



A REVIEW OF THE MINERALS DEVELOPMENT FUND ACT, 2016 (ACT 912)

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LIST OF ABBREVIATIONS

GHEITI: Ghana Extractive Industries Transparency Initiative

GRA: Ghana Revenue Authority

LMC: Local Management of Committee

MCDS: Mining Community Development Scheme

MDF: Minerals Development Fund

MLNR: Ministry of Lands and Natural Resources

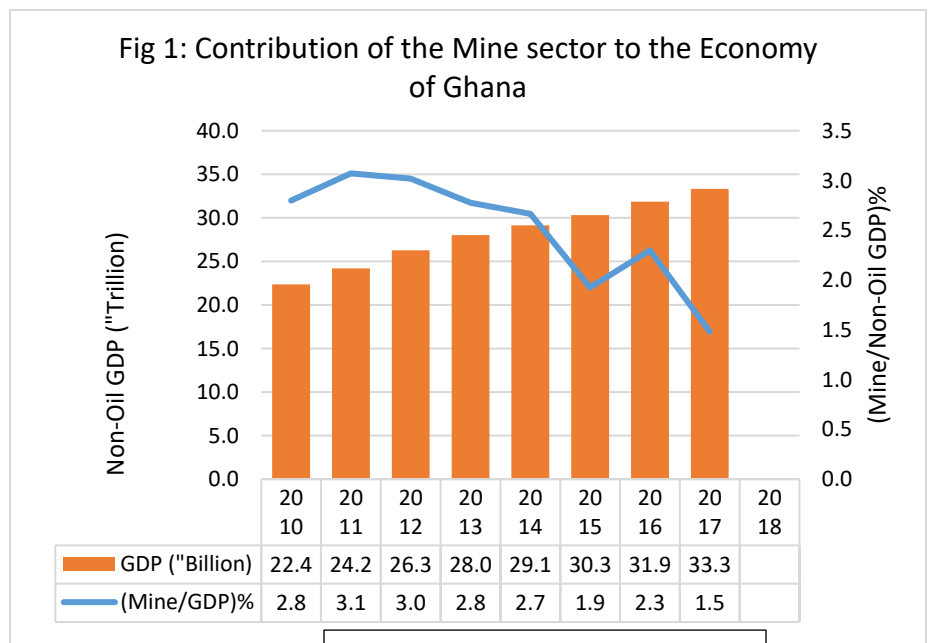
LI: Legislative Instrument

OASL: Office of the Administrator of Stool Lands

1.0 Background

The expected returns of social and economic benefits from resource extraction are often not realised in most developing resource rich countries. This is a challenge which partly arises from the lack of policy and or appropriate regulatory framework for mineral revenue management which covers the allocation and utilisation of revenues received from extractive operations. Unfortunately Ghana is faced with this challenge where the economic benefits of minerals (solid minerals) extraction over the years are not visible. Ironically mineral revenues contribute significantly to the economy. Mineral revenues from 2009 to 2014 contributed over 15% of the country's total revenues with a highest of 28.35% recorded in 2011¹. According to the Bank of Ghana, the mining sector was the leading source of foreign exchange in 2015, contributing in excess of 31 percent of total merchandise exports².

In 2017, the mining sector contributed only 1.5% to GDP (Non-oil) of Ghana, the lowest contribution of the sector to the economy in the past decade (Fig 1). This decline has been recorded despite the continuous growth of the economy. GDP (non-oil) increased from GH¢22.4billion in 2010 to GH¢33.3billion in 2017 while the mine sector contribution decreased from 2.8% to 1.5% during the same period. The contribution of the



sector was influenced by the decline in international prices of the major minerals – gold, bauxite, manganese and diamond. Production levels in the major minerals however has increased during the period except diamond. The collapse of international market prices of

¹ GHEITI 2014 Mining Sector Reconciliatory Report

² ibid

minerals has impacted heavily on the sectors contribution over the past decade. The dwindling levels of contribution is an indicator of inactivity or collapse of businesses along the value chain and job losses. It has affected the stability of foreign exchange regime, revenue generations to support the developmental agenda and to large extent the economy of the country. Besides the fluctuation in the prices of the minerals, the suspension of operations of AngloGold Ashanti Ltd, one of the major gold producers in the country, and the clamp down or banned on small scale mining in the country have also made it impossible for production to increase to compensate for the decline in prices of the minerals.

Mineral revenues largely form a greater part of national and local revenues playing a significant role in the country's development agenda. Ghana, like most resource rich countries disburses mineral revenues, specifically royalties between national and local governments. This is done largely with the objective of providing funds for mining communities to undertake development projects with the aim of mitigating the effects of mining on the environment as well as supporting the socio-economic development of mining communities. In line with these, the Minerals Development Fund (MDF) was created through an Executive decision (Administrative Fiat) in 1999 by Letter No. AB.85/156/01. The MDF was to support the environmental rehabilitation of communities. Although the objectives for the establishment of the mineral royalty allocation to mining communities were well intended, evidence from mining enclaves such as Obuasi, Tarkwa, Prestea, Akwatia among others shows the objectives are yet to be realised. These communities lack basic infrastructure including access to good roads and portable water. This affirms the assertion that the utilisation of revenues from mineral resources over the past decades has not been able to address the basic needs and problems associated with mining. Various reports by the Ghana Extractive Industries Transparency Initiative (GHEITI) attest to the challenges surrounding the utilisation of mineral royalties at the local level which largely results from weak alignment between revenue collection and utilisation, weak planning around mineral revenues, delays in the release of mineral royalties by central government, inadequate systems to support traceability and accountability and the attendant challenges associated with resource revenues in general.

To address the issue of unregulated mineral royalty utilisation, Government in 2016 passed the Minerals Development Fund Act, (Act 912) in an attempt to guide the spending of mineral royalties that accrue to the State. It is important to note that the Act governs only twenty percent (20%) of mineral royalties realised from the mineral sector. The Act establishes among others a Mining Community Development Scheme, a structure at the local level to facilitate the socio-economic development of communities in which mining activities are undertaken and those affected by mining operations.

2.0 Objectives of Study

The purpose of this paper is to review the legislative framework governing mineral royalty allocations-The Minerals Development Fund Act, 2016 (Act 912), in order to identify gaps and potential corruption risks. It will further propose some recommendations on how best to address the issues of corruption.

3.0 Methodology

A desk study and non-legal approach was adopted for the study. This involved a review of relevant documents and the Minerals Development Fund Act, 2016 (Act 912) and discussions with key officials at the Ministry of Lands and Natural Resources .

4.0 Sub-National Mineral Revenue Management

Mining operations remains an important issue for citizens, communities and governments at the local level due to its positive and negative effects. While national and local governments accrue revenues from mining operations in their jurisdictions, the negative environmental and social effects are equally borne by the citizens and communities in these mining jurisdictions. Portions of resource revenues are ceded to local governments for various reasons;

- a) compensating the producing areas to offset the harmful effects;
- b) for the promotion of economic and social development of mineral communities;
- c) for equalisation of benefits between richer and poorer regions;

- d) for conflict reduction/prevention, political pay-offs and
- e) for enhanced decentralised accountability to citizens.

In most jurisdictions, mining revenues to local governments is premised on the need to address inequity in benefits sharing. The resource revenues are received by local governments either through direct collections or payments by companies at the sub-national level, or indirectly received through national government transfers which may be based on some legal provisions or administrative mechanisms. In countries such as Nigeria, Indonesia and Ghana, the resources are shared between central government and local government based on respective formulae. In Ghana, mining revenues are shared between central government, local government, traditional authorities and institutions responsible for mining. Countries such as Mongolia and Bolivia, as well as the US state of Alaska however share the revenues among its citizens through cash transfers.

These revenues form significant portions of local government revenues. A study by the Centre for Social Impact Studies in 2013 using a case study of Obuasi Municipal Assembly indicated that mineral revenues (royalty and property rate) contributed 19.29% of the Assembly's total revenues³ The Centre for Extractives and Development, Africa (CEDA) also show in a recent analysis of the revenue flow to the Prestea Huni- Valley Municipal Assembly that mineral revenue (MDF and stool land) was 60%⁴ of the total revenue for 2016. Such high inflows tend to generate incentives for overconsumption or wasteful spending. GHEITI reports for instance have repeatedly reported inordinate use of mineral revenues at the local level. In some instances, as high as 40% or more of mineral revenues are used for waste collection and other recurrent expenditures. The wasteful spending often arise from poor planning and decisions around the utilisation of the revenues, procurement procedures and lack of project monitoring which also poses corruption risks⁵. With challenges of volatility and exhaustibility around

³ CESIS, 2013

⁴ CEDA, 2018

⁵ Performance Audit Report on Utilization of Mineral Development Fund by MMDA, Auditor General, 2013

resource revenues, inefficient planning around them raises concerns as to how best to effectively manage these revenues to ensure maximization of resource benefits. To overcome the challenge of poor utilisation of resource revenues, measures such as local economic diversification, strict adherence to sound Public Financial Management practices and effective citizen oversight at the local level could help address the inefficiencies around subnational revenue management

5.0 The Mineral Development Fund Act, 2016 (Act 912)

The MDF Act aims to prioritise financial resources for the direct benefit of mining communities by setting aside a proportion of royalties for local development projects specifically in mining host communities. The Act streamlines and expedites allocation of mineral funds and improves infrastructure development in mining host communities. For instance the Act stipulates that the receiving authority (Ghana Revenue Authority) of mineral royalty payment shall within 24 hours of receipt of payment transfer its component (i.e. 20% of royalties) into the Fund⁶. Again the MDF Act establishes for the first time, the Mining Community Development Scheme⁷ to directly sponsor socio-economic development in communities in which mining operations take place or which are affected by mining activities. The Act which is grouped into six parts and twenty-six sections covers the Funds establishment, its Management, creation of the Mining Community Development Scheme, Administrative and Financial provisions.

5.1 Part 1: Minerals Development Fund (MDF)

Part 1 of the Act establishes the MDF as a body corporate with its object of providing financial resources for the direct benefits of mining communities, traditional and local authorities within a mining community and the institutions responsible for the development of the mining⁸. It further identifies possible sources of money for the Fund including 20% of royalties received by the Ghana Revenue Authority on behalf of the State from holders of mining leases

⁶ Section 4(3) of Act 912

⁷ Section 16 of Act 912

⁸ Sections 1-4 of Act 912

in respect of their mining operations and opening of bank account for the Fund⁹. It clearly stipulates under section 4(3) that a person who receives money intended for the Fund shall not later than the next business day, pay the money into the bank account opened. It determines areas or activities the funds can be applied to under section 5 including redressing harmful effects of mining; promotion of local economic development; undertaking projects aimed at promoting mining; for related research and development in mining and also to support the policy, planning, evaluation and monitoring functions of the Ministry.

5.2: Part 2: Management of the Fund

This section relates to the governing body of the Fund which is the Board to consist of institutional representatives not below the rank of a director and one woman to be nominated by the Minister¹⁰. It further provides for the Board's functions, tenure, meetings, establishment of committees to facilitate its work, allowances and more importantly the disclosure of interest of members in matters for consideration under section 10.

5.3: Part 3: Administrative Provisions

The administrative provisions cover the appointment of an administrator and staff for the proper and effective performance of the Fund to achieve its objective¹¹.

5.4: Part 4: Administrative Provisions (Mining Community Development Scheme (MCDS))

The Act as indicated earlier, establishes a MCDS for each mining community with its object to facilitate the socio-economic development of communities in which mining activities are undertaken and that are affected by mining operations. Additionally a local management committee (LMC) for a mining community is to be established by the Board to perform functions assigned to it by the Board¹².

5.5 Part 5: Financial Provision

⁹ Section 3 (a) of Act 912

¹⁰ Section 6 of Act 912

¹¹ Sections 14 and 15 of Act 192

¹² Sections 16 – 20 of Act 912

Distribution and accounting for the funds are governed by provisions under sections 21-25 of the Act with timelines set for the auditing and reporting of the financials of the Fund to the Minister and to Parliament.

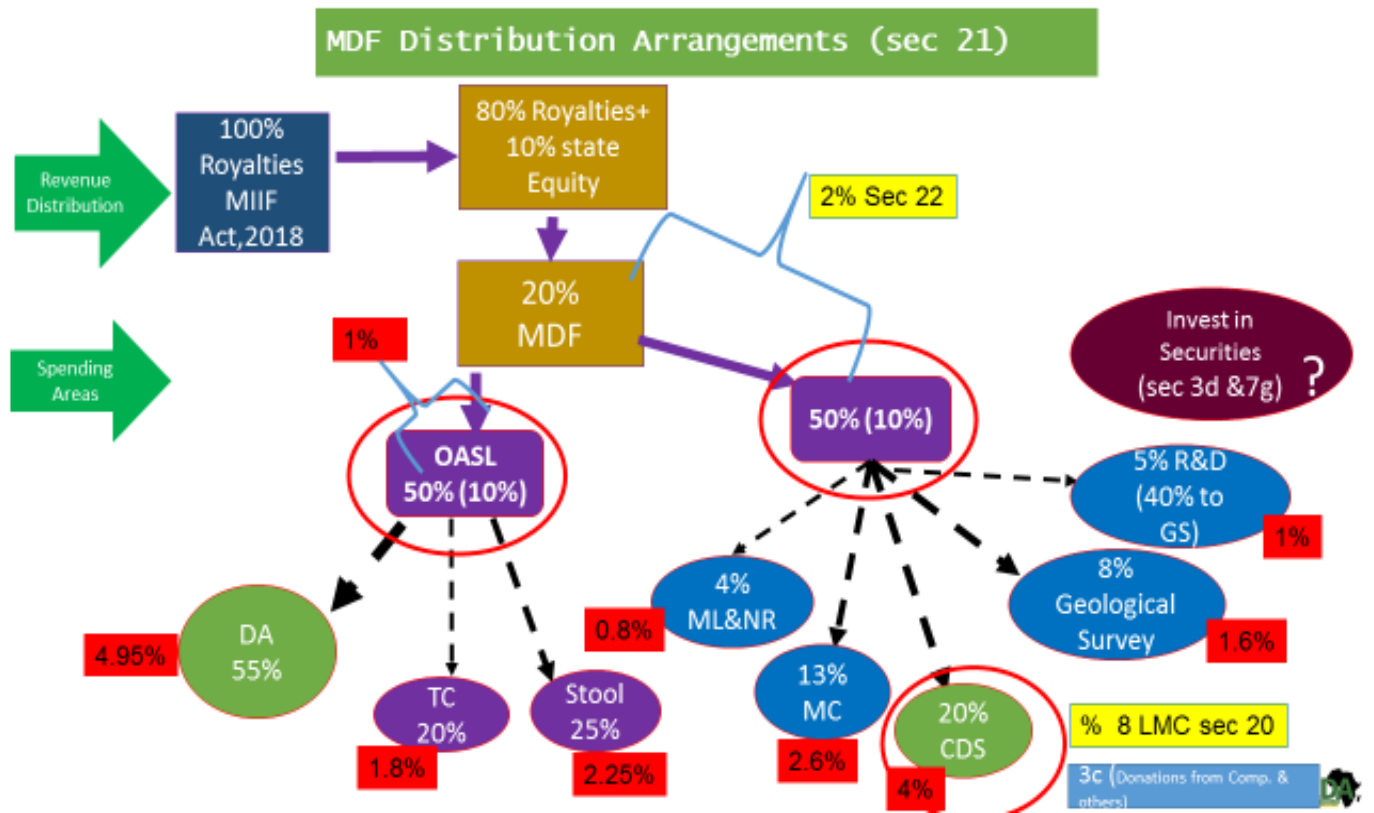
5.5.1 The MDF Distributive Framework

Section 21 of the MDF Act provides a framework for the distribution of the 20% of mineral royalties received into the Fund. The Board per the Act are to distribute the funds to the Office of Administrator of Stool Lands (OASL) and other institutions responsible for the development of mining in the country. The allocations include:

- 50% to OASL to be disbursed as prescribed by law (i.e. the OASL Act, 1994 (Act 481)),
- 20% to the Mining Community Development Scheme
- 4% to supplement the mining operations of the Ministry of Lands and Natural Resources (MLNR).
- 13% to supplement the mining operations of Minerals Commission
- 8% to supplement mining operation of the Geological Survey Authority.
- 5% for research, training and projects aimed at the promotion of sustainable development through mining of which at least 40% shall be allocated for the Geological Survey Authority.

The distribution framework is presented in the diagram below.

Figure 2: MDF Distribution Arrangements



Source; CEDA, 2018

The diagram illustrates how mineral royalties are shared in Ghana between central government, local government and institutions involved in mining. Local government receives only 4.95% of total royalties with the amount received dependent on the number of operating companies in the district and their production volumes. An additional 4% of royalties is provided to the Mining Community Development Scheme for the development of communities impacted by mining. Institutions responsible for the development of mining including the Minerals Commission, Geological Survey Authority, the sector Ministry (MLNR).

5.6: Part 6: Miscellaneous Provisions

The final part of Act 912 addresses issues on Regulations, interpretation and transitional provisions. Section 26 for instance provides for Regulations to be developed for its effective implementation within one year of its coming into force.

6.0 Analyses of the MDF Act (Act 912)

The MDF Act is premised on the need to address inequality in the distribution of the benefits to enable mining host communities to access a share of minerals extracted from their communities. The Act clearly provides a legal basis for the disbursement and management of ceded royalties received by local government as well as to redress harmful effects of mining in host communities.

The Act in addition provides clear rules under sections 3 and 4 for deposits and withdrawals under sections 20(2) and 21. The rules clearly demonstrate how moneys for the Fund are to be received through the Fund's bank account and how it is to be disbursed and utilised. Moreover, there are clearly defined institutional structures and roles involving the MDF Secretariat, the Ministry, the Governing Board, Audit Service and Parliament. All these entities are to work collaboratively to contribute to the governance and accountability mechanisms of the Fund stipulated under sections 6, 7, 14 and 25.

Section 5 of Act 912 provides for the application of the Fund; where 5(a) requires that the funds are applied to redress the harmful effects of mining on affected communities. Harmful effects are however not interpreted by the Act; the provision is too vague and generic and could serve as a means of potential abuse and misuse of funds by beneficiaries. Furthermore, companies in their environmental impact assessments are to provide mitigation plans for negative environmental impact. Section 5(a) as presently couched gives the impression that Fund is to be applied in undertaking the role assigned to the Mining Companies. Clarity to this essential provision of the Act is therefore essential.

In addition, section 7(g) provides for the investment of some of the moneys of the Fund in safe securities by the Board. This is a laudable provision. However the investment provision in Act

912 is vague as it fails to indicate the exact amount/percentage of funds to be invested by the Board. The disbursement framework provided under section 21(3) Act excludes any provision for investment. Act 912 does not provide any rules on investment to be applied by the Board.

Moreover, the law is silent on how the Local Management of Committee (LMCs) will be managed and how their administrative cost will be catered for. The Act in section 20 creates an eight (8) member LMC to manage twenty percent (20%) (or 4 percent of total mineral royalty) to the Mining Community Development Scheme.

In addition, sections 7(e), 10 and 23 require extensive disclosure and audit of the Fund. While section 7(e) stipulates that the Board in consultation with the Minister prepare and publish in the national dailies the disbursement and utilisation of moneys from the Fund, section 10 provides for the disclosure of interest by members of the Board to avert conflict of interest issues. The audit of the Fund is to be undertaken by the Auditor-General upon receipt of its account from the Board within three months of the financial year. Notwithstanding these disclosure clauses, It would be important for the board to ensure detailed publication and to encourage independent citizens oversight to monitor compliance with the rules. Furthermore, the law lends itself to too many administrative layers, bureaucratic structures and overlapping roles. It creates the MDF as a corporate entity to be governed by a Board and administratively to be managed by a Secretariat. Moreover, OASL, which used to disburse mineral royalties to the mining Districts prior to the promulgation of Act 912 is to continue in this role. In addition, the MCDSs and the LMCs at the local level are also to ensure the management of the Funds at that level.

6.1 An Assessment of the MDF Rules and Processes and Outcomes So Far

The Fund is governed by a Board, who per Section 6 of the Act are largely made up by institutional representatives from the sector. Although officials of the MLNR confirmed a list of nominees has been presented to the President, the Board has not been inaugurated.

For the financial year 2017, an amount of GH¢78.4million was allocated to the MDF out of expected amount of GH¢626.5million to be received from minerals royalties. In 2018, an amount of GH¢95.7million was allocated to the MDF out of expected amount of GH¢766.4

million to be received from minerals royalties (see Table 1). So, for the two successive financial years, only twelve and half percent (12.5%) of the minerals royalty has allocated to the Minerals Development Fund (MDF).

In 2017, receivables from minerals royalties was GH¢855.8million, exceeding the budgeted receivables by 36.6%. Actual disbursement for the year, however, was GH¢73.1million, representing 8.5% of the mineral royalty (Table 3). In 2018 only 9.5% of actual mineral royalty received by the Ministry of Finance of GH¢ 73,072,942 was paid to the MDF.

Table 1: Minerals Development Fund Allocations for 2017 & 2018

	2017			2018	
	Budget (GH¢)	Actual @ Dec., 2017 (GH¢)	Actual @ Dec., 2017 (%)	Budget (GH¢)	Actual @Dec 2018
Minerals Royalty	626,450,000	855,751,613.22	136.6	766,370,000	698,435,277.43
MDF Allocation	78,376,924	73,095,006.74	93.3	95,725,413	73,072,942.76*
% MDF Allocation	12.5	8.5		12.5	9.5

*Jan- Oct,2018

Source: MDF Secretariat, 2018

It is important to note that despite the absence of the Board, the 4.95% of royalties to District Assemblies are being distributed per section 21(3)(a). Furthermore, all institutional beneficiaries receive their share of royalties as prescribed per the Act. However, the 20% (or 4% of total mineral royalties) for the MCDSs has since 2017 not been disbursed to the respective communities. When the funds will be disbursed remains unanswered. Officials however insist the funds have been invested, but very little information in terms of the investment product, how much has been invested, returns on investment etc. Concerns have been raised about the affected communities' share of royalties.

In addition to above is the absence of Regulations to guide the implementation of the Act since its passage in March, 2016. The Act under section 26 mandates the Minister to make Regulations within one year after the coming into force of the Act on the advice of the Board. The L.I. is to prescribe generally for the effective implementation of the Act. Regrettably, as discussed in the preceding paragraph, neither has the Board been established nor the Minister

engaged on the issue of the Regulations. This notwithstanding, some work on developing the Regulations have commenced with CEDA leading the process.

6.2 Potential Corruption Risks

The absence of the Board to oversee the disbursement of funds and take investment decisions among others while moneys are being disbursed poses a major corruption risk. In addition, the absence of the LMCs in the Mining Districts means moneys meant for development activities at the local level may either not be disbursed, or should they be disbursed, would be done outside the MDF Act. This is another potential corruption risk. Finally, absence of guidelines or an L.I. for the utilisation of the moneys in the respective mining Districts means the use is left to the discretion of the District Assemblies.

7.0: Recommendations for Amendments and Regulations

- Ghana is practicing a decentralised system of governance in which the District, Municipal and Metropolitan Assemblies are seen as the real agents of development per the provisions of the Local Governance Act, 2016 (Act 936). For accelerated development at the local level, more resources are needed by the District Assemblies to properly perform their functions as mandated by law. The current system where only 4.95% of the mineral royalties get to the District Assemblies in the areas where mining takes place is woefully inadequate. It is proposed that the Act be amended to cede more mineral royalties to the MDF. This should be targeted in such a way that it gets to the District Assemblies and not necessarily the institutions that the MDF Act provides for. For instance, the law could be amended in section 3 to provide that 25 percent of the royalties collected by the GRA on behalf of the Republic be disbursed to the MDF. Then section 21 (3) (b) could in tend be amended to cede a greater percentage of funds to the Mining Community Development Scheme than the current 20 percent. By so doing, those who experience the harmful effects of mining will be more adequately catered for.

- The Regulations being developed for the MDF Act should clarify how the moneys disbursed to redress the harmful effects of mining on the communities and persons should be applied so that the Fund does not perform the role the mining companies are supposed to perform.
- The Board has very critical roles to play under section 7 including:
 - reviewing requests for moneys from the Fund and to make recommendations to the Minister,
 - Collection or making arrangement for the collection of moneys lawfully due to the Fund
 - Ensuring accountability of the moneys of the Fund
 - Investing some of the moneys of the Fund in safe securities
 - Making recommendations for the formulation of policy on the percentage level of mineral royalty payable to the Ghana Revenue Authority, and
 - Appointment of the Administrator of the Fund under section 14.

Unfortunately, moneys are being disbursed when the Board is not in place. This is a clear violation of the Act. Urgent steps should be taken to collect this anomaly before public-spirited citizens take the matter to Court for redress, with possible embarrassing consequences for the Presidency, the MLNR and the State as a whole.

- Section 4(3) of the MDF Act states that “a person who receives money intended for the Fund shall, not later than the next business day, pay the money into the bank account opened under subsection (2)”. Though the intention is good as inordinate delays in the lodgment of funds would be avoided with their attendant accountability and transparency ramifications, this has proved impracticable for the GRA. It is recommended that a technical meeting be organised by stakeholders in order to fashion out a more practicable and reasonable time within which the moneys collected could be paid into the accounts of the Fund.

- Section 19(2)(b) of Act 912 stipulates that traditional rulers of the mining community be made part of the LMC to be formed under section 19. The Act is however silent on the number of traditional rulers to be appointed. This can be addressed in the Regulations CEDA is championing. In addition, the Regulations could make provisions for the rotation of the traditional rulers appointed where there are several of them in a particular mining locality.
- Whether or not the Chairperson and Members of the LMC are to be paid allowances and how much they are to be paid are not stated in the Act. It is suggested that the Act be amended to state that they are to be paid allowances as may be determined by the Board in consultation with the Minister responsible for Mines.

8.0: Conclusion

The passage of the MDF Act is indeed a laudable effort at providing a legislative backing for mineral revenues in the country; though limited to only 20% of the royalties. This is particularly so, considering the fact that mineral revenues have been unregulated, despite over a century of mining in the country. Nonetheless there are issues that require clarification through Regulations, while others portions of the Act need amendments to reduce vagueness and ambiguity in the Act for effective implementation.

It is however worthy to note that the various Institutions and District Assemblies that benefit from the MDF have received regular disbursement from the Fund since 2017. Every effort must be made to implement the Act and give it a true meaning.

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