



A POLICY **BRIEF**

Addressing gaps and human rights violations in
Ghana's mining sector

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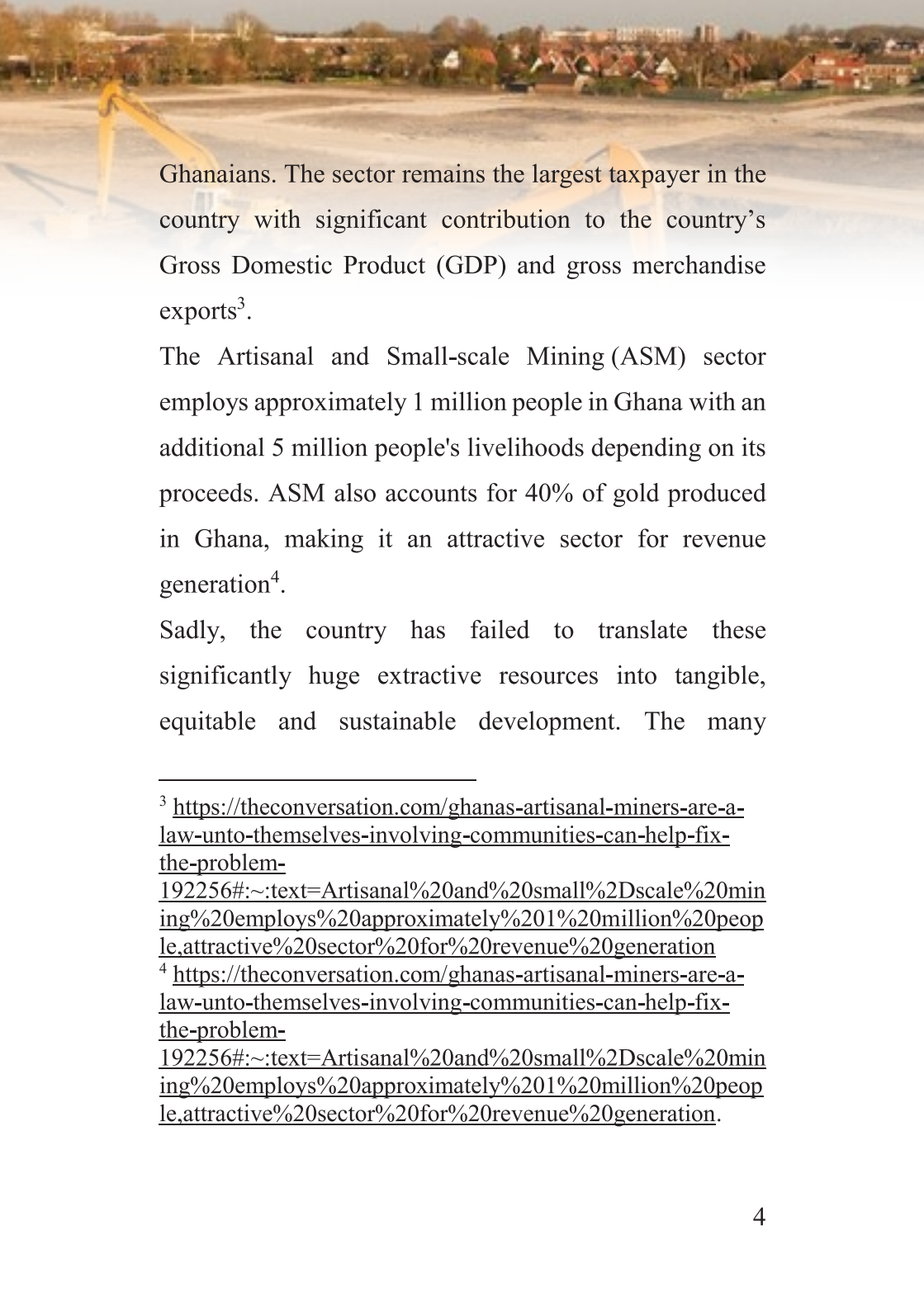
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1.0 Executive Summary

Ghana's extractive resource basket remains critical to its socio-economic development, as the country is bequeathed with minerals such as gold, bauxite, diamond and manganese. Additionally, oil and gas and most recently discoveries of Lithium and other critical minerals add to an already existing array of resources¹. Significantly, Ghana is the second largest producer of cocoa globally next only to Cote d'Ivoire with total production of 750,000 metric tonnes in 2023, down from 1,047,000 metric tonnes in 2020/2021. In 2023, merchandise exports for cocoa beans and products contributed about \$227.88 million to Ghana's GDP². In the area of gold mining, revenues generated from gold in Ghana amounted to around 6.6 billion USD in 2022. As of the end of 2021, the total number of persons employed directly by the mining-producing companies stood at 12,236. This is composed of about 99.2 per cent of local

¹<https://dicf.unepgrid.ch/ghana#:~:text=Ghana%20has%20abundant%20natural%20resources,the%20attainment%20of%20sustainable%20development.>

² <https://cocobod.gh/pages/cocoa>



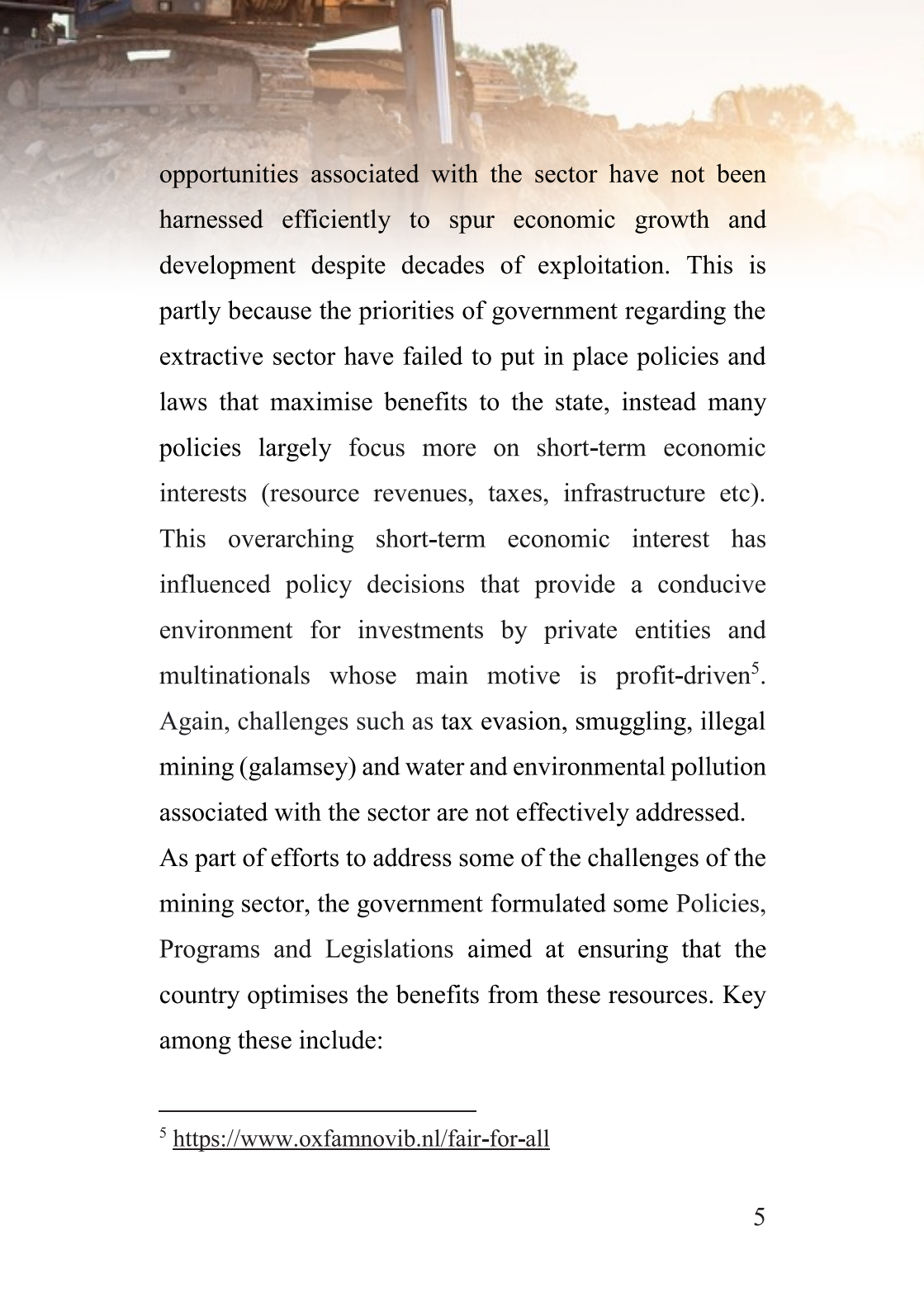
Ghanaians. The sector remains the largest taxpayer in the country with significant contribution to the country's Gross Domestic Product (GDP) and gross merchandise exports³.

The Artisanal and Small-scale Mining (ASM) sector employs approximately 1 million people in Ghana with an additional 5 million people's livelihoods depending on its proceeds. ASM also accounts for 40% of gold produced in Ghana, making it an attractive sector for revenue generation⁴.

Sadly, the country has failed to translate these significantly huge extractive resources into tangible, equitable and sustainable development. The many

³ <https://theconversation.com/ghanas-artisanal-miners-are-a-law-unto-themselves-involving-communities-can-help-fix-the-problem-192256#:~:text=Artisanal%20and%20small%2Dscale%20mining%20employs%20approximately%201%20million%20people,attractive%20sector%20for%20revenue%20generation>

⁴ <https://theconversation.com/ghanas-artisanal-miners-are-a-law-unto-themselves-involving-communities-can-help-fix-the-problem-192256#:~:text=Artisanal%20and%20small%2Dscale%20mining%20employs%20approximately%201%20million%20people,attractive%20sector%20for%20revenue%20generation>.



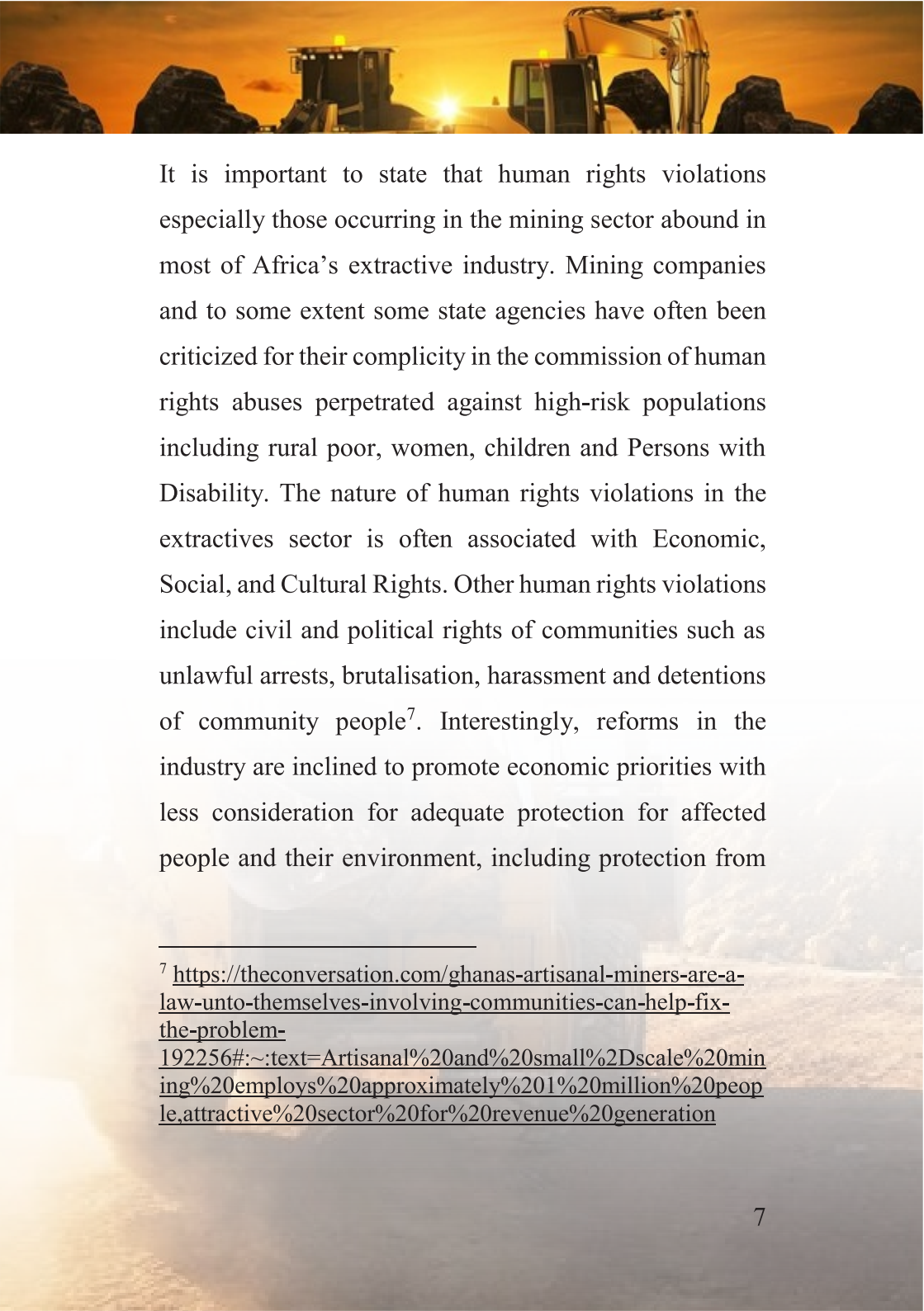
opportunities associated with the sector have not been harnessed efficiently to spur economic growth and development despite decades of exploitation. This is partly because the priorities of government regarding the extractive sector have failed to put in place policies and laws that maximise benefits to the state, instead many policies largely focus more on short-term economic interests (resource revenues, taxes, infrastructure etc). This overarching short-term economic interest has influenced policy decisions that provide a conducive environment for investments by private entities and multinationals whose main motive is profit-driven⁵. Again, challenges such as tax evasion, smuggling, illegal mining (galamsey) and water and environmental pollution associated with the sector are not effectively addressed. As part of efforts to address some of the challenges of the mining sector, the government formulated some Policies, Programs and Legislations aimed at ensuring that the country optimises the benefits from these resources. Key among these include:

⁵ <https://www.oxfamnovib.nl/fair-for-all>

1. The Multi-sectoral Mining Integrated Program (MMIP),
2. The Ghana Landscape Restoration and Small-Scale Mining Project (GLRSSMP)
3. The National Alternative Employment and Livelihood Program (NARLP)
4. The Minerals and Mining Act, 2006 (Act 703) as amended by Act 900 of 2015 and Act 995 of 2019
5. The Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (LI 2431),
6. The Minerals Income Investment Fund (MIIF) Act, 2018, (Act 978)
7. The Minerals Development Fund (MDF) Act, 2016, (Act 912).

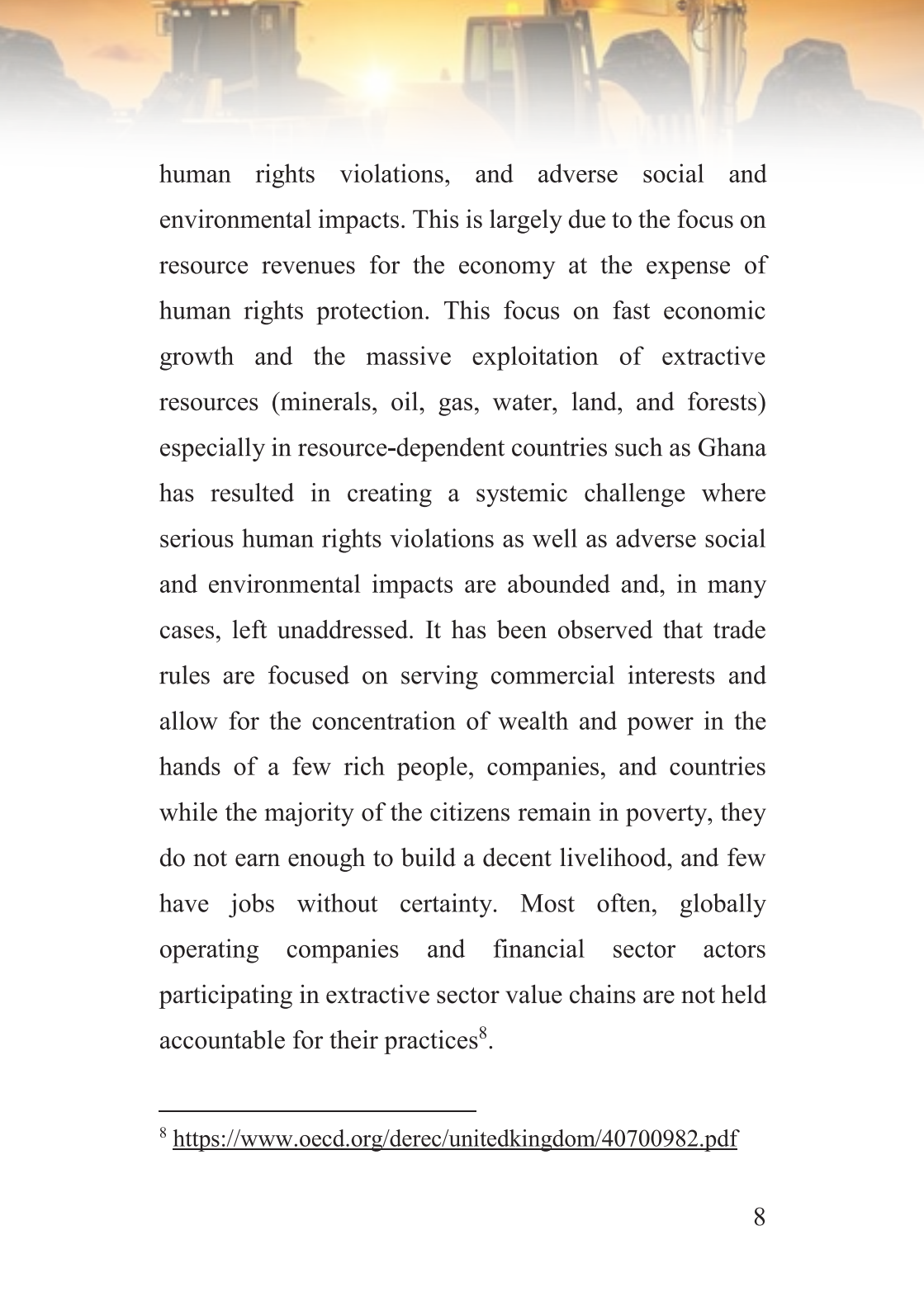
Also, the recently announced Ghana Critical Minerals Policy adds to the already existing policies all aim at contributing towards addressing the challenges and enhancing benefits of the mining sector⁶.

⁶ <https://www.downtoearth.org.in/news/africa/green-minerals-race-ghana-approves-policy-to-reap-maximum-benefits-from-mining-projects-91096#:~:text=It%20prohibits%20export%20of%20critical,in%20Accra%20in%20May%202023.>



It is important to state that human rights violations especially those occurring in the mining sector abound in most of Africa's extractive industry. Mining companies and to some extent some state agencies have often been criticized for their complicity in the commission of human rights abuses perpetrated against high-risk populations including rural poor, women, children and Persons with Disability. The nature of human rights violations in the extractives sector is often associated with Economic, Social, and Cultural Rights. Other human rights violations include civil and political rights of communities such as unlawful arrests, brutalisation, harassment and detentions of community people⁷. Interestingly, reforms in the industry are inclined to promote economic priorities with less consideration for adequate protection for affected people and their environment, including protection from

⁷ <https://theconversation.com/ghanas-artisanal-miners-are-a-law-unto-themselves-involving-communities-can-help-fix-the-problem-192256#:~:text=Artisanal%20and%20small%2Dscale%20mining%20employs%20approximately%201%20million%20people,attractive%20sector%20for%20revenue%20generation>



human rights violations, and adverse social and environmental impacts. This is largely due to the focus on resource revenues for the economy at the expense of human rights protection. This focus on fast economic growth and the massive exploitation of extractive resources (minerals, oil, gas, water, land, and forests) especially in resource-dependent countries such as Ghana has resulted in creating a systemic challenge where serious human rights violations as well as adverse social and environmental impacts are abounded and, in many cases, left unaddressed. It has been observed that trade rules are focused on serving commercial interests and allow for the concentration of wealth and power in the hands of a few rich people, companies, and countries while the majority of the citizens remain in poverty, they do not earn enough to build a decent livelihood, and few have jobs without certainty. Most often, globally operating companies and financial sector actors participating in extractive sector value chains are not held accountable for their practices⁸.

⁸ <https://www.oecd.org/derec/unitedkingdom/40700982.pdf>

A yellow excavator bucket is shown in the process of dumping a large amount of light-colored material, likely cocoa beans, into the bed of a truck. The scene is set outdoors under a bright, hazy sky, suggesting a sunny day. The excavator's arm and bucket are the central focus, with the truck's bed visible in the foreground. The background shows some trees and a building, but they are out of focus.

1.1 Rationale and Scope of the Policy Brief

This policy brief is done as part of the FAIR for ALL project which highlights key challenges bedeviling the cocoa - mining sector value chain offering policy proposals to contribute towards addressing the challenges. Broadly, it seeks to contribute to a world in which global value chains serve people and the planet before profit. Where people benefit fairly from value chains and ensure that the benefits of resources are equally distributed.

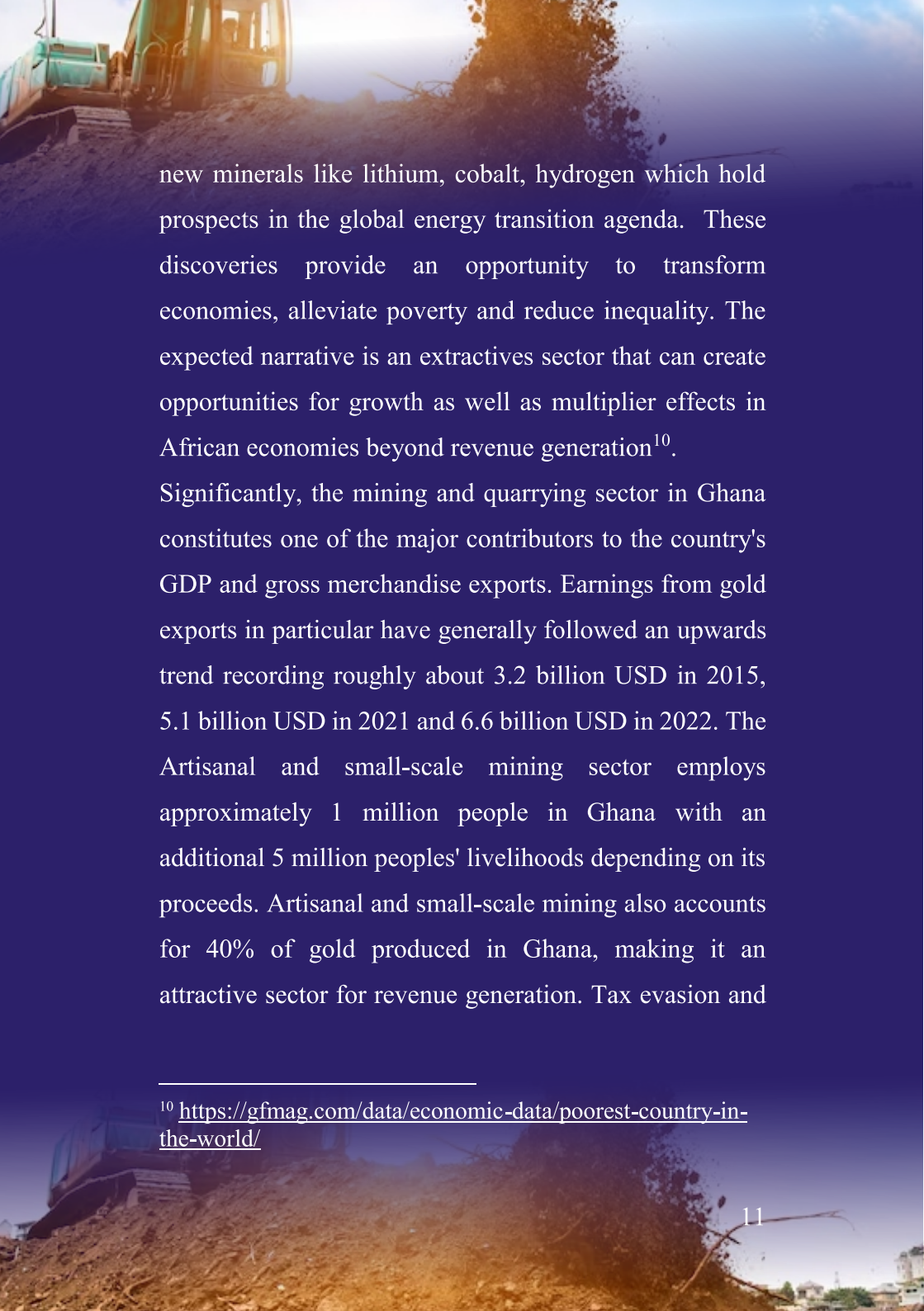
The policy brief answers questions on policy gaps that contribute to policy failures and what alternatives are available to harness benefits from extractive resources in ways that benefit citizens. It also highlights human rights violations and how to address them in the mining sector value chain within the Ghanaian context and therefore adopts a case study approach drawing lessons and best practices from relevant jurisdictions with similar context and challenges. Analysis of selected key mining sector policies is done under section three (3) while policy proposals are presented under section four (4) of this policy brief.



2.0 Introduction and Background

It is no longer news that the African continent is endowed with extractive resources which it has depended on for decades and centuries to sustain the economies, spur economic growth and improve the living conditions of her people. It is also known that the sector is bedeviled with challenges such as resource-based conflicts, corruption, rent-seeking, policy gaps, and mismanagement which have manifested in the inability to optimize the benefits from the sector thereby resulting in poor development outcomes, poverty and hopelessness⁹. The opportunities in the mining, oil and gas sectors could prove to be the very important catalysts required for industrial growth and sustainable development if the actors could rewrite the wrong narratives especially as more countries in the continent continue to make discoveries particularly the

⁹ <https://www.linkedin.com/pulse/unpacking-mining-value-chain-womhub/>



new minerals like lithium, cobalt, hydrogen which hold prospects in the global energy transition agenda. These discoveries provide an opportunity to transform economies, alleviate poverty and reduce inequality. The expected narrative is an extractives sector that can create opportunities for growth as well as multiplier effects in African economies beyond revenue generation¹⁰.

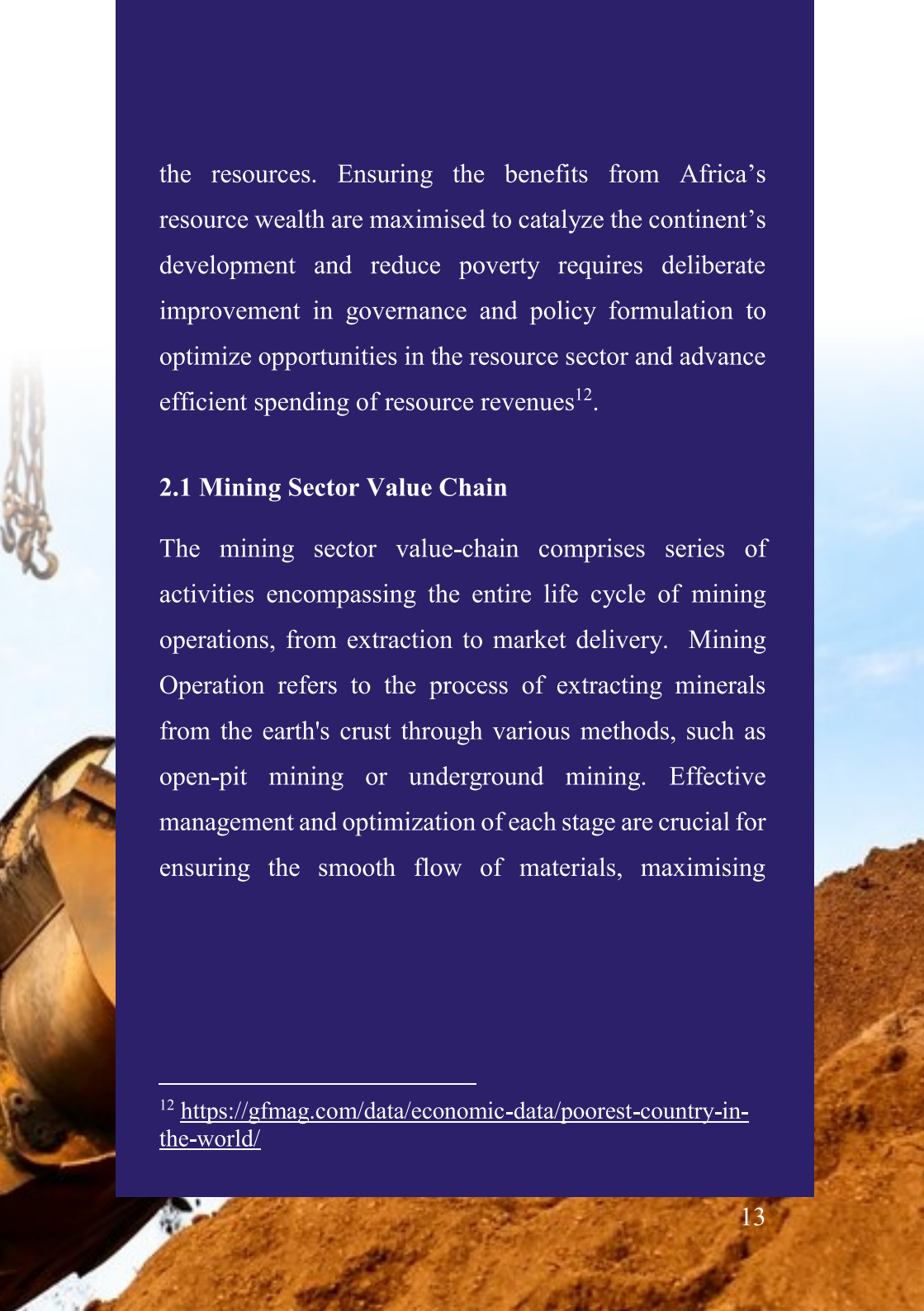
Significantly, the mining and quarrying sector in Ghana constitutes one of the major contributors to the country's GDP and gross merchandise exports. Earnings from gold exports in particular have generally followed an upwards trend recording roughly about 3.2 billion USD in 2015, 5.1 billion USD in 2021 and 6.6 billion USD in 2022. The Artisanal and small-scale mining sector employs approximately 1 million people in Ghana with an additional 5 million peoples' livelihoods depending on its proceeds. Artisanal and small-scale mining also accounts for 40% of gold produced in Ghana, making it an attractive sector for revenue generation. Tax evasion and

¹⁰ <https://gfmag.com/data/economic-data/poorest-country-in-the-world/>

smuggling are some of the major factors that affect the ability of the Ghana Revenue Authority (GRA) to meet its tax targets in the ASM sector¹¹.

While these significant resources hold the promise to catalyse economic development and transformation, history shows that in many resource-dependent countries, the impact is sub-optimal and fails to meet the expectations of the citizens. Like Ghana, many African countries rank lowest in the Human Development Index and many other indicators of well-being. Twenty-seven of the 28 poorest countries in the world are in Sub-Saharan Africa and the number of poor people in Africa is expected to rise by 2030. Poor governance of the extractive sector, characterised by corruption, rent-seeking, weak institutional capacity, and poor citizenry oversight among others, prevents benefit maximisation of

¹¹ <https://theconversation.com/ghanas-artisanal-miners-are-a-law-unto-themselves-involving-communities-can-help-fix-the-problem-192256#:~:text=Artisanal%20and%20small%20Dscale%20mining%20employs%20approximately%201%20million%20people,attractive%20sector%20for%20revenue%20generation>



the resources. Ensuring the benefits from Africa's resource wealth are maximised to catalyze the continent's development and reduce poverty requires deliberate improvement in governance and policy formulation to optimize opportunities in the resource sector and advance efficient spending of resource revenues¹².

2.1 Mining Sector Value Chain

The mining sector value-chain comprises series of activities encompassing the entire life cycle of mining operations, from extraction to market delivery. Mining Operation refers to the process of extracting minerals from the earth's crust through various methods, such as open-pit mining or underground mining. Effective management and optimization of each stage are crucial for ensuring the smooth flow of materials, maximising

¹² <https://gfmag.com/data/economic-data/poorest-country-in-the-world/>



resource utilisation, and meeting market demand efficiently¹³.

2.2 Laws, Policies and Programs in the Mining Sector

As a natural resource-dependent nation, Ghana in its quest to maximise the benefits from these resource endowments has developed many legislations, policies and Programs in addition to the constitutional provisions. Key among these include the following:

1. The Multi-sectoral Mining Integration Program (MMIP),
2. The Ghana Landscape Restoration and Small-Scale Mining Project (GLRSSMP)
3. The National Alternative Employment and Livelihood Program (NARLP)
4. The Minerals and Mining Act, 2006 (Act 703) as amended by Act 900 of 2015 and Act 995 of 2019
5. Minerals & Mining Policy of Ghana (2014)

¹³ <https://www.linkedin.com/pulse/unpacking-mining-value-chain-womhub/>

6. The Minerals Income Investment Fund (MIIF) Act 2018, (Act 978)
7. The Minerals Development Fund Act (MDF), 2016, (Act 912).

Also, the introduction of the recently announced Ghana Critical Minerals Policy adds to the already existing policies all aimed at contributing towards addressing the challenges and enhancing benefits of the mining sector.

2.3 Why Policies Fail – A Brief Overview of Policy Analysis and Approaches.

There is an increasing awareness that policies do not succeed or fail on their own merits; rather their progress is dependent upon the process of implementation. The policy context is, however, now understood to be much more complex than had been previously recognized¹⁴. Here the factors that shape and influence implementation are seen to be complex, multifaceted and multi-levelled

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<https://www.tandfonline.com/doi/full/10.1080/25741292.2018.1540378#>.

with public policies invariably fraught with poor consultations and engagement with key stakeholders. Policy gaps usually have multiple possible causes and potential solutions that vary in place and time according to local context. Understanding the context will reveal the dynamics that could aid or hinder effective policy implementation. Unfortunately, in developing countries, public policy formulation is informed by political party manifestos that mostly consider the peculiar interest of the political party philosophy of the government in power and how to win the votes of the electorates, thereby making most public policies fail at birth¹⁵.

This policy brief is mindful of the fact that policy analysis is the process of identifying weaknesses and potential policy options that could address the challenges and then comparing those options to choose the most effective, efficient, and feasible one. Policy analysis can be divided into two major aspects:

¹⁵ <https://www.wilsoncenter.org/blog-post/why-do-development-policies-often-fail-in-africa-perspectives-on-the-world-development-report-2017>

1. Analysis of existing policy, which is analytical and descriptive – it attempts to explain policies and their development highlighting the gaps in the existing policy and context. In developing this policy brief, all the policies identified were analyzed highlighting the purpose, implementation and gaps.
2. Analysis for a new policy, which is prescriptive – it is involved with formulating policies and offering alternative policy proposals in the form of policy brief specially to address human rights violations¹⁶. Here, the analysis was coordinated which made it possible to prescribe the proposed policy options.

¹⁶ <https://www.wilsoncenter.org/blog-post/why-do-development-policies-often-fail-in-africa-perspectives-on-the-world-development-report-2017>

2.4 Lessons and Best Practices on Addressing Human Rights Violations in the Mining Sector Value Chain Across the African Continent

The African continent is heavily reliant on its extractive resources to provide socio-economic infrastructure and support economic growth. While these significant extractive resources hold the promise to catalyse economic development and transformation, the history of the impact of the sector on national development has been suboptimal. However, many empirical studies point to the challenge of translating resource wealth and resource-led growth into poverty reduction, stressing the “ambiguity” in the relationship between extractive industries and “development”. Most of these countries have failed to translate the extractive resources into tangible, equitable and sustainable development. Developing countries rely much on the extractive industries. These industries can serve as a source of economic prosperity and serve as a link to the global economy through the involvement of multinational resource companies. Low-income countries can reduce poverty if they properly understand and link national fiscal policy and wise revenue management with

proper planning, development and utilisation of revenue into programmes that grow the economy such as vocational entrepreneurship, infrastructure development and rule of law¹⁷.

2.5 Lessons and Best Practices - The Case of South Africa

Among the laws regulating the mining industry in South Africa are the 1996 Constitution, the Mineral and Petroleum Resources Development Act of 2002 (MPRDA), the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry 2018 (Mining Charter), and the National Environmental Management Act¹⁸.

The South African Constitution recognises that mining must be carried out in a sustainable manner, which is affirmed by the right to a healthy environment. The South African Constitution recognises a Bill of Rights which is

¹⁷https://www.academia.edu/50949000/Resource_Curse_and_Sovereign_Funds?auto=download&email_work_card=download-paper

¹⁸ <https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa/>

a cornerstone of democracy in the country. The state is mandated to respect, protect, promote, and fulfil the rights in the Bill of Rights. In addition, the National Environmental Management Act directs the state to respect, protect, promote and fulfil the social, economic and environmental rights of everyone and to strive to meet the basic needs of previously disadvantaged communities. On the issue of community involvement in the mining value chain, some provisions of the MPRDA encourage consultation with mining communities. The MPRDA provides that any person who engages in any mining-related activity must notify and consult with the owner or occupier of a mining area. The holder of a mining right is required to give an owner or occupier of the land 21 days' written notice of their intention to exercise allocated rights. The acceptance of the application of mining rights over land must be published within 14 days, and interested or affected persons are to submit their comments on the application within 30 days of the notice.

Some of the weaknesses observed with the South African system are not far-fetched and include the fact that these provisions on consultation do not give interested parties

ample opportunity to participate effectively in decision-making processes concerning the application for mining on their land. The time allocated is short for effective negotiation between parties. Granting the application for mining rights before receiving comments may not accommodate the concerns of interested parties regarding the proposed project. These provisions indicate that mining agreements are between the government and mining companies without consideration of the affected people. Host communities and other stakeholders such as civil societies should be involved in the decision-making process from planning to implementation, including the monitoring of activities¹⁹.

Notwithstanding the short period of the notice requirements, a very elaborate and comprehensive framework is put in place by the mining charter. Community engagement is encouraged through a trust and mine community development (MCD) which must be

¹⁹ <https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa/>

set up for affected communities. The Mining Charter provides that a trust must be set up for the benefit of host communities by the mining right holder according to the applicable legislation, and will involve representation from host communities, community-based organisations, traditional authorities, and mining companies. Also, a mining right holder is required to consult with relevant municipalities, host communities, traditional authorities and other affected stakeholders to identify the development needs of host communities. The trust provides for a host community development programme, published in two common languages in the community. Hence, host communities are recognised as stakeholders in mining development.

In addition to the protection of fundamental rights and freedoms in the Constitution, the objectives of the MPRDA promote equitable access to resources; substantial and meaningful expansion of opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources; employment and advancing the

social and economic welfare of all South Africans, and ensuring the development of resources in an ecologically-sustainable manner. The Act protects marginalised people and provides that the Minister can grant a mining right if granting such right will further the objects referred to in sections 2(d) and (f) following the Charter and the prescribed social and labour plan (SLP)²⁰.

Furthermore, coupled with the trust and MCD which must be set up by mining companies to address the developmental needs of host communities, a mineral title holder is required to submit SLP, and comply with the requirements of the prescribed SLP before a mining right is granted. A mineral title holder must submit the prescribed annual report dealing with the extent of the holder's compliance. Granting the right will expand opportunities for historically disadvantaged persons and promote the employment and welfare of citizens. The objectives of SLPs are primarily to promote employment and advance the social and economic welfare of all South

²⁰ <https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa/>

Africans; contribute to the transformation of the mining industry and ensure a contribution by holders of mining rights towards the socio-economic development of the areas in which they are operating.

One major gap in the SLP regulation is its failure to require that the plan be disclosed to the public and mining communities that are beneficiaries. Although the SLP aims to benefit mine workers and mining host communities, the MPRDA and its regulations lack provisions on an obligation on mining companies or the government to disclose SLPs to the public. This prevents the monitoring of the implementation and compliance with the plan by stakeholders. Therefore, the gap may allow companies to evade their responsibility to carry out their obligations concerning SLPs under the law²¹.

Ghana can amend the mining regulations to make it mandatory for mining companies to develop human rights and community development plans in participatory manner that ensures that the affected mining communities

²¹ <https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa/>

will have their inputs into the plan. Such plans should be made public to allow CSOs and citizens to track and monitor implementation. Again, CHRAJ can be mandated to monitor implementation of such plans and publish their reports annually.

2.6 Lessons and Best Practices from Norway

Norway's oil and gas sector plays a vital role in the country's economy and the financing of the Norwegian welfare state, accounting for 14% of the government's revenue in 2021.

Norway has supported the EITI since its inception and hosts the International Secretariat in Oslo. Widely lauded as a success story in the management of oil wealth, Norway was the first OECD country to implement the EITI. In light of Norway's high level of systematic disclosure of data, the country implements the EITI Standard under an adapted implementation framework.

Like Ghana, the Constitution of Norway under Article 92 assures authorities of the State respect and ensure the relevant human rights outlined in the Constitution. Article

93 guarantees the right to life and freedom from the death penalty and torture.

One important lesson Ghana can learn from Norway is the passage of appropriate laws and enforcement of the same. The 2021 Transparency Act, based on the Organization for Economic Co-operation and Development's Guidelines for Multinational Enterprises and building upon the UN Guiding Principles on Business and Human Rights (UNGPR), entered into force. The new law applied to around 9,000 companies, requiring them to carry out due diligence and disclose key findings concerning human rights, including in relation to working conditions, as well as to respond to specific enquiries on how the enterprise addresses negative impacts in relation to its products and services.

Even though Norway practises parliamentary democracy and constitutional monarchy, Civil society and NGOs generally work very closely with the government, share similar agendas, receive government grants, and in some cases manage government funds. Government officials and NGOs are mindful of their well-established

relationships and take steps to ensure independence and avoid the appearance of government oversight.

There is an Ombudsman that considers human rights issues, the ombuds enjoy the government's cooperation and operate without government interference.

Unlike Norway, Ghana does not have a transparency Act that ensures that transparency and accountability in the mining sector. Admittedly, there are some transparency provisions in the Petroleum (Exploration and Production) Act and the Mining Act, they are not explicit and therefore difficult to monitor and enforced.

Also, Ghana can consider separating the Office of the Attorney General from that of Justice or better still establish the office of Ombudsman that should be allowed to function without government influence.

3.0 Gap Analysis of the Key Policy Interventions in the Mining Sector

3.1 The Multi-Sectorial Mining Integrated Project (MMIP)

The Multi-sectoral Mining Integrated Program (MMIP) was launched in 2017 as the government’s policy strategy towards addressing the mining sector challenges and illegal mining menace. As a five-year policy strategy, it employed several approaches including “Legislation, Enforcement, Civil, Integrated and Technological Approach (LECITA) that sought to improve the management of Artisanal Small-Scale Mining (ASM) in Ghana to ensure that its contribution to socio-economic development is felt within the mining communities through sustainable mining practices, minimising its negative impact on the environment. It also took into consideration gender and child protection issues associated with artisanal and small-scale mining activities, a grievance mechanism, and a remedial process

for human rights complaints. The following were the five interrelated components of the MMIP²²:

- a) Review and enforce the legal and regulatory regime
- b) Reclamation of degraded lands, dredge silted estuaries and waterways and free lands for agribusiness.
- c) Implementation of social interventions to facilitate sustainable livelihood creation in mining communities
- d) Adaptation of technology to ensure efficient mining, processing, environmental and monitoring activities
- e) Capacity building of ASMs, regulatory institutions and project management

The total estimated cost of the program was two hundred million United States Dollars (\$200,000,000) with the government of Ghana providing 20%, Funding partners 50%, Public-Private Partnership 20% and other sources such as corporate bodies, fundraising 10%.

²² <https://mlnr.gov.gh/wp-content/uploads/2019/06/MMIP-PROJECT-DOCUMENT.pdf>

3.2 The Ghana Landscape Restoration and Small-Scale Mining Project (GLRSSMP)

The Ghana Landscape Restoration and Small-Scale Mining Project (GLRSSMP) is built on the challenges and achievements of the previous MMIP with the sole objective of ensuring a strengthened integrated natural resource management and increased benefits to communities in targeted savannah and cocoa forest landscapes. The project seeks to boost post-COVID-19 economic recovery and create jobs and secure livelihoods, including in some of the poorest parts of Ghana. Given the climate risks in the country, climate impacts are equally fully considered in all of the project components. The project focuses on the following core interventions²³:

- (a) land-use planning to optimize land use.
- (b) formalization of ASM for sustainable mining.
- (c) restoration of degraded lands for agricultural productivity; and

²³ <https://glrssmp.epa.gov.gh/wp-content/uploads/2022/11/GH-GLRSSMP-PAD-public.pdf>

(d) strengthening of sustainable management of forest landscapes for biodiversity conservation and ecosystem services.

Intending to enhance integrated management, the project aims to place landscape and mining sector management on a trajectory that would transition from degraded landscapes, poverty, and low productivity toward one with high productivity and resilient landscapes, livelihoods, and high economic returns.

This new policy strategy does not seem to learn from the challenges of the erstwhile MMIP by putting in place adequate measures to address the shortfall identified in the previous implementation phases.

There was little consultation with key stakeholders and other interest groups in the Small-Scale mining sector. This implies that the GLRSSMP might face similar challenges of lack of transparency and accountability as the other programs as CSOs are unable to track implementation.

3.3 The National Alternative Employment and Livelihood Program (NARLP)

The National Alternative Employment and Livelihood Programme (NAELP) for illegal miners is an initiative of the Government of Ghana under the auspices of the Ministry of Lands and Natural Resources. The programme is a response to the upsurge of displaced illegal miners and victims as a result of the government's efforts to sanitise the mining sector. Inaugurated on 25th October 2021, the programme is targeted at creating alternative livelihoods to improve the economic circumstances of victims for sustainable national development for a period of five (5) years. The NARLP seeks to achieve the following²⁴:

1. Create sustainable employment and alternative livelihoods
2. Restore lands that were negatively impacted by illegal mining activities

²⁴ <https://mlnr.gov.gh/index.php/national-alternative-employment-and-livelihood-program-naelp/>

3. Promote responsible, viable and sustainable small-scale mining

This Programme seeks to mitigate the unavoidable and unintended hardships which our efforts to sanitise the small-scale mining sector have created, particularly in the five regions where Operation Halt II was carried out. It is intended to provide good economic livelihood options to the illegal mining and associated activities, to enable those adversely impacted to work and support themselves and their families.” H.E. Nana Addo Dankwa Akufo-Addo²⁵.

However, these policy interventions are shrouded in secrecy as there is little information available on the target communities and the number of beneficiaries. The sad reality is that galamsey is ongoing and the programs do

²⁵ <https://mlnr.gov.gh/index.php/national-alternative-employment-and-livelihood-program-naelp/>
<https://www.mincom.gov.gh/wp-content/uploads/2021/06/Mineral-and-Mining-Policy-Ghana.pdf>

not seem to be addressing the incidence of galamsey as anticipated.

3.4 The Minerals Income Investment Fund (MIIF) Act, 2018 (Act 978) as amended.

The Minerals Income Investment Act was established as a Special Purpose Vehicle (SPV) aimed ensuring maximization of the revenues from the minerals sector. The MIIF was established as a special purpose vehicle with the mandate to manage the equity interest of the Ghana in mining companies and receive dividends from these equity interests, to receive minerals royalties and other related income due the Republic from mining, and to provide for the management and investment of these funds.

It is proposed that an amendment be made to the MIIF Act that ensures a dedicated share of the profits from the investment of the fund is committed to addressing poverty and other livelihood diversification projects in the mining - affected communities. This should

complement interventions initiated under the Minerals Development Fund (MDF) in mining communities.

3.5 Minerals & Mining Policy of Ghana (2014)

The implementation and enforcement of the various laws and policies are guided by regulations that specify details to be achieved as provided for in law. Some of these include²⁶:

1. Minerals And Mining (Local Content and Local Participation) Regulations, 2020; LI 2431
2. Minerals and Mining (General) Regulations, 2012 (LI 2173)
3. Minerals and Mining (Support Services) Regulations, 2012 (LI 2174)
4. Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (LI 2175)
5. Minerals and Mining (Licensing) Regulations, 2012 (LI 2176)

²⁶ <https://www.mincom.gov.gh/mining-policy/>

6. Minerals and Mining (Explosives) Regulations, 2012 (LI 2177)

A very important part of the laws and regulations is the emphasis on the benefits of the mining resources to the local communities as provided for in the local content regulations. The Local Content provision of Ghana's mining sector is contained in the Minerals and Mining (Local Content and Local Participation) Regulations, 2020; LI 2431. The main focus of developing a Local Content framework for Ghana's mining industry is to create local employment and to promote the growth of domestic manufacturing. These two aspects, (Human Resources and Goods & Services) of Ghana's local content framework are supported by the Minerals and Mining Act, 2006 (Act 703) and L.I. 2173 of 2012²⁷.

The regulations apply to the following categories of players in the mining sector value chain:

²⁷ <https://www.mincom.gov.gh/local-content/#:~:text=The%20main%20focus%20of%20developin g,promote%20growth%20of%20domestic%20manufacturing.>

- (a) A holder of a reconnaissance Licence, a prospecting Licence, or a Mining Lease
- (b) A holder of a licence to export or deal in minerals
- (c) A person who is registered to provide mine support service

The Regulations seek to promote job creation through the use of Local Expertise, goods and services, business, and financing in the mining industry value chain as well as the retention of jobs in the country. It also seeks to develop local capacities in the mining sector value chain through education, training, and transfer of technology.

Regrettably, the recent amendment of the LI contains provisions that grant discretion to the minister to permit mining in forest reserves with recommendations from the Forestry Commission and Minerals Commission. Civil Society has raised concerns about this discretion and calls for curtailment of this newly amended provision.

It is realized that, though the regulations mention gender in a few provisions, it is not specific to what targets or outcomes are expected. This creates a lacuna for mining operations to get away with some non-compliance.

In the entire body of the regulation, there is no mention of provisions for Persons With disabilities and how to ensure the inclusiveness of the PWDs in the mining sector value chain.

It is also noticed that one key challenge in the implementation of the Local Content regulations is enforcement, monitoring and reporting on the objectives as experienced in the mining operations.



4.0 Key Gaps and Policy Options

4.1 Politicization and Inadequate Commitment

One of the key challenges bedeviling the mining industry is illegal mining activities popularly called “*galamsey*”. The uncontrolled and unregulated ‘*Galamsey*’ is a major

Prof. Frimpong-Boateng in the *galamsey* report accused some stalwarts of the New Patriotic Party of engaging in *galamsey* and interfering in the work of the Inter-Ministerial Committee on Illegal Mining (IMCIM) which he (Prof. Frimpong-Boateng) chaired.

“There are appointees in the Jubilee House that are doing or supporting illegal mining or interfering with the fight against the menace,”

“I can state without any equivocation that many party officials from the national to the unit committee level had their friends, PAs, agents, relatives, financiers, or relatives engaged in illegal mining. Most of them engaged Chinese working for them”. <https://www.myjoyonline.com/frimpong-boatengs-galamsey-report-empty-no-evidence-to-aid-prosecution-ag-to-cid/>

threat to the environment as it destroys the environment, water bodies, air pollution, farmlands and recently a threat to cocoa production. The current government and the preceding governments have made several attempts to address the “*galamsey*” challenge but to no avail. Interestingly, one of the factors accounting for the failure to fight this “*galamsey*” is blamed on politicization and

inadequate political commitment to tackle the main challenges. Following the launch of the national campaign against illegal mining, many stakeholders including the media, CSOs and FBOs all supported the campaign.

Unfortunately, the activities of some key political actors worked against the national effort and there was no government commitment to deal with it. Since the bane causing the unsuccessful fight against illegal mining is linked to political influence, it is therefore recommended that the fight against illegal mining should be spearheaded and managed by an independent neutral body whose work is devoid of political influence.



Adopting Efficient Governance Regime for Ghana's Critical (Green) Minerals

Ghana is blessed with critical minerals such as lithium, hydrogen, bauxite, manganese, and silica sand with some yet to go into production while others are producing amidst constraints. These mineral resources are critical in the energy transition drive and must be efficiently managed to ensure they play a key role in the transition journey. There has been advocacy from Civil society for the adoption of a different mining governance regime for the newly discovered lithium and other critical minerals. The government recently announced the development of critical minerals policy which is yet to be out doored. There are calls that the critical Minerals Policy must adopt a regime different from the existing regime as Ghana has discovered lithium in commercial quantities. Ghana recently granted its first Lithium Mining License to Barari DV, a subsidiary of Atlantic Lithium following their announcement of proven lithium reserves in the Ewoyaa enclave of the Central Region of Ghana in September

2022²⁸. Even though the government praises its efforts for ensuring enhanced fiscal take for the country, many stakeholders are not enthused because it appears that not much has changed in terms of the governance regime.

While critical minerals present an optimistic prospect for additional mineral revenue generation, it is imperative to draw lessons from Ghana's long history of mineral extraction and decades of mineral revenue management to shield critical minerals from the governance challenges and fiscal shortcomings that have plagued the mining sector. Notably, the Natural Resource Governance Institute (NRGI) rates Ghana's mining governance as only 'Satisfactory,' in contrast to the 'Good' rating given to the oil and gas sector in terms of governance. Some of the governance issues and vulnerabilities contributing to this rating include the absence of a comprehensive and unified act, comparable to the Petroleum Revenue Management Act in the petroleum sector, to guide the management of mineral revenues, insufficient disclosures of beneficial

²⁸ <https://www.bloomberg.com/news/articles/2023-10-19/ghana-gives-15-year-lithium-mining-license-to-atlantic-lithium#xj4y7vzkg>

ownership, limited transparency in licensing processes, and adverse environmental and social impacts of mining activities²⁹. These governance challenges and gaps undermine government revenue collection and the benefits that citizens derive from the mining sector.

Attention to Mining sector taxation System and address Illicit Financial Flows in the Mining Quarrying Sector

It is reported that the mining and quarrying sector in Ghana contributed around 4.9 billion Ghana cedis (GHS), roughly 809.4 million U.S. dollars to the country's GDP as of the second quarter of 2021³⁰. As of the second quarter of 2022, the value of gold exports from Ghana reached approximately 1.64 billion U.S. dollars. In 2021, around 5.1 billion U.S. dollars of the commodity were exported. Since 2015, the earnings from gold exports have generally followed an upward trend. That year, Ghana

²⁹ <https://resourcegovernance.org/news/governance-ghana-mining-oil-gas-improved-yet-some-areas-require-attention>

³⁰

<https://www.ghanaweb.com/GhanaHomePage/business/MIIF-to-acquire-significant-stake-in-Atlantic-Lithium-1715210>

exported the metal at roughly 3.2 billion U.S. dollars³¹. Research conducted by the Institute of Statistical, Social and Economic Research (ISSER) at the University of Ghana estimates that over six (6) years, the government lost approximately US\$6 billion in mineral revenues due to *'Illicit Financial Flows'*. Furthermore, the Global Financial Integrity report indicates that Ghana forfeited US\$386 million in tax revenues due to trade mis-invoicing between 2002 and 2011, equivalent to about 11% of government revenue during that period³². Given these circumstances, some analysts are concerned that the current fiscal and legal framework in the mining sector may not be optimally structured to deliver the maximum benefits from critical minerals to the country.

³¹ <https://www.statista.com/statistics/1172220/value-of-gold-exports-from-ghana/>

³² https://34n8bd.p3cdn1.secureserver.net/wp-content/uploads/2014/05/Hiding_In_Plain_Sight_Report-Final.pdf

Opportunities in the Minerals Income Investment Fund (MIIF) Act, 2018 (Act 978) as amended.

It is proposed that an amendment be made to the MIIF Act that ensures a dedicated share of the profits from the investment of the fund is committed to addressing poverty and other livelihood diversification projects in the mining - affected communities. This should complement interventions initiated under the Minerals Development Fund (MDF) in mining communities. The MIIF was established as a special purpose vehicle with the mandate to manage the equity interest of the Ghana in mining companies and receive dividends from these equity interests, to receive minerals royalties and other related income due the Republic from mining, and to provide for the management and investment of these funds.

Enforcement of the Laws and Regulations

There is also the need to ensure impartial and rigorous enforcement of mining laws and regulations. The effective implementation and enforcement of existing mining laws and regulations are essential to curb illegal

mining and ensure respect for the human rights of the affected people.

Identifying Mineable Areas and Demarcation for Small-Scale Mining (SSM)

The ASM sector is marked by haphazard mining activities occurring everywhere and anywhere gold minerals are found and the absence of clearly defined mineable areas makes it difficult to track and control the activities of the illegal mining.

To be able to achieve this, there should be a complete freeze of ASM across the country while efforts are made to re-demarcate a limited allowable mining area. This will allow for proper supervision and regulation of the mining activities.

Institutional Capacity Building for Law Enforcement

Enhancing the capacity of relevant institutions to enforce mining laws is crucial in addressing illegal mining. The Minerals Commission and the Metropolitan, Municipal

and District Assemblies (MMDAs) should be strengthened to support the fight against illegal mining.

Addressing Smuggling Issues

Smuggling of gold produced in Ghana especially from the ASM sector is one of the numerous challenges affecting the mining sector in Ghana. An assessment of trade data on gold export between Ghana and its major partner nations, including India, United Arab Emirates and Switzerland in 2019, revealed that more than \$9 billion worth of gold exports remained unaccounted for. These challenges affect the amount of tax revenues the government can mobilize from the small-scale mining sector³³.

The current arrangement in the ASM sector is inefficient in tackling the issue of gold smuggling. It is an area the government loses so much taxes as a result of gold smuggling. This is largely blamed on a weak tracking

³³ <https://www.ghanabusinessnews.com/2021/10/30/more-than-9b-worth-of-ghana-gold-exports-unaccounted-for/>

system and the complicity of key actors. There is therefore the need to put in place a that can track gold produced from the mines field and keep accurate statistics on gold produced.

Attention to human rights, Community interest and Land Ownership Rights

It is provided under Rule 10.8 of Ghana's Mining Policy, (2014) for Rural Transformation and Community Participation. It states that Mining should be an important pillar to support the development of rural Ghana. To improve their livelihood, mining communities and mining companies should collaborate as development partners and must tap into the unique expertise that mining companies bring along to that end through local content provisions. There are clear procedures established in the Minerals and Mining Act, Minerals Policy and the various regulations regarding the responsibility of Companies and the state agencies to promote community engagement and participation.

The main challenge in this context is what constitutes adequate community engagement and to what extent can it be said that community interest has been fully considered? These are grey areas that the regulations can address going forward.

The Rights and Interests of Landowners and Local Communities Regarding Benefits Accruing from the Use of Land Shall be Guaranteed During the Entire Mining Process.

It is stated under Sub Rule 3 of Rule 7 of Ghana's Mining Policy that Child labour is outlawed. It specifically states that Local Government Authorities and other local-level structures shall ensure that children are not engaged in mining operations. Children who have to visit mining areas shall be under proper supervision.

Addressing Human Rights Generally in the Mining Sector

Violations of human rights and fundamental freedoms of people living in mining communities abound, notwithstanding Ghana's constitutional safeguards for human rights as well as international conventions. The

prevailing policy space, regrettably fails to provide adequate safeguards for human rights protection and avenues for adequate redress for rights violations. Generally, the impact of operations of mining companies on human rights usually starts at the exploration stage with access to land and payment of adequate compensation to landowners. At the development stage, there is an increased impact on the local community that distorts the local economy and livelihood sources. Also, during mining operations, major issues concern environmental destruction/ water and air pollution, local content demands by host-mining communities and the share of economic benefits. There are also incidences of arrests and threats of harm suffered by dissatisfied community members who resist unfair deals³⁴. Reports of violations of rights and fundamental freedoms of people living in mining communities abound including:

- a. Violence,

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<https://www.iied.org/sites/default/files/pdfs/migrate/G00531.pdf>

- b. Unlawful arrests arrest and detention of community members,
- c. Torture of persons illegally arrested and detained,
- d. Unfair compensation for loss of land, residence, and crops
- e. Adverse impact on child education
- f. Gender-Based Violence (GBV)
- g. Environmental impacts including water pollution, environmental destruction and impact on health of the vulnerable communities

Addressing human rights violation requires strict and effective enforcement of the laws and policies related to human rights protection. It is recommended that the mining regulations be amended to include mandatory compliance with human rights promotion indicators and mandatory reporting annually by mining companies. A list of human right-compliant companies published annually.

It is also recommended that a separate body be created solely responsible for tracking and reporting on human

rights issues (such as CHRAJ) in mining, oil, and gas extraction and mandated to report to parliament annually.

4.11 Gender Issues in the Mining Sector Value Chain

The mining sector is generally male-dominated especially in artisanal and small-scale mining, where the workforce is largely made up of men-knit without their families, there is an acceptance of GBVH and the commercial sex trade³⁵. Globally, an estimated 736 million women (almost 1 in 3 have been subjected to physical and or sexual abuse. One study found that 74% of women in the eastern Democratic Republic of the Congo have been subjected to sexual violence, in a country with a strong association between mining, sexual violence and armed conflict³⁶.

Gender-based violence has been widely reported as a pervasive problem in mining (ILO 2021, IndustriALL

³⁵ <https://www.hracghana.org>

³⁶ <https://www.giz.de/en/worldwide/138235.html>

2019, 2021, IFC 2018, Oxfam International 2017).

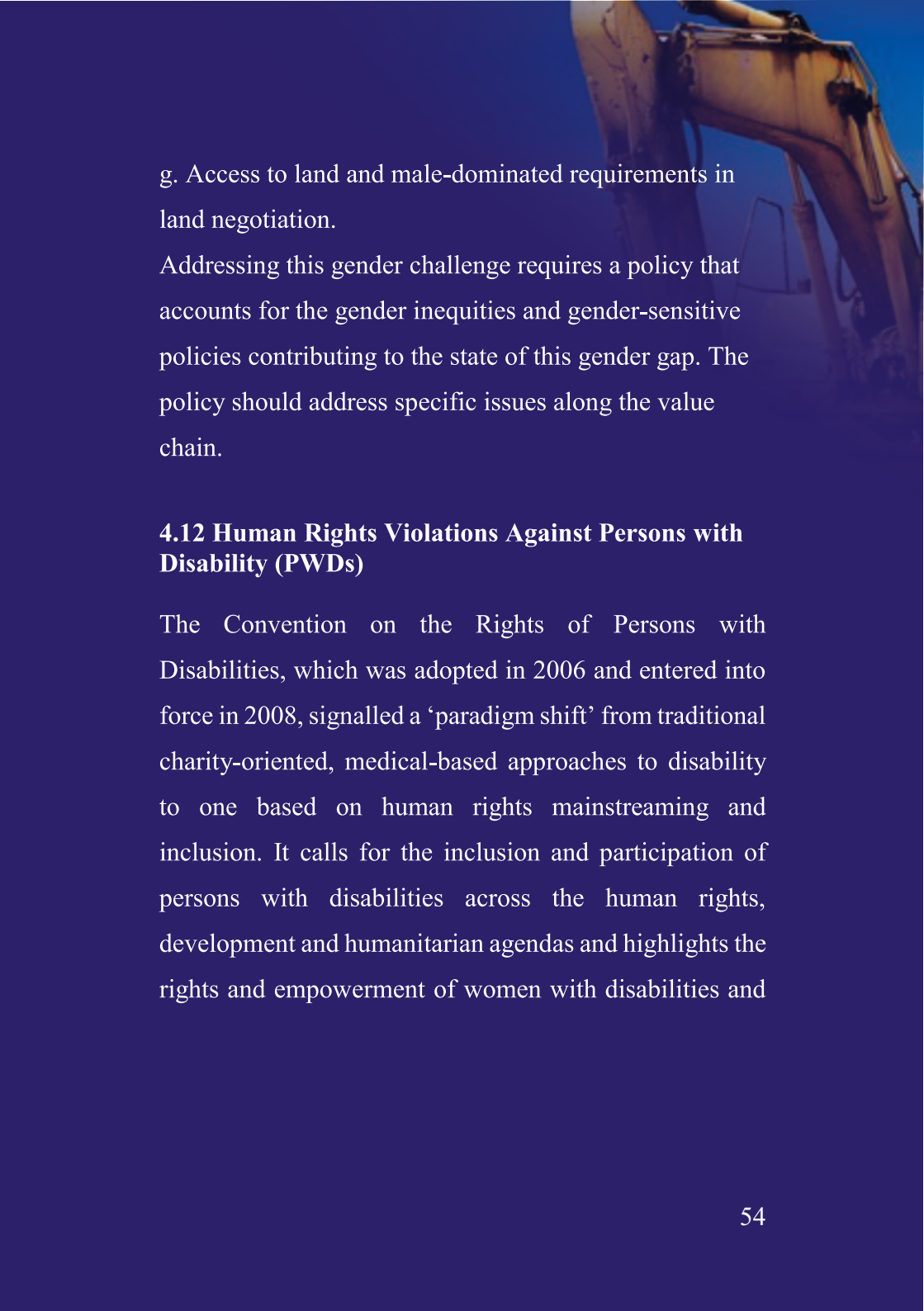
Women across the industry regularly experience:

- a. Physical assault,
- b. Sexual assault,
- c. Verbal abuse,
- d. Being asked for sexual favours in return for employment, promotion, or other benefits.

It has been generally noted that barriers to actively participating in the Mining sector by females include the following:

Education, Training and Skills

- a. Access to Finance
- b. Lack of Information
- c. Lack of Role Models (low visibility of successful women in Mining)
- d. Socio-cultural barriers such as Superstition, Male Chauvinism, Health barriers (exposure to Mercury, dust, lack of family planning)
- e. Lack of Personal Protective Equipment
- f. Inadequate facilities in the working environment (lack of washrooms, childcare etc)



g. Access to land and male-dominated requirements in land negotiation.

Addressing this gender challenge requires a policy that accounts for the gender inequities and gender-sensitive policies contributing to the state of this gender gap. The policy should address specific issues along the value chain.

4.12 Human Rights Violations Against Persons with Disability (PWDs)

The Convention on the Rights of Persons with Disabilities, which was adopted in 2006 and entered into force in 2008, signalled a ‘paradigm shift’ from traditional charity-oriented, medical-based approaches to disability to one based on human rights mainstreaming and inclusion. It calls for the inclusion and participation of persons with disabilities across the human rights, development and humanitarian agendas and highlights the rights and empowerment of women with disabilities and

children with disabilities as groups which face multiple and intersecting forms of discrimination³⁷.

There are an estimated 1.3 billion people – or 16% of the global population – who experience a significant disability today. This number is growing because of an increase in noncommunicable diseases and people living longer. Persons with disabilities are a diverse group, and factors such as sex, age, gender identity, sexual orientation, religion, race, ethnicity and their economic situation affect their experiences in life and their health needs. Persons with disabilities die earlier, have poorer health, and experience more limitations in everyday functioning than others³⁸. According to the 2021 Population and Housing Census, Persons with Disability

³⁷ <https://www.ohchr.org/en/disabilities/about-human-rights-persons-disabilities#:~:text=For%20example%2C%20they%20are%20commonly,enter%20freely%20into%20legal%20commitments>

³⁸ <https://www.who.int/news-room/factsheets/detail/disability-and-health#:~:text=An%20estimated%201.3%20billion%20people,earlier%20than%20those%20without%20disabilities.>

constitute about 8% of Ghana’s population which represents a total of 2,098,138 individuals³⁹.

UN High Commissioner for Human Rights, Michelle Bachelet, affirmed, “The Convention on the Rights of Persons with Disabilities is not only an instrument for persons with disabilities. Its principles and provisions benefit the entirety of the human family because it strengthens our responses against exclusion, and segregation and indeed, like the Sustainable Development Goals (SDGs), it illustrates that reaching the furthest behind first is the key to leaving no one behind⁴⁰.” Persons with disabilities face discrimination and barriers every day that restrict them from participating in society on an equal basis with others. For example:

³⁹ <https://census2021.statsghana.gov.gh/>

⁴⁰ <https://www.ohchr.org/en/disabilities/about-human-rights-persons-disabilities#:~:text=For%20example%2C%20they%20are%20commonly,enter%20freely%20into%20legal%20commitment>
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- A. Access to public places and services poses a challenge
- B. they are commonly denied the right to be included in school
- C. Discrimination at the workplace,
- D. Right to live independently in the community,
- E. Right to vote and participate in political activity
- F. Right, to participate in sports and cultural activities,
- G. Right to enjoy social protection,
- H. Right, to access justice,
- I. Right to consent or refuse medical treatment or to enter freely into legal commitments.

A disproportionate number of persons with disabilities living in developing countries, are often marginalised and in extreme poverty.⁴¹ Not even the passage and

⁴¹ <https://census2021.statsghana.gov.gh/>
<https://www.ohchr.org/en/disabilities/about-human-rights-persons-disabilities#:~:text=For%20example%2C%20they%20are%20comm only,enter%20freely%20into%20legal%20commitments>

implementation of the Persons with Disability Act, 2006 (Act 715) has changed the narrative.

There is an urgent need to amend the Disability Act and make regulations that empower the National Council for Persons with Disability (NCPD) working in collaboration with the various federations to track, the enforcement of disability issues.



