



PUBLIC INTEREST AND ACCOUNTABILITY COMMITTEE

**GHANA'S MANAGEMENT AND USE OF PETROLEUM
REVENUE:
AN ISSUE PAPER**

AUGUST 2020

LIST OF ABBREVIATIONS

ABFA	Annual Budget Funding Amount
BoG	Bank of Ghana
CAP	COVID-19 Alleviation Programme
CF	Contingency Fund
CGT	Capital Gains Tax
COVID-19	Corona Virus Disease of 2019
ENI	Ente Nazionale Idrocarburi
GHF	Ghana Heritage Fund
GIIF	Ghana Infrastructure Investment Fund
GNGC	Ghana National Gas Company
GNPC	Ghana National Petroleum Corporation
GOSCO	GNPC Operating Services Company Limited
GPF	Ghana Petroleum Fund
GRA	Ghana Revenue Authority
GSF	Ghana Stabilisation Fund
HIPC	Highly Indebted Poor Country
IAC	Investment Advisory Committee
IOCs	International Oil Company
KIA	Kotoka International Airport
LOPI	Loss of Production Insurance
MoF	Ministry of Finance
PA	Petroleum Agreement
PHF	Petroleum Holding Fund
PIAC	Public Interest and Accountability Committee
PRMA	Petroleum Revenue Management Act
SGN	Sankofa Gye-Nyame

TEN

Tweneboa-Enyenra-Ntomme

US

United States

INTRODUCTION

Background

Ghana's oil exploration has its historical antecedents in the pre-colonial era – 1896. The development of the Saltpond Field in the 1970s, marked the country's premier commercial oil production footprint. However, a significant twist occurred in 2007, given the scale of the commercial quantities discovered 50 years after the country's independence. The discovery inspired hope for rapid socio-economic development, which found expression in a national forum organised by the Government to deliberate on the best possible options for the management and use of the resource and wealth. The scope of citizens' participation was narrow, leading civil society to organise a parallel forum to deliberate on the role citizens could play in operationalising the Government's objectives.

Already, the inverse relationship between the production of solid minerals such as Gold, Diamond, and Bauxite, and Ghana's development outcomes had effectively dawned on citizens. Probably, to ask how the country fared with its famous gold production may be a wrong way to put the question, but how did the country's sustained gold production translate into development fortunes, may be a better way to put it. Ghana has a solid track record for Gold production, being well over a century old. However, the country earned the grim status of a Highly Indebted Poor Country (HIPC) in 2001. Not only did this status signal an indictment on the management and use of resource rents, but it also made it difficult to comprehend, as the HIPC period came on the heels of the economic liberalisation regime. The period of liberalisation witnessed unprecedented investment in the minerals sector through rapid deployment of foreign direct investment streams. Undoubtedly, the mining sector scenario depicts the resource curse phenomenon; a concept that has subsequently gained attention within the country's development discussion landscape.

Against this background, doing things differently with petroleum became obvious, giving rise to the enactment of the Petroleum Revenue Management Act, 2011 (Act 815) as amended by the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893) ("PRMA"). Civil society activism, along with other stakeholder campaigns, led to the establishment of the Public Interest and Accountability Committee (PIAC) within the PRMA framework. The PIAC structure provides for active citizen engagement in the governance of the petroleum resource and revenue. The Committee is a unique body modelled on oversight bodies elsewhere in the world, deriving its membership from broad citizen constituencies. Its establishment was the outcome of several meetings between high level officials as well as learning and exchange tours of a number of oil-producing countries such as Trinidad and Tobago, Norway, and Timor-Leste; to understand the various revenue management models in the oil sector. Its structure is an extrapolation and a fusion of aspects of the models of these three countries.

Primarily, PIAC is to ensure, through transparency and accountability measures, that petroleum revenue management and use accords with the provisions of law, to include intergenerational-equity spending and savings.

The Committee is established under Section 51 of the PRMA with the following interrelated but distinct mandates provided for under Section 52 of the Act:

- To monitor and evaluate compliance with the PRMA by government and relevant state institutions;
- To provide a platform for public discourse on petroleum management issues; and,
- To provide independent assessments on the management and use of petroleum revenues.

Ghana's commercial oil production commenced in December 2010, and expected to plateau and decline between 20 - 25 years after first oil. The year 2020 marks 10 years of commercial oil production. An appreciation of how we have fared over the past decade is imperative to guide options going forward.

This paper presents a menu of issues requiring urgent attention and commitment for redress, believing that such is a good way to insulate the oil sector from the 'resource curse' phenomenon that characterised the mining sector so as to ensure socio-economic transformation.

Following this introduction and background are the issues. Management and Utilisation of ABFA is captured under Issue One. Issue Two provides an insight on Revenue Collection; Issue Three is on the Management and Utilisation of the Ghana Petroleum Funds, and Issue Four analyses challenges associated with the implementation of the PRMA. The last part concludes the Paper.

ISSUE ONE: MANAGEMENT AND UTILISATION OF ABFA

The PRMA provides the framework for which the Annual Budget Funding Amount (ABFA) should be managed and utilised, guided by a long-term national development plan as the default position. However, in the absence of this Plan, Section 21 of the Act spells out the application of the ABFA to 12 priority areas from which the Minister for Finance is enjoined to select up to four for spending in the budget over a three-year period. The selection of the priority areas is guided by the prevailing medium term development framework.

Priority Area Selection

PIAC's assessment of the management and utilisation of the ABFA mechanism over the years, has revealed that even though four priority areas are selected, actual spending normally covers all the 12 listed priority areas within the PRMA. This practice has resulted in a situation where the ABFA is used to fund all manner of activities outside of the four priority areas.

In addition to this provision, Section 21(3) states among other things: 'where the long-term national development plan approved by Parliament is not in place, the spending of petroleum revenue within the budget shall give priority to, but not be limited to programmes or activities relating to' This allows the Minister to spread the ABFA beyond the 12 listed areas. For instance, from 2011 – 2016, Expenditure and Amortisation of Loans was selected as a Priority Area, which falls outside the 12 listed areas in the PRMA. Additionally, expenditure on Roads and Other Infrastructure Priority Area covered the energy, education, transport, water and health sectors, which are stand-alone Priority Areas within the PRMA.

The selected priority areas for ABFA spending were the same from 2011 to 2016. However, from 2017 to 2019, while agriculture was maintained, road infrastructure was broadened to include rail and other infrastructure, while amortization of loans and capacity building were replaced with physical infrastructure and service delivery in health and education.

Given the lack of clarity on the basis for selecting priority areas, PIAC has stressed that the selection of new priority areas must be guided by detailed impact evaluation of the ABFA expenditures.

Allocations to Priority Areas

An additional area of concern in the management and utilisation of the ABFA has been the allocations to the various priority areas. Though governments over the years have duly selected up to four priority areas, the sectors are not weighted equally, thus resulting in a situation where some priority areas receive a larger percentage of the ABFA than others. Once recognised and selected, priority areas should receive fairly equal amounts of funding. This, however, does not happen to be the case. For instance, from 2017 to date, Physical Infrastructure and Service Delivery in Health has been the most poorly-resourced priority area as compared to the others. Only 2.61 percent was disbursed to the health priority area in 2017, 2.7 percent in 2018 and 3.65 percent in 2019.

Project Implementation Challenges

The challenge is not only limited to the amounts allotted to the priority areas but also the thin-spread of projects and the paltry allocations made to these projects. These in addition to delays in the execution of some projects particularly roads have resulted in substantial cost variations, running into millions of Ghana Cedis with associated effects on value for money and impact on the socio-economic development of Ghana. This calls for conscious efforts to ensure better targeting of the ABFA allocation for impact maximisation.

Furthermore, contrary to Section 8(4)(a) of Act 893, which provides that at least 70 percent of allocations to the ABFA shall be used for Public Investment Expenditure, the Committee has noted that from 2017 to 2019, expenditure as reported by the Ministry of Finance does not conform to this requirement. In 2019, 54.86 percent of the actual ABFA was spent on capital expenditure with 45.14 percent spent on recurrent expenditure.

Non-Utilisation of ABFA

Another worrying trend is the non-utilisation of and accounting for the full ABFA allocation even though the entire budgetary amount is disbursed to the ABFA account. This first occurred in 2013, and has been repeated yearly since 2016, with exponential growth in the amount over time. Since 2016 therefore, a cumulative amount of GH¢1.48 million has been unutilised and unaccounted for.

Over the years, the Ministry explains that the unspent amounts are either swept or carried over to the ensuing year. To sweep unspent petroleum revenue is untenable, particularly when ongoing ABFA-funded projects are not fully resourced year-on-year. Similarly, the practice of carrying over unspent ABFA to the following year hinders proper tracking of petroleum revenue utilisation.

These practices raise issues of poor budgeting and planning, undermining the spirit behind the management and use of petroleum revenue.

ISSUE TWO: REVENUE COLLECTION

Section 3 (1– 5) of the Petroleum Revenue Management Act, 2015 (Act 815) states as follows:

- 1) Petroleum revenue due the Republic derived from whatever source shall be assessed, collected and accounted for by the Ghana Revenue Authority (GRA).
- 2) The petroleum revenue assessed as due in each month shall be paid by direct transfer into the Petroleum Holding Fund (PHF) by the fifteenth day of the ensuing month by the entities obliged to make the payment.
- 3) The entity shall notify the GRA in writing of the payment into the Petroleum Holding Fund.
- 4) Where the liability of an entity to make a payment is not discharged on or before the due date, the entity shall pay as a penalty, an additional five percent of the original amount for each day of default or the default rate established under any other law, whichever is higher.
- 5) For the purposes of this Act, petroleum revenue paid into the Petroleum Holding Fund shall not be:
 - a) treated as part of the normal tax revenue for purposes provided for in relevant laws of the Republic; and
 - b) used as the basis for the determination of any statutorily earmarked funds

On the basis of the aforementioned provision, this issue examines revenue collection, and its associated challenges.

Non-payment and Deferred Payment

The International Oil Companies (IOCs) have developed the practice of non-payment and deferred payment of Surface Rentals as a petroleum revenue stream. In particular, despite PIAC's findings and recommendations, Oranto/Stone Energy, an IOC, failed to honour its Surface Rental obligation, which stood at US\$67,438.36 in February 2013, and with accumulated penalties, amounted to US\$7.39 million at the end of December 2019. Similarly, the practice of IOCs deferring Surface Rental payments into the PHF limits accruals to the Fund. Though some improvements have been recorded since 2017, the practice undervalues the Petroleum Holding Fund, and does not comply with the provisions of the PRMA. Although non-payment and deferred payment attracts penalties, it denies Government the needed revenue for front-loaded expenditure.

Wrongful Lodgment

The PRMA stipulates that all petroleum receipts should be paid into the PHF. Over the period, there have been instances where petroleum receipts were wrongly lodged into GRA accounts instead of the PHF. For instance, in 2017, an amount of US\$13.52 million was wrongfully paid into a GRA account, though later transferred into the PHF. This does not only contravene the PRMA, it also denies the PHF of its due entitlement.

ISSUE THREE: MANAGEMENT AND UTILISATION OF THE GHANA PETROLEUM FUNDS

The Ghana Petroleum Funds (GPFs) comprise the Ghana Stabilisation Fund (GSF) and Ghana Heritage Fund (GHF). In terms of disbursement, the law mandates not less than 30 percent of the benchmark revenue or actual petroleum revenue in any fiscal year to be paid into the GPFs. A minimum of 30 percent of the revenue accrued to the Funds is transferred into the GHF and the balance transferred into the GSF.

As observed over the years, transfers into the GPFs are largely a reflection of an interplay of international crude oil prices, production volumes, the Annual Budget Funding Amount (ABFA), and transfers to the Ghana National Petroleum Corporation (GNPC).

This section looks at the management of the Stabilisation Fund, investments of the Heritage Fund within the constraints of the prescribed qualifying instruments, a proposal to diversify these instruments, and the operations of the Investments Advisory Committee (IAC), as required by the Petroleum Revenue Management Act, 2011 (Act 815).

The Ghana Stabilisation Fund

The GSF has been set up so that government can draw from the Fund in times of shocks to the economy, or un-anticipated shortfalls in petroleum revenue which necessitates that money be sourced to balance the budget. Hence, the Fund cushions the impact on public expenditure capacity such as was witnessed in 2015 and 2016 when low oil prices caused un-anticipated shortfalls in petroleum revenues.

Political Discretion Associated with the Management and Utilisation of the GSF

Following the amendment of the PRMA in 2015, the Minister for Finance has discretion, subject to Parliamentary approval, to place a cap on how much can be accrued to the GSF as necessitated by macroeconomic conditions. This is a loophole. Despite the provision to check the possibility of abuse by the introduction of Parliamentary oversight, this has not successfully curtailed the arbitrariness in the determination of caps and the use of excess funds. For instance, the GSF was capped at US\$250 million in 2014, US\$200 million in 2016, and US\$300 million in 2018 and 2019. Indeed, there is no established criteria for the determination of the caps and use of proceeds.

In line with Section 23(4) of Act 815, an amount totaling US\$903.71 million, being excess over the GSF cap, has been transferred into the ABFA, Sinking Fund/Debt Service Account, and Contingency Fund from 2014 to 2019, with details as follows:

- ABFA – US\$53.66 million (5.9 percent)
- Sinking Fund/Debt Service – US\$808.86 million (89.5 percent)
- Contingency Fund – US\$41.19 million (4.6 percent)

This implies that less than a tenth of the excess withdrawn from the GSF have been applied to the primary object of the GSF; to cushion or sustain public expenditure capacity, and raises concerns as to the real purpose of the Fund. Without belittling the importance of debt repayment, the use of almost 90 percent of withdrawals for that purpose defeats the primary objective of the Fund and threatens its potential to cushion against shortfalls.

Additionally, the Contingency Fund (CF), established under the 1992 Constitution to address national emergencies, has continuously been deprived of funding. The Fund has received just two transfers from the GSF – 2014 and 2015. Its purpose and relevance became evident when the global pandemic of the Corona Virus Disease of 2019 (COVID-19) hit Ghana in March 2020, and it was unsurprising that the country could not rely on the Contingency Fund to implement the COVID-19 Alleviation Programme (CAP).

In some instances, such as in 2018 and 2019, some excess funds remained in the GSF after the cap was set and part of the excess transferred. This raises the question of the basis for setting the cap at any given time, and whether an assessment of the need for the excess is done prior to the capping.

These withdrawals adversely impacted on investment returns as well as the growth of the GSF. The performance of the Fund is therefore not a question of how much discretionary power is allowed in its management, but largely on how this discretion is exercised.

The Ghana Heritage Fund

The Ghana Heritage Fund (GHF) provides an endowment to support development for future generations when Ghana's petroleum reserves have been depleted. The funds are invested outside Ghana in safe investments and the yields are generally low due to the low-risk nature of the investment instruments. The range of qualifying instruments is limited to investment grade bonds and convertible currency deposits issued by sovereign states, Central Banks, and multilateral organisations such as the Bank for International Settlements, among others.

Investment Returns, Rationale, and Growth Potential

Investment of the GHF is usually long-term in nature, as compared to the GSF. However, to take advantage of the entire United States (US) investment yield curve, it is sometimes invested across the broad spectrum of the curve – short, medium, and long terms. Returns have usually been pegged to the 2-year and 10-year US Treasury Notes.

The yield of the 10-Year US Treasury had risen from 0.46 percent in 2014 to an all-time high of 2.69 percent in 2018 but dropped to 1.92 percent in 2019. Consequently, yields on the GHF have fluctuated; from 7.73 percent in 2014 to 1.79 percent in 2016, and rising to 6.4 percent in 2019, according to the Bank of Ghana (BoG). In PIAC's 2019 Annual Report, the Committee reported that the GHF contributed 67 percent to the net returns on the Ghana Petroleum Funds (GPFs) as at the end of the year.

These fluctuations in the yields bring to bear some of the risks of relying on a narrowly-defined investment instrument. With additional petroleum production expected to come on stream, and the resultant potential for the Fund to receive more allocations, spreading the risks across diverse investment portfolios and jurisdictions, would be a valuable strategy to tackling the political and financial risks which may be peculiar to US markets.

For two years, the IAC was non-functional, and was only recently inaugurated in 2019. This is a significant violation of the PRMA. But for the delay in its establishment, the IAC would have impacted positively on the initial investment policy of the GPFs, given the importance of the IAC's mandate under Section 30 of the PRMA.

With its cumulative growth, the GPFs has the potential to perform better if a well-resourced, functional, and independent Investment Advisory Committee (IAC) with an investment strategy diversifying the qualifying instruments, is in place. Additionally, though the advice of the IAC is, in practice, not binding on the Minister for Finance, it is expected that as the years go by, the IAC's advice would form the fulcrum of the investment policy and management of the GPFs.

ISSUE FOUR: IMPLEMENTATION CHALLENGES UNDER THE PRMA

Status of Compliance and Impacts

Given the historical poverty of good management of mineral revenues in Ghana, the PRMA principally seeks to provide a strong governance framework for the optimum management of oil and gas revenues. The underlying philosophy is to improve the lot of Ghanaians (present and future), through the application of the ensuing revenues from the country's exhaustible oil and gas resources into impactful sectors of the economy. Within this context, we have three key groups of stakeholders that play vital roles in the implementation of the law. These are:

- **The Government and other public sector stakeholders**, including the Ministries of Finance and Energy, Bank of Ghana (BoG), Ghana National Petroleum Corporation (GNPC), Ghana National Gas Company (GNGC), Ghana Revenue Authority (GRA), Petroleum Commission, Energy Commission, Ghana Infrastructure Investment Fund (GIIF), the Investment Advisory Committee (IAC),
- **The private sector community**, including the international oil companies (IOCs) operating in Ghana, such as Kosmos Energy, ENI Ghana Limited, Tullow Ghana Limited, among others; and
- **Oversight and accountability institutions**: Parliament, Office of the Auditor-General, and PIAC

Almost a decade since the promulgation of the PRMA, implementation of the law has been largely impactful. Notable impacts arising from PIAC's recommendations include:

- The procurement of a Loss of Production Insurance (LOPI) by GNPC for Jubilee, TEN, and SGN Fields;
- Parliament's directive to GNPC to stop spending on non-core areas and the subsequent cancellation of the Corporation's sponsorship deal with the Black Stars;
- Ghana Revenue Authority's (GRA) retrieval of about US\$50 million through the tax audits of Kosmos Energy and Tullow Ghana;
- Improvements in the payment of Surface Rentals by IOCs since 2017 resulting from engagements with the Petroleum Commission, BoG, and GRA; and,
- Bridging the tax audit gap of IOCs by GRA.

Despite these impacts, PIAC's assessments indicate significant implementation bottlenecks and compliance challenges with petroleum revenue management.

Outstanding Implementation/Compliance Challenges and Recommendations

Among the myriad of challenges that confronts the effective implementation of the PRMA is the recurrence of wrongful lodgment of petroleum revenues/receipts into GRA accounts, contrary to the dictates of the PRMA. For instance, an amount of US\$13.52 million, which was wrongfully paid into GRA's account in 2017 has only recently been transferred into the PHF as required by the PRMA, according to GRA. The practice re-occurred in 2019, though rectified in the same year. This denies the PHF the needed resources for development financing.

The recurring noncompliance in the reported expenditure of the MoF to the PRMA requirement to spend at least 70 percent of the ABFA on Public Investment Expenditure is another challenge. Although the Ministry has been complying during budgeting, in actual expenditure, there has been non-compliance. In 2017, only 37 percent of the utilised ABFA was used for capital expenditure and 63 percent for the supply of goods and services, contrary to the PRMA. Again, in 2019, 55 percent was spent on Capital Expenditure and 45 percent on Goods and Services.

Another challenge in the implementation of the Law relates to the recurrence of unutilised ABFA. As at the end of 2019, the total unspent ABFA amounted to GH¢1.48 Billion. This situation is worrying, especially as it is becoming a trend and corruption risk to the management and use of petroleum revenues.

Another associated challenge is the inconsistent allocation of petroleum revenue to the Ghana Infrastructure Investment Fund (GIIF), contrary to Law. The PRMA requires that up to 25 percent of the amount allocated to Public Investment Expenditure under the ABFA shall be allocated to GIIF for the purpose of infrastructure development. Similarly, the GIIF Act identifies petroleum revenue as a funding source. Although the Fund has received US\$75.4 million from the ABFA since its establishment, and has made significant contributions to funding strategic investment projects including Terminal 3 of the Kotoka International Airport (KIA) in Accra in 2016, there were no allocations to GIIF for 2018 and 2019 consecutively. According to the Fund, an amount of US\$5.51 million representing 18.37 percent of its investment of US\$30 million in the KIA Terminal 3 Project was realised between 2017 and 2019 as returns, demonstrating the viability of the investment.

Closely linked with the above challenges is the late enactment of subsidiary legislation to the PRMA. Although the PRMA under Section 60 provides for the Minister for Finance to make regulations for the effective implementation of the law, it is only in 2019 that the provision has been acted upon, resulting in the enactment of the L.I. 2381. A timely enactment of the Regulations could have better operationalised the PRMA to prevent most (if not all) of the above compliance challenges.

CONCLUSION

Being mindful of the fact that petroleum is a finite resource, calls for prudent management of the resource and revenue in order to escape the trappings of the resource curse.