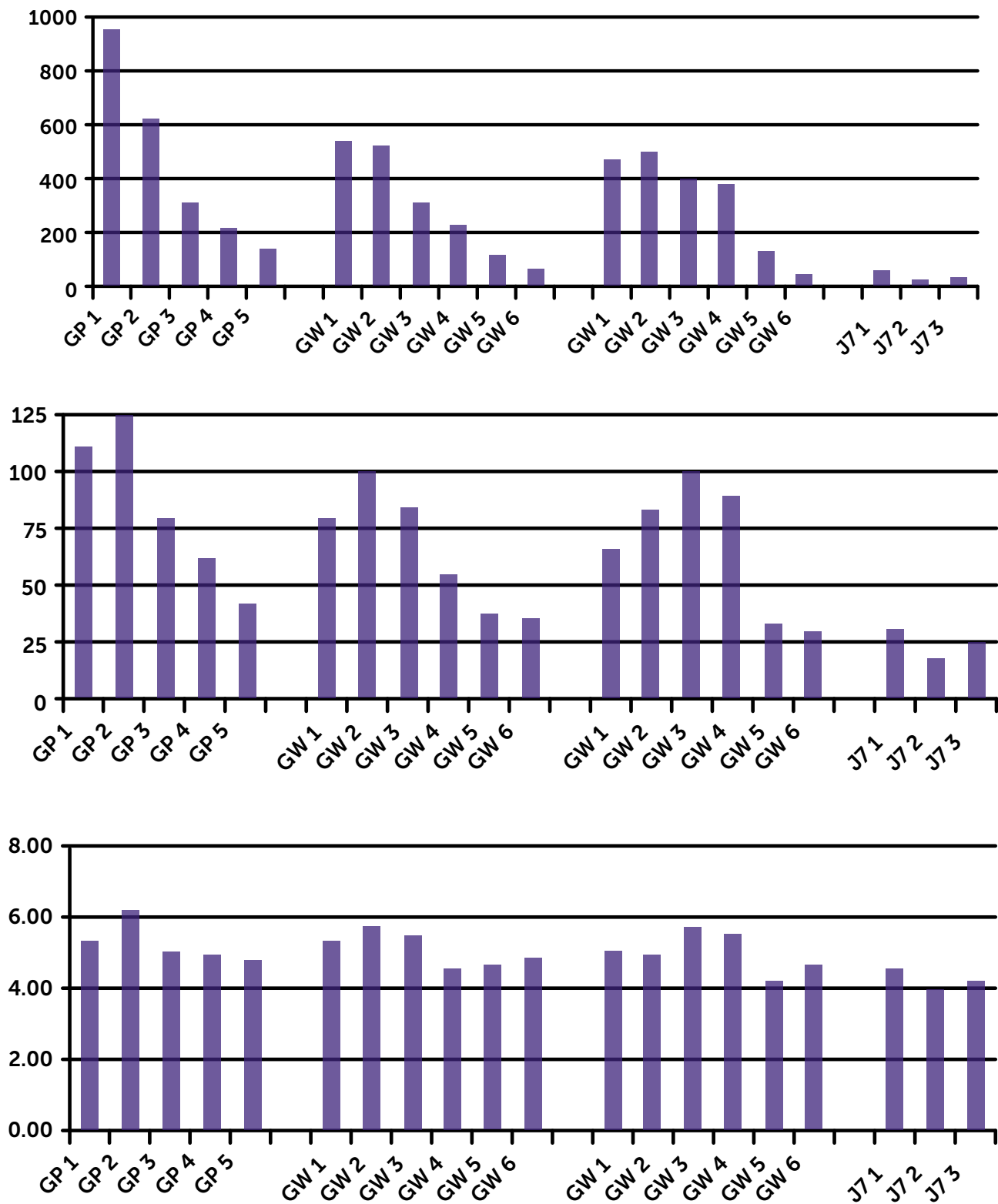
Offshore activities can induce changes in the characteristics of sediment near the offshore structures. The extent to which the biota is affected by these types of perturbations depends on complex interactions between environmental characteristics of the site and the characteristics of the platform and the discharges thereof. Studies have shown that the presence and the activity of off-shore platforms might impact biological communities inhabiting the surrounding seabed. The distance, however, to which the impact is apparent varies from tens of meters to over 1000

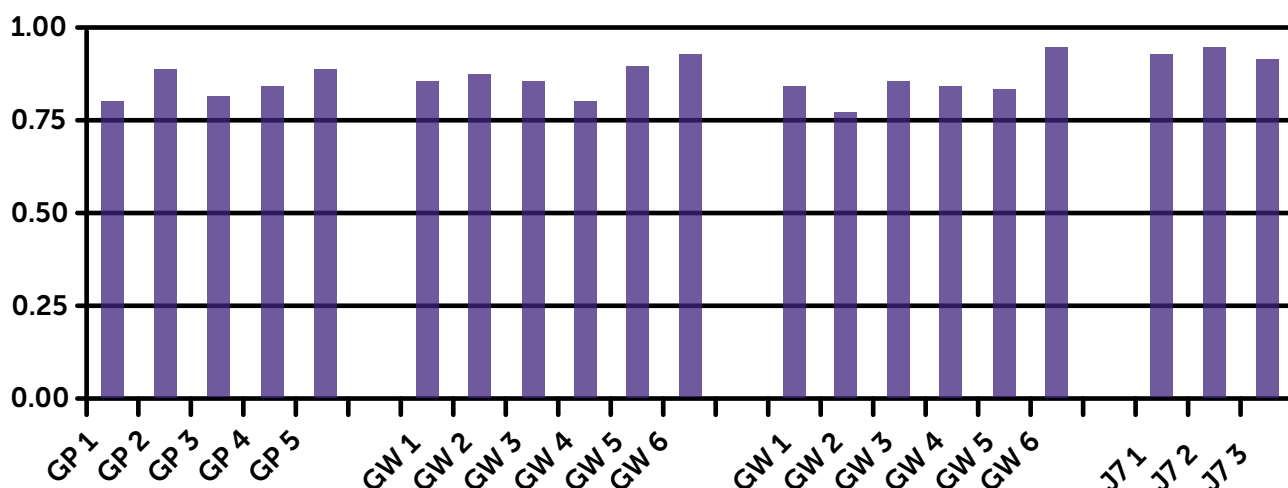
m.

According to Neff (2005), in a Report Prepared for the Petroleum Environmental Research Forum (PERF) and American Petroleum Institute, effects of Water Based Drillings Muds (WBM) and cuttings piles on bottom living biological communities are caused mainly by burial and low sediment oxygen concentrations caused by organic enrichment. Toxic effects, when they occur, probably are caused by sulfide and ammonia by-products of organic enrichment. Recovery of benthic communities from burial and organic enrichment occurs by recruitment of new colonists from planktonic larvae and immigration from adjacent undisturbed sediments. In a later study on bioavailability of metals associated with barite Neff (2008) concluded that only lead and zinc may dissolve from a high trace metal barite into sediment pore water. There would be little or no dissolution of metals from modern low trace metal barites. However, in another independent study, Trannum et al. (2010) found that there was a significant reduction in number of taxa, abundance, biomass and diversity of macro fauna with increasing thickness of drill cuttings, which was not observed for the natural sediment particles. The drill cuttings also influenced



oxygen consumption and oxygen penetration depth in the sediment, and it was concluded that an organic compound in the drill cuttings initiated a typical eutrophication response. The authors therefore recommended a reconsideration of the assumption that water-based drill cuttings only cause sedimentation (burial) effects (Trannum et al. 2010).





**Figure 9.** From the upper to the lower row: Number of individuals, taxa, diversity  $H'$  and evenness  $J$  along the three transects Ghana pipeline, Ghana west, Ghana east and at the Jubilee field in May 2009 (from Norad 2010).

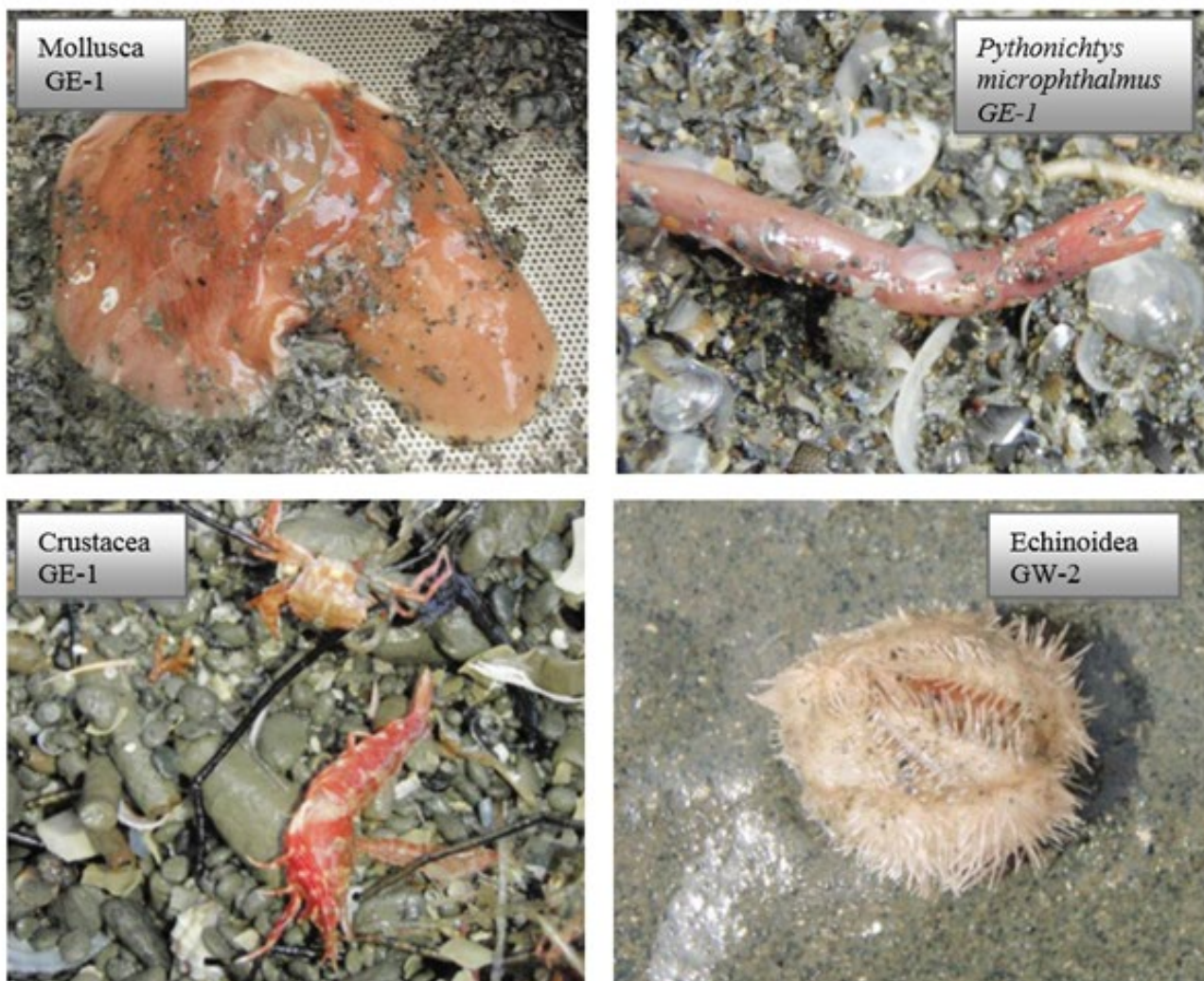
Ecological recovery usually begins shortly after completion of drilling and often is well advanced within a year. Full recovery may be delayed until concentrations of biodegradable organic matter decrease through microbial biodegradation to the point where surface layers of sediment are oxygenated.

The systematic recognition of organisms should be made at the species level at least for the most representative groups (Polychaeta, Mollusca, Crustacea, Echinodermata, Fig. 9). However, identification of the biota often poses challenges as rare species may even be undescribed and others

necessitate reference collections to correctly identify them. Many species will remain as unspecified genus or species 1, 2, 3 etc. Identification and sorting of individuals is a very time -and thus resource- intensive activity.

The data thus obtained may be used for the calculation of the following biological indices:

- Total Abundance (N);
- Total species richness (S);
- Index of Shannon-Weaver species diversity ( $H'$ , Shannon & Weaver, 1949).
- Index of evenness ( $J'$ , Pielou, 1966).



**Figure 10.** Some of the macrobenthic taxa collected at the sampling sites.

**Bioassays** - A bioassay is defined as an analytical procedure measuring a biological activity of a test substance based on a specific, functional, biological response of a test system (WHO/NINSC 1998). Bioassays with sensitive stages of marine organisms are used to integrate the impact of complex chemical mixtures, such as those present in the water column, in produced water discharged from FPSOs or in pore water or elutriates of sediment, on the development of these stages. Each bioassay has to be carried out according to standardized protocols. Examples of such protocols are the oyster embryo-larval test (Leverett & Thain 2013) and the *Paracentrotus lividus* sea urchin embryo test (Beiras *et al.* 2012). Statistical programs (e.g. Trimmed Spearman-Kärber method and Probit analysis) allow us to analyze the relationship between a stimulus

(dose) and a response (such as death or sublethal effects), calculating e.g. the concentration that induces the 50% effect (EC50) or no observed effect concentration (NOEC).

**Biomarkers** - Any of a series of biochemical or molecular responses to compounds that have entered an organism, reached sites of toxic action and are exerting an effect on the organism and which can be quantified are called biomarkers (Benford *et al.* 2000). Alterations at the molecular and cellular levels can provide a sensitive indication of early changes, which often represent the first warning signals of environmental disturbance, even in the absence of acutely toxic responses or at contaminant levels that are below detection limits.

## The importance of bivalve molluscs in monitoring programmes

Bivalve molluscs, in particular clams, scallops, oysters and mussels are exploited worldwide as delicate sea food, and if harvested in the wild below the sustainable yields or from cultivated populations can contribute significantly to local economies. As cultivating bivalve molluscs is still in its rudimentary stage in Ghana, most supplies come from wildly harvested individuals. Unsustainable harvest may lead to local extinction. A recent study of the mussel *Perna perna* at Iture Rock between Elmina and Cape Coast found that harvest rates were unsustainable (Krampah 2015, Krampah et al. 2016).

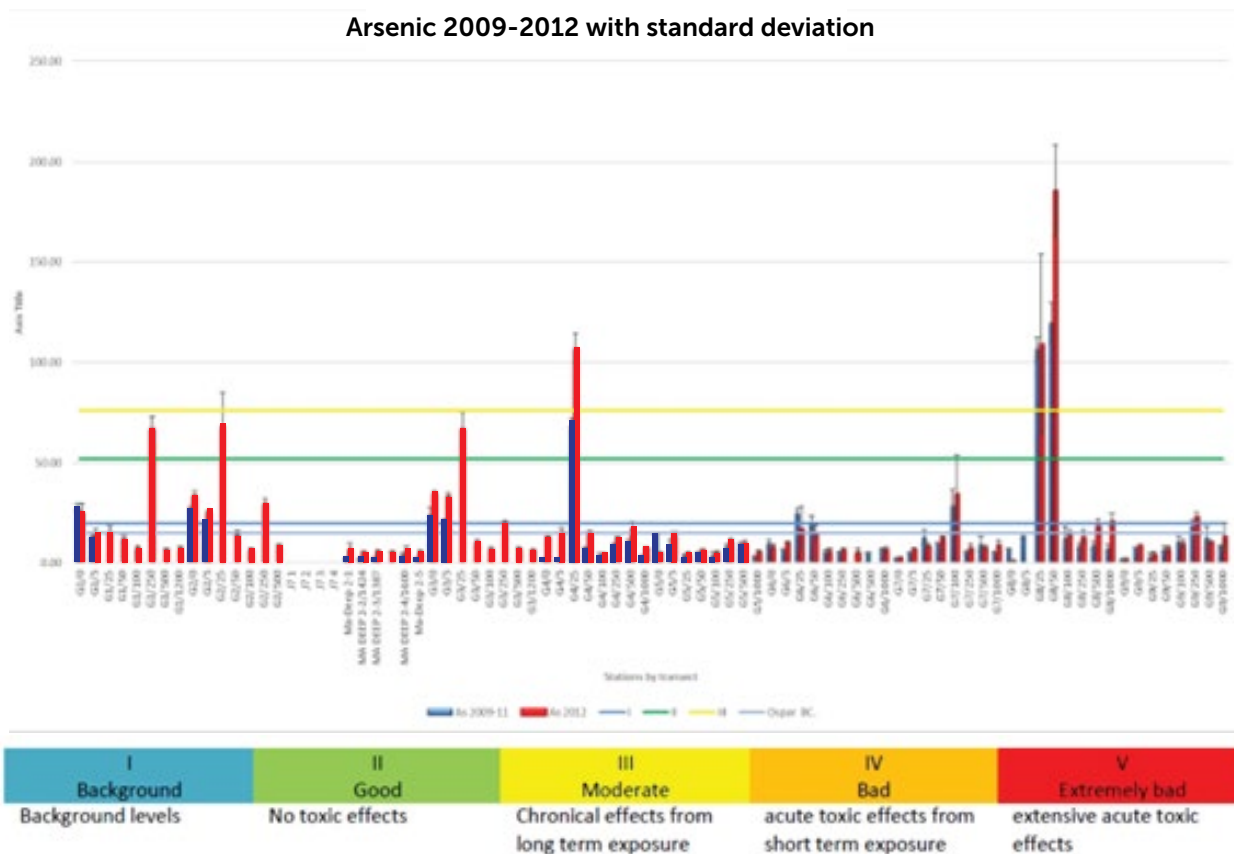
Due to their filter feeding, bivalve molluscs accumulate micro-contaminants adsorbed to particulate matter in the water column or dissolved in water. As such they can be used as bio-indicators for the level of water born contamination. The National Oceanic and Atmospheric Administration (NOAA) National Status and Trends (NS&T) **Mussel Watch Program** is a contaminant monitoring program in the USA that started in 1986. It is the longest running continuous contaminant monitoring program of its kind and has been followed worldwide in similar programmes.

Mussels are the organism of choice for monitoring contaminant levels in coastal regions for a number of reasons. The following paragraph has been copied (with modifications) from [https://en.wikipedia.org/wiki/Mussel\\_Watch\\_Program](https://en.wikipedia.org/wiki/Mussel_Watch_Program)

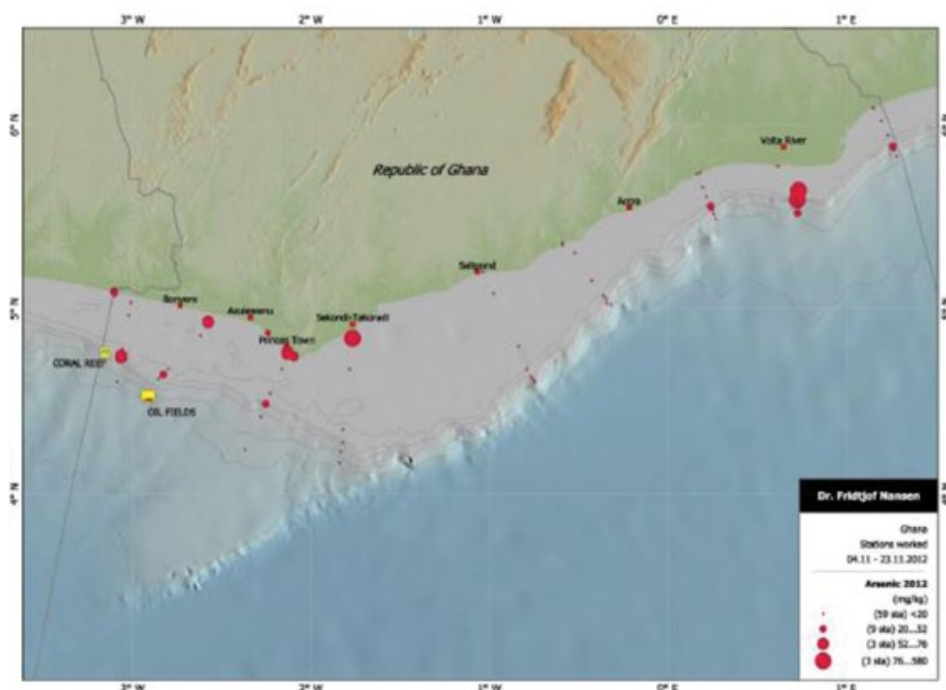
Most mussels are generally sessile and cannot move to another location if their environment has become contaminated; this makes them good measures of environmental pollution. Mussels do not readily metabolize some of the organics that vertebrates do, making them a better choice when tracking substances such as PAHs. In addition, most mussels are filter feeders and filter water

through their bodies to feed. This filtration makes them prime targets for picking up contaminants in the water. Mussels can provide information on if a system is recovering and if a remediation or clean-up effort is effective. In a successful remediation effort, a decline of contaminants in the organisms is expected. Due to the nature of their filter feeding, bivalves allow Mussel Watch to tracks changes in contamination levels in the environment by monitoring bivalve tissue concentrations. This is important because it can show whether a policy that is meant to protect and clean the environment or an ecosystem is actually working. Mussel Watch can be used to evaluate current policies to determine what, if any, changes need to be made to ensure that there is an improvement in environmental health. Mussels can be taken from clean to more contaminated sites in cages and left to accumulate toxic compounds over a fixed period of time which makes them even more valuable as sentinels.

Levels of contaminants in the marine environment of Ghana have probably increased as a consequence of anthropogenic activities both on land (such as galamsey activities) and offshore (oil and gas activities, maritime transport). In Fig. 11a and b the concentrations of Arsenic in the period 2009-2011 in marine sediments are compared to those in 2012. Arsenic can be considered as a tracer for galamsey activities and its concentrations close to the shore and near the Volta Region are much higher than around the Jubilee field. Arsenic concentrations on some sites are in the range that can cause moderate chronic effects in marine organisms from long-term exposure (Serigstad 2017). The diminishing of water and sediment quality can involve a decrease in natural resources. For this reason there is an increasing need to apply methods for the identification, estimation, comparative assessment and management of the risks posed by chemical pollutant discharges to the environment and natural resources (Cajaraville *et al.* 2000). Chemical analysis alone is insufficient to detect early changes in the environment.



**Figure 11b.** Concentrations of Arsenic in marine sediments in 2009-11 as compared to 2012. Concentrations in some near shore sampling sites are capable of producing moderate chronic effects from long-term exposure (From Serigstad 2017). Notice the absence of data from the Jubilee field. It is unclear if this is due to an absence of samples or due to concentrations below the Limit of Detection (<LOD).



**Figure 11b.** Spatial distribution of Arsenic concentrations in marine sediments in 2012. Concentrations in some near shore sampling sites are capable of producing moderate chronic effects from long-term exposure (From Serigstad 2017).



## How CEMAGs can contribute to an early warning monitoring programme

During the training sessions on Oil and Gas in the six coastal Districts of the Western Region, a questionnaire was distributed in which the participants were asked about their knowledge on the distribution of three bivalve molluscs (Brown Mussel *Perna perna*, Mangrove Oyster *Crassostrea tulipa*, African Bloody Cockle *Senilia senilis* and the Sea Urchin cf. *Paracentrotus lividus*; Fig. 12).



**Figure 12.** The four species on which participants of the Oil and Gas trainings were interrogated: Brown Mussel *Perna perna*, Mangrove Oyster *Crassostrea tulipa*, African Bloody Cockle *Senilia senilis* and the Sea Urchin cf. *Paracentrotus lividus*

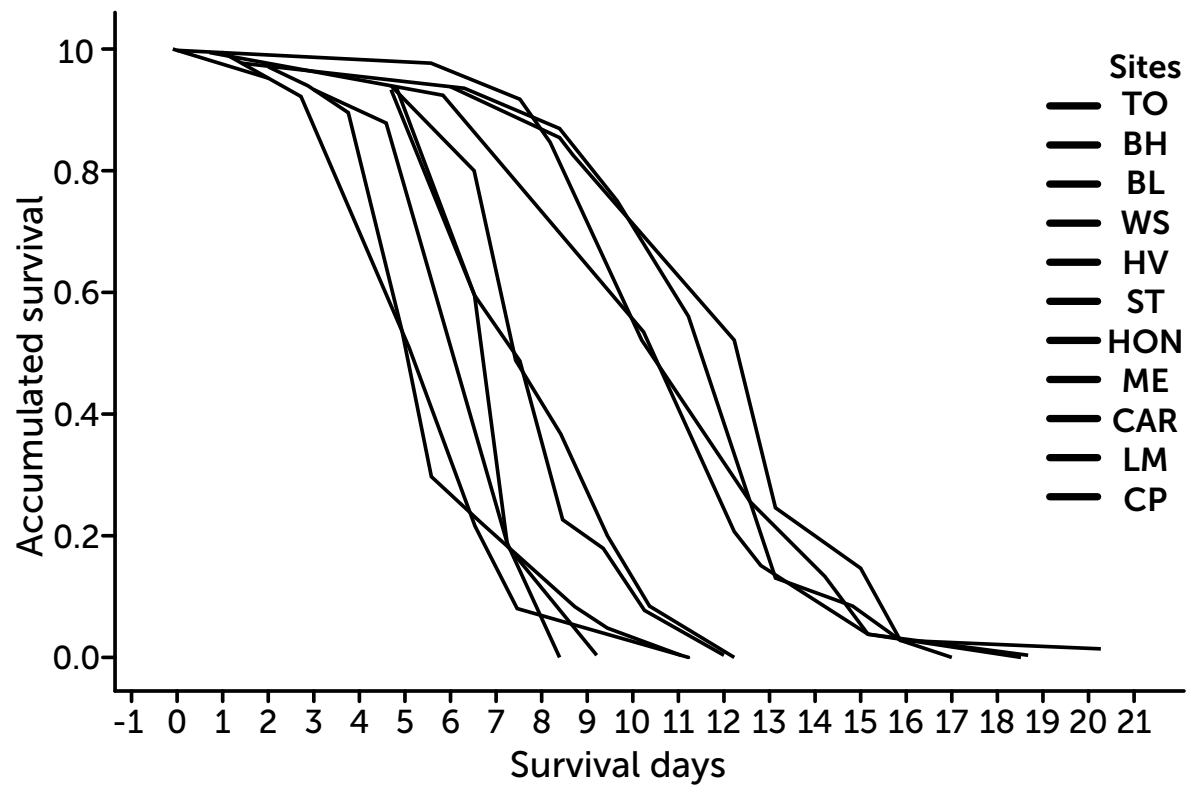
The preliminary results -which still need field verification- revealed a large number of sites where these species occur as well as information on their phenology, abundance and exploitation (Figs. 13-15).

**Survival in Air: a simple, low-cost and sensitive biomarker** - Survival in Air (SiA) or Stress on Stress is a biomarker for bivalve molluscs, preferably mussels, which has a proven track record of being sensitive, simple and low-cost. It is also being recommended for monitoring programmes by OSPAR and MedPol (Viarengo et al. 1995,

Hellou & Law 2003, Viarengo et al. 2007). The rationale behind the assay is that bivalve molluscs being exposed to a chemical stressor will survive for a shorter period when exposed to an additional stress factor than bivalves from a clean environment. The stress factor which will be added is anoxic survival when exposed to air. About 40 mussels of standard size are collected at Low Tide in an intertidal site and kept dry under standard conditions of humidity, temperature and daylight. At a fixed time during the day, the mussels that have died in the previous 24 hours will be counted and removed and survival curves constructed (Fig. 13). After all mussels have died, the LT50 (Lethal Time in which 50% of the individuals survive) will be calculated. Mussels can be taken from their natural growing place or taken from another -generally clean- site and exposed in another site for a predetermined period, e.g. six weeks or two months.

The assay can in principle be executed under ambient conditions with simple materials by trained members of CEMAGs. However, a series of experiments will first be performed by FoN to study the influence of variations in ambient conditions and subsequently a standard protocol will be produced.

As the SiA biomarker is sensitive to the condition of the mussels, it is important that the Condition Index (CI) remains within certain limits. The main factor having an influence on the condition index is spawning. The best period to execute SiA is just before the spawning periods. Therefore, it is recommended to use CI as a secondary biomarker to choose the best period and to synchronize sampling with other sites. Apart from CI and SiA, in some biomonitoring programmes the use of the Growth Index (GI) has also been suggested (Blaise et al. 2016). The GI is the annual growth as measured by the height of the shell divided by the number of annual rings. The rationale being that in stressed populations annual growth will be less than under non-stressed conditions. As individuals of different age classes will be used, it is not suitable as an Early Warning marker.



**Figure 13.** Typical survival curves of mussels taken from different sites and exposed to air (from internet).

# Module IV

## HUMAN RIGHTS

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### Introduction

*This module introduces the concepts and principles of human rights that apply both in Ghana and internationally. It will contain the provisions on fundamental human rights as stated in the 1992 Constitution of Ghana and also international human rights concepts and instruments such as declarations, conventions and covenants.*

*A variety of questions will be addressed in this session.*

*For example, how should a paralegal handle issues such as the use of security forces (private or public) to forcefully evict an entire community from a mining concession? What human rights are likely to be violated by such a forceful eviction? And are some rights more important than others or are all rights equal? Where should a person go to file a human rights complaint?*

### Objective

*The objectives of this Module include the following:*

- *To explain fundamental human rights*

*principles and concepts and how they apply to citizens in Ghana.*

- *To provide participants with an overview of fundamental human rights principles*
- *Demonstrate the relevance of human rights in peoples' daily lives.*
- *Facilitate an understanding of the indivisibility and interdependency of human rights.*
- *Examine international and domestic human rights instruments*
- *Explore the need for participants to be conscious of monitoring human rights violations*

### What Are Human Rights?

Human rights are those rights that belong to every individual – man or woman, Ghanaian or foreigner, infant or elder, simply because he or she is a human being. The concept of human rights means that every person is entitled to standards and conditions necessary for living a respectable life. Human rights are considered to be indispensable for the development of the individual and are the foundation of freedom, justice, and peace.



## Characteristics of Human Rights

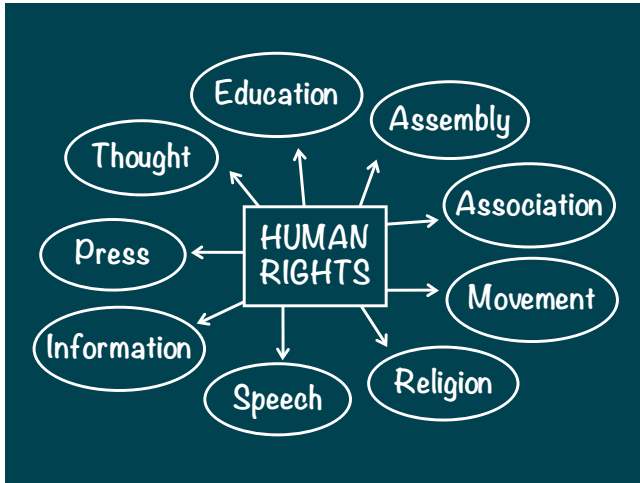
- **Universality:** Human rights are universal; meaning that all people are entitled to them. Human rights are not given, bought, earned or inherited. They belong to people simply because they are human. Human rights are inherent to each individual. They are applied equally and without discrimination to all people.



- **Inalienability:** Everyone is born with human rights which cannot be taken away. No one has the right to deprive another person of human rights for any reason. Similarly, no one can have his or her human rights taken away or waived /except in specific situations.
- **Non-discrimination:** Human rights are afforded to everyone regardless of sex, class, gender, race, language, ethnicity, religion, political opinion, or social origin.
- **Indivisibility:** Each human right is related to the other and is equal in value. They are interdependent and interrelated. All human rights are equal in importance and essential to the dignity and worth of every person
- **Interdependency:** All human rights are connected. A violation of one of the human rights can lead to the violation of several other rights. For instance a violation of the right to liberty detracts from other rights. Also, the loss of liberty due to imprisonment may affect one's ability to earn a living and therefore one's right to livelihood. Similarly, promotion of human rights in one area supports human rights in another area. Thus, the promotion of the right to education positively impacts on the exercise of the right to work and to earn a living; or the right to live a life of dignity.

## Categories of Human Rights

Traditionally, fundamental human rights can be placed into three categories:



1. **Civil and Political Rights:** These rights are “liberty-oriented” and include the rights to: life, liberty, and security of the individual; freedom from torture and slavery; freedom of thought, opinion, expression of conscience, and religion; prohibition of arbitrary arrest, detention, or exile, and freedom of association and assembly.
2. **Economic, Social, and Cultural Rights:** The remaining articles of the UDHR deal with economic, social, and cultural rights. These are the “security oriented” rights. They include the right to: work, education, a reasonable standard of living, food, shelter and health care.
3. **Environmental, Cultural and Developmental Rights:** This category of rights finds explicit expression in the African Charter of Human and People’s Rights and implicit expression in the International Covenant on Economic, Social, and Cultural Rights. These rights include the right to live in an environment that is clean and protected from destruction and the right to development.

## Human Rights Instruments

The international system of human rights protection is based on the understanding that human rights are not only universal, but they transcend the sovereignty of individual states. Human rights are spelled out in numerous human rights documents (instruments) such as the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and People’s Rights etc. Documents such as these are adopted by countries and determine what the government must do and not do to respect, promote and protect the rights of their citizens. Many countries, including Ghana have included chapters dedicated to the respect and protection of human rights in their constitutions.

### Universal Declaration of Human Rights

The Universal Declaration of Human Rights is the most widely accepted and important human rights document in the world. Its fundamental message is the inherent value of the human being and on the principle of equal rights. The UDHR was adopted on the 10 December 1948 by the United Nations. It sets out a list of basic human rights that should be afforded to all people in the world regardless of their race, color, sex, language, religion, national origin or political opinion. Since the UDHR’s adoption, a significant number of international legal instruments have been implemented to further protect and promote human rights.

### Fundamental Human Rights Provisions in the Constitution of Ghana

In general, human rights protected under international human rights instruments are not immediately realized unless they are recognized by the laws of a country. In Ghana, fundamental human rights are protected under the 1992 Constitution (Chapter Five, Article 12). The Executive (President), the Legislature (Parliament), the Judiciary

(Courts and tribunals), and all other organs of government must respect and uphold the fundamental rights and freedoms entrenched in the Constitution. The fundamental human rights and freedoms guaranteed under the 1992 Constitution reflect international standards and include the following:

- **Right to Life. (Article 13):** It ensures No person is to be deprived of their life intentionally. It provides protection against unlawful arrest, murder by criminal act, war, or genocide. To a larger extent it provides for the right to livelihood.
- **Protection of Personal Liberty (Article 14):** This ensures the right to personal freedom and safety. No one's freedom may be unlawfully taken away. Also no one is to be arrested or detained without lawful reason. A person who is arrested must be brought before a court within forty-eight hours. A persons liberty can only be interfered with on following lawful grounds
  - In execution of a court order.
  - Order to effect a lawful arrest.
  - Order to prevent the commission of a crime.
- **Respect for Human Dignity (Article 15):** This provides protection from torture, cruel or inhumane treatment. Also, Juvenile offenders are to be kept in lawful custody separately from an adult offender.
- **Right to Work (Article 24):** This provides for the free choice of employment, the right to work under satisfactory, safe and healthy work conditions and the payment of fair wages for work carried out. It also provides protection against unemployment and the right to form or join trade unions.
- **Protection from Slavery and Forced Labour (Article 16):** No person shall be held in slavery or servitude, nor required to perform forced labour. "Forced labour" does not include any labour required as a result of a sentence or order of a court; or any labour required of a member of a disciplined

force or service as his duties or any labour required during any period when Ghana is at war or in the event of an emergency etc or as part of normal communal or other civic obligations.

- **Right to Health (Article 30):** This provides for access to adequate health services and facilities including the rights to clean and potable water.
- **Right to Fair Trial, (Article 19):** A person is to be presumed innocent until proven guilty in a court of law. A person accused of offence has the right to representation and a lawyer of his or her choice and right to a hearing etc.
- **Equality and Freedom from Discrimination (Article 17):** All people are equal before the law. No person shall be discriminated against on grounds of gender, race, colour, religion, ethnic origin, religion, creed, or social or economic status.
- **Protection of Privacy (Article 18):** This guarantees protection of people's privacy in their homes, property, correspondence, or communication. However, in accordance with the law this right may be interfered with.
- **Protection from Deprivation of Property (Article 20):** All persons have the right to own property solely or jointly. No property or interest in property shall be compulsorily taken possession of or acquired by the State except under lawful grounds and subject to the payment of compensation.
- **Right to Fundamental Freedoms (Article 21).** This article grants freedoms such as:
  - Freedom of speech and expression
  - Freedom of press and other media
  - Freedom of thought
  - Freedom to practice any religion
  - Freedom of assembly
  - Freedom of association

- **Educational Rights (Article 25)** this guarantees the right to equal educational opportunities and facilities. It also provides that basic education shall be free & compulsory in Ghana.
- **Cultural Rights And Practices (Article 26)** It grants the right to practice any culture, language, tradition, religion.
- **Women's Rights (Article 27)** Ensures special care is given to women during pregnancy and to have equal rights to training and promotions.

## Other International Human Rights Instruments

- International Covenant on Civil and Political Rights (ICCPR).
- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The African Charter on Human and Peoples Rights.
- The African Charter on the Right and Welfare of the Child.
- European Convention on Human Rights
- The Convention on the Prevention and Punishment of the Crime of Genocide.
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- The Convention on the Rights of the Child.

- The Declaration on the Right to Development.

## Where Can One Make A Human Rights Complaint?

A human rights complaint can be made to the High Court or Commission for Human Rights and Administrative Justice.

## The High Court

According to the Constitution, the High Court has exclusive jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution. When a violation of a fundamental right has occurred or will likely occur, a person seeking redress shall submit an application to the High Court.

## Commission for Human Rights and Administrative Justice

CHRAJ has a broad mandate to promote and protect fundamental human rights and freedoms under the 1992 Constitution which includes civil, political, economic, social, and cultural rights, and other international human rights instruments which Ghana has ratified<sup>2</sup>. It investigates allegations of human rights violations. It undertakes public awareness and education programmes to promote human rights in Ghana. The Commission also monitors and documents violations of human rights including visiting prisons and other places of detention. It advises the government on its compliance with international human rights obligations and publishes annual reports on the state of human rights in Ghana.

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<sup>2</sup> see (Article 218(a),(c), and (f) of the 1992 Constitution and Section 7(1)(a),(c) and (g) of Act 456),

# Module V

## GENDER AND EXTRACTIVE GOVERNANCE

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### Introduction

*Men and women are both affected by the positive impacts and negative effects of extractive sector operations in any given country, but not always in the same way and magnitude. The pollution and degradation of the environment doesn't have equal consequences on men and women. A degraded environment and loss of biodiversity due to the operations of extractive sector activities will have more dire repercussions for women than men. For instance the contamination of water resources has direct and indirect impact on the health and well-being of the whole community, but women are particularly exposed.*

### Objective

- To introduce participants to the unequal impacts of the extractive sector on women
- To educate participants on the law relating to the rights of women to property
- To get Participants to understand and appreciate the rights of women generally
- To get participants respect womens' right to property in the extractive communities.

### Gender issues in Extractive Governance

Gender equality and women's empowerment is not only a human rights issue in the extractive sector, but also a pathway to achieving sustainable development. Just like all extractive sector activities, Oil and gas exploration and production is also full of several environmental, socio-cultural and economic challenges which can give rise to devastating consequences and cause untold hardship to the vulnerable, particularly, women.

The extractive sector generally and in many ways has dire effects on women. Some of the effects are social and cultural. They include pollution of streams and water bodies resulting in stress on water which affects women; loss of income to women including poor compensation regimes which do not take into account the interest of women; loss of forests mostly depended on by women; loss of livelihood, unemployment and the lack of participation of women in decision making regarding the extractive sector.

Oil and gas exploitation is prone to severe disasters and accidents such as oil spills, gas flaring, air and water pollution which can threaten not only marine, plant and animal lives but also constitute immense danger to human life and loss of livelihood especially to host \frontline community members with dreadful consequences for women.

In situations of competition and pressure on resources, including land for instance, examples from the solid mining sector show that, most of the time women are the first to suffer from such activities. If by chance land reserved for women are not occupied by the extractive projects, it will be taken from the women to replace those lost by their male counterparts particularly in communities where women are granted any land rights neither by the traditions nor by the law. Even in communities where women are granted land rights by traditions or modern law, they can face a denial of those rights by not being associated with any decision making process related to land issues. In case of land loss and payment of compensation for such loss for example, women are often left out when it comes to negotiating the compensations and as a result they do not benefit from the outcomes of the negotiations. Also, the negotiated packages do not often recognize the losses that women incur in the event of mine takeover of community lands and properties.

Sometimes women who own property are unable to benefit from compensation packages upon the acquisition of their land/property for extractive purposes. This is because, as a result of societal dictates and edicts, or out of general fear of the system, during the enumeration of property for purposes of paying compensation, these women register their properties in the names of their husbands or male counterparts and the male counterparts end up absconding with the compensation that has been paid, and thereby, further exacerbating the plight of women.

In the oil and gas sector where farm lands and plants have to be confiscated and or destroyed to allow for oil exploitation when discovered on shore, or to lay pipes from production areas to reservoirs for distribution, or when oil spills prevent fisher folks from engaging in their normal business, it tends to further marginalize the pursuit of economic activities by the vulnerable, especially the women.

Also, migration as a result of the oil and gas exploration worsens socio-economic conditions and deprives people of their long time livelihood, and thus forces them to the margin of society. When this happens, it is the women who are often less economically empowered who are culturally

assigned to the most insignificant roles in society and suffer most. For instance, there is currently incredible rush of businesses; trade, industry and services to the Sekondi/Takoradi Metropolitan Assembly area and its adjoining districts in Ghana. The rapid changes in demographics, as well as, how prices of land and rents have skyrocketed in the area, is forcing the poor citizens who are mostly women to move to the peripheries of society.

It must be emphasized that in most of the oil producing countries, particularly those in the developing countries worldwide, women and the youth tend to be worst losers. This is evidenced in most African countries notably the Democratic Republic of Congo, Angola, Equitorial Guinea and Nigeria.

Women are often most likely to come in contact with local water supplies and resources as part of their daily activities and roles in the family, and are thus at an increased risk of developing water related illnesses. Women suffering from such ailments are often forced to continue their daily activities of taking care of children, maintaining the living environment, providing meals for the family, and to even continue working in the poor working conditions, in order to generate an income for basic necessities such as food and clothing. Illness decreases the ability to fulfil such requirements and influences the development of the wellbeing of the woman, her children and family unit.

With a weakened economic life, women's vulnerability is exacerbated when they are excluded from decision making processes of communities and in extractive prospects. The participation of women in the entire EIA process is very limited. The involvement of women in the EIA process is often downplayed and for that matter the outcomes of the environmental impact assessment process do not often capture the peculiar interest of women, as a result, it does not address the issues that affect women. As noted above, the participation of citizens and communities in the EIA and the public hearings is generally not good. As it pertains to women, the number of women who are given the opportunity to speak at these public hearings are often very few, yet women are greatly impacted by the adverse effects of the implementation of the extractive project.

This limited participation of women and the lack of consideration of women issues in the EIA process stem from the fact that, the EPA Act and the Environmental Assessment Regulations suffer from some serious gender deficiencies. The above laws which govern EIA process does not require a gender disaggregated information and data on activities of the companies and also the disaggregation of the potential impacts and information on the possible health effects of any project on gender. There are no statutory funds or any other source of funds for women to participate or to encourage or facilitate the participation of women in the EIA process and this makes the decision making process and the decisions taken on the implementation of the extractive projects lopsided.

Effective participation in the social change process especially for women is a function of power. That is the level of power women possess to effect change in positive way. Women participation in the EIA process will be enhance if

- the number of women who participate in the EIA process is increased
- Women issues take centre stage in the preparation of EIAs such as the scoping report and the EIS
- Women are separately consulted in the EIA process
- There is funding support for women to participate in the EIA process.
- Capacity for women to participate in EIA process is built.
- There is an increase in women activism to having women participate and women issues highlighted in the EIA process

As stated, critical social and gender related inequalities such as the interrelationships between power, access to resources and increased voice and representation of women's needs is often none existent when it comes to the extractive sector in particular. This requires more women activism and for that matter the building of more women activists in the extractive sector to champion the cause of women.

## The Property Rights of Women

The term "women's rights" refers to the freedoms inherently possessed by women and girls or females of all ages, which may be institutionalized, ignored or suppressed by law, custom, and behaviour in a particular society. Globally, women's rights which are a component of socio-economic and cultural rights have not received much recognition as the civil and political rights.

The first global treaty which called for equality between men and women was the United Nations Charter. The United Nations (UN) has for some time now centred its work on recognizing women's roles in, and contribution to economic and social development. The UN believes that development was not possible without the full and equal participation of women. Thus the property rights of women denotes property and inheritance rights enjoyed by women as a category within society at any point in time.

## Customary Law and Practice

Although land and other property rights are fundamental in achieving higher standards of living, certain groups of individuals especially women are consistently left out of land ownership in Ghana under customary law and practice. Customary law dictates how land and other landed property are passed to family members in the event of death. In many customs, women are regularly excluded from inheriting title to land and landed property from their fathers under patrilineal practices and from their uncles under matrilineal practices, in favor of sons and nephews, respectively. Under a few customs in Ghana, women are allowed to have a lifetime user rights to their deceased husband's land or house. This notwithstanding, in some of these cases the widows are still being ousted and evicted from the land or matrimonial property they farmed or occupied with their husbands by their in-laws.

There are also some customs and societies in Ghana where women freely own land and can inherit land and landed property from the parents. Land rights refer to the inalienable ability of individuals to freely obtain, utilize and

possess land at their discretion as long as their activities on the land does not impede other individuals' rights.

In order to stem the denial of women their right to inherit and own landed and other property, there are some legal and regulatory systems that have been put in place and designed to provide women access to land and property rights. This notwithstanding, it is still stated that in practice these legal frameworks have not done much for the most vulnerable women in the country particularly those living in remote communities and villages.

## The Constitution

The rights of women have been specifically stated in the Ghanaian Constitution. Again, the right of women can also be inferred from the general constitutional provisions that seek to protect and promote the rights of all persons. For example article 17 provides that, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority. In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinion, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

The Constitution clearly states that everyone has the right to own property either alone or in association with other persons.

On property rights of spouses article 22 of the Constitution enjoins Parliament to make legislation regulating the property rights of married couple. In order to achieve the full realization of the rights referred to:

- a. spouses shall have equal access to property jointly acquired during marriage
- b. assets which are jointly acquired during marriage shall be equitably distributed between the spouses upon dissolution of the marriage .

Under article 22 of the Constitution, a spouse shall not be denied reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.

## Matrimonial Causes Act, 1971 (Act 367)

Section 20(1) of the Matrimonial Causes Act requires the court to order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or as part of a financial provision as the court thinks just and equitable.

## Wills Act, 1971 (Act 360)

Also, to take care of the interest of women where the deceased spouse has made a Will, under section 13(1) of the Wills Act, if the High Court, upon application being made, not later than three (3) years from the date upon which probate of a will is granted, is of the opinion that a testator has not made reasonable provision whether during his lifetime or by his will, for the maintenance of any father, mother, spouse or child under 18 years of age of the testator, and that hardship will thereby be caused, the High Court may, taking account of all relevant circumstances, notwithstanding the provisions of the will, make reasonable provision for the needs of such father, mother, spouse or child out of the estate of the deceased.

## Intestate Succession Act, 1985 (ACT /PNDCL 111)

Similarly, the Intestate Succession Act also seeks to take care of the situation where the spouse dies without making a will. The Intestate Succession law was enacted with the intention to create greater security for widows and children. If a man died without a will, the succession law stipulates that the man's property would be distributed among his widow, children and other members of the extended family.



The law however, does not apply to a stool, skin or family property.

The Intestate succession Law provides different principles for the distribution of property on the death of a spouse without a Will.

### **i. Household chattels**

Where the intestate is survived by a spouse or by a child or both spouse and child, the spouse or the child or both of them, is/are entitled absolutely to the household chattels of the estate.

### **ii. House**

Where the estate includes only one house, the surviving spouse or the child or both of them is/are entitled to that house and where it devolves to both the spouse and the child, they shall hold it as tenants in common. But where the estate includes more than one house, the surviving spouse or the child or both of them, shall select one of the houses. However, where there is disagreement as between the surviving spouse and the child on which of the houses, the surviving spouse or child has, or both of them have, the exclusive right to choose any of those houses. If the surviving spouse and the child are both unwilling and unable to make the choice, the High Court shall upon application made to it by the administrator of the estate, determine which of those houses shall go to the surviving spouse or the child or to both of them.

### **iii. Intestate survived by spouse only**

Where the intestate is survived by a spouse but no child, the residue of the estate after the spouse has selected one house will be distributed as follows:

- One-half ( $\frac{1}{2}$ ) will go to the surviving spouse
- One-fourth ( $\frac{1}{4}$ ) will go to the surviving parent
- One-fourth ( $\frac{1}{4}$ ) in accordance with customary law
- In case there is no surviving parent, one-half of the residue of the estate will be distributed according to customary law.

### **iv. Intestate survived by spouse and child**

Where Intestate survived by spouse and child the remainder of the estate will be distributed as follows:

- Three-sixteen ( $\frac{3}{16}$ ) to the surviving spouse
- Nine-sixteen ( $\frac{9}{16}$ ) to the surviving child
- One-eighth ( $\frac{1}{8}$ ) to the surviving parent
- One-eighth ( $\frac{1}{8}$ ) in accordance with customary law
- Where there is no surviving parent one-fourth ( $\frac{1}{4}$ ) of the remaining estate will be distributed in accordance with customary law.

### **v. Intestate survived by child only**

Where the intestate is survived by a child alone the remaining estate will be distributed in the following way:

- The surviving child is entitled to three-fourths ( $\frac{3}{4}$ ) of the remaining estate
- One-eighth ( $\frac{1}{8}$ ) to the surviving parent
- One-eighth ( $\frac{1}{8}$ ) in accordance with customary law
- Where there is no surviving parent the whole one-fourth ( $\frac{1}{4}$ ) will be distributed in line with customary law

### **vi. Intestate survived by parent only**

- Where the intestate is survived by a parent and not a child or spouse, three-fourths ( $\frac{3}{4}$ ) of the estate shall go to the surviving parent
- One-fourth ( $\frac{1}{4}$ ) is distributed in line with customary law.
- Where the intestate is not survived by a spouse, child or parent the estate shall devolve in accordance with customary law.

Where the total value of the remaining estate does not exceed Fifty Thousand Cedis, (GHc 50,000.00) it shall be given to a surviving spouse or child of the intestate or to both if alive and where the intestate is survived only by a parent and the total value of the estate does not exceed Fifty Thousand Cedis (GHc 50,000.00) the estate shall be given to the surviving parent.

Where there is no applicable customary law to the distribution of that part of the estate which is required to be distributed in accordance with customary law under the Intestate Succession Law, that part of the residue will be distributed in equal shares to those beneficiaries who are entitled to share the residue under the relevant provisions of this Act.

## Prohibition of Ejection of Spouses

A person shall not, before the distribution of the estate of a deceased person whether testate or intestate, eject a surviving spouse or child from the matrimonial home

- a. where the matrimonial home is the self acquired property of the deceased
- b. where the matrimonial home is rented property, unless the ejection is pursuant to Court order
- c. where the matrimonial home is the family house of the deceased, unless a period of six months has expired from the date of the death of the deceased or
- d. where the matrimonial home is public property unless a period of three months has expired from the date of the death of the deceased.

## Offences

A person who before the distribution of the estate of a deceased person whether testate or intestate

- a. unlawfully ejects a surviving spouse or child from the matrimonial home
- b. unlawfully deprives the entitled person of the use of
  - (i) a part of the property of the entitled person
  - (ii) a property shared by the entitled person with the deceased to which this Act applies, or
  - (iii) removes, destroys or otherwise unlawfully interferes with the property of the deceased person,

Commits an offence and is liable on summary conviction to a minimum fine of two and a half penalty units or to a term of imprisonment not exceeding one year.

The Court or tribunal shall make any other orders that it considers necessary for the re- installment of or reimbursement to the person thus ejected or deprived.

### 1. Children's Act, 1998 (Act 560)

Under the Children's Act, no person can deprive a child of reasonable provision out of the estate of a parent whether or not born out of wedlock

### 2. International Human Rights Instruments on the rights of women to property

#### a) Universal Declaration of Human Rights

Under the Universal Declaration of Human Rights all men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family and are entitled to equal rights as to marriage, during marriage and at its dissolution.

#### b) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women stressed that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women. The Convention therefore mandates all state parties to work towards the modification of social and cultural patterns of individual conduct in order to eliminate prejudices and customary practices which are based on the idea of the inferiority or the superiority of either of the sexes.

#### c) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

This Protocol specifically calls on member governments to among others:

- Promote women's access to and control over land and other productive resources and to inherit equitable shares of property from their husbands and parents;
- Grant women and men rights to equitable sharing of joint property upon separation, divorce, or annulment of marriage.

#### d) The International Covenant on Economic, Social and Cultural Rights

This Covenant provides for the rights of women by providing for women equal treatment with men. The Covenant states that State Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

In the context of this write up the surviving spouse, child or parents of an intestate can be a woman and property that has been inherited under the provision of this law will grant

property rights to the woman which must be given effect and recognition by communities and extractive companies in the governance of the extractive sector activities.

# Module VI

## ACCESS TO JUSTICE

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### *Introduction*

Majority of citizens, especially, the poor and marginalized are unable to access justice through the legal system because of several factors. Some of the factors that hinder the ability of the poor and marginalized to access justice in the courts include; lack of money, legal advice, and legal representation, the lack of information/knowledge or awareness of court processes and procedures, the location of certain category of courts and socio cultural limitations on some category of people. This module seeks to provide some guidance to community people and activists as to the “where” and “how” to seek justice for harms done against them and their communities.

Invariably, certain social conflicts end up in court or other conflict resolution bodies. There are many times that disputes never reach the courts for the sole reason that people cannot afford to employ a lawyer to defend them. Moreover, most often, marginalized communities do not have basic information to direct them to other institutions, governmental agencies, or civil society organisations that can assist them with their problems.

The expression “Access to Justice” has varied meanings.

In very broad terms, it refers to the provision of access to state-sponsored health, welfare, education and legal services and other services, particularly for the poor in society. Access to Justice is sometimes seen in terms of mechanisms for ensuring the broad ideals of Social Justice, that is, affording individuals, groups and community’s fair opportunities and treatment in the allocation and use of social/public services and goods.

In this context, Access to Justice is access to state-sponsored or state sanctioned legal services as well as accessible private legal services. These legal services include: access to justice institutions, access to information about legal rights and responsibilities, legal advice, legal counsel, legal representation and other legal advocacy services. At the individual level, Access to Justice may be defined as a person’s ability to seek and obtain fair and effective responses for the resolution of conflicts, the control of abuse of power and the protection of rights through transparent, accountable and affordable mechanisms and processes that are responsive to broad social needs and sensitive to culture and the needs of disadvantaged groups.

For the purposes of this module, Access to justice refers to the various avenues and strategies a community person must be aware of in order to use *to protect and promote the human rights of their community*.

## Objectives

*The objectives of this session include the following:*

- *Understand Access to justice generally*
- *Understand the role of the courts in Ghana*
- *Examine the procedural steps in a civil action in court or the Commission on Human Rights and Administrative Justice (CHRAJ)*
- *Demonstrate how to file a case in the courts*

## ACTIVITY

### Case Study

In March 2007, oil was discovered in commercial quantities at the Assewa basin in Jomoro District. The entire basin was awarded to Aponkye Inc., a consortium formed by the Government of Ghana and Abrantei oil Inc. an American company.

Aponkye Inc. commenced drilling and lifting of oil in earnest much to the desire of the government. Ghana is now self-sufficient in oil and its derivatives. A barrel of crude oil sells at about 100 Ghana cedis and the economy is booming. However in October 2009 it was discovered that, the drilling practices of Aponkye Inc. has resulted in extensive pollution in Jomoro District and beyond reaching as far as Axim, Half Assini and Ahanta Districts. The inhabitants of this area are predominantly farmers and fisher folk.

The pollution affecting the area consists of huge quantities of crude oil and other waste mixed with toxic compounds used in the drilling operations of the company. In fact Aponkye Inc. is still engaging in discharging these substances into open pits, streams, rivers, and wetlands. In addition, the company burned the waste products in open pits without temperature and air pollution controls. The company in an attempt to prevent dust emanating from the dusty roads of the area spread oil on the road. These and other practices contaminated the drinking water, rivers

streams, ground water and air with dangerously high levels of toxins, such as lead and hydrocarbons.

The resultant effect of the contamination is the massive depletion of fish stocks in the watercourse. Livestock in the area has reduced as a result of the loss of pasture grounds. Almost every land in the area has been rendered infertile and crops on farm lands have been destroyed. A bag of maize now sells at Ghc 200.

The only source of drinking water available to the communities in Jomoro is water collected from the rain as all the rivers, springs and wetlands in the vicinity has been contaminated with toxic crude. The inhabitants are also subjected to inhaling heavy levels of dust particles covered with oil. Residents of the area now suffer from various illnesses, including respiratory problems body growths, leukemia directly related to the oil contamination. There is a high infant mortality rate and stillbirths in these communities. The life expectancy rate in this community has dropped drastically. There are no hospitals in the area to attend to the sick and the dying. There is also a high rate of school dropout resulting from the diseases afflicting children. Teachers are also refusing to accept postings to the area.

When community leaders from Jomoro reported these occurrences to the Ministers of Energy, they replied that they have more important businesses to attend to and that these are little sacrifices that Jomoro District has to pay for the sustained prosperity of the nation.

1. What are the human rights issues emanating from the above scenario?
2. What measures will you take to address these violations?
3. What challenges do you anticipate to face in an attempt to address these human rights issues?
4. How do you intend to overcome these challenges?

At the completion of the reading, participants will be split into small groups to analyze the case study. Participants will be invited to identify the human rights and environmental issues or violations arising from the case study. They should also discuss where and how these communities can seek for help. After, the larger group should come back together

to share the answers which were generated.

## The Court System (The Judiciary)

The judiciary is the primary institution in Ghana responsible for the administration of justice. The judiciary's role is to ensure that laws are followed and justice is served. The following courts constitute the judicial branch:

**i. The Supreme Court** is the highest and final court of Appeal in the land. The Supreme Court functions as the authority on the Constitution and ensures the supremacy of the law. The Supreme Court is comprised of one chief justice and not less than nine other Justices (at the time of writing the total number of Supreme Court Judges is thirteen) and is located in Accra.



Supreme Court of Ghana

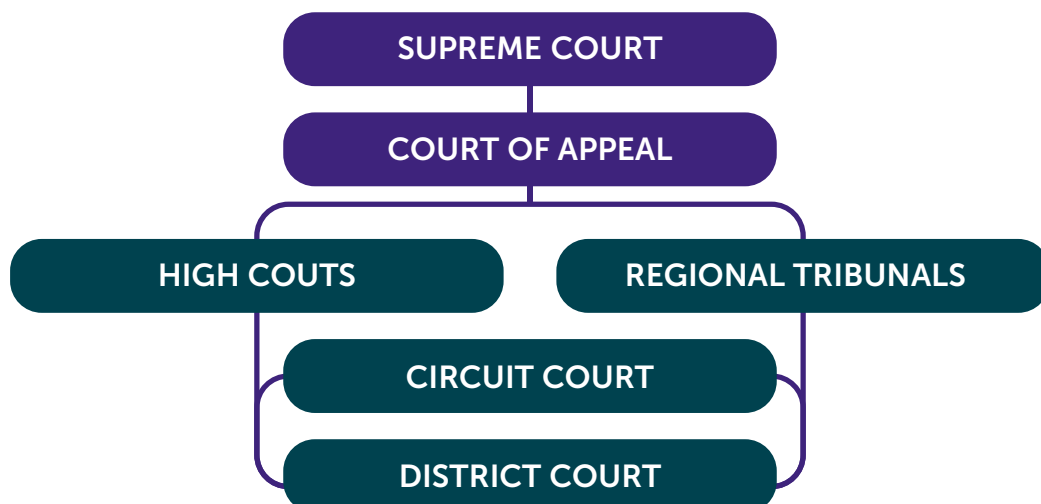
**ii. The Court of Appeal** determines appeals from the High Court and the Circuit Court. The Court of Appeal is comprised of the Chief Justice and not less than ten other Justices. The Court of Appeal is also located in Accra.

**iii. The High Court** has jurisdiction in all matters and specifically have exclusive jurisdiction over the enforcement of the Fundamental Human Rights provided under chapter 5 of the Constitution.

**iv. The Regional Tribunals** have jurisdiction over all criminal matters. Regional Tribunals are comprised of the Chief Justice, a chairman, and a panel of two other members. There are 16 Regional Tribunals dispersed throughout the regions of the country.

**v. The Lower Courts** are the District Magistrate Courts. They have jurisdiction to determine criminal and civil matters. Lower courts may only hear cases involving matters under a certain monetary amount. Anything above the amount must be referred to a higher court.

## STRUCTURE OF COURTS



Currently, the judicial system in Ghana is struggling to cope as a result of limited resources. Complaints concerning the system include: delays in trials, crowded court dockets, lack of assistance for litigants, lack of and/or inadequate implementation of new technology, lost files, and lack of case management on behalf of judges.



## Legal Remedies

The law provides remedies to persons whose legal rights have been violated. Courts generally grant these remedies for two purposes; (1) to enable them exercise their supervisory power over lower tribunals and administrative bodies, (2) to vindicate private rights. The remedies are provided by the courts at the request of those who have been wronged. The remedies include; damages, injunction, prohibition, mandamus, quo warranto, certiorari and declarations.

**i. Damages:** These are monetary compensation paid to a person for legal wrongs committed against that person. For instance, damages may be awarded to persons who have experienced environmental pollution by a mining company. This may be because the pollution has caused harm to particular persons (e.g. persons who have drunk water from a river/pond polluted by cyanide from a mine site). Sometimes damages may be difficult to assess and are not readily quantifiable because they arise generally from the circumstances of the case. Other times, they are capable of being quantified (e.g. in an action for breach of a commercial contract where a specific sum of money is lost due to the actions of a person) where the damages arise generally from the circumstance of the case, they are

called “general damages”. Where a specific sum of money is being claimed, this is referred to as “specific damages”.

**ii. Injunction:** An injunction is an order granted to restrain a person from engaging in conduct that may violate the rights of another person or cause injury to that person. It may be temporary or permanent. When an injunction is granted for a specific period and that period ends, the person must re-apply in order for the injunction to continue.

**iii. Prohibition:** This is an order, which is used to prevent a public body from violating the law. For instance, the remedy is available to prevent a public body from abusing its powers or exceeding its powers.

**iv. Mandamus:** This is an order, which is used to compel a public body to carry out a duty imposed on it by statute. For instance, if a statute imposes a duty on a District Assembly to pay monies to parents of poor children to enable them attend school and it fails to do so, it can be compelled by an order of mandamus to pay the fees of the deprived children. The Environmental Protection Agency (EPA) may be compelled by an order of mandamus to perform its duty of protecting the environment.

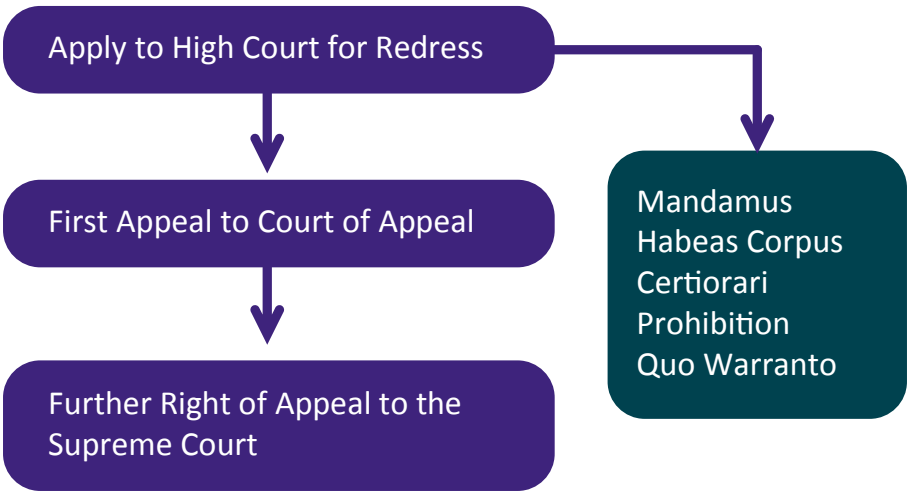
**v. Quo Warranto:** The name literally means “where is your warrant?” This is a remedy designed to question the exercise of power by public officials. For example, when the police have arrested a suspected criminal, the suspect may apply for a “quo warranto” order to question whether their arrest was legal. (e.g. where the police had no arrest warrant and the circumstances did not merit an arrest without warrant). Similarly, when tax inspectors enter into office premises to carry out inspections for tax purposes, the affected persons may apply for a “quo warranto” order against the tax authorities where it is clear that they did not have a warrant to enter the premises.

**vi. Certiorari:** is an order to invalidate the decision of an administrative body or lower court which has exceeded its lawful powers in making that decision. When a court, usually the High Court, grants a certiorari order, the decision of the administrative body or the lower court cannot be enforced against the person or persons affected by that decision.

**vii. Declaration:** as the name implies, this remedy ‘declares’ the rights or claims of a party to a suit. For instance, a person who is threatened with eviction by the Accra Metropolitan Assembly can apply for a declaration that the eviction order violates his/her right to housing. When the court grants the declaration, it means that the evictee’s right to housing has been recognized and cannot therefore be violated.

### Enforcement of Fundamental Human Rights by the Courts

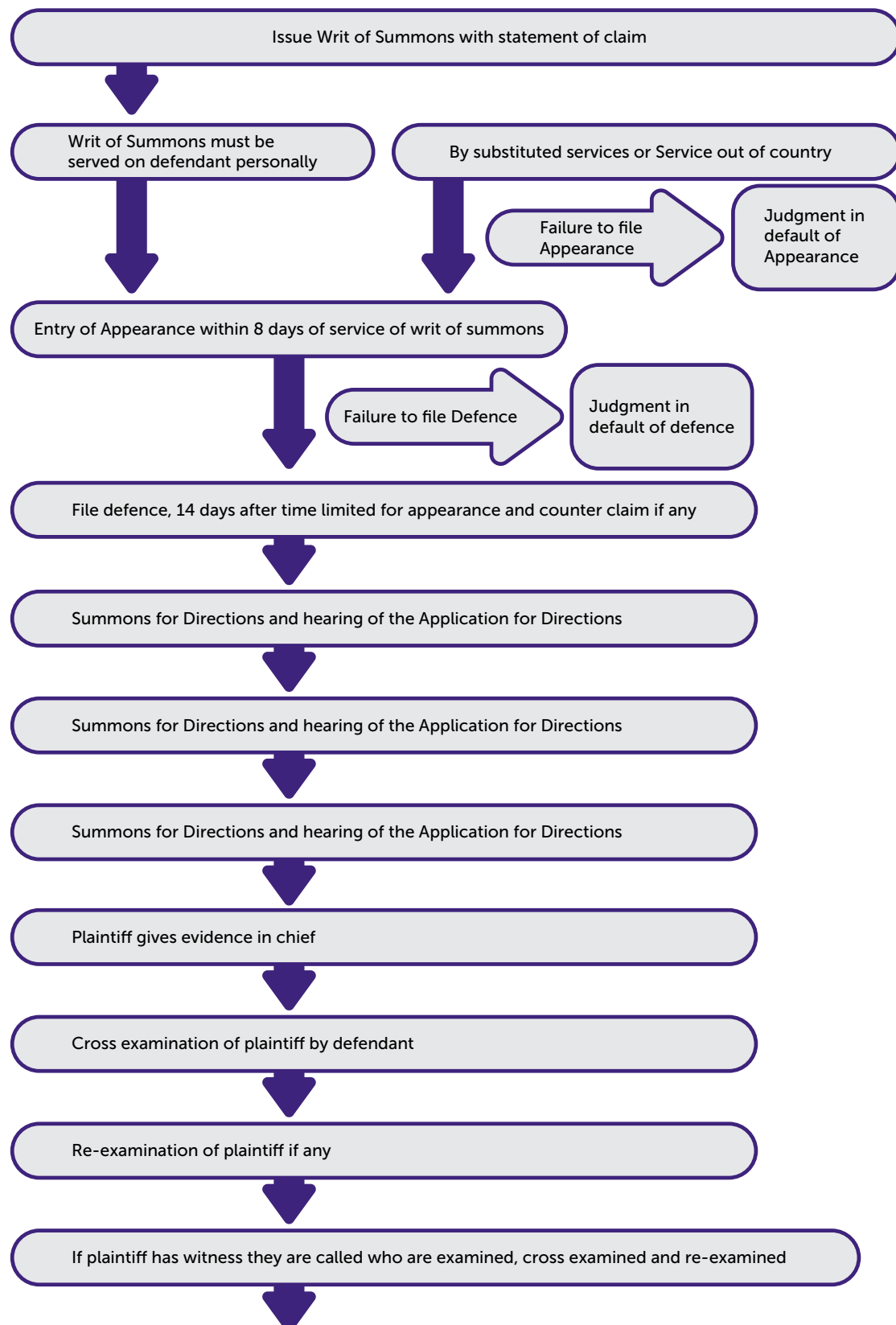
In case of a violation of fundamental human rights, an action for redress can be brought in the High Court. The **Protection by the Courts is contained in Article 33(1) of the 1992 Constitution. It states that:** *“Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.”*

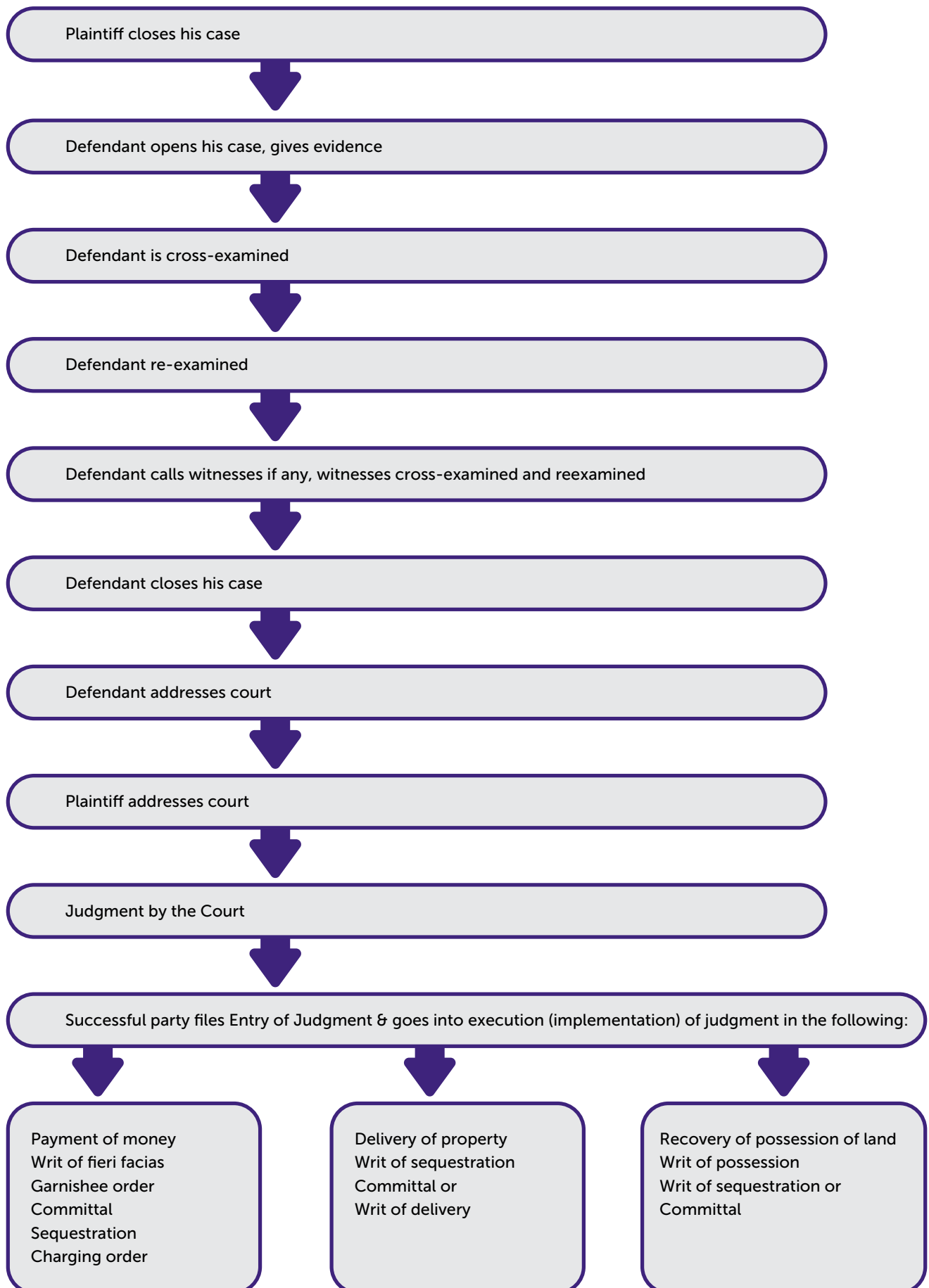




## Procedural Steps in Lodging a Civil Action

The procedural steps in a Civil Action are as stated below. It is important to have a general understanding of these steps in order to assist fellow community members who are engaged, or wish to engage in a civil action. The steps are as follows:





## Enforcement of Fundamental Human Rights by the Commission on Human Rights and Administrative Justice (CHRAJ)

The CHRAJ is an independent body set up by Parliament. The Commission exists to foster a culture of respect for fundamental human rights and freedoms, as well as administer justice and fairness in Ghanaian society. In practice, the Commission was designed to investigate and settle complaints made by citizens quicker than the courts. Any citizen with a human rights complaint may file the grievance with the Commission free of charge. CHRAJ has offices in all the regions of Ghana and their services are free.

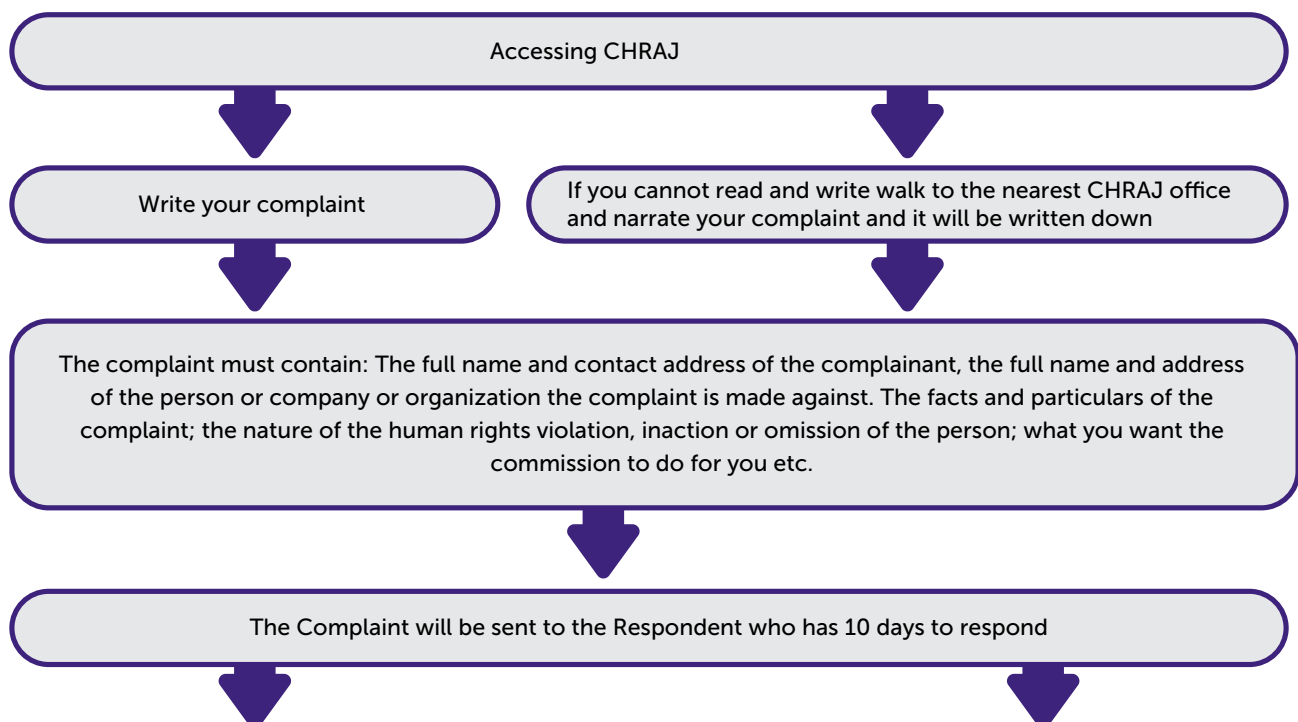
The primary duties of the Commission are to:

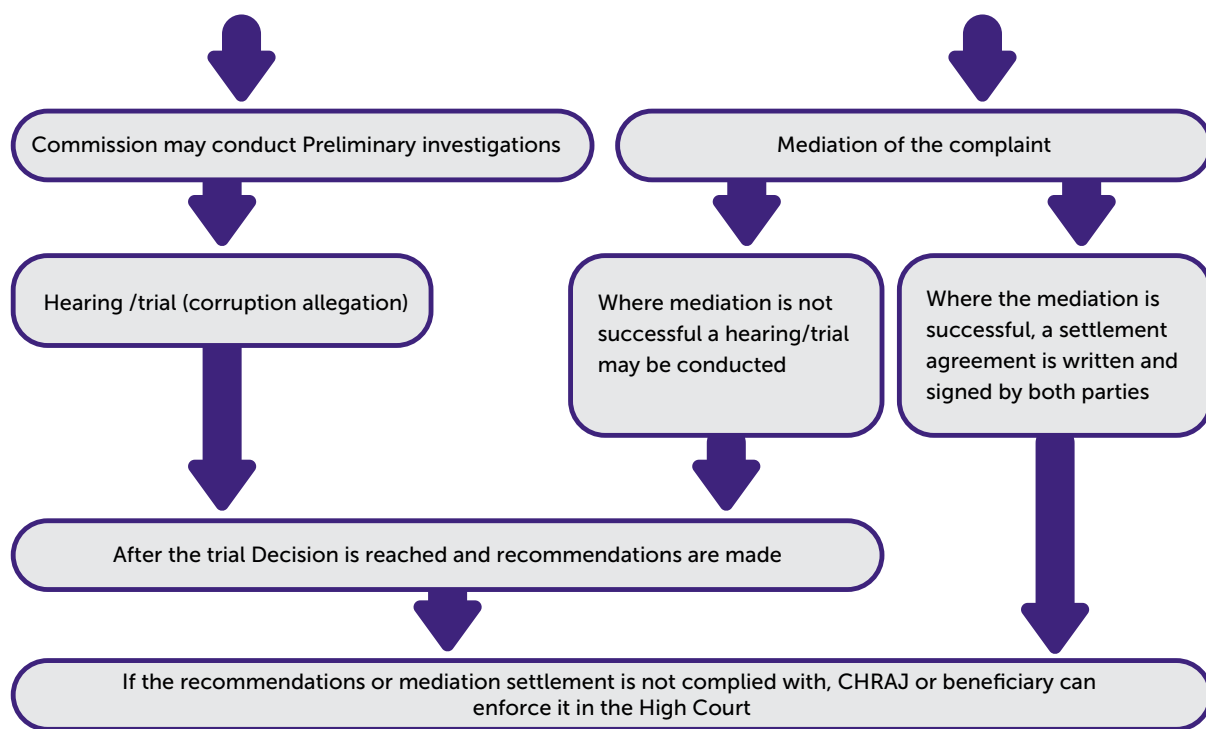
- Investigate complaints of human rights abuses.
- Investigate all instances of alleged corruption.
- Educate the public about their human rights.
- Report to Parliament annually on their activities.

How to file a human rights complaint with CHRAJ:

- Make a written or verbal complaint with the Commission.
- CHRAJ sends complaint to the respondent (i.e the person or institution against whom the complaint is made who has 10 days to make a response).
- CHRAJ makes investigations into the allegations.
- Parties can mediate the dispute with the help of a CHRAJ representative.
- If found to be guilty, charge the body with a human rights violation and ask the body or person to remedy the situation and or pay compensation to the victim.

### Step by Step Procedure for Accessing CHRAJ





If within three months after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commissioner, may bring an action before the High court and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission.

# Module VII

## ALTERNATIVE DISPUTE RESOLUTION

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### Introduction

*ADR is a general term that describes all conflict or dispute solving or resolution methods outside the court system. However, courts may assist the parties to use alternative dispute resolution. ADR methods offer a cheaper and speedier form of justice for ordinary citizens.*

### Objective

*This session is aimed at enabling participants appreciate the existence and importance of the different methods of conflict resolution outside the court system and to learn skills to resolve conflicts successfully.*

### Activity

In this session, the facilitator should introduce ADR by asking the participants how they generally resolve conflicts with their friends, families, and work colleagues. It is important to point out the fact that most people are more familiar with ADR than they may think. For example, many

people use informal arbitration by “respected persons” such as family heads and religious leaders. Additionally, chiefs and community based public hearings also serve as informal ADR mechanisms. For example, a land dispute between village members will often be settled by a chief and not by the courts.

The facilitator should introduce a scenario about a conflict and request volunteers to act out the scenario and how it would be typically settled in their everyday lives.

### Discussion

- How conflicts are typically resolved in their society?
- What conflicts would you be inclined to settle before a court?
- Is going to court always appropriate?
- Are there alternatives to going to court?

### Types of ADR Methods

#### Negotiation

Negotiation is a shared effort at solving a problem and it involves the parties themselves interacting directly with each other to resolve a dispute – moving to a compromise that reflects what is comfortable for either side. Negotiation is suitable for use in all cases in which the parties intend to

resolve their dispute with the aim of achieving a result that is acceptable to all concerned. There is no involvement of any neutral third party who would decide on the dispute at the end of the interaction.

### a. Common Negotiation Styles

- **Competitive Negotiation** – the negotiation is treated as a competition that must be won or lost. There must be a winner and a loser at all cost. This form is adopted where the relationship between the parties is unimportant as they do not have to deal with each other post-conflict.
- **Collaborative Negotiation** – the negotiation is treated as a joint effort at problem solving to allow both parties to benefit. The relationship between the parties is regarded as important especially if it is an on-going relationship and the parties would necessarily deal with each other post-conflict. This is the “win-win” approach to conflict resolution.
- **Balanced Negotiation** – this is a combination of the competitive and collaborative styles.

### b. How to Conduct a Successful Negotiation

- **People/issues** – separate the parties from the problem (placing too much emphasis on the parties instead of the problem may lead to wrong conclusions)
- **Interest** – people are motivated by their interests although they may not voice them out – self-interest is often the most important factor of most conflicts (it is important to identify the interests of the parties in order to make a headway)
- **Options** – one must develop options in the negotiation process to assist one in deciding the best course to take
- **External Factors** – outside influences that may harm the negotiation process should be carefully considered

- examples are national laws, tradition and custom and natural events

The process of negotiating involves a number of steps:

1. The negotiator must plan.
2. The negotiator should approach the other party directly.
3. Dates and times for negotiation must be negotiated and not forced on the other party.
4. The negotiator must portray confidence and have an ability to influence.
5. Keep the negotiation in your control - within your limits.
6. Be flexible, fair and open minded.
7. When negotiating on behalf of a group you must consider –
  - The interests of the parties
  - The relationships that exist between and among the parties
  - The best alternative to negotiation for the parties
  - Commitment of the parties
  - Communication between and among the parties

### Activity

Divide the participants into groups of two (2) for the role-play below. One member of each group will play the role of Jenifer, while the other member plays the role of Thomas. The part entitled “*Information for all parties*” should be given to both Jenifer and Thomas. The part entitled *Information for Jenifer* should be given to the group member playing Jenifer only. The part entitled *Information for Thomas* should be given to the group member playing Thomas only. Jenifer and Thomas will then negotiate and report to the larger group on their agreement or otherwise.

## ROLE PLAY – TIE & DYE BUSINESS<sup>3</sup>

### Information for all Parties

Thomas is the Sales Manager of Kikam Ltd., a company which produces good quality calico.

Jenifer is the representative of Half Assini Supplies Ltd, which uses Kikam’s calico to produce tie & dye designs.

<sup>3</sup> Based on “The Tie-And-Dye Company’s Contract”, Role Play developed by Prof. Henrietta Mensa-Bonsu, Faculty of Law, University of Ghana.

Half AssiniSupplies requires 30,000 bales of calico a month in order to satisfy all its customers.

The two companies have a contract that stipulates that Kikam Ltd is to supply 30,000 bales of calico a month to Half Assini Supplies for two years. Failure to do so attracts a liability fee of \$2,000 payable by Kikam Ltd. to Half Assini Supplies.

As a result of a strike by the local union, Kikam Ltd has failed to supply the bales of calico to Half Assini Supplies in three (3) months and has already paid \$6,000 in liability fees to Half Assini Supplies.

The union's strike action does not show any sign of ending soon and therefore Kikam Ltd. has hired temporary labour. The new work force can produce only 30,000 bales of calico in a month. Kikam Ltd. now finds that it cannot deliver the whole batch of 30,000 bales to Half Assini Supplies, since that would mean losing all the other customers of the company, and therefore wishes to discuss changing the terms of the contract.

Kikam Ltd is also considering cancelling the contract and paying the penalty. This would be cheaper than paying \$2000 a month to Makeni Supplies for an unspecified period.

### **Information for Jenifer**

Your company was too sure about its business plans and did not realize that during the lean season business would slow down. As a result of this you are having serious difficulty selling your product.

So far, it has been a great relief to you that Kikam Ltd. has not been able to supply your company for three (3) months. This has enabled you to earn \$6,000 dollars without sweat. However, in a few months the Christmas season would begin and you would need to satisfy your customers. Usually, during the Christmas period, you are not able to meet the demand of your customers.

You are alarmed that Kikam Ltd. is considering terminating the contract because Kikam Ltd. produces the best quality calico. In fact, Half Assini Supplies has become a market

leader because it uses Kikam calico.

You are even thinking about entering the export market and you are anxious to keep doing business with Kikam Ltd. If Kikam Ltd. should cancel the contract, serious harm would be done to your business.

### **Information for Thomas**

You are the Sales Manager of Kikam Ltd., and this is a very difficult time for you. Kikam Ltd. can produce only 30,000 bales of calico with the new work force as long as the strike does not end. Therefore, you must ensure that you keep all your customers by distributing the 30,000 bales among them till the strike ends.

You know that your company can presently easily supply 10,000 bales a month to Half Assini Supplies, if Half Assini could be persuaded to accept this lower figure.

Your company is not willing to pay more money to Half Assini Supplies for failing to supply the agreed 30,000 bales. If Half Assini cannot be persuaded to accept 10,000 bales, you will cancel the contract and pay the penalty.

Personally, cancelling the contract is not good for you since you have been promised promotion if you would manage to keep the customers during the strike period.

If the contract is cancelled, you would also have a big problem of finding new customers to replace Half Assini Supplies.



Thanks to compromise they were moving closer.



## Mediation

Mediation is a form of negotiation but which involves a neutral person who assists the parties to resolve their dispute - the neutral is referred to as the mediator. The mediator is not a judge and so he does not decide the case for the parties. The mediator facilitates, by way of advice, the interaction between or among the parties by suggesting ways by which the dispute may be resolved. Therefore, mediation is often referred to as assisted negotiation.

Mediation is commonly used in situations where the parties intend to or have to keep on-going relationships by solving the dispute while preserving the relationship. Mediation does not usually result in a binding decision. Thus, it leaves all other forms of legal remedies available.



### a. The Mediator's Role

**The mediator –**

- keeps the discussion on-going
- builds the team when discussions have broken down by

assisting the parties to move from hard-line positions to softer positions

- identifies areas of agreement
- opens communication channels
- creates options for the parties
- translates and transmits information
- distinguishes positions from interests by separating the "wants" and "needs" of the parties through reality testing (identifying unrealistic positions held by the parties and pointing out the negative consequences of such positions) – reality testing is often done through a process called *The Caucus* - this involves taking one party to an aside for him to tell you what he does not want the other party to hear or know.

### b. Qualities of a Mediator

- *Good listener* – effective listening involves being attentive, patient, maintaining eye contact, nodding to show that you are following what is being said-- asking questions and allowing the parties to tell their own story
- *Friendly* – the mediator must be courteous to the parties and make them feel at ease
- *Objective* – the mediator must not take sides - he/she must be neutral, fair and firm
- *Creative* – the mediator must be able to create options for the parties for them to select what best suits their case
- *Sense of Humour* – the mediator must make the mediation process lively by ensuring that the tension is reduced to a minimum – however, the mediator must not turn the mediation process into a comic show
- *Knowledgeable* – the mediator must know what the parties are disputing over and how best to assist them to resolve it

Divide the participants into groups of three (3) for the role-play below. One member of each group will play the role of mediator, another will play the role of Kalaitu, while the other member plays the role of Sheku. The part entitled *Information for the parties and the mediator* should be given to both parties and the mediator. The part entitled *Information for Kalaitu* should be given to only the group member playing that role. The part entitled



*Information for Sheku* should be given to only the group member playing that role. The mediator should attempt a settlement between the parties. The group members will then negotiate and report to the larger group on their agreement or otherwise.

## **ROLE PLAY – DEATH AND INHERITANCE IN THE FAMILY<sup>4</sup>**

### ***Information for the Parties and the Mediator***

Kalaitu is a well-educated woman with a master's degree in science. Her husband, Salieu, died recently. He was the Deputy Minister of Education before his retirement.

Sheku is a brother of Salieu. While not educated as his brother, Sheku is a royal and chief of police in his town. He is very powerful. Sheku has indicated that he represents the family of Salieu, the honour of their town and their ancestors.

A dispute arose when Kalaitu began clearing out the couple's property from the family home in Salieu's town soon after his death. The women in the town accused her of betraying her husband's spirit and insulting their ancestors, as she would not observe the traditional mourning rituals.

Kalaitu wants the property at all cost. She has gone to court for an order to enable her to do so but the local magistrate has decided that the dispute would be better settled out of court. He has sent for one of these new mediators to help resolve the dispute.

### ***Information for Kalaitu***

You are not happy in Salieu's town. The women in the town have treated you as an outsider since your arrival, and have actually made fun of your education and the women in your town! You suspect it is because they are jealous of you and of the women in your town as they are more educated, being closer to the capital city.

You want to return to the capital city. You like the life and you will be closer to your children, including your stepsons if you live there. Also, your home town would be much

closer. Salieu's town is too remote and does not have the amenities you like so much.

You consider local traditions and rituals silly. You see no reason why an educated person such as yourself should respect them. You were hoping the court would resolve the dispute and you do not want the matter to be settled by the elders in Salieu's town.

You do not want to abandon your marital property, and besides, the law says that the husband's property goes to his wife upon his death, no matter what these backward people in Salieu's town think.

You believe that you have a right to live your life according to your own principles, and that the law is on your side even if the local magistrate is not. Your worry is that the local magistrate may not be fair since he is a close friend of Sheku. You hope that this mediator will be able to resolve the matter. After all, the mediator is said to be well trained in resolving disputes.

Your husband died of sudden and unexpected heart attack. It was painful enough for you without having to deal with these other problems as well.

### ***Information for Sheku***

You come from a highly respected and powerful family in your town. Your father, who is quite elderly, is chief of the town. You have been taking over some of your father's duties at the clan level as it is difficult for your father to travel these days.

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<sup>3</sup> Based on "A Death and Inheritance in the Family"(1996) by Ernest Uwazie, Center for African Conflict Resolution and Daniel Yamshon, Western Center for Alternative Dispute Resolution.

Your recently deceased older brother, Salieu, was well respected although many in the town had trouble relating to him and his "city wife" when he came back from retirement. No one understood how he could treat his wife as an equal. Women are to be loved, respected, and taken care of. But that woman, Kalaitu! At times it seemed she did not understand that she was not a man. And such disrespect! She is not even in mourning for Salieu. Doesn't she know she needs to mourn for a year and undergo cleansing rituals? This is the way things have to be done but she thinks it is silly.

This woman does not even understand that the way of our people is that the family takes Salieu's property. She has no worry because the family is required to take care of her. The family will even provide a dowry if she remarries.

Kalaitu never tried to be part of your community, and some of the women here are saying that her ways let in spirits that killed Salieu. They do not understand heart attacks, but they understand sudden death.



As Chief of Police, you have to enforce the law. However, the law is wrong when it comes to family property. Maybe the magistrate has taken sides with you and that is why he has not given an order for Kalaitu to take the property. After all, he is your close friend.

Maybe this mediator person who is coming will tell Kalaitu that she needs to respect your tradition. The old ways are the best. Your father is embarrassed and the whole town is watching. You are not sure this matter can be resolved.

## Arbitration

Arbitration involves a neutral third party, called an arbitrator, who listens to the parties and decides respective rights. The arbitrator imposes his decision on the parties. The decision of the arbitrator is called an award and it is usually binding on the parties. In most countries, the arbitrator's award is equal to the judgment of a court.

Arbitration may be compulsory or voluntary. Where a law requires parties to a dispute to use arbitration then the arbitration is said to be compulsory but where the parties themselves choose arbitration as the method to resolve their dispute, then it is said to be voluntary arbitration.

Arbitration may also be customary or commercial. It is commercial where it is between commercial entities or

businesspersons. Customary arbitration, on the other hand, takes place in the traditional set-up where chiefs or elders sit as arbitrators and decide on disputes.

## Advantages of ADR

- ***Saves money and time*** – a dispute can be resolved in months, weeks or even days through ADR, while a court trial can take several years to conclude. The absence of court fees and charges, sometimes lawyers' fees and expert witness fees also enable the parties to an ADR process to save money.
- ***Increased flexibility and control*** – the parties have the option of choosing the ADR method that is best for them, unlike in the case of a court trial. Except in the case of arbitration, the parties have full control of the dispute resolution process and the outcome is determined by them.
- ***Confidentiality*** – unlike court trials that are held in open court rooms and the judgments published in law reports for the whole world to read, ADR ensures that whatever is discussed and decided on remains secret.

- ***Improves communication and preserves relationships*** – in mediation and negotiation for example, the parties work together to solve the dispute rather than against themselves as happens with court trials.
- ***Reduces stress and increases satisfaction*** – because ADR is not conducted in the tense and serious atmosphere of court trials, the parties are more relaxed and they get all the time to tell their own story thereby reducing stress and increasing satisfaction.

## Disadvantages of ADR

- ***Non-binding ADR may add to time and cost*** – where the parties are not required to accept the outcome of the ADR process, more time and money may be expended if the parties decide to go to court.
- ***The neutral may charge a fee for his/her services*** – arbitrators especially charge high fees for their services
- ***ADR may not be suitable for all disputes*** – as we noted earlier, it is not every conflict that can be resolved through ADR. In such cases, you have to go to court for the dispute to be settled.

# Module VIII

## CITIZEN GOVERNMENT ENGAGEMENT

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### Introduction

*The ability of citizens to contribute effectively to the governance and development of a nation will very much depend upon the level to which citizens are engaged by government and other duty bearers in the decision making processes leading to the developmental issues. This process of linking government and citizen/community is at the broadest level referred to as citizen engagement and involves arrangements for citizens and communities to participate in the processes used in order to make good policy and to deliver on programs and services in a country. Citizen government engagement in the management of natural resources denotes the level of engagement and participation in decision making relating to the governance of the natural resource sector by citizens including local communities and key stakeholders in the sector.*

### Objective

- *To empower communities to demand greater participation in decision making processes at the local and national level.*

- *To empower local communities in the oil and gas districts to demand a say in their development process so as to ensure demand-driven and cost effective utilization of revenues to be allocated for development in frontier communities.*
- *To expose participants to the need to demand for more openness in the decision-making process by government and policy makers for meaningful involvement and greater citizen input in decision making.*

*Citizen engagement are forums that bring the general public and/or impacted persons or communities into partnership with decision makers and other stakeholders through dialogue-based processes at any point in the policy or project development, design and implementation. It provides citizens with the opportunity to interact with the government and other duty bearers and to provide feedback regarding topical issues that concern them.*

## Types of Engagement

- Participation
- Involvement
- Consultation
- Collaboration

Citizen government engagement could take any form;

1. **Information:** This is where citizens and communities are provided balanced and objective information on the policy or project to be implemented.
2. **Consultation:** The process during which individuals, groups and organizations have the opportunity to become actively involved in a project or program. It involves the giving of balanced and objective information to the citizens and communities and then obtaining public feedback on analysis and alternatives towards making the decisions.
3. **Engagement:** This ensures public concerns are understood, taken and considered throughout the project period.
4. **Collaboration:** this is a form of partnership in decision, development of alternatives and identification of solutions.



## Levels of Engagements

### 1. National Level

- Engagement with the Executive. This involves holding meetings with Ministers and government agencies.
- Engagement with Parliament. This involves arranging meetings Select committees incharge of natural resources. E.g select committees on mines and energy.
- Engagement with donor agencies.
- Engagement with extractive companies.

### 2. Local Level

- Engagement with District Chief Executive and District

Assembly officials.

- Engagement with Assembly members.
- Engagement with companies at local level e.g Community Liaison Officer.
- Donors.
- Engagement with chiefs and traditional authorities.

## Importance of Citizens Government Engagement

- Citizen government engagement creates the opportunity for citizens to shape and determine public policy direction and implementation. As citizens are engaged they provide better information to duty bearers and decision makers, which could lead to improvement in government decisions on the policy or projects and thus creates more effective solutions.
- By ensuring that voices of persons and communities to be impacted upon by the policy or project are heard, considered and addressed, it will result in the legitimization of government decisions and an increase in the likelihood that the policy, projects or solutions will be widely accepted as the citizens will identify themselves with the decisions and solutions arrived at..
- Citizen engagement will have positive impact on output and outcome of policy formation and implementation which can lead to policy efficiency, effectiveness, equity and the attainment of social justice.

## Effective Citizen Government engagement

For there to be an effective citizen government engagement, there must exist the following:

- The opportunity for citizens to engage must exist.
- The capacity of citizens and other stakeholders must be built to engage in decision making processes.
- Citizen government engagement must be institutionalized.
- Resources for the engagement and facilitating the engagement must also exist





## Mobilizing for citizen government engagement

1. Identify if citizens are demanding more participation in the decision-making process of public policies and implementation at all levels of natural resource governance. That is, the local or national level is important for citizen mobilization to engage government.
2. Identification of the degrees of existing citizens' participation is critical. What is the degree of citizens' participation in public policy relating to exploration, development and production of oil and gas in the communities and the country? For example, are there avenues for sharing information, holding consultations or that allows for negotiation and effective participation.
3. Identifying the obstacles to citizens' 'effective engagement in public policy, and the critical factors that may lead to low citizens' participating in governance and decision making governing the extractive sector and developmental issues in general;



4. Do the citizens have the capacity to participate and;
5. Identify the extent to which government and duty

bearers want to involve the citizens and affected communities in decision making relating to natural resources sector.

## Barriers to Citizen Government Engagement

Citizens or communities may not have the capacity to engage effectively in decisions relating to oil and gas and the extractive sector in general due to the following factors:

- Legal framework: where the existing legal, institutional and policy framework does not provide an environment for constructive forms of citizens engagement in natural resource governance in the country.
- Illiteracy: where the literacy level of the people or communities inhibits their ability to understand, appreciate and engage more meaningfully in the extractive governance issues.
- Social: where social conditions do not allow for meaningful engagement. For example the denial of women participation in decision making process.
- Economic: where communities and people though understand the need to engage and have the capacity to engage does not have the financial resources to engage meaningfully.

Where there is no opportunity for citizen engagement in the natural resource governance at the national or local levels, people who mobilize communities must encourage communities and affected persons to develop strategies, methods and means to engage government and duty



bearers or that may force the government and duty bearers to engage them at the local or national levels. These ways may vary. But may include the use of one or more of the following

<ul style="list-style-type: none"> <li>• Building campaigns at Local, and National levels</li> </ul>	<ul style="list-style-type: none"> <li>• Organize Forums</li> </ul>
<ul style="list-style-type: none"> <li>• Engage the Media</li> </ul>	<ul style="list-style-type: none"> <li>• Sign on letters / letter writing campaigns</li> </ul>
<ul style="list-style-type: none"> <li>• Engage, Parliamentarians, Committees and Assemblymen</li> </ul>	<ul style="list-style-type: none"> <li>• News letters</li> </ul>
<ul style="list-style-type: none"> <li>• Circulate petitions</li> </ul>	<ul style="list-style-type: none"> <li>• lobby</li> </ul>
<ul style="list-style-type: none"> <li>• Joint networks and coalition working on oil and gas and extractive issues</li> </ul>	<ul style="list-style-type: none"> <li>• Organize public protests</li> </ul>
<ul style="list-style-type: none"> <li>• Organize meetings</li> </ul>	

As most extractive communities are always vulnerable and often not effectively engaged either by the government or the extractive companies in decision making relating to the extraction of mineral resources in their communities, people and groups in these communities must always be organise and sensitised to enable them demand their rights. Empowering such communities through education and providing them with relevant information is a key for communities’ effective participation in decisions affecting their communities especially the need to be engaged meaningfully by government and its agencies in policy decisions leading to the exploitation of mineral resources. Therefore, getting extractive communities to engage effectively with government and companies on decisions regarding the exploitation of mineral resources in the communities is through, awareness creation , education, sensitization, training and mobilization of communities in these areas.

# Module IX

## COMMUNITY MOBILIZATION

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### Introduction

*The ultimate purpose of community mobilization is to increase the community's knowledge base, protect their rights, and increase their capacity. In order to do this, it is necessary to identify a community's needs, organize around specific goals, and develop the confidence to overcome the struggle. Whatever the problem, the oppressed often lack strength unless people unite for the greater good of the community.*

*The objectives of this session are to enable participants to understand the following:*

- *What community mobilization is;*
- *The concept and principles of community mobilization;*
- *The process of community mobilization;*
- *The knowledge, skills, and attitude of community mobilization; and*
- *Strategies for community mobilization*

*Community Mobilization is a process by which people with a common agenda join together to overcome their struggles. However, it is important to remember that a community does not behave like an individual. Communities are made up of persons with different backgrounds, ideas and*

*beliefs. Therefore, it is necessary to empower individuals to unite and take action for the greater good of society.*

### What Is Community Mobilization?

Community mobilization is the process by which a community identifies its needs and objectives and develops the empowerment to take action. Thereafter, the community adopts a participatory approach whereby people actively participate in the resolution of matters affecting their lives.

### Concepts of community mobilization

To mobilize is to get something or someone on the move. It follows then that community mobilization is about organizing the community and all the resources available in the community to move them towards achieving a certain programmed goal. Having this concept in mind, *community mobilization* is defined as a capacity building process, through which individuals, groups and families (such as model families), as well as organizations, plan, carry out and evaluate activities on a participatory and



sustained basis to achieve an agreed goal. This might be from their own initiative — or a goal stimulated by others.

#### Activity

Invite participants in small groups, to discuss and subsequently share their understanding of the term Community Mobilization and the importance of mobilizing a community over an issue.

## AWARENESS



## Why Mobilize Your Community?

The majority of people in Ghana live below the poverty line and mostly in a culture of silence. As a result, communities develop such traits as hopelessness, nervousness and timidity. Instead of unleashing their anger on the government, companies, etc, they unleash hostility on each other. The oppressors use governing structures and policies to sustain the situation. In fact, people have been convinced to accept their realities as “God given” and inevitable.

## Advantages of Community Mobilization

There are several advantages of community mobilization that will help local ownership and the sustainability of programmes. Community mobilization helps to motivate the people in your community and encourages participation and involvement of everyone, as well as building community capacity to identify and address community needs. Community mobilization also promotes

sustainability and long-term commitment to a community change movement. In addition, it motivates communities to advocate for policy changes to respond better to their needs.

## Stages of Community Mobilization

**1. INTEGRATION-**The first task is to gain acceptance by the general community. It is necessary to build trust between you and the community. This can be done by talking to people to find out their specific problems which in turn will facilitate the ability to gather information, plan community meetings, and act as their representative.



A Community Meeting

**2. GATHER INFORMATION-** This stage allows you to learn and understand the problem at hand.

**3. ATTRACT SUPPORTERS-** A key component of a successful grassroots movement is engaging both individuals and organizations in the movement. Try to talk to representatives from all areas of the community including local groups, schools, businesses, and any other organizations. It is always helpful to start with the people you know. For example, if you are part of a women’s group you can talk to other members of your group about the need to mobilize around a certain issue.

4. Identify or establish a Committee which will oversee the preparation, implementation and monitoring of your issue/ project.

5. Establish a Plan of Action-in order to create focus and community ownership, divide tasks amongst people.

6. Implement strategies and continuously re-assess the plan of action in order to determine its productivity.

***Key steps in community mobilization***

- Create awareness on the issue
- Motivate the community through community preparation, organisational development, capacity development and bringing allies together
- Share information and communication
- Support them, provide incentives and generate resources

## ACTION



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