



# Transparency and Accountability Mechanisms in Ghana's Petroleum Revenue Management Act:

A Critical Analysis and Socio-Political Contextualisation with  
Counterpoints from Norway and Botswana

By

CHRIS ADOMAKO-KWAKYE (ADMCHR012)

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**Supervisor:** Professor Hanri Mostert, DST/NRF SARCHI Research Chair: Mineral Law in Africa, Department of Private Law, Faculty of Law, University of Cape Town

**Co-supervisor:** A/Professor Tracy Gutuza

MINERAL LAW  
IN AFRICA

● [mlio@uct.ac.za](mailto:mlio@uct.ac.za) ● [www.mlio.uct.ac.za](http://www.mlio.uct.ac.za)



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# Abstract

Once known as the Gold Coast due to minerals, Ghana has very little to show for that. The revenue generated from minerals in Ghana went into the Consolidated Fund associated with mismanagement and corruption. Auditor-General's annual reports support this assertion, and the Commission of Inquiry set up to investigate the source of the wealth of politicians, and public officials confirmed mismanagement of State resources.

Ghana enacted the Petroleum Revenue Management Act (PRMA) upon discovering oil and separated the oil revenue from the Consolidated Fund. The PRMA guides the management of oil revenue to benefit all Ghanaians and cause growth. Despite the PRMA, Ghanaians are pessimistic about the management of the oil revenue due to mismanagement issues. It includes the Finance Minister's discretionary power, capping the Ghana Stabilisation Fund, transferring the Annual Budget Funding Amount into the Consolidated Fund, oil revenue spent in ways not provided for by the Act, institutional weakness, and lack of national development plans.

The thesis seeks to determine how the enactment of the PRMA would help deal with mismanagement through a socio-political analysis of the Act. It does so by discussing the PRMA of Ghana critically, taking into account lessons from Botswana and Norway on a series of sub-questions:

- a) the discretionary powers of decision-makers and its effect on the management of oil revenue,
- b) features of quality institutions that aid the management of resource revenue,
- c) how various types of funds and their utilisation assist the management of oil revenue
- d) the role of policy planning and project reporting dealing with non-compliance.

The thesis deliberates these issues, focusing solely on the PRMA and its mechanisms to achieve transparency and accountability. It considered the reports issued by the Auditor-General and the Public Interest Accountability Committee (PIAC) on the utilisation of created funds and the lack of institutional autonomy. The thesis shows that although the PRMA has its strengths, flaws remain and these surface, especially in implementing the law. The design of the PRMA creates a discrepancy between its objectives and its operation requiring legislative reform. Looking at these weaknesses more closely, the thesis argues for a paradigm shift to precede recommended

legislative reform to assuage the fears of Ghanaians by offering recommendations for improving the PRMA to optimise the oil revenue.

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# Table of Abbreviations

Annual Budget Funding Amount	ABFA
Bulk Oil Storage	BOST
Compensatory Financing Facility	CCF
Economic and Organised Crime Office	EOCO
European Union	EU
Ghana Stabilisation Fund	GSF
Ghana Heritage Fund	GHF
Ghana National Petroleum Corporation	GNPC
Ghana National Gas Company	GNGC
International Monetary Fund	IMF
International Oil Marketing Companies	IOC
Livelihood Empowerment against Poverty	LEAP
Ministry of Finance and Development Planning	MFDP
Microfinance and Small Loans Centre	MASLOC
National Disaster Management Organisation	NADMO
National Development Planning Commission	NDPC
National Development Plans	NDPs
Organisation for Economic Development	OECD
Public Interest Accountability Committee	PIAC
Petroleum Revenue Management Act	PRMA
Sankofa Gye Nyame	SGN
Sovereign Wealth Funds	SWFs
Sustainable Budget Index	SBI
Tweneboa Enyera-Ntome	TEN

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# Chapter 1: Introduction

## 1. Introduction

The commercial exploitation of natural resources creates wealth.<sup>1</sup> The big question, however, is ‘wealth for whom?’ In most developing countries, mismanagement of the accrued revenue from extractive activity denies the nations and most of the inhabitants of the States whence resources are mined the anticipated benefits.<sup>2</sup> This mismanagement (“governance structure”) has resulted in deprived and weaker economic conditions.<sup>3</sup> Enormous sums of money are lost in most resource-rich countries through corruption and mismanagement by political leaders and their associates.<sup>4</sup> This research aims to support developing a legal framework that can aid in thwarting the resource curse and utilising the oil revenue to impact growth and development in Ghana.<sup>5</sup> Resource curse refers to the inability of resource-rich countries to benefit from their natural resources and has disappointing growth.<sup>6</sup> The thesis scrutinises the new Ghanaian legislation for revenue management from the oil sector, the Petroleum Revenue Management Act (PRMA).

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<sup>1</sup> Nigeria earned up to US\$ 320 billion from crude oil exports between 1970 and 1999. See Emeka Duruigbo, ‘The World Bank, Multinational Oil Companies and the Resource Curse in Africa’ in 26 University of Pennsylvania, *Journal of Int’l Economics*, 1, 2005, 23. Mexico, Venezuela and Nigeria earned US\$ 35 billion, US\$ 30 billion and US\$ 22 billion per year as income from oil. See Terry Lynn Karl, ‘Oil-Led Development: Social, Political and Economic Consequences’ in *Encyclopedia of Energy*, 2007, 667. In 2001, the Angolan government stated that the country earned US\$ 3.18 billion from oil. Estimates of the amount earned by Angola is between US\$ 3 to US\$ 5 billion per year. See Ian Gary and Terry Lynn Karl, ‘Bottom of the Barrel: Africa’s Oil Boom and the Poor’, 32. Sudan received US\$ 300 million from its oil sale in 2000. The projection is that the country shall earn about US\$ 30 billion in oil revenues according to estimates by the PFC Energy Consulting Firm’s estimates. See Ian Gary and Terry Lynn Karl, ‘Bottom of the Barrel: Africa’s Oil Boom and the Poor’, 35. Equatorial Guinea’s oil receipts amounted to US\$ 212 million in 2000. In 2003, the country’s total oil received jumped to US\$ 725 million. See Ian Gary and Terry Lynn Karl, ‘Bottom of the Barrel: Africa’s Oil Boom and the Poor’, 39.

<sup>2</sup> The economic development and the standard of living in some oil-rich countries like Nigeria, Angola, Gabon, Equatorial Guinea, Republic of Congo and Democratic Republic of Congo attest to the link between mismanagement and the deprivation of the benefits to the citizens.

<sup>3</sup> Idemudia, ‘The Quest for the Effective Use of Natural Resource Revenue in Africa: Beyond Transparency and the Need for Compatible Cultural Democracy in Nigeria’, *Africa Today*, Vol. 56 (2), 2009, 4.

<sup>4</sup> Kolstad & Soreide, ‘Corruption in Natural Resource Management: Implications for Policy Makers’, *Resources Policy*, 34 (2009), 214

<sup>5</sup> See chapter 2, section 2.

<sup>6</sup> Soros G., “Forward” in Humphrey et al., (eds.), ‘Escaping the Resource Curse’, Columbia University Press, 2007, xi.

## 2. Background

The thesis aims to evaluate the extent to which the PRMA will enable Ghana to avoid the circumstances of other resource-rich countries that have mismanaged their resource revenue. Angola, Equatorial Guinea, and Nigeria are examples of countries that typify the mismanagement of oil revenues.<sup>7</sup> Further examples are the Democratic Republic of Congo (Congo-Kinshasa), Gabon, and the Republic of Congo (Congo-Brazzaville).<sup>8</sup> The mentioned examples of mismanagement explain the concern about whether Ghana will succumb to the same trend with the legislation on revenue management. Following is a background on corruption and mismanagement of resource revenue in some resource-rich countries in Africa, resulting in the resource curse or the paradox of plenty. This broad discussion depicts the adverse effects and the dynamics of mismanagement and corruption of resource revenue on citizens. The relevance of this discussion is to flag the consequences of mismanagement and corruption of resource revenue so that Ghana will not repeat the experiences discussed.

### 2.1 Corruption and Mismanagement of Revenue Rife in Africa: some examples

From the examples of Congo-Brazzaville, Gabon, Nigeria, Equatorial Guinea, and Angola mentioned briefly below; it is evident that mismanagement and corruption associated with oil revenues are prevalent and pervasive in several resource-rich countries. Ghana may fall into the same trap unless measures are put in place to overcome the mismanagement of the oil revenue.

In 2005, Boston Globe reported an oil shipment from **Congo-Brazzaville** to the United States facilitated by a private company, Africa Oil & Gas, run by Denis A. M. Gokarna of Congolese

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<sup>7</sup> Afeikhena et al., "Addressing the oil Related Corruption in Africa, Is the push for Transparency enough? In Review of Human Factor Studies Special Edition 11(1), 2005, 15. See also, Gary, I. and Karl, T. L. 2003. Bottom of the Barrel: Africa's Oil Boom and the Poor. Catholic Relief Services, Available at <https://www.internationalbudget.org/wp-content/uploads/Bottom-of-the-Barrel-Africas-Oil-Boom-and-the-poor.pdf> accessed 13 March 2021, Gelb, A. 1988, Oil Windfalls: Blessing or Curse? New York: Oxford University Press, Global Policy Forum. 2003. Denny, 'Short Warns of Oil Boycott over African Corruption', Guardian 11 February 2003. Available at [www.archive.globalpolicy.org](http://www.archive.globalpolicy.org) accessed 22 March 2021. Ms. Short lamented that mineral wealth instead of blessing African countries has become a curse. She urged oil companies meeting in London to discuss the British plan to promote transparency and accountability to join the global drive to deal with corruption in developing countries by disclosing payments made to them.

<sup>8</sup> McFerson, "Governance and Hyper Corruption in Resource-Rich African Countries, Third World Quarterly, Vol. 30 (8), 2009, 1529.

national oil company and the special advisor to President Sassou-Nguesso.<sup>9</sup> Vitol SA of Geneva shipped the oil as a trader. The sale fetched US\$ 53 million, and the government of Congo reportedly received US\$ 48.8 million, and the remaining US\$ 4.2 million went to Africa Oil and Gas.<sup>10</sup> It is a case of an individual with links to a state institution and the President using that position and his private company to benefit from the Congo's oil revenue. His reported conduct amounts to a conflict of interest and denying the State its total oil revenue. Meanwhile, about 70 per cent of the Republic of Congo lives below the poverty line and without access to water.<sup>11</sup> However, the President, his family, and close associates reportedly control US\$ 1 billion, representing a third of the country's oil revenue.<sup>12</sup>

In **Angola**, the government has a history of mismanagement of resource revenue and has failed to account for billions of oil revenue.<sup>13</sup> Aid agencies have reported that corrupt government officials had stolen billions of dollars from the public coffers.<sup>14</sup> A Global Witness report of 2003 estimates that the Angolan government received an annual amount of US\$5 billion from its oil but failed to account for US\$ 1 billion.<sup>15</sup> The Global Witness report of 2004 indicates that Angola was unable to account for US\$ 1.7 billion received from its oil industry yearly from 1997-2001:<sup>16</sup> and Angola failed to account for US\$ 32 billion of its oil money from 2007 to 2010, according to the Natural Resources Charter.<sup>17</sup>

The International Monetary Fund's fiscal audit of Angola's oil revenue revealed a deficit of hundreds of millions of dollars.<sup>18</sup> In the Angolan case, the extent of the corruption problem is

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<sup>9</sup> McFerson, (note 8), 1535.

<sup>10</sup> McFerson, (note 8), 1535.

<sup>11</sup> Gary & Karl, 'Bottom of the Barrel: Africa's Oil Boom and the Poor', 2003, 37. Available at <https://www.internationalbudget.org/wp-content/uploads/Bottom-of-the-Barrel-Africas-Oil-Boom-and-the-poor.pdf> accessed 13 March 2021.

<sup>12</sup> Duruigbo, 'The World Bank, Multinational Oil Companies and the Resource Curse in Africa', 26 University of Pennsylvania, Journal of Int'l Economics, Issue 1, 2005, 25.

<sup>13</sup> Arvind Ganesen, 'Some Transparency No Accountability: The use of Oil Revenue and its impact on Human Right', Human Rights Watch, Vol. 16 1 (A), 2004, 1.

<sup>14</sup> Afeikhená et al., (note 7), 16.

<sup>15</sup> Afeikhená et al., (note 7), 16.

<sup>16</sup> Kuzu and Nantogmah, 'The Oil Economy and the Resource Curse Syndrome: Can Ghana make a difference?' Available at <http://library.fes.de/pdf-files/bueros/ghana/10492.pdf> Accessed 13 March 2021.

<sup>17</sup> Natural Resources Charter, (2<sup>nd</sup> ed.), 7. Available at <https://resourcegovernance.org/analysis-tools/publications/natural-resource-charter-2nd-ed> Accessed 13 March 2021.

<sup>18</sup> Palley, 'Lifting the Natural Resource Curse', Foreign Service Journal, Vol. 80, 2003, 54, available at <https://www.globalpolicy.org/the-dark-side-of-natural-resources-st/water-in-conflict/40112.html>. Accessed 13 March 2021.

unknown due to its secrecy. Angola did not report their oil revenues until the International Monetary Fund (IMF) intervened for Angola to include it in the budget to make the revenue payment public.<sup>19</sup> Hammond, for instance, catalogued corrupt practices by the Angolan government regarding the management of their oil revenue.<sup>20</sup> He reports that the government signed secret oil agreements with foreign oil companies disregarding the interest of Angolans.<sup>21</sup>

Further, it is reported that Angolan oil revenue was paid into foreign accounts for the benefit of the presidency and underreporting of oil revenue was rife, leading Economic Intelligence Unit to report that “Angola is clearly in a class of its own”.<sup>22</sup> Corruption in the oil industry is pervasive, and it continues to deny Angola its total oil revenue.<sup>23</sup> Aside from corruption, oil revenue also stoked civil war in Angola, described as ‘the oil wealth juxtaposed against humanitarian tragedy’.<sup>24</sup>

Since 1995, **Equatorial Guinea** exports about 400,000 barrels of crude oil per day.<sup>25</sup> The country earns about US\$ 7 billion every year from oil exports.<sup>26</sup> McFerson, argues that the political elite has taken a more significant portion of this amount. Equatorial Guinea’s oil revenues have not come to the limelight as the budget did not report it.<sup>27</sup> The State Department of the United States of America, in its 2003 Human Rights Report, stated that Equatorial Guinea’s use of oil revenue lacked transparency since no evidence exists to show that the oil revenue helps the public good.<sup>28</sup> In 2004, United States Senate investigations revealed that the President of Equatorial Guinea had transferred over US\$ 35 million from a government account to dubious offshore businesses.<sup>29</sup>

A study conducted by the Los Angeles Times reported that over US\$ 300 million of oil revenue got deposited into a private bank account controlled by President Obiang.<sup>30</sup> Such siphoning of the

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<sup>19</sup> Gary & Karl, (note 11), 40.

<sup>20</sup> Hammond, ‘The Resource Curse and Oil Revenues in Angola and Venezuela’, *Science and Society*, Vol. 75 (3) 2011, 348-378.

<sup>21</sup> Hammond, (note 20), 356.

<sup>22</sup> Hammond, (note 20), 360-361. See also Sinead Hunt, ‘Refining Black Gold: The Dodd-Frank Act and Corruption in the Oil Industry’ *UCLA Journal of International Law Foreign Affairs*, 2011, Vol. 16 (1) 41-76.

<sup>23</sup> Gary & Karl, (note 11), 31-33.

<sup>24</sup> Gary & Karl, (note 11), 31.

<sup>25</sup> Diamond et al., ‘Africa’s Coming Resource Curse and How to avoid it’, *92 Foreign Affairs*, 86 2013, 86.

<sup>26</sup> McFerson, (note 8), 1538.

<sup>27</sup> Gary & Karl, (note 11), 40.

<sup>28</sup> United State Department of State, ‘Country Report on Human Rights Practices for Equatorial Guinea’s, 2002, March 31, 2003.

<sup>29</sup> McFerson, (note 8), 1538.

<sup>30</sup> Silverstein, ‘Oil Boom Enriches African Ruler’, *Los Angeles Times*, January 20, 2003.

oil revenue enriches the political elite and creates a gap between the wealthy and the have-nots in Equatorial Guinea. The annual *per capita* income in Equatorial Guinea is over US\$ 14,000. However, 60 percent of the population earns below US\$ 350 a year. In Equatorial Guinea, an average amount of US\$ 400 million to US\$ 700 million reportedly got deposited into about sixty accounts run by President Obiang's government, officials of the government or members of their family in the United States at Riggs Bank.<sup>31</sup> Resource revenue benefited the elite through corruption and mismanagement and denied development in Equatorial Guinea.

The mismanagement of oil revenue in **Nigeria**, one of the largest oil-producing countries in Africa, is overwhelming and is now 'synonymous with corruption.'<sup>32</sup> The Organization of Petroleum Exporting Countries (OPEC) reports that 80 per cent of Nigerian oil and gas revenues accrue to only one per cent of the Nigerian population, with 20 per cent to 99 per cent of the population.<sup>33</sup> The International Assets Recovery has stated that the former military President General Sani Abacha and his family looted about US\$ 4 billion from the Nigerian oil revenue.<sup>34</sup> Between 1960 and 1999, a total amount of US\$ 380 billion of Nigeria's oil money is said to have gone lost to post-independence leaders.<sup>35</sup>

Another military ruler, General Ibrahim Babangida, ruled Nigeria between 1985 and 1993, and it is reported that his reign saw the disappearance of \$12.2 billion of Nigeria's oil revenue.<sup>36</sup> The change to democratic rule did very little to change Nigeria's oil revenue looting, leading to the term the "instrumentalisation of disorder", where politicians strive to win elections and hold onto power.<sup>37</sup> Nigeria's mismanagement of resource revenues has led to the term "Nigerian disease", depicting the government wasting resource revenue due to lack of institutional capacity to utilise resource revenues gainfully.<sup>38</sup> Nigerian political leadership has not shown leadership in managing

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<sup>31</sup> Afeikhena et al., (note 7), 17. See also Williams, Jr., From Malabo to Malibu: Addressing Corruption and Human Rights Abuse in an African Petrostate, *Human Rights Quarterly*, Vol. 33 (3), 2011, 620-648.

<sup>32</sup> Gary & Karl, (note 11), 25-26.

<sup>33</sup> Afeikhena et al., (note 7), 19.

<sup>34</sup> Ogbeidi, 'Political Leadership and Corruption in Nigeria since 1960: A Socio-Economic Analysis', *Journal of Nigeria Studies*, Vol. 1 (2), 2012, 9.

<sup>35</sup> Ejiegba et al., 'Corruption in the Underdevelopment of the Niger Delta in Nigeria', the *Journal of Pan African Studies*, Vol. 5 (8), 2012, 118.

<sup>36</sup> Idemudia, (note 3), 8.

<sup>37</sup> Idemudia, (note 3), 8. See also M. Ogbeidi, '(note 34), 18.

<sup>38</sup> Williams, 'Shining a Light on the Resource Curse: An Empirical Analysis of the Relationship between Natural Resources, Transparency, and Economic Growth', *World Development*, Vol. 39 (4), 2011, 490.

the oil revenue; but exhibited greed, corruption, abuse of trust, and neglect of their responsibilities.<sup>39</sup>

According to the United Nations, about a third of **Gabon's** population live in miserable poverty.<sup>40</sup> In the 1990s, investigators in the United States of America discovered and reported that the President of Gabon and his family had about US\$ 100 million linked to several accounts.<sup>41</sup> Gabon's President has received tens of millions of dollars in kickbacks from Elf Aquitaine, an oil company in France.<sup>42</sup>

Developmental challenges exist in these countries, despite significant oil revenue, which indicates the misappropriation of the resource wealth. Where the authorities fail in managing resource wealth, the beneficiaries of the resources suffer and become worse off despite the resource revenue.<sup>43</sup> The persons entrusted with managing the income from natural resources rather live lavishly. Corruption has engulfed the oil industry in Africa despite efforts by the international community for transparency.<sup>44</sup> The attitude of the political leaders in mismanaging oil revenue due to resource-rich countries has assumed the description of the 'paradox of the plenty'.<sup>45</sup> The following section attempts an explanation of the paradox of plenty.

## 2.2 "The Paradox of Plenty"

The resource curse or "paradox of plenty"<sup>46</sup> describes the phenomenon whereby countries with abundant natural resources tend to have lower-than-expected economic growth and weaker government institutions than those without it.<sup>47</sup> The resource curse phenomenon is the inability of resource-rich countries to enjoy the benefits of their natural resources.<sup>48</sup> Evidence exists that

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<sup>39</sup> Ogbeidi, (note 34), 18.

<sup>40</sup> Thonny Thomas Onyulo Ros and Alpha Denulo, Dayton Daily News of Ohio page Z3, 27<sup>th</sup> August 2016.

<sup>41</sup> McFerson, (note 8), 1540.

<sup>42</sup> McFerson, (note 8), 1540.

<sup>43</sup> Weinthal et al., 'Combating the Resource Curse: An Alternative Solution to Managing Mineral Wealth', *Perspective on Politics*, Vol. 4 (1), 2006, 35.

<sup>44</sup> Afeikhen et al, (note 7), 9.

<sup>45</sup> The paradox of plenty refers to abject poverty prevailing in resource-rich country despite the generation of wealth from the oil.

<sup>46</sup> See Karl, 'The Paradox of Plenty: Oil Booms and Petro-States'. Berkeley: University of California Press.

<sup>47</sup> Humphrey M., Sachs J. D. and Stiglitz J. 'Introduction: What is the Problem with Natural Resource Wealth?' in Humphrey M., Sachs J. D. and Stiglitz J. (eds.), *Escaping the Resource Curse*, New York, Columbia University Press 2007, 1.

<sup>48</sup> Soros G., (note 6), xi.

resource-rich countries have a slower-than-expected growth rather, on average, than countries that are not similarly well endowed in natural resources.<sup>49</sup> Such trends reduce human development and increase the prevalence of inequality and poverty.<sup>50</sup> The phenomenon has been the subject of comment by social scientists for some time now.<sup>51</sup> The causes include oil-price volatility,<sup>52</sup> the Dutch disease,<sup>53</sup> different expertise,<sup>54</sup> insufficient investment in education<sup>55</sup>, higher level of corruption,<sup>56</sup> rent-seeking,<sup>57</sup> weak unaccountable States,<sup>58</sup> and threats to democracy.<sup>59</sup>

The mismanagement of resource revenues by corrupt leaders hinders development.<sup>60</sup> Their conduct explains the low level of development in some developing resource-rich countries.<sup>61</sup> The mismanagement of oil revenue poses a significant risk to the benefits derived by a state if the authorities do not exhibit transparency and accountability.<sup>62</sup> Transparency allows the public to gain information about the operations and structures of a given entity.<sup>63</sup> The issue regarding the

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<sup>49</sup> Humphrey et al, (note 47), 1

<sup>50</sup> Kolstad & Soreide, (note 4), 216. Other works on the resource curse includes R.M. Auty, *Sustaining Development in Mineral Economies: The Resource curse thesis*, Routledge, Terry Lynn Karl, 'The Paradox of Plenty: Oil Booms and Petro-States', Berkley: University of California Press, Larry Diamond and Jack Mosbacher, 'Africa's Coming Resource Curse and How to avoid it', in 92 *Foreign Affairs*, 86, 2013, 86-98, Xavier Sala-i-Martin, Subramanian, 'Journal of African Economics', Vol. 22 (4), August 2013, Graham A. Davis, 'Replicating Sachs & Warner's Working Papers on the Resource Curse', *The Journal of Development Studies*, Vol. 49 (12), 2013, Annegret Mahler, 'Nigeria, A prime example of the Resource Curse? Revisiting the oil Violence Link in the Niger Delta', *German Institute of Global & Area Studies*, No. 120, January 2010, Alan Gelb & Stephanie Majerowicz, 'Oil for Uganda or Ugandans? Can Cash Transfers Prevent Resource Curse?' Centre for Global Development Working Paper, 261, July 2011, Richard King, 'An institutional Analysis of the Resource Curse in Africa: Lessons for Ghana', *The Journal of Sustainable Development*, 2009, Issue 2 and Gapa, Angela, 'Escaping the Resource Curse: The Sources of Institutional Quality in Botswana', 2013 submitted to Florida International University, Electronic Theses and Dissertation, 2013.

<sup>51</sup> Humphrey et al., (note 47), 1.

<sup>52</sup> Humphrey et al., (note 47), 6-7. Volatility is caused by the differences in rates of oil extracted, time of payments by multinational oil companies and fluctuations in oil prices.

<sup>53</sup> Humphrey et al., (note 47), 5. Huge financial inflows into an oil producing country causes an increase in the real exchange rate. This makes exports from the local sector less attractive causing a decline in manufacturing sector of the domestic economy of the resource rich county.

<sup>54</sup> Humphrey et al., (note 47), 4-5. The exploration and production of oil requires high technological expertise, bargaining techniques and capital lacking in resource-rich countries hence reliance on multinational oil companies.

<sup>55</sup> Humphrey et al., (note 47), 10. Resource rich countries fail to diversify their economies with the inflow of huge sums of money. They ignore the development of their skilled labour with a resultant decline in educational budgets.

<sup>56</sup> Humphrey et al., (note 47), 10-11. The sudden influx of money into the economy creates an enabling environment for theft by political leaders and government officials are susceptible to bribe by multinational oil companies.

<sup>57</sup> Humphrey et al., (note 47), 4. Rent seeking refers to a situation where a gap known as economic rent exist between the value of the resource and the cost of extracting it. Persons with political connections used it to capture the rent.

<sup>58</sup> Humphrey et al., (note 47), 11. The generation of huge sums of money sometimes compels the state to ignore the citizens, which creates missing link between the government and the citizens.

<sup>59</sup> Humphrey et al. (note 47), 4 -14. See note 50 above.

<sup>60</sup> Palley, (note 18), 54.

<sup>61</sup> Palley, (note 18), 54.

<sup>62</sup> See Chapters 3, section 2.1 and 2.2 and 4, section 3.

<sup>63</sup> Etzioni, "Is Transparency the Best Disinfectant? In *The Journal of Political Philosophy*: Vol. 18, Number 4, 389.

management of resource revenue is whether the citizens know what accrues to the state. If the government makes such disclosures, it enhances the information flow between the administration and the citizenry and makes the government accountable.<sup>64</sup>

The government may give information voluntarily, or the public may demand it.<sup>65</sup> Disclosures must be open, transparent and all-encompassing without misleading the population to limit corruption and control mismanagement.<sup>66</sup> The receipt of a report by citizens and their ability to process and use the data hold the government accountable, which is crucial in achieving transparency.<sup>67</sup> The government's readiness for the timeous release of information about receipt of oil revenue and how utilised protects the integrity of the State and reduces misconceptions.<sup>68</sup> The government must open up and share information on oil revenue to promote transparency.

Accountability is the process of holding actors responsible for their actions.<sup>69</sup> The system must have structures that make the government accountable to its citizens.<sup>70</sup> As this thesis argues, accountability must reflect in the governance of natural resources.<sup>71</sup> Accountability comes through a collaboration between the government on the one hand and others, including civil society organisations, communities, Parliament, professional associations, think tanks, oil companies and mass media; on the other, the absence of which accountability may suffer to the detriment of the citizens.<sup>72</sup>

## 2.3 Mismanagement and Corruption in Ghana: Past experiences

Upon discovering oil in Ghana in 2007, the mismanagement and corruption of state funds compelled President John Agyekum Kuffour to stress that Ghana would avoid the resource curse.<sup>73</sup>

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<sup>64</sup> Gyampo, "Transparency and Accountability in the Management of Oil Revenues in Ghana, *Africa Spectrum*", 2/2016, 81.

<sup>65</sup> Ofori et al., 'Illusionary Transparency? Oil Revenues, Information Disclosure, and Transparency' in *Society & Natural Resources*, 28, 2015, 1189.

<sup>66</sup> Chapter 3, sections 2 and 2.1.5.

<sup>67</sup> Jeffison et al., (note 65), 1189.

<sup>68</sup> Gyampo, (note 64), 82.

<sup>69</sup> Gaventa et al., 'The Impact of Transparency and Accountability Initiatives' in *Development Policy Review*, 2013, 31, 9.

<sup>70</sup> Canvar, 'Averting the Resource Curse in Ghana: The Need for Accountability', Ghana Centre for Democratic Development, Briefing Paper, 2008, Vol. 9 (3), 2.

<sup>71</sup> Chapter 3, section 2.2.6.

<sup>72</sup> Chapter 3, section 2.2.6.

<sup>73</sup> Canvar, (note 70), 1.

He emphasised that oil wealth should transform the country.<sup>74</sup> Even so, the annual reports of the Auditor-General of Ghana reveal mismanagement of money in the public sector.<sup>75</sup> Ghana's inability to derive maximum benefits from its natural resources stems from corruption and mismanagement of state revenue by civil servants and politicians.<sup>76</sup> For example, the Auditor-General's report of 2011 on second cycle educational institutions showed financial irregularities to the tune of GHC 12,786,626.36 (US\$ 7,799,101.16).<sup>77</sup> This figure increased to GHC 24,680,515.09 (US\$ 12,952,251.42) in 2012.<sup>78</sup>

Ghana has struggled with corruption and mismanagement of state revenue.<sup>79</sup> Through the district assembly's common fund, the government allocates funds to municipal and district assemblies to develop their areas of jurisdiction.<sup>80</sup> The Local Government Act provides that Parliament allocates at least five per cent of Ghana's total revenue to the district assemblies for development.<sup>81</sup> The Auditor General's department reports suggest that in 2013, the district assemblies misappropriated a total of GHC 28.29 million (US\$ 13,564,441.88) through cash, contract management, and procurement and store fraud irregularities.<sup>82</sup> In the same year, the Auditor General's report revealed that the district assemblies failed to account for GHC 9,875,356.93 (US\$ 4,735,019.62) generated internally.<sup>83</sup> The Auditor-General's report lists the irregularities, including misappropriation, unsubstantiated payments, free salaries, procurement, and contract irregularities.<sup>84</sup> In 2014, the Auditor General's report on district assemblies showed that eight assemblies embezzled a total of

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<sup>74</sup> Canvar, (note 70), 1.

<sup>75</sup> Articles 187 and 188 of 1992 Constitution of Ghana.

<sup>76</sup> The enactment of the PRMA, separated the oil revenue from the Consolidated Fund.

<sup>77</sup> The Auditor General's Report on pre-university institutions for 2011, 3. In 2011, the Ghana Cedi to U.S. Dollar rate was 1:1.6395.

<sup>78</sup> The Auditor General's Report on pre-university institutions for 2012. In 2012, the Ghana Cedi to U.S. Dollar rate was 1:1.9055. For a thorough discussion of context and statistics on poor management of oil revenue, see Chapter 7, sections 2.1 and 2.2.

<sup>79</sup> The reports of the Auditor-General over the years on ministries, schools, public institutions, and the District, Municipal and Metropolitan Assemblies shows wanton dissipation of state funds.

<sup>80</sup> Article 252 of the 1992 Republican Constitution of Ghana.

<sup>81</sup> Section 126(1) of the Local Government Act, 2016 Act 936.

<sup>82</sup> The Auditor General's Report on the management and utilization of common fund for 2013, 3-5. In 2013, the Ghana Cedi to U.S. Dollar rate was 1:2.0856.

<sup>83</sup> The Auditor General's Report on the management and utilisation of common fund for 2013, 4-7. In 2013, the Ghana Cedi to U.S. Dollar rate was 1:2.0856.

<sup>84</sup> The Auditor General's Report on the management and utilisation of common fund for 2013 at pages 4-7.

GHC 549,245.59 (US\$ 175,758.59) through diversion for their personal use insertions on cheques after endorsement.<sup>85</sup>

It is a common practice in Ghana to set up Commissions of Inquiry to investigate the activities of previous governments on allegations of corruption and mismanagement.<sup>86</sup> The National Liberation Council overthrew Ghana's first President in a coup and set up six commissions of inquiry<sup>87</sup> to investigate allegations of corruption and mismanagement against the Convention Peoples Party's government (CPP).<sup>88</sup> The committee's recommendations revealed that state officials took advantage of the state and could not account for the sources of their wealth.<sup>89</sup> The problem had been the inability of the State officials to punish persons who have misappropriated State funds or engaged in corruption. Ghana has a peculiar challenge in eradicating corruption involving public officials and politicians, and efforts by the State to deal with the menace became an exercise in futility.<sup>90</sup>

In the face of corruption and mismanagement, Ghana needed to formulate an oil policy and draft and pass legislation to oversee activities in the oil sector to avert the resource curse.<sup>91</sup> The government set up a team to develop an oil policy geared towards sound oil revenue management to ensure its optimal use.<sup>92</sup> After their engagement, the government set up a ministerial task force

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<sup>85</sup> See Report of Auditor-General on accounts of District Assemblies for the year ending 31<sup>st</sup> December 2014, 5. Available at <https://s3.amazonaws.com/rgi-documents/7ef06bc3680a4007bc92fc4d39bd91cdaf2b8cd7.pdf> accessed 27 April 2021. In 2014, the Ghana Cedi to U.S. Dollar rate was 1:3.2150.

<sup>86</sup> Article 278(1) of Ghana's 1992 Constitution permits the President to appoint a Commission of Inquiry to investigate any matter of public interest by a constitutional instrument. See two commissions of inquiry set up in Ghana in 2009 and 2013 to investigate allegations of corruption and mismanagement. Professor J.E.A. Mills (deceased) of the National Democratic Congress set up a Commission of Inquiry to investigate the Ghana @ 50 charged to plan Ghana's golden jubilee celebrations. The commission investigated allegations of corruption during the celebrations. The commission made adverse findings against two members of the previous government during whose tenure the celebration took place. The members were Dr. Charles Wereko-Brobey and Kwadwo Mpiani. The two were subsequently charged for causing financial loss to the State contrary to section 179A (3) (a) of the Criminal Offences Act, 1960 (Act 29). The prosecution failed and the case struck out because the two had a right a right of appeal after six months of the publication of the commission's report, which had not elapsed at the time of the prosecution.

<sup>87</sup> The Commission of Inquiry set up were, Commission of Inquiry under National Liberation Council Decree (NLCD) 72 (Investigation and Forfeiture of Assets), Apaloo Commission, Annie Jiagge Commission, Manyo-Plange (Assets Commission), Sowah Commission and Samuel Azu Crabbe Commission.

<sup>88</sup> Pabia Isaac, 'Combating Public Sector Corruption in Ghana, The Case of Public Procurement Act (2003) Act 663. An MPhil Thesis (2013) submitted to the University of Ghana, Legon, 34.

<sup>89</sup> Pabia Isaac, (note 88), 37.

<sup>90</sup> Le Vine, 'Corruption in Ghana', *Transition*, No. 47, 1975, 48.

<sup>91</sup> Canvar, (note 70), 1 - 4.

<sup>92</sup> The team included members from the following Ministries; Finance and Economic Planning, Lands and Natural Resources, Trade and Industry, Energy, the International Donors, Coalition of Non-Governmental and Civil Societies,

with two mandates.<sup>93</sup> First, the working group had to review the Ghanaian laws that regulate the oil sector.<sup>94</sup> Second, the working group had to give guidelines for the enactment of a revenue management law.<sup>95</sup> The outcome of these engagements led to the Petroleum Revenue Management Act (PRMA) passage in 2011.

The purpose of the PRMA is to set a legal framework within which revenue from the oil due to Ghana would be utilised in a transparent and accountable manner to benefit current and future Ghanaians.<sup>96</sup> The PRMA has created various funds and their uses.<sup>97</sup> It imposes obligations on the Minister of Finance and Economic Planning and the Bank of Ghana regarding the management and investment of the Ghana Petroleum Funds.<sup>98</sup> The Auditor-General audits the petroleum funds in their entirety.<sup>99</sup> The Public Interest Accountability Committee (PIAC) has oversight responsibility for managing the oil revenue under the PRMA.<sup>100</sup>

The reports from the PIAC demonstrate that all is not well with the administration of the oil revenue.<sup>101</sup> Some expenditures incurred by the government are not within the contemplation of the PRMA as per the examples below.<sup>102</sup> The use of such proceeds did not benefit the citizenry due to the projects the money financed.<sup>103</sup> Such expenditures raise the issue of transparency and accountability in the management of oil revenues.

Indeed, there are several transgressions borne of problems with transparency and accountability. In 2011, the government of Ghana borrowed US\$ 3 billion from the Chinese government, using

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National House of Chiefs, the Ghana National Association of Industries, Ghana Banking Association and other stakeholders.

<sup>93</sup> Canvar, (note 70), 1. The Task Force comprised Fiscal regime, fund types, legal, health, safety and environment, security and local content.

<sup>94</sup> Canvar, (note 70), 1.

<sup>95</sup> Canvar, (note 70), 1.

<sup>96</sup> The Hansard of 22 November 2010, Volume 71, No. 20, 1392.

<sup>97</sup> The Funds created under the Act are the Petroleum Holding Fund (section 2). The Petroleum Holding Fund is at the Bank of Ghana that receives and disburse petroleum revenue due to the Ghana. The Ghana Stabilisation Fund (section 9), hold funds that can help the economy during shortfall in petroleum revenue. The Ghana Heritage Fund (section 10), provides money to support development for the future generations.

<sup>98</sup> Section 61 of the Petroleum Revenue Management Act (PRMA), 2011, Act 815 defines the Ghana Petroleum Funds as the combination of Ghana Stabilisation Fund and the Ghana Heritage Fund.

<sup>99</sup> Sections 42-48 of Act 815.

<sup>100</sup> Section 51 of Act 815.

<sup>101</sup> The PRMA charges the PIAC to issue two reports per year namely semi and annual reports. These reports examines whether the revenue management follows the provision of the PRMA.

<sup>102</sup> Chapter 7, sections 2.1 and 2.2 (2.2.1-2.2.4) of the reports of the Auditor-General and PIAC.

<sup>103</sup> Chapter 7, sections 2.2 and 2.2 (2.2.1-2.2.4).

the oil revenue as collateral when the PRMA<sup>104</sup> disallowed the use of the amount earmarked for transfer into the Ghana Petroleum Fund.<sup>105</sup> The PRMA prohibits borrowing against the petroleum reserves to preserve the revenue streams.<sup>106</sup>

The institutions that benefited from petroleum revenue had no bearing on the oil and gas industry. They include the Ministry of Food and Agriculture (MoFA), Ministry of Lands and Natural Resources (MLNR), National Disaster Management Organisation (NADMO), The Creative Industry, Living Empowerment Programme (LEAP), Microfinance and Small Loans Centre (MASLOC), Venture Capital Fund and Exim Guarantee Fund.<sup>107</sup> For example, in 2012, an amount of GHC 111,959, 738 (US\$ 58,756,094.46) reportedly set aside for capacity building had no details of the expenditure.<sup>108</sup> The report of PIAC for the year 2013 featured an amount of GHC 20.18 million (US\$ 9,675,872.65) disbursed for capacity building.<sup>109</sup>

Much of the revenue generated by natural resources disappear from the annual budget. In 2014, an amount of GHC 666 million (US\$ 207,153,965.78) in the budget was lost and unaccounted for in the budget.<sup>110</sup> For 2015, an amount of GHC 94.74 million (US\$ 24,864,836.49) for capacity building was utilised by the Ministry of Finance to support social intervention programmes in education.<sup>111</sup> An amount of GHC 3.65 million (US\$ 957,954.96) of the oil revenue intended for the transport sector was used to rebrand Metro Mass Bus Transit buses with the pictures of former Presidents and then President John Dramani Mahama.<sup>112</sup> The inherent challenges in the PRMA have allowed some of these expenditures.<sup>113</sup> If these problems, difficulties, and mismanagement of the oil revenue go unaddressed in the Act, those expenses will affect Ghana's fortunes in the long run.<sup>114</sup>

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<sup>104</sup> Section 5 (1) (a) of Act 815.

<sup>105</sup> The PIAC report of 2011.

<sup>106</sup> See section 5 (2) of Act 815. The section spelt 'reserves' as resreve which was subsequently amended. See clause 1 (2) of Act 893.

<sup>107</sup> Chapter 7, section 2.2.3.

<sup>108</sup> PIAC report of 2012. In 2012, the Ghana Cedi to U.S. Dollar rate was 1:1.9055.

<sup>109</sup> PIAC report of 2013. In 2013, the Ghana Cedi to U.S. Dollar rate was 1:2.0856.

<sup>110</sup> PIAC report of 2014. In 2014, the Ghana Cedi to U.S. Dollar rate was 1:3.1250.

<sup>111</sup> PIAC report of 2015. In 2015, the Ghana Cedi to U.S. Dollar rate was 1:3.8102.

<sup>112</sup> PIAC report of 2015. In 2015, the Ghana Cedi to U.S. Dollar rate was 1:3.8102.

<sup>113</sup> See chapter 7, section 2.2.3.

<sup>114</sup> Chapters 4, 5, 6, and 7 discusses the problematic provisions in the PRMA which requires amendments. First, the selection of four areas of the economy with no guidelines for the selection. Second, The Minister's power to transfer funds from the PRMA to the Contingency Fund not subject to the PRMA to pay debts with parliamentary approval

The PIAC reports from 2012 to 2015 demonstrates that Ghana lost US\$ 301,408,727.34 million. This amount, on consecutive terms, could have built about 3, 632 six-unit classroom blocks with library and offices for the staff and the head teacher using the estimates of MTN Foundation in Ghana.<sup>115</sup> In value terms, Ghana has lost this amount to corruption and mismanagement but would have put these infrastructures in place for the citizens' benefit. Executive dominance through the Minister in the PRMA needs addressing.<sup>116</sup> The Minister has the power under the PRMA and can take decisions without controls.<sup>117</sup> The Minister has the discretion to select the four areas of the economy to invest in without any consultation.<sup>118</sup> He also appoints members of the PIAC and determines their allowances.<sup>119</sup> One critical institution created under the PRMA, the PIAC, needs new direction and power in the PRMA to function effectively. Ghana requires a reformed legal framework with the involvement of quality institutions to monitor the use and management of oil revenue that accrues to Ghana.

### 3. Objectives of the Research

At the core of the administration of the oil revenue is transparency and accountability. This thesis attempts to answer how such a legal framework can be constructed to bolster the monitoring and compliance of the PRMA on the management of the oil revenue. This question pursues the

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but the Act is silent on the type of debt. Third, the Minister is not bound by the advice of the Investment Advisory Committee established under the Act to formulate, propose and advise the Minister on investment related matters. Fourth, the Minister is empowered under the PRMA to nominate members of the Investment Advisory Committee and determine their allowances. The possibility of exerting improper pressure on the members is feasible. Fifth, the PRMA has provisions on transparency with the management of the petroleum revenue but allows the Minister to declare certain information regarding the petroleum revenue confidential if its disclosure may adversely affect the performance of the funds. These two provisions are inconsistent because the latter nullifies the effect of the former. Sixth, the capping of the Ghana Stabilisation Fund without guidelines makes part of the oil revenue available to the government. Seventh, the transfer of the excess of the Ghana Stabilisation Fund into the Consolidated Fund defeats the purpose of establishing the PRMA. Eight, Public Interest Accountability Committee (PIAC) is an independent body charged with safeguarding the funds created under the PRMA but has no power to prosecute under the PRMA.

<sup>115</sup> See <https://www.modernghana.com/news/930782/mtn-builds-ghc478000-classroom-block-for-nhyiaeso.html> Accessed on 13 March 2021. The MTN Foundation built a six classroom block, a library and offices for staff and head teacher at Nhyiaeso Basic School in the Asante Akyem North District of the Ashanti Region of the Republic of Ghana. Also, the government of Ghana built 60-80 bed hospitals for US \$ 25 million. The African Development Bank in 2018 put up a 150 hospital bed hospital in Accra at the cost of US \$ 1.3 million without furnishing.

<sup>116</sup> The problem deals with the discretionary powers given to the Minister under the PRMA in several areas of the PRMA without checks and balances.

<sup>117</sup> Chapters 5, section 4, 6, section 2.3 and 7, section 2.2.1-2.2.3.

<sup>118</sup> Section 21(3) of the PRMA.

<sup>119</sup> Sections 54 (2) and 57 of the PRMA.

principal aim of this research to determine whether the PRMA is appropriate to prevent the resource curse.

The following are the objectives of the thesis: it examines the legal basis for the creation of the various funds under the PRMA and their desirability, particularly the Sovereign Wealth Funds. It shall then ascertain whether the management of the oil revenue enhances the use of such funds. It shall also assess the role of the institutions established under the PRMA to determine their impact regarding the management of the oil revenue.

#### 4. Research Questions

Although Ghana has natural resources, very little jurisprudence exists on managing the revenue accruing to the state. This research seeks to analyse the problematic sections of PRMA<sup>120</sup> discussed above to ensure optimal use of the oil revenues, fill the gaps, and contribute to knowledge in Ghana. The research seeks to investigate the adequacy of the PRMA governing oil revenue utilisation in Ghana.

Extensive literature exists on the management of oil resources.<sup>121</sup> Some research has addressed corruption and mismanagement of natural resource wealth in Africa.<sup>122</sup> However, the existing

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<sup>120</sup> See note 114 supra for the discussion of some of the challenges identified with operation of the PRMA. See Chapters 4, 5, 6 and 7 below.

<sup>121</sup> Humphreys et al, *Escaping the Resource Curse*, Paul Stevens & Evelyn Dietsche, *Resource Curse: An Analysis of Causes, Experiences and Possible Way Forward*, CEPMLP, David Chambers, Elroy Dimson & Anttilmanen, *The Norway Model*, Thorvaldur Gylfason, *Natural Resources Endowment: A Mixed Blessing*, LESIFO Working Paper No. 3535, Morgan Bazilia et al, *Oil, Energy, Poverty and Resource Dependence in West Africa*, *Journal of Energy & Natural Resources Law* Vol. 31, Issue 1, 2013, Gawdat Bahgat, *Sovereign Wealth Funds Dangers and Opportunities in International Affairs*, Vol. 84, Jennifer Drysdale, *Five Principles for the Management of Natural Resources Revenue: The case of Timor-Leste's Petroleum Revenue*, Ola Listhaug et al, *Oil Wealth Dissatisfaction and Political Trust in Norway: A Resource Curse?*, *Western European Politics*, Vol. 28 No. 4 at 834-851, Erika Weinthal et al, *Combating Resource Curse: An alternative Solution to Managing Mineral Wealth*, *Perspective on Politics* Vol. 1 March 2006, Emeka Daruigbo, Benn Eifert et al, *The Political Economy of Fiscal Policy and Economic Management in Oil Exporting Countries*, World Bank Policy Research, *Managing Oil Revenues for Socio-Economic Development in Nigeria: The Case for Community Trust Funds*, Davis, J. et al, 'Oil Funds: Problems Posing as Solutions?' *IMF Finance & Development Magazine* (38)4, Davis, J., et al, *Stabilization and Savings Funds for Non Renewable Resources*, IMF, Posner, R.A. 'Creating a Legal Framework for Economic Development', *The World Bank Research Observer* 13(1); 1-12 and Palley, 'Lifting the Natural Resource Curse', *Foreign Service Journal*, Vol. 80, 2003, 54-61 are some of the examples.

<sup>122</sup> Eyene Okpanachi et al, "Preventing the oil Resource Curse" in Ghana: Lessons from Nigeria, Jerome et al, *Addressing Oil Related Corruption in Africa. Is the Push for Transparency Enough?*, Catholic Relief Services, Ian Gary et al, *Africa's Oil Boom and the Poor*, Catholic Relief Services, *Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-State*, Global Witness, 2002, *All the Presidents Men: The Devastating Story of Oil and banking in Angola's Privatised War*, London Global Witness.

literature has not adequately addressed the law's use to manage revenue from oil to ensure economic growth. This thesis seeks to contribute to closing this knowledge gap.

This thesis seeks to make recommendations for improving Ghana's PRMA, to bolster the monitoring and compliance in a transparent and accountable manner. It does so by an in-depth analysis of Ghana's PRMA. As support, some elements of the legal regimes of Norway and Botswana are also mentioned, as examples of how they are managing their resource revenues. Lessons can be drawn from their experiences on a series of sub-questions:

1. Whether and to what extent discretionary powers of decision-makers would affect the management of the resource revenue?
2. Whether and how quality institutions would aid in the management of resource revenue?
3. Whether the creation of the various funds and their utilisation would assist the management of the oil revenue? and
4. To what extent the role of policy planning and project reporting would deal with non-compliance?

The results gleaned from such analyses assists in making recommendations on the following issues for the Ghanaian context precisely:

1. How the enactment of the PRMA aids the management of the oil revenue to avert the resource curse;
2. Whether the creation and operation of the Sovereign Wealth Fund is appropriate for Ghana and;
3. Whether and to what extent the Public Interest Accountability Committee can become independent under the PRMA to play its watchdog role.

These research questions allow for a critical assessment of the PRMA regarding the management of the revenue from Ghana's oil and thus assist in informing a response to the central problem outlined above. The analysis of the PRMA will reveal the weaknesses which allow the use of the money on projects not envisaged under the PRMA. The gaps identified in the PRMA will inform the recommendations and suggestions for amendments to the PRMA to enable Ghana to benefit from it in line with the objectives of the PRMA.

## 5. Research Methodology

The thesis examines Ghana's PRMA and discusses the challenges militating against the effective management of Ghana's oil revenue. It hence pursues the research question by undertaking a desk-top research study involving the analysis of the PRMA, given a matrix of evaluative standards identified at the outset.

While the focus is entirely on the Ghanaian position, the analysis allows some brief sideways to look at how Norway and Botswana manage their resource revenues without purporting to undertake a complete comparative study. The purpose of the two country examples' brief consideration is to find inspiration for suitable suggestions for Ghanaian law reform. Lessons from Norway and Botswana may help find solutions to Ghana's problems in managing oil revenue.

Norway is a developed country in Europe, at a different phase of its legal, political, social, and economic advancement than Ghana.<sup>123</sup> Botswana is an upper-middle-income economy<sup>124</sup> in Africa. Both these countries' systems represent aspirational models for Ghanaian legal and regulatory reform. Norway is an obvious choice, because of its effectiveness in managing its petroleum revenues, compared with the record of Ghana in managing its resource revenues.<sup>125</sup> From Norway's experience with resource revenue law and management, Ghana may learn to look ahead to motivate reforms and adjustments. It may also help Ghana identify the law and practice that best suit the Ghanaian context to ensure that citizens benefit from their resource wealth.<sup>126</sup>

Norway's revenue management legal regime has helped the country manage the resource fund appropriately.<sup>127</sup> The government's control is limited, and the system promotes transparency.<sup>128</sup> The legal framework for revenue management in Norway has attained increased independence from the government that has kept a distance between the politicians and the fund.<sup>129</sup> Norway's

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<sup>123</sup> Peter de Cruz, 'Comparative Law in a Changing World', 2<sup>nd</sup> Edn. (Cavendish Publishing, London, 1999), 24.

<sup>124</sup> Sarraf and Jiwanji, 'Beating the Resource Curse, the case of Botswana', in Environmental Economic Series, World Bank publication, 2001, 9.

<sup>125</sup> Chapters 1, section 2.3 and 7, sections 2.1, 2.2 (2.2.1-2.2.4).

<sup>126</sup> Peter de Cruz, (note 123), 24.

<sup>127</sup> Norway by an Act of Parliament created, the Norwegian Government Petroleum Fund in 1990. In 2006, the name changed to Government Pension Fund-Global.

<sup>128</sup> Velculescu, 'State Investment: Norway's Oil Fund Shows the Way for Wealth Funds, IMF Survey Magazine, Vol. 37 (07), 2008, 111, at <http://www.imf.org/en/News/Articles/2015/09/28/04/53/sopol07908a> accessed 22 March 2021.

<sup>129</sup> See Government Pension Fund Act (no. 123 of 21 December 2005). The Act is supplemented by the Management Mandate for the Government Pension Fund Norway and the Management mandate for the Government Pension Fund Global.

experience may be exemplary for other resource-rich economies,<sup>130</sup> but it does not face the same issues as many African countries, such as poverty, corruption and enduring adverse effects of colonialism.

The other chosen example of Botswana is suitable because, being an African country and having made remarkable improvements in its revenue management since independence, it is worthwhile to draw lessons from its experience. Botswana did not have very favourable conditions at independence in 1966, including the lack of a University, inequality, and infrastructure.<sup>131</sup> It had only 12 kilometers of paved streets, 22 university graduates from foreign universities and 100 secondary school leavers.<sup>132</sup> The *per capita* income in Botswana was around US\$ 80, which made it one of the poorest countries in the world.<sup>133</sup> Botswana's features did not deter the nation. Botswana took decisions that bootstrapped itself out of poverty. Botswana's story reflects a combination of factors, including the quality of institutions that constrained the political elite at independence, development through national development plans, and the vision of its leaders at independence.<sup>134</sup> Harvey et al., for example, argue that Botswana's outstanding economic performance can be explained by three elements, namely luck,<sup>135</sup> paying attention to management<sup>136</sup>, and negotiating skills<sup>137</sup> at the time of independence.<sup>138</sup>

Botswana's success story relates to the management of its mineral revenue to achieve growth.<sup>139</sup> The achievement has necessitated the choice of Botswana as a country worthy of emulation. In

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<sup>130</sup> Ramirez-Cendro et al., 'Is the Norwegian model exportable to combat Dutch Disease', *Resource Policy*, Vol. 48, 2016, 85.

<sup>131</sup> Acemoglu et al., 'An African Success Story: Botswana', CEPR Discussion Paper, 2002, 1. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=290791](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=290791) accessed 24 March 2021. Botswana now boast of 6 tertiary institutions. They are University of Botswana, Botswana International University of Science & Technology, Botswana College of Agriculture, Botswana Accountancy College, Limkokwing University of Creative Technology and Botho University. Limkokwing and Botho are private universities.

<sup>132</sup> Acemoglu et al., (note 131), 1.

<sup>133</sup> Sebudubudu, 'The Institutional Framework of the Developmental State' in Botswana' in *The Potentiality of Developmental States in Africa: Botswana & Uganda Compared* (eds.) Mbabazi and Tylor, 2005, 82.

<sup>134</sup> Acemoglu et al., (note 131), 3. See also Sebudubudu et al., 'The Critical role of leadership in Botswana's development: What lessons?' *Leadership*, Vol. 8 (1), 2011, 31.

<sup>135</sup> According to Harvey et al., Botswana's luck relates to the discovery of diamond, copper-nickel and export of Botswana's beef to the United Kingdom as against the deplorable state of the country at independence.

<sup>136</sup> Botswana's national development plans introduced in phases led to economic transformation.

<sup>137</sup> Botswana negotiated good agreements regarding the exploitation of their minerals that benefited the country.

<sup>138</sup> Harvey et al, 'Policy Choice and Development Performance in Botswana', (ed.) Keith Griffin, Macmillan Press Limited, 1990, 6-10.

<sup>139</sup> Sarraf et al., (note 124), 9.

many ways, this African country is comparable to its Ghanaian counterpart in socio-economic terms, given the prevalence of HIV, unemployment, poverty, and inequality problems.<sup>140</sup>

Botswana's diamond industry's revenue, coupled with the factors enumerated, facilitated its rapid economic growth.<sup>141</sup> The lack of development and other necessities compelled the government to create an environment that promotes economic growth and development.<sup>142</sup> The political leaders of Botswana accepted the country's enumerated above, which propelled them to secure economic transformation for the country.<sup>143</sup> The success story of Botswana shows the emergence of the right combination of influence at the appropriate time, which spearheaded the country's development.<sup>144</sup> The State of Botswana was a country built around effective institutions, history, and leadership.<sup>145</sup> These are essential pointers Ghana can tap into to influence the management of its oil revenue. If there is one thing that the examples of Botswana and Norway illustrate well, it is essential to make a long-term view in managing revenue. Using examples from these two jurisdictions guide Ghana to mitigate the challenges of mismanagement of the oil revenues and combat the resource curse.

This thesis analyses the PRMA under four main themes and ascertains how the experience of Norway and Botswana would offer lessons to Ghana. First, the levels of transparency and accountability existing under Ghana's PRMA are considered.<sup>146</sup> Second, deals with institutions established under the PRMA and their role are then scrutinised.<sup>147</sup> Third, the creation of various funds, including sovereign wealth funds (SWF's), both within and outside the PRMA, which benefits from the oil revenue, are then investigated to determine their desirability.<sup>148</sup> The theoretical framework of the SWFs takes place in Chapter 6 and further consider SWFs as obtained under the PRMA. This thesis concedes that the appropriateness of SWFs is a topic for a doctoral thesis on its own but in a limited sense, this research considers whether its creation under the PRMA is desirable to assist Ghana overcome mismanagement of the oil revenue. Fourth, the

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<sup>140</sup> Acemoglu et al., (note 131), 2. See also Leith, 'Why Botswana Prospered', McGill-Queen's University Press, 2005, 17-18.

<sup>141</sup> Sebudubudu, (note 133), 79.

<sup>142</sup> Sebudubudu, (note 133), 80.

<sup>143</sup> Sebudubudu et al., 'The Critical role of leadership in Botswana's development: What lessons?', *Leadership*, Vol. 8 (1), 2011, 33-34.

<sup>144</sup> Leith, 'Why Botswana Prospered', McGill-Queen's University Press, 2005, 112.

<sup>145</sup> Leith, (note 144), 112. See also McFerson, (note 8), 1544.

<sup>146</sup> Chapter 4, section 3.

<sup>147</sup> Chapter 5, section 4.

<sup>148</sup> Chapter 6, sections 2.2 (2.2.1 and 2.2.2) and 3 on Sovereign Wealth Funds (SWF) generally.

process of managing resource revenues are critically examined.<sup>149</sup> The exercise will reveal the challenges, and the thesis will ascertain how Botswana and Norway overcame such obstacles, resulting in such good outcomes from their revenue management laws.<sup>150</sup>

The desk-top analysis study involves analytical legal research comprising primary and secondary sources, including the constitution of Ghana and the PRMA on revenue management. In assessing how Ghana has managed the oil revenues, the study will use the Auditor-General and the Public Interest Accountability Committee reports. These reports discuss the oil revenue management, and the exercise will reveal whether the administration is following the PRMA. Chapters 4, 5, 6, and 7 of the thesis have addressed different questions related to the PRMA and how it functions in Ghana. These discussions demonstrate how things work under the PRMA, and the thesis may be classified as a socio-political study of the law.

## 6. Limitation of the study

This thesis focuses only on how transparency and accountability are achieved in a single legislative instrument in Ghana through a narrow, tight focus with a deep analysis of the PRMA. The study does not consider other relevant local laws dealing with transparency and accountability. The research did not engage international and regional treaties and instruments that underpin transparency and accountability in revenue management applicable to Ghana. These issues are not addressed due to the limited scope of the research and the permissible word limit. These form part of areas of further research regarding transparency and accountability in the management of resource revenue in Ghana.

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<sup>149</sup> Chapter 7, sections 2.2 and 3.

<sup>150</sup> Martin, 'A Closer Look at Botswana's Development: The Role of Institutions, Adamolekun, 'Pragmatic Institutional design in Botswana-Salient features and Assessment', *International Journal of Public Sector Management*, Vol. 12 (7), 1999, Adne et al., 'Robinson, 'Botswana as a Role Model for Country Success', in *Achieving Development Success* (ed.) Augustine Kwasi Fosu, Research Paper 2009/4, 2009, Sebudubudu et al., 'Managing Resources and Democratic Order: The Experience of Botswana', *South African Institute of International Affairs, Occasional Paper No. 31*, 2009, Acemoglu et al., 'An African Success Story: Botswana, CEPR Discussion Paper, 2002, Adne et al., 'Can Norway be a role model for natural resource abundant countries?', *WIDER Research Paper*, No. 2009/23, 2009, Holden, 'Avoiding the resource curse the case Norway', *Energy Policy*, Vol. 63, 2013, Thurber et al., 'Exporting the "Norwegian Model": The Effect of administrative design on oil sector performance', *Energy Policy*, Vol. 39, 2011.

## 7. The Research Structure

This thesis comprises nine chapters. Following this, Chapter 1, which introduces the research question, Chapter 2 addresses the resource-curse phenomenon by defining and tracing its causes and the existing responses for overcoming the resource curse. The chapter argues that current answers to the resource-curse do not help in the absence of a revenue management law. The enactment of a revenue management law is not a panacea against the mismanagement of resource revenues in the absence of transparency and accountability in managing oil revenues. Following the above cluster of conceptualising chapters, Chapter 3 conceptualises transparency and accountability in managing oil revenues. It discusses transparency and accountability and focuses on the origin, meaning, institutionalisation, types, importance, and limitations of transparency and accountability. The chapter proceeds to address the requirements of accountability and transparency in the context of managing oil revenues. The chapter posits that the disclosure of oil revenue appears not to be a problem, but challenges exist with accountability.

Chapter 4 of the thesis then assesses the Petroleum Revenue Management Act (PRMA) in the context of transparency and accountability. The discussion in this chapter focuses on the provisions on transparency and accountability in the PRMA. It examines the power of the Finance Minister under the PRMA and its effect on managing the resource revenue.

The section further sheds light on the effect of weak oversight and governance regimes, the use of oil revenue outside the PRMA, and the dominance of political actors in managing the oil revenues. The chapter argues that the provisions in the PRMA on transparency and accountability creates a weak link. The thesis argues that until the revision of the PRMA, the involvement of other stakeholders, including civil society organisations, academic and research institutions, would help address the challenges with managing the oil revenue.

Chapter 5 examines institutions and their role in the management of resource revenue. The discussion seeks to identify the characteristics of quality institutions that aid the management of resource revenue. With these features, the chapter investigates the quality of institutions established under the PRMA and their essential functions in managing the oil revenue. The chapter argues that the constitutional power of Ghana's President to appoint all the heads of State institutions contributes to the inability of institutions to take bold decisions. This may exacerbate the problem of a resource curse.

Chapter 6 is devoted to the evaluation of the funds created under the PRMA and their application. The chapter determines whether the creation of the various funds and their utilisation helps manage the oil revenue. The chapter argues that Ghana, with development challenges, must not create too many funds. Moreover, the current provisions on the funds in the PRMA are not helpful since it makes money available to the government to spend outside the PRMA. The chapter suggests that the operation of numerous funds coupled with transfers to funds existing outside the PRMA and the minister's discretionary powers are not good indicators of managing oil revenue.

Chapter 7 evaluates the reports of the Auditor-General and the PIAC regarding the expenditure of the oil revenue. The reports issued by these two entities reveal non-compliance with the PRMA, misapplication of the Annual Budget Funding Amount (ABFA),<sup>151</sup> manipulation of the Ghana Stabilisation Fund,<sup>152</sup> and frivolous spending by the Ghana National Petroleum Commission (GNPC). The chapter concludes with a recommendation for the amendment of the PRMA to reflect the best practices existing in Norway and Botswana. Chapter 8 discusses the model of managing resource revenues in Norway and Botswana. The focus of the chapter is to let Ghana draw from indicators of better practices existing in these countries to address the problems identified in Chapters 4 to 7 of the thesis.

Chapter 9 concludes the thesis by summing up the findings and conclusions and offering recommendations for improving the PRMA.

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<sup>151</sup> See sections 18 (1) and 21 (1) of the PRMA.

<sup>152</sup> See sections 9 (1) and (2) of the PRMA.

# Chapter 2: Resource Curse and Developing Resource-Rich Countries

## 1. Introduction

Rostow argues that developing countries endowed with natural resources must utilise funds generated from their natural resources to build economies on the examples of Australia, the United States of America and Britain.<sup>153</sup> Some natural resources, such as oil, gas, and minerals, are exhaustible.<sup>154</sup> Managing resource revenue well may aid the escape or minimise the resource curse phenomenon.<sup>155</sup> The resource curse concerns non-renewable natural resources, which do not have a regenerative wealth potential.<sup>156</sup>

For natural resource wealth to be beneficial, the focus cannot merely be on its extraction; the economy must allow for removal followed by manufacturing activities to ensure added value to the raw materials that make up extracted resources.<sup>157</sup> Despite natural resources, in some African countries and the Middle East, poverty and low quality of life are prevalent in such countries attributable to mismanagement of resource wealth.<sup>158</sup> There is a need for a paradigm shift in policies regarding the utilisation of resource revenues.

The expectation is that nations endowed with natural resources would use resource wealth to enhance their economic development.<sup>159</sup> However, those with little or no such resources performed economically better than their resource-rich counterparts.<sup>160</sup> Examples from Norway, the United States of America and the United Kingdom show that it is possible to have natural resources and not suffer the resource curse. The differences in performances may be attributable to the quality and attitude of leadership, the structure of the economies of these countries, and sheer

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<sup>153</sup> Rosser, 'Escaping the Resource Curse', *New Political Economy*, Vol. 11, No. 4, 2006, 557.

<sup>154</sup> Badeeb et al., 'The evolution of the natural resource curse thesis: A critical literature survey', *Resources Policy*, 51, 2017, 124.

<sup>155</sup> Badeeb et al., (note 154), 124.

<sup>156</sup> Badeeb et al., (note 154), 124.

<sup>157</sup> Humphrey et al, (note 46), 3-4.

<sup>158</sup> Badeeb et al., (note 154), 124.

<sup>159</sup> de Medeiros Costa et al., 'Institutional analysis and the "resource curse" in developing Countries', *Energy Policy*, Vol. 63, 2013, 789.

<sup>160</sup> Humphrey et al, (note 47), 1.

mismanagement and corruption of the resource revenues by those entrusted with its management. This thesis focuses on the latter.

The Petroleum Revenue Management Act (PRMA) controls Ghana's non-renewable petroleum resource revenue and provides the utilisation of oil revenue.<sup>161</sup> The provisions in the PRMA deal with allocations, disbursements, and investments. The various accounts created to take care of these are the Ghana Stabilisation Fund,<sup>162</sup> the Ghana Heritage Fund,<sup>163</sup> and the Annual Budget Funding Amount.<sup>164</sup> These accounts receive money for every crude oil lifted. The annual budget funding amount paid to the government forms part of the funds for the national budget and has specific functions under the PRMA.<sup>165</sup> The revenue exists to maximise economic development, promote equality and economic opportunity to achieve even and balanced development of the regions in Ghana and for long-term economic growth.<sup>166</sup> The expectation may become a mirage due to mismanagement of oil revenue, as evidenced by the Auditor-General reports and the Public Interest Accountability Committee (PIAC) established under Ghana's PRMA.

The PRMA provides a framework to combat mismanagement by providing accountability, transparency, and the legal framework for utilising oil revenue.<sup>167</sup> Ghana has enacted the PRMA that sets out the legal framework for the “collection, allocation, and disbursement” of the petroleum revenue. However, the government's spending of petroleum revenue outside the parameters of the PRMA and manipulation of the funds (addressed in chapters 6 and 7) calls for concern. If such conduct continues, the effect of Ghana's management of the oil revenue would not be different from countries afflicted with the resource curse. This conclusion is premised on Ghana's inability to manage the mineral wealth and has once been exposed to the resource curse.<sup>168</sup> This chapter examines the causes of the resource curse phenomenon and the existing responses preferred to deal with the problem. The current answers alone cannot do away with the resource

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<sup>161</sup> Petroleum Revenue Management Act, 2011, Act 815 and its amendment Petroleum Revenue Management (Amendment) Act, 2015, Act 893 hereinafter referred to as the PRMA.

<sup>162</sup> Sections 9 and 12 of Act 815 and section 5 (a) and (b) of Act 893.

<sup>163</sup> Sections 10 and 13 of the PRMA.

<sup>164</sup> Sections 21 of Act 815 and section 8 (4) (b) of Act 893.

<sup>165</sup> Sections 18 and 21 of the PRMA.

<sup>166</sup> Section 21 (1) and (2) of the PRMA.

<sup>167</sup> Sections 49 to 57 of the PRMA titled.

<sup>168</sup> Kopinski et al., ‘Resource Curse or Resource Disease? Oil in Ghana’ *African Affairs*, Vol. 112, (449), 2013, 585. For the discussion of the manifestations of gaps, problems and challenges relating to lack of transparency and accountability in the management of Ghana's oil revenue, see Chapters 4 to 6 below.

curse in Ghana. Revenue management law coupled with transparency and accountability is the missing link in addressing the resource curse.

The chapter argues that the present form of the PRMA needs legislative reforms due to the political dominance and the powers available to the Minister of Finance in the management without checks and balances.<sup>169</sup> The chapter concludes that the enactment of the PRMA is not a panacea for the mismanagement of Ghana's oil revenue. The framework of the PRMA requires checks and balances to assist Ghana in overcoming the challenge of mismanagement that leads to the resource curse. Chapters 4, 5, 6, and 7 of this thesis addresses these issues.

## 2. Resource Curse Phenomenon

The resource curse phenomenon refers to the inversely correlated connection between countries with high dependence on natural resources and economic growth rates.<sup>170</sup> There are several explanations for the resource curse phenomenon in disciplines ranging from politics to economics. Political scientists explain that poor governance, corruption, and rent-seeking weaken democracy.<sup>171</sup> Such behaviour also directs revenue from natural resources meant to benefit the citizens to the elite.<sup>172</sup> Economists attribute the stunted growth of resource-rich countries to the so-called Dutch disease, rent-seeking, over-confidence about the potential of their natural resources and neglect of education.<sup>173</sup> The bottom line of these analyses for present purposes is that possession of natural resources does not necessarily confer economic success.<sup>174</sup> The premise supported here is that the resource curse afflicts countries because they fail to manage their resource revenue.<sup>175</sup> In Africa, States like Angola, Nigeria, Sudan, and Congo-Brazzaville, are rich

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<sup>169</sup> Chapter 6, sections 2.2.1 and 2.3, chapter 7, sections 2.2.1, 2.2.2 and 2.2.3.

<sup>170</sup> Karl, *Covering Oil: A Guide to Energy and Development*, 2005, 23.

<sup>171</sup> Kopinski et al., (note 168), 584.

<sup>172</sup> Kopinski et al., (note 168), 584. See also Humphreys et al., (note 47); 12, Elissaies Papyrakis and Roger Gerlagh, in 'The Resource Curse Hypothesis and its Transmission Channels published in the *Journal of Comparative Economics*, 32 (2004) 181 at 181-182 and 190.

<sup>173</sup> Gylfason, 'Natural Resources, Education and Economic Development', *European Economic Review*, Vol. 45, 2001, 850.

<sup>174</sup> Franknel, 'The Natural Resource Curse: A Survey', NBER Working Papers No. 15836, 2010, 4.

<sup>175</sup> Sarraf et al., (note 124), 1. The resource curse has been addressed by research such as; Jeffrey D. Sachs and Andrew Warner, 'Natural Resource Abundance and Economic Growth', NBER Working Paper No. 5398, December 1995, Richard M. Auty, 'Sustaining Development in Mineral Economies: The Resource Curse Thesis' (Routledge, London, 1993), Sachs J. and Warner A., 'The Curse of Natural Resources' (2001) (45) *European Economic Review*, 827, Paul Stevens and Evelyn Dietsche, 'Resource Curse: An analysis of causes, experiences and possible ways forward',

in oil and other minerals; however, these countries continue to have low *per capita* income. Their citizens experience a low quality of life.<sup>176</sup> Zambia, Nigeria, the Democratic Republic of Congo, and Sierra Leone are further examples of countries that have wasted wealth from their natural resources, affecting these nations' development outcomes.<sup>177</sup> Natural resources in themselves are not a curse, but problems arise when mismanaged.<sup>178</sup>

The actual examples of mismanagement and corruption in Congo-Brazzaville, Angola, Equatorial Guinea, Nigeria, and Gabon<sup>179</sup> should counsel Ghana to avoid the resource curse. Ghana has experience of mismanagement and corruption of public funds and, having found oil, should tread cautiously to optimise oil revenue.<sup>180</sup> A change of government often necessitates the setting up of a Commission of Inquiry into the activities of the previous administration to investigate allegations of corruption and bribery.<sup>181</sup> For example, after the overthrow of the Convention People's Party, the government of Kwame Nkrumah, forty commissions or committees of enquiry were set up to investigate allegations of bribery and corruption against the government.<sup>182</sup> The reports issued by the commissions showed that lack of supervisory controls allowed corruption to aggravate.<sup>183</sup>

Some resource-abundant states are over-confident and rely on natural resources without designing measures and programmes to help grow the economy.<sup>184</sup> Other resource-abundant countries focus on natural resources as their most valuable asset at the expense of developing their human resources.<sup>185</sup> Such countries ignore education that prepares the human resource support of the nation.

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Energy Policy, 36 (2008) 56, Larry Diamond & Jack Mosbacher, 'Africa's Coming Resource Curse and How to Avoid it', 92 Foreign Affairs 86, 2013, 86, Weinthal & Luong, 'Combating the Resource Curse: An Alternative Solution to Managing Mineral Wealth, Perspective on Politics', March, 2006, Vol. 4 (1), 35-53.

<sup>176</sup> Frankel, (note 174), 4.

<sup>177</sup> Lewin, 'Botswana's Success: Good Governance, Good Policies, and Good Luck', 82 in Yes African Can: success stories from a dynamic continent, Chahan-Pole et al., World Bank, 2011.

<sup>178</sup> Gylfason, (note 173), 851.

<sup>179</sup> Chapter 1, section 2.1.

<sup>180</sup> Chapter 1, section 2.3.

<sup>181</sup> Pabia, (note 88).

<sup>182</sup> Werlin, 'The Roots of Corruption - The Ghanaian Enquiry', The Journal of Modern African Studies, Vol. 10 (2), 1972, 251-252.

<sup>183</sup> Werlin, (note 182), 264.

<sup>184</sup> Sachs et al., 'Natural resource intensity and economic growth' in: Mayer, J., Chambers, B., Farooq, A. (Eds.), 1999. Development Policies in Natural Resource Economies. Edward Elgar, Cheltenham, U. K., and Northampton, MA, Chapter 2.

<sup>185</sup> Gylfason, (note 173), 850.

The counter-argument to the resource curse focuses on the failure of resource-rich countries to manage their resource revenue, primarily because of inefficient political structures.<sup>186</sup> If the institutions of the State, in resource-rich nations and the handlers of the economy, focus on managing wealth from natural resources, so the argument goes, the presence of natural resources would be a blessing rather than a curse. For example, the United States of America, Canada, and Australia are strong economies despite petroleum and other natural resources in their countries.<sup>187</sup> Norway was initially a poor European country, but the efficient handling of its oil revenue has made it one of the wealthiest countries in Europe.<sup>188</sup> In Africa, Botswana, very poor at independence, successfully managed income from its diamond mines to propel development.<sup>189</sup> Despite managing their resource revenues well, Botswana's challenges regarding the AIDS pandemic, a weak civil society, poor rural areas, high unemployment rates, and discrimination against the minority group.<sup>190</sup> The causes of the resource curse and the possible prescriptions to mitigate the effect of the phenomenon follows.

## 2.1 Causes of the Resource Curse

Several reasons account for countries suffering from the resource curse, and various authors classify the sources differently.<sup>191</sup> Putting the sources of explanation together reveals the following as common to all the classifications; namely, price volatility, Dutch disease, weak economic linkages, rent-seeking, corruption, and lack of transparency and accountability are common to the explanations. The fear of Ghana falling into the trap of the natural resource curse, which is an observed tendency for some countries endowed with and dependent upon oil and mineral resources to experience slow growth, was envisaged.<sup>192</sup> The reason for this skepticism stems from Ghana's

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<sup>186</sup> Wright et al., 'Exorcizing the Resource Curse: Minerals as a Knowledge Industry, Past and Present', 2002, 3. Available at <http://www.handresearch.org/papers/263.pdf> Accessed 14 March 2021.

<sup>187</sup> Duruigbo, (note 12), 9.

<sup>188</sup> Duruigbo, (note 12), 9.

<sup>189</sup> Duruigbo, (note 12), 9.

<sup>190</sup> Hillbom, 'Diamonds or development? A Structural assessment of Botswana's forty years of Success', in *Journal of Modern African Studies*, Vol. 46, (2), 2008, 192-193. See also Robert L. Curry, Jr., 'Poverty and Mass Unemployment in Mineral-Rich Botswana', *The American Journal of Economics and Sociology*, Vol. 46, No. 1, 1987, 71-87. Taylor, 'As Good as It Gets? Botswana "Democratic Development"', in *Journal of Contemporary African Studies*, Vol. 21, (2), 2003, 215-216.

<sup>191</sup> Stevens, 'Resource Impact – Curse or Blessing? A Literature Survey', 10. Available at <https://www.yumpu.com/en/document/view/8734515/resource-impact-a-curse-or-a-blessing-university-of-dundee> Accessed 14 March 2021, Duruigbo, (note 12), 12. Humphrey et al, (note 47), 4-14. The explanations include structuralist policies, social, economic, and political reasons.

<sup>192</sup> Amundsen, I., 'Can Ghana avoid the Resource Curse', in *Governance of the Petroleum sector in an Emerging Developing Economy*, (ed.) Kwaku Appiah-Adu, 2013, 109-144, Amundsen, I., 'The Challenges of Petroleum

history in the mining sector, in which 100 years of mining gold and other minerals have not translated into a significant transformation of the Ghanaian economy.<sup>193</sup> The section will further discuss how the resource curse is prevalent in Ghana under the markers discussed.

### 2.1.1 Price Volatility

Price volatility refers to the unpredictable nature of the fluctuations in the prices of natural resources on the world market. Price volatility contributes to the resource curse, which accounts for the slow growth of some resource-rich economies.<sup>194</sup> The revenue from natural resources is volatile due to changes in the world market prices at short intervals.<sup>195</sup> A study conducted between 1970-1992 disclosed that countries exporting primary commodities<sup>196</sup> went through periods of trade volatility of two to three times greater than industrialised countries within the same period.<sup>197</sup> For example, the volatility of crude oil emanates from three sources: the first deals with the amount of crude oil extracted, subject to change over time; the second with the type of agreement executed between the multinational oil companies and the government; and the third with the world market price of the natural resource.<sup>198</sup> Developing resource-rich countries have control over the second variable but none over the first and the third variables. Developing resource-rich countries must pay attention during negotiation,

The extraction of crude oil is high in the beginning and declines towards the end of the life of the mine.<sup>199</sup> The type of agreement signed between the host country and the multinational company determines the resource-rich nation's revenue.<sup>200</sup> Finally, the world market price of crude oil

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Revenues: Ghana, Corruption and Institution' in Collaborative Governance in Extractive Industries in Africa, (ed.) Afful-Koomson and Asubonteng, 2015, 106-123, Arthur, P., 'Avoiding the Resource Curse in Ghana: Assessing the options' in Natural Resources and Social Conflict, 2012, 108-127.

<sup>193</sup> Kuzu & Nantogmah, (note 16), 8.

<sup>194</sup> Mikesell, 'Explaining the Resource Curse, with special reference to Mine Exporting Countries', Resources Policy, 1997, Vol. 23, No. 4, 193.

<sup>195</sup> Stevens, (note 191), 10.

<sup>196</sup> The export of primary commodities refers to exporting raw materials without processing to add value to the resource.

<sup>197</sup> Mikesell, (note 192), 193.

<sup>198</sup> Humphrey et al, (note 47), 6-7.

<sup>199</sup> Humphrey et al, (note 47), 6.

<sup>200</sup> Kim et al., 'Lex Petrolea and the internationalization of petroleum agreements: focus on Host Governments Contracts', Journal of World Energy Law and Business, Vol. 5, No. 3, 2012, 186-189. They identify three main host government contracts, namely, Concessions, Production sharing contracts and Service Agreements.

determines the amount the state gets. The host country has no control whatsoever over the income to be generated.

The fall of commodity prices on the world market let government revenue dwindle, posing a challenge for resource-rich countries in the area of economic planning.<sup>201</sup> The absence of economic diversification worsens the economy's growth due to resource-rich countries heavy reliance on resource revenue.<sup>202</sup> The fluctuation may also encourage resource-rich nations to borrow in times of boom against oil revenues. Still, when the price fall and the loans are due, resource-rich countries must adjust expenditures to settle the debts in the 1980s in Mexico, Nigeria, and Venezuela.<sup>203</sup> Price volatility hampers growth, and the argument is that developing resource-rich countries must diversify their economies and establish stabilisation<sup>204</sup> and savings guidelines.<sup>205</sup> Getting over price volatility requires adequate planning and diversification of resource-rich economies to not depend solely on resource revenue.

In Ghana, crude oil plays an essential role in the economy. From 2011 when it became an exportable commodity in addition to cocoa and gold, it contributed 22 per cent of Ghana's total export revenue.<sup>206</sup> Due to price volatility, any fall in crude oil prices affects the economy adversely, like total revenue. The fall in crude oil prices in 2014 negatively affected Ghana's economic growth, fiscal management and macroeconomic stability and lowered the prospect for growth in the Gross Domestic Product (GDP).<sup>207</sup> Diversification by value addition to primary commodities is imperative for Ghana.

### 2.1.2 Dutch disease

Dutch disease refers to the Netherlands' experience in the 1960s, on the discovery of gas, that led to the neglect of the other sectors of the economy.<sup>208</sup> The Dutch disease explains the effect of a

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<sup>201</sup> Humphrey et al, (note 47), 8. See also Collier, 'The Political Economy of Natural Resources', *Social Research*, Vol. 77 (4) 2010, 1122.

<sup>202</sup> Weinthal et al., (note 43), 39 and Sarraf and Jiwani, (note 124).

<sup>203</sup> Humphrey et al, (note 47), 8.

<sup>204</sup> See chapter 6 for funds established under the PRMA.

<sup>205</sup> Van der Ploeg et al., 'Volatility and the natural resource curse', *Oxford Economic Papers*, Vol. 61 (4), 2009, 736.

<sup>206</sup> Institute for Fiscal Studies, 'Ghana: Impact of the falling Crude Oil Prices, Fiscal Alert, Vol. 2, 2015, 2. Available at <https://ifsghana.org/wp-content/uploads/2015/12/Fiscal-Alert-No.-2-Ghana-Impact-of-the-Falling-Crude-Oil-Prices-Sept-2015.pdf> accessed on 22 September 2021.

<sup>207</sup> (Note 206), 2-3.

<sup>208</sup> Duruigbo, (note 12), 14.

sudden inflow of foreign currency into an economy due to natural resource exploitation and its consequent impact on other sectors of the economy.<sup>209</sup> The boom effect creates an appreciation in the exchange rate of their currency and attracts labour to the oil industry due to high wages.<sup>210</sup> The impact of the movement lowered output in the other production areas, thereby leading to an increase in unemployment.<sup>211</sup> Factors of production,<sup>212</sup> like land, labour, capital, and entrepreneurship, migrate to the oil sector due to the real exchange rate and increase in wages in the oil segment, which cause other areas to shrink.<sup>213</sup>

The Dutch disease renders the non-booming tradable sectors less competitive and crowds out domains previously doing well.<sup>214</sup> In the case of the Netherlands, it was the manufacturing sector that suffered.<sup>215</sup> In developing economies, such as Ghana, the agricultural industry is often the one negatively affected.<sup>216</sup> The adverse consequences include job losses and sudden unemployment, requiring reskilling workers to find new jobs in the extractive industry.<sup>217</sup>

Regardless of the sectors affected, when a country's crude oil (or other resources upon which it depends) gets depleted, the different sectors that did not receive any necessary attention during the boom period may not recover from the neglect.<sup>218</sup> With increased foreign revenue pumped into the local economy, politicians often resort to short-term expenditure and other expenses that will not cause the nation's growth but allow them to hold onto the power and not take a holistic approach to develop the economy.<sup>219</sup>

This thesis argues that resource-rich countries must pay attention to all sectors of the economy upon discovering natural resources.<sup>220</sup> Paying attention to the other areas includes creating linkages

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<sup>209</sup> Brincikova, 'The Dutch Disease: An Overview', *European Scientific Journal*, Special Edition, August 2016, 95.

<sup>210</sup> Corden, 'Booming Sector and Dutch Disease Economics: Survey and Consolidation', *Oxford Economic Papers*, New Series, Vol. 36, (3), 360-361.

<sup>211</sup> Corden, (note 206), 361.

<sup>212</sup> Factors of production are inputs used in the production of goods or services to make an economic profit.

<sup>213</sup> Stevens, '(note 191).

<sup>214</sup> Duruigbo, (note 12), 14.

<sup>215</sup> Humphrey et al, (note 47), 5.

<sup>216</sup> Humphrey et al, (note 47), 5.

<sup>217</sup> Humphrey et al, (note 47), 6.

<sup>218</sup> Humphrey et al, (note 47), 6.

<sup>219</sup> Brincikova, (note 209), 97.

<sup>220</sup> Carneiro, 'Developmental Challenges of Resource-Rich Countries: The Case of Oil Exporters', *Proceedings of the VI International Colloquium*, 2007. Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=990091](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=990091) accessed 14 March 2021.

between the resource sector and the other sectors. Upon depleting the resources, the State can rely on the different sectors that received attention during the boom.

Ghana is an agrarian economy and not industry-led. Agriculture continues to drive the economy bringing in foreign exchange of US\$2,197 million in 2009.<sup>221</sup> The government has not abandoned the sector but has introduced interventions such as increases in producer price of cocoa, mass cocoa spraying exercise, supply of subsidized fertilizer, establishing the Buffer Stock Management Company to provide a ready market for farm products, among others, demonstrates its commitment to boost agriculture production despite the oil discovery. The government's introduction of the government's flagship programme planting for food and jobs is the government's effort to direct attention to other sectors of the economy. This is a positive step to prevent distortions and to avoid the Dutch disease.

### 2.1.3 Poor economic linkages

Countries endowed with natural resources see the resources as a means to fight poverty and build their economies, but their expectation is not materialised.<sup>222</sup> If the exploitation of natural resources has no link with the local economy, such a hope would be a mirage. The lack of economic linkages between local economies and the extractive industries contributes to the resource curse phenomenon. The export of primary commodity products alone cannot generate growth without linkages between the export sector and other sectors of the economy, emanating from the weak negotiating position of developing resource-rich countries.<sup>223</sup>

The exploration and exploitation of natural resources require technical knowledge and financial strength. Resource-rich countries often lack these capabilities and rely on multinational companies for the exploitation of their natural resources.<sup>224</sup> The engagement between multinationals and the governments of resource-rich nations indicates that multinationals are essential players in the

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<sup>221</sup> Datey-Baah and Amponsah-Tawiah, 'Emerging "Dutch disease" in emerging oil economy: Ghana's perspective', *Society and Business Review*, Vol. 7 (2), 2012, 197.

<sup>222</sup> Freudenburg et al., 'Linked to what? Economic Linkages in an extractive economy', *Society & Natural Resources*, Vol. 11, (6), 569 – 570.

<sup>223</sup> Duruigbo, (note 12), 14, who cited Odin Knudsen and Andrews Parnes, 'Trade Instability and Economic Growth: An empirical Study', (1975), 305.

<sup>224</sup> Humphrey et al., (note 47), 4-5.

development plan of resource-rich countries.<sup>225</sup> The relationship should benefit both parties. However, multinational oil companies often seek favourable terms during contracts negotiations with host developing countries.<sup>226</sup>

Multinational oil companies end up in better conditions during negotiation with resource-rich developing countries.<sup>227</sup> The position assumed by host developing nations is due to the lack of linkage between the resource sector and other sectors. On the one hand, forward linkages refer to where the resource-rich country negotiates to process the raw material before exports.<sup>228</sup> On the other hand, backward linkages deal with how local industries supply inputs for the commodity's production.<sup>229</sup> For instance, in gold mining, the ties are non-existing, except for the few goldsmiths who refines gold on a domestic scale.<sup>230</sup> Resource-rich countries often negotiate Foreign Direct Investment (FDI) in the resource sector with the multinational oil companies without seeking to create these linkages with the local economy.<sup>231</sup> The disconnect between the natural resource industry and the economy works against the interest of the resource-rich state, with no value being added to the natural resource, leading to little or no connection to the other sectors of the economy.

In most resource-rich countries, including Ghana, crude oil is exported and refined overseas due to the contract's nature between the state and the International Oil Company (OIC).<sup>232</sup> However, recent examples show that resource-rich nations have recognised the need to negotiate better oil agreements and take advantage of the petroleum industry to benefit the local economy. Ghana, for instance, has incorporated the Ghana National Gas Company, jointly financed by the government

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<sup>225</sup> Rodriguez-Clare, 'Multinationals, Linkages and Economic Development', *The American Economic Review*, Vol. 86, No. 4, 1996, 852.

<sup>226</sup> Stiglitz, 'What Is the Role of the State?' in Macartan Humphrey et al, (eds.) in *Escaping the Resource Curse*, New York Columbia University Press (2007), 24.

<sup>227</sup> Humphrey et al, (note 47), 5. See also Hugo Meyer van den Berg, 'Regulation of the Upstream Petroleum Industry: A Comparative Analysis and Evaluation of Regulatory Frameworks of South Africa and Namibia', A PhD thesis submitted to the University of Cape Town, February 2014, 3-4.

<sup>228</sup> Bloch and Owusu, 'Linkages in Ghana's gold mining industry: Challenging the enclave thesis', *Resources Policy*, 37, 2012, 438.

<sup>229</sup> Bloch and Owusu, (note 223), 438.

<sup>230</sup> Bloch and Owusu, (note 223), 439.

<sup>231</sup> Hansen, 'From enclave to linkage economies? A review of the Literature on linkages between extractive and multinational corporations and local industry in Africa', *DIIS Working Paper*, 2014:2, 5.

<sup>232</sup> Ghana has a crude oil refinery. It's a puzzle that Ghana failed to negotiate with the Jubilee Partners for a portion of the crude to remain and refined in Ghana to benefit from the by-products of refining.

of Ghana and the Jubilee operators through intense negotiation at the Jubilee oil fields in Takoradi.<sup>233</sup>

Uganda is another example of an African country attempting to link the local economy and the extractive industry. When Uganda discovered oil, the government commissioned Norwegian, Swiss and American lawyers to study and advise how to derive the best out of the new petroleum industry.<sup>234</sup> The study concluded that if Uganda put up a refinery, it stands to gain from exploiting its oil since the by-products of refining would stay in Uganda and create employment by supplying petroleum products to Rwanda, Burundi Kenya.<sup>235</sup> Uganda insisted on refining to serve the East African community, but after extensive deliberations, a compromise agreement allowed refining crude oil to meet the domestic needs of Uganda.<sup>236</sup> The Country has built a 60,000bbl/day to start refining at a capacity of 30,000bbl/day and using crude to generate electricity.<sup>237</sup> The by-product of refining crude stays in Uganda for further use in the economy.<sup>238</sup> Uganda's successful negotiation for part of its crude oil to be refined inside the country is a success story.<sup>239</sup> This thesis argues that developing resource-rich countries must address two issues to implement the linkage argument. First, resource-rich countries must sharpen their bargaining skills through engaging experts in the sector and negotiate the exploitation of their natural resources to create linkages between the extractive industry and the local economies. Second, developing resource-rich countries must address the linkage problem by designing and building a comparative advantage in their local economies.<sup>240</sup>

The establishment of Ghana Gas Company Limited, to some extent, demonstrates that Ghana, although failed to negotiate for refining portion of crude oil, nonetheless there is a linkage between the economy and the oil industry for the production of gas for domestic and commercial consumption. Further, in 2013, the government passed Ghana's Petroleum (Local Content and

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<sup>233</sup> Adam and Boakye, Public Interest Report, Africa Centre for Energy Policy, May 2014, 2.

<sup>234</sup> Patey, 'Oil in Uganda: Hard Bargaining and Complex politics in East Africa', The Oxford Institute for Energy Studies (OIES), 2015, 15.

<sup>235</sup> Patey, (note 234), 15.

<sup>236</sup> Nakkazi in The East African dated 18 October 2010, 'Uganda: Swiss Study Urges Nation to Build Oil Refinery', Available at <https://allafrica.com/stories/201010190811.html> accessed 23 March 2021.

<sup>237</sup> See Programme Document, Strengthening the Management of Oil and Gas Sector in Uganda, 2015, 6.

<sup>238</sup> Nakkazi (note 236).

<sup>239</sup> Patey, (note 234), 15.

<sup>240</sup> Venables, 'Using Natural Resources for Development: Why Has It Proven So Difficult', Journal of Economic Perspective, Vol. 30 (1) 2016, 177-178.

Local Participation) Regulations.<sup>241</sup> The regulation seeks to promote local participation in the oil and gas sector. Consequently, the government partnered with Jubilee Partners, a consortium of international oil companies (IOCs), to establish an Enterprise Development Centre (EDC) in Takoradi to enhance the capacity of Ghanaian businesses in the oil industry.<sup>242</sup> Ghana has begun to link the oil industry to the economy with these two examples, hence these two initiatives. Ablo argues that the EDC projects need redesigning to reduce huge financial requirements on applicants, which could hamper local participation in the oil industry.<sup>243</sup>

#### 2.1.4 Rent-seeking

Rent-seeking<sup>244</sup> refers to entrepreneurs with connections to political authorities who profit by using their relationship to secure a contract from the state to their advantage.<sup>245</sup> When natural resources abound, it increases the number of entrepreneurs involved in rent-seeking, which reduces contractors engaged in productive firms.<sup>246</sup> Rent-seeking exhibits in diverse forms, including bribery, corruption, smuggling and black markets.<sup>247</sup> With this arrangement, the benefit of rent-seeking goes to the politically connected individuals and not the nation. The advantage of rent-seeking inures to the elite without any benefit to the country.<sup>248</sup>

Rent-seeking hurts the economies of resource-rich countries by breeding corruption in business and government and distorting the allocation of resources, thereby reducing economic efficiency and social equity.<sup>249</sup> The effect is that corruption and favouritism showed to those connected to the government hamper economic growth.<sup>250</sup> Rent-seeking has a debilitating impact on resource-rich economies, as the practice protects private interest at the expense of the State.<sup>251</sup> The effect is that

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<sup>241</sup> The legislative instrument is L. I. 2204 of 2013.

<sup>242</sup> Ablo, 'Local content participation in Ghana's oil and gas industry: Can enterprise development make a difference?' *The Extractive Industry & Society*, Vol. 2, 2015, 320.

<sup>243</sup> Ablo, (note 242), 327.

<sup>244</sup> Anne O. Krueger, 'The Political Economy of the Rent-Seeking Society' in the *American Economic Review*, Vol. 64, No. 3, 1974, 291-303.

<sup>245</sup> Humphrey et al, (Note 47), 4-5. See also R. A. Badeeb et al, (note 154), 126.

<sup>246</sup> Torvik, 'Natural Resource, rent seeking and welfare', *Journal of Development Economics*, 67(2), 455.

<sup>247</sup> Krueger, 'The Political Economy of the Rent-Seeking Society' in the *American Economic Review*, Vol. 64 (3), 1974, 291.

<sup>248</sup> Badeeb et al., (note 154), 126.

<sup>249</sup> Gylfason, (note 173), 850.

<sup>250</sup> Bardhan, 'Corruption and Development: A Review of Issues', *Journal of Economic Literature*, Vol. 35 (3) 1997, 1328.

<sup>251</sup> Baland et al., 'Rent-Seeking and resource booms', *Journal of Development Economics*, Vol. 61, 2000, 529.

limited capital remains for investment in the resource-rich economy's formal sectors, and growth is also limited.<sup>252</sup> The decline in economic growth can be remedied by fairly allocating resources to all the productive sectors of the economy.<sup>253</sup> The rents secured if applied to the productive sectors of the economy would allow the economy to grow rather than spending such monies privately.<sup>254</sup>

Rent-seeking also creates a select interest group within the resource-rich economies that work against societal innovations, preserving their hold on the economy.<sup>255</sup> It also creates powerful groups that can block economic reforms to protect and project their economic interests without regard to the larger society.<sup>256</sup> Due to the adverse effects of rent-seeking and its impact on the economy, resource-rich countries must not encourage the practice.

Generally, bad institutions enhance corruption or may incentivise the ruling class to destroy state institutions to facilitate kleptocracy.<sup>257</sup> The issue in Ghana is whether there are strong institutions to exercise oversight responsibilities and enforce the PRMA to avoid rent-seeking. Due to Ghana's constitutional architecture, the President appoints the heads of state institutions, making it very difficult for the directors to question the President.<sup>258</sup> Currently, the PRMA vest the finance minister with excessive discretionary powers, which makes it possible to spend oil revenue contrary to the provisions of the PRMA.<sup>259</sup> To the extent that the current mode of appointment of state institutions remains, rent-seeking will manifest in the Ghanaian economy.

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<sup>252</sup> Baland et al., (note 251), 529. See also Tornell and Lane, 'The Voracity Effect', *American Economic Review*, Vol. 89 (1), 1999, 23.

<sup>253</sup> Baland et al., (note 251), 529.

<sup>254</sup> Stevens, (note 191), 15.

<sup>255</sup> Sachs, and Warner, 'Natural resource abundance and economic growth', Centre for International Development and Harvard Institute for International Development, Harvard University, 1997, 9.

<sup>256</sup> Auty, 'Industrial policy, sectoral maturation and post-war economic growth in Brazil: the resource curse thesis', *Economic Geography*, Vol. 71 (3), 1995.

<sup>257</sup> Dartey-Baah et al., 'Rent-Seeking resource and institutional challenges in Ghana's nascent oil economy', *International Journal of Law and Management*, Vol. 56 (5), 2014, 374.

<sup>258</sup> See chapter 5, sections 2.3 and 2.4 for detailed discussion on strong institutions and their role in managing natural resource revenues.

<sup>259</sup> See Chapter 7, sections 2, 2.1 and 2.2.

### 2.1.5 Corruption

Natural resource wealth exposes resource-rich countries to massive inflows of revenue, which may result in corruption.<sup>260</sup> The influx of money motivates those with decision-making powers to steal and perpetuate themselves in power.<sup>261</sup> Those involved in decision-making engage in lavish political party campaigns or suppress those opposed to the government.<sup>262</sup> Politicians may take undue advantage over resource-rich nations' oil revenue, for instance, by lining their own pockets.<sup>263</sup> Indirectly, wealth from oil may account for weak state institutions, which compromise the system and allow the state officials to engage in corrupt practices.<sup>264</sup>

The fraudulent practices exhibited by such government officials affect the integrity of State institutions and the decisions handed down by such organisations.<sup>265</sup> A study of 31 oil-exporting countries concluded that countries in which public agencies participated in oil production breeds corruption and increases political risk services.<sup>266</sup> Another argument is that natural resources induce corruption in countries with non-democratic regimes.<sup>267</sup> Further, a study from Nigeria shows that natural resources negatively impact the quality of institutions.<sup>268</sup> Organisations play a role to determine whether natural resource revenue would bring a curse or a blessing.<sup>269</sup> The effect of corruption in managing oil revenue in developing resource-rich countries hurts the citizens

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<sup>260</sup> Leite and Weidmann, 'Does Mother Nature Corrupt? Natural Resources, Corruption and Economic Growth', IMF Working Paper No. 99/85, 3. Available at <https://ssrn.com/abstract=259928>. Accessed 14 March 2021. On the link between resource abundance and the levels of corruption, see also, Venables, (note 235), 173 and Ades and Di Tella, 'Rents, Competition, and Corruption', *American Economic Review*, Vol. 89 (4), 1999, 982-983.

<sup>261</sup> Humphrey et al, (note 47), 11.

<sup>262</sup> Humphrey et al, (note 47), 11.

<sup>263</sup> Shaxson, 'Oil, corruption and the resource curse', *International Affairs*, Vol. 83 (6), 2007, 1123-1125. See also the following which addresses corruption in the management of oil revenue. McFerson, (note 8), 1535, Afeikhena et al., (note 7), 15, Gary & Karl, (note 11), 37, Hammond, (note 20), 348-378, Silverstein, 'Oil Boom Enriches African Ruler', *Los Angeles Times*, January 20, 2003, Ogbeidi, (note 34), 9, Ejiegba et al., (note 35), 118 and Idemudia, (note 36), 8.

<sup>264</sup> Humphrey et al, (note 47), 11.

<sup>265</sup> Badeeb et al., (note 154), 126.

<sup>266</sup> Arezeki et al., 'Oil Rents, corruption and state stability: evidence from panel data regressions, *European Economic Review*', 2011, Vol. 55, (7), 955-963.

<sup>267</sup> Bhattacharyya, and Hodler, 'Do natural resource revenues hinder financial development? The role of political institutions, 2014, *World Development*, Vol. 57, 101-113.

<sup>268</sup> Sala-i-Martin, X., Subramanian, 'Addressing the natural resource curse: an illustration from Nigeria', NBER Working Paper, 9804.

<sup>269</sup> Mehlum et al, 'Institutions and the resource curse' *The Economic Journal*, Vol. 116, No. 508, 2006. See also Mavrotas et al., 'Natural resource dependence and economic performance in the 1970-2000 period', *Rev. Dev. Econ.*, 2011, Vol. 15 (1), 124-138.

resulting in the ‘paradox of plenty’ principle.<sup>270</sup> This thesis argues that holding politicians accountable through quality institutions remains one of the antidote to transform the economies of developing resource-rich countries.<sup>271</sup> Corruption in resource revenue management makes it ‘difficult’ for developing resource-rich countries to transform their economies.<sup>272</sup>

In assessing whether corruption, one of the causes of the resource curse, is prevalent in Ghana’s oil sector, there are three variables employed under it: Mo Ibrahim Governance Index, Corruption Perception Index, and Resource Governance Index.<sup>273</sup> The Resource Governance Index is used because it is sector-specific and relevant for the exercise. According to Ackah et al., Ghana has performed creditably well in the oil and gas sector per the index; it has questioned the governance of the revenue management due to how part of the revenue ends up in the national budget and the corruption associated with it.<sup>274</sup> The 2021 report saw improvement in governance around licensing, but financial and beneficial ownership issues remain unresolved.<sup>275</sup> This is an area that Ghana needs to watch and attend to deal with the resource curse.

### 2.1.6 Lack of transparency and accountability

Ascertaining oil revenue is difficult due to the often opaque nature of oil accounts.<sup>276</sup> Lack of transparency and secrecy over oil-producing countries’ concealment of oil revenue contributes to the resource curse.<sup>277</sup> Citizens of the state are unable to ascertain the amount that has accrued to the resource-rich government. Some resource-rich countries fail to make available revenue received from the sale of crude oil. In Cameroon, for instance, 46 per cent of oil revenue went to the state’s budget between 1997-2006, but the government could not account for the outstanding

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<sup>270</sup> See chapter 1, section 2.2.

<sup>271</sup> See chapter 5, section 2.3.

<sup>272</sup> Venables, (note 240), 161-162.

<sup>273</sup> See <https://resourcegovernance.org/analysis-tools/publications/2021-resource-governance-index-ghana-oil-and-gas.pdf> page 1. Accessed 20<sup>th</sup> September 2021. See also Ackah, I., et al., ‘Between altruism and self-aggrandisement: Transparency, accountability and politics in Ghana’s oil and gas sector’, Energy Research and Social Science, Vol. 68, 2020, 10.

<sup>274</sup> Ackah, I., et al., ‘Between altruism and self-aggrandisement: Transparency, accountability and politics in Ghana’s oil and gas sector’, Energy Research and Social Science, Vol. 68, 2020, 10.

<sup>275</sup> See [https://resourcegovernance.org/sites/default/files/documents/2021\\_resource\\_governance\\_index\\_ghana\\_oil\\_and\\_gas.pdf](https://resourcegovernance.org/sites/default/files/documents/2021_resource_governance_index_ghana_oil_and_gas.pdf), page 3. Accessed on 20<sup>th</sup> September 2021.

<sup>276</sup> Ross, ‘The Oil Curse: How Petroleum Wealth Shapes the Development of Nations’ (2002), New Jersey, Princeton University Press, 59.

<sup>277</sup> Ross, (note 276), 59.

54 per cent.<sup>278</sup> A study of budgets of 94 countries worldwide revealed secrecy surrounding the budgets of “hydrocarbon” States and allowed decision-makers to mismanage oil revenue.<sup>279</sup> However, Brazil, New Zealand, Norway, and Alaska in the United States of America have openly declared revenues from their oil industries.<sup>280</sup>

The quest for transparency regarding the proceeds received by resource-rich countries remains germane to promote accountability.<sup>281</sup> For those making decisions concerning the management of the money, non-disclosure benefits them since they do not know what has accrued to the state and how much has been used to develop the economy<sup>282</sup>. In such circumstances, it isn't easy to ascertain the amount concealed from the public.<sup>283</sup> This thesis argues that resource-rich countries must overcome the challenge of transparency and accountability with the disclosure of oil revenue and its management to optimise oil revenue. The thesis will be homing in on transparency and accountability concerning Ghana's PRMA.

In Ghana, disclosure of oil revenue is ascertained from the Bank of Ghana, where the Petroleum Holding Fund is kept and the budget read by the Minister for Finance.<sup>284</sup> Be that as it may, the issue remains whether citizens, particularly those in the rural areas, can access the information and use same. The Resource Governance Index report on Ghana, 2021, contained recommendations for enhancing transparency at two ministries and one state agency. The recommendation bordered on the Ministry of Mines and Energy and the Petroleum Commission making disclosures on licensing and beneficial ownership.<sup>285</sup> The report requested the Ghana National Petroleum Corporation to disclose how it utilised the oil revenue it has received.<sup>286</sup> Regarding accountability, to the extent that developmental challenges exist due to lack of visible development, particularly

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<sup>278</sup> Ross, (note 276), 59.

<sup>279</sup> Ross, (note 276), 59.

<sup>280</sup> Ross, (note 276), 59.

<sup>281</sup> Chapter 4, section 2.

<sup>282</sup> Al Faruque, ‘Transparency in Extractive Revenues in Developing Economies in Transition: A Review of Emerging Best Practices, *Journal of Energy and Natural Resources*, Vol. 14 (1), 2006, 66-67.

<sup>283</sup> Ross, (note 276), 59.

<sup>284</sup> See Chapter 6 for the discussion the various funds under the PRMA, and section 2.21 for the Petroleum Holding Fund.

<sup>285</sup> See [https://resourcegovernance.org/sites/default/files/documents/2021\\_resource\\_governance\\_index\\_ghana\\_oil\\_and\\_gas.pdf](https://resourcegovernance.org/sites/default/files/documents/2021_resource_governance_index_ghana_oil_and_gas.pdf), page 6. Accessed on 20<sup>th</sup> September 2021.

<sup>286</sup> (Note 285), 6.

the rural areas, it may be argued that there is transparency with the declaration of oil revenues but little accountability.

Ghana currently exhibits gaps, problems, and challenges that relate to transparency and accountability. It includes, for example, lack of clear public information disclosure; weak laws on beneficial ownership; gaps in corporate reporting; lack of contract transparency and ensuring open licensing rounds; lack of an online repository on petroleum blocks; poor monitoring of government's expenditure of collected revenue to ensure that figures match; inadequate stakeholder engagement, fragile roles for civil society; lack of legislative backing for the implementation of EITI standards in Ghana; amongst others.

### 2.1.7 Type of Political Regime

The political regime existing in a resource-rich country sometimes contributes to the resource curse. The argument is that wealth from natural resources hinder democracy because governments in resource-rich countries spend a lot of money and reduce tax rates to reduce pressure for democratisation.<sup>287</sup> In many resource-rich countries, resource wealth often goes to the political elite, which promotes their entrenchment in power and suppresses the interest of the minority.<sup>288</sup> Examples of such a relationship abound in the Middle East, Northern and Sub-Saharan Africa as natural resources fail to promote economic growth and render governments authoritarian with limited growth.<sup>289</sup> Regrettably, wealth that must benefit the citizens turns out to serve a few in power, who hold on to power and impoverish the rest.

Since the state also controls the resource wealth, and the governing regime seeks to consolidate its security, it increases the expenditure on its internal security.<sup>290</sup> The State spends resources to safeguard the political elite's safety and protection and overcome any challenge from the minority.<sup>291</sup> Such expenditures have not led to economic growth but have created authoritarian regimes with Algeria, Nigeria, Gabon, Cameroon, and Angola.<sup>292</sup> These examples demonstrate that

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<sup>287</sup> Rosser, 'The Political Economy of the resource curse: A Literature Review, An IDS Working Paper 268, 20.

<sup>288</sup> Lam et al., 'Political Dutch Disease' NYU Working Paper, 3-6, 2003. Available at [http://neumann.hec.ca/neudc2004/fp/wantchekon\\_leonard\\_avril\\_16.pdf](http://neumann.hec.ca/neudc2004/fp/wantchekon_leonard_avril_16.pdf) accessed 14 March 2021.

<sup>289</sup> Lam et al., (note 288), 16.

<sup>290</sup> Rosser, (note 287), 20.

<sup>291</sup> Jensen et al., 'Resource Wealth and Political Regimes in Africa, Comparative Political Studies, 816.

<sup>292</sup> Jensen et al., (note 291), 816.

resource wealth may cause the fall of a democratic government or support a state to become authoritarian.<sup>293</sup>

The eventual result of this arrangement is that the resource wealth helps incumbent governments to consolidate their power.<sup>294</sup> It prompts a reaction from the minority to seek power through illegal means, resulting in a conflict.<sup>295</sup> The struggle will eventually produce a winner who becomes a dictator.<sup>296</sup> If not addressed, the challenges discussed in this section will impede the development of resource-rich countries that exhibit these symptoms. The literature has offered responses to deal with these challenges and examined below.

Concerning political regime, Ghana's Fourth Republic has lasted twenty-nine years from 1992 to 2021 and can thus be described as having a stable political terrain. Two political parties have dominated these years, namely National Democratic Congress and the New Patriotic Party. To date, none of these political parties has attempted to create a third term. Be that as it may, Ghana's Constitution and governance structure has made the winner-take-all situation which has not augured well for our democracy and requires a paradigm shift.<sup>297</sup>

#### 2.1.8 Importance of the oil revenue to the Ghanaian economy

Generally, oil revenue helps in accelerating development in oil-producing economics' if managed well. The discovery of crude oil and its subsequent production brings in additional revenue to the resource-rich country. The utilisation of the additional revenue shows that countries like Botswana and Norway have managed their resource revenue to benefit their respective countries. However, the story of countries like Angola, Gabon, Nigeria, Equatorial Guinea and others typifies mismanagement and corruption of oil revenue with very little to show for the additional oil revenue. Ghana, recognizing this dichotomy, enacted the PRMA to guide the utilisation of oil revenue and guard against the resource curse. There are indicators of mismanagement with the oil revenue, but one cannot rule out the importance of the oil revenue to the Ghanaian economy.

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<sup>293</sup> Jensen et al., (note 291), 817.

<sup>294</sup> Jensen et al., (note 291), 818. Examples cited includes Nigeria, Congo (Brazzaville) and Cameroon.

<sup>295</sup> Jensen et al., (note 291), 821.

<sup>296</sup> Jensen et al., (note 291), 822.

<sup>297</sup> See Chapter 5, section 2.4 below.

Despite the manifestations and challenges of the resource curse in Ghana, one cannot overlook the importance and the role of oil revenue in the Ghanaian economy. First, the introduction of oil revenue in the economy has created another source of earning foreign exchange. For example, Ghana's oil and gas sector has grown steadily since production began in the Jubilee oil field in 2010, with hydrocarbon exports increasing from \$127 million in 2010 to over \$4.9 billion in 2019, comprising almost 23 per cent of Ghana's merchandise exports.<sup>298</sup>

Second, as an oil economy, the injection of oil revenue fueled the acceleration of Ghana's Gross Domestic Product (GDP). For example, the Ghanaian economy grew from 7.9 in 2010 to 14.0 in 2011.<sup>299</sup> Third, the oil revenue has further injected oil revenue into the national budget. The PRMA has created the Annual Budget Funding Amount (ABFA) to contribute part of the oil revenue to support Ghana's budget to maximise economic development.<sup>300</sup> Twenty-five per cent of the ABFA has been earmarked for the Ghana Infrastructure Investment Fund (GIIF), which makes money available for infrastructure development.<sup>301</sup>

Fourth, from oil revenues, Ghana has further created Sovereign Wealth Fund (SWFs) comprising the Ghana Stabilisation Fund and the Ghana Heritage Fund, which said funds are invested outside the jurisdiction.<sup>302</sup> Fifth, under the oil industry, there has been an increase in government revenue in payment of royalties, surface rentals, receipt from petroleum operations, corporate taxes and capital gains tax where applicable.<sup>303</sup> Thus despite the appearance of gaps and challenges with transparency and accountability, Ghana can still derive benefits from the oil industry.

## 2.2 Existing responses to the resource curse

The above discussion demonstrates that having natural resources requires strategic measures and mechanisms to maximise the returns on natural resources. In the interest of resource-rich nations afflicted by the phenomenon, it is to tackle it and derive benefits from the oil revenues to nullify

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<sup>298</sup> [https://resourcegovernance.org/sites/default/files/documents/2021\\_resource\\_governance\\_index\\_ghana\\_oil\\_and\\_gas.pdf](https://resourcegovernance.org/sites/default/files/documents/2021_resource_governance_index_ghana_oil_and_gas.pdf), page 2. Accessed on 20<sup>th</sup> September 2021. The other exports earnings are from gold, cocoa beans, cocoa paste and manganese ore.

<sup>299</sup> Fosu, K., 'Oil and Ghanaian Economy' in *The Economy of Ghana Sixty Years after Independence*, (Eds) Ernest Aryeetey and Ravi Kanbur, Oxford University Press, 2017, 138.

<sup>300</sup> See Chapter 6, section 2.3 for discussion of the Annual Budget Funding Amount below.

<sup>301</sup> See Clause 8 (4) (b) of Act 893.

<sup>302</sup> See Chapter 6, section 2.2 below on the SWFs.

<sup>303</sup> See Chapter 6, section 2.1.

the assertion that oil is a curse. The resource curse is a multifaceted, problematic phenomenon. To be able to overcome or alleviated, it requires thoroughly formulated solutions. The affliction is most prevalent in sub-Saharan Africa, which poses a significant challenge to the region's development.<sup>304</sup> It is moreover difficult to describe one solution for all countries afflicted. Their set-ups and experiences of the resource curse are not the same. They have different governance structures, institutions of the state, economy, and frameworks for economic development.

The existing responses to fight the resource curse vary. This thesis describes the effectiveness of these responses and argues that, although the answers are limited, the existence of a revenue management law that dictates the use of the accrued revenue is the best option to address the shortfalls in the way resource-rich countries have tackled the phenomenon. The section proceeds to examine the policy prescriptions provided to address the resource curse phenomenon. Ghana should not fall into the position of other African countries that the resource curse has afflicted. The way to do this is to rethink the PRMA.

### 2.2.1 Economic Policies

Resource-rich nations should avoid accumulating foreign and domestic debts, reduce budget deficits, control inflation, and pursue a competitive exchange rate.<sup>305</sup> Economists, for example, have argued that such measures would help fight the Dutch disease.<sup>306</sup> These steps ensure that the resource-rich country pays attention to the development of all sectors of the economy and not only in the oil sector. This thesis argues that the optimisation of oil revenue will benefit the maximum if there is a revenue management law with built-in checks and balances on the power of the political elite.

The diversification of the economies of resource-rich countries helps to reduce the effect of the Dutch disease.<sup>307</sup> In this regard, some policies offered has resulted in using the oil revenue to establish stabilisation funds<sup>308</sup> or held at the central bank to increase the country's foreign exchange

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<sup>304</sup> Pegg, 'Can Policy Intervention beat the resource curse? Evidence from Chad-Cameroon pipeline project', in *African Affairs*, Vol. 105/148, 1-25, 2. Instances includes the Angolan government using oil revenues to fund its civil war, the abuse of the human rights of the Niger-Delta citizens by multinational oil companies, oil revenues fueling the civil war in Sudan and gargantuan corruption in Equatorial Guinea.

<sup>305</sup> Rosser, (note 287), 24.

<sup>306</sup> Usui, 'Dutch Disease and Policy Adjustment to the oil Boom: A comparative Study of Indonesia and Mexico', *Resources Policy*, Vol. 24, No. 4, 157.

<sup>307</sup> Duruigbo, (note 12), 15.

<sup>308</sup> Chapter 6, section 2.2.

reserves to create a balance in the economy.<sup>309</sup> The government must invest the oil revenues in the productive sectors of the economy to sustain the other parts of the economy.<sup>310</sup> The appropriate strategies depend on the condition and the circumstances of the country.

The lack of diversification explains the poor economic performance of resource-rich countries due to a lack of linkages between the resource sector and other sectors of the economy due to the type of oil contracts signed.<sup>311</sup> The majority of the agreements signed with resource-rich countries are production sharing contracts that pay little attention to linking the oil sector to the other areas of the economy. A production sharing contract refers to the process whereby an international oil company and the state agree that the foreign oil company should explore and exploit its oil reserves and share the oil extracted in an earlier agreed ratio.<sup>312</sup> Under this contract, the contractor bears all the cost of prospecting, whether it yields oil or not.<sup>313</sup> Aside from production sharing contracts, the other modes of exploiting oil are concessions agreements<sup>314</sup> and service agreements.<sup>315</sup> This thesis argues that in a developing resource-rich country, the efficient way to utilise the oil revenues depends on developing a development plan to develop other areas.<sup>316</sup>

Resource-rich nations borrow during oil booms since donor countries find them creditworthy.<sup>317</sup> Excessive borrowing affects the tradable sector increasing the exchange rate.<sup>318</sup> A policy intervention to stabilise the economy and deal with the resource curse is for resource-rich countries to refrain from excessive state borrowing and plan to use the available oil revenues in the economy

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<sup>309</sup> Mikesell, (note 194), 194.

<sup>310</sup> Mikesell, (note 194), 194. On diversification of economies, see also Stevens, (note 191), 19.

<sup>311</sup> Le Billion, 'The Resource Curse', *The Adelphi Papers*, 45:373, 19. See also Auty, R.M., 'Industrial Policy Reform in Six Large Newly Industrializing Countries: The Resource Curse Thesis', *World Development* 22.1 (1994b): 11–26.

<sup>312</sup> Oyewunmi, 'Stabilisation and Renegotiation Clauses in Production Sharing Contracts: Examining the Problems and key issues', Vol. 9 Issue 6, *Oil, Gas and Energy Law Intelligence (OGEL)*, 5 - 6.

<sup>313</sup> Oyewunmi, (note 312), 6.

<sup>314</sup> The concession refers to a handing over an area to an international oil company to explore develop and produce oil. The concession is granted for long period of times. Government receipt was based on a 'flat fee' paid to the state.

<sup>315</sup> With respect to service agreements, the oil extracted is for the host country. The international oil company is entitled to compensation by a 'royalty-in-kind of the oil produced. See Kim Talus, Scott Looper and Steven Otilar, 'Lex Petrolea and internationalization of petroleum agreements: focus on Host Governments Contracts' in *Journal of World Energy Law and Business*, Vol. 5 No. 3, 2012, 181- 193 for a discussion and effects of the said contracts.

<sup>316</sup> Chapter 2, section 3.2.2 and chapter 8, section 4.2.

<sup>317</sup> Havro, and Santiso, 'To benefit from plenty: Lessons from Chile and Norway', *OECD Policy Brief No. 37*, 2008. Paris, France: Organisation for Economic and Co-operation and Development. See also Sarraf, M. and Jiwajji, M. (note 124).

<sup>318</sup> Usui, (note 306), 157.

to yield returns.<sup>319</sup> Such a step helps the resource-rich State by reducing its dependence on the natural resource sector.

The pursuit of investment strategies and the establishment of stabilisation funds tend to reduce the effect of price volatility and contribute to lowering the resource curse, so goes the argument.<sup>320</sup> By adopting an investment policy, a resource-rich country can overcome economic difficulties.<sup>321</sup> The investment must concentrate on projects with high social returns, especially those in which human capital and infrastructure are desirable and those with high yields.<sup>322</sup> The creation of a stabilisation fund meant to reduce the impact of commodity price instability on the economy's life and has succeeded in Norway.<sup>323</sup> The operation of the Stabilisation Fund is inappropriate for developing resource-rich countries due to weak institutions, lack of transparency, and unaccountable governments.<sup>324</sup> The argument is that the establishment of stabilisation funds does little to improve fiscal policy conduct regarding accountability and transparency issues in resource-rich economies.<sup>325</sup>

Another intervention put forward is the creation of revenue funds to deal with the resource curse.<sup>326</sup> Such monies accomplish the tasks of protecting the economy from revenue windfalls, stabilise revenues, and reserve part of the funds for future generations.<sup>327</sup> Despite these functions, there are arguments for and against the establishment of these funds. Those objecting to creating the revenue funds argue that the budget should manage them if there are windfalls.<sup>328</sup> Those in favour demonstrate that such funds contribute to alleviating the effects of the resource curse.<sup>329</sup> This thesis argues that creating Sovereign Wealth Funds, sometimes described as stabilisation funds or revenue funds on earning oil revenue, cannot be the best option as resource-rich countries lack

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<sup>319</sup> Usui, (note 306), 157.

<sup>320</sup> Rosser, (note 287), 24.

<sup>321</sup> Stevens, (note 191), 22.

<sup>322</sup> Sarraf et al., (note 124), 8.

<sup>323</sup> Skancke, 'Fiscal Policy and Petroleum Fund Management in Norway' in *Fiscal Policy Formation and Implementation in Oil Producing Countries*, (2003), Jeffrey M. Davies et al (eds.)

<sup>324</sup> Rosser, (note 287), 24.

<sup>325</sup> Davis, J.M., Ossowski, R. and Fedelino, A. (eds.), *An overview to 'Fiscal Policy Formulation and Implementation in Oil-Producing Countries'*, Washington, DC: International Monetary Fund (2003), 7.

<sup>326</sup> Stevens, (note 191), 21.

<sup>327</sup> Stevens, (note 191), 21.

<sup>328</sup> Stevens, (note 191), 21.

<sup>329</sup> Stevens, (note 191), 21.

development, continue to borrow for development and pay interest.<sup>330</sup> Instead of borrowing, resource-rich countries need to plan and invest in critical sectors of the economy through a revenue management law and may invest in these funds later.<sup>331</sup>

## 2.2.2 Negotiating Oil Agreements

The inability of resource-rich countries to link the oil sector to other areas of the economy and take advantage of the international norms when negotiating oil contracts contributes to the resource curse.<sup>332</sup> The international standards are the United Nations Resolution 1803 (XVII) of 1962,<sup>333</sup> the Charter of Economic Rights & Duties of States,<sup>334</sup> and the United Nations Conference on Trade and Development (UNCTAD) Draft Code.<sup>335</sup> These are instruments that resource-rich countries must incorporate in local legislation to inform International Oil Companies' negotiation (IOC). The exploration and production agreement negotiation in Ghana's Jubilee Fields took place under the old law without the international norms existing under the domestic laws.<sup>336</sup> The law, which now regulates petroleum exploration and production agreements, have incorporated these international norms. What is left is its implementation for the benefit of the nation.<sup>337</sup>

Developing countries rich in natural resources can only benefit from these norms if international standards reflect local legislation dealing with the exploitation of natural resources.<sup>338</sup> Such a step will help protect their interests, allowing negotiating better terms with the IOC's and transferring technology to host developing countries.<sup>339</sup> Experts consulted by abundant resource countries in negotiating oil agreements are necessary to facilitate the inclusion of the international norms on linkages, which are missing in oil contracts. The domestication of the international standards

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<sup>330</sup> Chapter 6, sections 2.2, and 3.

<sup>331</sup> Chapter 7, section 3.

<sup>332</sup> C. Adomako-Kwakye, 'Petroleum Contracts between Foreign Private Investors and Host Developing Countries: A New Approach to Negotiating' in *Oil, Gas & Energy Law Intelligence (OGEL)* Vol. 15(1) 1, 2017.

<sup>333</sup> The norm grants permanent sovereignty over natural resources to the states and should be exercised to benefit the citizens and the state.

<sup>334</sup> The charter states that no foreign investor should receive preferential treatment, and there should be co-operation to transfer technology to the developing country.

<sup>335</sup> The code exist to help developing countries at the stage of negotiation with the transfer of technology and mutually satisfactory agreements.

<sup>336</sup> The Petroleum (Exploration and Production) Law, 1984, P.N.D.C.L. 84.

<sup>337</sup> The Petroleum (Exploration and Production) Act, 2016, Act 919.

<sup>338</sup> An example is the Jubilee contract between the government of Ghana and the international oil companies negotiated without recourse to the international norms.

<sup>339</sup> C. Adomako-Kwakye, (note 332), 6-8.

would enable resource-rich nations to derive benefits, including having access to the by-product after refining and creating jobs if the agreements permit the refining of the crude oil in Ghana.<sup>340</sup>

### 2.2.3 Good Governance

Good governance<sup>341</sup> is a broad concept adopted by international organisations as a yardstick to ascertain the governance status.<sup>342</sup> Resource-rich states must engage in proper management and sound economic policies which can mitigate the resource curse.<sup>343</sup> In the context of resource-rich States, establishing a legal framework to deal with the control of the resource revenue qualifies as good governance. Woods argues that the core principles of good governance are participation, accountability, and fairness.<sup>344</sup> He explains participation as the extent to which the citizens' are involved in decision making and the implementation of decisions affecting the interest of such parties.<sup>345</sup> When parties feel that decision-making and implementation include them, it gives them a sense of hope and ownership of what is at stake.<sup>346</sup> They have the opportunity to embrace the project and ensure that it succeeds. Accountability requires the release of information to the people and the rationale for taking a particular decision.<sup>347</sup> Such disclosures assure the citizens that those in charge of making decisions are forthright.

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<sup>340</sup> Refining the crude for example in Ghana would make jelly a by-product of refined crude for the production of Vaseline, as well as other by-products in Ghana.

<sup>341</sup> Bandyopadhyay, 'Administration, Decentralisation and Good Governance', *Economic & Political Weekly*, Vol. 31, No. 48, 1996, 3109-3114. The author argues that the World Bank and the Organisation for Economic Co-operation and Development (OECD) have become proponents of this concept. The World Bank uses good governance with reference to three terms namely, the political regime, the process of managing the country's economic and social resources for development and the ability of government to formulate and implement decisions. The OECD uses the World Bank's benchmark by referring to system of government, accountability of government officials, media freedom, and competence of governments to formulate and deliver services, human right and rule of law.

<sup>342</sup> Jorgensen et al., 'Codes of Good Governance' in *Public Integrity*, Vol. 15(1), 71.

<sup>343</sup> Pegg, (note 304), 1.

<sup>344</sup> Woods, 'Good Governance in International Organizations', *Global Governance*, Vol. 5(1), 1999, 43, 44 and 46. See also Hope Sr, 'Developmental policy and economic performance in Botswana: Lessons for the transition economies in Sub-Saharan Africa', *Journal of International Development*, Vol. 10 (4), 1998, 545. For Hope Sr, good governance must have the following features namely; 'the existence of political accountability; bureaucratic transparency; the exercise of legitimate power; freedom of association and participation; freedom of information and expression; sound fiscal management and public financial accountability; respect for the rule of law; a predictable legal framework encompassing an independent and credible justice system; respect for human rights; an active legislature; enhanced opportunities for the development of pluralistic forces, including civil society, and capacity building'.

<sup>345</sup> Woods, (note 344), 43.

<sup>346</sup> Woods, (note 344), 43.

<sup>347</sup> Woods, (note 344), 44.

Resource mining plus bad management increases poverty but resource extraction, coupled with excellent governance, reduces poverty.<sup>348</sup> Good governance is a prerequisite for social and economic development achieved by observing accountability, transparency, the rule of law, and participation.<sup>349</sup> Upon receipt of resource wealth, governments of resource-rich countries must spend the resources based on good governance.<sup>350</sup> In most resource-rich nations that experience resource curse, accountability, transparency, the rule of law and participation that help to accelerate economic growth are missing.<sup>351</sup> The lack of these indicators explains the poor state of resource-rich economies in the abundance of natural resources.

The state's resources, including resource wealth, must be managed to achieve the desired level of development in the society that commensurates with the wealth received.<sup>352</sup> Good governance refers to the state ensuring justice, equity, protection of life and property, enhanced participation, preservation of the rule of law and improved living standard of the populace".<sup>353</sup> The government must utilise its resources to improve its citizens and the economy, thereby ensuring good governance.

#### 2.2.4 Political and Social Change

Scholars have also advocated political and social changes as one of the means to address the resource curse. According to this argument, economic measures will not help if resource-rich countries fail to transform their political and social systems.<sup>354</sup> The transformation of the political and social network will help resource-rich nations pursue policies to minimise the effects of the resource curse. The political elites must change their mindset because commodity booms are temporary, a signal to use the money for the benefit of society, not to miss an opportunity.<sup>355</sup> Resource-rich countries must build the capacity of the State and motivate reforms in State

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<sup>348</sup> Pegg, (note 304), 20.

<sup>349</sup> McFerson, 'Extractive Industries and African Democracy: Can the "resource curse" be exorcised?' *International Studies Perspective*, 11, (2010), 338.

<sup>350</sup> McFerson, (note 349), 338. The author defines good governance as managing the country's economic and social resources for development.

<sup>351</sup> McFerson, (note 349), 338

<sup>352</sup> Ogundiya, 'Democracy and good governance: Nigeria's Dilemma', *African Journal of Political Science and International Relations*, Vol. 4(6), 2010, 204.

<sup>353</sup> Ogundiya, (note 352), 204.

<sup>354</sup> Rosser, (note 287), 24.

<sup>355</sup> Mitra, 'Adjustment in oil Importing Countries: A Comparative Economic Analysis, Cambridge University Press, 1994, 294-295.

institutions aimed at transforming the nation.<sup>356</sup> The implementation of such measures leads to an improvement in policies to ensure the growth of the economy.<sup>357</sup>

The people's focus is to perform actions that provide professionalism in the civil service, deal with corruption and promote democratisation.<sup>358</sup> The institutional reforms should have the support of the nation to make them beneficial to the state.<sup>359</sup> Resource-rich countries must address these issues; lack of economic development and growth would feature in these economies due to low-quality institutions, unlike a resource-rich country with strong institutions preventing the resource curse.<sup>360</sup> A surge in natural resources would increase the income of the resource-rich country if there are powerful institutions, but weaker institutions may cause the revenue to decrease.<sup>361</sup> Hong Kong, Singapore, Korea, and Taiwan (the “Asian Tigers”) are among the fastest-growing economies globally with a minimal amount of natural resources.<sup>362</sup> The same cannot be said of Angola, Sierra Leone, and the Democratic Republic of Congo, with enormous natural resources but a poor economic growth record.<sup>363</sup>

The lesson from the success story of the Asian Tigers is that one does not need natural resources to escape poverty, but natural resource wealth combined with quality institutions would ensure economic development.<sup>364</sup> Resource-rich countries must reform their institutional capacities to ensure competency to steer the states on the route of economic growth.<sup>365</sup> Skill should be the basis

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<sup>356</sup> Chapter 5 discusses institutions of State.

<sup>357</sup> Karl, (note 46), see also Aschar, ‘Why Governments waste Natural Resources: Policy Failures in Developing Countries, Baltimore, John Hopkins University Press, 1999, Auty, ‘Conclusions: Resource Abundance, Growth and Policy in R. Auty (ed.) Resource Abundance & Economic Development, Oxford University Press, 2001b, Auty, ‘Natural Resources and Civil Strife: A two stage Process’, *Geopolitics*, Vol. 9, 2004, 29-49 and Pearce, *Policy Failure and Petroleum Predation: The Economics of Civil War Debate viewed from the war zone*, *Government and Opposition*, Vol. 40 (2), 2005, 152-180.

<sup>358</sup> Karl, (note 46), 241. See also Auty, R., (2001b) ‘Conclusions: Resource Abundance, Growth Collapses, and Policy’, in R. Auty (ed.) *Resource Abundance and Economic Development*, Oxford: Oxford University Press, 323 where he argues in favour of reforming institutions of State to ensure the success of economic policies.

<sup>359</sup> Woolcock et al., ‘The Social Foundations of Poor Economic Growth in Resource-Rich Countries’, in R. Auty (ed.), *Resource Abundance and Economic Development*, Oxford: Oxford University Press: 200176–92, 90.

<sup>360</sup> Boschini et al, ‘Resource Curse or Not: A Question of Appropriability’, *Scandinavian Journal of Economics* 109 (3), (2007), 593.

<sup>361</sup> Robinson et al., ‘Political Foundations of the resource curse: A simplification and a comment’, *Journal of Development Economics*, 106, 2014, 196.

<sup>362</sup> Boschini et al., (note 360), 593.

<sup>363</sup> Boschini et al., (note 360), 594.

<sup>364</sup> Boschini et al., (note 360), 614.

<sup>365</sup> Chapter 5, section 2.3.

of engagement at all civil service levels, state-owned institutions, and public enterprises to achieve these objectives and not political patronage.<sup>366</sup>

### 2.2.5 Direct Distribution

Scholars<sup>367</sup> argue that resource-rich countries should consider distributing all or part of resource revenues directly to the citizens to address the resource curse.<sup>368</sup> The delivery occurs by paying part of the income that accrues to the state to the citizens. In practice, the resource-rich country must create a fund that shall receive the portion of the revenue reserved for distribution to citizens through constitutional means.<sup>369</sup> In Alaska, for instance, the payment is made once a year in the fall to families, which enable the families to acquire items they could not afford.<sup>370</sup> The distribution would minimise corruption and misappropriation since windfall payments would not be available to state officials for spending.<sup>371</sup> The approach will not withhold funds from the State since the State is still entitled to tax the citizens.<sup>372</sup>

There are particular challenges in implementing direct distribution in developing resource-rich states. First, the problem is identifying qualified persons to benefit from the distribution due to the lack of structures regarding a credible identification system in resource-rich economies.<sup>373</sup> Resource-rich countries seeking to use direct distribution need to establish structures to improve the identification system. The second is whether resource-rich developing countries have the institutional capacity to take charge of the system's distribution and administration.<sup>374</sup> The solution, if implemented, may create another problem of embezzlement of funds by those in authority. These

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<sup>366</sup> Chapter 5, section 2.3 and 2.4.

<sup>367</sup> Eifert et al., 'The Political Economy of Fiscal Policy and Economic Management in Oil Exporting Countries' in J.M. Davis, R. Ossowski and A. Fedelino (eds), 'Fiscal Policy Formulation and Implementation in Oil-Producing Countries', Washington, DC: International Monetary Fund: (2003) and Sala-i-Martin, X. and Subramanian, A., (note 257).

<sup>368</sup> Rosser, (note 287), 25.

<sup>369</sup> Goldsmith, 'The Alaska Permanent Fund Divided: An Experiment in Wealth Distribution', 2002, 1. Available at <http://www.ilo.org/public/english/protection/ses/download/docs/gold.pdf> accessed on 14 March 2021.

<sup>370</sup> Goldsmith, (note 369), 16.

<sup>371</sup> Sala-i-Martin, X. and Subramanian, A., (note 268), 80. See also, Eifert et al. (note 367), 119.

<sup>372</sup> Ross, 'Timber Booms and Institutional Breakdown in Southeast Asia', Ann Arbor: University of Michigan, (2001b), 200.

<sup>373</sup> The system of identification in some resource developing countries are poor. People hold multiple identity because of the lack of national identity system to check them.

<sup>374</sup> Weinthal et al., (note 43), 42.

challenges would make direct distribution of the oil revenue to citizens virtually impracticable in developing resource-rich countries.

## 2.2.6 Domestic Investors

It is argued that State ownership of natural resources contributes to the resource curse; hence privatising the sector could address the issue.<sup>375</sup> In the economies of resource-rich countries, privatisation of the natural resource sector may help prevent the resource curse.<sup>376</sup> The step will prevent rent-seeking since private investors would exploit the natural resources themselves.<sup>377</sup> The involvement of domestic investors in the resource sector through privatisation enhances the state's capacity and builds a viable tax regime.<sup>378</sup> Suppose the natural resource sector's privatisation stays with local investors. In that case, they maintain a balance with the government on fiscal matters since they need each other, unlike foreign investors who lose the bargaining power to the State after investing.<sup>379</sup>

For example, Russia sold its oil concessions to domestic investors, which led to the investors negotiating with the country to get a viable tax regime.<sup>380</sup> However, Kazakhstan, which sold its oil sector to foreigners, has a volatile tax system.<sup>381</sup> The volatility is a result of the inability of Kazakhstan to expand its tax nets beyond foreign investors.<sup>382</sup> After the initial investment by foreign investors, the government seeks additional tax revenue and is not keen to maintain its initial agreement.<sup>383</sup> Be that as it may, exploitation of natural resources is capital intensive, and Ghana may not have the capacity for exploitation.

This thesis suggests that in pursuing privatisation for local investors, the process of the award of a contract must be transparent and competitive to scrutinise and select credible contractors so that the ultimate entity would have won it on merit and not through political connection. Such a

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<sup>375</sup> Ross, 'The Political economy of the resource curse', *World Politics*, Vol. 51 (2), 1999, 320.

<sup>376</sup> Rosser, (note 287), 25.

<sup>377</sup> Ross, (note 375), 200. See also Weinthal et al., 'Energy Wealth and Tax Reforms in Russia and Kazakhstan', *Resource Policy*, Vol. 27, 217 they argue that privatisation of the natural resource sector would help limit rent-seeking, corruption and less opportunity for the state engaging in excessive spending and borrowing.

<sup>378</sup> Weinthal et al., 'Energy Wealth and Tax Reforms in Russia and Kazakhstan', *Resource Policy*, Vol. 27, 223.

<sup>379</sup> Weinthal et al., (note 378), 222.

<sup>380</sup> Weinthal et al., (note 378), 216.

<sup>381</sup> Weinthal et al., (note 378), 216.

<sup>382</sup> Weinthal et al., (note 378), 216.

<sup>383</sup> Weinthal et al., (note 378), 222.

precaution is necessary to reduce the tendency of politicians to form businesses and use their influence and power in government to secure such contracts and become beneficial owners.<sup>384</sup>

## 2.2.7 Intervention at the International Level

There have been calls for international action to help resource-rich countries overcome the resource curse.<sup>385</sup> The first attempt was to control global commodity prices through international agreements.<sup>386</sup> The effort did not yield the required results.<sup>387</sup> Other initiatives included the introduction of the Compensatory Financing Facility<sup>388</sup> (CFF) and the Stabex Facility<sup>389</sup> introduced by the International Monetary Fund (IMF) and the European Union (EU), respectively. The instruments were meant to enable resource-rich countries to manage the price shocks but have not significantly impacted them.<sup>390</sup> Nevertheless, these institutions are urged to help resource-rich countries through measures intended to improve their risk management skills and equip them to deal with price shocks to help resource-rich nations overcome the resource curse.<sup>391</sup>

Existing exploration and production agreements between sub-Saharan Africa and international oil companies are production-sharing transactions associated with price volatility, a primary cause of the resource curse.<sup>392</sup> It is necessary to revise these agreements to host developing countries, and the IOC's bear the burden of revenue volatility.<sup>393</sup> The revision of oil contracts can be challenging regarding the incorporation of stabilisation clauses in these agreements. Stabilisation clauses ensure that the oil agreement is not changed to affect multinational oil companies' interests, rights, and obligations during the contract term to their disadvantage.<sup>394</sup> For such reasons, resource-rich

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<sup>384</sup> See Global Witness, 'How to Lose US\$ 4 Billion', 2015. A study of the natural resource industries of Nigeria, Democratic Republic of Congo, Angola and the Republic of Congo by Global Witness. It reports that US\$ 4 billion have been allocated to companies whose ownership are doubtful. The report is as a result of credibility test for the global transparency standards as shadowy companies' gains billions in oil and mining deals. Available at <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/how-lose-4-billion/> accessed on 14 March 2021.

<sup>385</sup> Rosser, (note 287), 25.

<sup>386</sup> Ross, (note 375), 199.

<sup>387</sup> Ross, (note 375), 199.

<sup>388</sup> The CFF was a concessional borrowing facility granted to resource-rich countries.

<sup>389</sup> Stabex refers to the system for the stabilization of export earnings.

<sup>390</sup> Bannon, and Collier, 'Natural Resources and Conflict: What We Can Do', Chapter 1 in I. Bannon and P. Collier (eds.), *Natural Resources and Violent Conflict: Options and Actions*, Washington, DC: World Bank, (2003), 10.

<sup>391</sup> Bannon and Collier, (note 390), 10.

<sup>392</sup> Shaxson, 'New Approaches to Volatility Dealing with the "Resource Curse" in Sub-Saharan Africa', *International Affairs* Vol. 81, Issue 2, (2003) 311–24, 321

<sup>393</sup> Shaxson, (note 392), 322.

<sup>394</sup> C. Adomako-Kwakye, (note 332) 10.

countries at the negotiation stage must invoke the international norms<sup>395</sup> to help developing host countries control their natural resources, as discussed supra. These norms should reflect in mining, exploration, and production legislation to incorporate into the agreements to exploit natural resources.

This thesis argues that with these existing responses to overcome the resource curse, the assumption is that the revenue should benefit all the state citizens. However, the pursuit of these responses would be of little benefit if there is no legal framework for utilising the oil revenue. As a result of the need for the law, resource-rich states should endeavour to enact legislation to receive the oil revenues and manage it to improve the citizens' living standards.

## 2.2.8 Revenue Management Act

Governments of developing resource-rich countries must establish a legal regime to manage the wealth generated from natural resources to create hope for their citizens. Because resource revenues differ from other government income sources as they emanate from a depleting source and commodity price volatility, making it temporal and unreliable.<sup>396</sup> The legal framework deals with the creation of accounts to receive the revenues and its management. A revenue management law seeks to ensure transparency and accountability in the administration of the oil revenue. Revenue management law must consider the needs, institutions, and legal framework of the country in question to make it beneficial to the state and the people.<sup>397</sup> Due to the importance of oil revenue, experience indicates that a separate account should hold it for its management to ensure transparency and safeguard it to maximise the benefits.<sup>398</sup> The Central Bank holds such accounts.<sup>399</sup> Suppose the oil revenue does not form part of the mainstream government statement. In that case, the State needs to select a custodian, an international institution outside the country, to manage the account.<sup>400</sup>

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<sup>395</sup> The International norms are; Permanent Sovereignty over Natural Resources, UN Resolution 1803 (XVII) of 1962, the Charter of Economic Rights and Duties of State 1974 and United Nations Conference on Trade and Development (UNCTAD) Draft Code on Transfer of Technology.

<sup>396</sup> Collier, 'The Political Economy of Natural Resources', *Social Research*, Vol. 77 (4), 2010, 1120-1121.

<sup>397</sup> Bell et al, 'Critical Issues for a Revenue Management Law', in Humphreys et al. (Eds.), *Escaping the Resource Curse*, University Press, Colombia New York, 287.

<sup>398</sup> Bell et al, (note 397)288.

<sup>399</sup> Bell et al, (note 397), 288 to 299.

<sup>400</sup> Bell et al, (note 397), 289.

Oil revenue payable to the state consists of several heads, such as taxes, royalties, signature bonuses, and money from the sale of the government's portion of the oil.<sup>401</sup> The law must define all these comprehensively to avoid leakages and prescribe withdrawals from the account.<sup>402</sup> In countries with weak institutions, the revenue management law should ensure that formal structures exist for withdrawals to protect the fund.<sup>403</sup> The legal framework must charge different institutions with a mandate for collecting, using and supervising the revenue. The entity must render an account of their expenditure to Parliament, which represents the citizenry. The management of resource revenue law must limit the transfer of stated amounts in percentage terms to support the budget annually to prevent mismanagement.<sup>404</sup> Such limitations help reduce the temptation of regularly withdrawing from the oil account by the state to meet short-term deficits.<sup>405</sup> These restrictions will not make a significant impact if there is no political will to enforce them.

Funds created under the law must have clear rules to regulate deposits and withdrawal from the funds. Various countries use different approaches. Norway takes money from the oil funds to balance the budget whenever there is a deficit, but in Sao Tome and Principe, their law stipulates the oil fund amount to support the budget annually.<sup>406</sup> The revenue management law must define how funds are utilised to ensure economic development and make a particular demand on the spending authority or the body set up under the law. It makes it possible to use the funds for projects approved by the state.

The restrictions alone cannot help the fund to succeed. The revenue management law must provide for management selected based on competence and a clear governance structure. The composition of the body should be independent of government. There should be a supervising board that oversees the management and sanction expenditures from the oil fund. The oversight body must include civil societies to act as watchdogs.<sup>407</sup> The revenue management law must set out the powers available to the management in charge of the funds. It includes authorising investment policy on

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<sup>401</sup> Bell et al, (note 397), 290.

<sup>402</sup> Bell et al, (note 397), 290.

<sup>403</sup> Bell et al, (note 397), 290.

<sup>404</sup> Bell et al, (note 397), 291.

<sup>405</sup> Botswana took a decision that the savings fund exists for only the agreed development programme approved by Parliament. Other programmes must receive funds from outside the savings fund. The decision of the country not to change the development programmes except by a majority Parliamentary approval also enhanced the use of the funds.

<sup>406</sup> Bell et al, (note 397), 292.

<sup>407</sup> Bell et al, (note 397), 301.

the fund and mechanisms for informing the public of utilising the resources and auditing. If a resource-rich country has the political will to implement the law and abide by it, it can overcome the resource curse.

The resource curse is avoidable. Countries without natural resources fared better than countries with natural resources. In the seventeenth century, Spain exploited gold and silver from its Spanish colonies but did not do well regarding economic development.<sup>408</sup> However, the Netherlands, without natural resources, did better than Spain economically.<sup>409</sup> In the nineteenth and twentieth centuries, the growth of the economies of Switzerland and Japan were better than Russia, which had natural resources.<sup>410</sup> The economies of South Korea, Taiwan, Hong Kong, and Singapore<sup>411</sup> with little or no natural resources have become industrialised economies of the world, and resource-rich countries of Mexico, Nigeria, and Venezuela have gone bankrupt.<sup>412</sup>

### 3. Conclusion

The existing responses to the resource curse phenomenon, as discussed, seeks to help mitigate the effects of the resource curse. These remedies emanate from different country studies and, therefore, would not apply to all resource-rich nations. Resource-rich nations should explore these policies and implement those that would be appropriate together with any necessary modifications. In considering nations that have overcome the resource curse, the affected states must pay attention to the conditions under which such countries succeeded.<sup>413</sup> This thesis contends that these responses, although acceptable, the implementation of the measures applicable to a resource-rich country is not enough in the absence of a revenue management law. A legal framework would direct the use of the revenue that accrues to the state. The issue, however, remains whether the enactment of a revenue management law solves the resource curse phenomenon entirely.

In Ghana, the Auditor-General and the Public Interest Accountability Committee (PIAC) reports showing that mismanagement of the oil revenue is rife despite the enactment of a revenue

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<sup>408</sup> Sachs and Warner, (note 255), 2.

<sup>409</sup> Sachs and Warner, (note 255), 2.

<sup>410</sup> Sachs and Warner, (note 255), 2.

<sup>411</sup> Commonly referred to as Asian Tigers.

<sup>412</sup> Sachs and Warner, (note 255), 2-3.

<sup>413</sup> Rosser, (note 153), 558.

management law.<sup>414</sup> The natural resources of Ghana, including oil and gas, are held in trust by the President for the people of Ghana.<sup>415</sup> The mismanagement of income from oil and gas means that the whole nation suffers. Overcoming the resource curse requires a concerted effort on the government, bureaucrats, civil society players, academia, and resource-rich countries' citizens.

This chapter argues that the PRMA is no panacea to mismanagement of the oil revenues given the challenges associated with all the remedies. In Ghana, the State actors control the disbursement of the money with little or no input from other stakeholders except auditing by Auditor-General and PIAC. The introduction of more checks and balances may help reduce the mismanagement because the State's expenditures with the oil revenue get to the public domain after audits by the Auditor General and PIAC.<sup>416</sup> The preamble of the PRMA shows that the legislation has strong points providing the legal framework for the collection, allocation and management of Ghana's oil revenue. Be that as it may, its implementation has shown flaws with its design creating a discrepancy between the objective of the law and its operation. The inability of the country to invoke the sanctions regime in the PRMA is not a good signal for fighting transparency and accountability.<sup>417</sup> The next chapter discusses accountability and transparency as tools for managing oil revenues.

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<sup>414</sup> Chapter 8, sections 2.1 and 2.2 (2.2.1-2.2.4).

<sup>415</sup> See Article 257(6) of the 1992 constitution of Ghana. See also section 1 of the Minerals and Mining Act, 2006, Act 703. The section is to the effect all minerals in their natural state wherever in Ghana is the property of the Republic of Ghana and vested in the President *in trust* for the people of Ghana.

<sup>416</sup> Chapter 7, sections 3.1 and 3.2.

<sup>417</sup> See section 58 of Act 815. There is no evidence of the application of the penalties under the PRMA.

# Chapter 3: Conceptualising Transparency and Accountability in the Resource Revenue Context

## 1. Introduction

Chapter 2 concludes that the Petroleum Revenue Management Act (PRMA) enactment is commendable but not the panacea for the mismanagement of oil revenue. It requires checks and balances to assist Ghana to overcome the challenge of mismanagement.<sup>418</sup> The Constitution,<sup>419</sup> the Minerals and Mining Act<sup>420</sup> of Ghana, make the President a trustee<sup>421</sup> of all-natural resources on behalf of the citizens.

Transparency and accountability feature prominently at businesses and government levels as the basis for good governance.<sup>422</sup> The actions of the State in managing the oil revenue must equally reflect transparency and accountability to realise the objectives of enacting the PRMA. Suppose the government of Ghana in control of the economy fails to exhibit transparency and accountability. In that case, the intention of passing the PRMA will be a “pie in the sky” rather than reality.<sup>423</sup>

This chapter discusses transparency and accountability as tools for managing oil revenue to avert the resource curse. The chapter argues that the Ghana government must exercise openness and be accountable for its oil revenue management. Transparency and accountability alone cannot guarantee sensible use of the oil revenue if institutions vested with responsibility in the PRMA fail to assert their independence and authority under the Act.<sup>424</sup>

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<sup>418</sup> Chapter 2, section 3.

<sup>419</sup> Article 257(6) of the 1992 Republican Constitution of Ghana.

<sup>420</sup> Section 1 of Act 703 of 2006.

<sup>421</sup> The relationship creates a principal and agent relationship between the parties with the citizens being the principal and the President being the agent.

<sup>422</sup> Hood, ‘Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple?’ *West European Politics*, Vol. 33 (5), 2010, 989.

<sup>423</sup> The PRMA creates the legal framework for the management and maximisation of the oil revenue.

<sup>424</sup> Chapter 5 discusses institutions and their autonomy.

## 2. Transparency and Accountability in the Management of Petroleum Revenues

Transparency and accountability have become the yardstick for assessing governments, especially multilateral institutions such as the World Bank and the International Monetary Fund (IMF).<sup>425</sup> For aid and development funding, transparency and accountability are considered antidotes to prevent corruption and enable resources channelled to the productive sectors of the economy to see tangible results.<sup>426</sup> In a democracy, these concepts ensure that the government caters for the needs of the citizens.<sup>427</sup> In contrast, non-governmental organisations and civil society believe that transparency and accountability would manifest the claims of the political elite serving the interest of the citizens.<sup>428</sup>

Evidence exists to prove the mismanagement of oil revenue in some African resource-rich States by the ruling class with its indirect result of impeding economic growth and, in some cases, fueling conflicts.<sup>429</sup> The mismanagement has led to the resource curse or the “paradox of plenty.”<sup>430</sup>

In managing oil revenue, one of the remedies to deal with the resource curse is for the leadership of the resource-rich States to pursue transparency and accountability in managing the resource revenue.<sup>431</sup> Although transparency and accountability are not the only means of managing oil revenue, their adherence minimises the resource curse, controls corruption, and promotes government credibility.<sup>432</sup>

### 2.1 Transparency

This section traces the origin of transparency. It defines the term, assesses how transparency is institutionalised within the legal framework of States to promote the release of information to the public. The segment discusses the types of transparency and the merits and limits and finally examines it in managing natural resource revenues.

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<sup>425</sup> Hood, (note 422), 990.

<sup>426</sup> Gaventa and McGee, (note 69) s 4.

<sup>427</sup> Gaventa and McGee, (note 69), s 4.

<sup>428</sup> Gaventa and McGee, (note 69), s 4.

<sup>429</sup> Ofori et al., (note 65), 1188.

<sup>430</sup> Chapter 1, sections 2.1 and 2.2.

<sup>431</sup> Williams, (note 38), 490.

<sup>432</sup> See section 3 below.

### 2.1.1 Origins of Transparency

Transparency takes its roots from the word “transparentum”, meaning “showing light”.<sup>433</sup> Transparency embodies two concepts, namely visibility and inferability.<sup>434</sup> Visibility means the extent to which the information provided is complete, accessible, and valuable, and inferability implies the quality of the information provided.<sup>435</sup> Processed information has three attributes, namely, disaggregation, verifiability, and simplification.<sup>436</sup> Disaggregation means knowledge from an unsullied source; verification connotes information vetted by a third party, while simplification suggests that the data is understandable or simplified and useful.<sup>437</sup> Together these attributes indicate that any information put out must be accurate and meaningful.

Researchers began to conceptualise the subject of transparency.<sup>438</sup> Political scientists joined the campaign for transparency to expose corruption and other underhand dealings in society.<sup>439</sup> The Watergate<sup>440</sup> scandal of the 1970s placed the concept of transparency on the proverbial table, culminating in the passage of the new United States of America laws<sup>441</sup> that gave the American public access to government information.<sup>442</sup> Transparency refers to a policy-level commitment to honesty and publicity in the affairs of the State.<sup>443</sup>

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<sup>433</sup> Hossein et al, ‘Four references models for transparency requirement in information systems’, *Requirements Eng*, Vol. 23, 2018, 251.

<sup>434</sup> Michener & Bersch, ‘Identifying Transparency’, *Information Polity*, Vol. 18, 2013, 234 and 238.

<sup>435</sup> Michener & Bersch, (note 434), 238.

<sup>436</sup> Michener & Bersch, (note 434), 239.

<sup>437</sup> Michener & Bersch, (note 434), 239.

<sup>438</sup> Stiglitz, Incentives, risk, and information: Notes towards a theory of hierarchy, *Bell Journal of Economics* 6(2) 1975, 552–579, M. Spence, ‘An economist’s view of information’, *Annual Review of Information Science and Technology* 9 1974, 57–78 and G. Akerlof, The market for ‘lemons’: Quality, uncertainty and the market mechanism, *The Quarterly Journal of Economics* 84(3), 1970, 488–500.

<sup>439</sup> Michener & Bersch, (note 410), 235. See also K. Weyland, *The Politics of Corruption in Latin America*, *Journal of Democracy* 9(2) (1998), 108–121 and L. Manzetti, *Privatization South American Style*, Oxford: Oxford University Press, 1999.

<sup>440</sup> The Watergate scandal occurred in the United States between 1972 and 1974 and led to resignation of President Richard Milhaus Nixon on 8 August. See *Watergate: The Scandal That Brought Down Richard Nixon*, available at [www.watergate.info](http://www.watergate.info) accessed on 14 March 2021.

<sup>441</sup> The laws included the Freedom of Information Act in 1966 amended in 1974, the Sunshine in Government Act (1976) and the Presidential Records Act (1978). See Ball, ‘What is Transparency’, *Public Integrity*, Vol. 11, No. 4 2009, 293.

<sup>442</sup> Ball, ‘What is Transparency’, *Public Integrity*, Vol. 11(4), 2009, 293.

<sup>443</sup> Michener & Bersch, (note 434), 235. See also J. Paterson, *Playing the Transparency Game: Consultation and Policy-Making in the European Commission*, *Public Administration* 73 (3) 1995, 473 – 492 and T. Remington, *Renegotiating Soviet Federalism: Glasnot and regional autonomy*, *Publius: The Journal of Federalism* 19 (3) 1989, 145-165.

Transparency International, an international non-governmental organisation, furthered the spread of the idea of openness.<sup>444</sup> It aimed to examine the effects and consequences of corruption at the nation state-level and prescribe policy directions in global institutions to check fraud.<sup>445</sup> The term gained ground with scholarly works<sup>446</sup> and became a widely recommended potential remedy for contesting corruption and a tool for accountability.<sup>447</sup>

Transparency is a function of three variables, namely the information, its holder and the recipient.<sup>448</sup> The concept gradually found its way into documents of institutions, including the European Union, the General Agreement on Tariffs and Trade and other activities of institutions in Europe and Non-Governmental Organisations (NGOs).<sup>449</sup> The import of incorporating transparency into these establishments is to create an open society where information freely flows to the general public.<sup>450</sup>

### 2.1.2 Meaning of Transparency

Transparency is about openness and access to reliable information. The concept means making public the conduct of officials and subjecting it to scrutiny.<sup>451</sup> It is difficult to get a precise definition of transparency because several disciplines refer to it.<sup>452</sup> For example, in politics, transparency is defined as the ability of the government to release information to enable citizens to ascertain the government's performance.<sup>453</sup> In economics, transparency means the process by which information about existing conditions, decisions and actions are accessible, visible and

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<sup>444</sup> Ball, (note 442), 294.

<sup>445</sup> Ball, (note 442), 295.

<sup>446</sup> Florini, 'Does the invisible hand need a transparent glove? The politics of transparency, in: Annual World Bank Conference on Development Economics, Washington, DC, 2009, Ball, (note 418), 293–307, D. Weitzner, H. Abelson, T. Berners-Lee, J. Feigenbaum, J. Hendler, J. Sussman and J. Gerald, Information accountability, Communications of the ACM 51(6) (2008), 82–87, J. Fox, The Uncertain Relationship between Transparency and Accountability, Development in Practice 17(4) (2007), 663–671.

<sup>447</sup> Michener & Bersch, (note 434), 235.

<sup>448</sup> Schauer, 'Transparency in Three Dimensions', University of Illinois Law Review, 2011, 1339.

<sup>449</sup> Ball, (note 442), 295.

<sup>450</sup> Holzner & Holzner, 'Transparency in Global Change: The Vanguard of the Open Society', Pittsburg, University of Pittsburg Press, 2006, 1.

<sup>451</sup> Birkinshaw, 'Freedom of Information and Openness. Fundamental Human Rights' Administrative Law Review, Vol. 58, No. 1, 2006, 186.

<sup>452</sup> Florini (ed.) 'The Right to Know: Transparency for an Open World', Columbia University Press, 5.

<sup>453</sup> Florini, (note 452), 5.

understandable.<sup>454</sup> In security terms, the United Nations group defines transparency to involve systematic information on specific aspects of military activities.<sup>455</sup>

Aside from the various disciplinary meanings, transparency is the release of information to the public, who make informed decisions on matters of national interest.<sup>456</sup> The declaration gives two significant implications by keeping the citizens abreast of current happenings and being heard on issues. What remains a challenge in Ghana regarding the impact of transparency deals with the State making decisions without reference to the public? In this regard, society has limited information regarding the activities of the government.

Transparency gives stakeholders timely access to relevant economic, social, and political information.<sup>457</sup> Lack of knowledge leaves the public uninformed about the happenings in the State. Stiglitz argues that “secrecy reduces the information available to the citizenry, hobbling their ability to participate meaningfully.”<sup>458</sup> To Stiglitz, transparency is an indispensable part of public governance observable by those in authority and holding information.<sup>459</sup> The disclosure of information to the public or on request should not be difficult for an office holder unless it falls under the law's exceptions.<sup>460</sup>

Transparency creates an enabling environment to allow the public to gain access to information.<sup>461</sup> However, the public's release of information may not amount to transparency if the recipients cannot comprehend the information<sup>462</sup> or cannot process the information.<sup>463</sup> Transparency requires State institutions to make information available to the public within and outside the political system allowing proper communication between the government and the public regarding credible

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<sup>454</sup> Florini, (note 452), 5.

<sup>455</sup> Florini, (note 452), 5.

<sup>456</sup> Florini, (note 452), 5.

<sup>457</sup> Kolstad & Wiig, ‘Is Transparency the key to Reducing Corruption in Resource-Rich Countries?’ *World Development*, Vol. 37, No. 3, 2009, 522.

<sup>458</sup> Stiglitz, ‘On liberty, the Right to Know and Public Discourse: The Role of Transparency in Public Life’, 1999, 7. Available at <https://www.internationalbudget.org/wp-content/uploads/On-Liberty-the-Right-to-Know-and-Public-Discourse-The-Role-of-Transparency-in-Public-Life.pdf> accessed 14 March 2021.

<sup>459</sup> Stiglitz, (note 458), 8

<sup>460</sup> Sections 60-74 of the Data Protection Act, 2012, Act 843 of Ghana provides a list of information exempted from disclosure.

<sup>461</sup> Etzioni, ‘Is Transparency the Best Disinfectant?’ *The Journal of Political Philosophy*, Vol. 18, No. 4, 2010, 389.

<sup>462</sup> Heald, ‘Varieties of transparency’, in Hood, C. and Heald, D. (eds.) *Transparency: the Key to Better Governance?* Series: Proceedings of the British Academy (135). Oxford University Press, 26.

<sup>463</sup> Heald, (note 462), 26.

information.<sup>464</sup> The disclosure of reliable information helps citizens monitor the government regarding accrued revenue and expenditure. Chapters 4, 5, 6 and 7 seeks to undertake this exercise regarding Ghana's oil revenue.

The institutionalisation of a legal framework for disclosing information or access is essential to enable citizens to access information.<sup>465</sup> Therefore, governments of resource-rich economies must reveal their resource revenues to the public to build and maintain the citizens' trust. The failure of the government to make disclosures regarding resource revenue fuels the suspicion of mismanagement. Disclosure of resource revenue by the State addresses mismanagement if there is accountability on the part of the State.

### 2.1.3 Merits and Limitations of transparency

There are benefits associated with the principle of transparency and suitable for democracy.<sup>466</sup> Transparency has positive political, economic and social effects.<sup>467</sup> Politically, transparency allows for the flow of information between the State and its citizens and enhances the credibility of the government, public institutions, and the State's image.<sup>468</sup> Transparency may serve as a tool to enable citizens to ascertain what the government has done for the State with the resources.<sup>469</sup> Assessing the government depends on the State's information, and lack of information may leave citizens helpless.

In economic terms, a transparent country opens up the country economically since investors and other stakeholders are prepared to invest and undertake other economic activities.<sup>470</sup> On the social front, transparency by a government replicates in different sectors of the economy regarding audits,

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<sup>464</sup> Finel & Lord, 'The Surprising Logic of Transparency', *International Studies Quarterly*, Vol. 43, No. 2, 1999, 316.

<sup>465</sup> Moore, 'The Limits of Transparency', *The Political Quarterly*, Vol. 4, 2011, 506.

<sup>466</sup> Moore, (note 465), 506.

<sup>467</sup> Frynas, 'Corporate Social Responsibility and Societal Governance: Lessons from Transparency in the Oil and Gas Sector', *Journal of Business Ethics*, Vol. 93, 2010, 168.

<sup>468</sup> Frynas, (note 467), 168.

<sup>469</sup> Frynas, (note 467), 168.

<sup>470</sup> Gelos and Wei, 'Transparency and International Portfolio Holdings', *Journal of Finance*, Vol. 60 (6), 2005, 2987-2988.

tender process, procurement and foreign aid.<sup>471</sup> If the government is transparent, it transcends other sectors of the economy.<sup>472</sup>

Transparency has positive effects; it allows the citizens to judge the stewardship of the individuals entrusted with responsibility for resources. The benefits of transparency occur under free media, vibrant civil society organisations and the timely introduction of transparency.<sup>473</sup> Successfully managing resource revenues occurs in countries whose leaders are not autocratic and permit the press and civil society organisations to push for the good governance of resource wealth.<sup>474</sup>

However, there are challenges. The argument is that some information should be kept secret regarding its nature, for example, state secrets or because some data issued may not be processed well by those holding the information to make it meaningful.<sup>475</sup> With such a condition, there is no guarantee that transparency will work.<sup>476</sup> It is now possible to obtain information through other means, such as Wikileaks, and keeping information away from the citizens may not serve any useful purpose.<sup>477</sup> Transparency is not equivalent to trust, but it is a crucial component in establishing trust.<sup>478</sup> The inability to process the data implies that although the information is out, it is not helpful to those who have received it because they cannot take any significant decision.<sup>479</sup> The difficulty requires breaking down the information disseminated so that all manner of persons would understand it.

Transparency requires disclosure of information but fails to compel effective communication with the audience, requiring that any report release be clear and understandable.<sup>480</sup> The need to observe transparency may also affect the information provider, who has to be vigilant and conform because the audience is being watched from afar.<sup>481</sup> Transparency may also affect negotiations because

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<sup>471</sup> Transparency International: 2006, Global Corruption Report 2006 (Pluto Press, London).

<sup>472</sup> Schults, J. 'Follow the Money - A Guide to Monitoring Budgets and Oil and Gas Revenues', Open Society Institute New York, 2004.

<sup>473</sup> Frynas, (note 467), 169.

<sup>474</sup> Shankleman, 'Managing Natural Resource Wealth', United States Institute of Peace, Washington D.C., 2006.

<sup>475</sup> Florini, (note 446), 60-61.

<sup>476</sup> Florini, (note 446), 60-61.

<sup>477</sup> Moore, (note 465), 507.

<sup>478</sup> Moore, (note 465), 507.

<sup>479</sup> Etzioni, (note 461), 399.

<sup>480</sup> O'Neal, 'Transparency and the ethics of Communication', Proceedings British Academy, Oxford University Press, 2006, 81 and 88-89.

<sup>481</sup> Bannister and Cannolly, 'The Trouble with Transparency: A critical Review of Openness in e-Government, Policy and Internet', Policy and Internet, 2011, 16.

parties would be cautious in releasing valuable information that may later undermine the parties' interests.<sup>482</sup> Although openness helps to detect corrupt officials, it may also lead to identifying a corrupt official susceptible to accept a bribe, thereby establishing the link or contact.<sup>483</sup> A challenge in ensuring transparency in the resource sector is the non-existence of robust civil society organisations to balance the executive powers regarding managing the revenues and adherence to the legal framework.<sup>484</sup> Civil Society Organisations must take an active part in scrutinising disclosures made by the government to ensure accountability. The scrutiny by the Civil Society Organisation of the values put out by the State addresses a lack of transparency and accountability to the extent that citizens receive information accrued to the State. This is likely to deal with mismanagement.

#### 2.1.4 Types of Transparency

Reliable information to the citizens creates trust because the citizens are informed about the affairs of the State. If the government is transparent with resource revenues, trust between host communities, government, and companies will build trust.<sup>485</sup> A crucial issue concerning the release of information is the willingness of the entity in possession eagerness to release the same.<sup>486</sup> The need for disclosure has resulted in non-agent controlled transparency and agent-controlled transparency.<sup>487</sup>

Non-agent transparency refers to situations where, because of non-disclosure by the State, another body, namely, mass media or a whistle-blower institution, investigates issues or problems of public nature and publishes it to the public.<sup>488</sup> Here, the information is held and released by a body other than the government.<sup>489</sup> Agent-controlled transparency refers to the release of information through legal demands, namely the presentation of budget statements and the State of the Nation addresses and orders of the court for disclosure.<sup>490</sup> The third type of transparency is demand-driven access to

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<sup>482</sup> Kolstad and Wiig, (note 457), 525.

<sup>483</sup> Kolstad and Wiig, (note 457), 525.

<sup>484</sup> Delescuse, 'Chad-Cameroon: A Model Pipeline?' *Georgetown Journal of International Affairs*, Vol. 43 (5), 2004, 48.

<sup>485</sup> Al-Faruque, (note 282), 69.

<sup>486</sup> Lindstedt and Naurin, 'Transparency is not enough: Making Transparency Effective in Reducing Corruption', *International Political Science Review*, Vol. 31(3), 305.

<sup>487</sup> Lindstedt and Naurin, (note 486), 305.

<sup>488</sup> Lindstedt and Naurin, (note 486), 305.

<sup>489</sup> Lindstedt and Naurin, (note 486), 305.

<sup>490</sup> Lindstedt and Naurin, (note 486), 305.

information where the government fails to release the information, and an individual may use the relevant laws and recognised means available to demand information from the government or institution.<sup>491</sup>

Agent-controlled transparency tends to reduce corruption because the agent will have to cover the tracks of his conduct due to the laws and other mechanisms available for checking some of the abuse.<sup>492</sup> Therefore, it is necessary to monitor the agents' actions to ensure that their acts reflect the tenets of transparency. Transparency is essential because where the State, as the custodian of the information, refuses to release it, other channels through which one may access it.<sup>493</sup> Accessing Ghana's oil revenue information is now possible; whether this will help overcome mismanagement and corruption remains a challenge.

### 2.1.5 Institutionalisation of Transparency

For better governance to prevail, transparency must exist.<sup>494</sup> Access to information about the affairs of the State by the general public and journalists serves to check corruption by the political elites for fear of exposure.<sup>495</sup> The request for release of information by politicians sometimes receives stiff opposition from the political actors who oppose openness to reduce challenges to their actions.<sup>496</sup> Political opposition to transparency measures may stem from the fact that the release of such information is often prologued for journalists to investigate the government to reveal corruption and other misconduct. The passage of legislation is one way to compel the government's transparency by releasing information regarding the affairs of the State. Access to such information enables the citizens to follow the work of the State actors and thereby deter corruption and misconduct.

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<sup>491</sup> Fox, 'The Uncertain relationship between transparency and accountability', *Development in Practice*, Vol. 17 Nos. 4-5, 2007, 665.

<sup>492</sup> Lindstedt and Naurin, (note 462), 306.

<sup>493</sup> Ghana passed the Right to Information Act, 2019, Act 989 on 26 March 2019.

<sup>494</sup> Florini, (note 486), see also Hood, Christopher, and David Heald, 'Transparency: The Key to Better Governance?' Oxford: Oxford University Press, 2006 and Stiglitz, Joseph, 'On Liberty, the Right to Know and Public Discourse: The Role of Transparency in Public Life' 1999 Oxford Amnesty Lecture.

<sup>495</sup> Berliner, 'The Political Origins of Transparency', *The Journal of Politics*, Vol. 76, No. 2, 2014, 479.

<sup>496</sup> Berliner, (note 495), 479.

The need for the government to give access to information has found expression in international law with encouragement to countries to adopt rules that support transparency.<sup>497</sup> The passage of laws that promote openness is one way to increase transparency, accountability, and trust.<sup>498</sup> The inference from these pieces of treaties and agreements supports the enactment of the legislation to allow citizens to access government information. Generally, the Freedom of Information Act (FOIA) passage enhances transparency, leading to a robust information regime.<sup>499</sup> Freedom of Information laws has three features. The first feature makes government information available to the public.<sup>500</sup> The government discloses through its various ministries, department, agencies, and budgets. The general public may access the information through the FOIA and its absence through other means, including court actions and investigative journalism.

The availability of government information is crucial for planning, obtaining information about jobs from the State and other services. State officials do not benefit by keeping the information and later releasing it to their allies.<sup>501</sup> Such behaviour results in what is described as “information as a commodity permits officials to allow selective access and can lead to strategic leaks, patronage and networks, and rent-seeking behaviours.”<sup>502</sup>

The second feature of a FOIA is that it increases access to information and serves as a tool for monitoring the activities of the government.<sup>503</sup> The argument goes that mass media can assist vulnerable citizens with their actions to influence their voting.<sup>504</sup> The relationship between the administration and the citizens is one of principal and agent, the citizens being the principal and the government, the agent.<sup>505</sup> The link creates separate interests for the parties; the assumption is that the public officer conducts activities that will favour his interest against the principal's benefit

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<sup>497</sup> Banisar, ‘Freedom of Information around the World: A Global Survey of Access to Government Information Laws’, In Privacy International, 2006 available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1707336](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1707336) accessed 14 March 2021.

<sup>498</sup> Banisar, (note 497), 6. The treaties and declarations committing States to make information available to their citizens is replicated with the passage of Freedom of Information Act by countries that seek to make information available. See also Birkinshaw, (note 427), 178-179.

<sup>499</sup> Michener, ‘FOI Laws around the World’, *Journal of Democracy*, Vol. 22 (2), 2011, 154.

<sup>500</sup> Berliner, (note 495), 482.

<sup>501</sup> Berliner, (note 495), 482.

<sup>502</sup> Pinto, ‘Transparency Policy Initiative in Latin America: Understanding Policy Outcomes from an institutional Perspective’, *Commonwealth Law and Policy*, 2009, Vol. 14 (1), 45.

<sup>503</sup> Berliner, (note 495), 482

<sup>504</sup> Besley and Burgess, ‘The Political Economy of Government Responsiveness: Theory and Evidence from India’, *The Quarterly Journal of Economics*, Vol. 117 (4), 2002, 1415-1416.

<sup>505</sup> Barro, ‘The Control of Politicians: An Economic Model’, *Public Choice*, 1973, Vol., 14, 19 and 22.

due to having the information.<sup>506</sup> The dissemination of the information helps monitor the activities of public officials.<sup>507</sup>

Once the electorates get to know of the accrued revenue from the oil, it makes the government responsive to the constituents' needs, and the role of the mass media to secure and disseminate the information primarily for the vulnerable is crucial.<sup>508</sup> Freedom of Information laws has served parties in opposition by allowing them access to information to expose the government's shortcomings to the general public.<sup>509</sup>

The third feature of FOIA helps to establish transparency through the enactment of a law binding successive governments.<sup>510</sup> The passage of FOIA is better than not having one since the absence of the law gives no guarantee of the pursuit of transparency.<sup>511</sup> The institutionalisation of transparency would have a low impact without information, which educates and inform the general public and multiple stakeholders about transparency in resource governance.<sup>512</sup> The dissemination of information serves as a crucial component of transparency's institutionalisation, without which transparency would be a mere talk shop.<sup>513</sup>

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<sup>506</sup> Barro, (note 505), 19 and 22.

<sup>507</sup> Berliner, (note 495), 482. See also Paivi et al, 'Transparent for Whom? Dissemination of Information on Ghana's Petroleum and Mining Revenue Management', *The Journal of Development Studies*, Vol. 56 (12), 2136-2137, 2020. They argue that transparency existing in Ghana's natural resource revenue management is nominal. Their contention is premised on the fact that most citizens do not receive information on resource revenue management because of the medium of dissemination which are the internet, newspapers and meetings in regional capitals as against radio, television and local community meetings patronized by the majority. The information thus rest with the elite and those working in the sector.

<sup>508</sup> Besley and Burgess, (note 504), 1415-1456.

<sup>509</sup> Berliner, (note 495), 482.

<sup>510</sup> Berliner, (note 495), 482.

<sup>511</sup> Ackerman and Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws', *Administrative Law Review*, Vol. 58 (1), 2006, 85-130.

<sup>512</sup> Van Alistine, 'Transparency in Resource Governance: The Pitfalls and Potential of "New Oil" in Sub-Saharan Africa', *Global Environmental Politics*, Vol. 14 (1), 2014, 28.

<sup>513</sup> For more discussion on access to information (ATI) and disclosure principles, see the following: Turrilli and Floridi, 'The Ethics of Information Transparency', *Ethics and Information Technology*, Vol. 11, 2009, 105-112, Marais and Burns, 'The role of access to information in enabling transparency and public consultation in governance - a case of access to policy consultation records in South Africa', *African Journal of Public Affairs*, Vol. 9 (6), 2017, 36-49, Banisar et al., 'Moving from principles to Rights: Rio 2012 and Access to Public Participation and Justice', *Sustainable Development Law and Policy*, Vol. 2, 2011, 8-14 and Dingwerth and Eichinger, 'Tamed Transparency: How Information Disclosure under Global Reporting Initiative Fails to Empower', *Global Environmental Politics*, Vol. 10 (3), 74-96.

### 2.1.6 Transparency in the context of managing oil revenue

The bid to overcome the resource curse requires a concerted effort by stakeholders.<sup>514</sup> Corruption and mismanagement by politicians and bureaucrats in managing oil revenues are the misery of developing resource-rich nations. Transparency ensures the disclosure of resource revenues by the government, which serves as vital information for combating corruption.<sup>515</sup> In the case of Ghana, payment of oil revenue goes into the Petroleum Holding Fund held at the Bank of Ghana<sup>516</sup> and notice is served on the Ghana Revenue Authority.<sup>517</sup> The Minister of Finance, the Auditor-General and the Public Interest Accountability Committee (PIAC) issues reports on the earnings, disbursements and expenditure of the oil revenues.<sup>518</sup> The government must balance the disclosure requirements with the interest of citizens who equate openness to development.<sup>519</sup> The inability of the citizens to see advancement despite the disclosure of oil revenue by the government means that the government is not transparent.

Lack of transparency adversely affects society, including enhancing corruption, inability to select competent persons to responsible positions, promoting rent-seeking, failure to initiate reforms, and insider dealing and affecting society's norms, which benefits the government due to concealment of information.<sup>520</sup> Where the government fails to make disclosures, press freedom can help fight corruption by releasing such information,<sup>521</sup> provided there is no State capture<sup>522</sup> of the press since a higher degree of media competition reduces corruption.<sup>523</sup> Transparency alone is insufficient to reduce corruption because aside from the information released; one needs to process and understand it to make it meaningful.<sup>524</sup>

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<sup>514</sup> Williams, (note 38), 490.

<sup>515</sup> Truelove, 'Oil, Diamonds, and Sunlight: Fostering Human Rights through Transparency in Revenues from Natural Resources', *Georgetown Journal of International Law*, Vol. 35, 2003, 212.

<sup>516</sup> Section 2 (1) and (2) of Act 815.

<sup>517</sup> Sections 3 (3) of Act 815.

<sup>518</sup> See chapter 5, section 3 for institutions and their role under the PRMA.

<sup>519</sup> Ofori et al, (note 65), 1187.

<sup>520</sup> Kolstad and Wiig, (note 457), 522-524.

<sup>521</sup> Brunetti and Wader, 'A Free Press is bad news for Corruption', *Journal of Public Economics*, Vol. 87, 2003, 1805.

<sup>522</sup> Besley and Prat, 'Handcuffs for the grabbing hand? Media Capture and Government Accountability', *American Economic Review*, Vol. 96 (3), 2006,

<sup>523</sup> Suphachalasai, 'Bureaucratic Corruption and Mass Media', *Environmental Economy and Policy Research Discussion Paper Series*, 2005,

<sup>524</sup> Kolstad and Wiig, (note 457), 524.

Local civil society groups and the international community have advocated transparency to make the citizens aware of oil revenues that accrue to the State to mitigate the effect of the resource curse and improve the management of resource revenues.<sup>525</sup> Transparency in the declaration of oil revenues is vital because citizens can examine expenditures incurred against the declared income to avoid an atmosphere of exaggerating or concealing the revenues.<sup>526</sup> The disclosure demonstrates the dependability of the information presented to the general public and creates trust between the government and the citizens.<sup>527</sup> However, the accuracy of the disclosed information is necessary to prevent manipulation by the government. It, therefore, requires testing the information released against what the government proclaims it has done. Transparency in this context allows the citizens to control the activities of the government, thereby reducing “government misbehaviour”.<sup>528</sup>

Transparency is essential in managing oil revenues because it enables the government to communicate the amounts realised from the natural resources to the public, and it helps citizens scrutinise the incomes declared by the State.<sup>529</sup> If governments engage in projects that enhance the living standards of the citizens, transparency may be a factor to reduce the effect of the resource curse. However, politicians may abuse the trust, and after the disclosure, monitor their actions by instituting checks and balances through institutions of the State.<sup>530</sup> Without monitoring expenditure, the government can use the funds to undertake projects that will secure the interest of the incumbent to the disadvantage of the community.

### 2.1.7 International Transparency Initiatives

The poor performance of some resource-rich countries in managing natural resource wealth has prompted stakeholders at the international level to intervene to help manage the resource revenues and boost transparency. To strengthen transparency in the management of resource revenues, the

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<sup>525</sup> Ofori et al, (note 65), 1188.

<sup>526</sup> Collier, and Hoeffler, ‘High-Value natural resources, development, and conflict: Channels of Causation. In High-Value Natural Resources and Peace building, (ed.) P. Lujala and S.A. Rustad, 2012, 307.

<sup>527</sup> Collier, and Hoeffler, (note 526), 307.

<sup>528</sup> Schauer, (note 448), 1347-1349.

<sup>529</sup> Corrigan, ‘Breaking the resource curse: Transparency in the natural resource sector and the extractive industry transparency initiative’, *Resources Policy*, 40, 2014, 19. See also Haufler, ‘Disclosure as Governance: The Extractive Transparency Initiative and Resource Management in the Developing World’, *Global Environmental Politics*, Vol. 10 (3), 2010, 59.

<sup>530</sup> Collier, ‘Is Aid Oil? An Analysis of Whether Africa Can Absorb More Aid’, *World Development*, Vol. 34, No. 9,

Extractive Industries Transparency Initiative (EITI) and Publish What You Pay (PWYP) have introduced policies aimed at alleviating the resource curse facing resource-rich countries.<sup>531</sup>

The EITI initiative highlights transparency concerning payment and expenditure of resource revenue by resource-rich nations.<sup>532</sup> The approach is justified because governments of some resource-rich countries have failed to use resource revenue to make them accountable to the citizens.<sup>533</sup> The voluntary nature of the initiative, coupled with the fact that companies should put out aggregate information on their dealings with resource-rich countries, makes governments reluctant to join.<sup>534</sup> EITI limitation further relates to exhibiting transparency in collecting the revenues but fails to address the expenditures of these revenues.<sup>535</sup> The EITI must expand its scope by assessing the management of resource wealth, which is the problematic area.

Another initiative is known as the Publish What You Pay (PWYP) campaign came into being in 2002. Soros championed the battle together with the Open Society Institute and the international non-governmental organisation Global Witness with the aim of foreign oil and gas companies publishing disaggregated payments made to resource-rich countries.<sup>536</sup> This initiative is not voluntary as businesses that want to list on the global stock exchange market must disclose resource-rich countries' payments.<sup>537</sup>

The efforts by EITI and PWYP are laudable for revenue transparency. The political will to implement it remains since resource-rich nations have lamented national sovereignty and permanent sovereignty over natural resources.<sup>538</sup> The revenue may be declared. However, it is uncertain whether resource-rich countries would be accountable for using the income to develop the economies.

The World Bank and the International Monetary Fund (IMF) have added their voices to the transparent management of the resource revenues by abundant resource countries. The World

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<sup>531</sup> Williams, (note 38), 490.

<sup>532</sup> Al-Faruque, (note 282), 72.

<sup>533</sup> Duruigbo, (note 12), 48.

<sup>534</sup> Al-Faruque, (note 282), 72-73.

<sup>535</sup> Papyrakis et al., 'Corruption and the Extractive Industries Transparency Initiative', *The Journal of Development Studies*, 2017, Vol. 53 Issue 2, 295

<sup>536</sup> Duruigbo, (note 12), 51.

<sup>537</sup> Collier et al., (note 530).

<sup>538</sup> Collier et al., (note 530).

Bank's Extractive Industry Review stresses the importance of transparency in managing resource revenue to ease poverty in developing resource-rich countries.<sup>539</sup> The World Bank board has emphasised that revenue transparency regarding payments by extractive industries to resource-rich governments shall be the basis for investing in the sector and the public disclosure of agreements with the State.<sup>540</sup> The World Bank has endorsed the EITI and urged several developing resource-abundant countries and companies to join and publish what they pay to rich resource countries to enhance revenue transparency.<sup>541</sup>

The IMF has advocated the following as a guide for transparency in managing revenue from oil, gas and mining industries: Code of Good Practices on Fiscal Transparency,<sup>542</sup> Manual on Fiscal Transparency<sup>543</sup> and Draft Guide on Resource Revenue Transparency.<sup>544</sup> The IMF and the World Bank jointly produces reports on the Observance of Standards and Codes detailing how rich resource countries comply with safe practices. These mechanisms aim to make information available and bring integrity to resource-rich countries' management of resource revenues. Although the report has no direct bearing on transparency, its relevance is in the acceptable practices exhibited by countries that derive a significant source of revenues from mining.<sup>545</sup>

The initiatives launched at the international level by EITI, PWYP, the World Bank and the IMF have the objective of helping resource-abundant countries derive the best from their resource revenues. The measures introduced by these agencies would work if developing resource-rich countries act transparently. The laws passed by resource-rich governments to regulate the upstream and downstream sectors of the petroleum industry and the management of the revenues from natural resources should reflect transparency. Resource-rich country benefits from exhibiting transparency in resource management because it allows citizens to scrutinise the government's

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<sup>539</sup> Al-Faruque, (note 282), 77.

<sup>540</sup> Butler, 'The World Bank Responds to the Extractive Industries Review-Sustainable Development Among Goals', 36 No. 3 ABA Trends Newsletter, 2005, 10-11.

<sup>541</sup> World Bank press release No. 2004/180/S referred to by Al-Faruque, (note 461), 77.

<sup>542</sup> The contents include information disclosure, open budget process and the role of responsible governments.

<sup>543</sup> This guides the implementation of transparency standards.

<sup>544</sup> Al-Faruque, (note 282), 78.

<sup>545</sup> Al-Faruque, (note 282), 79.

control and hold government accountable.<sup>546</sup> Further, without transparency, it is impossible to keep politicians and public institutions responsible for public spending.<sup>547</sup>

## 2.2 Accountability

The purpose of transparency initiatives is to strengthen accountability and make persons with obligations answerable for their work performance.<sup>548</sup> In this regard, transparency will be meaningless if there is no accountability on the part of the government. The laws passed to regulate the oil revenue management must embody accountability and transparency provisions to enable citizens to ascertain projects undertaken with accrued oil revenue.<sup>549</sup> Implementing these measures may reduce the negative link between resource wealth and the development of resource-rich economies.<sup>550</sup> If transparency and accountability fail to take place due to mismanagement, no initiative will transform resource-rich economies.<sup>551</sup>

### 2.2.1 Origins of Accountability

Dubnick traces the meaning of accountability to the reign of William I, who required all property owners ‘to render *a count*’ of what they possessed.<sup>552</sup> Property owners declared their interest for purposes of tax with a yearly amendment.<sup>553</sup> Accountability refers to those in power accounting to the governed and has become an icon for good governance globally.<sup>554</sup> Accountability now represents mechanisms that allow institutions to be responsive to their societies.<sup>555</sup>

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<sup>546</sup> Gyampo, (note 64), 81. See also Bellver and Kaufmann, ‘Transparenting Transparency: Initial Empirics and Policy Implications’, Washington, DC: World Bank, 2005, Islam, ‘Do More Transparent Governments Govern Better?’, Policy Research Working Paper, 3077, June, Washington, DC: World Bank Institute, 2003, and Kolstad and Wiig, (note 433), 521–532.

<sup>547</sup> Moore, (note 441), 506.

<sup>548</sup> Shkabatur, Transparency with (out) Accountability: Open Government in the United States, 31 Yale L. & Pol’y Rev. 79, 2012, 80.

<sup>549</sup> C van Ingel et al., ‘Fiscal policy and revenue management in resource-rich African Countries: A comparative study of Norway and Nigeria’, South African Journal of International Affairs, Vol. 21 (3), 2014, 372. See also Stevens, ‘Resource impact: Curse or blessing? - A literature survey’, Journal of Energy Literature, Vol. 9 (1), 2003.

<sup>550</sup> Mejia, ‘The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources’, Development Policy Review, Vol. 31 (s1), 2013, s 95-99.

<sup>551</sup> Idemudia, (note 3), 12-14. See also Hauler, ‘Disclosure as Governance: The extractive industries Transparency Initiative and resource management in developing world, Global Environmental Politics, Vol. 10 (3), 2010, 53–73.

<sup>552</sup> Dubnick, ‘Seeking Salvation for Accountability’, A Paper presented at an Annual Meeting of the American Political Science Association, 2002, 7-9. Available at <http://mjdubnick.dubnick.net/papersrw/2002/salv2002.pdf> accessed 14 March 2021.

<sup>553</sup> Bovens, ‘Analysing and Assessing Accountability: A Conceptual Framework’, European Law Journal, Vol. 13, No. 4, 2007, 448.

<sup>554</sup> Bovens, (note 553), 449.

<sup>555</sup> Mulgan, Holding Power to Account: Accountability in Modern Democracies, Palgrave, 2003.

Accountability as a concept denotes being called upon to render an account of one's action.<sup>556</sup> The features are (a) it is external since the account goes to someone other than the person being held accountable, (b) there is an interaction between the parties involved and (c) there is an exercise of authority to demand an answer and impose sanctions.<sup>557</sup> This core accountability relationship exists between citizens and public office holders and elected political officers and bureaucrats dealing with the relationship between the participants, which seeks to scrutinise public officials' decisions.<sup>558</sup>

A key feature of governance is to curb government power where it fails to perform its legally mandated duties and ensures that citizens remedy non-performance.<sup>559</sup> The non-performance of the government's obligation may also trigger action against the State, but which government institution would enforce the judgment if the State loses.<sup>560</sup> In this puzzle, there must be a way to hold the government accountable for its powers by the electorate. Otherwise, the citizens would be without any remedy in dealing with an authoritarian government. Dealing with accountability in the legal and political domains focuses on the difficulty of balancing the power given to public officials against performing their legitimate duties.<sup>561</sup> The objective of accountability is to hold public officers to the democratic will of the citizens, to promote fairness and prudence in their decision making to serve the interest of citizens.<sup>562</sup>

Accountability, therefore, exists to ensure that those entrusted with power should answer for their behaviour.<sup>563</sup> In ensuring that accountability works, it is essential to put measures in place to check public officials by confining their power, correcting abuses, and keeping them in line with the established rules.<sup>564</sup> Currently, accountability focus on applying checks and balances against the

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<sup>556</sup> Jones, 'The Search for Local Accountability' in S. Leach (ed.), *Strengthening Local Government in the 1990s*. London, Longman, 1992, 73.

<sup>557</sup> Mulgan, 'Accountability': An Ever-Expanding Concept?, *Public Administration*, Vol. 78, No. 3, 2000, 555.

<sup>558</sup> Mulgan, (note 557), 556.

<sup>559</sup> Seidman, 'The Origins of Accountability: Everything I know about the Sovereign Immunity, I Learned from King Henry III', 49 *St. Louis University Law Journal*, Vol. 49, 2005, 393.

<sup>560</sup> Seidman, (note 559), 394.

<sup>561</sup> Scot, 'Accountability in the Regulatory State', *Journal of Law & Society*, Vol. 27(1), 2000, 38.

<sup>562</sup> Scot, (note 561), 39.

<sup>563</sup> Newell and Bellour, 'Mapping Accountability: Origins, Contexts and Implications for Development', An IDS Working Paper No. 168, 2002, 1. Available at <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3930/Wp168.pdf?sequence=1&isAllowed=y> accessed 26 March 2021.

<sup>564</sup> Schedler et al. (eds.), *The Self-Restraining State: Power and Accountability in New Democracies*, Boulder & London: Lynne Rienner Publishers, 1999, 18.

arbitrary use of power by public officials, the absence of which may lead to the detriment of citizens.<sup>565</sup> Accountability relates to “surveillance, monitoring, oversight, control, checks, restraint, public exposure and punishment”<sup>566</sup> and requires citizens to be proactive to check public officials. In constructing accountability, the relationship between the actors and State positions of power needs to be defined.<sup>567</sup> Accountability must determine who is vested with the authority to call for the account and the body required to give an account of the work assigned.<sup>568</sup>

### 2.2.2 Meaning of Accountability

Accountability means different things depending on the context and the scope of discussion. Accountability refers to standards set for evaluating the behaviour and conduct of public officials.<sup>569</sup> It refers to a relationship whereby a party authorised to act on behalf of others justify his decisions allowing the other party to pass judgment and, if possible, impose sanctions with consequences.<sup>570</sup> The public officials must provide an account of their stewardship to society. The citizens have the right to question decisions taken by the authorities with possible sanctions for non-performance. The forum actor relationship is that of a principal and agent with three phases, namely (a) the actor must provide information about its work, (b) the forum must interrogate decisions are taken and (c) conclude whether the decision made warrants punishment.<sup>571</sup>

Accountability means to account for one’s actions. It is known as core accountability. The actor gives information on his stewardship to the forum and receives appropriate sanctions, which allow citizens to scrutinise public officers and politicians to attend to society’s needs.<sup>572</sup> The meaning of accountability has gone beyond this core meaning explained above. Accountability is classified along the lines of public service, which are urged to show concern for the public interest, known as personal or professional accountability.<sup>573</sup>

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<sup>565</sup> Schedler et al., (note 564), 14-15.

<sup>566</sup> Schedler et al. (note 564), 14.

<sup>567</sup> Day and Klein, ‘Accountabilities: Five Public Services’, 1987, 5, London and New York.

<sup>568</sup> Newell and Bellour, (note 563), 2.

<sup>569</sup> Bowens, ‘Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism’, *West European Politics*, Vol. 33, No. 5, 2010, 947.

<sup>570</sup> Bowens, (note 553), 450.

<sup>571</sup> Bowens, (note 553), 451.

<sup>572</sup> Mulgan, (note 557), 555-556.

<sup>573</sup> Romzek, and Dubnick, ‘Accountability in the public sector: Lessons from the Challenger tragedy’, *Public Administration Review* Vol. 47, 1987, 228, Sinclair, A., ‘The Chameleon of accountability’, *Accounting Organizations and Society* Vol. 20, 1995, 223, 230-231, Corbett, D., ‘Australian Public Sector Management, 2nd edn.

Accountability may also operate where State institutions put in place processes to control government actions.<sup>574</sup> The control is to make public agencies perform their duties.<sup>575</sup> Such conduct is possible when accountability structures, including Parliament, the courts and statutory bodies, exist to control public officers.<sup>576</sup> Peters, for example, argues for another layer of control outside of government and mentions civil society organisations, interest groups and mass media.<sup>577</sup>

The need for governments to pursue measures to satisfy citizens' requirements without any demand is another form of accountability, known as responsive accountability.<sup>578</sup> Responsive accountability equates the relationship between the government and the citizens to the private sector level, which is sensitive to the demands of their clients and satisfies them.<sup>579</sup> The OECD has re-echoed this position<sup>580</sup>, and others stressing the need for public officials to respond to the public.<sup>581</sup> Accountability is further explained as a dialogue when citizens publicly engage each other to interrogate government performance, which is the basis of democracies.<sup>582</sup> Day and Klein argue that social interaction allows the parties to share their expectations through the discussions in their analysis of accountability.<sup>583</sup> The above discussions oblige all the actors to act by their mandate.

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Sydney: Allen and Unwin, 1996, 201-2, Kernaghan, K. and D. Siegel, 'Public Administration in Canada. Toronto: Methuen, 1987, 298 and Gagne, R. L. 1996. 'Accountability and Public Administration', Canadian Public Administration, Vol. 39, 1996.

<sup>574</sup> Mulgan, (note 557), 556.

<sup>575</sup> Uhr, 'Redesigning Accountability', Australian Quarterly, Vol. 65, 1993, 6.

<sup>576</sup> Mulgan, (note 557), 563.

<sup>577</sup> Peters, 'The politics of bureaucracy' 4th (edn.) White Plains: Longman, 1995, 300-1. The suggestion has led to the principle of participatory development theory being one of the pillars of accountability. For more on the principle of participatory development theory see: Mohan and Stokke, 'Participatory development and empowerment: The dangers of localism', Third World Quarterly, Vol. 21 (2), 2000, 247-268, Williams, 'Evaluating participatory development: tyranny, power and (re)politicisation', Third World Quarterly, Vol.25 (3), 2004, 557-578, Connel, 'Participatory Development', Development in Practice, Vol. 7 (3), 1997, 248-259, Dipholo, 'Trends in participatory development', Journal of Social Development in Africa, Vol. 17 (1), 2002, 59-80, Kapoor, 'Participatory development, complicity and desire', Third World Quarterly, Vol.26 (8), 2005, 1203-1220 and Kohl-Arenas, 'Governing Poverty Amidst Plenty: Participatory Development and Private Philanthropy', Geography Compass, Vol. 5 (11) 2011, 811-824.

<sup>578</sup> Mulgan, (note 557), 556.

<sup>579</sup> Hughes, 'Public Management and Administration', 2nd edn. London: Macmillan, 1998, 236-7.

<sup>580</sup> OECD, 'Administration as service: the public as client', Paris: Organisation for Economic Co-operation and Development, 1987.

<sup>581</sup> Osborne and Gaebler, 'Reinventing government', Reading, MA: Addison-Wesley, 1992, Ch. 6

<sup>582</sup> Mulgan, (note 557), 556.

<sup>583</sup> Day and Klein, (note 567), 5.

Accountability as a concept has been seen as a virtue and as a mechanism.<sup>584</sup> As a virtue, it means the existence of a set of standards<sup>585</sup> for evaluating public officers' behaviour to ascertain their performance and conclude whether they have acted reasonably.<sup>586</sup> Whether there is accountability or not depends on how the public officials place themselves against existing standards.<sup>587</sup>

As a mechanism, accountability refers to an institutional arrangement through which the actor submits for questioning with consequences.<sup>588</sup> The relationship shows that the actor has a responsibility to give account to the forum and justify making individual decisions.<sup>589</sup> The link has three facets: the actor must be under obligation to report and explain failures. The forum must have an opportunity to question the actor's decisions and finally pass judgment and impose sanctions where necessary.<sup>590</sup> The obligation on actors to report and the possibility of sanctions is essential to make decision-makers reflect and envisage their decision before acting, thereby making them responsible.

Accountability also requires a relationship whereby actors explain their actions and are ready to take sanctions<sup>591</sup> which are termed “the giving and demanding of reasons for conduct”.<sup>592</sup> An actor must have the basis for engaging in a particular activity since there are sanctions for acting contrary to expectation. The principle of accountability also refers to holding actors accountable for their conduct.<sup>593</sup> Accountability imposes an obligation on elected political officers to provide answers for the political decisions they have taken. Based upon the responses, they may retain their position or vote out of office by the electorates.<sup>594</sup>

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<sup>584</sup> Bowens, (note 569).

<sup>585</sup> Mulgan, (note 557), 556.

<sup>586</sup> Bowens, (note 569), 949.

<sup>587</sup> Bowens, (note 569), 949.

<sup>588</sup> Bowens, (note 569), 951.

<sup>589</sup> Goodin, ‘Democratic Accountability: The Distinctiveness of the Third Sector’, *Archives Europeennes de sociologie*, XLIV: 3, 2003, 361. See also Lerner and Tetlock, ‘Accounting for the Effects of Accountability’, *Psychological Bulletin*, Vol. 125, No. 2, 1999, 255.

<sup>590</sup> Bowens, (note 569), 952.

<sup>591</sup> Sinclair, ‘The Chameleon of Accountability: Forms and Discourses’, *Accounting Organizations and Society*, Vol. 20, No. 2/3, 1995, 220-221.

<sup>592</sup> Roberts, & Scapens, ‘Accounting Systems and Accountability-Understanding Accounting Practices in their Organizations Contexts’, *Accounting, Organizations and Society*, 1985, 447.

<sup>593</sup> Tisne, M., ‘Transparency, Participation and Accountability: Definitions’. Unpublished Background Note for Accountability and Accountability Initiative, Institute of Development Studies.

<sup>594</sup> Diamond & Morlino, ‘The Quality of Democracy, An Overview’, *Journal of Democracy*, Vol. 14, No. 4, 2004, 25.

The definitions provided above are different, but there are specific common factors peculiar to them. The relationship between an actor and a forum requires the actor to justify his action with the possibility of sanctions. Accountability involves three phases, namely (a) the information phase, (b) the debating phase and (c) sanctioning or consequences phase.<sup>595</sup> At the information stage, the actor informs the forum of his conduct by providing information concerning his performance.<sup>596</sup> The second stage allows the forum to subject the actor to questioning regarding the information provided by the actor and proceeds to pass judgment.<sup>597</sup> The final step is where the forum decides to apply sanctions or not to the actor, ranging from disapproval, fines, and release to the managers.<sup>598</sup>

It is essential to ensure that persons in positions of responsibility account for their stewardship by providing information concerning the availability of resources available and their utilisation. Such disclosure allows the citizens to probe further into the activities of the managers of the economy.

### 2.2.3 Merits and Limitations of Accountability

Accountability provides a platform to check the powers of the government to prevent the abuse of power. It controls the misuse of public authority, guarantees using public funds per the law, and ensures continuous governance and general management.<sup>599</sup> There are, however, limitations to the usefulness of accountability. The section proceeds to discuss the merits and shortcomings of accountability.

The political elite accounts for the elected representatives, voters, political parties and the media and controls the government to achieve good governance.<sup>600</sup> Accountability is essential because it provides the electorates with information to critique their activities by passing judgment on their conduct.<sup>601</sup> The mechanism encourages governments to act and serve the interest of the electorates.

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<sup>595</sup> Bovens, 'The Concept of Public Accountability' in Ferlie et al., *The Oxford Handbook of Public Management*, (Oxford University Press, 2005), 184-5.

<sup>596</sup> Bovens, (note 595), 185. See also Schillemans, (note 598), 177.

<sup>597</sup> Bovens, (note 595), 185.

<sup>598</sup> Schillemans, 'Accountability in the shadow of Hierarchy: The Horizontal Accountability of Agencies', *Public Organize Rev.*, Vol. 8, 2008, 177.

<sup>599</sup> Aucoin and Heintzman, 'The dialectics of accountability for performance in public management reform', *International Review of Administrative Sciences*, Vol. 66, 46.

<sup>600</sup> March James and Oslon, 'Democratic Governance', New York: The Free Press, R. Mulgnan, 'Holding Power to Account: Accountability in Modern Democracies', Basingstoke: Palgrave, 2003.

<sup>601</sup> Przeworski et al. (eds.), 'Democracy, Accountability and Representation', Cambridge University Press, 1999.

The quest for accountability has made it possible to establish legal and administrative forums like courts, auditors, the ombudsman, and other bodies to prevent and detect public office corruption and abuse.<sup>602</sup> Accountability further serves to guide the executive arm of government to learn and improve its performance.<sup>603</sup> The debating stage where the political elites are questioned serves society's interest to influence politicians' decisions. The likelihood of sanctions by the stakeholders permits the public officers' to search and formulate proactive ways to organise their conduct.<sup>604</sup> In managing oil revenues, the expectation is that the ruling class and public officers would be mindful of the need to account for their stewardship and act in ways that safeguard the public purse. Adherence to accountability by the politicians would help the resource-rich countries put their resources to fair use, being mindful of sanctions from the electorates.

Despite the importance of accountability, there are problems associated with the principle. The argument is that a blend of the public and the private sector in pooling resources together could enhance the problem-solving capacities of countries.<sup>605</sup> The counter-argument posits that the mix would not improve global governance due to non-accountable non-governmental organisations, international organisations, and transnational corporations.<sup>606</sup> The combination makes it difficult to hold a particular entity accountable for governance in a country. This thesis looks at the central government's decisions concerning utilising oil revenue, whether it averts the resource curse. The responsibility lies with the government to put measures to hold the combined team responsible. Otherwise, they would hide under the unusual nature of the private partners and fail to account.

The various descriptions of accountability have contributed to the problems associated with its challenges, leading to several narratives, including accountability 'overloads and deficit'.<sup>607</sup> The accountability paradox states that more accountability is not a recipe for good governance.<sup>608</sup> One

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<sup>602</sup> Bovens, (note 569), 955.

<sup>603</sup> Aucion and Heintzman, (note 599), 52-53.

<sup>604</sup> Bovens, (note 569), 956.

<sup>605</sup> Wolf, 'Private Actors and Legitimacy of Governance beyond the State', paper prepared for the workshop 'Governance and Democratic Legitimacy', ECPR Joint Sessions, Grenoble, 6-11 April 2001, Darmstadt, TU Darmstadt, 2001, 2.

<sup>606</sup> Ottaway, 'Corporations Goes Global: International Organizations, HGO Networks and Transnational Business', *Global Governance*, 7:3 2001, 245.

<sup>607</sup> Bovens et al., 'Does Public Accountability Work? An Assessment Tool', *Public Administration*, Vol. 86, No. 1, 2008, 227.

<sup>608</sup> Jos and Tompkins, 'The Accountability Paradox in an age of Reinvention: The Perennial Problem of Preserving Character and Judgment', *Administration & Society*, Vol. 36, 2000.

issue with hierarchical accountability is the inability of Parliaments, ministries, and citizens to hold the executive arm of government accountable for the policy decisions, given the executives' discretionary power.<sup>609</sup> The head of a complicated and extensive agency to hold personnel under him responsible for their actions has its limitation in that due to numbers, the head is not interested in all the subordinates' efforts and therefore mainly pays attention to vital areas.<sup>610</sup> Too much accountability may not be suitable for society leading to descriptions of accountability as a dilemma or a paradox.<sup>611</sup> Instead of promoting efficiency, stressing accountability ends up underperforming or achieving an optimum, and there is the need for a balance.<sup>612</sup>

#### 2.2.4 Types of Accountability

In governance, the classification of the types of accountability borders on the nature of the duty owed.<sup>613</sup> Politicians and officials entrusted with responsibilities must live up to expectations and account for the power assigned to them. Accountability includes formal and informal types of accountability.<sup>614</sup> Formal accountability relates to the judiciary, legislature, and executive controls, while informal accountability has roots in society's norms, managers, professional standards, and code of ethics.<sup>615</sup>

The classification of accountability differs, but generally, it includes political, legal, hierarchical and professional. Political accountability deals with vesting authority in a public officer to exercise it on behalf of elected representatives.<sup>616</sup> Under this relationship, the public officer is accountable to the public and serves their needs by implementing pragmatic programmes.<sup>617</sup> Political accountability is essential in democracies and operates along the principal and agent relationship lines where the electorates hand over their power to their elected representatives to be responsive

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<sup>609</sup> Schillemans, 'Does Horizontal Accountability Work? Evaluating Potential Remedies for the Accountability Deficit Agencies', *Administration & Society*, Vol. 43(4), 2011, 393.

<sup>610</sup> Moe, 'The New Economics of Organisation' *American Journal of Political Science*, Vol. 28, 1984, 766.

<sup>611</sup> Bovens, (note 595).

<sup>612</sup> Adelberg and Batson, 'Accountability and Helping: When Needs Exceeds Resources', *Journal of Personality and Social Psychology*, 1978, 36.

<sup>613</sup> Bovens, (note 553), 454-455.

<sup>614</sup> Roberts, 'Keeping Public Officials Accountable through Dialogue: Resolving the Accountability Paradox', *Public Administration Review*, Vol. 62, No. 6, 2002, 658.

<sup>615</sup> Simon et al, 'Public Administration' New Brunswick, NJ, 1999, 513-61.

<sup>616</sup> Sinclair, (note 591), 225.

<sup>617</sup> Sinclair, (note 591), 229.

to the voters.<sup>618</sup> Managers of resource-rich economies, in some cases, have mismanaged resource revenues to the detriment of their electorates.<sup>619</sup>

Legal accountability explains the relationship that exists between the legislature and law enforcement.<sup>620</sup> The link makes it possible for bodies charged with implementing the law to summon and question public officials either through the courts or other agencies of State vested with investigative powers.<sup>621</sup> The authorities conferred with legal authority to enforce the rules through standards prescribed under the legal regime.<sup>622</sup> The courts and other agencies charged with law enforcement must be independent to ensure accountability from the executive.<sup>623</sup> Independent judiciary enhances accountability because society can institute legal proceedings against the officers of the State.<sup>624</sup> The courts are crucial as machinery for accountability.<sup>625</sup> Thus to entrench the concept of accountability, the laws must make provision for the intervention of the courts to hold the executive in check.

The interplay between the law and the courts would enhance accountability for providing a penalty, compensations and redress, reflecting the rule of law.<sup>626</sup> In the context of this thesis, the Petroleum Revenue Management Act (PRMA) has provisions titled penalties.<sup>627</sup> Be that as it may, no prosecution has taken place since the promulgation of the PRMA. The absence of prosecutions to punish officials in the face of reports issued by the Auditor-General and the Public Interest Accountability Committee (PIAC) of infractions of the PRMA may encourage officials to make decisions that may not benefit the State.<sup>628</sup> In Ghana, it is the Attorney-General vested with the power to prosecute criminal offences.<sup>629</sup> The trial of offenders becomes the task of a succeeding administration as the government has no determination to pursue one of its own.<sup>630</sup> This challenge

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<sup>618</sup> Bovens, (note 553), 455.

<sup>619</sup> See chapter 1 sections 2.1, 2.2 and 2.3.

<sup>620</sup> Romzek & Dubnick, (note 573), 228-229.

<sup>621</sup> Bovens, (note 595), 188.

<sup>622</sup> Bovens, (note 553), 456.

<sup>623</sup> Mulgan, (note 555), 75-76.

<sup>624</sup> Mancini and Keeling, 'Democracy and the European Court of Justice' 57 *Modern Law Review*, 1994, 181.

<sup>625</sup> Harlow and Rawlings, 'Promoting Accountability in Multilevel Governance: A Network Approach', *European Law Journal*, Vol. 13, No. 4, 2007 547.

<sup>626</sup> Harlow and Rawlings, (note 625), 547.

<sup>627</sup> Section 58 of the PRMA.

<sup>628</sup> See chapter 7, sections 3.1 and 3.2.

<sup>629</sup> See Article 88 (3) of the 1992 Constitution of Ghana.

<sup>630</sup> See chapters 7 and 8. That PIAC be given prosecutorial powers under the PRMA.

contributes to the mismanagement of resource revenue. Resolving this accountability challenge requires empowering another body which this thesis has recommended PIAC to take up prosecutions under the PRMA.<sup>631</sup>

In hierarchical accountability, the head of an organisation is held accountable for those responsible to the head, assumes full responsibility for their behaviour, and uses internal controls to check those under him in the command structure.<sup>632</sup> The leader must monitor the lines of authority, control and performance with performance appraisals to ensure accountability.<sup>633</sup> The head of a political institution or the organisation assumes responsibility for any lapses.<sup>634</sup> This makes leaders and their subordinates accountable and allows the law to deal with offenders. The continued inaction and sanctioning mismanagement show cooperation between the head and their assistants, betraying the electorates.

Governance is a complex phenomenon with varied social issues that requires a solution from the government by engaging expert and skilled employees.<sup>635</sup> It has been termed Professional accountability.<sup>636</sup> It involves the appointment of qualified and trained employees to account for their performance based on acceptable practice.<sup>637</sup> The significance of this accountability warrants appointment based on competence and not on any other consideration. Ghana must address this challenge due to the constitutional framework, which gives the President of Ghana the power to appoint heads of State institutions.<sup>638</sup>

Vertical accountability discusses instances where an authority through the law requires the actor to account for his conduct, whereas, in horizontal accountability, there is no compulsion to account and is voluntary.<sup>639</sup> Diagonal accountability refers to a body having information but would have to resort to another institution to apply sanctions, as auditors report their work to Parliament.<sup>640</sup>

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<sup>631</sup> Chapter 7, section 4.

<sup>632</sup> Bovens, (note 595), 192.

<sup>633</sup> Romzek, 'Dynamics of public sector accountability in the era of reform', *International Review of Administrative Sciences*, Vol. 66 Issue 1, 2000, 24.

<sup>634</sup> Bovens, (note 595), 191.

<sup>635</sup> Romzek & Dubnick, (note 573), 229.

<sup>636</sup> Friedrich, 'Public Policy and the Nature of Administrative Responsibility', *Public*, 1940.

<sup>637</sup> Romzek, (note 633), 26.

<sup>638</sup> Chapter 5, sections 2.3 and 5.

<sup>639</sup> Bovens, (note 553), 460.

<sup>640</sup> Bovens, (note 553), 460.

In vertical accountability - sometimes called “traditional accountability” - a relationship exists between a principal and an agent whereby the subordinate must render account to the superior.<sup>641</sup> The phases of accountability allow citizens to learn of actions taken by their leaders and the justifications and enable citizens to decide whether to punish or retain their leaders, which generates competition among parties to ensure choices at the level of government.<sup>642</sup> In the context of the thesis, vertical accountability ascertains whether legal structures can compel the executive to account for utilising the oil resources upon an action.

Horizontal accountability addresses peers, equals, stakeholders, or concerns outside the central government and executive agency's hierarchical relationship with limited power to sanction.<sup>643</sup> Under horizontal accountability, public officials must act within the confines of the law and answer for any omissions to voters and State institutions vested with legal authority to monitor their actions.<sup>644</sup> State institutions entrusted with the constitutional power to sanction State institutions and other agencies for their unlawful actions are crucial for horizontal accountability.<sup>645</sup> The institutions and the State officials must respect the law and not engage in any acts that violate this type of accountability by intruding into one’s territory and accepting favours for personal use.<sup>646</sup>

The thesis requires an examination of the PRMA to ascertain whether citizens can compel the executive to account, seeing that under horizontal accountability, the obligation to account to the general public is moral. If the government fails to use the oil revenue to benefit society, citizens are helpless because the executive cannot account. This thesis has suggested the empowerment of the PIAC to guarantee accountability under the PRMA to prosecute offenders as well.<sup>647</sup>

### 2.2.5 Institutionalisation of Accountability

At the heart of accountability is the relationship of stewardship, requiring the steward to account for the principal.<sup>648</sup> The system of accountability serves as the reference point concerning the duties

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<sup>641</sup> Mulgan, (note 555), 12.

<sup>642</sup> Diamond, & Morlino, (note 594), 25.

<sup>643</sup> Schillemans, (note 598), 178.

<sup>644</sup> Diamond & Morlino, (note 594), 25.

<sup>645</sup> O’Donnel, ‘Horizontal Accountability in New Democracies’, *Journal of Democracy*, Vol. 9, 1998, 117.

<sup>646</sup> O’Donnel, (note 645), 121.

<sup>647</sup> See chapters 7 and 8.

<sup>648</sup> Gray and Jenkins, ‘Codes of Accountability in the New Public Sector’, *Accounting, Auditing and Accountability Journal*, Vol. 6 (3), 1993, 55.

of the steward and the principal's expectation of the steward's conduct. The traditional forms of political accountability through institutional checks and balances have not succeeded in establishing an active watch over governmental authority, leading to the emergence of other channels of control referred to as social accountability.<sup>649</sup>

Social accountability relates to agents who use the public domain to emphasise public concerns by working through social mobilisation, the judiciary and the media to hold public officers accountable.<sup>650</sup> The objective of this new social movement in ensuring accountability deals with the outcomes of public actions.<sup>651</sup> The goals of other social activities target the aberrations of governments and corruption.<sup>652</sup> The social accountability movements play a critical role in the body politic by first putting out what the government has done or failed to do in the public domain. Secondly, the movements ensure that the government is accountable to the citizens by putting out what the government has done.

The institutionalisation of accountability may also occur through a hierarchical system of command and control where subordinates account for their work to their heads and sanction the subordinate for non-performance.<sup>653</sup> Other institutions of State, namely Parliament, the courts and other constitutionally mandated bodies, are mechanisms through which accountability is exercised.<sup>654</sup>

## 2.2.6 Accountability in the context of managing oil revenues

In managing oil revenues, accountability must compel the government to inform the citizens concerning decisions taken in dealing with the oil revenues. The second precept of the Natural Resources Charter echoes this and states that “resource governance requires decision-makers to be

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<sup>649</sup> Joshi, ‘Producing Social Accountability? The Impact of Service Delivery Reforms’, *IDS Bulletin*, Vol. 38, Issue 6, 2008, 13.

<sup>650</sup> Peruzzotti and Smulovitz, ‘Social Accountability: An Introduction’, in Peruzzotti and Smulovitz (eds.), *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*, Pittsburgh: University of Pittsburgh Press, 2006.

<sup>651</sup> Goetz and Jenkins, *Reinventing Accountability: Making Democracy Work for the Poor*, London, Palgrave, Macmillan, 2004.

<sup>652</sup> Joshi, (note 624), 13.

<sup>653</sup> Goodin, Robert E., ‘Democratic Accountability: The Distinctiveness of the Third Sector’, *Archives Europeennes de sociologie*, XLIV: 3, 2003, 36.

<sup>654</sup> Scott, (note 561), 48.

accountable to an informed public”.<sup>655</sup> From the discussion, the citizens must have the opportunity to question and subject the decisions made by their government to scrutiny and where the leaders fall short, sanctions must apply. The existence of the PRMA is the right policy choice to keep the government accountable. Therefore, the State's role is to promote access to information and criminalise corrupt practices concerning petroleum revenue.

Accountability must be integrated into governance in the extractive sector through stakeholder engagement between the government and civil society organisations, community representations, professional associations, think tanks, Parliament, and the mass media.<sup>656</sup> Thus government and stakeholders must be accountable to build capacities to attain a meaningful collaboration to ensure development that benefits the society.<sup>657</sup> The government’s utilisation of oil revenue creates a principal and agent relationship with citizens as principal. The government, as an agent, is managing the oil revenue on behalf of the citizens.<sup>658</sup> The relationship creates a fiduciary duty for the government, which requires the State to take decisions in the interest of the citizens.

The effectiveness of accountability in resource revenues governance depends on how vigorous oversight institutions act to serve as a check on the powers of the government and apply sanctions in case of a default.<sup>659</sup> The challenge to the effective oversight by these institutions relates to appointing their heads and relying on the State for funding issues that would compromise their oversight duties if not resolved.<sup>660</sup>

### 3. The Relationship between Transparency and Accountability

Transparency, as earlier explained, denotes access to reliable information and openness.<sup>661</sup> On the other hand, accountability refers to the standards set for evaluating the behaviour and conduct of

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<sup>655</sup> See <https://resourcegovernance.org/analysis-tools/publications/natural-resource-charter-2nd-ed> accessed 14 March 2021.

<sup>656</sup> Desai and Jarvis, “Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank, *Journal of Energy and Natural Resources Law*, Vol. 30 (2), 2012, 102.

<sup>657</sup> Desai and Jarvis, (note 656), 103.

<sup>658</sup> Ofori et al., (note 65), 1189.

<sup>659</sup> Mejia, (note 550), 100-101.

<sup>660</sup> Mejia, ‘Pilot Programme to Strengthen Parliamentary Oversight of the Extractive Sector in Ghana and Tanzania: Baselines Overview and M & E Report, New York, Revenue Watch Institute, 2009.

<sup>661</sup> See section 2.1.2 above.

public officials.<sup>662</sup> These two concepts are used as the basis of good governance by most international institutions. This section assesses how they relate to each other and their importance in the management of resource revenue.

Hood, for example, discusses the relationship between transparency and accountability by describing their relations as “Siamese twins”, “matching parts”, and “awkward couple”.<sup>663</sup> Like Siamese twins, the two words appear together in good governance narratives. Being transparent means one is accountable; however, the assertion may not be accurate since accountability may occur without disclosure to the public as disclosure by civil servants to the minister has nothing to do with the general public.<sup>664</sup>

The combination of transparency and accountability are prerequisites for good governance. However, the concepts are not the same because the government's disclosure of information allows the public to assess whether it has been accountable.<sup>665</sup> Therefore, the twin relationship creates an atmosphere of evaluating the government based on the information in the public domain through transparency and accountability. The ‘awkward couple’ relationship between the concepts illustrates that they both have different elements, the combination of which results in good governance.<sup>666</sup>

Transparency is a necessary precondition of accountability<sup>667</sup>, and scholars generally agree with this description. Transparency makes information available, thereby informing the citizens about their government's progress.<sup>668</sup> The citizens will invariably be able to determine whether their government has been accountable to them or not. The argument is that transparency is necessary for accountability as it enhances fairness by subduing the self-interest of public officials.<sup>669</sup> Fenster argues that transparency permits the sharing of information and makes room for inputs, review and criticism of government action to enhance the quality of governance.<sup>670</sup> Accountability is one of

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<sup>662</sup> See section 2.2.2 above.

<sup>663</sup> Hood, (note 422), 990.

<sup>664</sup> Hood, (note 422), 991.

<sup>665</sup> Hood, (note 422), 992.

<sup>666</sup> Hood, (note 422), 990.

<sup>667</sup> Shkabatur, (note 548), 83.

<sup>668</sup> Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies, 74 Federal Regulation, 2009, 4685.

<sup>669</sup> Vermeule, ‘Mechanisms of Democracy: Institutional Design Writ Small’, Oxford University Press, 2007, 182.

<sup>670</sup> Fenster, ‘The Opacity of Transparency’, Iowa Law Review, Vol. 91, 2006, 900.

the advantages of transparency.<sup>671</sup> Therefore, the relationship between transparency and accountability must show that it must be visible to the public for the State to perform well.<sup>672</sup> The visibility in managing oil revenues depicts the government's disclosure of information about the revenue and its management to citizens benefit. It must allow deliberations with bodies outside the government to optimise the use of the oil revenue.

The interplay between transparency and accountability allows citizens and civil societies to monitor, scrutinise, and hold public office holders to account.<sup>673</sup> Transparency becomes an essential precondition for accountability and a prerequisite for reducing the prevalence of corrupt practices of public officials.<sup>674</sup> Transparency is a crucial element of accountability because, without disclosing information, evaluating the performance of persons entrusted with responsibility would be difficult.<sup>675</sup> To conclude that someone is accountable, one needs information that has been made available and subjected to scrutiny.

Transparency is the literal value of accountability since it is the tool for assessing the organisation's performance by presenting accurate facts to the public.<sup>676</sup> Therefore, to achieve accountability along with transparency, it is essential to show how the organisation performs.<sup>677</sup> Fox argues that the distinction between opaque and transparent transparency<sup>678</sup> affects the relationship between transparency and accountability to the extent that transparency may not generate accountability regarding opaque transparency.<sup>679</sup> That is why the argument is that a clear transparency policy is better than opaque systems.<sup>680</sup> Right transparent policies encompass methods of accountability that provides information to enable the public to act.<sup>681</sup> It is necessary to assess the type of information released and conclude whether it aids a recipient to hold the other party accountable. The

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<sup>671</sup> Schauer, (note 448), 1346.

<sup>672</sup> Shkabatur, (note 548), 83.

<sup>673</sup> Bauhr and Grimes, 'Indignation or Resignation: the implications of Transparency for Societal Accountability', *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 27, No. 2, 2014, 291.

<sup>674</sup> Bauhr and M. Grimes, (note 673), 309.

<sup>675</sup> De Hann and Eijffinger, 'The Democratic Accountability of the European central bank: A Comment on Two Fairy Tales', *Journal of Common Market Studies*, Vol. 38, No. 3, 2000, 399.

<sup>676</sup> Koppel, 'Pathologies of Accountability: ICANN and the Challenge of Multiple Accountabilities Disorder', *Public Administration Review*, Vol. 65, No. 1, 2005, 96.

<sup>677</sup> Koppel, (note 676), 96.

<sup>678</sup> Fox, (note 491), 667-8.

<sup>679</sup> Fox, (note 491), 668.

<sup>680</sup> Finkelstein, Neal D. (ed.), *Transparency in Public Policy: Great Britain and the United States*. New York: St. Martin's Press, 2000, 1.

<sup>681</sup> Ball, (note 442), 300.

government's release of information is not enough because citizens must be active participants if transparency occurs.<sup>682</sup>

Government accountability begins with making disclosures to citizens to limit or stop the effect of corruption.<sup>683</sup> Transparency promotes accountability and permits citizens to regulate the government by checking its misbehaviour<sup>684</sup> and public control as an end in itself.<sup>685</sup> The relationship between transparency and accountability requires focusing on both concepts. Whereas transparency deals with the disclosure of credible information, accountability focuses on evidence of prudent management. The role of transparency and accountability in managing resource revenues is two-fold. First, it creates awareness in the public domain of how much money has accrued to the State from the oil revenue. Second, the focus of accountability is on the utilisation or the management of the accumulated revenue. The avenue for questioning the government does not exist under the PRMA, and the issue remains whether that would help fight the mismanagement of Ghana's oil revenue.

This thesis proceeds to assess the Petroleum Revenue Management Act (PRMA) operation through the lenses of transparency and accountability. Transparency and accountability do not work in Ghana. However, accountability and transparency work and benefits other jurisdiction, as discussed in this thesis.<sup>686</sup> How do transparency and accountability tie up in the PRMA? The following four chapters address this by examining transparency and accountability provisions and their application in implementing the PRMA.

## 4. Conclusion

This chapter discussed transparency and accountability as tools for managing oil revenues. The adherence to these principles will ensure that public officials entrusted with the responsibility to manage oil revenues take decisions to ensure the welfare of the citizens. For transparency, the

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<sup>682</sup> Ball, (note 442), 298.

<sup>683</sup> Truelove, (note 513), 212.

<sup>684</sup> Shauer, (note 448).

<sup>685</sup> Shauer, (note 448), 1348-1349. See also Theodore Nsoe Adimazoya, 'Governance of Resource Revenues in Ghana's Mineral and Petroleum Sectors'. A thesis submitted to the University of Calgary in partial fulfilment of the requirements for the degree of Master of Laws.

<sup>686</sup> Chapter 8.

State should disclose the revenues that have accrued to the country from the oil. The introduction of initiatives by various global institutions seeks to equip citizens with resource revenues.

The release of information about the oil revenue and decisions concerning the projects is not enough if the citizens have no avenue to question the public officials concerning their policy decisions. Transparency without accountability is a misnomer, and citizens must have a channel to hold their government accountable. The next chapter assesses the PRMA against the benchmarks of transparency and accountability to ascertain whether the provisions of the PRMA measure up to the principles discussed and recommend remedies in case of shortfalls.

# Chapter 4: An Assessment of the Petroleum Revenue Management Act within the Context of Transparency and Accountability

## 1. Introduction

Chapter 3 conceptualises transparency and accountability in the context of resource revenues. Within the purview of managing oil revenues, transparency ensures that the government fully discloses the State's oil revenue.<sup>687</sup> Evidence exists that some resource-rich countries have failed to manage their natural resource revenues, necessitating a global attempt to control their resource revenues.<sup>688</sup> These initiatives seek to assist resource-rich countries in deriving optimal use from their resource revenues and deal with corruption.<sup>689</sup>

There are international and regional treaties and instruments applicable to Ghana that underpin transparency and accountability in revenue management. The instruments are United Nations Convention Against Corruption, 2004, Revised African Convention on the Conservation of Nature and Natural Resources, African Convention, African Union Convention on Preventing and Combatting Corruption, the African Charter on Human and Peoples Rights, African Union's 2012 Resolution on a Human Rights-Based Approach to Natural Resources Governance, Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector, Article 19 of the Universal Declaration of Human Rights; and Paris Declaration on Open Government. The thesis does not intend to discuss these instruments due to the scope of the research and word limitations. The parameters of the international framework are assumed and not analysed.

This chapter assesses the provisions in Ghana's Petroleum Revenue Management Act (PRMA) and its amendment regarding the elements of transparency and accountability. The discussion aims

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<sup>687</sup> Chapter 3, section 2.

<sup>688</sup> Al Faruque, (note 282), 66-68. See also Papyrakis et al., (note 535), 295-297 and chapter 3, section 2.1.7.

<sup>689</sup> Chapter 3, section 2.1.7.

to establish whether requirements on transparency and accountability in the PRMA are suitable to help Ghana optimise its oil revenue.

The chapter contends that there is a missing link concerning the management of the oil revenue and argues for other institutions and stakeholders' involvement. The publication of gains that accrue to Ghana from oil is now easily verifiable from the budget presentations made by the Minister to Parliament and the records at the Bank of Ghana,<sup>690</sup> and transparency is thus not an issue.<sup>691</sup> However, greater transparency has not led to accountability, as evidenced in the equitable distribution of the nation's resources. It is this issue that needs more consideration.<sup>692</sup>

The real issue for redress is the responsible use of the revenue from natural resources, including oil. The various transparency initiatives have not addressed this.<sup>693</sup> For Ghana, the concentration of power within the executive has created accountability challenges for State institutions.<sup>694</sup> The latter has become dysfunctional because the office of the President appoints their heads.<sup>695</sup> Civil Society Organisations have achieved some success in influencing governance in the extractive sector and may assist State institutions in remedying the accountability deficit.<sup>696</sup> In the face of resource revenue management challenges, more collaboration must occur between the State and other actors, including academic, recognised professional bodies, and various research agencies, to address the responsible use of resource revenue to create development.<sup>697</sup>

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<sup>690</sup> Sections 2 (1) and 26 (1) of Act 815.

<sup>691</sup> Section 48 (1) of Act 815.

<sup>692</sup> Brockyer et al., 'Assessing the Evidence: The Effectiveness and Impact of Public Governance-Oriented Multi-Stakeholder Initiatives', 2015, 26. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2693608](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2693608) accessed 12 March 2021.

<sup>693</sup> Batchelor et al., 'Coalitions for Transparency in Extractive Industries: A study of the coalition model of the Publish What You Pay Campaign', 2013. Available at [https://www.publishwhatyoupay.org/wp-content/uploads/2014/09/ODI-PWYP\\_summary\\_report\\_2.pdf](https://www.publishwhatyoupay.org/wp-content/uploads/2014/09/ODI-PWYP_summary_report_2.pdf) accessed 12 March 2021.

<sup>694</sup> Chapter 5, sections 2.3 and 2.4.

<sup>695</sup> Stacey and Austin, 'The Weak Link: The Role of Local Institutions in Accountable Resource Management, Ghana', 2016, Oxfam America, 60-63. Available at [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/tr-the-weak-link-ghana-150416-en.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/tr-the-weak-link-ghana-150416-en.pdf) accessed 24 March 2021.

<sup>696</sup> Stacey and Austin, (note 695), 69.

<sup>697</sup> Brinkerhoff, 'Exploring State-Civil Society Collaboration: Policy Partnerships in Developing Countries', *Nonprofit and Voluntary Sector Quarterly*, Vol. 28 (4), 1999, 63-66. See also Bratton, 'Civil Society and Political Transition in Africa', *Institute of Development Research Reports*, Vol. 11 (6), 1994, 1-21, Prell et al., 'Stakeholder Analysis and Social Network Analysis in Natural Resource Management', *Society and Natural Resources*, Vol. 22(6), 501-518, and Orji, 'Civil Society, Democracy and Good Governance in Africa', *CEU Political Science Journal*, Vol. 4 (1), 2009, 76-101.

The discussion below assesses Ghana's PRMA against the yardstick of transparency and accountability. It focuses on petroleum receipts and public oversight as examples of problems relating to transparency and accountability. First, though, the chapter engages with provision made for transparency and accountability in the PRMA. The chapter argues that other institutions need to collaborate with the State institutions to optimise the oil revenue.

## 2. Transparency and accountability provisions in the PRMA

The preamble for the Petroleum Revenue Management Act<sup>698</sup> of 2011 (PRMA) states that “the Act provides the framework for the collection, allocation, and management of the petroleum revenue in a responsible, transparent, and accountable and sustainable manner for the benefit of the citizens of Ghana under Article 36 of the Constitution and related matters.”<sup>699</sup>

The Petroleum Revenue Management Act<sup>700</sup> and its subsequent amendment passed in 2015<sup>701</sup> have two significant provisions on transparency and accountability. The first deals with the transparency and accountability of petroleum receipts,<sup>702</sup> while the second part is titled accountability, transparency, and public oversight.<sup>703</sup> The petroleum receipts refer to the sources of petroleum revenues as stated under the PRMA.<sup>704</sup> The second part establishes the Public Interest and Accountability Committee (PIAC), an independent body established under the PRMA to ensure transparency and accountability. The provisions on transparency and accountability seek to ensure that the oil revenues are appropriately used to benefit all Ghanaians.

### 2.1 The Public Interest Accountability Committee (PIAC)

The discovery of oil led to an awareness of the need to safeguard the oil revenue and avoid the resource curse.<sup>705</sup> The collaboration between 110 civil society groups, policy think tanks, research institutions, various interest groups and a host of organisations culminated in the formation of the Civil Society Platform on Oil and Gas (CSPOG) with technical support from Oxfam America, the

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<sup>698</sup> Petroleum Revenue Management Act, 2011 Act 815.

<sup>699</sup> See PRMA's preamble.

<sup>700</sup> Act 815 of 2011.

<sup>701</sup> Petroleum Revenue Management (Amendment) Act, 2015, Act 893.

<sup>702</sup> Section 8 of Act 815.

<sup>703</sup> Sections 49 to 53, 55 and 56 of Act 815 as well as Clause 13 of Act 893.

<sup>704</sup> Section 6, 7 (2) and (3) of Act 815 and clause 2 of Act 893.

<sup>705</sup> Gyimah-Boadi et al., 'Oil, Politics, and Ghana's Democracy', *Journal of Democracy*, Vol. 23 (3) 2012, 94.

Revenue Watch Institute, and the World Bank.<sup>706</sup> The coalition aimed to share ideas and engage the government, petroleum companies, and communities where the companies operated.<sup>707</sup> The platform held a summit in 2010 and issued a communique to ensure greater transparency and accountability in managing Ghana's oil revenue.<sup>708</sup> The co-operation yielded positive effects. First, it included provisions in the Petroleum Revenue Management Bill, setting up separate accounts for the oil revenue and quarterly reports of petroleum receipts and expenditures.<sup>709</sup> Second, the establishment of audits and the Public Interest Accountability Committee (PIAC) as a watchdog group to monitor government use of the oil revenue.<sup>710</sup>

The inclusion of the PIAC in the bill was due to the collaboration of civil societies that wanted transparency and accountability as the hallmark of managing Ghana's oil revenue.<sup>711</sup> Since Ghana gained independence, the country has not had a separate fund to receive income from its natural resources, and the PRMA is an exception.<sup>712</sup> The oversight duty assigned by the PIAC initially drew strong opposition from parliamentarians who argued that under the Constitution of Ghana, oversight responsibilities are vested in Parliament,<sup>713</sup> and no other body can assume that obligation.<sup>714</sup> The Hansard reports of debates on the bill reveal some parliamentarians' vigorous efforts to remove the provisions on PIAC.<sup>715</sup>

Civil society's urge to fight for PIAC in the PRMA stood firm in the face of the opposition. The Trade Union Congress (TUC) of Ghana joined the campaign, and Parliament retained some of the PIAC provisions in the PRMA.<sup>716</sup> The TUC and CSPOG consultations kept PIAC in the PRMA have allowed the PIAC to issue reports that reveal the oil revenue utilisation.<sup>717</sup> The PIAC reports

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<sup>706</sup> Gyimah-Boadi et al., (note 705), 97-98.

<sup>707</sup> Gyimah-Boadi et al., (note 705), 97-98.

<sup>708</sup> Gyimah-Boadi et al., (note 705), 98.

<sup>709</sup> Gyimah-Boadi et al., (note 705), 98-99.

<sup>710</sup> Gyimah-Boadi et al., (note 705), 99.

<sup>711</sup> Gyimah-Boadi et al., (note 705) 98-99.

<sup>712</sup> See (note 76) above.

<sup>713</sup> Oppong, 'Ghana Public Interest and Accountability Committee: an elusive quest for 'home grown' transformation in the Oil industry', *Journal of Energy and Natural Resources Law*, Vol. 34 (3), 2016, 324-326.

<sup>714</sup> Oppong, (note 713), 2016.

<sup>715</sup> Hansard Fourth Series, Vol. 71, Nos. 20, 21 and 22. The parliamentarians included, Armah Buah, Mohammed Muntaka, Felix Twumasi-Appiah and Cletus Avorka.

<sup>716</sup> 'TUC Cautions Parliament against Amendment of Petroleum Bill', available at <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=197403#> accessed 11 March 2021.

<sup>717</sup> Chapter 7, section 2.2.

show violations concerning the management of the oil revenue under the PRMA.<sup>718</sup> In 2012, the annual report issued by PIAC showed that the government had failed to comply with the provisions of the PRMA concerning the allocation of oil revenues between the budget and future savings.<sup>719</sup> The 2011 report also showed that Ghana National Petroleum Corporation, a State enterprise whose operations are not subject to parliamentary scrutiny, received nearly fifty per cent of petroleum revenue.<sup>720</sup> The problem, however, is that where there is non-compliance by the government and institutions under the PRMA, the PIAC has no power of sanction against them, making these bodies indifferent to the infringements.<sup>721</sup>

The establishment of the PIAC in the PRMA is the first of its kind in the history of Ghana to spearhead accountability in the management of Ghana's oil revenues.<sup>722</sup> The objective of the PIAC is to curb corruption. The committee has the responsibility to monitor government and other institutions compliance within the Act, provide a platform to engage the public on the management and use of the oil revenues and provide an independent assessment on the use of the income to Parliament and the executive.<sup>723</sup>

Accountability provisions in the PRMA begin with the establishment of the Public Interest Accountability Committee<sup>724</sup> (PIAC). PIAC is charged with monitoring and evaluating how government and other institutions comply with the PRMA to manage petroleum revenue and investment.<sup>725</sup> It has the mandate to create a platform to engage the public and give information on whether the management and use of the oil revenue conform to the development schedule set out in the law.<sup>726</sup> It assesses administration and the use of the petroleum revenues to assist the executive and Parliament in their performance.<sup>727</sup> The PIAC must further consult widely on the best practices relating to the management and use of the petroleum revenue<sup>728</sup> and determine the procedure by

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<sup>718</sup> See Chapters 6 and 7 below.

<sup>719</sup> Gyimah-Boadi et al., (note 705), 100.

<sup>720</sup> Gyimah-Boadi et al., (note 705), 100.

<sup>721</sup> Gyimah-Boadi et al., (note 705), 100.

<sup>722</sup> Sections 51 and 52 of Act 815.

<sup>723</sup> Section 52 (a) (b) and (c) of Act 815.

<sup>724</sup> Section 51 of Act 815.

<sup>725</sup> Section 52 (a) of Act 815.

<sup>726</sup> Section 52 (b) of Act 815.

<sup>727</sup> Section 52 (c) of Act 815.

<sup>728</sup> Section 53 (1) (a) of Act 815.

which it shall operate<sup>729</sup> with its secretariat to enhance its operations.<sup>730</sup> The PRMA fails to mention a body that the PIAC must consult.

According to the PRMA, PIAC has thirteen members with one person each appointed from recognised bodies and institutions as follows: (i) independent research think tanks, (ii) civil society and community-based organisations, (iii) Trade Union Congress, (iv) National House of Chiefs, (v) Association of Queen Mothers, (vi) Association of Ghana Industries and Chamber of Commerce, (vii) Ghana Journalist Association, (viii) Ghana Bar Association, (ix) Ghana Extractive Industries Transparency Initiative, (x) Christian Groups, (xi) the Federation of Muslim Councils and (xii) Ahmadiyya Mission and (xiii) the Ghana Academy of Sciences.<sup>731</sup> The Minister appoints the members of the PIAC after nomination by the group.<sup>732</sup> In PIAC's deliberations, a decision is binding when made by a majority with a quorum of nine members.<sup>733</sup> The PIAC elects its chairperson from the members.<sup>734</sup>

The members of PIAC serve either two or three-year terms.<sup>735</sup> A person appointed for two years qualifies for re-appointment for a further two years,<sup>736</sup> but those selected for three years do one term.<sup>737</sup> A person convicted of certain offences cannot serve as a member of PIAC.<sup>738</sup> Members of PIAC have the security of tenure.<sup>739</sup> The government may not remove a member of PIAC except through a medical condition.<sup>740</sup> The security of tenure is laudable since it allows the members to exercise their independent opinion based on the committee's facts.

PIAC is mandated to submit two reports of their findings relating to the management and the use of the petroleum revenue for publication in at least two state-owned national dailies by 15<sup>th</sup>

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<sup>729</sup> Section 53 (b) of Act 815.

<sup>730</sup> Section 53 (2) of Act 815.

<sup>731</sup> Clause 12 of Act 893.

<sup>732</sup> Section 54 (2) of Act 815.

<sup>733</sup> Section 54 (3) of Act 815.

<sup>734</sup> Section 54 (4) of Act 815.

<sup>735</sup> Section 55 (1) of Act 815.

<sup>736</sup> Section 55 (3) of Act 815.

<sup>737</sup> Section 55 (4) of Act 815.

<sup>738</sup> Section 55 (5) (a) to (e) of Act 815. The offences are: being declared undischarged bankrupt, unsound mind, convicted of a high criminal offence or an offence punishable by death or an election-related offence, found to be incompetent by a Commission or Committee of inquiry, or is under a death sentence or otherwise disqualified by law.

<sup>739</sup> Section 55 (6) of Act 815.

<sup>740</sup> Section 55 (6) of Act 815.

September and 15<sup>th</sup> March of each year, respectively<sup>741</sup> and publish its reports on its website.<sup>742</sup> It must hold two public meetings in a year to share its findings with the general public.<sup>743</sup> Copies of the reports must go to the President and Parliament for debate by Parliament.<sup>744</sup> The establishment of PIAC is a manifestation to achieve transparency and accountability.

Parliament has not debated all the reports submitted to it by PIAC to ascertain the reports' concerns.<sup>745</sup> Parliament's inability to discuss all the reports of PIAC and the lack of enforcement powers of the PIAC to deal with infractions of the PRMA is a sad reflection regarding the pursuit of accountability.<sup>746</sup> As an independent oversight body to fight corruption and ensure transparency and accountability, PIAC lacks enforcement powers. No provision in the law empowers the committee to take action in case of non-compliance with the PRMA.<sup>747</sup>

Finally, members of PIAC must submit to the Minister the budget for their annual programmes.<sup>748</sup> The members are entitled to allowances determined by the Minister.<sup>749</sup> Although PIAC is independent and charged with oversight responsibilities under the PRMA,<sup>750</sup> it is the Minister for Finance, an appointee of the government that appoints the members of the PIAC.<sup>751</sup> The Minister performs functions under the PRMA and appoints members of PIAC to oversee the work of the Minister.<sup>752</sup> The committee, therefore, on paper is not truly independent from the government but has been very critical of the government.<sup>753</sup>

This thesis suggests that the various organisations whose members constitute the PIAC must select their representatives for onward submission to the Minister and not the existing practice.<sup>754</sup> However, it is argued elsewhere that in practice, the Minister plays a minimal role in the

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<sup>741</sup> Section 56 (a) of Act 815.

<sup>742</sup> Section 56 (b) of Act 815.

<sup>743</sup> Section 56 (c) of Act 815.

<sup>744</sup> Section 56 (d) of Act 815.

<sup>745</sup> Africa Centre For Energy Policy (ACEP), Review of the Petroleum Revenue Management Act 2011 (ACT 815), 12. Available at <https://www.newsghana.com.gh/wp-content/uploads/2017/03/ATT00051.pdf> accessed 24 March 2021.

<sup>746</sup> ACEP, (note 745), 12.

<sup>747</sup> Opong, (note 713), 326-329.

<sup>748</sup> Section 13 (1) of Act 893.

<sup>749</sup> Section 13 (2) of Act 893.

<sup>750</sup> See section 52 (a), (b), and (c) of Act 815.

<sup>751</sup> Section 54 (2) of Act 815.

<sup>752</sup> See section 52 (a) (b), and (c) of Act 815. See also ACEP, (note 745), 12.

<sup>753</sup> See chapter 7 for PIAC reports.

<sup>754</sup> See section 54 (2) Act 815.

appointment process.<sup>755</sup> The organisations use their internal mechanisms to nominate persons to the Minister who performs a background check on the nominee and makes the appointment.<sup>756</sup> The thesis suggests an amendment of PRMA to enable member organisations to choose their members and assign the background check to the Minister as the appropriate way of selecting members of PIAC.

From an accountability perspective, the relationship between “the actor” and the forum involves three phases: first, in the information stage, the actor gives the information to the forum.<sup>757</sup> Second, in the debating stage, an opportunity is given to the forum to question the actor, who then justifies the action.<sup>758</sup> Third, the outcome stage deals with sanctioning the actor if need be.<sup>759</sup> The PRMA fails to make any provision to allow the forum to engage the decision-maker, who is the Minister. The Act instead makes a provision for the PIAC to brief citizens by creating a platform for that purpose.<sup>760</sup> The engagement only informs the citizens; the debate cannot go beyond the release of information by PIAC to the citizens.<sup>761</sup> This thesis suggests that the current arrangement is problematic because PIAC that did not utilise the petroleum revenue instead engages the public. The Ministry that used funds stays away from questioning by the public as required under the rubric of accountability.<sup>762</sup> The current arrangement allows the Minister to make decisions regarding utilising the petroleum revenue but stay away from accounting to the people.<sup>763</sup>

## 2.2 Publication of Petroleum Receipts

It becomes imperative to assess the provisions on transparency and accountability in the PRMA. As discussed in Chapter 3,<sup>764</sup> the discourse on transparency reveals that transparency operates when three elements are satisfied: first: the government must wholly release information; second, the information must be understandable; and finally, the establishment of institutions to make the information available.

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<sup>755</sup> Oppong, (note 713), 331.

<sup>756</sup> Oppong, (note 713), 331.

<sup>757</sup> Chapter 3, section 2.2.2.

<sup>758</sup> Chapter 3, section 2.2.2.

<sup>759</sup> Chapter 3, section 2.2.2.

<sup>760</sup> Section 52 (c) of Act 815.

<sup>761</sup> Section 52 (b) of Act 815.

<sup>762</sup> Chapter 3, section 2.2.2.

<sup>763</sup> Sections 21(5) and 25 of Act 815.

<sup>764</sup> Chapter 3, section 2.1 and 2.2.

The first provision in the PRMA that deals with transparency and accountability demands the minister publish the revenue receipts in the Gazette, two national dailies within thirty days of the applicable quarter, inform Parliament and publish the information on its website.<sup>765</sup> The same procedure must take place regarding the total petroleum extracted with its reference price at the time of lifting.<sup>766</sup> It is a new provision in the history of the management of natural resource revenue in Ghana where there is a disclosure without any public request.<sup>767</sup>

The disclosure enables the citizens to have first-hand information about the quantum of money received and ascertain whether the government has been accountable or not by reference to evidence of spending. The composition of the revenue receipts is crucial to satisfying the ends of transparency. The PRMA set out a detailed structure of the streams of revenue that accrue to the State under the Act.<sup>768</sup> The components spelt out under the Act allows the public to compare with the figures declared by Minister in the annual budget statement submitted to Parliament.

The second set of provisions on transparency and accountability consists of accountability, transparency, and public oversight.<sup>769</sup> On transparency as a fundamental principle, the section is to the effect that the petroleum revenue and savings shall be managed “with the highest internationally accepted standards of transparency and good governance.”<sup>770</sup> The phrase has not been defined or explained in the parent law or its subsequent amendment, making it vague.<sup>771</sup>

Further, the Minister has the power under the PRMA not to disclose information or data classified as confidential and deemed prejudicial to the operation of the Ghana Petroleum Funds, subject to Parliament’s approval after providing a clear explanation.<sup>772</sup> The PRMA has no guideline for determining that certain information is confidential, and its disclosure would be prejudicial to the funds. The PMRA defines confidential information as any information so classified.<sup>773</sup> The

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<sup>765</sup> Section 8 (1) (2) of Act 815.

<sup>766</sup> Section 8 (3) of Act 815.

<sup>767</sup> See (note 76) above.

<sup>768</sup> Sections 6 (a) - (e) of Act 815 and clause 2 of Act 893.

<sup>769</sup> Sections 49, 50, 51, 52, 53, 55 and 56 of Act 815 and clauses 12 and 13 of Act 893.

<sup>770</sup> Section 49(1) of Act 815.

<sup>771</sup> Oshionebo, ‘Sovereign Wealth Funds in developing countries: A case study of the Ghana Petroleum Funds’, *Journal of Energy & Natural Resources Law*, Vol. 36 (1), 2018, 46.

<sup>772</sup> Section 49 (3) and (4) of Act 815.

<sup>773</sup> Section 61 of Act 815.

provision encourages secrecy, which is not suitable for the new petroleum industry in Ghana.<sup>774</sup> The PRMA further states that the information or data considered confidential can only be released after three years, by demand, provided the information is no longer secret.<sup>775</sup> The Minister plays a dual role that permits the unilateral determination of information as confidential and decides when it ceases to be confidential.<sup>776</sup> The provision gives the Minister unfettered power and discretion that an overbearing government may manipulate to its advantage by preventing information disclosure, which is not suitable for transparency.<sup>777</sup> The requirement to disclose information to the public must come with the necessary infrastructure to undertake such duties.<sup>778</sup>

The PRMA promotes transparency by urging the State to adopt international best practices in managing and saving petroleum revenue.<sup>779</sup> Despite this provision, the Minister of Finance, with parliamentary approval and a written explanation, may declare certain information or data as confidential if its disclosure would prejudice the Ghana Petroleum Fund's performance.<sup>780</sup> However, the declaration of confidentiality exempts Parliament and the PIAC to access the information or data.<sup>781</sup>

Parliament, the Bank of Ghana, and the Minister and the Investment Advisory Committee in the performance of their duties are required to take measures that engrain transparency and allow the public access to information.<sup>782</sup> The Annual reports relating to the Ghana Petroleum Funds and the operations management agreement must be available to the minister.<sup>783</sup> The failure to publish reports or to obstruct a person from doing so is an offence and upon conviction is liable to a fine.<sup>784</sup>

The requirement for the publication of oil revenue satisfies the disclosure and transparency of the oil revenue to the public. In addition to PIAC's publication of oil revenue, the Minister and the Bank of Ghana further publish oil revenue through the budget statement and at the bank's website, respectively. The publication by the Minister and the Bank of Ghana introduces another level of

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<sup>774</sup> ACEP, (note 720), 10.

<sup>775</sup> Section 49 (6) of Act 815.

<sup>776</sup> Oshionebo, (note 771), 47.

<sup>777</sup> Bell et al., (note 397), 307.

<sup>778</sup> Bell et al., (note 397), 307.

<sup>779</sup> Section 49 (1) and (2) of Act 815.

<sup>780</sup> Section 49 (3) and (4) of Act 815.

<sup>781</sup> Section 49 (5) of Act 815.

<sup>782</sup> Section 49 (7) of Act 815.

<sup>783</sup> Section 49 (8) of Act 815.

<sup>784</sup> Section 50 of Act 815. The fine shall not exceed two hundred penalty units. One Penalty Unit is GHC 12.00.

transparency and accountability. These two mediums of communication are not within reach of many Ghanaians due to the disclosure mode. This requires a better form of disseminating information on the publication of oil revenue to aid transparency and accountability.

The disclosure requirements of petroleum revenues are new; however, the powers available to the Minister, as discussed above, defeats the transparency provisions in the PRMA. The purpose of enacting the PRMA may elude Ghana if the rules on the minister's capabilities remain. This thesis suggests a limitation on the powers of the Minister through checks and balances in the PRMA since the current provisions cannot limit the influences of the Minister. The next segment assesses the public oversight responsibilities in the PRMA dealing with accountability.

### 3. Transparency and accountability gaps and concerns under the PRMA

The provisions on transparency and accountability, as discussed above, are to ensure the use of oil revenue for the benefit of Ghanaians. Accountability challenges in the PRMA stem from the dominance of politicians, weak oversight, and broad discretionary powers given to the Minister to select areas to benefit from the oil revenue, notwithstanding the formation of the PIAC.<sup>785</sup> The section below discusses the effect of these provisions in the PRMA.

The need to be accountable has resulted in the institutionalisation of transparency and accountability in the legal regimes of resource-rich countries. Transparency and accountability in managing natural resource revenue are crucial to benefiting resource-rich countries as most resource-rich countries are poor despite the receipt of income from natural resources.<sup>786</sup> Adherence to the provisions stimulate growth and make governments accountable. It is essential to assess whether transparency and accountability have achieved the desired effect in the fortunes of resource-rich countries.

The impact of transparency and accountability initiatives shows with countries that applied it and those who did not.<sup>787</sup> It may also be assessed by looking at the outcomes before and after the application of the intervention.<sup>788</sup> Another mode of evaluating the impact of transparency and

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<sup>785</sup> Stacey and Austin, (note 695), 4-6.

<sup>786</sup> Al Faruque, (note 282), 68.

<sup>787</sup> Mejia, (note 550), 93.

<sup>788</sup> White Howard, 'A Contribution to Current Debates in Impact Evaluation', Evaluation, Vol. 16(2), 2010, 154.

accountability initiatives is talking to stakeholders who implement the actions or the direct beneficiaries of the intervention and administer questionnaires to the citizens to get first-hand information on resource revenues.<sup>789</sup>

### 3.1 Optimal Management of Resource Revenue for Development

It is necessary to safeguard oil revenue and use it for poverty alleviation and development because crude oil production estimated to last for between twenty to thirty years.<sup>790</sup> There is optimism that with proper governance and legal framework in place, Ghana's hydrocarbons can contribute to the development of the nation.<sup>791</sup> Until Ghana addresses the challenges in the PRMA regarding transparency and accountability, it may hamper the optimism generated, and Ghana cannot boast of development with the oil revenue.

The optimal management of resource revenue depends on two principles; first, to check the powers of those controlling the resource revenue to make them accountable.<sup>792</sup> Second, the State must make transparent disclosure of revenues and the state of the industry.<sup>793</sup> Implementing these two principles would ensure transparency and control the power of those in authority, which will yield results like using the revenue to benefit society.

One risk associated with PRMA in its current structure on transparency and accountability is the weak oversight and governance regimes. The existing framework cannot prevent mismanagement; the Minister's discretionary power under the Act is too considerable.<sup>794</sup> The Minister can act, and the PIAC cannot challenge the Minister's decision under the PRMA.<sup>795</sup> The Minister can, therefore, take individual decisions which breach the PRMA.<sup>796</sup>

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<sup>789</sup> Mejia, (note 550), 97-98. See also Mainhardt-Gibbs, H., 'Survey of Civil Society Participation in the Extractive Industries Transparency Initiative and the Role of the World Bank, Washington, DC, 2010.

<sup>790</sup> Gary, 'Ghana's Big Test: Oil's Challenge to Democratic Development', OXFAM, AMERICA/ISODEC, GHANA 2009, 3. Available at <http://www.oxfamamerica.org/static/oa3/files/ghanas-big-test.pdf> accessed 23 March 2021.

<sup>791</sup> Van Alstine, (note 512), 28.

<sup>792</sup> Simpson, 'Ghana and the Ideal of the Citizen-Shareholder: A Corporate-Law Response to the Resource Curse', *Duke Law Journal*, Vol. 65, 2016, 1285.

<sup>793</sup> Simpson, (note 792), 1285.

<sup>794</sup> Simpson, (note 792), 1292.

<sup>795</sup> PIAC has no such power under the PRMA.

<sup>796</sup> See Chapter 7, sections 2.1 and 2.2 below.

One such determination made by the Minister refers to the unilateral decision to cap the Stabilisation Fund retrospectively<sup>797</sup> when the PRMA stipulates prospective capping.<sup>798</sup> In May 2014, the Minister capped the Ghana Stabilisation Fund at US\$ 250 million without parliamentary approval.<sup>799</sup> The money in the fund was in excess, and the Minister instructed the Bank of Ghana to withdraw US\$ 176 million and transfer US\$ 16 million into the Contingency Fund.<sup>800</sup> The remaining amount of US\$ 159 million used to pay debts.<sup>801</sup>

Transfers from the Stabilisation Fund are regulated under the PRMA and meant to alleviate shortfalls in the petroleum revenues and debt payment approved by Parliament.<sup>802</sup> The transfer into the Contingency Fund was in breach of the rules under the PRMA, but the PIAC could only issue a press statement to express their misgivings.<sup>803</sup> The Minister has the power under the PRMA to cap the Stabilisation Fund.<sup>804</sup> Successive Ministers have done it to make part of the oil revenue available to government spending and redirect the funds to service debts.<sup>805</sup> These expenditures are outside the PRMA, and this calls for guidelines to regulate the capping mandate given to the Minister.<sup>806</sup> The Minister has the power to cap the Stabilisation Fund with the prior approval of Parliament, and a decision taken without parliamentary permission amounts to illegality.<sup>807</sup> The discretionary power of the Minister remained intact when Parliament amended the PRMA in 2015.<sup>808</sup>

PIAC is an oversight body under the PRMA to improve accountability of revenue management. PIAC works with reports issued by the Ministry of Finance, Ghana National Petroleum Commission, the Bank of Ghana, Ghana National Gas Company and the Ghana Revenue

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<sup>797</sup> Section 9 (1) of Act 815.

<sup>798</sup> See section 23(3) of Act 815.

<sup>799</sup> See section 23(3) of Act 815. See also Oshionebo, (note 771), 42-44.

<sup>800</sup> See Article 117 (1) of Ghana's Constitution. See also section 23 (4) of Act 815.

<sup>801</sup> Press release by PIAC dated 7 August 2014.

<sup>802</sup> Clause 5 (a) and (b) of Act 893.

<sup>803</sup> Section 23 (3) of Act 815.

<sup>804</sup> Section 23 (3) of Act 815.

<sup>805</sup> The conduct of Ministers breach the section 23 (3) of the PRMA.

<sup>806</sup> Stacey and Austin, (note 695), 30.

<sup>807</sup> Capping started in 2011 till date.

<sup>808</sup> Petroleum Revenue Management (Amendment) Act, 2015 Act 893.

Authority.<sup>809</sup> This thesis suggests that PIAC must find an independent way of verifying the authenticity of these reports rather than going to the same institutions for clarification.

The PRMA lists twelve areas where the Annual Budget Fund Amount<sup>810</sup> qualifies to receive funding in the absence of any long-term national development project.<sup>811</sup> The PRMA states that seventy per cent of the total revenue from petroleum shall go to the Annual Budget Fund meant to support the budget of Ghana.<sup>812</sup> Under the PRMA, it is the prerogative of the Minister to choose four out of the twelve listed sectors mentioned for the use of the petroleum revenue.<sup>813</sup> The selection takes place without consultations, and the Minister choice prevails, irrespective of the needs of the society.<sup>814</sup> Civil Society Organisations have argued for reducing the four areas, as it is unrealistic to get the needed impact and concentrates on two sectors for maximum benefits. The amendment failed to address the suggestions, and the four areas remain in the parent Act.<sup>815</sup>

The ministerial discretion under the PRMA sometimes allows the Minister to allocate oil revenues outside the defined areas of the Act.<sup>816</sup> For example, oil and gas revenues were allotted by the Minister to recapitalise the Ghana National Gas Company, even though this allocation contravened the PRMA.<sup>817</sup> The Minister also has, on some occasions, acted without reference to the PRMA, amounting to giving different interpretations to the transfers to the annual budget funding amount and the petroleum funds.<sup>818</sup> In 2013, an amount of US\$ 70 million transferred from the annual budget funding amount earmarked for transfer to the District Assembly Common Fund<sup>819</sup> and used to pay debts.<sup>820</sup> The Minister reportedly took these decisions because there are no checks and balances on the minister's powers under the PRMA.<sup>821</sup> This thesis argues that the continued

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<sup>809</sup> The methodology section of PIAC reports confirms using institutional reports. Any inconsistencies is clarified with the relevant institution before the publication of the report.

<sup>810</sup> Section 61 of Act 815 for definition.

<sup>811</sup> Section 21 (3) of Act 815.

<sup>812</sup> Section 18 (1) of Act 815 and Clause 8 (4) (b) of Act 893.

<sup>813</sup> Section 21 (5) of Act 815.

<sup>814</sup> ACEP, (note 745), 8-9.

<sup>815</sup> ACEP, (note 745), 8-9.

<sup>816</sup> Chapter 6.

<sup>817</sup> Stacey and Austin, (note 695), 30.

<sup>818</sup> 2015 PIAC report at xvii.

<sup>819</sup> Articles 252 (1) and (2) of the 1992 Ghana's Constitution.

<sup>820</sup> See 2015 PIAC Report, xvii.

<sup>821</sup> Stacey and Austin, (note 695), 31.

treatment of the oil revenue in this manner due to the Minister's discretionary authority under the PRMA becomes a source of concern and requires measures to curtail his powers.

The PMRA states that the Ghana Stabilisation Fund must only hold the amount approved by Parliament.<sup>822</sup> The excess amount must be transferred into the Contingency Fund<sup>823</sup> or must be used to pay for debt approved by Parliament.<sup>824</sup> The composition of the membership of the Parliament dominated by the members of the ruling party, and the Minister being part of the ruling party may use their numbers to get the approval. The practice has increased because funds sent to these areas are not subject to the strict rules of accountability under the PRMA.<sup>825</sup>

The above discussion indicates that the current form of the PRMA favours the government because the Minister has the power to take individual decisions under the law. The choices are accepted; in most cases, to support the government by making more oil revenue available to the government to use in other areas where controls are minimal or non-existent. This situation allows the political elite to transfer oil revenue to sectors where no monitors exist.<sup>826</sup> The analysis reveals a weak link requiring serious attention to safeguard the oil revenue from an accountability perspective.

### 3.2 Challenges with the implementation of the PRMA

Transparency and accountability provisions in the PRMA seek to ensure optimal benefit to Ghana, but the problem is with its compliance by those implementing it.<sup>827</sup> A missing link exists between the provisions of the Act and adherence to accountability due to the failure of State institutions to check political authority, weak oversight and the dominance of the executive in decision making.<sup>828</sup> The reports of PIAC and Auditor-General's indicates breaches of the PRMA, which has gone unpunished despite the existence of penalties under the PRMA.<sup>829</sup>

The problem is non-compliance at the implementing stage of the disbursement. There is a weak link between transparency and accountability on one hand and compliance with the PRMA.<sup>830</sup> This

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<sup>822</sup> Section 23 (3) of Act 815.

<sup>823</sup> See Article 177 (1) of the 1992 Ghana's Constitution.

<sup>824</sup> Section 23 (4) of Act 815. See also Clause 5 (b) of Act 893.

<sup>825</sup> Stacey and Austin (note 695), 30.

<sup>826</sup> See chapter 7 section 2.2 and 3.2.

<sup>827</sup> See chapter 7.

<sup>828</sup> Stacey and Austin, (note 695), 4-5.

<sup>829</sup> Section 58 of Act 815.

<sup>830</sup> See chapter 7 on Auditor-General and PIAC reports.

thesis suggests that the prevailing situation raises an issue with the government's level of accountability by the government represented by the Minister.<sup>831</sup>

The constitutional framework of Ghana indicates that the President shall select the majority of ministers of State from Parliament and such persons nominated as ministers vetted and approved by Parliament before being sworn in as a minister of state.<sup>832</sup> From the inception of the 1992 Constitution, the elected President's party also controls Parliament,<sup>833</sup> a situation that has rendered Parliament's oversight role is weak due to powers vested in the President.<sup>834</sup> The same arrangement also makes some members of Parliament of the ruling party, appointed as ministers, belong to the executive and unable to counterbalance the powers of the President.<sup>835</sup> As a result, bills, contracts, loans and bilateral agreements sent to Parliament from the executive must be supported by all members of the governing party, some of whom are also Ministers of State.<sup>836</sup> Despite the sentiments of the minority, any agreement, bill, or treaty presented by the executive must pass due to the voting pattern.<sup>837</sup>

Examples abound in Ghana confirmed by the Deputy Minority leader of the seventh Parliament of the Fourth Republic, Honourable James Klutse Avedzi, who stated that legislators take a partisan

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<sup>831</sup> Sections 21 (5), 23 (3), and 25 of Act 815.

<sup>832</sup> Article 78 (1) of the 1992 Constitution of Ghana.

<sup>833</sup> In 1992, the National Democratic Congress (NDC) won the Presidency and controlled Parliament because the New Patriotic Party (NPP) boycotted the parliamentary election. In 1996, the NDC won again and controlled Parliament. The NPP won the 2000 and 2004 presidential election and also controlled Parliament. In 2008 and 2012, the NDC won the presidential election and controlled Parliament as well. In 2016, the NPP won the Presidential election and controlled Parliament. In the 2020 elections however, the NPP won the presidential but has 138 members of Parliament, one of whom was their member who went independent and won the seat. The NDC have 137 members of Parliament reflecting a slimmest majority. Ghana awaits the operation of the current Parliament with these close numbers.

<sup>834</sup> Stacey and Austin, (note 695), 58.

<sup>835</sup> Kopin et al., (note 168), 586. The Constitutional Review Commission (CRC) set up by President J.E.A. Mills (deceased) after consultation nationwide, recommended an amendment of the Constitution to give the President power to appoint Ministers of State from within and outside Parliament without any condition. The Commission submitted its report in 2011, but to date, the earlier provisions remain intact without any effort to amend the Constitution in that regard. Report of the Constitutional Review Commission, 2011, 128. Available at <https://www.documents.clientearth.org/wp-content/uploads/library/2011-12-20-report-of-the-constitution-review-commission-ext-en.pdf> accessed 24 March 2021. See also Article 78(1) of Ghana's Constitution. It states that majority of the ministers of State shall be members of Parliament thus belonging to the executive and the legislature. Under Ghana's 1979 Constitution, members of Parliament appointed as ministers of State were required to resign their seats as members of Parliament.

<sup>836</sup> Per Article 104 (1) of Ghana's Constitution, matters in Parliament shall be determined by majority members present and voting.

<sup>837</sup> Article 104 (1) of Ghana's Constitution.

stance and not vote on issues.<sup>838</sup> Political parties have taken a dominant position in shaping the conduct of parliamentarians.<sup>839</sup> The situation is so because voting against the official party position amounts to a breach of party discipline by a Member of Parliament.<sup>840</sup> Party loyalty influences parliamentarians support for bills and other instruments from the executive, which come to the house for deliberations. Every bill with financial implications emanates from the executive. Given the composition of Parliament, the ruling party uses its numbers to secure the needed votes, which weakens Parliament's oversight duty.<sup>841</sup>

The debate on the state of the nation address shows the extreme nature of partisanship of the Parliament of Ghana.<sup>842</sup> It has always been that the majority support the President's speech, budgets and agreements introduced by the government, but the minority parliamentarians differ or disagree with such initiatives.<sup>843</sup> The extreme partisanship stems from the fact that parliamentarians perceive their political interest because their electoral fortunes depend on the failure of other institutions.<sup>844</sup> The intense partisan relationship creates a challenge on Parliament's oversight duties.<sup>845</sup> It makes checks and balances of the executive very difficult.<sup>846</sup> There is a saying: "let the minority have their say, and the majority would have their way." It refers to the perception that any proposal from the presidency must pass, irrespective of the consequences. The situation has resulted in limited accountability on Parliament's oversight responsibility with unpleasant implications for the country.<sup>847</sup> Seldom would one find Parliamentarians of the ruling party voting against a bill, a loan agreement or any treaty brought to Parliament by the ruling government for deliberations.

The representatives of the electorates having failed to assert their oversight responsibilities to protect the interest of the citizens in holding the executive accountable with the oil revenue raises crucial concerns. The infraction of the PRMA regarding management is a problem. This thesis

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<sup>838</sup> See [www.myjoyonline.com](http://www.myjoyonline.com) dated 26 June 2019. Accessed 4 July 2019.

<sup>839</sup> Kedia et al., 'The impact of political party control over the exercise of parliamentary mandate', Inter-Parliamentary Union publication, 2011, 6. Available at [archive.ipu.org/conf-e](http://archive.ipu.org/conf-e) accessed on 14 February 2020.

<sup>840</sup> Kedia et al., (note 839), 19. In Ghana, examples include Parliament's deliberations on the divestiture of Ghana Telecom to Vodafone, STX Housing scheme for Ghana, the Agyapa Royalty Agreement.

<sup>841</sup> Article 108 of Ghana's Constitution.

<sup>842</sup> Article 67 of Ghana's Constitution.

<sup>843</sup> The Hansard of parliamentary debates, Ghana shows entrenched positions taken by parliamentarians.

<sup>844</sup> Linz, 'Presidents vs. Parliaments: The Virtues of Parliamentarism', *Journal of Democracy*, Vol. 1 (4), 1990, 89.

<sup>845</sup> Article 103 (3) of the Constitution.

<sup>846</sup> Stacey and Austin, (note 695), 57-58.

<sup>847</sup> The yearly Auditor-General's report depicts mismanagement of State resources.

argues that it breaches the constitutional duty imposed on the President to hold in trust all-natural resources for the people of Ghana.<sup>848</sup>

The effective management of the oil revenue requires transparency and monitoring by institutions with technocratic skill.<sup>849</sup> In that case, the public would feel confident that those managing the oil revenue are accountable to the citizens who are the owners of the resources.<sup>850</sup> Anything short of this will mean that Ghana is inviting the resource curse.<sup>851</sup> The management of the oil revenues should not be left to the political elite alone. After nine years of becoming an oil-producing country, very little can be shown of the effect of the oil revenue in Ghanaians' lives.<sup>852</sup> Ghana now requires a system of management of oil revenues that replicates benefits to the public and poverty alleviation expected from ruling governments.<sup>853</sup> The chapter suggests an urgent need to involve other stakeholders in the management of oil revenue. The infractions come to the public domain after the PIAC, and the Auditor General has audited the previous years' expenditures.

The enforcement of transparency requires checks and balances between government agencies. The empowering of Parliament, civil society organisations, journalists, research institutions, and academia with oversight responsibilities to monitor the management of the oil revenues needs urgent consideration to reflect in amending the PRMA.<sup>854</sup> The role of transparency in the management of oil revenues empowers the public with knowledge and authority to monitor the performance of governments and companies in the oil sector and the publication of revenue receipts to aid the public advocate economic policies.<sup>855</sup> This accounts for the growth of the anti-corruption movement to ensure transparency of the revenue flowing into countries with natural resources.<sup>856</sup>

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<sup>848</sup> Chapter 3, section 1.

<sup>849</sup> Simpson, (note 792), 1314.

<sup>850</sup> Simpson, (note 792), 1314.

<sup>851</sup> See chapter 2 on Resource Curse.

<sup>852</sup> Amin, 'Three Years of Petroleum Revenue Management in Ghana: Transparency without Accountability', ed. Kristy Wissing, Public Interest Report 2, 2014, 46-48. Available at <http://acep.africa/wp-content/uploads/2019/11/ACEP-Report-PRMA-Final.pdf> accessed 24 March 2021.

<sup>853</sup> Simpson, (note 792), 1314.

<sup>854</sup> Gary, 'Oil and gas revenues, funds and state budgets: Minimising leakages and maximizing transparency and accountability in the hydrocarbon value chain.' UNDP Discussion Paper No. 6, 168.

<sup>855</sup> Heller et al., 'Accountability Mechanisms in Ghana's Proposed Oil Legislation', Ghana Policy Journal, Vol. 4, 2010, 53-54.

<sup>856</sup> Eigen, 'Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry', Houston Journal of International Law, Vol. 29, 2007, 329.

If channeled into the productive sectors of the economy, the revenues would empower growth and alleviate poverty.<sup>857</sup> Transparency and accountability initiatives seek to ensure that governments of resource-rich countries are accountable for petroleum revenue.<sup>858</sup> Being accountable will yield better economic development results, exemplified in specific interventions in the nation.<sup>859</sup>

Ghana must find a way of dealing with the problems regarding political challenges, executive discretion and the ‘marriage of convenience between the Executive and Parliament to ensure effective management of oil revenue. Some resource-rich countries have escaped the resource curse due to their steps to safeguard the revenue from their natural resources. Chapter 8 of this thesis shall discuss the alternative legal regime for revenue management of Norway and Botswana. The discussion seeks to ascertain lessons Ghana can learn from their examples to improve transparency and accountability in managing Ghana’s oil revenue.

The management of oil revenue under the PRMA shows challenges that impede effective management to benefit society.<sup>860</sup> Politicians dominate the implementation of the PRMA, weak oversight and broad discretionary power given to the Minister of Finance.<sup>861</sup> Parliament’s inability to debate the reports of the PIAC on the utilisation of the oil revenues becomes an accountability challenge.<sup>862</sup> The other accountability challenge deals with the minister's power to cap the Ghana Stabilisation Fund and transfer the excess to the Contingency Fund, which is not subject to scrutiny by the PIAC.<sup>863</sup>

### 3.3 Safeguarding Ghana’s oil revenue

Apart from the members of PIAC appointed from thirteen institutions and the Investment Advisory Committee (IAC), all other institutions in the PRMA are public agencies. The Minister consults the Governor of the Bank of Ghana and nominates the members of IAC for appointment by the President.<sup>864</sup> The public institutions are the Bank of Ghana,<sup>865</sup> the Ghana Revenue Authority,<sup>866</sup> the

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<sup>857</sup> Venables, (note 240), 161-162.

<sup>858</sup> Mejia, (note 550), 93.

<sup>859</sup> Mejia, (note 550), 93.

<sup>860</sup> Chapter 4, section 3.2.

<sup>861</sup> Chapter 4, section 3.2.

<sup>862</sup> Chapter 5, section 3.4.

<sup>863</sup> Chapter 4, section 3.2. See also chapter 6, section 2.2.1 and chapter 7, section 2.2.3.

<sup>864</sup> See sections 29 and 31 (3) of the Act 815.

<sup>865</sup> Section 26 of Act 815.

<sup>866</sup> Section 3 of Act 815.

Ministry of Finance and Economic Planning,<sup>867</sup> the Auditor-General Department,<sup>868</sup> and Parliament.<sup>869</sup> These institutions have been offered different roles under the PRMA to ensure that Ghana derives maximum benefits from managing the oil revenue.<sup>870</sup> Aside from Parliament's inability to exercise its oversight role discussed earlier, all the other institutions are government agencies whose heads by the constitutional arrangement are appointed by the President and has not performed creditably.<sup>871</sup>

The power of appointment and removal by the President and the desire for appointees to keep their jobs compromises State institutions' independence and professionalism, leading to political patronage.<sup>872</sup> The practice has further created a winner-takes-all situation in Ghana, which sometimes compromises the suitability of the appointees in public institutions.<sup>873</sup> Overcoming this challenge may greatly assist Ghana to optimise its oil revenue to enhance its development.<sup>874</sup> However, the Constitution vests only the President to make appointments in the public sector to run the country.<sup>875</sup> Ghana must create a space to accommodate and integrate the views of other stakeholders in the legal structure concerning the management of the oil revenue.

This thesis suggests that Ghana must reduce the political influence in the PRMA, which has created a weak link.<sup>876</sup> The Minister must base the power to cap the Ghana Stabilisation Fund on set conditions.<sup>877</sup> Hopefully, implementing these recommendations will create the needed transparency and accountability with managing Ghana's oil revenue.

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<sup>867</sup> Section 25 of Act 815.

<sup>868</sup> Section 45 of Act 815.

<sup>869</sup> Section 51 of Act 815.

<sup>870</sup> Chapter 6, section 2.3.

<sup>871</sup> See Article 58 (1) of Ghana's Constitution.

<sup>872</sup> Gyimah-Boadi et al., (note 705), 101-104.

<sup>873</sup> Gyimah-Boadi et al., (note 705), 101. See also Gyampo, 'Dealing with Ghana's Winner-Take-All Politics: A Case for Proportional Representation? In Selected Issues in Ghana Democracy, Vol. 1, 83-96, 2017, (Ed.) Bossman E. Asare and Alex K.D. Frempong and Gyampo, 'Winner-Takes-All Politics in Ghana: The Case for Effective Council of State', Journal of Politics and Governance, Vol. 4 (1)-(4), 2015, 157-186.

<sup>874</sup> Chapter 5, sections 4 and 5.

<sup>875</sup> Article 58 (1) of Ghana's Constitution. See also Gyimah-Boadi, 'The 2008 Freedom House Survey: Another Step Forward for Ghana', Journal of Democracy, Vol. 20 (2), 2009, 147, Gyampo et al., 'Reviewing the Extensive Appointment Powers of the President as Solution to Winner-Takes-All Politics in Ghana', Ghana Social Science Journal, Vol. 14 (2), 2017, 166-197.

<sup>876</sup> Chapter 4, sections 3.3 and 4.

<sup>877</sup> Chapter 6, section 2.2.1.

The stakeholders to assist include (but are not limited to) Civil Society Organisations, (CSOs) academic institutions, professional bodies, and research institutions.<sup>878</sup> These bodies may play different roles and collaborate with the state to enhance the optimal use of oil revenues.<sup>879</sup> The need for this stakeholder's partnership has become more imperative because Ghana has seen very little development with the revenue from the oil.<sup>880</sup> Such a decision would necessitate amending the PRMA to incorporate the role of these bodies into the law. The next section proceeds to discuss the basis for the above suggestion.

### 3.3.1 Civil Society Organisation

Civil Society Organisation (CSOs) refers to an interaction between the State and the household, based upon structures reflected in co-operation between the parties.<sup>881</sup> The concept of CSOs relates to an arrangement with plan parts<sup>882</sup> being the values of the society, expressed in an organised form, and the ability to communicate with one another concerning their expectation of the Government.<sup>883</sup> CSOs are institutions that exist as associations separate from State institutions.<sup>884</sup> One feature of CSOs is that although they are distinct, they are in a relationship with the State.<sup>885</sup> The relationship between them is one of dialogue, the purpose of which is to ensure that the government is accountable to the people by addressing the issues of the State.<sup>886</sup>

Another definition offered focus on the ability of individuals to organise themselves and form an autonomous association.<sup>887</sup> CSOs began to articulate issues of political interest in a bid to influence political agenda and decisions.<sup>888</sup> Such collaboration helps society allocate its resources to take care of the needs of the community due to stakeholder consultation.

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<sup>878</sup> Stacey and Austin (note 695), 69.

<sup>879</sup> Stacey and Austin (note 695), 69.

<sup>880</sup> Chapter 7 discusses the reports of PIAC.

<sup>881</sup> Bratton, 'Civil Society and Political Transition in Africa' IDR Reports, Vol. 11 (6), 1994, 2.

<sup>882</sup> Bayart Jean-Francois, 'Civil Society in Africa' in Chabal, Patrick, (ed.) Political Domination in Africa, New York: Cambridge University Press, 1986, 112.

<sup>883</sup> Bratton, (note 881), 2.

<sup>884</sup> Chambers et al., 'Civil Society and the State', The Oxford Handbook of Political Theory, 2009, 363.

<sup>885</sup> Chambers et al., (note 885), 364.

<sup>886</sup> Chambers et al., (note 885), 369.

<sup>887</sup> Neubert, 'Civil Societies in Africa? Forms of social self-organization between the poles of globalization and local socio-political order', Bayreuth African Studies Working Papers No. 12, 5.

<sup>888</sup> Neubert, (note 887), 5.

CSOs are viewed from two standpoints. The first refers to where a social order participates in the political realm to ensure ‘political accountability’<sup>889</sup> from Government. The second focuses on the space created for interaction between the national government and other organisations to achieve a stated end.<sup>890</sup> The organisations get attracted to matters of public interest affecting society, and the underlying factors are issues of general importance, religion, or education.<sup>891</sup> They exist to speak to the problems of the community and task democracy to address the difficulties.<sup>892</sup> They must, therefore, be independent of the State, exhibit a public character, and serve the common good of the nation.<sup>893</sup> With these attributes, no government can afford to ignore the powerful potential of CSOs and calls for collaboration with the State to resolve society's problems.<sup>894</sup> CSOs further complement the role of the country.<sup>895</sup> Elected governments must create the space and atmosphere to cooperate with CSOs in the management and decision-making processes.<sup>896</sup> The relationship will allow the non-state actors to assist the State in decision-making, which necessitates a legal framework to consolidate the partnership.<sup>897</sup> Elected governments must recognise their limitation in addressing the problem of society and collaborate with CSOs and others to resolve issues of society collectively.<sup>898</sup>

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<sup>889</sup> Fadakinte, ‘Historicizing; Civil Society in Africa: An Analysis of the State, Democracy and the Third Sector’, *Canadian Social Science*, Vol. 11 (3), 2015, 131.

<sup>890</sup> Fadakinte, (note 889), 131.

<sup>891</sup> Fadakinte, (note 889), 132.

<sup>892</sup> Chandhoke, ‘State and Civil Society: Explorations in political theory’, Sage Publications, New Delhi, 1995.

<sup>893</sup> Osaghae, ‘Colonialism and Civil Society in Africa: The perspective of Eke’s two publishes’, *Volunteers*, Vol. 7.

<sup>894</sup> Brinkerhoff, (note 697), 59-60.

<sup>895</sup> Brinkerhoff, (note 697), 59. See also James, E. (Ed.), *The nonprofit sector in international perspective: Studies in cooperative culture and policy*. New York: Oxford University Press, 1989 and Salamon & Anheier, (Eds.), ‘Defining the nonprofit sector: A cross-national analysis’, New York: Manchester University Press, 1997.

<sup>896</sup> Brinkerhoff, ‘Democratic governance and sectoral policy reform: Linkages, complementarities, and synergies (Monograph No. 5). Washington, DC: U.S. Agency for International Development, Implementing Policy Change Project, 1998a, See also Haggard, and Webb, (Eds.), *Voting for reform: Democracy, political liberalization, and economic adjustment*, New York: Oxford University Press, 1994 and Rothchild, ‘Structuring state-society relations in Africa: Toward an enabling political environment in J. A. Widner (Ed.), *Economic change and political liberalization in sub-Saharan Africa*, Baltimore: Johns Hopkins University Press, 1994.

<sup>897</sup> Brinkerhoff, (note 697), 60.

<sup>898</sup> Brinkerhoff, (note 697), 60-61. See also Coston, *Administrative avenues to democratic governance: The balance of supply and demand*. *Public Administration and Development*, 1998a, 18(5), 479-493. Coston, *A model and typology of government-NGO relationships*. *Nonprofit and Voluntary Sector Quarterly*, 1998b, 27(3), 359-383, Farrington et al., ‘Reluctant partners? Non-governmental organizations, the State and sustainable agricultural development, 1993, Fisher, J., *Non governments: NGOs and the political development of the third world*, 1998, West Hartford et al., (Eds.), *NGOs, states and donors: Too close for comfort?* 1997.

### 3.3.2 Academic and Research Institutions

Academic institutions research into problems that plagued society.<sup>899</sup> Most of the study conducted by educational institutions seek to address the issues of society.<sup>900</sup> The collaboration between the State and academic institutions on the use of research findings benefits the nation. If well exploited, the relationship would inform the government's policies to address its challenges since research findings recommend solution(s).

Apart from academic institutions, other research institutions in Ghana are engaged in numerous research whose findings, if implemented, would help the country.<sup>901</sup> The main issue is whether the research findings of these institutions influence policy decisions of governments or whether there is a collaboration between the State and the research institutions. Lack of collaboration between the State and these research institutions stems from a lack of stakeholder engagement during the planning process.<sup>902</sup> In Ghana, the partnership between academic institutions, the State, and the industry is minimally coupled with a lack of coordination.<sup>903</sup> Research institutions in Ghana mainly rely on grants from international funding agencies to conduct their research, and the exhaustion of the funds automatically ends the research.<sup>904</sup>

The utilisation of oil revenue in its current form dominated by the political elite without any collaboration cannot propel development in Ghana.<sup>905</sup> This thesis suggests collaboration between the State, academic and research institutions.<sup>906</sup> The state must commit part of the oil resources to the educational and research institutions, conduct research, and offer solutions to address society's problems.<sup>907</sup> If the power to spend is not broadened but left to only the politicians, development

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<sup>899</sup> Whitmer et al., 'The Engaged University: providing a platform for research that transforms society', *Frontiers in Ecology and the Environment*, 2010, Vol. 8 (6), 314-315.

<sup>900</sup> Whitmer et al., (note 899), 314-315.

<sup>901</sup> Research institutions in Ghana include Noguchi Memorial Institute for Medical Research, Cocoa Research Institute of Ghana, Kumasi Centre for Collaborative Research in Tropical Medicine, Crops Research Institute, Council for Scientific and Industrial Research, Centre for Scientific Research into Plant Medicine, Soil Research Institute, Water Research Institute, Building and Road Research Institute and Ghana Space Science and Technology Centre.

<sup>902</sup> Adu-Ampong, 'Divided we stand: institutional collaboration in tourism planning and development in the Central Region of Ghana', *Current Issues in Tourism*, Vol. 20 (3), 2017, 299.

<sup>903</sup> Owusu-Nimoh et al., 'Research collaboration in Ghana: Patterns, motives and roles', *Scientometrics*, Vol. 110 (3), 2017, 1103.

<sup>904</sup> Owusu-Nimoh et al., (note 903), 1103.

<sup>905</sup> Chapter 7, sections 2.1, 2.2 (2.2.1-2.2.4).

<sup>906</sup> See section 3.3 above.

<sup>907</sup> Owusu-Nimoh et al., (note 903), 1103.

challenges will continue despite the oil revenue.<sup>908</sup> Panford, for example, advocates collaboration between various academic disciplines from Universities in Ghana to fashion a comprehensive national development agenda to assist the country's development.<sup>909</sup>

### 3.3.3 International policy guidelines

Various policies provide valuable lessons on resource revenue accountability at the international level, including the Natural Resource Charter, the International Monetary Fund's (IMF) guide on revenue transparency and the Santiago Principles on Sovereign Wealth Funds.<sup>910</sup> The Natural Resources Charter offers policy prescriptions to resource-rich countries on managing resource revenue and has developed twelve central precepts in that regard.<sup>911</sup> The second principle discusses accountability and transparency. The emphasis is on managing resource wealth to help a country sustain its development, and that transparency is a prerequisite for accountability.<sup>912</sup>

The IMF's guide on resource revenue transparency is a set of principles to address transparency issues encountered by resource-rich countries concerning the management of their resource revenue.<sup>913</sup> The guide gives four pillars: Clarity of Roles and Responsibilities, Open Budget Process, Public Availability of Information, and Assurance of Integrity. These guides provide acceptable practices for transparency in the management of resource revenues.

The Santiago Principles on Sovereign Wealth Funds has twenty-four principles that promote transparency, good governance, accountability, and investment of resource revenues by resource-rich countries.<sup>914</sup> These documents, among others, are guides meant to help governments put their resource revenue into fair use.<sup>915</sup> The challenge remains whether these steps would be adhered to by governments of resource-rich countries since they are guides and not binding.<sup>916</sup>

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<sup>908</sup> See chapters 6 and 7.

<sup>909</sup> Panford, 'Academy and Successful Management of Ghana's Petroleum Resources', *Africa Today*, Vol. 61 (2), 96-99.

<sup>910</sup> Heller et al., (note 855), 53.

<sup>911</sup> The Natural Resource Charter 2nd edition available at <https://resourcegovernance.org/analysis-tools/publications/natural-resource-charter-2nd-ed> accessed 14 March 2021.

<sup>912</sup> See precept 2 which states that "Resource governance requires decision makers to be accountable to an informed public".

<sup>913</sup> See International Monetary Fund, *Guide on Resource Revenue Transparency*, 2007 available at <https://www.imf.org/external/np/pp/2007/eng/051507g.pdf> accessed 14 March 2021.

<sup>914</sup> Available at <http://www.ifswf.org/santiago-principles-landing/santiago-principle> accessed 14 March 2021.

<sup>915</sup> Meija, (note 550), 93.

<sup>916</sup> Meija, (note 550), 93.

## 4. Conclusion

Chapter 4 has given an overview of the PRMA in the context of transparency and accountability. The current provisions and their implementation cannot prevent the resource curse. Transparency is excellent as it improves accountability, but the interplay of other stakeholders compels the government to be accountable, enhances the co-operation between the government and CSOs to strengthen the anti-corruption drive.<sup>917</sup> Allowing ruling parties alone to make decisions on the management of oil revenue utilising their majority in Parliament will not help Ghana optimise oil revenue.<sup>918</sup> Stakeholder partnership in managing the oil revenue from planning projects through its execution is necessary to optimise the oil revenue.<sup>919</sup>

The intervention of other institutions has become crucial because, since the inception of the Fourth Republic, ruling governments majority in Parliament and members of Parliament who find themselves in the executive positions have weakened the oversight duties of Parliament.<sup>920</sup> PIAC's role limited to playing an oversight role with the issuance of reports requires enhancement to include the power to prosecute.<sup>921</sup>

Ghana must remedy the frequent changes in economic policies and the wholesale replacement of heads of State institutions when the government changes.<sup>922</sup> The practice impact negatively on institutional stability in Ghana.<sup>923</sup> The inability of the legal framework to stop the government from using the oil revenue contrary to the law suggests weak institutional structures.<sup>924</sup>

This thesis suggests 'autonomy, legitimacy, and discipline of leaders and institutions in managing oil revenue.'<sup>925</sup> Until Ghana attempts to relook the lapses associated with the PRMA as identified in this thesis, its enactment may not succeed to fight the resource curse.<sup>926</sup> Ghana needs to tackle the problematic provisions of the PRMA and other constitutional provisions, the operations of

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<sup>917</sup> David-Barret et al., 'The Transparency Paradox: Why do Corrupt Countries Join EITI?' European Research Centre For Anti-Corruption and State Building Working Paper No. 38, 2013,

<sup>918</sup> Gyimah-Boadi, 'The 2008 Freedom House Survey: Another Step Forward for Ghana', *Journal of Democracy*, Vol. 20 (2), 2009, 147-149.

<sup>919</sup> Brinkerhoff, (note 697), 59-60.

<sup>920</sup> Stacey and Austin, (note 695) 59-61.

<sup>921</sup> Chapter 7, section 3.2.

<sup>922</sup> Skaten, Ghana's Oil Industry: Steady growth in a challenging environment', The Oxford Institute for Energy Studies Paper, 2018, 14.

<sup>923</sup> Skaten, (note 922), 19.

<sup>924</sup> See chapters 5, section 4 and 6, section 4.

<sup>925</sup> Samatar, '*An African Miracle: State and Class Leadership, and Colonial Legacy in Botswana Development*', Portsmouth, NH: Heinemann, 1999, 188.

<sup>926</sup> See chapters 5, 6, and 7.

which render State institutions ineffective.<sup>927</sup> The next chapter discusses institutions and their functions under the PRMA.

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<sup>927</sup> Article 70 (1) of the Constitution.

# Chapter 5: Institutions and their Functions under the Petroleum Revenue Management Act

## 1. Introduction

Chapter 4 examines the Petroleum Revenue Management Act (PRMA) within the context of transparency and accountability.<sup>928</sup> The discussion identifies issues, namely, limiting the powers of those controlling the oil revenue to make them accountable and ensuring that the State is transparent in disclosing oil revenue.<sup>929</sup> Notable among them are, first, the discretionary powers available to the Minister of Finance and Economic Planning (Minister) under the PRMA concerning the utilisation of the oil revenue.<sup>930</sup> Second, weak oversight and governance regime, especially Parliament.<sup>931</sup> Third, the failure of State institutions to serve as a check on executive authority.<sup>932</sup> Fourth, the constitutional architecture in Ghana permits a new President to appoint new heads of State institutions.<sup>933</sup> Fifth, PIAC, an oversight body, is limited and has no power to enforce its orders. These issues and other provisions of the PRMA are critical to Ghana's ability to derive optimum benefits from its oil revenue and avoid its mismanagement.

The executive's preference to make decisions that enhance their electoral fortunes has been the practice since the inception of the fourth republic.<sup>934</sup> Thus, chapter 4 suggests collaboration between the State and CSOs, academic and research institutions, and embedding international policy guidelines into managing the oil revenues.<sup>935</sup>

Chapter 5 investigates the quality of institutions with responsibilities under the PRMA concerning the management of the oil revenue of Ghana. The chapter begins by defining institutions, discussing the types and importance of institutions and features of a robust institutional

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<sup>928</sup> Chapter 4.

<sup>929</sup> Chapter 4, sections 3.1 and 3.2.

<sup>930</sup> See chapter 6 on created funds and utilisation.

<sup>931</sup> Chapter 4, section 3.2.

<sup>932</sup> Chapter 4, section 3.1 and 3.2.

<sup>933</sup> Chapter 4, section 3.2.

<sup>934</sup> Gyimah-Boadi, (note 918), 147.

<sup>935</sup> Chapter 4, sections 3.3 (3.3.1-3.3.3)

arrangement. The features are then used as an evaluative framework to assess the role assigned to institutions under the PRMA to ascertain whether their decisions influence the control of the oil revenue and avert the resource curse. The chapter further identifies the problems associated with institutions charged with managing the oil revenue in Ghana. The critique of the arrangements in the PRMA coping with the quality of institutions follows after the exposition of the theoretical understanding of quality institutions and their role in managing oil revenues in the next section.

## 2. The purpose of institutions in managing oil revenues

Resource-rich countries with excellent management of their resource wealth have strong institutions that prevent politicians' 'predatory behaviour'.<sup>936</sup> The level of development in such resource-rich countries measures the functional outcome of resilient institutions. A connection exists in the debate regarding institutions and good governance, and those governance indicators determine the institutional quality, and the two used interchangeably.<sup>937</sup> The role of institutions in development has become an issue due to institutions set up in resource-rich countries during colonisation.<sup>938</sup>

Two types of institutions were established in resource-rich countries through settlement by Europeans. In the colonisation of Congo, Belgium created "an extractive State." Institutions did not advocate protection of private property. There were no checks and balances against government expropriation, which resulted in the transfer of the colony's resources to Europe.<sup>939</sup> However, in Australia, New Zealand, and Canada, the European settlers established institutions comparable to what existed in Europe, which championed private property and checked the government power.<sup>940</sup> This thesis argues that the mindset of the colonisers made it possible for the setting up of two different types of State institutions in resource-rich countries.

On the one hand, if the institution exploited natural resources without adding value, such an arrangement did not assist the development of that country's State institutions but weakened

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<sup>936</sup> Stevens et al., 'Resource Curse: An analysis of causes, experiences and possible ways forward', *Energy Policy*, Vol. 36, 2008, 57 and 59.

<sup>937</sup> Stevens et al., (note 936), 59.

<sup>938</sup> Acemoglu et al., 'The Colonial Origins of Comparative Development: An Empirical Investigations', *American Economic Review*, Vol. 91 (5), 2001, 1370.

<sup>939</sup> Acemoglu et al., (note 938), 1370.

<sup>940</sup> Acemoglu et al., (note 938), 1370.

them.<sup>941</sup> On the other hand, establishing quality institutions enabled the resource-rich country to turn around its economy with resource revenues.<sup>942</sup> A paradigm shift is required. This thesis suggests that resource-rich countries must establish quality institutions to assist with their development and shed the colonial outlook.

This thesis recommends that resource-rich countries must examine the problem in the context of institutions charged with making and implementing policies. In developing countries, the poor governance of these resources creates the resource curse, not its existence.<sup>943</sup> The quality of the institutions is crucial for resource revenue management by developing checks and balances to help reduce the adverse effects associated with natural resource revenues, including oil.<sup>944</sup>

In developing resource-rich countries, resource wealth could have a detrimental impact on institutional quality, making the government susceptible to rent-seeking and inability to formulate economic policies.<sup>945</sup> Resource-rich countries' reliance on resource revenues discourages politicians from investing and building the capacity of the State institutions.<sup>946</sup> They perceive that viable state institutions might challenge their authority in governance and on fiscal issues.<sup>947</sup> The politicians prefer the status quo because the development of the State institutions would support transparency and accountability, which would limit the exercise of corruption and unethical conduct of politicians.<sup>948</sup> This thesis argues that legislation meant for managing resource revenues

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<sup>941</sup> Ji et al., 'Natural Resources, institutional quality, and economic growth in China', *Environmental and Resource Economics*, Vol. 57, 2014, 325-326. See also Lane & Tornell, 'Power, growth and the voracity effect', *Journal of Economic Growth*, Vol. 1, 1996, 213-241 and Tornell & Lane, 'The voracity effect', *American Economic Review*, Vol. 89, 1999, 22-46.

<sup>942</sup> Sarmidi et al., 'Resource Curse: New Evidence on the Role of Institutions', *International Economic Journal*, Vol. 28 (1), 2013, 192.

<sup>943</sup> Doro et al., 'Resource Curse or Governance Deficit? The Role of Parliament in Uganda's Oil and Zimbabwe's Diamonds', *Journal of South African Studies*, Vol. 44 (1), 44.

<sup>944</sup> Doro et al., (note 943).

<sup>945</sup> Ross, 'What Have We Learned about the Resource Curse?' *Annual Review Political Science*, Vol. 18, 2015, 249.

<sup>946</sup> Luong et al., 'Rethinking the Resource Curse: Ownership Structure, Institutional Capacity and Domestic Constraints', *Annual Review of Political Science*, Vol. 9, 2006, 245

<sup>947</sup> Luong et al., (note 946), 245. See also Anderson, 'The State in the Middle East and North Africa', *Comparative Politics*, 1987, Vol. 20 (1), Beblawi & Luciani, 'Nation, State and Integration in the Arab World', Vol. II: *The Rentier State*, London: Croom Helm, 1987, Chaudry, 'The Price of Wealth: business and the state in labour remittance and oil economies', *Int. Organ.*, Vol.43, 101-1045, 1989, Karl, 'The Paradox of Plenty: Oil Booms and Petro States', Berkley, University of Calif. Press, 1997 and Mahday, 'The Patterns and problems of economic development in rentier states: the case of Iran in *Studies in the Economic History of Middle East* (ed.) MA Cook, London, Oxford University Press, 428-467, 1970.

<sup>948</sup> Luong et al., (note 946), 245. See also Auty, 'Resource Abundance and Economic Development', Oxford, UK, Oxford University Press, 2001 and Karl, 'The Paradox of Plenty: Oil Booms and Petro States', Berkley, University of Calif. Press, 1997.

should equip State institutions and make them autonomous to ensure the State's oil revenue benefits. The quality of the institutions will also depend upon the competence of persons appointed to decision-making positions in the institutions. This thesis submits that developing resource-rich countries must pay attention to these considerations to manage resource revenues.

Resource abundance contributes to low-quality institutions in developing resource-rich countries due to the appointment or election of 'political candidates' into positions of responsibility.<sup>949</sup> For example, 'political candidates' are individuals with political affiliations but lack the requisite competency to the job appointed to occupy.<sup>950</sup> Many such persons holding positions in State institutions succeed to pull apart institutions established for the governance of the resource revenues to their benefit or the constituency the individual represents.<sup>951</sup> It would be appropriate to set minimum qualification requirements for individuals to occupy positions in institutions with responsibilities under the PRMA. The process would reduce the adverse effect associated with the management of resource revenues in developing resource-rich countries.

According to Ross,<sup>952</sup> separating the connection between resource wealth and the quality of institutions is difficult because institutional quality may be affected by revenue from natural resources. Wealth from oil may lead to weak State institutions, where the government plays a leading role in the petroleum industry.<sup>953</sup> Still, a combination of private and foreign investors who play prominent roles in the oil sector is likely to create strong institutions for the benefit of the State.<sup>954</sup> Therefore, developing resource-rich countries ought to realise that they need strong institutions as the best way of ensuring a positive return from the wealth associated with resources.<sup>955</sup>

Scholars' views on the fact that resource wealth could harm State institutions have not looked at the power of heads of State institutions' appointment. In Ghana, the fact remains that even the selection of heads of State institutions based on merit may not solve the mismanagement of oil revenue. The reason is that the power of appointment remains with the President, and his Ministers

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<sup>949</sup> Brollo et al., 'The Political Resource Curse', *American Economic Review*, Vol. 103 (5), 2013, 1765.

<sup>950</sup> Brollo et al., (note 949), 1765-1766.

<sup>951</sup> Ross, (note 372), 249.

<sup>952</sup> Ross, (note 372), 250.

<sup>953</sup> Luong et al., (note 946), 248.

<sup>954</sup> Luong et al., (note 946), 248.

<sup>955</sup> Mehlum et al., (note 269), 3-4.

get their positions through the political elections.<sup>956</sup> The oft-touted democratic credentials of Ghana in the international community and a host of laws<sup>957</sup> in the oil sector have not reflected the impact of oil translated into developmental outcomes.<sup>958</sup>

In this milieu, this thesis makes two recommendations to reduce the political influence associated with the appointment and performance of heads of State institutions. First, elected Presidents must respect the constitutional protection given to public officers.<sup>959</sup> The Supreme Court of Ghana has recently declared that the government should not remove Public Service Officers appointed under the Constitution except according to the terms and conditions of their engagement or the absence of a just cause.<sup>960</sup> Second, the political polarisation of the appointments of heads of institutions in Ghana, if not resolved, would impact negatively on the quality of institutions, weakening their potential.<sup>961</sup> This thesis suggests that once the power of appointment gets decentralised, other considerations and views would influence heads of State institutions' selection to delink political influence associated with such engagements. The following section discusses the definition of institutions, the theories of institutions, the importance of quality institutions, and their characteristics.

## 2.1 Definition of institutions

The Ministry of Finance and Economic Planning, Parliament, the Bank of Ghana, Ghana Revenue Authority, the Auditor-General, the Investment Advisory Committee, and the Public Interest Accountability Committee (PIAC) exist under the PRMA institutions. These institutions have various roles assigned to them under the PRMA, as discussed under section 3 below. Therefore, these institutions are necessary because it would be difficult to implement policies to achieve the goals set out under the PRMA. The existence of created institutions must bring order to society and reduce uncertainties.<sup>962</sup> In other words, State institutions must offer solutions to society's

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<sup>956</sup> Mohan et al., 'Party Politics and the Political Economy of Ghana's Oil', *New Political Economy*, Vol. 23 (3), 286.

<sup>957</sup> The Petroleum (Exploration and Production) Act, 2016, Act 919, the Petroleum Commission Act, 2011, Act 821 and the Petroleum Revenue Management Act, 2011, Act 815 as amended by Act 983.

<sup>958</sup> Mohan et al., (note 956), 274-275.

<sup>959</sup> Article 191 (a) and (b) of Ghana's Constitution. The article is to the effect that no public officer shall be victimized or be discriminated against for performing his work in accordance with the Constitution and shall not be dismissed or removed from office or be punished without just cause.

<sup>960</sup> *Theophilus Donkor versus. The Attorney General*, Suit No. J1/08/2017 dated 12<sup>th</sup> June 2019 at 25-26.

<sup>961</sup> Skaten, (note 922), 19.

<sup>962</sup> North, 'Institutions', *The Journal of Economic Perspective*, Vol. 5 (1), 1991, 97.

problems and their inability to perform this function warrants investigations to ascertain reasons for its failure. This next section discusses the nature of institutions and the characteristics of good institutions that help manage oil revenue.

An institution is “a set of humanly devised behavioural rules that govern and shape the interactions of human beings, in part by helping them to form expectations of what other people will do.”<sup>963</sup> Lin and Nugent argue that institutions may be formal or informal units.<sup>964</sup> They classify the formal as comprising constitutions, agreements, market exchange, and organisational by-laws with shared values, norms, customs, ethics, and ideology coming under the informal.<sup>965</sup> North also define institutions as “humanly devised constraints that shape human interaction.”<sup>966</sup> The definition connotes rules meant for the efficient functioning of the society because they set the basis for dealings in the community and reduce uncertainty by providing a structure for everyday life.<sup>967</sup>

Rodrik,<sup>968</sup> argues that for institutions to support growth, five characteristics are required; namely, secure property rights, regulate the institutions, establish institutions for macroeconomic stabilisation, social insurance institutions, and conflict management institutions. The interplay between these characteristics will strengthen the quality of the institutions, thereby having a positive impact on society.<sup>969</sup> If institutions in resource-developing countries fail to exhibit these features, they will be powerless to affect the community.<sup>970</sup>

## 2.2 Types of institutions

The effect of resource wealth on resource-rich countries has been diverse. Some have benefited, while others have failed to use resource revenues to the benefit of their citizens.<sup>971</sup> An essential explanation for the success and failures lie in the quality of relevant institutions in these

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<sup>963</sup> Lin et al., ‘Institutions and Economic Development’ in J. Behrman and T. N. Srinivasen, *Handbook of Economic Development*, Vol. 3A, 1995, 2306-2307.

<sup>964</sup> Lin et al., (note 963), 2307.

<sup>965</sup> Lin et al., (note 963), 2307.

<sup>966</sup> North, ‘Institutions, Institutional Change and Economic Performance’, Cambridge University Press, New York, 1990, 3.

<sup>967</sup> North, (note 966), 4.

<sup>968</sup> Rodrik, ‘Institutions for High-Quality Growth: What they are and How they Acquire them’, *Studies in Comparative International Development*, Vol. 35 (3), 2000, 6.

<sup>969</sup> Rodrik, (note 968), 12.

<sup>970</sup> Rodrik, (note 968), 12.

<sup>971</sup> Mehlum et al., ‘Cursed by Resources or Institutions?’, *The World Economy*, 2006, 117. See section 2.3 below.

countries.<sup>972</sup> The rationale for diversity has revealed the existence of two institutions, namely high-quality institutions and low-quality institutions.<sup>973</sup> This section discusses types of institutions, particularly the link between resource wealth, the quality of institutions, and economic growth in resource-rich countries.<sup>974</sup> The focus of these two types of institutions is different in that it is resource-rich economies with quality institutions that will benefit from the resource wealth.

The interaction between institutions and the resource curse focuses on the tension between production and rent-seeking.<sup>975</sup> In Countries with corrupt institutions, resource wealth tends to lower the level of development, but quality institutions prevent rent-seeking and help the growth in the economy.<sup>976</sup> Resource-rich countries with good institutions exhibit law and efficiency in the public sector characterised by low corruption in government.<sup>977</sup> Corrupt institutions that encourage rent-seeking display a lack of transparency, the weak rule of law, bureaucratic corruption, fraud, and illegal takeovers.<sup>978</sup> According to this argument, high-quality institutions attract more entrepreneurs to increase productivity growth in the country.<sup>979</sup> That is not the case in the other economy, which classifies the institutions as “grabber-friendly.”<sup>980</sup> The model espoused by Mehlum et al.<sup>981</sup> depicts that resource wealth is a curse in the face of corrupt institutions. The generation of wealth in such countries serves few connected to the ruling elite, leaving a more significant part of the nation deprived.

Further, resource-rich countries with weak institutions dissipate their resources through patronage.<sup>982</sup> However, countries with strong institutions benefit from their resources through accountable and competent governance.<sup>983</sup> Resource wealth becomes problematic where public institutions in charge of management are weak, which causes the incomes of the nation to decline.<sup>984</sup> The trend favours politicians whose pre-occupation in countries with low-quality

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<sup>972</sup> Mehlum et al., (note 972), 1118.

<sup>973</sup> Kolstad, ‘The resource curse: which institutions matter’, *Applied Economics Letters*, Vol. 16 (4), 2009, 439.

<sup>974</sup> Mehlum et al., (note 972), 1119.

<sup>975</sup> Mehlum et al., (note 972), 1121.

<sup>976</sup> Mehlum et al., (note 972), 1121.

<sup>977</sup> Kolstad, (note 973), 439.

<sup>978</sup> Mehlum et al., (note 972), 1121.

<sup>979</sup> Sarmidi et al., (note 942), 194

<sup>980</sup> Sarmidi et al., (note 942), 194.

<sup>981</sup> Mehlum et al., (note 972), 1121.

<sup>982</sup> Robinson et al., (note 361), 465

<sup>983</sup> Robinson et al., (note 361), 465.

<sup>984</sup> Kolstad, (note 973), 440.

institutions is to work to secure their electoral fortunes. This motive guides their appointment into the public sector with inefficiencies' in output.<sup>985</sup> This discussion's consensus is that the quality of institutions is very significant whether a resource-rich country would benefit or not from its resource revenue.

The index used to determine the quality of institutions was developed by two private investment institutions, namely International Country Risk Guide and Business Environmental Risk Intelligence. The index help investors identify countries with relevant institutions for investments.<sup>986</sup> The indicators used to assess institutional quality are expropriation risk, the rule of law, repudiation of contracts by the government, corruption in government and bureaucracy, contract enforcement, infrastructure quality, nationalisation potential, and bureaucratic delays.<sup>987</sup> Where the score for the assessment is low, then the quality of institutions in that country are lacking, a sign of imminent infringements against property rights, which ultimately affects investments.

The Natural Resource Governance Index<sup>988</sup> is a tool that measures the quality of resource governance in the countries worldwide that are responsible for producing the lion's share of the world's oil and gas resources and a "significant proportion" of its minerals. The NRGI assesses policies and practices employed in resource-producing states to govern their extractive industries.<sup>989</sup> It does so by considering the extent to which, first, value realisation is enabled through the governance of allocating extraction rights, exploration, production, environmental protection, revenue collection and state-owned enterprises. Secondly, it scrutinised countries' revenue management by considering national budgeting, subnational resource revenue sharing and sovereign wealth funds practices. Third, it also assesses a country's enabling environment through legal and political markers, such as the presence of the Rule of Law, strong governing institutions, and regulatory frameworks and a culture of accountability and transparency. An enabling

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<sup>985</sup> Kolstad, (note 973), 439.

<sup>986</sup> Knack and Keefer, 'Institutions and Economic Performance: Cross country test using alternative measure', 1995, 5. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0343.1995.tb00111.x> accessed 15 March 2021.

<sup>987</sup> Knack and Keefer, (note 986), 5-7.

<sup>988</sup> Natural Resource Governance Institute, (NRGI) '2017 Resource Governance Index: Measuring the quality of governance in the oil, gas and mining sectors of 81 countries' < <https://resourcegovernanceindex.org> > accessed 22 February 2021.

<sup>989</sup> NRGI, (note 988), 7.

environment is further marked by the absence of political instability and violence, and control of corruption.<sup>990</sup>

The questionnaire-based assessment of 89 countries, supported with extensive documentary evidence, produced the latest available NRG<sup>991</sup> from 2017. It is damning in its review of African states, most of which find themselves in the lower (orange/red) spectrum of the index.<sup>992</sup> The insights gleaned from the NRG's work include many countries facing daunting governance challenges<sup>993</sup> and compounded problems. Nations fail to honour their own legal and regulatory frameworks through proper implementation.<sup>994</sup>

These insights suggest that many African states' ability to fulfil a custodial role is compromised. It is compromised, among others, by weaknesses in the institutions supporting and cultures determining the management of resources for the benefit of the people in the countries at hand. In this thesis, I seek to use corruption in government and quality of bureaucracy as indicators to assess the benchmarks of the institutions to determine their readiness to help create a conducive atmosphere to enhance growth in Ghana with the oil revenue.

### 2.3 Importance of institutions

Institutions in society must reduce uncertainties by establishing a stable structure to react to human interactions.<sup>995</sup> The deterioration of governance and quality of institutions has contributed to the difficulty of development in resource-rich countries.<sup>996</sup> Mehlum et al.<sup>997</sup> assert that a resource-rich country may either develop or not depending upon the quality of its institutions. Their argument suggests that the presence of natural resources test the capability of the institutional arrangement of the nation with the resource curse taking place in countries with inferior institutions.<sup>998</sup> They conclude that the quality of institutions in Botswana and Norway explain their excellent

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<sup>990</sup> NRG, (note 988), 7.

<sup>991</sup> NRG, (note 988), 3.

<sup>992</sup> NRG, (note 988), 9.

<sup>993</sup> NRG, (note 988), 10.

<sup>994</sup> NRG, (note 988), 15.

<sup>995</sup> North, (note 962), 6.

<sup>996</sup> Auty, Transition reform in mineral-rich Caspian region countries, *Resources Policy*, Vol. 27 (1), 2001, 25-32.

<sup>997</sup> Mehlum et al., (note 258), 1

<sup>998</sup> Mehlum et al., (note 258), 3.

performance in managing their resource revenues, while weak institutions in Nigeria, Venezuela, and Mexico account for the poor management of their resource revenue.<sup>999</sup>

Botswana's institutions helped its development because, after independence, the country strengthened their colonial institutions, which placed constraints on the executive and guaranteed political and economic stability.<sup>1000</sup> By European standards, Norway was poor in 1900. Now it is one of the wealthiest countries in the world. The role played by institutions in the management of their resource revenue attributed to the shift.<sup>1001</sup> The quality of institutions in charge of managing resource revenue is decisive in explaining the role of natural resources in the development and growth of a nation.<sup>1002</sup> Deteriorating institutions are the primary cause of problems with development in some resource-rich countries.<sup>1003</sup> A resource-rich government must develop the skills of their institutions, mainly being independent and professional in managing resource revenue. The institutions can exhibit quality with the appointment of competent persons to occupy positions of responsibility in these organisations.

Aside from the examples above, there are nations with natural resources which has experienced slow growth because of weak institutions. Lane and Tornell<sup>1004</sup> argue that Nigeria, Venezuela, and Mexico's disappointing economic performance despite the discovery of oil in these countries was due to dysfunctional institutions that promoted leaders looting the oil revenues. They attribute the condition to powerful groups in these countries on ethnic, regional or professional lines with the power to receive favours from the government in the absence of strong institutions to check the powers of the government and these private groups.<sup>1005</sup>

The weak institutions favour the influential group because their inaction allows an interaction between the group and the fragile political system with an opportunity for the group to take

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<sup>999</sup> Mehlum et al., (note 258), 3.

<sup>1000</sup> Acemoglu et al., (note 131), 1 and 21.

<sup>1001</sup> Mehlum et al., (note 972), 117-118.

<sup>1002</sup> Knack and Keefer, (note 986). See also Bulte, E.H., Damania, R., Deacon, R.T., 'Resource intensity, institutions and development', *World Development* Vol. 33 (7).

<sup>1003</sup> Kolstad and Soreide, (note 4), 217.

<sup>1004</sup> Lane et al., 'Power, growth and the voracity effect', *Journal of Economic Growth*, Vol. 1, 1996, 213.

<sup>1005</sup> Lane et al., (note 1004), 214.

advantage of national resources for their benefit.<sup>1006</sup> Rodrik et al.<sup>1007</sup> support the assertion that the resources of resource-rich countries with low-quality institutions serve the interest of politicians. The struggle between quality institutions and the dominant political groupings in resource-rich countries is a barrier to overcome to see the benefits of resource revenue to citizens. The thesis submits that it is in the interest of resource-rich countries to get quality institutions that will ensure the proper management of resource revenues and accountability of State institution.

From the above discussions, the quality of the institutions in a resource-rich country and their role in managing resource revenues may positively or negatively affect its economic performance.<sup>1008</sup> The discourse discloses the relationship between resource wealth and the quality of institutions concerning how powerful is the government bureaucracy, the level of corruption, the rule of law and the State's capability to promote the growth of the economy.<sup>1009</sup> Therefore resource-rich countries with institutional quality and good indicators of accountability, low corruption, law and order and collaboration between State institutions have fared well economically.<sup>1010</sup>

Quality institutions are beneficial to the economy because they deal with rent-seeking behaviour,<sup>1011</sup> reduce corruption and the menace of conflicts and enhance resource distribution.<sup>1012</sup> If natural resource abundance is unhelpful to a country's economic growth, it may be due to low-quality institutions.<sup>1013</sup> An improvement in the quality of the institutions may transform the economy if policymakers work to improve the quality of institutions.<sup>1014</sup>

Essentially, quality institutions matter in managing the economy; it is irrelevant to come out with sound economic policies if there are no institutional structures to support them.<sup>1015</sup> Weak

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<sup>1006</sup> Tornell et al., 'The Voracity Effect', *American Economic Review*, Vol. 89, 1999, 22.

<sup>1007</sup> Rodrik et al., 'Institutions rule, the primacy of institutions over geography and integration in economic development' *Journal of Economic Growth*, Vol. 9, 2004.

<sup>1008</sup> Melhum et al., (note 972), 1119.

<sup>1009</sup> Ross, (note 945), 248.

<sup>1010</sup> Sarmidi et al., (note 942), 192. See also Damania, R., & Bulte, E., *Resource for sale: Corruption, Democracy and natural resource curse*, Discussion paper No. 0320, Centre for International Studies, University of Adelaide, 2003, Melhum et al., (note 972).

<sup>1011</sup> Auty, 'Resource abundance and economic development', Oxford University Press, 2001.

<sup>1012</sup> Atkinson et al., *Savings, growth and the resource curse hypothesis*, *World Development*, Vol. 31, 2003.

<sup>1013</sup> Sarmidi et al., (note 942), 192.

<sup>1014</sup> Sarmidi et al., (note 942), 192.

<sup>1015</sup> Frankel, 'The Natural Resource Curse: A Survey of Diagnoses and Some Prescriptions', HKS Faculty Research Working Paper Series RWP12-014, John F. Kennedy School of Government, Harvard University, 2012, 9. Available at <http://nrs.harvard.edu/urn-3:HUL.InstRepos:8694932> accessed 15 March 2021.

institutions lead to political leaders not having restrictions on their actions and thereby plunder the nation of its resources meant for development.<sup>1016</sup> This thesis submits that the absence of quality institutions partly explain why Ghana has participated in several economic recovery programmes designed locally and by international collaborators, but developmental challenges remain.<sup>1017</sup>

Quality institutions serve to check the conduct of politicians by placing limitations on their discretion and define the policy space.<sup>1018</sup> The usefulness of quality institutions makes it necessary to examine institutions of the State in Ghana dealing with the management of the oil revenues. The examination will disclose whether Ghanaian State institutions possess the characteristics described above. The challenge deals with the President's constitutional power to appoint heads of State institutions. The following section discusses the criteria against which to evaluate the Ghanaian institutions involved in managing the oil revenues.

## 2.4 Key characteristics of a strong institutional arrangement

The discussion under section 2.3 sets out the key features of a strong institutional structure. This part considers the attributes of strong institutions as discussed above and uses them as the criteria to review the Ghanaian institutions involved in managing the oil revenue. The exercise will determine whether the institutions in Ghana qualify as a quality institution.

The appointment process to head State institutions in Ghana has been mainly due to party patronage since the President makes all the appointments to fill the heads of the state institutions.<sup>1019</sup> Institutions of State exist to resolve the problem of the society, and persons appointed to such positions must act to seek the welfare of the community.<sup>1020</sup> Anything short of this expectation would not augur well for the resource-rich country. Institutions must reduce uncertainties through the establishment of structures to deal with the needs of society. Quality institutions enhance resource management, and the resource curse takes place in countries with weak institutions.<sup>1021</sup> Where institutions are of high quality, it helps with the transformation of economies, exemplified by Botswana and Norway. However, weak institutions in Nigeria,

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<sup>1016</sup> Frankel, (note 1015), 9.

<sup>1017</sup> See chapter 8, section 4.2.

<sup>1018</sup> Cabrales et al., 'The quality of political institutions and the curse of natural resources', *The Economic Journal*, Vol. 121, 2010, 59.

<sup>1019</sup> Article 58 (1) of Ghana's Constitution.

<sup>1020</sup> Section 2.3 *supra*

<sup>1021</sup> Mehlum et al., (note 269), 3.

Venezuela and Mexico account for their lack of development.<sup>1022</sup> Quality institutions come about with the appointment of competent persons to positions of responsibility in state institutions. For this reason, the President's constitutional power of selection of heads of state institutions in Ghana needs reconsideration.

Independent and quality institutions serve as a check on the authority of the political elite and ensure that the government is accountable.<sup>1023</sup> If the institutions are not independent, the political elite succeeds in taking decisions through these institutions to serve their interest. Such a struggle between the institutions and political elite becomes a barrier to developing the resource-rich country.<sup>1024</sup> The independence of the state institution would ensure the proper management of the resource revenue to the benefit of the nation.

Regular reporting lines further enhances transparency and accountability. Transparency manifests in the openness of the institution regarding its core mandate. Once their work becomes apparent before the public, it would be easy to determine whether they are accountable. The combination of transparency and accountability would reduce corruption and mismanagement.

The oversight and monitoring of State institutions will further help the organisation stay on course, seeing that a body exists to monitor its functions. If no system exists to track their activities with strong institutions, it may become weak institutions with its attendant adverse effect. These key characteristics must help resource-rich countries develop the framework to strengthen state institutions with the management of resource revenues.

### 3. Institutions and their role in the PRMA

The PRMA provides specific tasks to different institutions in the management of oil revenue. The institutions involved are the Ministry of Finance and Economic Planning, Parliament, Bank of Ghana, Ghana Revenue Authority, Ghana National Petroleum Corporation, the Investment Advisory Committee (IAC) and the Public Interest Accountability Committee (PIAC). The PRMA sets up the PIAC and the IAC as new institutions to manage Ghana's oil revenue. The roles lay

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<sup>1022</sup> Mehlum et al., (note 269), 3.

<sup>1023</sup> Cabrales et al., (note 1018), 59.

<sup>1024</sup> Section 2.3.supra

down a framework for the collection, allocation, and management of petroleum revenue in a transparent and accountable manner to benefit the citizens of Ghana.<sup>1025</sup> The section discusses the institutional role and determine their status. It is essential to evaluate the role of the institutions of State that manages the oil revenue to ascertain their level of quality to overcome the resource curse, which would allow Ghanaians to obtain optimum benefits from their oil revenue.

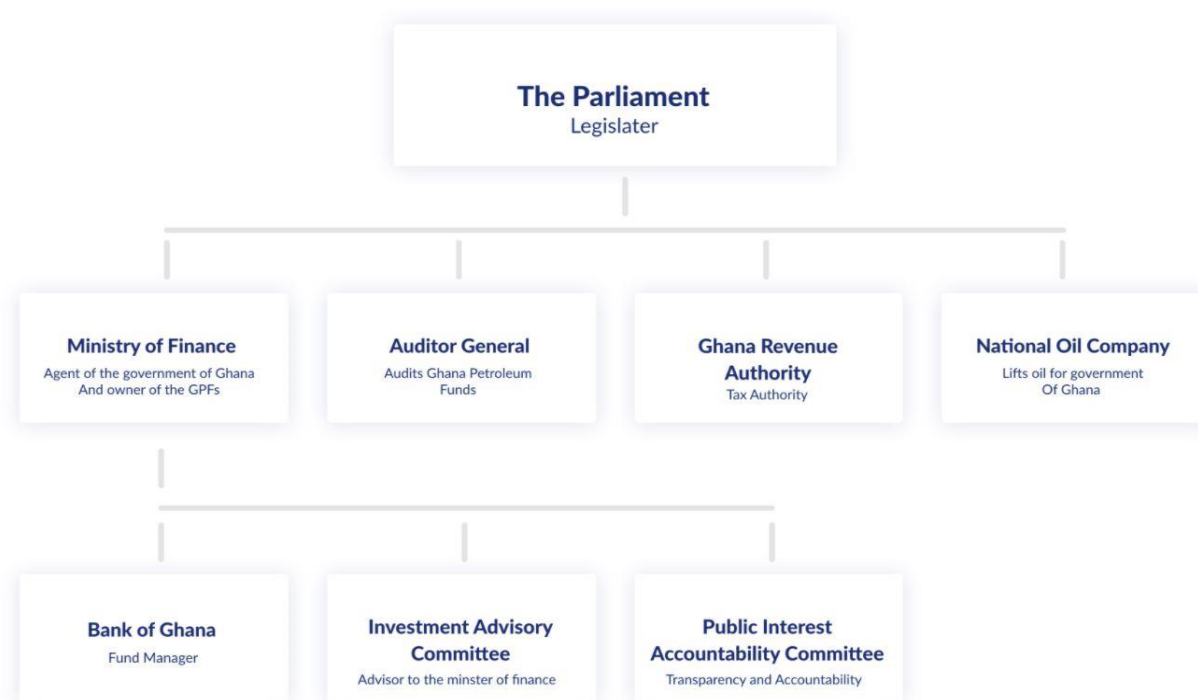


Figure 1: PRMA'S institutional framework and responsibilities<sup>1026</sup>

### 3.1 Ministry of Finance and Economic Planning

The Ministry of Finance and Economic Planning (Ministry) plays a crucial role in the PRMA concerning management, investments, reporting, and utilisation of the oil revenue. The Ministry and the governor of the Bank of Ghana make nominations for persons to serve on the investment committee under the PRMA.<sup>1027</sup> The Minister has the responsibility to develop an investment policy for the investment of the Ghana Petroleum Funds.<sup>1028</sup> The Ministry also manages the Ghana

<sup>1025</sup> See the preamble of the PRMA.

<sup>1026</sup> Available at <https://www.iacghana.com/the-organisation/> accessed on 24<sup>th</sup> September 2021.

<sup>1027</sup> Section 25 of Act 815.

<sup>1028</sup> Section 25 (a) of Act 815.

Petroleum Funds concerning payments into and disbursements from the funds with advice from the Investment Advisory Committee and the Bank of Ghana's governor.<sup>1029</sup> The Ministry and the Bank of Ghana must sign an agreement regarding the Ghana Petroleum Funds' operational management.<sup>1030</sup> PRMA's second schedule sets out details of the management agreement and the minister's duties, and the Bank of Ghana.<sup>1031</sup> Together with the Bank of Ghana fashion investment policies, these provisions ensure that the Ministry invest part of the oil revenue.

The Minister must undertake quarterly reconciliation of total petroleum revenue receipts with the Annual Budget Funding Amount (ABFA) of the previous year and furnish Parliament with a written report.<sup>1032</sup> The ABFA refers to the amount of petroleum revenue allocated to support Ghana's budget.<sup>1033</sup> The report sent to Parliament must indicate discrepancies and make recommendations for reconciliation and adjustments so that the income received and disbursements from the Ghana Petroleum Funds equals the actual for the year.<sup>1034</sup> The settlement report must be published in the Gazette and two state-owned newspapers by 30 April in the year the reconciliation took place.<sup>1035</sup> The reconciliation report to Parliament and the subsequent publication promotes transparency in reporting oil revenues and their expenditure. The report to Parliament further gives assurance that the representatives of the electorates are aware of the utilisation of the oil revenue.

Every year, the Minister must approximate the Benchmark Revenue.<sup>1036</sup> The Benchmark Revenue refers to the estimated revenue the government of Ghana expects from petroleum operations for a year.<sup>1037</sup> The Minister may recommend revising values for the Benchmark Revenue due to price adjustments or production levels.<sup>1038</sup> The variation becomes effective after parliamentary

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<sup>1029</sup> Section 25 (b) and (c) of Act 815.

<sup>1030</sup> Section 25 (d) of Act 815.

<sup>1031</sup> See paragraphs 1, 2 and 3 of the second schedule of Act 815.

<sup>1032</sup> Section 15 (1) of Act 815.

<sup>1033</sup> Section 61 of Act 815.

<sup>1034</sup> Section 15 (2) (d) of Act 815.

<sup>1035</sup> Section 15 (3) of Act 815.

<sup>1036</sup> Section 17 of Act 815.

<sup>1037</sup> Section 61 of Act 815.

<sup>1038</sup> Clause 7 (2) and (4) of Act 893.

approval.<sup>1039</sup> The Minister's power to change the Benchmark Revenues values eradicate concealing part of the oil revenues where there is a rise in production or oil prices on the world market.

The Minister is empowered to use the Annual Budget Funding Amount (ABFA) set aside under the PRMA to supplement the national budget for the overall development of Ghana by a development plan approved by Parliament.<sup>1040</sup> In the absence of any development plan, the PRMA gives twelve different sectors of the economy<sup>1041</sup> to select four sectors<sup>1042</sup> and apply the ABFA.<sup>1043</sup> The PRMA states that at least 70 per cent of the ABFA must finance public investment for national development.<sup>1044</sup> Of this amount, a maximum of 25 per cent shall be set aside for the Ghana Infrastructure Investment Fund to develop infrastructure approved by Parliament in the nation's budget.<sup>1045</sup>

The Minister has the power under the PRMA to decide on investment and management with the governor of the Bank of Ghana if there is insufficient time to consult with the Investment Advisory Committee.<sup>1046</sup> The Minister then informs the Investment Advisory Committee in writing any decision taken within two days, and the committee has five days to advise the Minister.<sup>1047</sup> The Minister has two days to re-examine the Investment Advisory Committee's conclusion and take the necessary action and inform Parliament of the committee's advice.<sup>1048</sup> These provisions are untidy and may render the Minister's decision detrimental to the State. The Minister can summon the members under emergency to seek their expert opinion on the investment. If the contract is signed and the committee's advice requires termination, it would be detrimental to the State due to accrued rights and obligations. The investment decisions must involve all the parties mentioned in the PRMA.

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<sup>1039</sup> Clause 7 (4) of Act 893.

<sup>1040</sup> Section 21 (1), (2), (a), (b), (c) and (d) of Act 815.

<sup>1041</sup> Section 21 (3) of Act 815, list the 12 sectors.

<sup>1042</sup> Section 21 (5) of Act 815.

<sup>1043</sup> Section 21 (3) of Act 815.

<sup>1044</sup> Clause 8 (4) (a) of Act 893.

<sup>1045</sup> Clause 8 (4) (b) and (c) of Act 893.

<sup>1046</sup> Section 38 (2) of Act 815.

<sup>1047</sup> Sections 38 (3) and (4) of Act 815.

<sup>1048</sup> Sections 38 (5) and 39 (1) and (2) of Act 815.

The Minister is further required to submit an annual report on the performance of the petroleum funds to Parliament as part of the budget statement.<sup>1049</sup> The Minister's report captures the previous years audited accounts showing receipts and transfers to and from the Petroleum Holding Fund.<sup>1050</sup> It must state the deposits to and withdrawals from the Ghana Stabilisation Fund and the Ghana Heritage Fund<sup>1051</sup> and a balance sheet of the Ghana Petroleum Funds.<sup>1052</sup> The Minister's budget must state the progress and expenditure incurred in respect of projects financed with the ABFA and indicate the amount of the ABFA set aside for the Ghana Infrastructure Investment Fund.<sup>1053</sup> The Minister signs the Ghana Petroleum Funds' performance and reports from the Investment Advisory Committee and the Auditor-General and submits it to Parliament for their consideration.<sup>1054</sup> The report must show Ghana's income from the Stabilisation and the Ghana Heritage Funds during the year and the benchmark performance compared with the two previous financial years.<sup>1055</sup> Reports issued under the PRMA reveal infractions of the law, but Parliament has failed to debate the reports since the operation of the PRMA.

The qualities of a resilient institution discussed under section 2 must reflect in the functions of the various institutions. The PRMA has reasonable provisions on transparency and accountability. The implementation and enforcement have, however, showed that the PRMA has shortfalls. The problem arises due to the executive branch involvement with the decision making regarding the utilisation of petroleum revenue. The Minister occupies a political position and acts to please the appointing authority. In these circumstances, the Minister representing the Ministry cannot serve as a check on the political elite regarding the management of the oil revenue. Despite the PRMA being purpose-built, its implementation is dominated by the executive branch vested with discretionary power to check accountability.<sup>1056</sup> These attributes make the Ministry a weak institution.

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<sup>1049</sup> Section 48 (1) and (2) of Act 815.

<sup>1050</sup> Section 48 (2) (a) (i) of Act 815.

<sup>1051</sup> Section 48 (2) (a) (ii) of Act 815

<sup>1052</sup> Section 48 (2) (a) (iii) of Act 815.

<sup>1053</sup> Clause 11 (2) (b) (i) and (ii) of Act 893.

<sup>1054</sup> Section 48 (2) (c) of Act 815.

<sup>1055</sup> Sections 48 (2) (d), (e) (i) and (ii) of Act 815.

<sup>1056</sup> Stacey and Austin, (note 695), 3-4.

### 3.2 Bank of Ghana

The Bank of Ghana oversees the monetary policies and regulates the financial and non-financial institutions in Ghana.<sup>1057</sup> The PRMA has created various funds with different functions managed by the Bank of Ghana.<sup>1058</sup> The Act assigns management obligations of the funds to the Bank of Ghana per its management agreement with the Ministry.<sup>1059</sup> The Bank of Ghana, in the management of these funds, must act by international standards and support Ghana's currency against weakening.<sup>1060</sup> As part of its management duties, the Bank of Ghana submits quarterly reports on the Ghana Petroleum Funds' performance to the Minister and the Investment Advisory Committee.<sup>1061</sup> The Bank of Ghana must report to Parliament the Ghana Petroleum Fund's performance and publish the report in two national dailies and at its website.<sup>1062</sup> The Bank of Ghana must submit its report and other relevant documents on the Petroleum Funds to the Auditor-General for auditing.<sup>1063</sup> The internal audit of the Bank of Ghana every quarter must audit the Petroleum Funds and submit it to the Minister.<sup>1064</sup>

The multiple reporting levels are laudable since they ensure accurate reporting of the receipt and the disbursement of the oil revenue by all the parties involved. Since the Auditor-General's report goes to Parliament, any discrepancy in the report is subject to the scrutiny of Parliament that exercises oversight responsibilities. However, the Bank of Ghana cannot refuse transfers ordered by the Minister from the bank's funds. As a political appointee, the Bank of Ghana's governor cannot reject the minister's transfers. The bank's failure to resist instructions for the transfer shows the bank as a weak institution.

### 3.3 The Ghana Revenue Authority

The Ghana Revenue Authority is mandated to collect revenues on behalf of the Government of Ghana.<sup>1065</sup> The institution's mandate derives from the Revenue Administration Act.<sup>1066</sup> The Ghana

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<sup>1057</sup> Bank of Ghana Act, 2002 (Act 612), section 4.

<sup>1058</sup> See chapter 6 for the discussion of the Funds.

<sup>1059</sup> Section 26 (1) of Act 815.

<sup>1060</sup> Section 26 (2) of Act 815.

<sup>1061</sup> Section 28 (1) of Act 815.

<sup>1062</sup> Section 28(2) of Act 815.

<sup>1063</sup> Section 46 (1) of Act 815.

<sup>1064</sup> Section 44 (1) and (2) of Act 815.

<sup>1065</sup> See sections 2 and 3 of the Ghana Revenue Authority Act, 2009, Act 791.

<sup>1066</sup> Section 1 (1) of Act 915.

Revenue Authority has a mandate to “assess, collect and account” for all petroleum revenue<sup>1067</sup> due to the Ghana Government from all sources.<sup>1068</sup> Oil revenues due Ghana are transferred into the Petroleum Holding Fund by the fifteenth of each month by entities required to make payments and inform the Ghana Revenue Authority in writing.<sup>1069</sup>

The companies default. The payment attracts a penalty of five per cent of the amount payable for every day of the default or any sanction under any other law, whichever is higher.<sup>1070</sup> However, if the government wants to receive petroleum instead of cash, the value of the oil in United States Dollars on the day of receipt shall be entered in the Petroleum Fund as receipts by the Ghana Revenue Authority within sixty days.<sup>1071</sup>

These provisions ensure proper accounting of payments due to Ghana and sanctions applied if there is a default. The PRMA is silent on what amounts to delay. However, technocrats, politicians, and oil companies may get the advantage of investing that money in short-term instruments since the values are significant. To that extent, the payment of a penalty would not adversely affect the person that has spent and received returns.

The Ghana Revenue Authority under the PRMA has the mandate to assess, collect and account for the petroleum revenue due to the State. There are instances that companies have defaulted, which require sanctions, but the Ghana Revenue Authority fails to sue to collect the amount due.<sup>1072</sup> The inability of the Ghana Revenue Authority to sue to enforce the penalty amounts to a failure to utilise its powers of sanction, making it a weak institution.

### 3.4 Parliament

Parliament has oversight responsibilities over institutions in Ghana.<sup>1073</sup> In the PRMA, the body receives the various reports issued by the Ministry of Finance, the Bank of Ghana, the Auditor-General and PIAC.<sup>1074</sup> The minister must submit to Parliament a reconciliation of actual petroleum

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<sup>1067</sup> The PRMA define petroleum revenue as comprising royalties, corporate income tax, participating interest, additional oil entitlements, dividends from national oil company, investment profit from petroleum funds, surface rentals paid by licensed producers or any revenue so determined by the Minister.

<sup>1068</sup> Section 3 (1) of Act 815.

<sup>1069</sup> Section 3 (2) and (3) of Act 815.

<sup>1070</sup> Section 3 (4) of Act 815.

<sup>1071</sup> Section 4 (1), (2) and (3) of Act 815.

<sup>1072</sup> Section 3 (1) of Act 815. See also chapter 8.

<sup>1073</sup> See Article 103 (3) of the Constitution.

<sup>1074</sup> See Article 103 (3) of the Constitution.

receipts and the ABFA of the previous year.<sup>1075</sup> The Minister further requires Parliament's approval to cap the Ghana Stabilisation Fund and transfer the excess amount into the Contingency Fund.<sup>1076</sup> Parliament has the mandate to approve transfers of the ABFA from the Petroleum Holding Fund into the Consolidated Fund.<sup>1077</sup>

The failure of Parliament to set up a committee to debate the report of PIAC issued every year must concern all Ghanaians.<sup>1078</sup> PIAC has been very critical of the Governments spending on oil revenue.<sup>1079</sup> The expectation of Ghanaians is for the body with oversight responsibilities over institutions in Ghana to thoroughly study the reports and act. Parliament has failed to do so and fits the description of a weak institution. The practice whereby ruling governments control Parliament with members of Parliament belonging to the executive and the legislature explains the weakening of their oversight duties.

### 3.5 The Auditor-General

The Auditor-General has a constitutional responsibility to audit public institutions in Ghana.<sup>1080</sup> The PRMA recognises the Petroleum Holding Fund, the Ghana Petroleum Funds, and the Ghana Petroleum Wealth Fund.<sup>1081</sup> Under the PRMA, the Auditor-General externally audits the Petroleum Funds after the initial audit by the audit department of the Bank of Ghana but may appoint another external auditor to audit for a non-renewable tenure for three years.<sup>1082</sup>

The Bank of Ghana shall, after three months of the financial year, submits to the Auditor-General the statement of accounts on the Petroleum Funds for audit.<sup>1083</sup> On receipt of the statement of account, the Auditor-General has three months to audit and submit its report to Parliament.<sup>1084</sup> In its report to Parliament, the Auditor-General shall indicate whether the entities kept proper accounts regarding payments to and from the Petroleum Funds.<sup>1085</sup> After submission to Parliament,

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<sup>1075</sup> Section 15 (1) of Act 815.

<sup>1076</sup> Section 23 (3) and (4) of Act 815.

<sup>1077</sup> Section 19 (1) of Act 815.

<sup>1078</sup> Section 56 (d) of Act 815.

<sup>1079</sup> See chapter 8 for PIAC's reports.

<sup>1080</sup> Article 187(2) and (3) of the Constitution.

<sup>1081</sup> Section 42 of Act 815.

<sup>1082</sup> Section 45 (1), (2) and (3) of Act 815.

<sup>1083</sup> Section 46 (1) of Act 815.

<sup>1084</sup> Section 46 (2) of Act 815.

<sup>1085</sup> Section 46 (a), (b) and (c) of Act 815.

the Auditor-General then publish the report within thirty days, stating any irregularities and any other matter of concern.<sup>1086</sup> The Auditor-General may also conduct special audits or reviews of the Petroleum Funds in the public interest and submit its findings to Parliament.<sup>1087</sup>

The work of the Auditor General is vital to the extent that the office audits the various funds created under the PRMA. The responsibility imposed on the Auditor-General requires a person who will be independent and competent and not be under the control of the executive to compromise the position of the office. The various reports issued by the Auditor-General indicts the government concerning the utilisation of the oil revenues.<sup>1088</sup> The Auditor-General has carried out its work, and being critical of the expenditures under the PRMA is commendable and makes the institution quality.<sup>1089</sup> Perhaps the Auditor-General's security of tenure enshrined in the Constitution has influenced the fearless manner of executing its work.<sup>1090</sup> The government can remove the Auditor-General by removing a Justice of the Superior Court of Judicature.<sup>1091</sup>

### 3.6 Investment Advisory Committee

Ghana can preserve and maintain the value of its oil revenue; hence, the provisions on investments in the PRMA.<sup>1092</sup> The PRMA establishes the Investment Advisory Committee (IAC) to advise the Minister and monitor the Ghana Petroleum Fund's performance.<sup>1093</sup> The role assigned to the IAC includes formulating investment policies for the Minister and the management of the Ghana Petroleum Funds (Ghana Stabilisation Fund and the Ghana Heritage Fund) and submit the reports to Parliament for approval.<sup>1094</sup> The committee further advises the Minister on guidelines for investment and management strategies relating to the Ghana Petroleum Fund and the Ghana Petroleum Wealth Fund based on international best practices of investments of such nature.<sup>1095</sup> The committee has to develop investment guidelines for the Minister based on returns and risks

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<sup>1086</sup> Section 46 (4) and (5) of Act 815.

<sup>1087</sup> Section 47 of Act 815.

<sup>1088</sup> See chapter 7 for the reports of the Auditor-General and PIAC on the utilisation of the oil revenue.

<sup>1089</sup> Chapter 7, section 2.1.

<sup>1090</sup> Article 187 (13) of Ghana's Constitution.

<sup>1091</sup> Articles 187 (13) and 146 of Ghana's Constitution.

<sup>1092</sup> ACEP, (note 745).

<sup>1093</sup> Section 29 of Act 815.

<sup>1094</sup> Section 30 (1) (a) of Act 815.

<sup>1095</sup> Section 30 (1) (b) of Act 815.

associated with the Ghana Petroleum Funds and the Ghana Petroleum Wealth Fund. In doing so, it must factor the investment guidelines used by the Bank of Ghana.<sup>1096</sup>

The committee in giving the investment advice shall consider certain factors. The Ghana Petroleum Funds emanates from a non-renewable petroleum resource for the benefit of citizens now and future generation.<sup>1097</sup> The committee shall consider the current economic conditions of Ghana and the dynamics of the investment market, and the constraints under which the Bank of Ghana and all other institutions operate.<sup>1098</sup> Finally, the committee must ensure that in times of shortfall in petroleum revenues, there are funds available to satisfy the various transfers under the PRMA.<sup>1099</sup> Investments are made to secure one's future, and the investment of part of the revenue is laudable. However, the returns that accrue to these investments are not enough since the investments are made overseas where interest rates are low. The IAC serves as an advisory body whose advice is not binding on the Minister and in that sense cannot classify it as a strong or weak institution.

### 3.7 Public Interest Accountability Committee (PIAC)

The Public Interest Accountability Committee (PIAC) acts as an oversight body. The PRMA provides three objectives for establishing the committee.<sup>1100</sup> The monitoring and evaluation of government and institutional compliance in managing oil revenue and investments vest with PIAC.<sup>1101</sup> PIAC plays an advocacy role by engaging the public to discuss whether the management and expenditures incurred with the petroleum revenues are by the PRMA.<sup>1102</sup> The committee provides an independent assessment of the use and management of the oil revenues to support Parliament's oversight and the executive's performance.<sup>1103</sup> The establishment of PIAC is an

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<sup>1096</sup> Section 30 (1) (c) of Act 815.

<sup>1097</sup> Section 30 (2) (a) of Act 815.

<sup>1098</sup> Section 30 (2) (b) of Act 815.

<sup>1099</sup> Section 30 (2) (c) of Act 815.

<sup>1100</sup> Section 52 of Act 815.

<sup>1101</sup> Section 52 (a) of Act 815.

<sup>1102</sup> Section 52 (b) of Act 815.

<sup>1103</sup> Section 52 (c) of Act 815.

innovation introduced in the PRMA and is rare in the legal regimes of resource-rich countries in Africa.<sup>1104</sup>

The PIAC, in its functions, must consult on acceptable practices related to the management and use of petroleum revenues and develop its own rules of engagement.<sup>1105</sup> The platform created for PIAC to interact with the public is one way of ensuring accountability from the government. The PIAC goes to the areas development projects are reported to ascertain whether the projects exist. The exercise enables PIAC to get feedback from the public concerning projects undertaken, which is one good thing under the PRMA. The reports issued by PIAC shows that governments continue to contravene the provisions of the PRMA, but PIAC has no power to sanction under the PRMA.<sup>1106</sup>

PIAC has so far issued reports that disclose the utilisation of the oil revenue. The reports state that the interpretation of the PRMA has made money available to the government.<sup>1107</sup> Some PIAC reports show that part of the oil revenue is transferred into funds not regulated by the PRMA, defeating the purpose of the PRMA.<sup>1108</sup> The diverse composition of the body and their independence has helped reveal the oil revenue expenditures. PIAC is one institution that has exhibited its independence and commitment to safeguarding Ghana's oil revenue. The success of the committee includes its ability to ensure good governance from the government.<sup>1109</sup> The PIAC has since its inception produced two reports every year, which scrutinises how the government has utilised Ghana's oil revenue.<sup>1110</sup> Their report has further raised non-compliance with the PRMA, 'discrepancies' and 'irregularities' of institutions under the PRMA.<sup>1111</sup> It is one of the quality institution existing under the PRMA seen as addressing rent-seeking classified as one of the causes of the resource curse.<sup>1112</sup> The thesis proceeds to assess the functions of these institutions to determine whether their functions optimise the oil revenue.

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<sup>1104</sup> Graham et al., 'An institutional assessment of the public interest and accountability committee (PIAC) in Ghana's oil and gas sector', *Journal of Contemporary Africa Studies*, Vol. 37 (4), 2019, 317, citing Panford, (note 909), 79-107.

<sup>1105</sup> Section 53 (1) (a) and (b) of Act 815.

<sup>1106</sup> Chapter 7, sections 2.1, 2.2, 2.2.1-2.2.4.

<sup>1107</sup> Chapters 7, sections 2.2, 2.2.1-2.2.4.

<sup>1108</sup> Chapters 7, sections 2.2.1-2.2.3.

<sup>1109</sup> Oppong, (note 713), 315-316.

<sup>1110</sup> Section 56 (1) of Act 815. See chapter 7, section 2.2.2 (2.2.1-2.2.4).

<sup>1111</sup> Graham et al., (note 1104), 325.

<sup>1112</sup> Yates, *The Scramble for African Oil: Corruption and War for Control of Africa's Natural Resources*, 2012, London Pluto Press.

#### 4. Assessment of the institutional functions under the PRMA

The Investment Advisory Committee (IAC) and the Public Interest Accountability Committee (PIAC) are two institutions established under the PRMA. The Ministry of Finance and Economic Planning, Bank of Ghana, Parliament, and Auditor-General are existing institutions within the public sector before the promulgation of the PRMA and are assigned roles under the PRMA. Their institutional architecture is not, therefore, within the contemplation of the PRMA. The PRMA gives different functions to these six institutions. However, the Ministry can spend petroleum revenue when Parliament approves the government's budget statement. The role assigned to these institutions under the PRMA is crucial because the PRMA is novel in Ghana's political history.

The issue, however, is whether the form and manner they exist now give these institutions the power to influence decisions concerning the management of the oil revenues. The section assesses the functions performed by institutions under the PRMA to consider whether the quality of these institutions has led to decisions that fight the resource curse. I argue that the institution's existence has not influenced decisions on the management of the oil revenues, a fact borne out by the reports issued by PIAC owing to the appointment of heads of State institutions by the President, thereby affecting quality.<sup>1113</sup>

The constitutional arrangement in Ghana gives the President-elect the power to appoint the heads of the institution's assigned duties under PRMA.<sup>1114</sup> The government that won the 2016 general elections controls Parliament with its majority.<sup>1115</sup> The government has also appointed new heads for the Bank of Ghana, the Ghana Revenue Authority, the Minister for Finance and Economic Planning, and the Investment Advisory Committee members. Appointment to PIAC comes from recognised bodies provided under the PRMA. The existing arrangement makes it difficult for these bodies to challenge the executive regarding breaches of the PRMA as reported by PIAC since the heads serve at the pleasure of the President.<sup>1116</sup>

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<sup>1113</sup>Gyimah-Boadi, (note 918), 146-147.

<sup>1114</sup> Article 58 (1) and (2) of Ghana's Constitution.

<sup>1115</sup> Of the 275 members in the 2016 Parliament, the ruling New Patriotic Party has 169 members and the National Democratic Congress has 106 members.

<sup>1116</sup> Article 58 (1) of Ghana's Constitution.

The Minister has the mandate under the PRMA to manage and invest the Ghana Petroleum Funds.<sup>1117</sup> The Minister deals with spending after the presentation of the national budget to Parliament for approval.<sup>1118</sup> The Minister further has the sole discretion to choose four out of the twelve sectors mentioned in the PRMA.<sup>1119</sup> The PRMA has not given any basis for the selection of the areas to spend. Such a provision provides unfettered discretion to the Minister, whose decision may be influenced by considerations other than societal needs.

The IAC exist under the PRMA to advise the Minister by monitoring the performance and the management of the Ghana Petroleum Funds.<sup>1120</sup> The IAC propose investment policies and guidelines and, in doing so, must be mindful of the fact that the oil revenues are for the present use and future generations.<sup>1121</sup> The IAC, by its nature, is a technical committee, and its composition should, therefore, be members who are technically knowledgeable in investments and its related discipline. For example, the members shall have a background in finance, investments, accounting, banking, auditing, and legal.<sup>1122</sup> Such diversity would enable the committee to perform its duties meaningfully. The composition of IAC would determine compliance with the PRMA. The Minister and the Governor of the Bank of Ghana make nominations for President's consideration and appointment.<sup>1123</sup> The President appoints the chairperson of the IAC.<sup>1124</sup>

The discussion under section 3 above shows challenges with State institutions managing the oil revenue. Firstly, institutions are weak and unable to serve as checks and balances on executive power. Secondly, due to the President's authority under the Constitution, persons appointed to head State institutions seek to preserve their positions are not prepared to act against the President's instructions. Thirdly, the Minister has discretionary power to select areas to benefit from the use of ABFA without any input. Fourthly, State institutions are unable to utilise the power available to them. Parliament's failure to set up a committee to debate the reports of PIAC is worrying, having regard to the issues raised by their reports. Resolving these challenges would make State institutions quality and constrain the powers of the political elite in Ghana. There are seven

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<sup>1117</sup> Section 25 of Act 815.

<sup>1118</sup> Section 25 (b) of Act 815.

<sup>1119</sup> Section 23 (5) of Act 815.

<sup>1120</sup> Section 29 of Act 815.

<sup>1121</sup> Section 30 (1) (a), (b), and (c) and 2 (a), (b) and (c) of Act 815.

<sup>1122</sup> See section 31 (1) of Act 815.

<sup>1123</sup> See section 31 (3) of Act 815.

<sup>1124</sup> See section 31 (4) of Act 815.

institutions involved with the management of Ghana's oil revenue. Aside from the Auditor-General and PIAC, the other institutions have failed to act as required under the PRMA.<sup>1125</sup> This thesis recommends reducing the institution charged with managing the oil revenue to four, namely the Ministry of Finance and Economic Planning, the Bank of Ghana, Parliament and PIAC, to promote coordination against the seven institutions.

Ghana needs to work and improve the quality of State institutions.<sup>1126</sup> The management of the oil revenue by quality institutions is an 'intervening variable' to minimise the effect of the resource curse.<sup>1127</sup> The presence of high-quality institutions would aid the management of oil revenue through investment and savings.<sup>1128</sup> This thesis argues that Ghana needs a paradigm shift in the outlook of institutions assigned duties under the PRMA, and that is possible with a political re-orientation to actualise institutional autonomy.<sup>1129</sup> The President's power to appoint new heads of State institutions upon assumption of office needs reconsideration as the first step through a constitutional amendment.<sup>1130</sup> The thesis makes a case for the Public Service Commission to play a role in the appointment of heads of State institutions. The involvement of the Public Services Commission in the recruitment of heads of State institutions, as suggested, would minimise the politicisation of State institutions and allow institutions to check the powers of the political elite.<sup>1131</sup>

Ghana's handling of resource revenues from gold and other natural resources has not resulted in economic fortunes for the country due partly to mismanagement of resource revenue and institutions inability to check the political elite.<sup>1132</sup> The legal order ought to divest the President of this power or modify it by broadening the process of recruitment to include other bodies to make State institutions autonomous.

The Public Services Commission established under the 1992 Constitution<sup>1133</sup> of Ghana must develop standards and guidelines concerning recruitment into the public service.<sup>1134</sup> The

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<sup>1125</sup> Chapter 7.

<sup>1126</sup> Sections 2.3 above and 5 below.

<sup>1127</sup> Chapter 2, section 2.2.3.

<sup>1128</sup> Section 2.3 above.

<sup>1129</sup> Section 4 *supra*.

<sup>1130</sup> Article 58 (1) of the Constitution.

<sup>1131</sup> Section 4.

<sup>1132</sup> Chapter 1, section 2.3.

<sup>1133</sup> Article 194 of the Constitution.

<sup>1134</sup> Article 196 of the Constitution.

Commission is independent and can make its regulations by constitutional instrument for the adequate performance of its duties under the Constitution.<sup>1135</sup> It consists of the Chairman, a Vice-Chairman and three other members as full-time employees of the Commission.<sup>1136</sup> The Constitution provides for further appointment unto the Commission as Parliament may by law recommend.<sup>1137</sup> The Public Services Commission enabling law provides four other members to serve on the Commission on a part-time basis.<sup>1138</sup> However, the appointment of Chairman, Vice-Chairman, and other Commission members, which remains with the President, acting in consultation with the Council of State is problematic.<sup>1139</sup>

This thesis suggests an amendment to the President's power to appoint all the members of the Commission. The Commission comprises nine members, and the government should appoint three members, two of whom shall serve as the Chairman and the Vice-Chairman. CSOs, Chartered Institute of Human Resources, the academic institutions, faith-based institutions, professional associations and the Trade Union Congress making nominations to make the number. The membership of the Commission as constituted would advertise and interview prospective applicants for the heads of State institutions.

First, such a system of appointment may reduce the over politicisation of the public sector whenever there is a change of government with wholesale removal of heads of state institutions. Second, such appointees must have the security of tenure so that they would not look on their shoulders when making decisions. Third, the Public Services Commission must design a system of appraisal for the heads of the State institutions to get the leaders to offer their best services to the nation.

## 5. Conclusion

The chapter has discussed institutions and their role in managing oil revenue that accrues to Ghana. Institutions are classified based on how they affect the management of resource revenues. The quality of an institution in a resource-rich country determines the level of success in managing

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<sup>1135</sup> Article 197 and 198 of the 1992 Constitution.

<sup>1136</sup> Article 194 (1) of the Constitution.

<sup>1137</sup> Article 194 (2) (b) of the 1992 Constitution.

<sup>1138</sup> See section 1 (2) (b), (c), and (4) of the Public Services Commission Act, 1994, Act 482.

<sup>1139</sup> Section 1(3) of the Public Services Commission Act, 1994, Act 482.

resource revenue. Resource-rich countries with quality institutions experience growth, and those with weak institutions promotes rent-seeking.

Executive influence dominates Ghana's PRMA through the discretionary powers of the Minister of Finance and transfers to funds outside the PRMA that leans towards making decisions based on political expediency.<sup>1140</sup> The inability of the legal framework to stop the government from using the oil revenues contrary to the law suggests weak institutional structures coupled with the failure of the State to initiate prosecutions under the PRMA.<sup>1141</sup>

Ghana must build democratic institutions that exhibit transparency and accountability in the management of oil revenue.<sup>1142</sup> This thesis suggests an amendment of the Constitution to broaden the process of appointing heads of State institutions to ensure institutional autonomy as it pertains to Botswana, where the public service got insulated from politics to actualise the aim of the PRMA.<sup>1143</sup> The strengthening of institutions would require a thorough appraisal of the president's mode of appointing heads of State institutions.<sup>1144</sup> The Public Services Commission of Ghana must take charge of the recruitment process to make it competitive and ensure efficiency, not political patronage.<sup>1145</sup>

The development of the institutions in resource-rich countries to the level where they serve as a check on the executive powers would help minimise the extent of the resource curse. As argued, quality institutions do not just come up.<sup>1146</sup> The establishment of quality institutions that can pass and enforce laws in developing countries has proved very challenging.<sup>1147</sup> The challenge gets replicated with institutions in government administration, leading to weak institutions and abysmal economic performance.<sup>1148</sup>

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<sup>1140</sup> Section 4 above.

<sup>1141</sup> Section 4 above.

<sup>1142</sup> Skancke, (note 323), 333.

<sup>1143</sup> Chapter 8, section 2.2.3.

<sup>1144</sup> Section 4 above.

<sup>1145</sup> Section 4 above.

<sup>1146</sup> Leith, (note 144), 48.

<sup>1147</sup> Davis et al., 'What Role Do Legal Institutions Play in Development', A Conference paper on Second Generation Reforms, IMF, 1999.

<sup>1148</sup> Leith, (note 144), 48.

In Ghana, the institutions assigned duties under the PRMA are limited in the exercise of its powers to check the executive arm of government due to the constitutional architecture of the appointment of the heads of these institutions by the President.<sup>1149</sup> The roles assigned to these institutions in the PRMA are good enough to ensure the resource revenues' effective utilisation. Still, political expediency has cowed the institutions into submission to the executive. It is sporadic for an appointee of the President to challenge or refuse to honour the demands of the executive. Such a constitutional arrangement presents a problem concerning the use of resource revenues to benefit citizens.

The seeming monopoly enjoyed by the political elite due to the constitutional arrangement needs a paradigm shift to address the imbalance between natural resources and the low level of development in resource-rich countries. The thesis recommends a constitutional amendment to vest the power of appointment of heads of State institutions, including those discussed in this chapter in the Public Services Commission and the President. The next chapter looks at the various funds created under the PRMA and the utilisation of the funds.

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<sup>1149</sup> Article 58 (1) of Ghana's Constitution.

# Chapter 6: Evaluating the Utilisation of Oil Revenue under the Petroleum Revenue Management Act

## 1. Introduction

Chapter 5 discusses the role of the institutions existing under the Petroleum Revenue Management Act (PRMA).<sup>1150</sup> The discussion shows three challenges militating against the management of Ghana's oil revenue. First, the types of institutions established by Europeans and their quality.<sup>1151</sup> The quality of institutions in resource-rich countries is critical in the development of a nation.<sup>1152</sup> Second, the constitutional power available to the President regarding the appointment of heads of State institutions has not helped the management of oil revenue.<sup>1153</sup> The appointed head is unable to hold the President to account, which has compromised State institutions. Third, the discretionary power available to the Finance Minister, which permits taking decisions alone, is worrying.

A functional examination of public institutions under PRMA reveals a deficit that may not bring the needed change expected to overcome the resource curse.<sup>1154</sup> Chapter 5 concludes that this problem requires a constitutional amendment, and the power of appointment be given to the Public Services Commission.<sup>1155</sup> The net effect of the conclusions from chapter 5 shows that institutions in Ghana are weak. Given the state in which institutions currently managing oil revenue find themselves, chapter 6 assesses the utilisation of funds established under the PRMA since the inception of oil revenue in 2011. The discussion is relevant to determine whether these funds would help Ghana optimise the benefits of oil revenue. The PRMA creates sovereign wealth funds (SWFs), namely, the Ghana Stabilisation Fund and the Ghana Heritage Fund.<sup>1156</sup> The aim of

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<sup>1150</sup> Petroleum Revenue Management Act, 2011 Act 815.

<sup>1151</sup> Chapter 5, section 2.2.

<sup>1152</sup> Chapter 5, section 2.3.

<sup>1153</sup> Article 58 (1) of the Constitution.

<sup>1154</sup> Chapter 5, section 4.

<sup>1155</sup> Chapter 5, sections 4 and 5.

<sup>1156</sup> See sections 9 and 10 of Act 815.

establishing the SWFs under the PRMA is to sustain public expenditure during shortfalls in expected oil revenue and provide an endowment to support future generations upon depleting petroleum resources.<sup>1157</sup> The discussion further seeks to determine whether the creation of SWFs is necessary regarding the developmental challenges facing Ghana. This chapter argues that Ghana must reconsider establishing the SWFs to optimise the benefits of oil revenue. Within the bigger picture, the chapter seeks to ascertain whether the creation of various funds and their utilisation would ensure that the oil revenue management would help overcome the resource curse.

## 2. Funds established in terms of the PRMA and their aims

The PRMA creates several funds for different purposes. These funds are the Petroleum Holding Fund, the Ghana Petroleum Funds, the Annual Budget Funding Amount (ABFA), the Consolidated Fund<sup>1158</sup> and the Ghana Infrastructure Investment Fund.<sup>1159</sup> The Ghana Infrastructure Investment Fund is part of the Annual Budget Funding Amount created to take care of infrastructure development in Ghana.

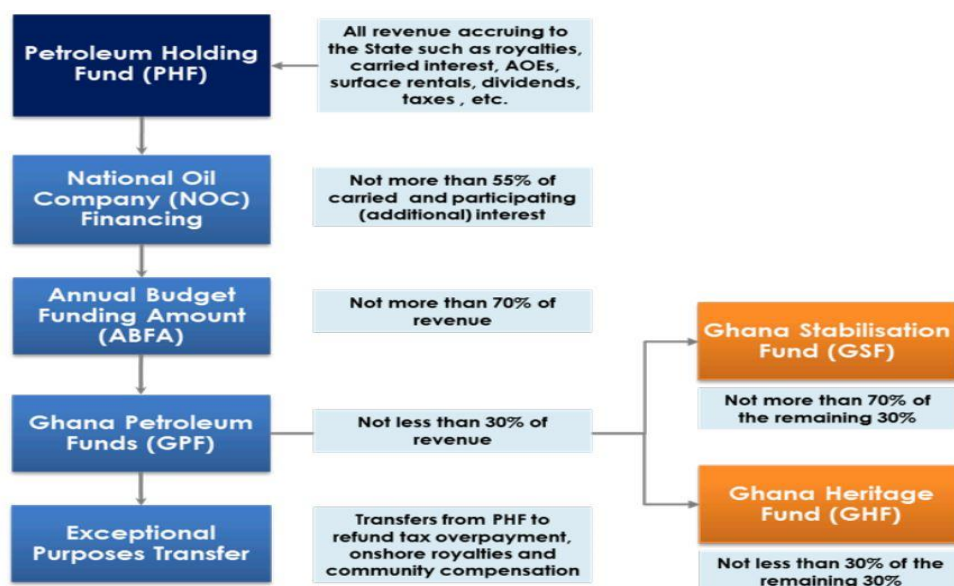


Figure 2: Funds existing under the PRMA<sup>1160</sup>

<sup>1157</sup> Section 9 (2) of Act 815 and clause 3 (2) of Act 893.

<sup>1158</sup> The Consolidated Fund exist under Ghana's Constitution but receives payments from the oil revenue.

<sup>1159</sup> Clause 8 (4) (b) of Act 893.

<sup>1160</sup> PIAC, Guide to the PRMA, 2017, 17 available at [https://www.piacghana.org/portal/files/downloads/simplified\\_guide\\_to\\_ghana's\\_petroleum.pdf](https://www.piacghana.org/portal/files/downloads/simplified_guide_to_ghana's_petroleum.pdf)

It receives a maximum of 25 per cent of the ABFA for infrastructural development in Ghana upon the approval of Parliament.<sup>1161</sup> The creation of the Ghana Infrastructure Investment Fund admits challenges with the development of infrastructure in Ghana. Therefore, the idea behind the establishment of the SWFs becomes bizarre in the face of development gaps.<sup>1162</sup> It is surprising why Ghana has decided to invest part of the oil revenue in SWFs for future generations against committing the resources to aid the development infrastructure.<sup>1163</sup> The arrangement now cannot be the best option for Ghana.

The Ghana Petroleum Fund consists of the Ghana Heritage Fund and the Ghana Stabilisation Fund.<sup>1164</sup> These funds exist under the PRMA as a sovereign wealth fund with a different emphasis from the other funds.<sup>1165</sup> The PRMA states that the Ghana Stabilisation Fund and the Ghana Heritage Fund become the Ghana Petroleum Wealth Fund upon depletion of the petroleum reserves.<sup>1166</sup> Upon its creation, the Ghana Stabilisation Fund and the Ghana Heritage Fund ceases to exist.<sup>1167</sup> The PRMA is silent on whether the Ghana Petroleum Wealth Fund remains a sovereign wealth fund upon its assumption.<sup>1168</sup>

The Ghana Petroleum Wealth Fund does not currently exist as a fund under the PRMA. The PRMA and its amendment Act are silent on the status of the Fund when it comes on board.<sup>1169</sup> The omission is not suitable for Ghana because it may end up as part of the Consolidated Fund with accountability challenges.<sup>1170</sup> The failure means that there is no oversight regarding the expenses and spent in areas that will favour the politician with its attendant corruption. This thesis recommends an amendment to the PRMA to guide the disbursement of the revenue in the Ghana Petroleum Wealth Fund to bring it under the Public Interest Accountability Committee (PIAC).

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<sup>1161</sup> Clause 8 (4) (b) and (c) of Act 893.

<sup>1162</sup> Sections 9 and 10 of Act 815.

<sup>1163</sup> Wills et al., 'Sovereign Wealth Funds and Natural Resource Management in Africa', *Journal of African Economies*, 2016, Vol. 25 (2), 4.

<sup>1164</sup> Section 11 (1) of Act 815.

<sup>1165</sup> Sections 9 (2) of Act 815 and clause 3 (2) of Act 893.

<sup>1166</sup> Section 20 (1) of Act 815.

<sup>1167</sup> Section 20 (1) of Act 815.

<sup>1168</sup> Section 20 (1) of Act 815.

<sup>1169</sup> See Act 815 and Act 893.

<sup>1170</sup> See chapter 1, section 2.3.

## 2.1 Petroleum Holding Fund

The Petroleum Holding Fund is established under the PRMA to receive and distribute petroleum revenue from all sources.<sup>1171</sup> The Bank of Ghana holds and administers the Fund.<sup>1172</sup> The PRMA list the various sources of petroleum revenue receipts to include, firstly, income from royalties, surface rentals, receipts from petroleum operations and the sale of petroleum.<sup>1173</sup> The second source of revenue receipts are amounts received by the State in its participation in petroleum operations.<sup>1174</sup> Third, corporate tax from companies operating in the petroleum value chain.<sup>1175</sup> Fourth, the National Oil Company's payments comprise corporate income tax, royalty, dividends, and other sums due to the State.<sup>1176</sup> Fifth, amounts received from capital gains tax derived from the sale of ownership of exploration, development and production rights.<sup>1177</sup>

The PRMA<sup>1178</sup> further states that the government's revenue includes the Republic's direct or indirect participation in petroleum operations, including carried interest<sup>1179</sup> and participating interest.<sup>1180</sup> The Ghana Revenue Authority's responsibility is to ensure that these payments due to the Petroleum Holding Fund get paid in the manner provided under the PRMA.<sup>1181</sup> The PRMA further provides that the Ghana Petroleum Fund cannot grant credit for any entity; neither can it be used as surety for a company's liability.<sup>1182</sup> The provisions on the Petroleum Holding Fund seeks to track and account for the sources of the oil revenue due to Ghana and reduce the mismanagement of the oil revenue meant for the benefit of Ghanaians.

## 2.2 Sovereign Wealth Funds

The Ghana Petroleum Funds consist of the Ghana Stabilisation Fund and the Ghana Heritage Fund classified as sovereign wealth funds (SWFs) under the PRMA.<sup>1183</sup> The Ghana Stabilisation Fund

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<sup>1171</sup> Section 20 (1) of Act 815.

<sup>1172</sup> Section 2 (1) and (2) of Act 815.

<sup>1173</sup> Section 6 (a) of Act 815.

<sup>1174</sup> Section 6 (b) of Act 815.

<sup>1175</sup> Section 6 (c) of Act 815.

<sup>1176</sup> Section 6 (d) of Act 815.

<sup>1177</sup> Section 6 (e) of Act 815.

<sup>1178</sup> Clause 2 of Act 893.

<sup>1179</sup> Section 61 of Act 815 defines carried interest as an amount paid by a contractor to the State for a right to explore and develop an area held by the Republic which is not reimbursed.

<sup>1180</sup> Section 61 of Act 815 defines participating interest as the interest held in petroleum operations by a party to a petroleum agreement.

<sup>1181</sup> Section 3 (1) and (2) of Act 815.

<sup>1182</sup> Section 5 (1) (a) and (b) of Act 815.

<sup>1183</sup> Section 11 (1) of Act 815.

exists to support the economy in case of underperformances in petroleum revenue.<sup>1184</sup> The Ghana Heritage Fund provides the legal framework for an endowment for the development of future generations upon the depletion of the petroleum reserves.<sup>1185</sup>

This section discusses what an SWF is, how it works, its management, and why it matters. This discussion places Ghana Petroleum Funds within the context of the principle of sovereign wealth funds as a form of savings for Ghana. The purpose of the Ghana Stabilisation Fund is to support the budget during losses, and the Ghana Heritage Fund creates a legacy to help future generations upon depletion of the petroleum resources.<sup>1186</sup> According to the PRMA, these funds exist to manage the oil revenue optimally to avoid the resource curse.<sup>1187</sup>

SWFs are mediums through which States invest in numerous assets financed with revenue from commodity exports and excess funds.<sup>1188</sup> SWFs originated in the 1950s created by oil and resource-rich countries to stabilise their economies and provide wealth for future generations.<sup>1189</sup> SWF are government-controlled funds invested in assets for safe returns.<sup>1190</sup> Kuwait, in 1953, established an office in London to manage oil revenue surplus and subsequently created the Kuwait Investment Authority as a public government entity to manage the funds as SWFs.<sup>1191</sup> The creation of SWFs helps create a pool of funds to address the problems of the State. SWFs serves to strengthen the economic capacity of the country, establishing the fund.<sup>1192</sup> Therefore, a unique feature of SWFs is to allow their growth to enable the resource-rich countries to fall on it during periods of famine.<sup>1193</sup>

The growth of SWFs necessitated guidance for regulating their operation.<sup>1194</sup> In 2008, the International Working Group of Sovereign Wealth Funds convened a forum to set a framework

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<sup>1184</sup> Section 9 (2) of Act 815.

<sup>1185</sup> Clause 3 (2) of Act 893.

<sup>1186</sup> Sections 9 (2) of Act 815 and clause 3 (2) of Act 893.

<sup>1187</sup> See section 9 and 10 of Act 815.

<sup>1188</sup> Alhashel, 'Sovereign Wealth Funds-Literature Review', *Journal of Economics and Business*, Vol. 78, 2015, 2.

<sup>1189</sup> Weiss, *Sovereign Wealth Funds: Background and Policy Issues for Congress*, 2008, 4.

<sup>1190</sup> Baldwin, 'A Portfolio Analysis of Sovereign Wealth Funds' in 'Sovereign Wealth: The Role of State Capital in the New Financial Order', edited Justin O'Brien, 2011, 46. See also D.W. Drezner, 'Sovereign Wealth Funds and the (In) security of Global Finance', *Journal of International Affairs*, Vol. 62, No. 1, 2008, 116.

<sup>1191</sup> The overview of Kuwait Investment Authority, 2013.

<sup>1192</sup> Gyeyir, 'The Ghana Stabilisation Fund: Relevance and Impact so far', *Energy Policy*, Vol. 135, 2019, 2-4.

<sup>1193</sup> Balding, 'Sovereign Wealth Funds: the New Intersection of Money and Politics', Oxford University Press, New York, 2012.

<sup>1194</sup> Aggarwal et al., 'Sovereign Wealth Fund governance and national culture', *International Business Review*, Vol. 27, 2018, 79.

for establishing the SWFs.<sup>1195</sup> The meeting resulted in the Santiago Principles comprising 24 voluntary principles to regulate the nature of SWFs by promoting understanding and transparency.<sup>1196</sup> The Santiago Principles focused on the legal framework for their operation, the institutional and governance structure, and investment risk and management structure.<sup>1197</sup> Following the Santiago Principles, the International Working Group on SWFs established the International Forum of Sovereign Wealth Funds, culminating in the Kuwait Declaration in 2009.<sup>1198</sup> The purpose of this declaration was for countries operating SWFs to meet and exchange views on issues of common interest to facilitate and understand the Santiago Principles and activities of SWFs.<sup>1199</sup>

The Santiago Principles define SWFs as special purpose investment funds created by national governments for macroeconomic purposes.<sup>1200</sup> SWFs get funded from the balance of payments surplus, revenue from privatisation, fiscal surpluses and export revenue.<sup>1201</sup> The Santiago definition's critical elements are that the government owns the funds, the investments occur in foreign financial assets, and the funds must set objectives.<sup>1202</sup> An SWF is a State-owned investment vehicle in global financial instruments and assets with proceeds from export commodities or foreign reserves.<sup>1203</sup> SWFs are defined as an investment owned by the government and set up for macroeconomic reasons.<sup>1204</sup> It is an investment fund owned by the government entrusted with managing and investing its wealth in private financial markets.<sup>1205</sup>

From these definitions, SWFs refer to significant funds controlled by governments invested abroad in private markets.<sup>1206</sup> The descriptions feature accumulated funds of the State and an investment

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<sup>1195</sup> See Sovereign Wealth Funds, Generally Accepted Principles and Practices, 'The Santiago Principles', 2008. Available at <https://ecgi.global/code/sovereign-wealth-funds-generally-accepted-principles-and-practices-gapp-santiago-principles> accessed 15 March 2021.

<sup>1196</sup> Aggarwal et al., (note 1167), 79.

<sup>1197</sup> See Sovereign Wealth Fund, (note 1195).

<sup>1198</sup> See the Kuwait Declaration available at [www.ifswf.org/santiago-principles-landing/kuwait-declaration](http://www.ifswf.org/santiago-principles-landing/kuwait-declaration) accessed 15 March 2021.

<sup>1199</sup> See Sovereign Wealth Funds, (note 1195).

<sup>1200</sup> See Sovereign Wealth Funds, (note 1195).

<sup>1201</sup> See Sovereign Wealth Fund, (note 1195).

<sup>1202</sup> See Sovereign Wealth Fund, (note 1195).

<sup>1203</sup> Alhashel, (note 1188), 2.

<sup>1204</sup> Bahgat, 'Sovereign Wealth Funds: Dangers and Opportunities', *International Affairs*, Vol. 84, No. 6, 2008, 1189.

<sup>1205</sup> Dixon et al., 'Rethinking the sovereign in sovereign wealth funds', *Transactions of the Institute of British Geographers*, Vol. 37 (1), 2012, 105.

<sup>1206</sup> Kimmitt, 'Public Footprints in Private Markets: Sovereign Wealth Funds and the World Economy', *Foreign Affairs*, Vol. 87 (1), 2008, 119.

mechanism to manage the funds.<sup>1207</sup> The establishment of SWFs is essential since it makes resources available for a country's development.<sup>1208</sup>

In the context of resource-rich countries in Africa, SWFs serves as a tool for managing their resource revenues.<sup>1209</sup> SWFs matter because they exist to improve the living conditions in states that have set them up by providing an endowment for future generations upon depleting natural resources.<sup>1210</sup> They require prudent management of the resource revenues or surplus from the country's reserves.<sup>1211</sup> SWFs exist to protect budgets and economies against unpredictable prices globally, mobilise excess liquidity in the marketplace, build an endowment for future generations and use the money for social and economic development.<sup>1212</sup> SWFs exist in developing countries to ensure that resources generated from natural resources are invested and managed in SWFs to reduce the effect of the resource curse.<sup>1213</sup>

There are various reasons for setting up SWFs. First, since the funds stay abroad, it helps to stabilise the economy through predictable budget allocations.<sup>1214</sup> Second, in times of financial instability, the State can utilise the funds.<sup>1215</sup> The availability of the Fund helps to maintain a balance between expectations and the long-term commitment of the nation.<sup>1216</sup> The International Monetary Fund (IMF) and the International Working Group of Sovereign Wealth Funds (Santiago

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<sup>1207</sup> Alhashel, (note 1188), 2.

<sup>1208</sup> Balin, 'Sovereign Wealth Funds: A Critical Analysis', 2009, 4. Available at SSRN 1477724 accessed on 1<sup>st</sup> March 2019.

<sup>1209</sup> Dixon and Monk, 'What Role for Sovereign Wealth Fund's in Africa's Development?' Center for Global Development, 4. Available at <https://research-information.bris.ac.uk/en/publications/what-role-for-sovereign-wealth-funds-in-africas-development> accessed 23 March 2021.

<sup>1210</sup> Alhashel, (note 1188), 2. See also J. Aizenman, R. Glick, 'Sovereign Wealth Funds: Stumbling Blocks or Stepping Stones to Financial Globalization', Centre for Pacific Studies, 2007 Annual Report, 11-13. Available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.404.5149&rep=rep1&type=pdf#page=12> accessed 15 March 2021, Beck, R., & Fidora, M., 'The Impact of Sovereign Wealth Funds on global financial markets', *Intereconomics*, November, 2008, Vol. 43, issue 6 and Urban, D., 'The Role of sovereign wealth funds in global management of excess foreign exchange reserves', *Comparative Economic Research*, 2011, 14 (2), 144-145.

<sup>1211</sup> Alhashel, (note 1188), 2.

<sup>1212</sup> Razanov, 'Who Holds the Wealth of the Nations?' State Street Global Advisors, 2005, 1. Available at <http://piketty.pse.ens.fr/files/capital21c/xls/RawDataFiles/WealthReportsEtc/SovereignFunds/General/Rozanov2005.pdf> accessed 15 March 2021.

<sup>1213</sup> Oshionebo, 'Managing Resource Revenues: Sovereign Wealth Funds in Developing Countries', *Asper Review International Business & Trade Law*, Vol. 15, 2015, 218.

<sup>1214</sup> Dixon and Monk, (note 1209), 4.

<sup>1215</sup> Dixon and Monk, (note 1209), 4.

<sup>1216</sup> Dixon and Monk, (note 1209), 5.

Principles) distinguish between five main types of SWFs.<sup>1217</sup> These are Stabilisation Funds,<sup>1218</sup> Savings Funds,<sup>1219</sup> Pension Reserve Funds,<sup>1220</sup> Reserve Investment Funds,<sup>1221</sup> and Development Funds<sup>1222</sup> as some examples.<sup>1223</sup> The distinction relates to the objectives for setting up the Fund based on the needs of the country.<sup>1224</sup> Ghana's reason for setting up SWFs are two-fold; to support the budget in terms of a shortfall in oil revenue and provide an endowment to support development for future generations upon the depletion of petroleum reserves.<sup>1225</sup> The management of the SWF per the reports of PIAC and the Auditor-General reveals that the establishment of SWFs is not appropriate for Ghana.<sup>1226</sup>

The establishment of SWFs must yield the necessary returns to enable the investing country to commit the returns to development. However, the issue remains whether it is prudent for developing resource-rich countries to allocate the money to development immediately upon receipt rather than waiting to receive returns on the investment. The above argument becomes essential in the face of the caution on developing countries to achieve the United Nations Development Goals.<sup>1227</sup>

This thesis advocates for a paradigm shift in how Ghana and other developing countries have resorted to SWFs by neglecting to utilise the funds for development. It proposes a legal regime that ensures the strict application of these resource revenues domestically to address

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<sup>1217</sup> Al-Hassan et al., 'Sovereign Wealth Funds: Aspects of Governance Structure and Investment Management', An IMF Working Paper No. WP/13/231, 2013, 4-6. Available at <http://www.imf.org/external/pubs/ft/wp/2013/wp13231.pdf> accessed 15 March 2021.

<sup>1218</sup> A fund set up by a resource-rich country to insulate the national budget in terms of shortfall in resource revenue.

<sup>1219</sup> Transforms resource revenues into financial assets in a savings account.

<sup>1220</sup> A fund to meet the pension related liabilities of a resource-rich country in future.

<sup>1221</sup> Fund by resource-rich countries to meet unforeseen cost or financial commitment.

<sup>1222</sup> A fund to allocate resources to specific areas to develop infrastructure.

<sup>1223</sup> Al-Hassan et al., (note 1217), 4-5. See Sovereign Wealth Fund, (note 1195) 3.

<sup>1224</sup> Al-Hassan et al., (note 1217), 4-5.

<sup>1225</sup> Section 9 (2) of Act 815 and clause 10 (2) of Act 893.

<sup>1226</sup> Chapter 7, section 2.1 and 2.2. See also Wills et al., (note 1163), 15-16.

<sup>1227</sup> The United Nations Millennium Declaration is the foundation for the MDGs. It sets 8 measurable goals for 2015 with emphasis on improving human conditions around the world. Available at [http://www.za.undp.org/content/south\\_africa/en/home/post-2015/mdgoverview.html](http://www.za.undp.org/content/south_africa/en/home/post-2015/mdgoverview.html) accessed 15 March 2021. The eight goals of the MDGs are the eradication of extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality improve maternal health, combat HIV/AIDS, malaria and other diseases, ensure environmental sustainability, and develop global partnerships for development. At the end of 2015, Ghana performed well but there is poverty and lack of development in critical sectors of the economy including education and health.

developmental challenges within deprived economies.<sup>1228</sup> The developed countries rich in natural resources may resort to the creation of SWFs.<sup>1229</sup> The proposal above would require developing resource-rich countries to rethink the creation of SWFs and an amendment of the PRMA to establish, implement, and manage the SWFs.<sup>1230</sup>

The International Working Group of Sovereign Wealth Funds and the Santiago Principles support establishing a sound legal framework to help the operations of SWFs achieve their purpose.<sup>1231</sup> A robust legal regime for the operation of SWFs is necessary because the resource curse<sup>1232</sup> occurs mainly due to policy decisions by decision-makers.<sup>1233</sup> It is essential to address the gaps within the law to avoid exploitation of the weaknesses.<sup>1234</sup> This requires a sound legal framework to promote a better institutional and governance structure to manage the SWFs.<sup>1235</sup> In the absence of a robust legal regime operating, SWFs will not benefit Ghana.

Two legal regimes exist in developing resource-rich countries for the management of SWFs. The first type is SWFs established with a separate legal identity under a statute with perpetual succession, which can sue and be sued with operational management structures.<sup>1236</sup> The different legal personality status allows the managers of the SWFs to take decisions if the board is independent of the government and works without interference promoting operational independence.<sup>1237</sup> However, this may be a mirage since the government appoints the members of the board.<sup>1238</sup>

The second type of management focuses on joint control by the central bank in conjunction with other agencies.<sup>1239</sup> This type runs on three separate models. First, the Ministry of Finance mandates

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<sup>1228</sup> Willis et al., (note 1163), 6.

<sup>1229</sup> Willis et al., (note 1163), 6.

<sup>1230</sup> Gyeyir, (note 1192), 8-10. See also Skancke, (note 323), 332 who argues that it is senseless to accumulate capital in a fund and build debt at other sectors of the local economy.

<sup>1231</sup> Santiago Principle 1.

<sup>1232</sup> Chapter 2.

<sup>1233</sup> Oshionebo, (note 1213), 225.

<sup>1234</sup> Oshionebo, (note 1213), 225.

<sup>1235</sup> Al-Hassan et al., (note 1217), 9.

<sup>1236</sup> Oshionebo, (note 1213), 225. See also Ayensu, *Managing Ghana's Oil Revenue: Ghana Petroleum Funds (Gpfs)*, 'Asian Journal of Humanities and Social Sciences', Vol. (2), 2013, 151, Al-Hassan et al., (note 1217), 8-10.

<sup>1237</sup> Oshionebo, (note 1213), 229.

<sup>1238</sup> Oshionebo, (note 1213), 229. For example, Brunei, Nigeria, Kuwait and Angola operates SWFs under statute.

<sup>1239</sup> Oshionebo, (note 1213), 230.

the Central Bank to manage the SWF under an operational management agreement.<sup>1240</sup> Second, the Ministry of Finance set up a fund management entity within the Ministry to manage the SWF.<sup>1241</sup> Third, the Ministry of Finance appoints an external entity to manage the SWF.<sup>1242</sup> Ghana, under the PRMA, operates the first model where the Ministry of Finance has an operational management agreement with the Bank of Ghana for the day-to-day management of the SWFs.<sup>1243</sup> In the second model, management cannot be independent due to interference by the government.<sup>1244</sup> There is the tendency of secrecy surrounding the operation, and the lack of separate legal personality works against the model.<sup>1245</sup>

The issue for both types is whether those in charge of management can independently work to establish the SWFs geared towards the development of the nation.<sup>1246</sup> The different SWF types show that a country must examine its circumstances and determine which model best serves its interest.<sup>1247</sup> This thesis advocates operating an SWF under a separate legal personality with diverse members serving on the board, contrary to operating under the second model. The Minister for Finance, the Bank of Ghana and the Investment Advisory Committee currently manages Ghana's SWFs.<sup>1248</sup>

SWFs have benefits for the country investing and the investment destination. For example, Bernanke, the Chairman of the Federal Reserves of the United States of America, stated that Western financial institutions survived the financial crisis by the emergency funding from SWFs from Asia and Arab.<sup>1249</sup> It shows the magnitude of the revenue made available to developed countries by countries that have established SWFs. The next section discusses the benefits and limitations of creating SWFs within the investing and recipient countries' context.

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<sup>1240</sup> Al-Hassan et al., (note 1217), 10.

<sup>1241</sup> Al-Hassan et al., (note 1217), 10.

<sup>1242</sup> Al-Hassan et al., (note 1217), 10.

<sup>1243</sup> Sections 25 and 26 of Act 815.

<sup>1244</sup> Oshionebo, (note 1213), 233.

<sup>1245</sup> Oshionebo, (note 1213), 232.

<sup>1246</sup> Al-Hassan et al., (note 1217), 9.

<sup>1247</sup> Al-Hassan et al., (note 1217), 6.

<sup>1248</sup> Sections 25, 26 and 29 of Act 815.

<sup>1249</sup> Bahgat, (note 1204), 1189.

The operation of SWFs may have a positive or an adverse effect on the firm where the investment takes place and the country that has invested it.<sup>1250</sup> SWFs operated as “shock absorbers” during the financial crisis in the United States of America and Europe and assisted financial institutions such as Citigroup, Bear Stearns, Morgan Stanley, Merrill Lynch, and Fortis.<sup>1251</sup> The United States and Europe, the United States Federal Reserves, the European Union and the Organisation for Economic and Development (OECD) have recognised the role of SWFs in improving the effectiveness of financial crises on their economies.<sup>1252</sup>

The benefits that accrue to the investing country include the State's ability to diversify the resources and use the returns during lean seasons.<sup>1253</sup> Since the investing economy cannot absorb the available resource revenue due to lack of economic capacity, its returns result in a low risk to the country.<sup>1254</sup> The target country benefits include easy access to capital by banks and companies and stabilise the economy because of the placement of the funds over long periods and provision of money to banks and companies that cannot raise additional finances due to financial challenges.<sup>1255</sup>

The United States of America’s economic policy embraces open investment, which accounts for the United States of America's development.<sup>1256</sup> The development of the United States of America as a world economic power is due to its openness to foreign direct investment.<sup>1257</sup> It’s the reason why it’s argued that direct foreign investments hold many benefits for the United States.<sup>1258</sup>

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<sup>1250</sup> Alhashel, (note 1188), 6.

<sup>1251</sup> Betbeze, ‘Sovereign Wealth Funds: A Solution to the Crisis? *Revue d’économie financiere (English Ed.)* Vol. 9 (1), 2009, 160.

<sup>1252</sup> O’Brien, ‘Barriers to Entry: Foreign Direct Investment and the Regulation of Sovereign Funds’, *The International Lawyer*, Vol. 42 (4), 2008, 1237.

<sup>1253</sup> Makhoul, ‘Sovereign Wealth Funds’, *International Journal of Government Financial Management*, Vol. 10 (1), 2010, 39. See also Balin, (note 1208), 4.

<sup>1254</sup> Makhoul, (note 1208), 39.

<sup>1255</sup> Makhoul, (note 1208), 39. See also Amy Keller, ‘Sovereign Wealth Funds: Trustworthy Investors or Vehicle of Strategic Ambition? An Assessment of the Benefits, Risks, and Possible Regulation of Sovereign Wealth Funds’, *The Georgetown Journal of Law and Public Policy*, Vol. 7, 2007.

<sup>1256</sup> Haley, ‘A Short Across the Bow: Changing the Paradigm of Foreign Direct Investment Review in the United States’, *Brooklyn Journal of International Law*, Vol. 32, 2006, 1159.

<sup>1257</sup> Nowak, ‘Note, Above All, Do No Harm: The Application of the Exon-Florio Amendment to Dual Technologies’ *Michigan Journal of International Law*, Vol. 13, 1992, and 1014. See also Reece, ‘Buyer Beware: The United States No longer wants Foreign Capital to Fund Corporate Acquisition’, *Denver Journal of International Law and Policy*, 1990, 279.

<sup>1258</sup> Schaefer et al., ‘Why All the Fuss about Foreign Investment’, *Challenger*, Vol. 32, 1989, 31.

Although the investing country also gains, the investing countries' returns mean that developing countries would be better off if they apply these resources in developing their countries.<sup>1259</sup>

Regarding risk, the investing country as well as the target country of the investment experience adverse effects. Some states that invest in SWFs are undemocratic and therefore raise transparency and accountability with the governance of these funds with particular reference to Russia and China.<sup>1260</sup> The undemocratic nature of some governments that own the SWFs has become a source of concern for the Western countries where these investments occur, putting forward several interests.<sup>1261</sup> The fears include the possibility of the SWFs owned by foreign governments becoming majority shareholders in Western companies by their continuous investments with the option of taking decisions to favour the investing government.<sup>1262</sup>

The risk of the threat of financial contagion, subtle political power, and national security concerns exist.<sup>1263</sup> National security concerns raised are that if SWFs succeed in acquiring companies of national interest, it may hurt the country, necessitating laws to restrict interest in critical companies.<sup>1264</sup> SWFs are now motivated not by profits alone but by non-financial considerations, which may position the importance of SWFs in conflict with national security concerns of the investment destination.<sup>1265</sup>

For these reasons, certain countries have passed laws to regulate or prevent the acquisition of stakes by SWFs in companies classified as being of national interest, including the Investment Canada Act,<sup>1266</sup> the Defense Production Act<sup>1267</sup> of 1950 and the Foreign Investment and National Security

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<sup>1259</sup> Oshionebo, (note 1213), 263-264.

<sup>1260</sup> O'Brien, (note 1252), 1233.

<sup>1261</sup> Oshionebo, (note 1213), 248.

<sup>1262</sup> Oshionebo, (note 1213), 248-249.

<sup>1263</sup> O'Brien, (note 1252), 1237.

<sup>1264</sup> Oshionebo, (note 1213), 249.

<sup>1265</sup> Slawotsky, 'Sovereign Wealth Funds as Emerging Financial Superpowers: How United States Regulators Should Respond', *Georgetown Journal of International Law*, Vol. 40 (4), 2009, 1249. See also Weiss, (note 1156), 12-15, raises two policy issues for United States Congress consideration namely, lack of transparency in the operations and management of SWFs and the probability to use the SWFs for 'strategic' or 'political purposes'.

<sup>1266</sup> The Canadian government has the right to review investment from foreign countries to in the interest of national security.

<sup>1267</sup> The President of the United States has the right to block the acquisition of United States Company by foreign investment if it is a threat to national security.

Act<sup>1268</sup> of 2007.<sup>1269</sup> These laws depict that although the Western world acknowledges the vital role that SWFs play in their economies, they are quick to safeguard and protect the national interest so that the nation's attention remains supreme.

The surge in investments by SWFs could be a yardstick for exercising a subtle political power through takeovers and acquisitions where board decisions taken by these companies reflect the interest of the donor countries.<sup>1270</sup> In this regard, the information obtained as members of the board may help to access the delicate details of the company for insider dealing.<sup>1271</sup> Therefore, the target countries are cautious not to cede the control of their corporate institutions into the hands of foreign investors to dictate companies' policy and political orientation in the target country.<sup>1272</sup>

SWFs can affect economies adversely if owners of SWFs decide to withdraw their investment from the destination countries unexpectedly.<sup>1273</sup> The effect of the withdrawal of investments would affect the economies if the economies are not doing well, but the impact would be minimal if the economies are doing well.<sup>1274</sup> Suppose the owners of the SWFs decide to diversify their investment and look for investments in other areas. In that case, it may affect the financial system of the economy, including a fall in the share prices of the securities.<sup>1275</sup>

With the discussion on SWFs, the Ghana Stabilisation Fund and the Ghana Heritage Fund (SWFs) exist under the PRMA and situate it within the framework discussion supra. The section assesses whether resort to SWFs under the PRMA would optimally help manage Ghana's oil revenue to counteract the effect of the resource curse and overcome mismanagement.

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<sup>1268</sup> The Act permitted the Committee on Foreign Investment in the United States to review transactions concerning mergers, acquisitions or takeovers to determine its impact on national security.

<sup>1269</sup> Oshionebo, (note 1213), 249.

<sup>1270</sup> O'Brien, (note 1252), 1241.

<sup>1271</sup> Oshionebo, (note 1213), 251-2. See also Slawotsky, (note 1265), 1241-2 and 1254.

<sup>1272</sup> Slawotsky, (note 1265), 1240-1241.

<sup>1273</sup> Oshionebo, (note 1213), 249.

<sup>1274</sup> Jackson, 'Foreign Ownership of US Financial Assets: Implications of a Withdrawal', Washington D.C. Congressional Research, 2008, 11. Available at <https://fas.org/sgp/crs/natsec/RL34319.pdf> accessed 15 March 2021.

<sup>1275</sup> Jackson, (note 1274), 11. See also Stephen Jen, 'Sovereign Wealth Funds What they are and what's happening', World Economics, Vol. 8 (4), 2007, 6.

### 2.2.1 Ghana Stabilisation Fund

The Ghana Stabilisation Fund (GSF) helps sustain public expenditure during a shortfall in projected oil revenues.<sup>1276</sup> The GSF Fund receives a percentage of the petroleum revenue from the Petroleum Holding Fund as determined by Parliament.<sup>1277</sup> The PRMA states that where the petroleum revenue exceeds one-quarter of the Annual Budget Funding Amount (ABFA), the excess income must go into the Ghana Petroleum Funds.<sup>1278</sup> Out of this amount, a minimum of 30 per cent goes to the Ghana Heritage Fund (GHF), and the excess transferred into the GSF quarterly.<sup>1279</sup> The stipulated amount reviewable every three years.<sup>1280</sup>

With the Parliament's approval, the minister has the mandate to recommend the remaining amount in the GSF.<sup>1281</sup> The amount recommended and approved is reviewed from time to time having regard to the macroeconomic conditions.<sup>1282</sup> The excess in the GSF gets transferred into the Contingency Fund or payment of debts subject to parliamentary approval on attaining the agreed amount.<sup>1283</sup>

Stabilisation Funds have the function of cushioning public expenditure during periods of a shortfall in petroleum revenues.<sup>1284</sup> The Fund can perform this function if it is allowed to grow.<sup>1285</sup> Capping the GSF and transferring the excess into the Contingency Fund and payment of debt approved by Parliament amounts to an abuse of funds.<sup>1286</sup> The continued practice of capping the GSF would hamper the Fund's growth. The PRMA fails to mention the type of debt the excess amount should service and is subject to abuse.<sup>1287</sup> Since the transfer from the GSF started in 2014, the amount of money borrowed by the State has increased from \$ 4,677,268,250.0 in 2014 to \$ 9,915,808,690.0 in 2017.<sup>1288</sup> The capping of the GSF makes resources available to the government to spend because

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<sup>1276</sup> Section 9 (2) of Act 815.

<sup>1277</sup> Section 9 (3) of Act 815.

<sup>1278</sup> Section 23 (1) (a) of Act 815.

<sup>1279</sup> Section 23 (1) (b) of Act 815.

<sup>1280</sup> Section 23 (2) of Act 815.

<sup>1281</sup> Section 23 (3) of Act 815.

<sup>1282</sup> Section 23 (3) of Act 815.

<sup>1283</sup> Section 23 (4) of Act 815.

<sup>1284</sup> Section 9 (2) of Act 815.

<sup>1285</sup> Gyeyir, (note 1192), 8.

<sup>1286</sup> Section 23 (4) of Act 815. See also Gyeyir, (note 1165), 8. He argues that the practice adopted by the Minister of Finance since the implementation of the PRMA amount to dilution of the intent of the fund and creates an avenue for abuse.

<sup>1287</sup> ACEP, (note 745), 2.

<sup>1288</sup> Gyeyir, (note 1192), 8.

no guidelines exist in the PRMA. The minister recommends capping the Fund, which takes place after amounts accumulate in the Fund.<sup>1289</sup>

The condition for using the GSF is when there is a shortfall in petroleum revenue.<sup>1290</sup> The growth of GSF would be difficult until the Minister's power of capping and transfer is set against conditions in the PRMA.<sup>1291</sup> Such a decision requires an amendment to the PRMA and prevents the minister from capping the Fund when it accumulates enough money. The alternative argument could be that the GHF should receive the outstanding amount not transferred into the Contingency Fund or used to pay debts upon attaining the ceiling.<sup>1292</sup> The crucial issue remains whether the political elite would champion the amendment as proposed seeing that such a step would deprive them access to funds.

The Contingency Fund is a public fund under the Constitution of Ghana meant to finance urgent or unforeseen events with no provision subject to the approval of the finance committee of Parliament.<sup>1293</sup> The Contingency Fund and the Consolidated Fund exist outside the PRMA, but they receive transfers from the GSF for the purposes stated above.<sup>1294</sup> Since these two funds are outside the strict monitoring of the PRMA, it becomes difficult to monitor how amounts allocated to these funds get utilised.<sup>1295</sup> Capping the GSF weakens the concept of creating a stabilisation fund to serve as an SWF under the PRMA.<sup>1296</sup> The thesis suggests that the right of the Minister to go into the GSF hampers the growth of the GSF and creates accountability challenges. The quest to use the PRMA to curtail mismanagement and avoid the resource curse may be difficult to achieve under the current legal regime.<sup>1297</sup>

### 2.2.2 Ghana Heritage Fund

The Ghana Heritage Fund (GHF), like the GSF, is an SWF created under PRMA to support future development upon depletion of petroleum reserves.<sup>1298</sup> The Fund receives from the Petroleum

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<sup>1289</sup> ACEP, (note 745), 2.

<sup>1290</sup> Section 9 (2) of Act 815.

<sup>1291</sup> The PRMA is currently silent on these issues hence the practice of unilateral actions by the Finance Minister.

<sup>1292</sup> ACEP, (note 745), 3-4.

<sup>1293</sup> Article 177 (1) of Ghana's Constitution.

<sup>1294</sup> ACEP, (note 745), 2.

<sup>1295</sup> ACEP, (note 745), 2.

<sup>1296</sup> Section 23 (3) and (4) of Act 815.

<sup>1297</sup> Chapter 1, section 2.3.

<sup>1298</sup> Clause 3 (2) of Act 893.

Holding Fund a percentage of petroleum revenue determined by Parliament as savings.<sup>1299</sup> Parliament has the right to review the restriction of transfers from the GHF after fifteen years by transferring the accrued interest into a fund established by or under the PRMA.<sup>1300</sup>

After fifteen years, the right of Parliament to vote and review the restrictions placed on the Ghana Heritage Fund puts the Fund in danger of growth.<sup>1301</sup> The relaxation may serve the interest of a ruling government due to the voting pattern of Ghana's Parliament because, since the inception of the fourth Republic of Ghana in 1992, governments in power have majority members in Parliament and hence controls it through the system of voting.<sup>1302</sup> Parliament cannot defeat any bill, loan agreement or contract presented to Parliament because the government has the numbers to carry the votes.<sup>1303</sup>

The power in the PRMA to remove the restriction on the Ghana Heritage Fund reveals two issues. First, it shows that there is no justifiable reason to let the money remain abroad to attract interest where there is a lack of development. Second, it is surprising to borrow and pay interest on foreign loans contracted for development when the country has money overseas. As a developing country, Ghana cannot do away with loans; however, if the money left in the SWFs implement programmes to address development, the quantum of loans contracted by Ghana might reduce.<sup>1304</sup> With these issues, the creation of the Ghana Heritage Fund needs reconsideration.

### 2.3 Annual Budget Funding Amount

The Annual Budget Funding Amount (ABFA) supports Ghana's budget to maximise economic development, promote equal economic opportunity and ensure balanced development of all regions of Ghana guided by a development plan approved by Parliament.<sup>1305</sup> The ABFA receives no more than seventy per cent of the benchmark revenue.<sup>1306</sup> The benchmark revenue is the estimated revenue expected by the country from its oil operations for the year.<sup>1307</sup> The ABFA allocated in a year depends on the country's development plan, the capacity of the economy and

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<sup>1299</sup> Section 10 (3) of Act 815.

<sup>1300</sup> Section 10 (4) of Act 815.

<sup>1301</sup> ACEP, (note 745), 2.

<sup>1302</sup> Article 104 (1) of Ghana's Constitution.

<sup>1303</sup> Article 104 (1) of Ghana's Constitution.

<sup>1304</sup> Wills et al., (note 1163), 8.

<sup>1305</sup> Section 21 (2) and (3) of Act 815.

<sup>1306</sup> Section 18 (1) of Act 815.

<sup>1307</sup> Section 61 of Act 815.

the prudent management of the economy subject to the approval by Parliament as part of the national budget.<sup>1308</sup> Based upon the development needs of Ghana, the Minister is empowered by the PRMA to review the spending allocation of the ABFA every three years, subject to ratification by two-thirds of the members of Parliament.<sup>1309</sup>

The government of Ghana may use the ABFA as collateral for its liabilities for a maximum period of ten years from the inception of the PRMA.<sup>1310</sup> The PRMA does not guide the government's power to use the ABFA as collateral for its liabilities and fails to state the amount that qualifies for the guarantee.<sup>1311</sup> The PRMA is silent on the type of loan the ABFA can secure. The Africa Energy Policy Centre (ACEP)<sup>1312</sup> has argued that the collateralisation of the ABFA and the lack of guidelines and limits to the borrowing could lead to uncontrolled borrowing and accumulation of debts.<sup>1313</sup>

An amendment to the provisions on the ABFA states that a minimum of 70 per cent of the amount should finance investments in the public sector.<sup>1314</sup> A maximum of 25 per cent of the amount allocated for public expenditure goes to the Ghana Infrastructure Investment Fund to finance the development of infrastructure in Ghana as part of the national budget.<sup>1315</sup>

Ghana's Constitution classifies the Consolidated Fund and the Contingency Fund as public funds.<sup>1316</sup> The Consolidated fund receives all government revenues, including those raised or received in trust for the government to support the government's budget approved by Parliament.<sup>1317</sup> The Consolidated Fund does not exist as a fund created under the PRMA, but it receives funds from the Petroleum Holding Fund.<sup>1318</sup> The ABFA set up under the PRMA is

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<sup>1308</sup> Section 18 (2) and (3) of Act 815.

<sup>1309</sup> Section 18 (4), (5) and (6) of Act 815.

<sup>1310</sup> Section 18 (7) of Act 815.

<sup>1311</sup> ACEP, (note 745), 7.

<sup>1312</sup> Africa Centre for Energy Policy is a policy think tank on energy, based in Ghana.

<sup>1313</sup> ACEP, (note 745), 7. As demonstrated by Gyeyir, (note 1192), 8, gives an example of how the Ghana government in 2014 borrowed GHC 25 billion but this rose sharply to GHC 53 billion in 2017.

<sup>1314</sup> Clause 8 (4) (a) of Act 893.

<sup>1315</sup> Clause 8 (4) (b) and (c) of Act 893.

<sup>1316</sup> Article 175 of Ghana's Constitution.

<sup>1317</sup> Article 176 (1) of Ghana's Constitution.

<sup>1318</sup> Clause 6 (b) of Act 893.

transferred into the Consolidated Fund.<sup>1319</sup> The transfer takes place every quarter after the publication of the ABFA in the Gazette that Parliament has approved the appropriation amount.<sup>1320</sup>

The PRMA does not regulate the Consolidated Fund by submitting a report to PIAC for scrutiny to track revenues under the various funds.<sup>1321</sup> However, being a public account, it is audited by the Auditor-General.<sup>1322</sup> Reports from the Auditor-General show the tendency of the political elite and other public officials to misappropriate monies transferred into the Consolidated Fund.<sup>1323</sup> The misappropriation associated with the Consolidated Fund informed the establishment of the PRMA outside the purview of the Consolidated Fund.<sup>1324</sup> The transfers into the Consolidated Fund creates the situation that existed before the PRMA came into force concerning the application of the oil revenue.<sup>1325</sup>

The practice of transferring the ABFA into the Consolidated Fund would not benefit the citizens within the current architecture of the PRMA.<sup>1326</sup> The transfers into the Consolidated Fund is synonymous with mismanagement and defeat the rationale for enacting the PRMA.<sup>1327</sup> The enactment of the PRMA is adequate, but some of the provisions as discussed inhibit utilising oil revenue to benefit the country as contained in the preamble.<sup>1328</sup> The challenges identified with the operation of the funds above need resolution if Ghana desires to see a positive impact of the oil revenue on the economy.

### 3. Critique of the Funds

SWFs exist to enable the nation to save for trying times, as discussed under section 2.2 and its associated benefits. As they exist under the PRMA, the SWFs do not optimally function as a vehicle to help manage the oil revenues of Ghana. The capping of the Stabilisation Fund by the

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<sup>1319</sup> Section 19 (1) of Act 815.

<sup>1320</sup> Section 19 (1) (a) and (b) of Act 815.

<sup>1321</sup> Article 175 of Ghana's Constitution classifies the Consolidated Fund and the Contingency Fund as public Funds.

<sup>1322</sup> Article 187 (2) of Ghana's Constitution.

<sup>1323</sup> Chapter 1, section 2.3.

<sup>1324</sup> Chapter 7 review the reports of the Auditor-General on the use of Ghana's oil revenue.

<sup>1325</sup> Chapter 1, section 2.3 for discussion on mismanagement of the funds in the Consolidated Fund.

<sup>1326</sup> Section 19 (1) of Act 815.

<sup>1327</sup> See the preamble of the PRMA.

<sup>1328</sup> See (note 1327) above.

Minister without any guidelines adversely affect the administration of the resource revenue.<sup>1329</sup> The Minister's recommendation requires approval by Parliament, but no evidence exists to show that Parliament has set parameters for support.<sup>1330</sup>

The provision gives the Minister an unfettered power for the Stabilisation Fund to accumulate, and the Minister proceeds to cap the amount. The outstanding amount after the capping goes into the Contingency Fund or payment of other debts.<sup>1331</sup> The Contingency Fund and the other account are outside the remit of the PRMA. The inability of the PRMA to audit the Contingency Fund and the other accounts which receive these transfers smacks of a lack of accountability which is not conducive to the operation of the PRMA.

The Heritage Fund serves as savings for future generation to support development when the petroleum reserves are depleted.<sup>1332</sup> Savings connotes excess amount after paying for all expenses. Ghana borrows to finance infrastructure development.<sup>1333</sup> The current situation in Ghana regarding development makes it imperative to use the money to develop the economy.<sup>1334</sup> Using these funds to build the nation would have an immediate benefit to Ghanaians and serve future generations. The massive infrastructural developments undertaken by the first President of Ghana, Kwame Nkrumah, illustrate the cross-generational use of infrastructures that serve Ghanaians.<sup>1335</sup> The PRMA states that the Ghana Petroleum Fund, and subsequently the Ghana Petroleum Wealth Fund, must be invested in qualifying instruments outside Ghana.<sup>1336</sup> The rate of interest offered on these investments are low as against interest rates on borrowing, and it makes no economic sense to continue the cycle of indebtedness.<sup>1337</sup>

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<sup>1329</sup> Section 23 (3) of Act 815.

<sup>1330</sup> Section 23 (3) of Act 815.

<sup>1331</sup> Section 23 (4) of Act 815.

<sup>1332</sup> Section 3 (2) of Act 819.

<sup>1333</sup> Otto, 'A review of Ghana's Heritage Fund under Ghana's Petroleum Revenue Management Act 2011 (Act 815)', 39 *Journal of Law, Policy and Globalization*, Vol. 1, 6, 2015.

<sup>1334</sup> Otto, (note 1333), 7-8.

<sup>1335</sup> Otto, (note 1333), 9.

<sup>1336</sup> See section 27 of Act 815.

<sup>1337</sup> Otto, (note 1333), 10. See for example, Aisha Adams, 'Ghana's Petroleum Revenue Management Act: Back to Basics', Natural Resources Governance Institute's briefing paper, April 2007, 4 available at [https://resourcegovernance.org/sites/default/files/documents/ghana-petroleum-revenue-management\\_act.pdf](https://resourcegovernance.org/sites/default/files/documents/ghana-petroleum-revenue-management_act.pdf) accessed 15 March 2021. The article states interest payments on loans as follows: 2016, interest paid amounted to GHS 10.77 billion (USD\$ 2, 003, 115, 531.0). This represents 5.14 percent of gross domestic product (GDP).

The established funds in Ghana include the GSF and the GHF classified as Sovereign Wealth Funds, which the chapter argues cannot serve the interest of Ghana due to developmental challenges.<sup>1338</sup> The other funds are the Petroleum Holding Fund,<sup>1339</sup> the Annual Budget Funding Amount,<sup>1340</sup> the Consolidated Fund,<sup>1341</sup> and the Contingency Fund.<sup>1342</sup> The operation of these funds under the current provisions has challenges.<sup>1343</sup>

Firstly, the power of the Minister to cap the GSF and send the excess amount into the Contingency Fund or to pay debts approved by Parliament.<sup>1344</sup> Secondly, the ABFA is transferred into the Consolidated Fund<sup>1345</sup> to finance projects in four sectors of the economy without a development plan.<sup>1346</sup> Thirdly, the ABFA can also serve as collateral for a loan contracted by the government.<sup>1347</sup> The PRMA has not given any guidelines and the amount that may lead to uncontrolled borrowing.<sup>1348</sup> Fourthly, the oversight body created under the PRMA cannot audit the Contingency Fund and the Consolidated Fund despite receiving oil revenues.<sup>1349</sup> The operation of the funds currently does not show accountability on the part of the government.<sup>1350</sup>

The PMRA creates multiple funds, making tracking and accountability difficult since some of the funds' utilisation occurs outside the audit regime existing under the PRMA.<sup>1351</sup> This thesis suggests the amendment of the PRMA to allow PIAC to audit the Consolidated Fund and the Contingency Fund regarding receipt of oil revenue.<sup>1352</sup> The Minister must furnish PIAC with a report of monetary expenditure, pending an amendment to the PRMA to ensure transparency and

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<sup>1338</sup> Section 3.

<sup>1339</sup> Section 2 of Act 815.

<sup>1340</sup> Section 18 of Act 815.

<sup>1341</sup> Clause 6 (1) (b) of Act 893.

<sup>1342</sup> Section 23 (4) of Act 815.

<sup>1343</sup> Section 3.

<sup>1344</sup> Section 23 (3) and (4) of Act 815.

<sup>1345</sup> Section 19 (1) of Act 815.

<sup>1346</sup> Section 21 (3) and (5) of Act 815 and Clause 8 (4) (a) of Act 893.

<sup>1347</sup> Section 18 (7) of Act 815.

<sup>1348</sup> Section 3.

<sup>1349</sup> Section, 2.2.1 and 3 *supra*.

<sup>1350</sup> Section, 2.2.1 and 3 *supra*.

<sup>1351</sup> Petroleum Holding Fund, Ghana Stabilisation Fund, Ghana Heritage Fund, Ghana Petroleum Fund, The Annual Budget Funding Amount, Ghana Infrastructure Investment Fund, Contingency Fund and the Consolidated Fund.

<sup>1352</sup> Chapter 7, section 3.2.

accountability.<sup>1353</sup> Such an amendment will allow PIAC access to financial expenses that occur outside the PRMA.

The continued operation of the PRMA in its current structure with the multiple funds would not ensure development in Ghana as the reports of the Auditor-General and the PIAC reveals.<sup>1354</sup> The use of mineral revenues depends on two principles: the investment and spending policy framework introduced through the National development plans.<sup>1355</sup> Lack of a national development plan in Ghana may affect the impact of the oil revenue on the Ghanaian economy.

#### 4. Conclusion

This chapter highlights established funds and their management under the PRMA. The discussion has revealed some weaknesses inherent in the provisions of the PRMA regarding the operation of these funds. The Petroleum Holding Fund,<sup>1356</sup> Ghana Petroleum Funds<sup>1357</sup> and the Annual Budget Funding Amount<sup>1358</sup> are subject to the scrutiny of PIAC and the Auditor-General.<sup>1359</sup> The Consolidated Fund and the Contingency Fund exist outside the PRMA but receives money from the PRMA.<sup>1360</sup> The amounts transferred to these funds cannot be audited by the PIAC set up under the PRMA as an oversight body.<sup>1361</sup> Nonetheless, because the Auditor-General audits public funds, the funds are inadvertently evaluated by the Auditor-General.<sup>1362</sup> The audit reports reveal non-compliance with the provisions of the PRMA, misappropriation of the funds, manipulation of the Ghana Stabilisation Funds, the discretionary power of the Minister and an uncoordinated expenditure incurred by the Ghana National Petroleum Corporation (GNPC).<sup>1363</sup>

The practice of transferring part of the oil revenue to areas outside the PRMA raises two concerns. First, through this method, money indirectly becomes available to the State for expenditure that

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<sup>1353</sup> Chapter 7, section 3.2.

<sup>1354</sup> Chapter 7, section 3.2.

<sup>1355</sup> Chapter 8, section 2.2.2.

<sup>1356</sup> Section 2 of Act 815.

<sup>1357</sup> Sections 9, 10 and 11 (1) of Act 815.

<sup>1358</sup> Section 18 of Act 815.

<sup>1359</sup> Chapter 5 discusses institutions.

<sup>1360</sup> Sections 19 (1) and 23 (4) of Act 815.

<sup>1361</sup> Section 52 (c) of Act 815.

<sup>1362</sup> Article 187 (2) of Ghana's Constitution.

<sup>1363</sup> Chapter 7 sections 2.2.1, 2.2.2, 2.2.3, and 2.2.4.

falls outside what is earmarked under the PRMA.<sup>1364</sup> Second, the strict accountability regime under the PRMA is absent in respect of other funds existing outside the PRMA.<sup>1365</sup> The thesis suggests that the practice works against the tenets of PRMA to ensure that the use of oil revenues benefits all Ghanaians.<sup>1366</sup> The provisions discussed above on the funds reveal that accountability is a challenge despite the disclosure of oil revenues. The continued operation of the PRMA in its current form cannot help the optimisation of the oil revenues.<sup>1367</sup>

Regarding the multiplicity of funds created, this thesis suggests that Ghana must reduce the funds to two, supporting the budget and a heritage fund for future generations.<sup>1368</sup> The ABFA that supports the budget must remain in an account with the Bank of Ghana and not the Consolidated Fund due to abuses of the Consolidated Fund.<sup>1369</sup> The involvement of CSOs in implementing a development plan would help deal with the weak link associated with oil revenue management.<sup>1370</sup> These suggestions emanate from the developmental problems facing Ghana in the development trajectory.

The thesis puts forward two proposals to deal with the accountability issues concerning the transfers into the Consolidated Fund and the Contingency Fund. The PRMA requires an amendment to give power to PIAC to audit the expenditure of the transfers into these funds to reveal expenses. The PRMA requires an amendment to request the Minister who disburses these monies to submit a report on the expenditure to PIAC for scrutiny. The proposed changes deal with the transfer of oil revenue for spending outside the PRMA. If the position discussed persist, the enactment of the PRMA as a legal regime to help utilise the oil revenue to impact growth and development in Ghana might be a mirage. The next chapter reviews the reports of the PIAC and the Auditor-General.

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<sup>1364</sup> Section 19 (1) and 23 (4) of Act 815.

<sup>1365</sup> Section 52 (c) of Act 815.

<sup>1366</sup> See (note 1334) above.

<sup>1367</sup> Chapter 4, sections 3 and 3.2.

<sup>1368</sup> Section 3 above.

<sup>1369</sup> Chapter 7, section 3.2.

<sup>1370</sup> Chapter 4, section 3.3.

# Chapter 7: Assessing the Accountability Regime in the Petroleum Revenue Management Act

## 1. Introduction

Chapter 6 discusses the various funds under the Petroleum Revenue Management Act (PRMA).<sup>1371</sup> The first set of funds are the Petroleum Holding Fund,<sup>1372</sup> the Ghana Petroleum Funds<sup>1373</sup> comprising the Ghana Stabilisation Fund<sup>1374</sup> and the Ghana Heritage Fund described as Sovereign Wealth Funds (SWFs)<sup>1375</sup> and the Annual Budget Funding Amount<sup>1376</sup> (ABFA). The Consolidated Fund<sup>1377</sup> and the Contingency Fund<sup>1378</sup> exist outside the PRMA; nevertheless, these funds receive a portion of Ghana's oil revenue.<sup>1379</sup> Chapter 6 examines the concept of sovereign wealth funds in the context of the PRMA and their desirability.

The existence of the second set of funds outside the PRMA means that the funds are not subject to the accountability regime provided for under the PRMA. Chapter 6 sees this as a disturbing trend and argues for an amendment of the PRMA to allow the Public Interest Accountability Committee (PIAC) to audit expenditures of these funds.<sup>1380</sup> The Minister of Finance disburses the two sets of funds under the PRMA and submits an audit of the spending to Parliament, and the report serves as a basis document for PIAC's work.<sup>1381</sup>

Chapter 7 assesses the accountability regime within the PRMA. The thesis assesses through the evaluation of the reports issued by the PIAC and the Auditor-General. The discussion further evaluates the effectiveness and usefulness of the disbursement formula provided under the PRMA. Within this broad focus, the chapter seeks to verify whether the use of the funds enhances the oil

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<sup>1371</sup> Petroleum Revenue Management Act, 2011 Act 815.

<sup>1372</sup> Section 2 (1) of Act 815.

<sup>1373</sup> Section 11 (1) of Act 815.

<sup>1374</sup> Section 9 (1) of Act 815.

<sup>1375</sup> Section 10 (1) of Act 815.

<sup>1376</sup> Section 18 (1) of Act 815.

<sup>1377</sup> Article 176 (1) of Ghana's Constitution.

<sup>1378</sup> Article 177 (1) of Ghana's Constitution.

<sup>1379</sup> Chapter 6, sections 2.2.1 and 2.3.

<sup>1380</sup> Chapter 6, section 3.

<sup>1381</sup> Sections 25 and 48 of Act 815.

revenue's optimisation. In managing resource revenues, resource-rich countries must address three issues: the need to balance spending and saving, where to spend and save, and how to spend or invest efficiently.<sup>1382</sup> The PRMA addresses the expenditures<sup>1383</sup> and where to spend<sup>1384</sup> or invest,<sup>1385</sup> but it is silent on spending efficiency.<sup>1386</sup> Germane to the management of resource revenues is a legal regime that helps transform the income into development outcomes at the core of the resource curse<sup>1387</sup> discussion.<sup>1388</sup> This chapter argues that the absence of provisions on the efficient expenditure of Ghana's oil revenue cannot help enhance the use of the oil revenue despite the enactment of the PRMA.

## 2. Assessment of the use of the revenue per reports

The Auditor-General and the PIAC have the mandate to audit the various funds created under the PRMA to ascertain whether their utilisation satisfies the provisions of the law. The audit promotes transparency and accountability in the management of oil revenue.<sup>1389</sup> The PRMA has been in operation for nine years, which gives enough scope for its assessment. The reports of the Auditor-General and the PIAC are essential to evaluate the utilisation of the oil revenue.<sup>1390</sup>

### 2.1 The reports of the Auditor-General

The Auditor-General acts as an external auditor of the Petroleum Funds and must issue an annual report on the funds.<sup>1391</sup> Alternatively, it may appoint an external auditor for a non-renewable term

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<sup>1382</sup> Amin, (note 852), 13.

<sup>1383</sup> Sections 16 (2) and (3) and clause (4) (a), (b) and (c) of Act 893.

<sup>1384</sup> Section 21 (3) and (5) of Act 815.

<sup>1385</sup> Sections 9 and 10 of Act 815.

<sup>1386</sup> Amin, (note 852) 26

<sup>1387</sup> Chapter 2, section 2.

<sup>1388</sup> Amin, (note 852), 26.

<sup>1389</sup> Sections 45, 47, 52, and 53 of Act 815.

<sup>1390</sup> For more on challenges associated with the utilisation of Ghana's oil revenue, see the following; Aisha Adam, (note 613), Ali-Nakyea et al., 'Are Sub-Saharan African Countries Losing it on Oil and Gas Revenue Management Too? Evidence from Ghana', *International Journal of Energy Economics and Policy*, Vol. 9 (2), 2019, 89-97, Peter and Abbey, 'Ghana's Oil Governance Challenges and Policies in Oil Wealth and Development in Uganda and Beyond, Prospects, Opportunities and Challenges', (eds) Langer, Ukiwo & Mbabazi, 2020, 331-350, Kow Kwegya Amisah, 'Petroleum Revenue Management in Ghana: The Epoch of High Expectation in Perspective', *Afe Law Journal*, 2019, 33-55, Ackah et al., 'Balancing debt with sustainability? Fiscal policy and the future of petroleum revenue management in Ghana', *Energy Research & Social Science*, Vol. 67, 2020, 1-12, Obeng-Odoom, 'Managing what? "success" and "failure" in Ghana's oil industry', *Society Natural Resources*, Vol. 27 (6), 2014, 656-670, Sulemana and Ennim, 'Performance Review of Petroleum Revenue Management in Ghana: SWOT Analysis after a Decade of Production', *The Oil, Gas and Energy Law Intelligence (OGEL)*, 2021 (Forthcoming), Stephens, (note 1630), Skaten, (note 922)

<sup>1391</sup> Section 45 (1) of Act 815.

of three years to audit the funds.<sup>1392</sup> The Auditor-General uses the financial statements and other documents from the Bank of Ghana to inspect or commission an audit of the Ghana Petroleum Funds. The Auditor-General submits its report to Parliament.<sup>1393</sup> Auditor-General's report to Parliament focuses on the proper keeping of accounts, payments into and from the Petroleum Funds, and whether the management of the Petroleum Funds accords with the PRMA.<sup>1394</sup>

The PRMA mandates the Investment Advisory Committee (IAC), an independent body established under the PRMA, to formulate and propose for the Minister of Finance (Minister) consideration an investment policy to manage the Ghana Petroleum Funds.<sup>1395</sup> The Minister develops the investment policy on receipt of the proposals by IAC and submits it to Parliament for approval to invest the Ghana Petroleum Funds.<sup>1396</sup> The Auditor-General's report stated that the IAC has failed to make proposals, and the Minister proceeded to invest the Ghana Petroleum Funds without an investment policy.<sup>1397</sup> The Auditor-General's 2013 report found that due to IAC's failure to perform its duty, the Finance Minister invested the Petroleum Funds without developing an investment policy.<sup>1398</sup> The conduct violated the provisions of the PRMA without any sanctions to the offending parties.<sup>1399</sup>

The Auditor-General described the investment so far undertaken as conservative.<sup>1400</sup> The description stems from investing in instruments that qualify as low-risk yielding low returns.<sup>1401</sup> The Auditor-General, therefore, urged the Minister to review the range of products funded to generate higher profits.<sup>1402</sup> The Auditor-General's warning is futile because of the lack of policy regarding investing in the Ghana Petroleum Funds.

The PRMA requires the payment of petroleum revenues due to Ghana into the Petroleum Holding Fund by the middle of the ensuing month; in default, it attracts a daily five per cent penalty on the

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<sup>1392</sup> Section 45 (2) and (3) of Act 815. Messrs. Ernst and Young and Price Waterhouse Coopers have prepared Petroleum Funds accounts for the Auditor-General.

<sup>1393</sup> Section 46 (1) and (2) of Act 815.

<sup>1394</sup> Section 46 (3) (a), (b) and (c) of Act 815.

<sup>1395</sup> Section 30 (1) (a) of Act 815.

<sup>1396</sup> Section 25 (a) of Act 815.

<sup>1397</sup> Auditor-General's Report on Petroleum Funds, 2013, 15.

<sup>1398</sup> Auditor-General's Report on Petroleum Funds, 2013, 15.

<sup>1399</sup> Auditor-General's Report on Petroleum Funds, 2013, 15.

<sup>1400</sup> Auditor-General's Report on Petroleum Funds, 2013, 17-18.

<sup>1401</sup> Auditor-General's Report on Petroleum Funds, 2013, 17-18.

<sup>1402</sup> Auditor-General's Report on Petroleum Funds, 2013, 18.

original amount as the non-payment continues.<sup>1403</sup> The 2015 Auditor-General's report revealed the non-payment of US\$ 69.61 million into the Petroleum Holding Fund contrary to the provisions of the PRMA.<sup>1404</sup> The non-payment means that Ghana lost revenue since the amount could have been invested to yield returns.<sup>1405</sup> The amount comprised non-payment of gas supplied to Ghana Gas Company Limited by Ghana National Petroleum Corporation and non-payment of surface rentals<sup>1406</sup> by some upstream companies.<sup>1407</sup>

As an example, the report shows that Oranto/Stone Energy owed US\$ 115,316, which represents non-payment of surface rentals and royalties for two years.<sup>1408</sup> The Ghana Revenue Authority, charged with collecting revenue under the PRMA, failed to demand the amount despite its power to assess, collect, and account for every income due to Ghana.<sup>1409</sup> Where the income becomes outstanding, the PRMA permits the Ghana Revenue Authority to charge a penalty of five per cent of the original amount for each day the default continues.<sup>1410</sup> It is strange for the rents to be outstanding when the PRMA vests the authority with the power to demand the amount and levy penalty on the amount due.

Despite the Auditor-General's 2013 report noting the absence of investment guidelines, the 2015 report indicates the default persists.<sup>1411</sup> The IAC did not provide evidence of meeting the auditors, contrary to the requirement for a quarterly meeting<sup>1412</sup> under the PRMA<sup>1413</sup>. The Minister and the IAC have invested contrary to the investment policy guidelines as required under the PRMA. The IAC has also failed to meet as needed under the PRMA.

The report of the Auditor-General for 2016 showed that as of 31<sup>st</sup> December 2016, an amount of US\$ 130.07 million meant for the Petroleum Holding Fund was outstanding.<sup>1414</sup> The Ghana Revenue Authority had not taken any decision towards collecting the accumulated amount. Lack

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<sup>1403</sup> Section 3 (4) of Act 815.

<sup>1404</sup> Auditor-General's Report on Petroleum Funds, 2015, 8.

<sup>1405</sup> Auditor-General's Report on Petroleum Funds, 2015, 8.

<sup>1406</sup> Auditor-General's Report on Petroleum Funds, 2015, 42.

<sup>1407</sup> Auditor-General's Report on Petroleum Funds, 2015, 8.

<sup>1408</sup> Auditor-General's Report on Petroleum Funds, 2015, 11.

<sup>1409</sup> Section 3 (1) of Act 815.

<sup>1410</sup> Section 3 (4) of Act 815.

<sup>1411</sup> Auditor-General's Report on Petroleum Funds, 2015, 9.

<sup>1412</sup> Section 33 (1) of Act 815.

<sup>1413</sup> Auditor-General's Report on Petroleum Funds, 2015, 9.

<sup>1414</sup> Auditor-General's Report on Petroleum Funds, 2016, 8.

of coordination and collaboration between the institutions means loss of revenue, which could have been invested to generate income. It seems that by the end of 2016, IAC had still failed to meet<sup>1415</sup> as required under the PRMA.<sup>1416</sup> The investment policy guidelines were in place but not finalised, and the Auditor-General was thus unable to determine whether the investment undertaken was sound or not.<sup>1417</sup> The lack of meetings by IAC prompted the Auditor-General to suggest the appointment of persons who can make time for the meetings of the committee.<sup>1418</sup> The inability of members of IAC to meet and develop the investment policy guidelines suggest a lack of commitment and are not devoted to applying themselves to the provisions of the PRMA.

The PRMA states that the Minister must ensure that the Bank of Ghana transfers any portion of the petroleum revenue due to the Ghana National Petroleum Corporation (GNPC) within three days of payment into the Petroleum Funds.<sup>1419</sup> The Bank of Ghana failed to transfer the money to GNPC regarding two oil consignment lifted and, when queried, responded that it could only transfer money to GNPC upon instructions from the Ministry of Finance and the Controller and Accountant-General.<sup>1420</sup> The PRMA provides for the Minister of Finance and Bank of Ghana to effect payment but not in conjunction with any other institution.<sup>1421</sup> The PRMA has a sanctions regime but not invoked when there are infractions.<sup>1422</sup>

Oranto/Stone Energy<sup>1423</sup>, as of 31<sup>st</sup> December 2016, owed surface rentals and royalties to the tune of US\$ 115 316, which was noted outstanding in the 2015 report of the Auditor-General.<sup>1424</sup> The Auditor-General's reference of the company's continued indebtedness gives ground to amend the PRMA mandating PIAC to sue for the recovery of these debts. The Auditor-General wrote to demand the list of defaulting companies in the payment of surface rentals, but the Ghana Revenue Authority failed to respond.<sup>1425</sup> It took a second letter to the Ghana Revenue Authority, and it replied that the upstream companies did self-assessment but defaulted, and the Ghana Revenue

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<sup>1415</sup> Section 33 (1) of Act 815.

<sup>1416</sup> Auditor-General's Report on Petroleum Funds, 2016, 8.

<sup>1417</sup> Auditor-General's Report on Petroleum Funds, 2016, 9.

<sup>1418</sup> Auditor-General's Report on Petroleum Funds, 2016, 9.

<sup>1419</sup> Section 16 (4) of Act 893.

<sup>1420</sup> Auditor-General's Report on Petroleum Funds, 2016, 10-11.

<sup>1421</sup> Section 16 (4) of Act 893.

<sup>1422</sup> See section 58 (1) of Act 815.

<sup>1423</sup> Oranto /Stone Energy is one of the upstream companies that operates within the Jubilee Field oil enclave in Ghana.

<sup>1424</sup> Auditor-General's Report on Petroleum Funds, 2016, 11.

<sup>1425</sup> Auditor-General's Report on Petroleum Funds, 2016, 13.

Authority is now doing the assessment.<sup>1426</sup> This thesis argues that the Ghana Revenue Authority has the power under the PRMA to assess, collect, and account for all revenues due to Ghana and has no justification for failing in this duty.<sup>1427</sup> Where the companies fail to pay after demand, Ghana Revenue Authority must proceed to court to recover the money with interest.<sup>1428</sup> The PRMA, through amendment, must grant PIAC the power to prosecute defaulters.

The Auditor-General's report of 2017 indicated that as of 31<sup>st</sup> December 2017, an amount of US\$ 220.64 million had not been paid into the Petroleum Holding Fund.<sup>1429</sup> The non-payment violates the PRMA because an amount assessed becomes due on the fifteenth of the following month.<sup>1430</sup> The Ghana Gas Company Limited, out of this amount, owed US\$ 219.53 million as the cost of gas supplied to them by the Ghana National Petroleum Corporation.<sup>1431</sup> The outstanding amount of US\$ 1.11 million represented non-payment of the surface rental by companies.<sup>1432</sup> If Ghana had sued the defaulting companies on the PRMA,<sup>1433</sup> an estimated amount of US\$ 3.4 billion would have accrued to the country.<sup>1434</sup> The non-payment amounts to a loss of income since the Ghana Revenue Authority has failed to initiate action for the money; the thesis suggests amending the PRMA to empower the PIAC to proceed against such defaulters.<sup>1435</sup> The report indicates that IAC has failed to develop the investment policy for investing in the Ghana Petroleum Funds; nevertheless, an investment took place, which amounts to a violation of the PRMA.<sup>1436</sup>

One major infraction of the PRMA in 2018 relates to the non-transfer of assessed petroleum revenue into the Petroleum Holding Fund.<sup>1437</sup> The Auditor-General put the figure as of 31<sup>st</sup> December 2018 to be US\$ 310.34 million was not transferred into the Petroleum Holding Fund.<sup>1438</sup>

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<sup>1426</sup> Auditor-General's Report on Petroleum Funds, 2016, 13.

<sup>1427</sup> Section 3 (1) of Act 815.

<sup>1428</sup> Section 3 (1) of Act 815.

<sup>1429</sup> Auditor-General's Report on Petroleum Funds, 2017, 6.

<sup>1430</sup> Section 3 (2) of Act 815.

<sup>1431</sup> Auditor-General's Report on Petroleum Funds, 2017, 6.

<sup>1432</sup> Auditor-General's Report on Petroleum Funds, 2017 6. The defaulting companies are Britannia-U Ghana Limited, Swiss African Oil Company Limited, Sahara Energy Fields Ghana Limited, Gosco/Heritage Exploration and Production Ghana Limited, Saltpond Offshore Producing Company Limited, Medea Development International Limited, CAMAC Energy Ghana Limited, EcoAtlantic/A-Z petroleum Productions Ghana LTC/ PETROGULF, Blue Star Exploration Ghana Limited, UB Group and UB Resources Limited.

<sup>1433</sup> Section 3 (4) of Act 815.

<sup>1434</sup> Auditor-General's Report on Petroleum Funds, 2017, 6.

<sup>1435</sup> See section 3.2 below.

<sup>1436</sup> Auditor-General's Report on Petroleum Funds, 2017, 6. See also section 30 (1) (a) of the PRMA.

<sup>1437</sup> Section 3 (2) of Act 815.

<sup>1438</sup> Auditor-General's Report on Petroleum Funds, 2018, 8.

The inability to transfer the said amount was due to the Ghana National Gas Company Limited's default for gas supplied by Ghana National Petroleum Corporation and non-payment of surface rentals fees unpaid by several entities working in the sector.<sup>1439</sup> The non-transfer of the amount has two effects. The failure to invest as provided for under the PRMA and the late payment should attract interest, but there is no evidence of interest payment.<sup>1440</sup> The issue of companies not honouring their payment obligations under the PRMA is rampant. The Auditor-General singled out three companies: Sahara Energy Limited, Britannia-U Ghana Limited and Swiss Sahara African Oil Company Limited, for failure to pay despite efforts to recover.<sup>1441</sup> However, the report indicates that the Ghana Revenue Authority, in cooperation with the Petroleum Commission, seeks compliance from the entities or applies the necessary sanctions.<sup>1442</sup> This thesis suggests that failure to comply with payment obligations under the PRMA must attract sanctions rather than negotiating with the defaulter. Once a notice of demand is served and the entity defaults, the Ghana Revenue Authority must invoke their powers under the PRMA for assessment, collection accounting for oil revenue due to Ghana.<sup>1443</sup>

## 2.2 The reports of the PIAC

The Public Interest Accountability Committee (PIAC) must issue two reports yearly.<sup>1444</sup> The reports are semi-annual released by 15 September and an annual report issued by 15 March every year and published in at least two national daily newspapers.<sup>1445</sup> PIAC must publish these reports on its website and submit copies to the President and Parliament.<sup>1446</sup> The reports of the PIAC examines government and institutional compliance with the management of the oil revenue, educate the public and give an independent assessment to the President and Parliament regarding the management of oil revenue.<sup>1447</sup> Their duties promote transparency and accountability in the management of oil revenue. The section proceeds to discuss the various findings of PIAC under the following sub-themes:

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<sup>1439</sup> Auditor-General's Report on Petroleum Funds, 2018, 8.

<sup>1440</sup> Section 3 (4) of Act 815.

<sup>1441</sup> Auditor-General's Report on Petroleum Funds, 2018, 9.

<sup>1442</sup> Auditor-General's Report on Petroleum Funds, 2018, 9.

<sup>1443</sup> Section 3 (1) of Act 815.

<sup>1444</sup> Section 56 (a) of Act 815.

<sup>1445</sup> Section 56 (a) of Act 815.

<sup>1446</sup> Section 56 (b) and (d) of Act 815.

<sup>1447</sup> Section 52 (a), (b) and (c) of Act 815.

### 2.2.1 Non-compliance with the PRMA

The Petroleum Revenue Management Act (PRMA) lists the components of petroleum receipts to include surface rentals.<sup>1448</sup> PIAC's report, issued in 2011, stated that Ghana's non-tax revenue account received the surface rental payment instead of the Petroleum Holding Fund, resulting in the underestimation of the Petroleum Holding Fund.<sup>1449</sup> The Ghana National Petroleum Corporation (GNPC) received an amount of US\$ 448, 222, which represented 47 per cent of total government receipts of petroleum revenue.<sup>1450</sup> PIAC reported that it was unable to ascertain the use of the funds since the audited accounts of GNPC were not ready at the time of the report. PIAC admonished the organisation to publish its statements in the interest of transparency and accountability.<sup>1451</sup> PIAC, in its 2012 semi-annual report, indicated that GNPC has accounted for the expenditure of the amount in its accounts presented to Parliament through the government's budget statement.<sup>1452</sup>

PIAC further found that the allocation of funds to the Ghana Petroleum Funds fell short by 82 per cent due to how the Finance Ministry interpreted the PRMA concerning the distribution into the Ghana Petroleum Funds.<sup>1453</sup> The PRMA states that a minimum of 30 per cent of the excess petroleum revenue shall go into the Ghana Heritage Fund and the balance into the Ghana Stabilisation Fund every quarter.<sup>1454</sup> The government chose to compute 70 per cent of quarterly collections of petroleum revenue as the Annual Budget Funding Amount (ABFA) and sent the outstanding amount of 30 per cent to the Ghana Petroleum Funds.<sup>1455</sup> PIAC sought a legal opinion on the issue that revealed the Ministry's interpretation was in error of the PRMA.<sup>1456</sup>

The PRMA requires the Bank of Ghana and the Ministry of Finance to sign an operational management agreement to authorise the bank to invest in the Ghana Petroleum Funds.<sup>1457</sup> PIAC's report showed that the bank invested the Ghana Petroleum Funds without the contract with the

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<sup>1448</sup> Section 6 (a) of Act 815.

<sup>1449</sup> PIAC Annual Report for 2011, 12.

<sup>1450</sup> Section 7 (3) of Act 815.

<sup>1451</sup> PIAC Annual Report for 2011 19-20.

<sup>1452</sup> PIAC semi-annual report for 2012, 2.

<sup>1453</sup> Section 23 (b) of Act 815.

<sup>1454</sup> Section 23 (1) (b) of Act 815.

<sup>1455</sup> PIAC annual report for 2012, 20-21.

<sup>1456</sup> PIAC Annual Report for 2012, 37- 42.

<sup>1457</sup> Section 25 (d) of Act 815.

Finance Ministry; the investment took place outside the purview of the PRMA.<sup>1458</sup> The PRMA stipulates that a minimum of 30 per cent of the total excess petroleum receipts must go to the Ghana Heritage Fund and the balance to the Ghana Stabilisation Fund.<sup>1459</sup> PIAC reported the breach of the provision to the extent that 21 per cent of the excess revenue went into the Ghana Heritage Fund and the Ghana Stabilisation Fund received 79 per cent.<sup>1460</sup> The first year of implementation of the PRMA revealed these infractions. If subsequent reports have these breaches, that would require assessing what contributes to the violations and finding means of addressing the challenges of the management of the petroleum revenue.

PIAC's semi-annual report for 2012 reported that the total petroleum revenue received for six months came up to US\$ 327,172, 427.15.<sup>1461</sup> Of this amount, US\$ 38, 357, 884 meant for the Ghana Petroleum Funds, was allocated to the ABFA.<sup>1462</sup> The distribution contravened the PRMA and denied the Ghana Petroleum Funds of investible funds. PIAC's 2011 annual report identified an anomaly with transfers into the Ghana Petroleum Fund.<sup>1463</sup> The Ghana Stabilisation Fund had an excess of US\$ 9,000,000 meant for the Ghana Heritage Fund, and the 2012 semi-annual report showed that this anomaly exists.<sup>1464</sup> The overpayment was deliberate because of the Minister of Finance's power to cap the Ghana Stabilisation Fund and the excess amount transferred into the Consolidated Fund to make money available for government spending.<sup>1465</sup>

The non-allocation further shows that if money is available for use, the government will choose to spend the money rather than invest it. Thus, the challenge has become whether to invest - or not invest - the Ghana Petroleum Funds or use them to take care of the needs of society.<sup>1466</sup> This thesis advocate using a significant part of the oil revenue and reduces investments due to Ghana's developmental challenges.<sup>1467</sup>

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<sup>1458</sup> PIAC Annual Report for 2011, 30.

<sup>1459</sup> Section 23 (1) (b) of Act 815.

<sup>1460</sup> PIAC Annual Report for 2011, 28.

<sup>1461</sup> PIAC Annual Report for 2012, 12.

<sup>1462</sup> PIAC Annual Report for 2012, 116.

<sup>1463</sup> Section 23 (1) (b) of Act 815.

<sup>1464</sup> PIAC semi-annual report, 2012, 19.

<sup>1465</sup> Section 23 (3) of Act 815.

<sup>1466</sup> Sections 9, 10 and 11 of Act 815.

<sup>1467</sup> Chapter 6, section 3.

PIAC reported that the Ghana Petroleum Funds did not receive an allocation from January to June 2012 with no reason for the non-allocation.<sup>1468</sup> For such lapses, the PRMA requires PIAC to furnish the President and Parliament with copies of its report to assist Parliament and the executive in the performance of their oversight functions.<sup>1469</sup> Parliament has not debated any of the reports issued.<sup>1470</sup> PIAC has recommended that the Finance, Mines and Energy Committees of Parliament seek technical advice to inspect petroleum revenue allocation and spending before budget approval and demand a government response on issues raised by PIAC.<sup>1471</sup> The request by PIAC for technical advice demonstrates the lack of institutional expertise required to manage the oil revenues, which accounts for the breaches recounted.<sup>1472</sup>

The compliance with the PRMA regarding the application of the ABFA was not forthcoming. The PRMA, as amended, states that 70 per cent of the ABFA shall finance public investment expenditure with 25 per cent of the said amount allocated to the Ghana Infrastructure Investment Fund for infrastructure development.<sup>1473</sup> Out of the 70 per cent, 36.73 per cent of the ABFA financed capital expenditure in 2017.<sup>1474</sup> The figures above show the violation of the PRMA, but no sanctions followed the breach of the PRMA. The report of PIAC further revealed that the Ministry of Finance spent 63.27 per cent of the ABFA in 2017 on goods and services.<sup>1475</sup>

In 2017, the PIAC report showed having passed the law in 2010, the regulations on the legislation were still outstanding, having raised the issue in 2012.<sup>1476</sup> In 2017, two more oil fields, Tweneboa-Enyenra-Ntome (TEN) and Sankofa Gye Nyame (SGN), came on stream and the Jubilee Field yielding a total revenue of US\$ 539.832 million to Ghana.<sup>1477</sup> It emerged from the PIAC report that contrary to paying petroleum receipts into the Petroleum Holding Fund at the Bank of Ghana,

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<sup>1468</sup> PIAC semi-annual report, 2012, 19.

<sup>1469</sup> Section 52 (c) of Act 815.

<sup>1470</sup> Section 56 (1) (d) of Act 815.

<sup>1471</sup> PIAC semi-annual report, 2012, 21.

<sup>1472</sup> PIAC semi-annual report, 2012, 21

<sup>1473</sup> Clause 8 (a) and (b) of Act 893.

<sup>1474</sup> PIAC annual report, 2017, 52.

<sup>1475</sup> PIAC Annual Report for 2017, 52.

<sup>1476</sup> PIAC Annual Report for 2017, 4.

<sup>1477</sup> PIAC Annual Report for 2017, 28.

some companies paid petroleum revenues into the Ghana Revenue Authority's account, and the lodgments amounted to US\$ 13,518,852.98 million.<sup>1478</sup>

The inability to track the ABFA sent to the Consolidated Fund has been raised by PIAC.<sup>1479</sup> The committee recommends that the Finance Ministry opens a separate account to receive this amount and render an account for its application to allow PIAC to examine the expenditures.<sup>1480</sup> The recommendation is suitable for accountability purposes, but it would require an amendment of the PRMA to give substance to the suggestion. The amendments to the PRMA in 2015 failed to address this proposal. The Minister must report on the progress of projects financed with proceeds from the ABFA.<sup>1481</sup> The PIAC annual report of 2018 found that from 2011-2016, the Minister has failed to file any such report.<sup>1482</sup> The Minister in 2017 attempted to report on project status but reported in percentage terms which, according to PIAC, is misleading and not helpful.<sup>1483</sup> The infringement of the PRMA continued in 2019. The PRMA states that a maximum of 25 per cent of the amount allocated for public investment under the ABFA must be assigned to the Ghana Infrastructure Investment Fund to facilitate infrastructure development.<sup>1484</sup> PIAC observed in its 2019 report that for two years running, no allocation has come from the ABFA to the Ghana Infrastructure Investment Fund, violating the PRMA.<sup>1485</sup>

The PIAC can only report the default and urge compliance with the PRMA but has no power to sanction the Minister. The practice leaves compliance with the PRMA at the inclination of the institutions and their officers. This thesis suggests that the government is comfortable sticking to the present arrangement with little accountability.

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<sup>1478</sup> PIAC Annual Report for 2017, 36-37.

<sup>1479</sup> PIAC semi-annual report, 2012, 21.

<sup>1480</sup> PIAC semi-annual report, 2012, 21.

<sup>1481</sup> Section 48 (2) (b) of Act 815.

<sup>1482</sup> PIAC annual report, 2018, 90.

<sup>1483</sup> PIAC annual report, 2018, 90.

<sup>1484</sup> Clause 8 (4) (b) of Act 893.

<sup>1485</sup> PIAC annual report, 2019, 55.

### 2.2.2 Misapplication of ABFA

The Ministry proposed four areas for utilising the Annual Budget Funding Amount<sup>1486</sup> (ABFA) in 2012 in the annual budget.<sup>1487</sup> After the approval of the budget, the minister applied the ABFA to fund goods and services and assets at Ministries, Parliament, Departments, Agencies, and intra-sectoral to the neglect of the approved sectors that violates the PRMA.<sup>1488</sup>

The PIAC reported in 2013 that some projects reportedly financed with the ABFA were pretentious because the Ministry failed to provide the details.<sup>1489</sup> PIAC further said that, whereas the PRMA<sup>1490</sup> requires investment in four sectors, the government spread the ABFA in all the twelve areas listed under the PRMA, and the impact on the economy was minimal.<sup>1491</sup> The committee concluded that the government used the ABFA as counterpart funding for government interventions contrary to the provisions of the PRMA.<sup>1492</sup> The situation presents a challenge to utilising the petroleum revenue because, despite the PRMA setting out the use of the oil revenue, the Minister decided to do otherwise.<sup>1493</sup> The Minister's failure to apply the ABFA in four areas of the economy per the PRMA continues to occur,<sup>1494</sup> and oil revenue has impacted the economy of Ghana minimally.<sup>1495</sup> PIAC was critical of using oil revenue on the capacity building because the capacity building is not defined in the PRMA and has become an "amorphous and ambiguous" expenditure.<sup>1496</sup>

PIAC's concern on the ABFA relates to the non-adherence to the provisions in the PRMA<sup>1497</sup> restricting its application to not more than four sectors.<sup>1498</sup> PIAC's report showed that the ABFA went to thirteen areas over the past years, contrary to being confined to four areas<sup>1499</sup> set out in the

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<sup>1486</sup> Sections 18 and 21 of Act 815.

<sup>1487</sup> The four areas were Expenditure and Amortization of Loans for Oil and Gas Infrastructure, Road and Other Infrastructure, Agriculture Modernisation and Capacity Building.

<sup>1488</sup> PIAC annual report, 2018 19-20.

<sup>1489</sup> PIAC annual report, 2013, 43.

<sup>1490</sup> Section 21 (5) of Act 815.

<sup>1491</sup> PIAC annual report, 2013, 43.

<sup>1492</sup> PIAC annual report, 2013, 43.

<sup>1493</sup> PIAC annual report, 2013, 43.

<sup>1494</sup> Section 21 (5) of Act 815.

<sup>1495</sup> PIAC annual report, 2015, 55.

<sup>1496</sup> PIAC annual report, 2015, 56.

<sup>1497</sup> See section 21 (5) Act 815.

<sup>1498</sup> PIAC annual report, 2016, 60.

<sup>1499</sup> See section 21 (5) of Act 815.

PRMA.<sup>1500</sup> The Minister received a commendation from PIAC for using the 2016 ABFA on a smaller number of projects that allowed better observation of the spending impact.<sup>1501</sup>

In 2017 and 2018, the Minister breached the PRMA. The PRMA commits 70 per cent of the ABFA to public investment expenditures.<sup>1502</sup> The Minister, however, in 2017 and 2018, spent 63.27 per cent and 50.87 per cent of the ABFA on goods and services, respectively.<sup>1503</sup> The 2019 PIAC report showed that 45 per cent of ABFA got spent on goods and services, contrary to the provisions of the PRMA.<sup>1504</sup> The issue remains why the Minister consistently in three years has violated the PRMA without any sanction. The continued misapplication of the ABFA affects the intended purpose of earmarking the revenue's use. It remains one of the challenges that require a solution to prevent the resource curse from affecting Ghana.

### 2.2.3 Manipulation of the Ghana Stabilisation Fund

The Ghana Stabilisation Fund (GSF) exists under the PRMA to sustain Ghana's public expenditure during shortfall in petroleum revenues.<sup>1505</sup> The Fund receives from the Petroleum Holding Fund an amount determined by Parliament.<sup>1506</sup> The PRMA further permits the Minister to cap<sup>1507</sup> the Fund prospectively with the approval of Parliament.<sup>1508</sup> The Minister's power to cap the GSF has been manipulated to make part of the oil revenue available to the government. The Bank of Ghana transferred US\$ 351.05 million into the Ghana Petroleum Funds, with the GSF receiving US\$ 245.73 million and the Ghana Heritage Fund received US\$ 105.31.<sup>1509</sup> The GSF earned US\$ 1.40 million and US\$ 1.12 million accrued to the Ghana Heritage Fund as interest.<sup>1510</sup> The closing book balance of the GSF came up to US\$ 319, 034,153.16 at the end of 2013.<sup>1511</sup>

With this closing book balance, the Finance Minister capped the Fund at US\$ 250 million in 2013 when presenting the 2014 budget statement, which made US\$ 69,034,153.16 available to the

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<sup>1500</sup> PIAC annual report, 2016, 60.

<sup>1501</sup> PIAC annual report, 2016, 69.

<sup>1502</sup> Clause 21 (4) of Act 839.

<sup>1503</sup> PIAC annual report, 2018, 90.

<sup>1504</sup> PIAC annual report, 2019, 66.

<sup>1505</sup> Section 9 (2) of Act 815.

<sup>1506</sup> Section 9 (3) of Act 815.

<sup>1507</sup> The PRMA has no guidelines regarding the Minister's power to cap the GSF.

<sup>1508</sup> Section 23 (3) of Act 815.

<sup>1509</sup> PIAC annual report, 2013, 47.

<sup>1510</sup> PIAC annual report, 2013, 47-48.

<sup>1511</sup> PIAC annual report, 2013, 48.

government for spending.<sup>1512</sup> The caution on the conduct of the Finance Minister is that Parliament should cap the Fund before it accumulates money so as not to influence the Finance Minister's recommendation. The Finance Minister breached the PRMA since transfers from the GSF to the Consolidated Fund occurs only during shortfalls in petroleum receipts.<sup>1513</sup> There was no reported shortfall in petroleum revenues when the transfer took place.<sup>1514</sup>

PIAC further observed that the expenditures described as the capacity building was rather expenses incurred for the purchase of consumables, goods, and services for the Ministry of Food and Agriculture and the Ministry of Lands and Natural Resources.<sup>1515</sup> Other agencies that benefitted from the money meant for the capacity building included National Disaster Management Organisation (NADMO), Creative Industry, the Livelihood Empowerment against Poverty (LEAP), Microfinance and Small Loans Centre (MASLOC), the Venture Capital Fund and the Exim Guarantee Fund.<sup>1516</sup> PIAC observed that the payments to these organisations could not qualify as capacity building.<sup>1517</sup> The thesis suggests vesting PIAC with powers of prosecution under the PRMA to initiate prosecution and eradicate some of these expenditures through an amendment.

In 2014, the GSF was capped at US\$ 250 million, leaving an excess amount of US\$ 305.68 million, which was transferred<sup>1518</sup> into the Contingency Fund or for debt repayment.<sup>1519</sup> The Bank of Ghana transferred US\$ 17.43 million into the Contingency Fund, and the balance of US\$ 288.25 million lodged into the debt service account for the payment of debts approved by Parliament.<sup>1520</sup> Only US\$ 179.81 million was utilised to pay domestic debts, leaving an amount of US\$ 108.44 million, which, if left in the GSF, would have attracted interest.<sup>1521</sup> The provision of capping is not helpful because it results in the transfer of the oil revenue into the Contingency Fund and the debt service account, but the funds may lie idle as it happened in 2014.<sup>1522</sup>

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<sup>1512</sup> PIAC annual report, 2013, 49.

<sup>1513</sup> Section 12 (5) of Act 815.

<sup>1514</sup> PIAC annual report, 2013, 89.

<sup>1515</sup> PIAC annual report, 2013, 60-61.

<sup>1516</sup> PIAC annual report, 2013, 61.

<sup>1517</sup> PIAC annual report, 2013, 60.

<sup>1518</sup> Section 23 (4) of Act 815.

<sup>1519</sup> PIAC annual report, 2014, 52.

<sup>1520</sup> PIAC annual report, 2014, 52.

<sup>1521</sup> PIAC annual report, 2014, 53.

<sup>1522</sup> PIAC annual report, 2014, 53.

The PIAC reports' observations indicate that the government is taking advantage of the provision on capping to obtain money from the GSF where there is no shortfall in petroleum revenues, as required under the PRMA.<sup>1523</sup> The practice continues but is not right, as the economy will suffer during shortfall in petroleum revenues.<sup>1524</sup> This thesis argues for the amendment of the provisions on capping. The transfer from the GSF needs revision, and Parliament must examine and approve it if satisfied with the rationale for such transfers.<sup>1525</sup> However, the Finance Minister failed to produce any written record that Parliament granted such approval to utilise the oil revenues.<sup>1526</sup> An amendment of the provisions discussed above, which gives the Finance Minister access to oil revenue, would minimise the effects of the mismanagement.<sup>1527</sup>

The Minister capped the GSF in 2015 at US\$ 300 million, however in the mid-year budget review, the Minister reduced the Fund to US\$ 150 million and made US\$ 95.02 million available to the government.<sup>1528</sup> The PIAC continues to lament that the fund cannot grow to cushion the nation in times of shortfall in oil revenue if the trend continues and recommends a 'static' cap instead of the 'moving' cap operated by Finance Ministers.<sup>1529</sup> This thesis argues for the amendment of the PRMA to set condition precedent before the Minister invokes the right to cap the GSF. Until the change takes care of these lapses, the enactment of the PRMA to ensure the management of the oil revenue to benefit all Ghanaians may be a mirage.<sup>1530</sup>

The PIAC report of 2016 stated that the government received US\$ 207.78 million that year.<sup>1531</sup> The Minister transferred US\$ 21,292,307.70 from the ABFA to the scholarship secretariat for payment of scholarship claims and classified it as capacity building, including oil and gas.<sup>1532</sup> The Ministry did not give details of the beneficiaries except money paid to the scholarship secretariat to pay for

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<sup>1523</sup> Section 3 and section 3.2 below.

<sup>1524</sup> PIAC annual report, 2014, 52.

<sup>1525</sup> Section 23 (4) of Act 815.

<sup>1526</sup> PIAC annual report, 2014, 64.

<sup>1527</sup> Section 23 (4) of Act 815.

<sup>1528</sup> PIAC annual report, 2015, 65-66.

<sup>1529</sup> PIAC annual report, 2015, 65-66.

<sup>1530</sup> See the preamble to the PRMA.

<sup>1531</sup> PIAC annual report, 2016, 25.

<sup>1532</sup> PIAC annual report, 2016, 44.

scholarship claims for 2016.<sup>1533</sup> Disclosure of the money spent is not enough without particulars because the non-inclusion of the beneficiaries depicts a lack of accountability.

The PIAC report of 2018 further shows the abuse of the GSF contrary to the object of setting up the Fund.<sup>1534</sup> The GSF exist to cushion the public in the event of shortfalls in oil revenue.<sup>1535</sup> The GSF must grow and serve its purpose; however, since its inception, an amount of US\$ 714.81 million has been withdrawn from the Fund.<sup>1536</sup> An amount of US\$ 53.69 million supported the national budget, which is the core function of the Fund.<sup>1537</sup> An amount of US\$ 619.73 million and US\$ 41.19 million was applied to debt repayment and transfer into the Contingency Fund, respectively.<sup>1538</sup> Generally, the GSF is not serving its purpose, and PIAC expressed their misgivings regarding these withdrawals and questioned the Minister's action.<sup>1539</sup>

#### 2.2.4 GNPC's Expenditures

The GNPC is the national oil company charged with the exploration, development, production, and disposal of petroleum.<sup>1540</sup> It receives part of the oil revenue to enable the corporation to carry out its core duties which shall be in place for fifteen years from the operation of the PRMA.<sup>1541</sup> The GNPC consistently has spent outside its core scope of activity. First, it financed the Western corridor roads at the cost of US\$ 25.30 million and paid US\$ 18.75 million to Trafigura, an oil company for oil supplied to Bulk Oil Storage<sup>1542</sup> (BOST) which the GNPC guaranteed and was pursuing BOST for the money.<sup>1543</sup> The Minister requested a special advance of US\$ 50 million from GNPC and used US\$17.94 million to recapitalise Ghana National Gas Company (GNGC). There was no information on the outstanding amount, while GNPC's demand from GNGC remains unanswered.<sup>1544</sup> The GNPC gave a loan of US\$ 25, 297,424.63 to GNGC, which stayed outstanding

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<sup>1533</sup> PIAC annual report, 2016, 44.

<sup>1534</sup> PIAC annual report, 2018, 125.

<sup>1535</sup> Section 9 (2) of Act 815.

<sup>1536</sup> PIAC annual report, 2018, 125.

<sup>1537</sup> PIAC annual report, 2018, 125.

<sup>1538</sup> PIAC annual report, 2018, 125.

<sup>1539</sup> PIAC annual report, 2018, 125.

<sup>1540</sup> Section 2 (1) of Ghana National Petroleum Corporation Act, 1983 Act 64.

<sup>1541</sup> Sections 7 (2) (b) and (3) (a) and (b) of Act 815 and clause 6 (1) (a) and (2) of Act 893.

<sup>1542</sup> Bulk Oil Storage is a government entity that stocks petroleum products for sale to oil companies.

<sup>1543</sup> PIAC annual report, 2015, 57.

<sup>1544</sup> PIAC annual report, 2015, 59-60.

at the time of PIAC's report, and PIAC recommended an end to the practice of providing guarantees to State Enterprises.<sup>1545</sup>

With these expenditures, the core duties of GNPC will suffer. Maybe GNPC receives more than what the organisation needs. The practice of spending outside its scope of operation without any reprimand perhaps explains the continued expenditure outside its core areas of activity.<sup>1546</sup> The trend remains since the President appoints the head of the GNPC, who is answerable to the President.<sup>1547</sup> The conduct of the GNPC is not an efficient way to spend the oil revenue, as argued earlier. The mode of appointment of heads of State institutions contributes to the difficulties associated with the functions performed by state institutions. PIAC can only report and has no power under the PRMA to sanction or compel the repayment of these sums back to the GNPC.

The GNPC in 2016 received an allocation of US\$ 88.50 million as against the corporation's expenditure of US\$ 144.52 million, which led to using its cash balance for the difference.<sup>1548</sup> The GNPC has in times past used part of its share of the oil revenue on non-core activities, which has attracted comments from the PIAC. The shortfall shows that the company must examine the application of its share of the oil revenue to areas outside its mandate. In 2016, GNPC spent US\$ 12.64 million to renovate the company's landed properties in Accra, Tema, and Sekondi-Takoradi.<sup>1549</sup> In the same manner, staff cost increased from US\$ 10.23 million in 2015 to US\$ 16.64 in 2016.<sup>1550</sup> It is such expenditures that need scrutiny to prevent abuse. The report of PIAC is silent on the number of properties renovated and the total number of staff employed; these expenditures are on a higher side which needs examination.<sup>1551</sup>

The PIAC report of 2016 had fewer issues regarding infractions. However, PIAC's report shows a need for more monitoring regarding the expenditures incurred by the GNPC. The reduction in the quantum of total receipts by GNPC further shows that Ghana must use oil revenue judiciously to reduce the effect of the resource curse.

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<sup>1545</sup> PIAC annual report, 2015, 60.

<sup>1546</sup> Although section 58 (1) prescribes penalties for infringing the PRMA, there is no evidence of any institution being reprimanded since the implementation of the Act.

<sup>1547</sup> Article 195 (1) of Ghana's Constitution.

<sup>1548</sup> PIAC annual report, 2016, 47.

<sup>1549</sup> PIAC annual report, 2016, 51.

<sup>1550</sup> PIAC annual report, 2016, 51.

<sup>1551</sup> PIAC annual report, 2016, 51.

The GNPC in 2017 received an amount of US\$ 182.04 million of the oil proceeds.<sup>1552</sup> The corporation had to pay the litigation cost between Ghana and La Cote d'Ivoire regarding the maritime boundary dispute from its share of the oil proceeds. As PIAC pointed out, the suit was between two countries and not between a State and a company to warrant payment by the GNPC and suggested that the government refund the litigation cost to GNPC.<sup>1553</sup> In 2018, Parliament approved an amount of US\$ 926.13 million for the activities of GNPC.<sup>1554</sup> The company received US\$ 286.66 million.<sup>1555</sup> Despite the warning by PIAC to GNPC to focus on their core mandate, GNPC spent 17 per cent representing US\$ 47.47 million on exploration and development projects, including funding the Maritime Secretariat activities with Togo.<sup>1556</sup> The expenditure on the Maritime Secretariat has no bearing on their activities.

The PIAC report for 2018 shows that the Ministry of Finance and Ghana Gas Company Limited owed GNPC US\$ 50 million from 2014, being money used for road construction to facilitate transportation of gas from Jubilee Field but remains unpaid.<sup>1557</sup> GNPC further made payments and guaranteed some State Enterprises to the tune of US\$ 228, 311, 998 .4, which said sums remain outstanding as of June 2018.<sup>1558</sup> The 2019 report of PIAC demonstrates that GNPC has not heeded the warning to stop providing guarantees to State Enterprises. The corporation spent about US\$ 645, 511, 405 .40 as guarantees for companies<sup>1559</sup> in 2019, more than twice the amount spent in 2018.<sup>1560</sup>

PIAC reports from 2011 to 2018 highlight non-compliance with the provisions of the PRMA, misapplication of the ABFA, manipulation of the Ghana Stabilisation Fund and expenditures incurred by GNPC outside its core mandate. The infractions present a challenge to the realisation of the hopes expressed in the PRMA.<sup>1561</sup> The contraventions require immediate attention, having

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<sup>1552</sup> PIAC annual report, 2017, 56.

<sup>1553</sup> PIAC annual report, 2017, 58 and 85.

<sup>1554</sup> PIAC annual report, 2018, 92.

<sup>1555</sup> PIAC annual report, 2018, 94.

<sup>1556</sup> PIAC annual report, 2018, 95.

<sup>1557</sup> PIAC annual report, 2018, 83.

<sup>1558</sup> PIAC semi-annual report, 2018, 84.

<sup>1559</sup> The beneficiary State institutions included, the Government of Ghana, Ministry of Finance, Tema Oil Refinery, ECG-BG, Ghana National Gas Company Limited, Ministry of Education, Bulk Oil Storage, Volta River Authority and Bank of Ghana

<sup>1560</sup> PIAC annual report, 2019, 70-71.

<sup>1561</sup> The preamble to the PRMA.

regard to the volatile nature of oil revenue.<sup>1562</sup> The violations in the PRMA need redress if Ghana wants to overcome the resource curse. The thesis advocates that PIAC must have prosecutorial powers as an independent entity under the PRMA to address the challenges enumerated above.

### 3. Evaluation of Reports

Having discussed the management of the oil revenues through the reports of the Auditor-General and PIAC, in the preceding section, the thesis proceeds to evaluate and give recommendations that will help resolve the challenges identified with the management of Ghana's oil revenue. The evaluation seeks to reveal the shortcomings, which then form the basis for recommending an amendment to the PRMA.

#### 3.1 Auditor-General

The Auditor-General's reports repeatedly show that State institutions mandated under the PRMA to perform their assigned duties have failed to do so. The reports cite the Investment Advisory Committee, the Ghana Revenue Authority, the Minister of Finance and the Bank of Ghana as flouting the provisions of the PRMA. Non-compliance with the responsibilities assigned to State institutions under the PRMA poses a challenge with the implementation of the PRMA.<sup>1563</sup>

The continued absence of the investment policy guidelines is not suitable for the effective utilisation and management of the Ghana Petroleum Funds and needs immediate attention.<sup>1564</sup> Parliament has an oversight responsibility regarding audited reports prepared by the Auditor-General under the PRMA.<sup>1565</sup> Upon receipt of PIAC's reports depicting violations by State institutions, Parliament, through its supervisory role, ought to have stopped the further investment of the Ghana Petroleum Funds. Still, Parliament has failed to take any such step.

The Auditor-General's report ought to have prompted Parliament to stop any further investment until the guidelines are issued because Parliament must approve.<sup>1566</sup> The actions of the officers of the Finance Ministry and the IAC suggest an indifferent attitude. The solution lies in amending the PRMA to get another body (preferably the PIAC) to act on these reports. The suggestion stems

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<sup>1562</sup> Chapter 2, section 2.1.1.

<sup>1563</sup> Chapter 5, sections 2.3 and 4.

<sup>1564</sup> The Auditor-General's report as discussed above speaks to the lack of guidelines on investment policies.

<sup>1565</sup> Section 46 (2) and (5) of Act 815.

<sup>1566</sup> Section 30 (1) (a) of Act 815.

from the independent composition and operations of PIAC, which is critical of all stakeholders mentioned in the PRMA.

The non-payment of the surface rentals by some upstream companies is unacceptable because the PRMA vests the Ghana Revenue Authority with the power to perform that function.<sup>1567</sup> The power available to the Ghana Revenue Authority under the PRMA is not being used, although a breach has occurred.<sup>1568</sup> The need for the institutions to collaborate and share information on non-payments of revenue would reduce the debts incurred under the funds.<sup>1569</sup> This thesis suggests the following to address the continued non-payment of revenue due to the State. Firstly, the Bank of Ghana as a keeper of all petroleum funds must furnish the legal department of the Ghana Revenue Authority with a defaulters list to start the pursuit of these arrears in court since the PRMA gives the mandate of collection to the Ghana Revenue Authority.<sup>1570</sup> Secondly, an amendment to include the Attorney-General in the PRMA to pursue the arrears in court since the Constitution vests the office with the power to initiate civil cases on behalf of the State.<sup>1571</sup> Thirdly, PIAC may be empowered through the amendment of the PRMA to proceed against defaulters as an additional function.<sup>1572</sup>

The State institutions contravene their duties, and due to lack of prosecutions in the PRMA, the same breaches occur over successive years.<sup>1573</sup> This thesis recommends the amendment of the PRMA to prosecute public officials for the violations. The prosecutions and possible sanctions would compel the officials of the State institutions to act or face penalties once the amendment takes place. If the infractions continue as the reports set out, without any reprimand, it undermines the objectives of enacting the PRMA.

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<sup>1567</sup> Section 3 (1) of Act 815.

<sup>1568</sup> Section 3 (4) of Act 815.

<sup>1569</sup> See the reports of PIAC from 2011 to 2017 so far discussed shows non-payment of debts under the PRMA, but to date no action has been taken to address the challenge.

<sup>1570</sup> Section 3 (1) of Act 815.

<sup>1571</sup> Article 88 (5) of Ghana's Constitution.

<sup>1572</sup> See section 53 for the functions of the PIAC.

<sup>1573</sup> Chapter 5, section 4.

### 3.2 Public Interest Accountability Committee (PIAC)

The reports examined show deficiencies in the PRMA that allows the State to act in a manner inconsistent with the provisions of the PRMA.<sup>1574</sup> The existence of the Act has not prevented the State from working against the prescriptions of the law.<sup>1575</sup> The issues remain unresolved despite earlier annual reports issued by the Auditor-General and the PIAC.<sup>1576</sup> The problems present challenges in two areas: how to ensure compliance with the provisions of the PRMA and the inability of the State to prosecute offenders.<sup>1577</sup> The failure of the State to sanction State institutions assigned duties under the PRMA probably explains the continued breaches of the provisions of the PRMA.<sup>1578</sup>

The inability of State institutions to fulfil their legislative mandate has become a significant challenge to the enforcement of the provisions PRMA.<sup>1579</sup> The IAC must submit investment proposals to the Finance Minister to develop investment guidelines for investing in the Ghana Petroleum Funds.<sup>1580</sup> The 2016 Auditor-General's report states that investment policy guidelines was in draft form and not finalised; meanwhile, the Ministry of Finance has continued to invest the Ghana Petroleum Funds in the absence of the policy.<sup>1581</sup>

The IAC must meet at least once every quarter for deliberations.<sup>1582</sup> The said meeting has never taken place from the Auditor-General's report of 2016 since the IAC failed to furnish minutes of meetings attended by their members.<sup>1583</sup> IAC was unable to comply with the PRMA, and no sanctions applied to those who are members of the committee.<sup>1584</sup> Regarding meetings of IAC, the PRMA states that the chairman at the request in writing of three or more members must convene a meeting within seven days from receipt of the letter.<sup>1585</sup> The provision on meetings of the IAC is not helpful since holding meetings is at the inclination of at least three members writing to the

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<sup>1574</sup> See section 2.2 supra.

<sup>1575</sup> Sections 23 (3) and (4) and 19 (1) (a) and (b) of Act 815.

<sup>1576</sup> See section 2.2 supra.

<sup>1577</sup> The inception of the PRMA has not witnessed any prosecution despite breaches of the PRMA.

<sup>1578</sup> Chapter 5, section 4 and 5.

<sup>1579</sup> Chapter 5, section 4.

<sup>1580</sup> Sections 25(a) and 30 (1) (a) of Act 815.

<sup>1581</sup> Auditor-General's report on Petroleum Funds, 2016, 9.

<sup>1582</sup> Section 33 (1) of Act 815.

<sup>1583</sup> Note 1472, 9.

<sup>1584</sup> There is no evidence on record for any sanctions being applied.

<sup>1585</sup> Section 33 (2) of Act 815.

chairperson.<sup>1586</sup> The arrangement makes it optional for the holding of IAC meetings. The text of the PRMA is not helpful and needs specific wording by way of amendment to make it mandatory for the holding of meetings.<sup>1587</sup>

The PRMA gives the Ghana Revenue Authority the responsibility to ensure payments into the Petroleum Holding Fund by entities.<sup>1588</sup> Upon payment, the body must write to inform the Ghana Revenue Authority of the said payment.<sup>1589</sup> In the event of non-payment, the PRMA empowers the Ghana Revenue Authority to charge a 5 per cent penalty on the original amount for default daily.<sup>1590</sup> The reports of the Auditor-General mention the non-payment of surface rentals and royalties by the upstream companies.<sup>1591</sup> Although the PRMA grants power to the Ghana Revenue Authority to collect petroleum revenue due to Ghana, the potential remains unutilised to the detriment of Ghana.<sup>1592</sup>

The inaction of the Ghana Revenue Authority becomes disturbing when the Revenue Administration Act<sup>1593</sup> gives it the ability to use other means to recover tax from taxpayers who default.<sup>1594</sup> The PRMA and the Revenue Administration Act's provisions vest the Ghana Revenue Authority to collect outstanding revenue for the Petroleum Holding Fund.<sup>1595</sup> The inability of the Ghana Revenue Authority to use its mandate suggests inefficiency.<sup>1596</sup> This thesis recommends that the power to collect outstanding revenues due to the Petroleum Holding Fund be supervised and monitored by another body to ensure compliance with the PRMA. The Ghana Revenue Authority has been indifferent to collecting outstanding revenues due to the Petroleum Holding Fund.

The yearly reports issued by the PIAC showed infractions and non-compliance with the provisions of the PRMA.<sup>1597</sup> The reports indicate that some of the breaches occurred yearly because the

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<sup>1586</sup> Section 33 (2) of Act 815.

<sup>1587</sup> Section 33 (2) of Act 815 needs some specificities for the holding of meetings.

<sup>1588</sup> Section 3 (1) of Act 815.

<sup>1589</sup> Section 3 (3) of Act 815.

<sup>1590</sup> Section 3 (4) of Act 815.

<sup>1591</sup> The reports released in 2013, 2015 and 2016 mentions the non-payments.

<sup>1592</sup> Section 3 (1) of Act 815.

<sup>1593</sup> Revenue Administration Act, 2016, Act 915.

<sup>1594</sup> Sections 51-57 of Act 915 discuss several ways the Ghana Revenue Authority can enforce payment of tax through court actions, creating charges over the assets of the tax payer, taking possession of charged assets, sale of charged assets and prevent the tax payer from leaving the jurisdiction of Ghana.

<sup>1595</sup> Section 3 (1) of Act 815 and sections 51 to 62 of Act 915.

<sup>1596</sup> Chapter 5, section 4.

<sup>1597</sup> See section 2.1 to 2.2 supra.

previous reports highlighted the violations.<sup>1598</sup> PIAC reports further revealed problems associated with the powers of the Minister regarding the implementation of the PRMA.<sup>1599</sup> The first relates to capping the Ghana Stabilisation Fund and transferring the excess into the Contingency Fund to pay debt approved by Parliament.<sup>1600</sup> The second issue deals with the transfer of the ABFA into the Consolidated Fund because the scrutiny that exists under the PRMA does not apply to the Consolidated Fund.<sup>1601</sup> The practice makes money available to the State to spend but unaccounted for under the PRMA.<sup>1602</sup> The PIAC has recommended creating a separate account at the Ministry of Finance to allow the Ministry to render an account of the expenditure of the use of ABFA to reflect ‘transparency and accountability.’<sup>1603</sup> The recommendation from PIAC is sound, but its implementation depends on amending the PRMA to take care of this situation.

PIAC reports discussed that contrary to the provisions of the PRMA, the Minister of Finance used the ABFA on projects not approved under the budget.<sup>1604</sup> The ABFA, instead of applying it to four sectors as set out under the PRMA, sometimes financed the twelve areas of the economy listed in the PRMA.<sup>1605</sup> With such conduct, the areas earmarked for the utilisation of the said revenue suffer. The PIAC report further mentioned that in 2012, the ABFA was used to fund expenditures other than what the PRMA states.<sup>1606</sup> The Ministry used part of the ABFA to finance goods and services and assets for ministries, departments, agencies, and Parliament.<sup>1607</sup> PIAC report of 2012 stated that the report on expenditures sent to Parliament by the Ministry differed in content from the details set out in PIAC’s report.<sup>1608</sup> This thesis suggests that if Parliament pays attention to the reports presented by the PIAC, it would have realised that the Minister abused the approvals given for the expenditure of the ABFA. The silence of Parliament on the misapplication negates the oversight responsibilities of Parliament.

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<sup>1598</sup> See section 2.1 to 2.2 supra.

<sup>1599</sup> See section 2.2 above.

<sup>1600</sup> Section 23 (3) and (4) of Act 815.

<sup>1601</sup> Section 19 (1) (a) and (b) of Act 815.

<sup>1602</sup> See the combined operation of sections 19(1) (a) and (b) and 23 (3) and (4) of Act 815.

<sup>1603</sup> PIAC semi-annual report, 2012, 21 and PIAC annual report, 2012, 28.

<sup>1604</sup> See section 2.2.2 above.

<sup>1605</sup> Section 21 (5) of Act 815.

<sup>1606</sup> PIAC annual report, 2012, 27.

<sup>1607</sup> PIAC annual report, 2012, 19-20.

<sup>1608</sup> PIAC annual report, 2012, 20.

The GNPC is a national oil company.<sup>1609</sup> The corporation receives part of the oil revenues to aid its core duties of researching to prepare seismic reports for prospective investors.<sup>1610</sup> However, the reports showed that GNPC granted loans to State institutions, paid for certain transactions and acted as a guarantor for some State institutions.<sup>1611</sup> The actions of GNPC are against the rationale for allocating the money to the corporation. Because these infractions are left unpunished, GNPC is encouraged to continue pursuing the agenda and serving as a financier for some State institutions.<sup>1612</sup>

#### 4. Conclusion

This chapter discusses the reports issued by the Auditor-General and the Public Interest Accountability Committee (PIAC) regarding applying the oil revenue since Ghana's commercial exploitation commenced in 2010.<sup>1613</sup> One trend that runs through the report is State institutions acting contrary to the provisions of the PRMA.<sup>1614</sup> The Ministry of Finance has, to date, failed to issue regulations on the PRMA.<sup>1615</sup> The evaluation of the reports issued by the Auditor-General and the PIAC about the management of Ghana oil revenue reveals specific challenges.<sup>1616</sup> Among others, the implementation has shown the need to maximise transparency and accountability of ABFA funded projects and empower the PIAC to undertake its oversight responsibilities.<sup>1617</sup>

The PRMA gives the PIAC power to provide 'independent assessments on the management and use of petroleum revenues...'<sup>1618</sup> However, all the information used to prepare its reports emanates from the government with no independent means to ascertain its authenticity.<sup>1619</sup> The Africa Centre for Energy Policy (ACEP, Ghana) argues that accountability institutions should develop their

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<sup>1609</sup> Section 29 (1) of Ghana National Petroleum Corporation Act, 1983, Act 64.

<sup>1610</sup> Section 7 (2) (b) and 3 (a) and (b) of Act 815 and clause 16 (3) of Act 893.

<sup>1611</sup> See section 2.2.4 above.

<sup>1612</sup> Lack of prosecution makes it more compelling for the amendment of the PRMA to empower the PIAC to undertake prosecutions as a result of breaches of the PRMA.

<sup>1613</sup> See section 2, 2.1, 2.2, (2.2.1-2.2.4) above.

<sup>1614</sup> Sections 2.1 and 2.2 (2.2.1-2.2.4) above.

<sup>1615</sup> Gyimah Boadi et al., (note 705), 100. The article laments the absence of regulations to operationalise the legislation in the petroleum sector raising fears about the watering down the safeguards in the statutes.

<sup>1616</sup> See section 2.1, 2.2 (2.2.1-2.2.4) above.

<sup>1617</sup> Adam, 'Ghana Petroleum Revenue Management Act: Back to Basics', 20017, 1-2 and 6-7, available at <https://resourcegovernance.org/analysis-tools/publications/ghana-petroleum-revenue-management-act-back-basics> accessed 10 March 2021.

<sup>1618</sup> Section 52 (c) of Act 815.

<sup>1619</sup> Amin, (note 852), 45.

capability to undertake their accountability duties.<sup>1620</sup> The study supports the quest for an amendment to clothe the PIAC with more powers. Although PIAC was conceived of as an oversight body to fight corruption, transparency, and accountability, it is a toothless bulldog in its present form.<sup>1621</sup> The PIAC highlights the violations in its reports but lacks the power to take any further step regarding sanctions.<sup>1622</sup> PIAC, which under the PRMA spearheads accountability, has become a reporting body that churns out reports without action.<sup>1623</sup> The need to amend the PRMA to clothe the PIAC with prosecutorial powers to sanction erring institutions is paramount to achieve PRMA's objective.<sup>1624</sup> The committee can competently spearhead the campaign to sanitise the petroleum sector regarding the role of institutions and the application of the oil revenues.

The issues discussed highlight the discussions in chapter 4 of this thesis that proper governance and a legal framework can help Ghana manage oil revenue to develop the nation.<sup>1625</sup> The PRMA needs an amendment to vest the PIAC with power to prosecute since the Attorney-General has refused to initiate any action to punish erring institutions, PIAC having signed a Memorandum of Understanding with the Economic and Organised Crime Office (EOCO) to facilitate the prosecutions.<sup>1626</sup> The position of PIAC requires more power to enable the body to undertake its functions and safeguard the oil revenues.<sup>1627</sup>

For Ghana to develop economically and benefit from its oil revenue depends on the 'autonomy, legitimacy, and discipline of leaders and institutions.'<sup>1628</sup> Ghana needs to tackle the problematic provisions of the PRMA and other constitutional provisions, the operations of which render State institutions ineffective.<sup>1629</sup> Ghana's management of the oil revenue signifies uncoordinated execution of projects and misapplication of funds that cannot transform the economy.<sup>1630</sup>

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<sup>1620</sup> Amin, (note 852), 45.

<sup>1621</sup> Opong, (note 713), 326.

<sup>1622</sup> Section 2.2 (2.2.1-2.2.4) above.

<sup>1623</sup> Aryeetey and Ackah, *The Boom, the bust, and the dynamics of oil resource management in Ghana*, Wider Working Paper 2018/89, 2018, 13. Available at <https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2018-89.pdf> accessed 15 March 2021.

<sup>1624</sup> Section 3.2 above.

<sup>1625</sup> Chapter 4, section 3.2.

<sup>1626</sup> 'PIAC to Sign MoU with EOCO', at <http://www.peacefmonline.com/pages/business/economy/201902/375334.php> accessed 13 March 2021.

<sup>1627</sup> Opong, (note 713), 326.

<sup>1628</sup> Samatar, (note 925), 188.

<sup>1629</sup> Article 58 (1) and 70(1) of Ghana's Constitution.

<sup>1630</sup> Stephens, 'Framework for petroleum revenue management in Ghana: current problems and challenges', *Journal of Energy and Natural Resources Law*, Vol. 37 (1), 2019, 142-143.

The central issue is how Ghana would overcome the problems enumerated above with the identification of these challenges. In addressing these issues, the thesis resorts to the experiences of Norway and Botswana's application of their resource revenue and ascertain what lessons Ghana may learn from their experience, which is the focus of chapter 8. The next chapter discusses the examples of Norway and Botswana regarding the management of resource revenues and lessons Ghana can learn to address the issues raised in this thesis.

# Chapter 8: Examples for the Management of Resource Revenues: Lessons from Norway and Botswana

## 1. Introduction

Chapters 4, 5, 6 and 7 identify the weak points and challenges associated with the Petroleum Revenue Management Act (PRMA). These chapters posit that the PRMA requires amendment because the continued management of the oil revenue under the current legal regime is unfavourable to Ghana and cannot help Ghana overcome the resource curse.<sup>1631</sup> Chapter 4 gives an overview of the provisions of the PRMA in the context of transparency and accountability.<sup>1632</sup> The discussion reveals that transparency and accountability provisions in the PRMA cannot prevent resource curse in its current form and creates a weak link that requires immediate attention.<sup>1633</sup> By safeguarding oil revenue for development, the chapter suggests the involvement of Civil Society Organisations, academic and research institutions, and adopting the international policy guidelines on managing resource revenue.<sup>1634</sup>

Institutions play a critical role in managing oil revenue.<sup>1635</sup> Unfortunately, the quality of institutions in Ghana is compromised because the President by the constitutional architecture appoints all heads of the State institutions.<sup>1636</sup> This practice has rendered the institutions lame, unable to challenge the President's instructions for fear of losing their jobs.<sup>1637</sup> Chapter 6 highlights the established funds, their management and consequences under the PRMA. The operation of the funds as they exist now permits the Minister to cap the Ghana Stabilisation Fund and transfer the excess into the Contingency Fund or for repayment of debts approved by Parliament.<sup>1638</sup> The

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<sup>1631</sup> See chapters 4, 5, 6, and 7 above.

<sup>1632</sup> Chapter 4, section 4.

<sup>1633</sup> Chapter 4, section 4

<sup>1634</sup> Chapter 4, section 3.3, 3.3.1-3.3.3.

<sup>1635</sup> Chapter 5, sections 2.3 and 5.

<sup>1636</sup> Chapter 5, section 5.

<sup>1637</sup> Chapter 5, section 5.

<sup>1638</sup> Chapter 6, sections 2.2.1, and 4.

Annual Budget Funding Amount (ABFA), which supports the budget, goes into the Consolidated Fund.<sup>1639</sup> These two funds are not subject to the accountability regime that exist under the PRMA, which is a cause for concern.<sup>1640</sup> The transfers to these funds further make part of the oil revenue available to the government to spend outside the PRMA.<sup>1641</sup>

Another challenge associated with the operation of the PRMA relates to executive dominance and influence with the management coupled with the Minister's discretionary powers, which endanger the oil revenue.<sup>1642</sup> The lack of a national development plan in Ghana to direct development with the oil revenue militates against Ghana's oil revenue management.<sup>1643</sup> How Ghana will address these weak points and challenges identified remains a significant concern. It is helpful to turn to some examples of best practices to help identify possible solutions to the challenges posed. Given the earlier motivation<sup>1644</sup> in favour of looking beyond Ghana's own experience for inspiration in resolving remaining challenges, the thesis proceeds to consider, in this chapter, the best practices existing in Norway and Botswana in the management of their resource revenues. The chapter provides the background of Norway and Botswana in the context of how the two countries have managed their resource revenues to impact their economies.<sup>1645</sup> The thesis then draws lessons from the experiences of the two countries as recommended solutions to enhance the management of Ghana's oil revenue.

The reason for selecting Norway is the effectiveness in managing its petroleum revenues compared with the record of Ghana in managing its resource revenues.<sup>1646</sup> Norway's experience shows successful management of its natural resources that gives lessons for other resource-rich economies.<sup>1647</sup> Norway is a developed country in Europe, and Botswana has done well in managing mineral revenue with a better economy than other Sub-Saharan African countries.<sup>1648</sup> Botswana is an African country with more semblance than Ghana. Since independence, Botswana boasts of quality institutions that place constraints on the political elite and charting development through

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<sup>1639</sup> Chapter 6, sections 2.3 and 4.

<sup>1640</sup> Chapter 6, section 4.

<sup>1641</sup> Chapter 6, section 4.

<sup>1642</sup> Chapter 7, section 4.

<sup>1643</sup> Chapter 7, section 4.

<sup>1644</sup> Chapter 1, section 5.

<sup>1645</sup> See below section 3.1 and 3.2.

<sup>1646</sup> See chapters 1 and 7, on mismanagement of resources and accountability regime under the PRMA respectively.

<sup>1647</sup> Ramirez-Cendro et al., (note 130), 85.

<sup>1648</sup> Sarraf and Jiwanji, (note 124), 9.

national development plans.<sup>1649</sup> The following section engages the different models employed by Norway and Botswana to manage their resource revenue. The thesis from these two countries will identify, list and discuss the essential legal and institutional best practices in both countries. The thesis will use these indicators to assess the Ghanaian model and determine what Ghana can learn based on the problems identified in Chapters 4-7 of this research.

## 2. Country Contexts

This section considers the countries' background to study their model of managing resource revenue to enable Ghana to learn from their system. The section examines the framework of Norway and Botswana in the management of their resource revenues, which has aided the countries to combat the resource curse. Studying their systems will reveal how they have addressed the challenges identified and discussed in this thesis.<sup>1650</sup> This thesis has examined the provisions in the PRMA regarding transparency and accountability, institutional role in managing the funds, the various funds created and the management of these funds. The study has made use of reports issued by the Auditor-General and the Public Interest Accountability Committee, which exercise reveals that the operation of the PRMA under the current legal regime is problematic.<sup>1651</sup>

### 2.1 Norway's Model

The selection of Norway as a jurisdiction whose experience Ghana could learn from is due to the management of its oil revenues to create a thriving economy compared with Ghana's record in managing its resource revenues.<sup>1652</sup> The system of management adopted by Norway gives lessons for developing resource-rich countries.<sup>1653</sup> The key to this achievement is its development of strategies for its oil and gas deposits, including revenue management.<sup>1654</sup> At the time of oil discovery, Norway's advantage was its competent bureaucracy that has administered earlier natural

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<sup>1649</sup> Acemoglu et al., (note 131), 2.

<sup>1650</sup> See chapters 4, 5, 6, and 7.

<sup>1651</sup> Chapter 7, sections 2.1 and 2.2.

<sup>1652</sup> Chapter 1, section 5.

<sup>1653</sup> Ramirez-Cendrero et al., (note 130), 85.

<sup>1654</sup> Østerud, 'Introduction: The Peculiarities of Norway', *Western European Politics*, Vol. 28 (4), 2005, 708.

resources.<sup>1655</sup> Norway has a diversified economy and strong State institutions that have succeeded to handle the pressures of the oil boom.<sup>1656</sup>

The choice of Norway stems from the fact that the country does not face the same issues such as poverty, corruption, past colonialism as African Countries. Norway has operated a revenue management legal regime that has helped the country manage the funds appropriately.<sup>1657</sup> The Fund has features that limit the government's control and promotes transparency.<sup>1658</sup> The study of Norway allows Ghana to consider Norway's experience at a different phase of legal, political, social, and economic advancement.<sup>1659</sup> In scrutinising the Norway experience, it would be enough motivation to reform, adjust, and determine which law and practice must be incorporated to suit the Ghanaian context for their benefit.<sup>1660</sup>

### 2.1.1 Management of oil revenue

Oil and gas have proved unfavourable to the economic growth of some resource-rich countries, termed as the resource curse.<sup>1661</sup> This description does not, however, fit Norway, despite being well-endowed with natural resources.<sup>1662</sup> Norway's position is that natural resources are for all and that development must benefit society and future generations.<sup>1663</sup> The same official position exists in Ghana per the Constitution, but accountability remains a challenge in Ghana.<sup>1664</sup> The idea encouraged the Norwegian government to form a government commission for advice on oil revenue.<sup>1665</sup>

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<sup>1655</sup> Thurber et al., 'Norway's Evolving Champion: Statoil and the Politics of State Enterprise, Program on Energy and Sustainable Development Working Paper No. 92, 2010, 10.

<sup>1656</sup> Karl, (note 46), 216.

<sup>1657</sup> Norway by an Act of Parliament created, the Norwegian Government Petroleum Fund in 1990 and in 2006, changed the name to Government Pension Fund-Global.

<sup>1658</sup> Velculescu, (note 128).

<sup>1659</sup> Peter de Cruz, (note 123), 24.

<sup>1660</sup> Peter de Cruz, (note 123), 24.

<sup>1661</sup> See chapter 2. See also Sachs and Warner, 'Natural Resources Abundance and Economic Growth', NBER Working Paper No. 5398 and Mehlum et al., (note 269).

<sup>1662</sup> Holden, 'Avoiding the resource curse the case Norway', Energy Policy, 2013, Vol. 63, 873.

<sup>1663</sup> Holden, (note 1662), 873.

<sup>1664</sup> Article 257 (6) of Ghana's Constitution.

<sup>1665</sup> NOU, 1983 27: Tempoutvalget. NOU's are reports published by committees or working groups appointed by the government or a ministry. See also Holden, (note 1634), 873.

The commission recommended the formation of a buffer fund to transform the natural resources wealth into financial wealth.<sup>1666</sup> In 1990, the government formed the Petroleum Fund through an Act<sup>1667</sup> of Norwegian Parliament (*Stortinget*).<sup>1668</sup> Norway amended the Government Petroleum Fund Act of 1990,<sup>1669</sup> and the name changed to the Government Pension Fund Act of 2005.<sup>1670</sup> The Government Pension Fund comprises two funds, namely the Government Pension Fund-Global and Government Pension Fund-Norway.<sup>1671</sup> The Government Pension Fund-Global is a deposit account with the Central Bank (Norges), while *Folketrygdfondet* handles the Government Pension Fund- Norway.<sup>1672</sup> The *Folketrygdfondet* is a professional investment company appointed by the Ministry of Finance to manage the Government Pension Fund-Norway.<sup>1673</sup> The Ministry of Finance sets the investment directives for the two institutions.<sup>1674</sup>

The creation of the Government Pension Fund serves as long-term savings to secure the resource revenues, diversify the economy, and ensure that future generations benefit from the Fund's wealth.<sup>1675</sup> The Fund insulates the Norwegian domestic economy from the resource curse because the sudden influx of money into an economy can adversely affect other parts.<sup>1676</sup> The Fund's establishment provides the government with the means to address issues of the economy, serving as a stabilisation fund, replacing resource rent upon depletion of the oil and gas and provides support for the national pension system.<sup>1677</sup>

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<sup>1666</sup> Holden, (note 1662), 873.

<sup>1667</sup> Government Petroleum Fund (Act of June 22, 1990, No. 36).

<sup>1668</sup> Skancke, (note 323), 318.

<sup>1669</sup> The Government Petroleum Fund Act (no. 36 of 22 June 1990).

<sup>1670</sup> The Government Pension Fund Act (no. 123 of 21 December 2005). This Act repeals Act no. 36 of 22 June 1990.

<sup>1671</sup> Backer, 'Sovereign Wealth Funds as Regulatory Chameleons: The Norwegian Sovereign Wealth Funds and Public Global Governance through private Global Investment', *Georgetown Journal of International Law*, Vol. 41, 2010, 451. See also section 2 of the Government Pension Fund Act (no. 123 of 21 December 2005).

<sup>1672</sup> See section 2 of the Government Pension Fund Act (no. 123 of 21 December 2005). See also Backer, (note 1645), 452 and Clark et al., 'The Legitimacy and governance of Norway's sovereign wealth fund: the ethics of global investment', *Environmental and Planning A: Economy and Space*, Vol. 42 (7), 2010, 1723.

<sup>1673</sup> The Government Pension Fund Norway. Available at [www.folketrygdfondet.no](http://www.folketrygdfondet.no) accessed 17 March 2021.

<sup>1674</sup> Andrzej et al., 'The Norwegian Model of Oil Extraction and Revenues Management in Uganda', *African Studies Review*, Vol. 60, (3) 2017, 187.

<sup>1675</sup> Chamber et al., 'The Norway Model', *Journal of Portfolio Management*, 2012, Vol. 38 (2) 68.

<sup>1676</sup> Chamber et al., (note 1675), 68.

<sup>1677</sup> Andrzej et al., (note 1674), 187.

### 2.1.2 The Norwegian Framework

Oil prices are volatile<sup>1678</sup>, and it is essential to have a mechanism that separates the government's expenditures from resource revenues in the short term.<sup>1679</sup> The creation of the Government Pension Fund-Global and the Government Pension Fund-Norway aims at curbing government spending through the 'Spending Rule.'<sup>1680</sup> In the discourse on the resource curse,<sup>1681</sup> the role of institutions is crucial because they monitor decision-makers and keep them accountable.<sup>1682</sup> The quality of institutions charged with resource wealth management determines whether the wealth would become a blessing or a curse.<sup>1683</sup> Good institutions, therefore, ensure effective management of natural resource wealth.<sup>1684</sup> State institutions, labour, and business's role contributed to Norway's success despite several government changes.<sup>1685</sup> The institutions flourished under a high level of transparency and bureaucratic principles that assert general trust in the politicians and professional civil servants' skills.<sup>1686</sup>

The institutions involved in the management of Norway's oil revenues are the Ministry of Finance, the Central Bank (Norges Bank), and Parliament.<sup>1687</sup> The Ministry of Finance has the responsibility to manage the Fund and determine the targets, asset allocation, and monitors the operational management of the Fund.<sup>1688</sup> The Government Pension Fund Act mandates the Ministry to issue regulations to operationalise the Act.<sup>1689</sup> The Ministry has released the management mandates<sup>1690</sup> for administering the Government Pension Fund-Global and the Government Pension Fund-

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<sup>1678</sup> Chapter 2, section 2.1.1.

<sup>1679</sup> Skancke, (note 323), 316.

<sup>1680</sup> Larsen, 'Are Rich countries immune to the resource curse? Evidence from Norway's management of its oil riches', *Resources Policy*, Vol. 30, 2005, 82. The spending rule allows the government to spend only the returns from the investment made by the State.

<sup>1681</sup> Chapter 2, section 2.

<sup>1682</sup> Sharma et al., 'Special fiscal institutions for resource-rich developing economies', *Overseas Development Studies*, 2013, 4. See also Rosser, 'The Political Economy of the Resource Curse: A Literature Survey', *Institute of Development Studies*, 2006, 25.

<sup>1683</sup> Chapter 5, section 2.3.

<sup>1684</sup> Karl, 'Ensuring fairness? The case for a transparent fiscal social contract', *Initiative for Policy Dialogue Working Paper Series*, 2006. Columbia University. See also chapter 6.

<sup>1685</sup> Eifert et al., 'Managing Oil wealth', *Finance and Development*, A quarterly magazine of the IMF, Vol. 40 (1), 2003, 5.

<sup>1686</sup> Eifert et al., (note 1685), 5.

<sup>1687</sup> Clark et al., 'The legitimacy and governance of Norway's sovereign wealth fund: the ethics of global investment', *Environment and Planning A: Economy and Space*, Vol. 42(7) 2010, 1730.

<sup>1688</sup> Holden, (note 1662), 873

<sup>1689</sup> Section 7 of the Government Pension Fund Act (no. 123 of 21 December 2005).

<sup>1690</sup> The management mandates are two. One for the Government Pension Fund Global and the other for the Government Pension Fund Norway.

Norway.<sup>1691</sup> The two documents establish the modalities for managing the Fund, the relationship between the Ministry and the Central Bank, management cost, and public reporting.<sup>1692</sup> The rules in the management mandate further discuss objective and assignment, the investment of the capital, strategic plan for managing the investment portfolio, and provisions on outsourcing.<sup>1693</sup>

The Government Pension Fund Act vests ownership of the Funds in the Ministry of Finance.<sup>1694</sup> The Fund is a deposit account with the Norges Bank and the Ministry of Finance as the Fund's owner defines the investment strategies.<sup>1695</sup> The Global Fund's operational management is assigned to the Norges Bank by the Ministry of Finance through a management agreement.<sup>1696</sup> Ethical considerations influence the investment of the Government Pension Fund Global.<sup>1697</sup> The Ministry of Finance has established the Council of Ethics, which examines prospective companies and provides information to the Ministry whether a particular investment contravenes the ethical guidelines.<sup>1698</sup> The Ministry shares the information from the Council of Ethics with the Norges Bank Investment Management (NBIM), the investment wing of Norges Bank, to guide its investment.<sup>1699</sup> The NBIM's guidelines for management state the ethics that must influence the investments decisions.<sup>1700</sup> The investment occurs in companies that observe corporate governance

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<sup>1691</sup> The management mandate for the Government Pension Fund Global is available at <https://www.regjeringen.no/en/topics/the-economy/the-government-pension-fund/government-pension-fund-global-gpfg/id697027/> and that of Government Pension Fund Norway is available at <https://www.regjeringen.no/en/topics/the-economy/the-government-pension-fund/government-pension-fund-norway-gpfn/id697028/> accessed 17 March 2021.

<sup>1692</sup> Management mandate for the Government Pension Fund Global and the Management mandate for the Government Pension Fund Norway.

<sup>1693</sup> Chapter 1 of the management mandate for the Government Pension Fund Global.

<sup>1694</sup> Section 2 of the Government Pension Fund Act (no. 123 of 21 December 2005).

<sup>1695</sup> Skancke, (note 323), 328.

<sup>1696</sup> Backer, (note 1671), 455-456.

<sup>1697</sup> Clark et al., 'The Norwegian Government Pension Fund: Ethics over Efficiency', *Rotman International Journal of Pension Management*, Vol. 3 (1) 2010, 15-16.

<sup>1698</sup> Clark et al., (note 1697), 16.

<sup>1699</sup> Clark et al., (note 1697), 16.

<sup>1700</sup> Section 5 of the NBIM's Guidelines for Management gives two provisions on the ethical considerations; First, "the Fund is an instrument for ensuring that a reasonable portion of the country's petroleum wealth benefits future generations" and "financial wealth must be managed with a view to generating a sound return in the long-term, which is contingent to sustainable development in the economic, environmental, and social sense." Second, "the Fund shall not make investments that entail an unacceptable risk that the Fund is contributing to unethical acts or omissions" including violations of human rights, gross corruption, and severe environmental damage.

and those that do not pose a risk to the global community.<sup>1701</sup> The application of these principles denies some companies access to funds on the Council of Ethics recommendations.<sup>1702</sup>

The NBIM, as the investment wing of the Norges Bank, manages the investment of the Global Fund.<sup>1703</sup> The investment wing has control and compliance units that issue quarterly reports on its activities to the Norges Bank.<sup>1704</sup> The Norges Bank reports to the Ministry of Finance on a quarterly and annual basis on the Fund's management, with the Ministry issuing an annual report to Parliament.<sup>1705</sup> Norges Bank must communicate its strategic plan for the management of the investment to the Ministry of Finance.<sup>1706</sup> The Auditor-General audits the funds and reports directly to Parliament as the appointing authority.<sup>1707</sup> The above organisational structure reduces the State's interference with oil revenue expenditure, although not impossible.<sup>1708</sup> Public reporting makes the Fund transparent and provides an accurate and comprehensive overview of the execution of the institutions' duties.<sup>1709</sup> Parliament's role in the management of the Fund involves the approval of the investment strategies of the Ministry and scrutinises the reports submitted to it on the Fund's control by the Ministry.<sup>1710</sup> Parliament also examines the ethical investment guidelines which determine the companies that qualify to benefit under the Fund.<sup>1711</sup> This thesis suggests that the different levels of control and supervision in the management documents create checks and balances, which has enhanced the quality of the institutions mandated to manage the Funds.

The issuance of reports and several levels of supervision in managing oil revenue in Norway reflects transparency.<sup>1712</sup> Transparency plays out by the Norges Bank consulting the public before

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<sup>1701</sup> Clark et al., (note 1697), 1723-1724.

<sup>1702</sup> Clark et al., (note 1697), 1732-1733. The breaches involved producing landmines, supply of arms or military equipment to the government of Burma, the production of cluster munitions, nuclear weapons, human right breaches and environmental damage.

<sup>1703</sup> Backer, (note 1671), 456.

<sup>1704</sup> Holden, (note 1662), 873.

<sup>1705</sup> Backer, (note 1671), 456.

<sup>1706</sup> Management mandate for the Government Pension Fund Global at chapter 7, section 7 (1). Available at <https://www.regjeringen.no/en/topics/the-economy/the-government-pension-fund/government-pension-fund-global-gpfg/id697027/> accessed 17 March 2021.

<sup>1707</sup> Backer, (note 1671), 456.

<sup>1708</sup> Backer, (note 1671), 456.

<sup>1709</sup> See (note 16706), sections 6 (1) and (2).

<sup>1710</sup> Richardson, 'Sovereign Wealth Funds and the Quest for Sustainability: Insights from Norway and New Zealand', *Nordic Journal of Commercial Law*, Vol. 1, 2011, 6.

<sup>1711</sup> Richardson, (note 1710)), 6.

<sup>1712</sup> Holden, (note 1662), 873.

submitting its investment plans to the Ministry.<sup>1713</sup> The decision of the Council of Ethics to exclude a company in its investment is not subject to a judicial appeal, but the council meets annually and invites non-governmental organisations for discussions and accepts concerns from the public.<sup>1714</sup> The Fund makes available information about its operations, which allows outsiders to assess the Fund's performance.<sup>1715</sup> The availability of the information on the Fund to the public enables examining the Fund, reflecting transparency.<sup>1716</sup>

Several factors influence Norway's investment in foreign jurisdictions. First, it aims to protect the local economy; second, secure the income from the returns on the funds.<sup>1717</sup> Third, investment in foreign jurisdictions reduces the risk of bad governance, diversifies risk and financial returns.<sup>1718</sup> It becomes possible due to the structures for managing the oil revenues. Such investments serve as a buffer against budget deficits, diversify the economy and lower interest on domestic savings.<sup>1719</sup> The Government Pension Fund-Global rests on three pillars: professionalism,<sup>1720</sup> accountability,<sup>1721</sup> and transparency<sup>1722</sup> in managing the Fund.<sup>1723</sup> The Fund has invested in several products: equities, non-governmental bonds, real estate, and private equities.<sup>1724</sup> The Norway model succeeded because there was consensus, coordination, transparency, and accountability between the institutions involved in managing the revenue.<sup>1725</sup>

### 2.1.3 The Fiscal Policy Rule

One feature that has enabled Norway to manage and grow its oil revenue is the fiscal policy rule limiting spending to the Fund's returns.<sup>1726</sup> Norway has integrated the Fund into the budget to offset

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<sup>1713</sup> Richardson, (note 1710), 6.

<sup>1714</sup> Richardson, (note 1710)7.

<sup>1715</sup> Caner et al., 'Sovereign Wealth Funds: The Norwegian Experience', *The World Economy*, Vol. 33 (4), 2010, 602.

<sup>1716</sup> Caner et al., (note 1715)), 602.

<sup>1717</sup> Holden, (note 1662), 873.

<sup>1718</sup> Backer, (note 1671), 453.

<sup>1719</sup> Skancke, (note 323), 334-345.

<sup>1720</sup> According to Skancke, professionalism occurs at two levels. The central bank of Norway (*Norges Bank*) must work with its full skill and capabilities and rely on external fund managers where the Norges Bank lacks the capability.

<sup>1721</sup> Accountability connotes a system of checks and balances on the various parties engaged in the management of the fund. See chapters 3 and 4 of this thesis for discussion on accountability.

<sup>1722</sup> See chapters 3 and 4 of this thesis.

<sup>1723</sup> Skancke, (note 323), 327.

<sup>1724</sup> Caner et al., (note 1715), 602.

<sup>1725</sup> Skancke, (note 323), 333.

<sup>1726</sup> The Norwegian Fiscal Policy Framework, available at <https://www.regjeringen.no/en/topics/the-economy/economic-policy/economic-policy/id418083/#> accessed 10 March 2021. See also Holden, (note 1662), 873.

debt where there is a budget deficit.<sup>1727</sup> The practice aims to stop politicians from taking advantage of the Fund to finance projects not approved under the budgets<sup>1728</sup> and stop grandiose projects.<sup>1729</sup> It also teaches fiscal discipline in the government budget to curb excessive expenditure.<sup>1730</sup> The fiscal rule limits expenditure to the returns from the Pension Fund and initially estimated at 4 per cent annually.<sup>1731</sup> This figure has since the spring of 2017 been revised downwards to 3 per cent annually.<sup>1732</sup>

The use of the expected annual return provides a reference for budget estimates and promises the sustenance of the fiscal policy rule under oil revenue volatility since Norway utilises the returns<sup>1733</sup> and allow all generations to enjoy their share of the oil revenues.<sup>1734</sup> The fiscal policy is also known as the ‘bird-in-hand’ policy, which means spending the profit and allowing the capital to grow because that approach would minimise the harmful effects of Dutch disease,<sup>1735</sup> price volatility, and boom-bust spending.<sup>1736</sup>

The fiscal policy rule is difficult to apply in resource developing countries because oil revenues usually relate to the public's high expectations.<sup>1737</sup> In Norway, the State's inability to use the revenue in the Fund led to a decline in political trust.<sup>1738</sup> The decision of Norway to invest their oil wealth in foreign capital markets rather than spending it has not been popular with voters who want the money spent, but the government also thinks about the future.<sup>1739</sup> The rule, however, did not preclude transferring a higher or a smaller amount to the budget based on economic

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<sup>1727</sup> Holden, (note 1662), 873.

<sup>1728</sup> Holden, (note 1662), 873.

<sup>1729</sup> Andrzej et al., (note 1674), 187.

<sup>1730</sup> Chambers et al., (note 1675), 69.

<sup>1731</sup> Holden, (note 1662), 873. See also Larson, (note 1680), 82 and Chambers et al., (note 1675), 69,

<sup>1732</sup> See the Norwegian Fiscal Policy Framework, available at <https://www.regjeringen.nden/topics/the-economy/economicpolicy/economic/id418083/> accessed on 24<sup>th</sup> September 2021.

<sup>1733</sup> Skancke, (note 323), 327.

<sup>1734</sup> Skancke, (note 323), 327.

<sup>1735</sup> See chapter 2.

<sup>1736</sup> Andrzej et al., (note 1674), 185.

<sup>1737</sup> Andrzej et al., (note 1674), 189.

<sup>1738</sup> Listhaug, ‘Oil Wealth Dissatisfaction and Political Trust in Norway: A Resource Curse?’, *West European Politics*, Vol. 28 (4), 2005, 848.

<sup>1739</sup> Listhaug, (note 1738), 835.

difficulties.<sup>1740</sup> A significant feature of the oil fund management mechanism is to separate the accumulation of revenues and government expenditures.<sup>1741</sup>

## 2.2 Botswana's Model

Botswana did not have very favourable conditions at independence in 1966, including the lack of a University, lack of infrastructure and inequality.<sup>1742</sup> Botswana today boasts of being one of Africa's star performers because of its transformation into one of the prosperous economies in Southern Africa aside South Africa.<sup>1743</sup> Three elements can explain Botswana's outstanding economic performance: luck, paying attention to management, and negotiating independence skills.<sup>1744</sup>

The lack of development and other necessities compelled the government to create an environment that promotes economic growth and development.<sup>1745</sup> The State of Botswana was a country built around active institutions, history, and leadership.<sup>1746</sup> The achievement has necessitated the choice of Botswana as an excellent example to learn from despite the prevalence of HIV, unemployment, poverty, and inequality problems.<sup>1747</sup>

Another factor for selecting Botswana is that it is in Africa and has more in common with Ghana. These are essential pointers Ghana can tap into to influence the management of its oil revenue. As an African country, Botswana had made such remarkable improvement in its revenue management makes it worthwhile to learn from the State. Lessons from the two nations examined to give an insight into the area of managing resource revenues. Studying these two jurisdictions shall guide

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<sup>1740</sup> Thurber et al., (note 1655) 24, 92.

<sup>1741</sup> Mohn, 'Resource revenue management and wealth neutrality in Norway', *Energy Policy*, Vol. 96, 2016, 456.

<sup>1742</sup> Acemoglu et al., (note 131), 1. See also chapter 1, section 5.

<sup>1743</sup> Hope Sr, 'Developmental policy and economic performance in Botswana: Lessons for the transition economies in Sub-Saharan Africa', *Journal of International Development*, Vol. 10 (4), 1998, 539-540. See also, Lesego Sekwati, 'Economic Diversification: The case of Botswana', *Revenue Watch Institute*, 2010, 1 available at [https://resourcegovernance.org/sites/default/files/RWI\\_Econ\\_Diversification\\_Botswana.pdf](https://resourcegovernance.org/sites/default/files/RWI_Econ_Diversification_Botswana.pdf) accessed 28 March 2021. Lesego Sekwati argues that these impressive macroeconomic indicators concealed the structural weaknesses and the vulnerability of the economy which has failed to diversify. The economy of Botswana depends heavily on mining sector which forms a third of the Gross Domestic Product (GDP) of the country, Ian Taylor, 'Botswana as a 'Development-Oriented Gate-Keeping State': A Response, *African Affairs*, Vol. 111(444), 2012, 476, touching on the economy of Botswana regarding GDP figures also argues that the economy of Botswana has failed to diversify remains underdeveloped due to the country's inability to attract foreign direct investment due to its land-locked nature.

<sup>1744</sup> Harvey et al, (note 138), 6-10.

<sup>1745</sup> Sebudubudu, (note 133), 80.

<sup>1746</sup> Leith, (note 144), 112. See also McFerson, (note 8), 1544.

<sup>1747</sup> Acemoglu et al., (note 131), 17-18.

Ghana to mitigate the challenges of mismanagement of the oil revenues and combat the resource curse.

Botswana still face challenges and is doing the best with what it has, despite struggles against poverty and health issues. Persistent unemployment and under-employment exist in Botswana, which has led to inequality and poverty.<sup>1748</sup> The diamond industry is much closed with secrecy, which has contributed to political corruption by the elite.<sup>1749</sup> The health of the poor is further jeopardized due to limited access, with life expectancy falling by half.<sup>1750</sup> Due to this, Botswana's economic growth success is seen as 'poverty amid plenty' due to high levels of inequality and poverty.<sup>1751</sup> This makes their achievement all the more important to highlight since they make the best with what they have.

### 2.2.1 Management of mineral revenue

The philosophy of the political leadership of Botswana avoided the mistakes of resource-rich countries and designed a system of governance that adopted stability and social and economic improvement.<sup>1752</sup> The leaders' measures focused on sustainable development; for example, the government set up a savings fund known as the Pula Fund and delinked public expenditure from the mineral revenue.<sup>1753</sup> After using the mineral revenue for developing the economy for twenty-seven years, the government set up the Pula Fund.<sup>1754</sup> The government adopted the policy of accumulating funds for the future and building infrastructure, and investing in health and

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<sup>1748</sup> Taylor, 'Botswana's Developmental States and Politics of Legitimacy', in Harrison G (eds.), *Global Encounters International Political Economy Series*, 2005, 17-20. Taylor in this article further discusses some of the challenges facing the economy of Botswana as little investment in manufacturing, weak economy due to non-diversification, and lack of urgency to develop. He further argues that inequality and the fair distribution of resources remains a challenge in post independent Botswana.

<sup>1749</sup> Good, 'Resource Dependency and its Consequences: The Cost of Botswana's Shining Gems', *Journal of Contemporary African Studies*, Vol. 23(1), 2005, 33, 39 and 45. Good contends that the government has been hostile towards civil society groups when they raise human rights issues. That although Botswana is touted for its good governance and economic development, a careful examination of the country reveals that the diamond industry has not promoted industrialization but has created class society which restricts democracy and promotes elitism, discrimination and inequalities.

<sup>1750</sup> Good, (note 1749), 35-36.

<sup>1751</sup> Ulriksen, 'Mineral Wealth and limited redistribution, social transfers and taxation in Botswana', *Journal of Contemporary African Studies*, Vol. 35(1), 2017, 88.

<sup>1752</sup> Lewin, 'Botswana's Success: Good Governance, Good Policies, and Good Luck', 84 in *Yes African Can: success stories from a dynamic continent*, Chahan-Pole et al., World Bank, 2011.

<sup>1753</sup> Lewin, (note 1752).

<sup>1754</sup> Revenue Watch Institute, *Natural Resource Funds*, Vale Columbia Center, 2013, 3.

education.<sup>1755</sup> The leadership embraced foreign investment, which led to strong ties with commercial interest.<sup>1756</sup> The following section examines how Botswana undertook its impressive economic reconstruction with resource revenues from diamonds.

### 2.2.2 The Botswanan Framework

A country rich in mineral wealth must manage the wealth through a designated account and use it for economic and social development.<sup>1757</sup> Botswana discovered diamond after independence, and the government's first move was to set up a company,<sup>1758</sup> with the State and the diamond giant De Beers each holding fifty per cent.<sup>1759</sup> The agreement is known as a "smart partnership" regarding how Botswana struck that deal.<sup>1760</sup> The deal succeeded partly due to nationalisation taking place to avoid the nationalisation of an international company.<sup>1761</sup> Botswana initially had 20 per cent shares in the company and negotiated its interest to 50 per cent, of the shares in the company, unlike other African countries that have settled for the receipt of royalties and corporate tax for the exploitation of its natural resources.<sup>1762</sup> Diamonds aside, Botswana earned revenue from beef exports and the tourism industry, serving as the foundation for infrastructure, hospitals, hotels, and schools.<sup>1763</sup> The country has some deposits of Copper-Nicol, Coal, Soda-Ash, and Gold.<sup>1764</sup>

A resource-rich economy's key to economic development depends on its ability to transform its non-renewable natural resources into other forms of capital to reward for the exhaustion of the natural resources.<sup>1765</sup> Lange et al. referred to the Hartwick-Solow rule of sustainability, which requires that the depletion of natural resources must yield other forms of capital that generate

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<sup>1755</sup> Lewin, (note 1752).

<sup>1756</sup> Beaulier, 'Explaining Botswana's Success: The Critical Role of Post-Colonial Policy', *Cato Journal*, Vol. 23 (2), 2003, 237.

<sup>1757</sup> Iimi, 'Escaping from the Resource Curse: Evidence from Botswana and the rest of the World', *IMF Staff Papers*, Vol. 54 (4), 2007, 690.

<sup>1758</sup> The de Beers Botswana Mining Company (Debswana).

<sup>1759</sup> Cook et al., 'Is Botswana the Miracle of Africa – Democracy, Rule of Law and Human Rights versus Economic Development', *Transnational Law and Contemporary Problems*, Vol. 19, 2010, 462.

<sup>1760</sup> Maipose, 'Policy and Institutional Dynamics of Sustained Development in Botswana', *Commission on Growth and Development Working Paper No. 35*, 2008, 11.

<sup>1761</sup> Maipose, (note 1760), 11.

<sup>1762</sup> Maipose, (note 1760), 11. See also Good, 'Interpreting the Exceptionality of Botswana', *The Journal of Modern African Studies*, Vol. 30 (1), 75.

<sup>1763</sup> Cook et al., (note 1759), 464.

<sup>1764</sup> Khama, 'Botswana's Mineral revenues, Expenditure and Savings Policy, Case Study, African Development Fund, 2016, 8.

<sup>1765</sup> Lange et al., 'Sustainable development in mineral economies: the example of Botswana' *Environment and Development Economics*, Vol. 9, 2004, 485-486.

wealth.<sup>1766</sup> The leadership of Botswana embraced this thinking with the introduction of National Development Plans (NDPs) that imparted fiscal discipline and developed physical and social infrastructure.<sup>1767</sup> The development policy of Botswana created rapid economic growth, social justice, economic independence, and sustainable development.<sup>1768</sup> The development projects resulted from broad-based consultation,<sup>1769</sup> which required parliamentary approval before financing could occur through the budget.<sup>1770</sup>

The engagement process yielded balanced development within the country, and commitment to implementing the projects was overwhelming.<sup>1771</sup> The NDPs acquired a national character and could not be changed but only reviewed.<sup>1772</sup> It takes a country with a leader who understands governance to rally the whole nation behind these development plans, transforming and making Botswana's case counted as a success story in Africa.<sup>1773</sup> The first NDP occurred from 1966 to 1968.<sup>1774</sup> Botswana has since produced eleven NDPs, with the first five covering five years and the remaining covering six years and reviewed halfway through implementation.<sup>1775</sup> The eleventh development plan covers 2017 to 2023.<sup>1776</sup> The NDPs guide the overall development of Botswana and contain the strategies, programmes, and projects of the government to achieve the plans' goals.<sup>1777</sup>

Botswana's mineral revenue management dwelt on the principle that government exists to serve the citizens and promote development against a few holding on to the nation's wealth for their

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<sup>1766</sup> Lange et al., (note 1765), 486.

<sup>1767</sup> Stevens, (note 191), 10.

<sup>1768</sup> Maipose, (note 1760), 15.

<sup>1769</sup> Adamolekun et al., 'Pragmatic Institutional Design in Botswana-Salient features and an assessment', *International Journal of Public Sector*, Vol. 12 (7), 598. The consultation involved holding meetings at the regional and local levels as well as the elected councilors in charge of the cities, towns and districts and village development committees which made national development plans acceptable.

<sup>1770</sup> Khama, (note 1764), 10.

<sup>1771</sup> Maipose, (note, 1760), 36.

<sup>1772</sup> Maipose, (note 1760), 36.

<sup>1773</sup> Robinson, 'Botswana as a Role Model for Country Success', in *Achieving Development Success* (ed.) Fosu, 2013, 189.

<sup>1774</sup> Chiepe, 'Development in Africa', *African Affairs*, Vol. 72 (288), 1973, 320. See also World Bank, 'Botswana: Towards Prosperity for All, A Comprehensive Development Framework Profile', World Bank Policy Document, 2000. The two year development plan was titled Transitional Plan for Social and Economic Development.

<sup>1775</sup> Chiepe, (note 1774).

<sup>1776</sup> The Eleventh National Development Plan of Botswana. Available at <https://botswana.un.org/sites/default/files/2020-10/NDP%2011%20full%202017.pdf> accessed 17 March 2021.

<sup>1777</sup> The NDP's Guide for Development of Botswana. Available at <https://botswana.un.org/sites/default/files/2020-10/NDP%2011%20full%202017.pdf> accessed 17 March 2021.

gains.<sup>1778</sup> The approach of the political leaders suggests accountability and transparency to the citizens who were the owners of the resources.<sup>1779</sup> The 2018 Corruption Perception Index (CPI) released by Transparency International, Botswana, out of 180 countries, placed 34 with 61 and the second in Africa.<sup>1780</sup> Botswana overcame poor governance and lack of transparency, the challenges of most resource-rich countries in sub-Saharan Africa, which contribute to their inability to benefit from their natural resources.<sup>1781</sup> The government delinked government expenditure from the revenue and invested in public goods and infrastructure to avoid the Dutch disease and price volatility.<sup>1782</sup>

Botswana's government formed the Pula Fund in 1993 under the Bank of Botswana's Act of 1975 and amended it in 1996, which currently regulates the operation of the Fund.<sup>1783</sup> The Fund comprises two accounts, the Government Investment Account that belongs to the government and the foreign exchange reserve account that belongs to the Bank of Botswana.<sup>1784</sup> The purpose of setting up the Fund is to invest portions of the diamond and mineral revenues for future generations, although not stated in the Act.<sup>1785</sup>

The Fund's management vests in the Bank of Botswana and the Ministry of Finance and Development Planning (MFDP) determine the Fund's investment.<sup>1786</sup> Investment decisions taken by the Bank and the Ministry are subject to the approval of the Board of Governors of the Bank and usually invest in equities and long-term fixed-income assets.<sup>1787</sup> The governor's investment committee decides on investment strategy executed by the Financial Markets Department of the bank.<sup>1788</sup> The different structures for the management and investment of the Pula Fund make the players independent and ensure separation of duties.<sup>1789</sup>

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<sup>1778</sup> Lewin, (note 1752).

<sup>1779</sup> See chapter 3 for the concepts of Transparency and Accountability.

<sup>1780</sup> The 2018 Corruption Perception Index (Transparency International). Available at <http://www.transparency.org/cpi2018> accessed 17 March 2021.

<sup>1781</sup> Bartsch et al., *Lifting the Oil Curse: Improving Petroleum Revenue Management in Sub-Saharan Africa*, IMF, 2004, 61.

<sup>1782</sup> Lewin, (note 1752). See chapter 2.

<sup>1783</sup> See section 35 of the Bank of Botswana Act, 1966 (Capp 55:01).

<sup>1784</sup> Revenue Watch Institute, *Natural Resource Funds*, Vale Columbia Center, 2013, 2.

<sup>1785</sup> Revenue Watch Institute, *Natural Resource Funds*, Vale Columbia Centre, 2013, 3.

<sup>1786</sup> Section 35 (1) of Bank of Botswana Act, 1996 (Capp 55:01).

<sup>1787</sup> Revenue Watch Institute, *Natural Resources Funds*, Vale Columbia Centre, 2013, 7-8.

<sup>1788</sup> Revenue Watch Institute, *Natural Resource Funds*, Vale Columbia Center, 2013, 8.

<sup>1789</sup> Revenue Watch Institute, *Natural Resource Funds*, Vale Columbia Center, 2013, 8.

The Bank of Botswana's Act makes provision for the preparation of accounts, auditing, and issuance of the annual report on the Fund's operations.<sup>1790</sup> The Bank of Botswana keeps record and accounts and adhere to sound accounting principles and further prepares the yearly financial statement.<sup>1791</sup> The financial statement of the Bank is audited by auditors appointed by the board and approved by the Minister.<sup>1792</sup> The Bank's board has an audit committee that reviews and examines the accounts prepared by the bank, including that of the Pula Fund.<sup>1793</sup> Besides, the MFDP may request the Auditor-General to investigate and report on the Bank's accounts and other matters.<sup>1794</sup>

The Bank of Botswana must issue annual reports three months after the financial year to the MFDP with a copy of the financial statement certified by an auditor and reports of the Bank's operations.<sup>1795</sup> The MFDP, upon receipt of the financial statement and report of activities, submit them to Parliament for deliberations.<sup>1796</sup> The Bank prepares a monthly report of the return of its assets and liabilities to the MFDP and publishes a copy in the Gazette.<sup>1797</sup> The Fund further uses external fund managers for the management of the foreign reserves.<sup>1798</sup> The multiple levels of reporting and supervision create checks and balances on the various parties' responsibilities and allow the general public to access information on the operations of the Pula Fund.

Despite these provisions on management and accountability, deposits and withdrawals from the Fund and the determination of benchmark values and geographical location of the assets are not for public consumption.<sup>1799</sup> The use of mineral revenues depends on two principles: the investment and spending policy framework implemented through the NDPs.<sup>1800</sup> The expenditure pattern of the government comprises recurrent spending and development budget; the latter covered the financing of roads, schools, building projects, purchase of capital equipment, and acquisition of

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<sup>1790</sup> See sections 35 (7), 66, 67, and 68 of the Bank of Botswana Act, 1966 (Cap 55:01).

<sup>1791</sup> Section 66 (1) and (2) of Bank of Botswana Act, 1966 (Cap 55:01).

<sup>1792</sup> Section 67 (1) of Bank of Botswana Act, 1966 (Cap 55:01).

<sup>1793</sup> Section 67 (2) of Bank of Botswana Act, 1966 (Cap 55:01).

<sup>1794</sup> Section 67 (3) of Bank of Botswana Act, 1996 (Cap 55:01).

<sup>1795</sup> Section 68 (1) (a) and (b) of Bank of Botswana Act, 1966 (Cap 55:01)

<sup>1796</sup> Section 68 (2) of Bank of Botswana Act, 1966 (Cap 55:01).

<sup>1797</sup> Section 68 (3) of Bank of Botswana Act, 1966 (Cap 55:01).

<sup>1798</sup> Revenue Watch Institute, Natural Resources Funds, Vale Columbia Centre, 2013, 7.

<sup>1799</sup> Revenue Watch Institute, Natural Resources Funds, Vale Columbia Centre, 2013, 10.

<sup>1800</sup> Khama, (note 1764), 10.

stakes in state-owned enterprises.<sup>1801</sup> The various ministries had no power to spend money outside those approved by Parliament per the NDPs and the national budget.<sup>1802</sup> Botswana's mineral revenue gets paid into the Consolidated Fund and is paid out for spending and investing through guidelines without statutory backing known as the 'Sustainable Budget Index' (SBI).<sup>1803</sup>

### 2.2.3 Institutional Drive

Institutions are crucial for the management of natural resource wealth for the development of a country.<sup>1804</sup> Where quality institutions exist, they have guided the steady growth of resource-rich countries.<sup>1805</sup> Weak institutions have favoured powerful political groupings that take advantage of natural resource wealth against the interest of the majority.<sup>1806</sup> Diamonds became the main backbone of Botswana after it was discovered in 1967, one year after independence, and accounted for about 70 per cent of its export revenue.<sup>1807</sup> The solid institutional capacity in Botswana was influenced by their traditional culture, which made the chief accountable to his subjects through an open forum, and citizens could express their disapproval of his reign.<sup>1808</sup> The constraints on the chief's powers and the public engagement got replicated in public institutions, and these features served as a monitor on the authorities of the political elite.<sup>1809</sup>

With the focus on using the country's institutions for development, the country's first two Presidents ensured the insulation of the civil service from politics.<sup>1810</sup> The Presidents directed the bureaucrats in the top echelons not to favour any politician.<sup>1811</sup> The devotion by the political leadership and institutional capacity catapulted the development of Botswana.<sup>1812</sup> The country further introduced the National Development Plan defining the country's social and economic

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<sup>1801</sup> Khama, (note 1764), 10.

<sup>1802</sup> Khama, (note 1764), 10.

<sup>1803</sup> Khama, (note 1764), 11.

<sup>1804</sup> Chapter 5, section 2.2 and 2.3.

<sup>1805</sup> Chapter 5, section 2.2 and 2.3.

<sup>1806</sup> Chapter 5, section 2.2 and 2.3.

<sup>1807</sup> Martin, (note 150), 40.

<sup>1808</sup> Martin, (note 150), 40.

<sup>1809</sup> Martin, (note 150), 41.

<sup>1810</sup> Sebudubudu, (note 133), 84.

<sup>1811</sup> Sebudubudu, (note 133), 84.

<sup>1812</sup> Maundeni, 'State Culture and the Botswana Developmental State', Department of Political and Administrative Studies, University of Botswana, 2001, 18

planning programme.<sup>1813</sup> The development plan succeeded because of political commitment, support for planning and a link between the development plans and the budget.<sup>1814</sup>

Botswana proceeded to set up the Ministry of Finance and Development Planning,<sup>1815</sup> the Botswana Development Corporation,<sup>1816</sup> the Financial Assistance Policy,<sup>1817</sup> Citizens Entrepreneurial Development Agency,<sup>1818</sup> Botswana Export Development and Investment Authority<sup>1819</sup> and the Directorate on Corruption and Economic Crime<sup>1820</sup> as major institutions to spearhead the development plan.<sup>1821</sup> These institutions had professionals with technical competence insulated from politics.<sup>1822</sup> They were helpful and not corrupt because they enjoyed autonomy in their work.<sup>1823</sup> The exclusion of elected politicians as top bureaucrats in the civil service enhanced the independence of the State institutions.<sup>1824</sup> These characteristics assisted bureaucrats to influence policy, define its content and form before the political leaders who had no expertise in policymaking took over.<sup>1825</sup>

The Ministry of Finance and Development Planning (MFDP) became a powerful ministry that combined finance and development planning and linked development projects to government revenue.<sup>1826</sup> Botswana succeeded in its economic development because it established 'strong and accountable state institutions' just as they exist in European states.<sup>1827</sup> The thesis argues that

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<sup>1813</sup> Edge, 'Botswana: A Developmental State' in W. Edge and M. Lekorwe (eds.) *Botswana: Politics and Society*, Pretoria: Van Schaik, 1998, 334.

<sup>1814</sup> Sebudubudu, (note 133), 81.

<sup>1815</sup> The Ministry of Finance and Development Planning plans, coordinates, monitor and ensures that projects are implemented in accordance with the development plan of Botswana.

<sup>1816</sup> An institution set up to promote industrial development in Botswana.

<sup>1817</sup> The institution ensures diversification of the economy, boost employment and encourage limiting dependence on minerals.

<sup>1818</sup> A private institution but was answerable to the government because it took over the financial responsibilities of the Financial Assistance Policy as well as projects under that institution.

<sup>1819</sup> The institution facilitates investments in the manufacturing sector to utilise the country's raw materials namely, leather, jewelry, glass and beef by-products.

<sup>1820</sup> An anti-corruption institution establish to control corruption.

<sup>1821</sup> Sebudubudu, (133), 83-87.

<sup>1822</sup> Leftwich, 'Bringing Politics Back In: Towards a Model of the Developmental State', *The Journal of Developmental Studies*, Vol. 31 (3), 1995, 286.

<sup>1823</sup> Somolekae, 'Bureaucracy and Democracy in Botswana: What Type of a Relationship' in Stedman (ed.) *Botswana: The Political Economy of Democratic Development*, Boulder: Lynne Rienner, 1993, 119.

<sup>1824</sup> Holm, 'Development, Democracy and Civil Society in Botswana' in L.A. Leftwich (ed.) *Democracy and Development*, Cambridge: Polity Press, 1996, 97.

<sup>1825</sup> Somolekae, (note 1823), 117.

<sup>1826</sup> Sebudubudu et al., 'Managing Resources and the Democratic Order: The Experience of Botswana', *South African Institute of International Affairs, Occasional Paper No. 31*, 2009, 5-6.

<sup>1827</sup> Robinson, (note 1773), 196.

institutions in Botswana did well because the leadership of Botswana knew the importance of separating the institution of State from political actors to make them autonomous.

In Ghana, State institutions get politicised as every change of government affects the civil and public service's topmost ranks.<sup>1828</sup> Therefore, the institutions cannot exercise their autonomy and act as a check on the authority of the political elite as required.<sup>1829</sup> Having discussed the steps taken by Norway and Botswana to chart their development, the thesis seeks to identify the lessons that will serve as indicators of better practices for Ghana. The exercise aims to use the two jurisdictions' features to resolve the challenges identified in this thesis.<sup>1830</sup>

### 3. Indicators of better practices: Essential elements

The thesis has evaluated the provisions of the PRMA.<sup>1831</sup> The discussion has revealed challenges with the management of Ghana's oil revenue which, if not addressed, would not make the passage of the PRMA bring the needed benefits to Ghana. This thesis discusses the examples of Norway and Botswana for lessons that will help Ghana optimise oil revenue and not miss the opportunity as other resource-rich countries in Africa have experienced.<sup>1832</sup> The thesis proceeds to discuss the indicators of better practices as a guide to address the issues identified in this thesis. The problems are transparency and accountability, institutional autonomy, created funds, and oil revenue management.

The examples from Norway and Botswana demonstrate a legal framework that optimises the resource revenues accrues to the countries. The model existing in these countries confirms transparency and accountability, sound institutions able to restrain the political elite, few funds, and proper revenue management based on national development plans that accelerate economic

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<sup>1828</sup> Skaten, (note 922), 19. See also Mohan et al., (note 956), 275-276. Mohan et al argue that the impact of the oil on Ghana's economy is minimal despite the country's strong democratic credentials and legislation for managing the oil revenue. They contend that the reason for the little impact is based on elite-based political coalitions which creates political settlements. Ghana's current political settlement is based on "winner takes all" electoral system in which the two leading political parties in Ghana compete to retain power. The contest to retain power and control everything in the country has adversely affected State institutions explaining the disappointing performance of Ghana's oil economy.

<sup>1829</sup> See chapter 5, section 4.

<sup>1830</sup> See chapters 4, 5, 6, and 7.

<sup>1831</sup> See chapters 4, 5, 6, and 7 of the thesis.

<sup>1832</sup> Chapter 1, section 2.1.

growth.<sup>1833</sup> The thesis uses these attributes to help address the challenges facing Ghana's management of oil revenue.

### 3.1. Transparency and Accountability

The provisions on transparency and accountability in the Petroleum Revenue Management Act (PRMA) relate to petroleum receipts and public oversight, establishing the Public Interest Accountability Committee (PIAC).<sup>1834</sup> Despite this, the assessment of the PRMA within the context of transparency and accountability in chapter 4 reveal challenges associated with implementation, which cannot prevent the resource curse.<sup>1835</sup> These provisions in the PRMA create problems with performance resulting in a weak link between the requirements of the Act and the adherence to accountability due to institutions inability to check political authority.<sup>1836</sup> The thesis suggests an amendment of the PRMA to take care of these lapses in the law.<sup>1837</sup> The thesis further recommends the involvement of CSOs, academic and research institutions, and international policy guidelines to help Ghana overcome transparency and accountability challenges.<sup>1838</sup> In addition to these suggestions, Ghana can learn from Norway and Botswana to deal with transparency and accountability discussed earlier in the thesis.<sup>1839</sup>

Transparency and accountability in managing resource revenues flourished in Norway and Botswana due to institutional autonomy and quality.<sup>1840</sup> Ghana can enhance transparency and accountability within the PRMA through lessons from the experiences of Norway and Botswana. First, Ghana must build different reporting lines under the regimes that prevail in Norway and Botswana, promoting professionalism.<sup>1841</sup> Maintaining that organisational structure reduces the State's interference with oil revenue expenditure, although not impossible.<sup>1842</sup> Second, the Minister's power to cap the Ghana Stabilisation Fund with the subsequent transfer of the excess amount into the Contingency Fund and used outside the PRMA cannot help manage the oil revenue

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<sup>1833</sup> Section 2.1 and 2.2 supra.

<sup>1834</sup> Chapter 4, section 2.

<sup>1835</sup> Chapter 4, sections 3, 3.1, 3.2 and 4.

<sup>1836</sup> Chapter 4, section 3.2.

<sup>1837</sup> Chapter 4, section 3.3.

<sup>1838</sup> Chapter 4, section 3.2.

<sup>1839</sup> Chapter 4, sections 3, 3.1 and 3.2.

<sup>1840</sup> See section 2.1, 2.1.1, 2.1.2, 2.2, 2.2.1, 2.2.2 and 2.2.3 above.

<sup>1841</sup> Sections 2.1.2 and 2.2.2 above.

<sup>1842</sup> Section 2.1.2 and 2.2.2 above.

and requires an urgent review.<sup>1843</sup> The regimes in Norway and Botswana do not give such discretionary power to disburse their resource revenues to political appointees.<sup>1844</sup> Third, the promotion of accountability and transparency thrives with the bureaucrats functioning by law contrary to politicians dominating the PRMA as exist in Ghana.<sup>1845</sup> Thus, Ghana must deal with the political interference that Norway and Botswana have overcome to enhance transparency and accountability.

Fourth, Ghana must strengthen controls and supervision in the PRMA since they create checks and balances and improve the quality of institutions mandated to manage the Funds.<sup>1846</sup> This thesis suggests that Ghana must learn from the model operated in Norway and Botswana and deal with its challenges. Implementing these lessons will enhance the needed transparency and accountability with the management of Ghana's oil revenue.

### 3.2 Sound institutions

As discussed in chapter 5, resource-rich countries that have successfully managed their resource revenue achieved it through solid institutions that constrain executive power.<sup>1847</sup> The absence of reliable institutions affects governance and impedes development, particularly in resource-rich countries.<sup>1848</sup> Countries with weak and inferior institutions experience the resource curse. Where institutions are independent, it serves as a check on political authority, and their inability to perform this duty spells doom for the nation.<sup>1849</sup> The institutional functions assessed under the PRMA against these benchmarks reveal several challenges that militate against the smooth functioning of these institutions and the implementation of the PRMA.<sup>1850</sup>

The thesis has made recommendations for strengthening state institutions to perform their duties without any inhibitions.<sup>1851</sup> Be that as it may, Ghana can learn lessons from the characteristics of institutions in Norway and Botswana regarding their role in managing their resource revenue to

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<sup>1843</sup> Chapter 6, section 2.2.1.

<sup>1844</sup> Sections 2.1.2, 2.1.3 and 2.2.2 above

<sup>1845</sup> Sections 2.1.2 and 2.2.3 above.

<sup>1846</sup> Sections 2.1.2 and 2.2.2 and 2.2.3 above.

<sup>1847</sup> Chapter 5, section 2.

<sup>1848</sup> Chapter 5, section 2.3.

<sup>1849</sup> Chapter 5, section 2.4.

<sup>1850</sup> Chapter 5, section 4.

<sup>1851</sup> Chapter 5, sections 4 and 5.

apprise legislative reform of the PRMA. First, Ghana must improve the independence of State institutions to provide a conducive environment to implement policies for development.<sup>1852</sup> Second, to achieve independence, Ghana must insulate civil and public servants from political activities to create a ‘solid institutional infrastructure’ that allow bureaucrats to perform their work professionally.<sup>1853</sup> Third, the optimisation of Ghana’s oil revenue depends on the policy, good governance and the existence of quality institutions.<sup>1854</sup> The adherence to these lessons by Ghana on institutional autonomy remains crucial to ensure that institutions are independent and civil servants act without looking at their shoulders. When State institutions attain these characteristics, they would be better positioned to check executive power and optimise oil revenue.

### 3.3 Established Funds

Having identified the institutional weakness in chapter 5, chapter six evaluates the utilisation of the funds set up under the PRMA.<sup>1855</sup> The discussion ascertains whether the creation of the funds enhances the management of Ghana’s oil revenue.<sup>1856</sup> The established funds under the PRMA include the Petroleum Holding Fund, the Ghana Petroleum Funds comprising the Ghana Stabilisation Fund, and Ghana Heritage Fund classified as Sovereign Wealth Funds.<sup>1857</sup> The PRMA further mentions the Consolidated Fund, the Contingency Fund, and Ghana Infrastructure Investment Fund created outside the PRMA but receives part of the oil revenue.<sup>1858</sup> This thesis argues that the multiple funds established within and outside the PRMA make tracking and management difficult, hence the oil revenue's abysmal impact on Ghana’s economy.

The PRMA further creates the Ghana Petroleum Wealth Fund under the PRMA. The Ghana Petroleum Wealth Fund replaces the SWFs upon the depletion of the petroleum reserves; however, the PRMA does not regulate the Ghana Petroleum Wealth Fund.<sup>1859</sup> Evaluating the various funds

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<sup>1852</sup> Section 2.1.2 and 2.2.3 above.

<sup>1853</sup> Section 2.1.2 and 2.2.3 above.

<sup>1854</sup> Section 2.2.1, 2.2.2, and 2.2.3 above.

<sup>1855</sup> Chapter 6.

<sup>1856</sup> Chapter 6, section 1.

<sup>1857</sup> Chapter 6, section 2.

<sup>1858</sup> Chapter 6, section 2.

<sup>1859</sup> Chapter 6, section 2.

created under the PRMA reveals weaknesses associated with managing Ghana's oil revenue.<sup>1860</sup> The review exposes weaknesses in managing the funds existing within and outside the PRMA.<sup>1861</sup>

The enactment of the PRMA is adequate, but some of the provisions, chapter 6 discusses, inhibits the utilisation of the oil revenue to benefit the country as contained in the preamble.<sup>1862</sup> Ghana must address the challenges identified for a positive impact of the oil on Ghana's economy. Norway and Botswana are resource-rich countries with a track record of successfully managing their resource revenue to impact their respective economies. These two countries with a solid institutional structure created only two funds to manage their resource revenue. Lessons from these countries can aid the management of Ghana's oil revenue.

First, as in Norway and Botswana, Ghana must reduce created funds to only two, supporting the budget and a heritage fund if the country still desires to keep part of the windfall for future generations.<sup>1863</sup> Second, capping and transfers from the Ghana Stabilisation Fund must cease since it makes oil revenue available to the government to spend outside the PRMA, contrary to the practice in Norway and Botswana.<sup>1864</sup> Third, Ghana must rethink creating a Sovereign Wealth Fund at the initial stages of accruing oil revenue since Botswana, due to developmental challenges, using the diamond revenue for twenty-seven years before starting the Pula Fund.<sup>1865</sup> What Ghana needs is a legal framework that regulates oil revenue and not making a Sovereign Wealth Fund. Fourth, given the lack of a National Development Plan passed into law as existing in Botswana, a learning curve for Ghana requires involving other stakeholders in planning development projects contrary to the Minister making a sole determination of beneficiaries sectors. The implementation of these lessons can create the needed development Ghana needs.

### 3.4 Management of resource revenue

Chapter 7 assessed the use of oil revenue accrued to Ghana using the Auditor-General, and the Public Interest Accountability Committee (PIAC) reports.<sup>1866</sup> The assessment has become

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<sup>1860</sup> Chapter 6, section 4.

<sup>1861</sup> Chapter 6, section 4.

<sup>1862</sup> Chapter 6, section 3.

<sup>1863</sup> Chapter 6, section 3 and sections 2.1.2 and 2.2.2 above.

<sup>1864</sup> Sections 2.1.2 and 2.2.2 above.

<sup>1865</sup> Section 2.2.2 above.

<sup>1866</sup> Chapter 7, section 1.

necessary to ascertain whether the management of oil revenue so far benefits Ghanaians.<sup>1867</sup> Two sets of funds exist under the PRMA. One is subject to the accountability regime under the law, but the second set escapes the accountability lenses of the PRMA and remains a challenge.<sup>1868</sup> The evaluation seeks to substantiate whether the management of the funds enhances the optimisation of the oil revenue.<sup>1869</sup>

The PRMA addresses expenditures and where to spend or invest but is silent on the efficiency of spending.<sup>1870</sup> The assessment of the reports of the Auditor-General and PIAC shows that without an urgent intervention and amending the PRMA, the euphoria that accompanied the discovery of the oil in commercial quantities may not benefit Ghanaians.<sup>1871</sup> Norway and Botswana have overcome such difficulties, and Ghana may learn from these two countries' experiences to improve the management of Ghana's oil revenue through amending the PRMA.

During oil discovery, Norway's level of development influenced their investment decision within and outside the jurisdiction and applied the returns on investment to support the budget.<sup>1872</sup> The country decided to create two funds, one meant for investing locally and the other outside the jurisdiction.<sup>1873</sup> Ghana cannot take this route due to a lack of development. The example of Botswana offers the best lessons for Ghana. Ghana must adopt the strategy of a national development plan as exist in Botswana.<sup>1874</sup> A national development plan assists in the orderly development of an economy, as happened in Botswana.<sup>1875</sup> Botswana further ensured that the NDPs were not jettisoned and passed a law to regulate their implementation.<sup>1876</sup>

The adoption of NDPs upon which the execution of projects has not been part of Ghana's development plan and the PRMA recognises this deficiency.<sup>1877</sup> The PRMA further states that until Ghana gets a development plan, oil revenue must finance projects in four sectors of the economy.<sup>1878</sup> Development projects appear in national budgets presented to Parliament by the

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<sup>1867</sup> Chapter 7, section 1.

<sup>1868</sup> Chapter 6, section 1.

<sup>1869</sup> Chapter 7, section 2.

<sup>1870</sup> Chapter 7, section 2.

<sup>1871</sup> Chapter 7, sections 3.1 and 3.2.

<sup>1872</sup> Section 2.1.3 above.

<sup>1873</sup> Section 2.1.2 above.

<sup>1874</sup> Section 2.2.2 above.

<sup>1875</sup> Section 2.2.2 above

<sup>1876</sup> Section 2.2.2 above.

<sup>1877</sup> Section 21 (3) of Act 815.

<sup>1878</sup> Section 23 (3) of Act 815.

Minister for Finance with donor support for implementation.<sup>1879</sup> In the event of development partners not providing funding, that ends the project.

The development strategy in Ghana is mixed.<sup>1880</sup> The period 1973 to 1983 was very turbulent because Ghana had several governments, of which the majority were military regimes.<sup>1881</sup> Economic Recovery Programme (ERP) characterised by liberalised economy and minimising government's role in the economy was then pursued by Ghana in conjunction with the Bretton Woods Institutions followed from 1983.<sup>1882</sup> Due to challenges in development, Ghana in 1986 adopted the Structural Adjustment Programme (SAP) meant to correct imbalances in the economy and privatisation of the economy and had to turn to the World Bank and the International Monetary Fund (IMF).<sup>1883</sup> The different development strategy adopted did not help Ghana develop as expected. This thesis suggests that to undertake sustained development as embarked upon by Botswana, Ghana needs a national development plan and funding sources. The PRMA can help with growth when the State takes steps to have a national development plan based on consultation with legislative backing.

Ghana's Constitution establishes the National Development Planning Commission (NDPC),<sup>1884</sup> whose primary function is to recommend development plans and proposal for even the development of Ghana.<sup>1885</sup> Consequent to this constitutional provision, Ghana passed legislation as the framework for the Commission's work.<sup>1886</sup> The President appoints all the members of the Commission in consultation with the Council of State.<sup>1887</sup> The NDPC has not lived to its expectation because it is under the President and therefore not autonomous.<sup>1888</sup> As a result of this difficulty, the Constitutional Review Commission in 2011 recommended a national development plan entrenched in the Constitution, to bind successive governments and with diverse

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<sup>1879</sup> Budget statements of Ghana. Available at <https://mofep.gov.gh/publications/budget-statements> for the budgets of Ghana. Accessed 17 March 2021.

<sup>1880</sup> Fosu, 'Country Models for Development Success: The Ghana Case', in *Achieving Development Success*. (ed.) Augustine Kwasi Fosu, 2009, 269.

<sup>1881</sup> Fosu, (note 1880), 269. Ghana has had as many as 6 coups since independence in 1957.

<sup>1882</sup> Fosu, (note 1880), 269.

<sup>1883</sup> Fosu, (note 1880), 269-270.

<sup>1884</sup> Article 86 (1) of Ghana's Constitution.

<sup>1885</sup> Article 87 (1) (a) – (e) of Ghana's Constitution.

<sup>1886</sup> See the National Development Planning Commission Act 1994, Act 479.

<sup>1887</sup> Article 86 (2) (a) – (f) of Ghana's Constitution.

<sup>1888</sup> Panford, 'Academy and Successful Management of Ghana's Petroleum Resources', *Africa Today*, Vol. 61 (2), 97-98.

membership.<sup>1889</sup> The government rejected the provision on embedding development plans in Constitution to bind consecutive governments due to the winner-takes-all politics in Ghana.<sup>1890</sup>

The operations of the NDPC are challenged because, first, the appointments are skewed towards party patronage, confirmed by the government's rejection of the Constitutional Review Commission's report. Second, a change in government comes with a leadership difference in the NDPC, which works against the successful implementation of development projects. Third, the development plans lack national consultation with no legislative backing as pertains in Botswana; hence the formulated plans elapses with a change of government.

The norm in Ghana remains ruling parties using party manifestos in the absence of national development plans to determine the development of the nation with no coordinated projects.<sup>1891</sup>

Such a development plan is that a change in government leads to the winning party abandoning the projects of earlier government, a phenomenon that has resulted in abandoned projects.<sup>1892</sup>

The passage of a law to guide national development plans in Ghana and bind successive governments is long overdue. The implementation of these lessons can influence Ghana's transformation. This requires amending the PRMA to restrict oil revenue to a legislative backed national development plan to take care of these developments.

## 4. Conclusion

Chapter 8 discusses the management of resource revenues in Norway and Botswana and ascertain lessons to assist in managing Ghana's oil revenue. The two countries have a different focus; Norway paid attention to investing the money and using the returns to support the budget because of the level of development.<sup>1893</sup> Botswana focus was to use the income for development through their NDPs backed by legislation to guide the execution of the projects.<sup>1894</sup> Botswana also had

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<sup>1889</sup> Gyampo, 'Dealing with Winner-Takes-All Politics: The Case of National Development Planning', Africa Portal, 2016, 1.

<sup>1890</sup> Gyampo, (note 1889), 1. See also the Government's White Paper, 4 issued on the final report of the Constitutional Review Commission of Ghana available at <https://rodra.co.za/images/countries/ghana/research/WHITE%20PAPER%20%20ON%20THE%20REPORT%20OF%20THE%20CONSTITUTION%20REVIEW%20COMMISSION%20PRESENTED%20TO%20THE%20PRESIDENT%20.pdf> accessed 24 March 2021.

<sup>1891</sup> Panford, (note 1888) 95. See also Prempeh and Kroon, 'The Political Economy Analysis of Oil and Gas Sector in Ghana: The Implication for STAR GHANA'.

<sup>1892</sup> Panford, (note 1888), 95.

<sup>1893</sup> Sections 2.1.2 and 2.1.3.

<sup>1894</sup> Sections 2.2.1 and 2.2.2.

autonomous State institutions without interference from the political elite, which enhances the performance of their duties.<sup>1895</sup>

The net effect of the features of the model that existed in Norway and Botswana contributed to their success. Ghana's current challenges in managing the oil revenue, as this thesis reveal, require immediate attention. The country must learn from these systems to improve on the problematic areas identified in this thesis. The demonstration of transparency and accountability, sound institutions, the establishment of few funds and evolving national development plans with legislative backing can accelerate development in Ghana. The study of these jurisdictions sheds light on steps Ghana must take regarding managing the oil revenue to combat the resource curse. The next chapter concludes the thesis by summing up the findings and conclusions and offering recommendations for improving the PRMA.

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<sup>1895</sup> Section 2.2.3.

# Chapter 9: General Conclusions

## 1. Introduction

This thesis examines Ghana's Petroleum Revenue Management Act (PRMA) to ascertain whether the law can help Ghana avoid the resource curse that has adversely affected some resource-rich countries in Africa.<sup>1896</sup> Ghana's quest to use its mineral revenues optimally for the growth and development of the economy influenced the promulgation of the PRMA.<sup>1897</sup> Before enacting the PRMA, the government managed Ghana's resource revenues through the Consolidated Fund with its attendant mismanagement and corruption.<sup>1898</sup> The thesis evaluates the provisions of the PRMA against the principles of transparency and accountability to determine whether the PRMA addresses mismanagement and corruption of public funds depicted throughout Ghana's history.<sup>1899</sup> The thesis submits that if the PRMA remains in its current state, it may fail to address these issues. The thesis further examines the provisions of the PRMA, which deal with transparency,<sup>1900</sup> the autonomy of institutions,<sup>1901</sup> created funds,<sup>1902</sup> and management of the resource revenue,<sup>1903</sup> and learn lessons from the examples of resource revenue management systems from Norway and Botswana.<sup>1904</sup>

## 2. Contextualising the problem

Through the appraisal of the PRMA, the thesis demonstrates that the enactment of the PRMA may not help Ghana combat the resource curse within the current legal framework of the PRMA.<sup>1905</sup> The mismanagement of resource revenue, identified as a challenge, may continue to have adverse

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<sup>1896</sup> Petroleum Revenue Management Act, 2011, Act 815 as amended. See chapter 2 for discussion on the resource curse.

<sup>1897</sup> Canvar, (note 70), 1.

<sup>1898</sup> Article 176 (1) of the Constitution.

<sup>1899</sup> Chapter 1, section 2.3.

<sup>1900</sup> Chapter 4, sections 3 and 3.2.

<sup>1901</sup> Chapter 5, sections 3 and 4.

<sup>1902</sup> Chapter 6, sections 2.1, 2.2, and 2.3.

<sup>1903</sup> Chapter 7, sections 2.1, 2.2 (2.2.1-2.2.4), 3.1, and 3.2

<sup>1904</sup> Chapter 8, sections 3, 3.1 (3.1.1-3.1.4).

<sup>1905</sup> Chapter 4, sections 3, and 3.2, chapter 5, sections 3 and 4, chapter 6, sections 2.1, 2.2, 2.3, and 3, and chapter 7, sections 2.1, 2.2 (2.2.1-2.2.4), 3.1, and 3.2

effects.<sup>1906</sup> This observation stems from several factors recognised through the engagement of the PRMA in chapters 4, 5, 6, and 7 of this thesis.

First, discretionary power is given to the Minister to determine the four areas to benefit from the oil revenue without any consultation.<sup>1907</sup> Second, there is a lack of institutional autonomy since the constitutional provisions give the President the power to appoint institutional heads in Ghana.<sup>1908</sup> Third, there is a lack of guidelines regarding transfers from the Ghana Stabilisation Fund into the Contingency Fund.<sup>1909</sup> Fourth, the capping of the Ghana Stabilisation Fund further makes part of the oil revenue available to the State, which is spent outside the PRMA and escapes the audit regime of the PRMA.<sup>1910</sup> Fifth, for reasons expounded in Chapter 6, Sovereign Wealth Funds' creation is inappropriate under Ghana's current development dispensation.<sup>1911</sup> Sixth, there is an implementation disability: the PRMA has provisions for punishment, but no prosecution has occurred, despite known infractions of the Act.<sup>1912</sup> Seventh, the PIAC - charged with the oversight responsibilities under the Act - has no power to enforce its findings.<sup>1913</sup> Eighth, there are no development plans in the PRMA, which fails to guide oil revenue for development.<sup>1914</sup> Ninth, the transfer of the ABFA into the Consolidated Fund creates room for mismanagement and corruption as existed before the promulgation of the PRMA.<sup>1915</sup> The thesis shows that the retention of these provisions in the PRMA cannot help Ghana overcome the mismanagement of the oil revenue. The examples of how Norway and Botswana have managed their resource revenues offer valuable lessons to Ghana. The lessons drawn from their management of resource revenues serve as better indicators for legislative reforms of the PRMA.<sup>1916</sup>

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<sup>1906</sup> Chapter 1, section 2.3, chapter 4, sections 3, and 3.2, chapter 6, sections 2.1, 2.2, and 3, and chapter 7, sections 2.1, 2.2 (2.2.1-2.2.4), 3.1, and 3.2 .

<sup>1907</sup> Chapter 5, section 4.

<sup>1908</sup> Chapter 5, section 4 and 5.

<sup>1909</sup> Chapter 6, section 2.2.1.

<sup>1910</sup> Chapter 6, section 2.2.1

<sup>1911</sup> Chapter 6, section 3.

<sup>1912</sup> Chapter 7, section 3.1.

<sup>1913</sup> Chapter 5, section 3.7 and chapter 7, section 5.

<sup>1914</sup> Chapter 8, section 3.1.4.

<sup>1915</sup> Chapter 7, section 2.2.2.

<sup>1916</sup> Chapters 8, sections 3.1 (3.1.1-3.1.4).

The thesis engages with the concept and leading causes<sup>1917</sup> of the resource curse. It identifies the indicators against which to evaluate the revenue management law of Ghana.<sup>1918</sup> It also assesses possible measures<sup>1919</sup> to overcome the resource curse.<sup>1920</sup> The conclusion is that the existing responses cannot help resource-rich countries overcome the resource curse without a revenue management Act.<sup>1921</sup> Resource-rich African countries can minimise the problem of the resource curse by resorting to revenue management law.<sup>1922</sup> However, even such a law is useless against mismanagement and corruption if there is no transparency and accountability in managing resource revenue.

In managing oil revenues, transparency refers to openness and development, and the lack of progress means there is no transparency even with the declaration of the payments.<sup>1923</sup> Transparency is the key to building trust, and the World Bank, the International Monetary Fund, and the United Nations have adopted the concept.<sup>1924</sup> What is essential is the institutionalisation of a legal framework that allows the disclosure of crucial information.<sup>1925</sup>

Transparency will be meaningless if there is no accountability on the government, which oversees oil revenue management.<sup>1926</sup> Legislation passed to regulate the management of revenue must hence incorporate accountability.<sup>1927</sup> Accountability refers to being called to account for your stewardship.<sup>1928</sup> The essence of accountability is to make those vested with the power of management answer for their behaviour by applying checks and balances.<sup>1929</sup>

To achieve the required transparency and accountability in managing resource revenues, State institutions with responsibility under the PRMA must be autonomous.<sup>1930</sup> In managing Ghana's oil

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<sup>1917</sup> See chapter 2, section 2.1.

<sup>1918</sup> Chapter 2, section 2.

<sup>1919</sup> Chapter 2, section 2.2 (2.2.1-2.2.7).

<sup>1920</sup> Chapter 2, section 2.2.8.

<sup>1921</sup> Chapter 2, section 2.2.8.

<sup>1922</sup> Chapter 2, section 2.2.8.

<sup>1923</sup> Ofori et al, (note 65), 1187. See also chapter 3, sections 2.1, 2.2, and 3.

<sup>1924</sup> Chapter 3, section 2.1.7.

<sup>1925</sup> Chapter 3, section 2.1.5.

<sup>1926</sup> Chapter 3, section 2.2.

<sup>1927</sup> Chapter 3, section 2.2

<sup>1928</sup> Chapter 3, section 2.2.2.

<sup>1929</sup> Chapter 3, section 2.2.3.

<sup>1930</sup> Chapter 3, section 1.

revenue, State institutions<sup>1931</sup> need to act robustly and check the powers of the political elite.<sup>1932</sup> The ability of State institutions to keep the executive to account remains a challenge in Ghana's revenue management, as discussed in this thesis.<sup>1933</sup> The 'winner-take-all' political system of governance in Ghana contributes to this phenomenon.<sup>1934</sup> The thesis concludes that releasing information on oil revenues is not enough if there is no avenue to question the political elite.<sup>1935</sup>

PRMA's assessment of transparency and accountability showed that the disclosure of oil revenue is achieved through the Bank of Ghana's publication<sup>1936</sup> and the national budget.<sup>1937</sup> However, the minister's power to declare certain information confidential and withhold it works against transparency,<sup>1938</sup> although Parliament and PIAC can access the confidential information.<sup>1939</sup> The thesis argues that the provision for disclosure of the oil revenue in the manner stipulated in the PRMA is novel in Ghana's history,<sup>1940</sup> however, the power of the Minister to withhold information based on confidentiality defeats transparency.<sup>1941</sup>

With accountability, the PRMA creates the office of PIAC with oversight responsibilities.<sup>1942</sup> The PIAC furnishes Parliament and the President with their reports for debate and action, respectively.<sup>1943</sup> The oversight responsibilities given to the PIAC are limited in that the PRMA has no provisions for enforcing its findings resulting in continued infractions of the PRMA.<sup>1944</sup>

The thesis has identified several challenges regarding accountability, including weak oversight and governance regime and the minister's discretionary power.<sup>1945</sup> The PRMA does not regulate money transferred from the Ghana Stabilisation Fund into the Contingency Fund; thus, it also presents

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<sup>1931</sup> Chapter 5, section 3.

<sup>1932</sup> Chapter 3, section 2.2.6.

<sup>1933</sup> Chapter 4, section 4, Chapter 5, sections 4 and 5.

<sup>1934</sup> Mohan et al., (note 956), 278. See also Oduro et al., 'A Dynamic Mapping of the Political Settlement in Ghana', ESID Working Paper, Vol. 28, and Manchester, U.K.: Effective States and Inclusive Development Research Centre.

<sup>1935</sup> Chapter 3, section 4.

<sup>1936</sup> Section 28 (1) and (2) of Act 815.

<sup>1937</sup> Section 48 (1) of Act 815.

<sup>1938</sup> Section 49 (3) and (4) of Act 815.

<sup>1939</sup> Section 49 (5) of Act 815.

<sup>1940</sup> Chapter 4, section 2.1.

<sup>1941</sup> Chapter 4, section 2.1.

<sup>1942</sup> Section 52 of Act 815.

<sup>1943</sup> Section 56 (d) of Act 815.

<sup>1944</sup> Chapter 5, section 3.7 and chapter 7, section 4.

<sup>1945</sup> Chapter 4, section 3, and 3.2.

challenges in applying the oil revenues.<sup>1946</sup> Ghana's constitutional framework has contributed to the accountability challenges: some members of Parliament also belong to the executive, which impinges upon the measures of 'checks and balances between the executive and the legislative branches of government.'<sup>1947</sup>

The analysis of the PRMA in Chapters 4 to 7 shows that two main elements constitute the PRMA. The first is that it has strong and weak points, which shows its design flaws. Second, is the discrepancy between the design and how it works in practice? Ghana's Petroleum Revenue Management Act (PRMA) has provisions that show its strength. One feature that illustrates its strength is the Public Interest and Accountability Committee (PIAC), Ministry of Finance, Ghana National Petroleum Corporation and Bank of Ghana publications regarding how much petroleum revenues are collected and where they go.<sup>1948</sup> The strength is further depicted by establishing a procedure for accountable and transparent mechanisms for assessment, collection and guidance for the utilisation and savings of the oil revenue.<sup>1949</sup>

The PRMA further set fiscal guidelines regarding how much of the oil revenue should be spent and how much should be saved for investment.<sup>1950</sup> As discussed in Chapter 6, the Act further creates sovereign wealth funds for supporting the budget and investing for unborn generations.<sup>1951</sup> The Act has gone to great lengths to make provisions for transparency and accountability and further provides auditing and reporting mechanisms for the management of the petroleum revenue.<sup>1952</sup>

It has been argued that the PRMA is a fine law embedded in deep-seated challenges in the budgetary process and public financial mismanagement.<sup>1953</sup> The assessment shows that there are challenges with implementing the law regarding the utilisation of the oil revenue. The interplay of

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<sup>1946</sup> Chapter 6, section 2.2.1. See also section 24 (3) and (4) of Act 815.

<sup>1947</sup> Chapter 5, section 1.

<sup>1948</sup> Aisha Adam, (note 1617), 1

<sup>1949</sup> See Chapter 6, section 2 and Chapter 7, section 2 above.

<sup>1950</sup> See Chapter 7, section 2 above.

<sup>1951</sup> See Chapter 6, section 2.2 above.

<sup>1952</sup> See Chapter 4, section 2 above.

<sup>1953</sup> Amoako-Tuffour, 'Managing Natural Resources Revenue - The case of Ghana', conference presentation at Maputo-Mozambique, 27-28 February 2013. Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Presentation%20-%20Managing%20Natural%20Resource%20Revenue%20-%20The%20Case%20of%20Ghana.pdf> accessed on 22 September 2021.

the two elements has created a discrepancy between the fine provisions of the law as against its implementation exemplified in the discussion in this thesis.<sup>1954</sup> With this observation, the current form of the PRMA is not a sufficient safeguard for the management of Ghana's oil revenue unless the government address the challenges raised above.

The thesis has identified these challenges as a weak link and recommends other institutions, namely Civil Society Organisations, academic institutions, and research institutions, and implementing international policy guidelines to manage oil revenue.<sup>1955</sup> Lwabukuna argues for cooperation between the State, private and civil society organisations to succeed in Ghana's PRMA.<sup>1956</sup> Ghana's Constitution does not allow non-State stakeholders to be directly involved in the management of oil revenue.<sup>1957</sup> This challenge requires an amendment of the PRMA to permit other stakeholders and the Minister to decide the expenditure of oil revenues.<sup>1958</sup>

### 3. The general overview of the PRMA

Chapters 4, 5, 6, and 7 gave a general overview of the PRMA. These chapters discussed transparency and accountability provisions within the PRMA, institutions, and their role in managing oil revenues, evaluating the application of the oil revenue under the PRMA and the accountability regime through an analysis of the reports issued by the PIAC and the Auditor-General on the use of the oil revenues.<sup>1959</sup> That part of the thesis engages with the problem through analysis of the provisions of the PRMA.<sup>1960</sup>

The thesis engages with transparency and accountability provisions within the PRMA. It revealed a weak link due to the constitutional architecture of governance in Ghana and argued for other stakeholders.<sup>1961</sup> The thesis further engages the theoretical underpinnings of institutions since resource-rich countries with quality institutions check on politicians.<sup>1962</sup> The thesis submits that the

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<sup>1954</sup> See Chapters 4 to 7 above.

<sup>1955</sup> Chapter 4, sections 3.3 (3.3.1-3.3.3).

<sup>1956</sup> Lwabukuna, 'Governing African Extractives for Development: Lessons from Ghana's Petroleum Revenue Management Law', Africa Institute of South Africa, Briefing No 22, 2016, 1.

<sup>1957</sup> The growing trend seeks to favour stakeholder engagement.

<sup>1958</sup> See section 21 (4) of Act 815 as amended by clause 8 of Act 893.

<sup>1959</sup> Chapters 4, 5, 6, and 7.

<sup>1960</sup> Chapters 4, 5, 6, and 7.

<sup>1961</sup> Chapter 4, sections 3.3 (3.3.1-3.3.3).

<sup>1962</sup> Chapter 5, section 2.3. See also Stevens et al., (note 911), 57 and 59.

role of institutions in managing resource revenue is critical because in developing resource-rich countries, the poor governance of resources creates the resource curse and not its existence.<sup>1963</sup> Ghana's peculiar situation relates to heads of State institutions' appointment charged with responsibilities under the PMRA.<sup>1964</sup> If the institutions serve to restrain the political elite, the impact of the oil revenue resonates with visible signs of development.<sup>1965</sup>

The heads of State institutions' appointment has compromised institutional quality since the State vests executive authority in the President mandated under the Constitution to make these appointments.<sup>1966</sup> The appointees are unable to serve as a check on the powers of the elite.<sup>1967</sup> The challenge of non-performing institutions needs a paradigm shift; the selection of heads of State institutions needs expansion to involve the Public Services Commission and not the sole prerogative of the President.<sup>1968</sup> The independence of State institutions depends on examining the appointment process to shield the civil service and public servants from the politicians.<sup>1969</sup> The current position cannot fight mismanagement because the heads of the various institutions serve at the pleasure of the President and are reluctant to challenge the President's orders.

Evaluating institutions against this background, the discussion in Chapter 5 reveals non-adherence to the duties assigned to these institutions.<sup>1970</sup> Unfortunately, PIAC has no authority to pursue persons who have infringed the PRMA.<sup>1971</sup>

Chapter 6 evaluates the utilisation of the funds established under the PRMA. Within the broader context, the chapter seeks to ascertain whether the creation of the funds and their usage would reduce the resource curse to stop mismanagement.<sup>1972</sup> The chapter indicates that the PRMA has many funds created both within and outside it.<sup>1973</sup> The operation of these multiple funds affects transparency and accountability in managing oil revenue, as evidenced by the reports issued by the

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<sup>1963</sup> Doro et al., (note 943), 44.

<sup>1964</sup> Chapter 5, section 4.

<sup>1965</sup> Chapter 5, section 2.3 and 4.

<sup>1966</sup> Chapter 5, section 2.3 and 4.

<sup>1967</sup> Chapter 5, section 1.

<sup>1968</sup> Chapter 5, sections 4 and 5.

<sup>1969</sup> Chapter 5, sections 4 and 5.

<sup>1970</sup> Chapter 5, section 4.

<sup>1971</sup> Chapter 5, section 3.7 and chapter 7, section 4.

<sup>1972</sup> Chapter 6, sections 2.1, 2.2 and 2.3.

<sup>1973</sup> Chapter 6, sections 1 and 2.

PIAC and the Auditor-General.<sup>1974</sup> The arrangement for the transfer of money to funds outside the PRMA creates accountability challenges regarding applying the transferred funds.<sup>1975</sup>

Ghana has further created Sovereign Wealth Funds (SWFs) in the PRMA.<sup>1976</sup> The creation of the SWFs may not be appropriate now due to developmental challenges.<sup>1977</sup> Instead of borrowing with interest to undertake development, it is more advantageous to have a legal regime that ensures the strict application of the resource revenue to address the issues of society.<sup>1978</sup> The chapter indicates that the operation of the PRMA in its current form provides extra income to the government.<sup>1979</sup> Unfortunately, those funds are not subject to the oversight regime existing under the PRMA.<sup>1980</sup> The chapter recommends the amendment of the PRMA and permits PIAC to audit the transferred funds to optimise oil revenues.<sup>1981</sup> The amendment would allow PIAC to receive reports and audit expenses on the funds transferred by the Minister.<sup>1982</sup>

The thesis assesses the accountability regime of the PRMA through the reports issued by the Auditor-General and the PIAC. It ascertains whether the use of the funds enhances the optimisation of the oil revenue. The management of resource revenue requires paying attention to three issues, namely: balancing spending and saving, where to spend and save, and how to spend or invest efficiently.<sup>1983</sup> The chapter establishes that the PRMA addresses two of these issues raised, but there is no provision on spending efficiency.<sup>1984</sup>

Further, in resource-rich countries, the key to economic development depends on the ability of the country to transform the natural resource into other forms of capital to reward the country benefits from the proceeds from its natural resources.<sup>1985</sup> The issue with the management of Ghana's oil revenue is that despite the enactment of a revenue management law, the country cannot boast of

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<sup>1974</sup> Chapter 7, section 3.1 and 3.2.

<sup>1975</sup> Chapter 7, sections 2.2.2 and 2.2.3.

<sup>1976</sup> See sections 9 and 10 of Act 815.

<sup>1977</sup> Chapter 6, section 3.

<sup>1978</sup> Chapter 6, sections 3 and 4. See also Wills et al, (note 1163), 10-12.

<sup>1979</sup> Chapter 6, sections 2.2.1 and 2.3 and chapter 7, sections 2.2.2 and 2.2.3.

<sup>1980</sup> Chapter 6, section 3.

<sup>1981</sup> Chapter 6, section 6.

<sup>1982</sup> Chapter 6, section 6.

<sup>1983</sup> Chapter 7, section 2.

<sup>1984</sup> Chapter 7, section 2.

<sup>1985</sup> Chapter 8, section 2.2.2. See also Lange et al., (note1765), 485-486.

the development of capital projects to transform the economy.<sup>1986</sup> PIAC and the Auditor-General's report reveal mismanagement by institutions with responsibilities under the PRMA.<sup>1987</sup>

The violations include; non-compliance with the PRMA by the institutions, the misapplication of the ABFA, manipulation of the GSF, and frivolous expenditures incurred by the GNPC.<sup>1988</sup> This thesis suggests that these infractions have become repetitive because no prosecutions have taken place under the PRMA despite sanctions. Chapter 7 thus gives recommendations to deal with the challenges raised by the Auditor-General and the PIAC. First, amend the PRMA to clothe PIAC with prosecuting powers.<sup>1989</sup> Second, set out guidelines for exercising the minister's discretionary power regarding his dealings with the GSF on capping.<sup>1990</sup>

The discussion in Chapters 4, 5, 6, and 7 have revealed the problematic areas of managing Ghana's oil revenue using the PRMA. There are several areas of the PRMA which need legislative review. The discussion of the examples for the management of resource revenues from Norway and Botswana offers lessons to help Ghana find best practices to optimise its oil revenue.<sup>1991</sup>

#### 4. The approaches of Norway and Botswana

The thesis undertook a study of Norway and Botswana regarding the mechanisms that aided the management of their resource revenue to avoid the resource curse.<sup>1992</sup> Due to the challenges identified with managing Ghana's oil revenue, the thesis discussed the legal regime for managing oil and mineral revenues in Norway and Botswana. It drew lessons for the benefit of Ghana.<sup>1993</sup> The exercise is to learn from their models for optimally utilising their resource-revenues and ascertain which of them would apply in Ghana.<sup>1994</sup>

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<sup>1986</sup> Chapter 8, section 3.1.4. See also Mohan et al., (note 956), 275.

<sup>1987</sup> Chapter 7, section 3.1 and 3.2.

<sup>1988</sup> Chapter 7, section 2.1 and 2.2 (2.2.1-2.2.4).

<sup>1989</sup> Chapter 7, section 4.

<sup>1990</sup> Chapter 7, section 4.

<sup>1991</sup> Chapter 8, sections 2.1 (2.1.1-2.1.3), 2.2 (2.2.1-2.2.3) and 3.1 (3.1.1-3.1.4).

<sup>1992</sup> Chapter 8, sections 2.1 (2.1.1-2.1.3) and 2.2 (2.2.1-2.2.3).

<sup>1993</sup> See chapters 4, 5, 6, 7, and 8.

<sup>1994</sup> See chapter 8, sections 3.1 (3.1.1-3.1.4).

## 4.1 Norway

The Norwegian model has specific features. First, its legal regime curbs spending of its oil revenue and focuses on savings and a stabilisation fund due to the absence of developmental challenges.<sup>1995</sup> Second, the institutions established to manage the oil revenue had earlier handled Norway's hydropower, fishing, and mining sectors and had the requisite experience managing oil revenue.<sup>1996</sup> Third, institutional autonomy serves as checks and balances on the powers of the political class's desire to use the oil revenues for political expediency.<sup>1997</sup> Fourth, Norway devised the fiscal policy rule whereby the returns on their invested funds, targeted at 4 per cent, support the national budget.<sup>1998</sup> Fifth, the Norwegian model also creates only two funds: Government Pension Fund-Global and Government Pension Fund-Norway, for investment in international and domestic, respectively.<sup>1999</sup> These features have helped Norway to optimise its oil revenues.

## 4.2 Botswana

Botswana's model for managing its mineral revenue has some characteristic features. First, Botswana introduced the National Development Plans (NDPs), which is a product of consensus-building.<sup>2000</sup> The country did not leave the question of where to utilise mineral revenue to a Minister but involved stakeholders.<sup>2001</sup> Second, the agreed development plan received legislative backing from Parliament, which meant the NDPs continued until completion.<sup>2002</sup> Third, institutional autonomy and quality further strengthened the implementation of the development plans because of civil and public service insulation from politics.<sup>2003</sup> Fourth, the political leadership of Botswana understood the importance of using the mineral revenue to transform their economy and took decisions in that direction.<sup>2004</sup> Fifth, a link existed between the NDPs and the budget of Botswana, and NDPs approved by Parliament received funding.<sup>2005</sup>

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<sup>1995</sup> Chapter 8, section 2.1.2.

<sup>1996</sup> Chapter 8, section 2.1.2.

<sup>1997</sup> Chapter 8, section 2.1.2.

<sup>1998</sup> Chapter 8, section 2.1.3.

<sup>1999</sup> Chapter 2, section 2.1.1.

<sup>2000</sup> Chapter 8, section 2.2.2.

<sup>2001</sup> Chapter 8, section 2.2.2.

<sup>2002</sup> Chapter 8, section 2.2.2.

<sup>2003</sup> Chapter 8, section 2.2.3.

<sup>2004</sup> Chapter 8, section 2.2.2.

<sup>2005</sup> Chapter 8, section 2.1.3.

### 4.3 Lessons for Ghana

Resource revenue management in Norway and Botswana offers lessons to inform the management of Ghana's oil revenue. The two jurisdictions have different emphases. Although all the measures cannot apply in Ghana, there are lessons to draw from their experience to inform the amendment of the PRMA. First, Ghana must make decisions that improve institutional autonomy intending to check the power of the political elite for the mismanagement of the oil revenues.<sup>2006</sup> Such a practice would aid the development of expertise of institutions charged with the management of resource revenues. The process of appointing institutional heads requires broadening, as suggested in chapter 5, and not left to the President alone.<sup>2007</sup> The thesis shows that Ghana must avoid the mismanagement of oil revenue, and institutional independence is paramount, which requires a constitutional amendment on the powers of the President to appoint heads of State institutions.<sup>2008</sup> As argued earlier, Ghana must build democratic institutions to champion transparency and accountability.<sup>2009</sup>

Second, it is needful for Ghana to learn from the examples of Norway and Botswana and reduce the created funds that exist under the PRMA.<sup>2010</sup> The creation of numerous funds creates an avenue for mismanagement, as discussed in this thesis.<sup>2011</sup> Third, the evolution of national development plans through consensus building would help reduce Ghana's development challenges. The current state, whereby oil revenues are spread thinly over several areas of the economy, has not impacted the Ghanaian economy. The adoption of a national development plan has the effect of transforming economies as transpired in Botswana.<sup>2012</sup>

Fourth, passing a law to regulate national development plans makes it imperative for successive governments to continue the project and not abandon it to avoid wasting funds, a phenomenon of Ghanaian development trajectory.<sup>2013</sup> Ghana must implement this because projects approved under the national development plan receive funding that guides steady development and provision of

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<sup>2006</sup> Chapter 8, section 3.1.2 and chapter 5, sections 2.3 and 4.

<sup>2007</sup> Chapter 8, section 3.1.2 and chapter 5, sections 2.3 and 4.

<sup>2008</sup> Chapter 5, sections 2.3, 4, and 5, chapter 8, section 3.1.2.

<sup>2009</sup> Chapter 5, sections 4 and 5.

<sup>2010</sup> Chapter 8, section 3.1.3. See chapter 6, sections 2.1, 2.2, and 2.3 for the funds.

<sup>2011</sup> Chapter 6, sections 2.2.1, 2.2.2 and 3, chapter 8, section 3.1.3.

<sup>2012</sup> Chapter 8, section 3.1.4.

<sup>2013</sup> Chapter 8, section 3.1.4.

funds.<sup>2014</sup> Backed by dedicated leaders, Ghana can overcome developmental challenges, commit oil revenue to productive use, and avert the resource curse.

From the two jurisdictions, adherence to their revenue management laws, institutional autonomy, leadership roles, creation of few funds, the evolution of national development plans, and legislation to regulate development has succeeded in using the oil and mineral revenues to advance and transform their economies.<sup>2015</sup> The resolution of the challenges identified in Ghana's PRMA demands adopting and applying the lessons learned from these two jurisdictions through legislative reform.

## 5. The case for amending the PRMA

The operation of the PRMA in its current form as the legal framework for managing the oil revenue cannot help to optimise the oil revenues due to the challenges discussed in this thesis.<sup>2016</sup> Reforming the PRMA to deal with the bottlenecks identified would help Ghana maximize the oil revenues.<sup>2017</sup> The problems identified in the operation of the PRMA are accountability issues, lack of institutional autonomy, several funds, the discretionary power of the Minister of Finance, the lack of guidelines for capping the Ghana Stabilisation Fund, lack of rules for spending funds transferred to the Consolidated Fund and the Contingency Fund, lack of national development plans and the lack of prosecutorial powers for PIAC to enforce the offences and sanctions regime within the PRMA.<sup>2018</sup> Due to these challenges, the impact of oil revenue on the country's economic development is minimal.<sup>2019</sup> The yearly reports of the Auditor-General and the PIAC show the need to tighten the rules regarding utilization and management of oil revenue.<sup>2020</sup>

This thesis assesses the PRMA within the context of transparency and accountability.<sup>2021</sup> The discussion revealed challenges with the accountability regime in the PRMA.<sup>2022</sup> The problems emanate from the President's constitutional power to appoint all the heads of state institutions,

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<sup>2014</sup> Chapter 8, section 3.1.4.

<sup>2015</sup> Chapter 8, sections 2.1.2 and 2.2.2.

<sup>2016</sup> Chapters 4, 5, 6, and 7.

<sup>2017</sup> Chapters 4, 5, 6, and 7.

<sup>2018</sup> Chapters 4, 5, 6, and 7 of the thesis.

<sup>2019</sup> Mohan et al., (note 956), 275.

<sup>2020</sup> Chapter 7, sections 3.1 and 3.2.

<sup>2021</sup> Chapter 4, sections 3, and 3.2.

<sup>2022</sup> Chapter 4, section 3.2.

including those involved with managing the oil revenue.<sup>2023</sup> The lack of accountability shows through the reports issued by the Auditor-General and PIAC.<sup>2024</sup> Parliament has oversight responsibility under the Constitution.<sup>2025</sup> However, Parliament's inability to exercise that power over the executive stems from its composition, which gives the ruling party majority in Parliament with the majority members unable to vote against government agreements, bills, and policies.<sup>2026</sup> Parliamentarians vote on issues to favour the incumbent government due to the executive and the legislature's fused nature.<sup>2027</sup> Such conduct cannot curb mismanagement in Ghana. The Chapter, therefore, recommends the need for other stakeholders to partner with State institutions in the management of the oil revenue and further strengthen the PIAC as an independent oversight body in the PRMA.<sup>2028</sup> The challenge is the lack of a legal framework in Ghana's Constitution, allowing other stakeholders to participate in governance.<sup>2029</sup> A constitutional amendment can cure this defect to allow stakeholder consultation.

Institutional autonomy comes up as another challenge with the management of the PRMA.<sup>2030</sup> The appointment of heads of state institutions' architecture limits the exercise of their powers to check the executive arm of government.<sup>2031</sup> Institutional independence as it exists under Norway and Botswana need replication in Ghana, and this is possible with the broadening of the appointment process as suggested in Chapter 5.

This thesis proposes a constitutional amendment in three main areas concerning the selection of heads of State institutions to improve their performance and the quality of the institutions they superintend. First, a revision of the Constitution to cede part of the power of heads of State institutions' appointment to the Public Service Commission.<sup>2032</sup> Second, the power of the President to appoint all the nine members of the Public Services Commission needs an amendment.<sup>2033</sup> The thesis recommends that the President nominate three Commissioners, with two appointees serving

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<sup>2023</sup> Chapter 5, section 4 and 5.

<sup>2024</sup> Chapter 7, section 2.1, 2.2 (2.2.1-2.2.4).

<sup>2025</sup> Article 103 (3) of Ghana's Constitution.

<sup>2026</sup> Chapter 5, sections 4 and 5.

<sup>2027</sup> See Article 78 (1) of Ghana's Constitution.

<sup>2028</sup> Chapter 5, section 5.

<sup>2029</sup> See Article 58 (1) of Ghana's Constitution.

<sup>2030</sup> Chapter 5, sections 2.4, 4 and 5.

<sup>2031</sup> Chapter 5, sections 1, 2.4, 4 and 5.

<sup>2032</sup> Chapter 5, sections 4 and 5.

<sup>2033</sup> Chapter 5, section 5.

as the chairman and the vice-chairman.<sup>2034</sup> The CSOs, Chartered Institute of Human Resources, Civil Society Organisations, academic institutions, faith-based institutions, professional associations, and the Trade Union Congress making the remaining nominations.<sup>2035</sup>

Third, the thesis suggests the security of tenure for all the heads of State institutions to ensure that they work without political interference.<sup>2036</sup> The resort to the proposed appointment system would further reduce public office politicisation whose occupants change with a new regime.<sup>2037</sup> The thesis submits that the current practice of wholesale substitution of heads of State institutions with a change in government has a minimal prospect of facilitating development in Ghana.

The utilisation of the funds created under the PRMA reveals defects inherent in applying the oil revenues.<sup>2038</sup> First, the Consolidated Fund and the Contingency Fund established under the Constitution receive part of the oil revenue but is not subject to the audit regime existing under the PRMA.<sup>2039</sup> The PRMA needs an amendment to bring the transfers to these accounts under the PRMA for PIAC to scrutinize.<sup>2040</sup> Second, the Minister of Finance's discretionary power to cap the Ghana Stabilisation Fund and transfer the excess amount into the Contingency Fund or the payment of debt approved by Parliament requires an amendment.<sup>2041</sup> The lack of guidelines for exercising these powers benefits the government by making oil revenue available to spend in areas outside the scope of the PRMA.<sup>2042</sup> It is necessary to amend the PRMA to ensure strict conditions regulating the transfer and expenditure of such sums. Third, the Minister's sole power to determine the areas of applying the ABFA needs an urgent consideration in the absence of national development policy.<sup>2043</sup>

The amendments recommended requires immediate attention because, if the PRMA remains in its current form, it will make more revenue available to the State to spend outside the PRMA. The

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<sup>2034</sup> Chapter 5, section 5.

<sup>2035</sup> Chapter 4, sections 3.3 (3.3.1-3.3.2) and 4.

<sup>2036</sup> Chapter 5, sections 4 and 5.

<sup>2037</sup> Chapter 5, sections 4 and 5.

<sup>2038</sup> Chapter 7, sections 3.1 and 3.2. See also chapter 6 section 3.

<sup>2039</sup> Chapter 7, section 2.2.2, 2.2.3, 3.1, and 3.2.

<sup>2040</sup> Chapter 7, sections 3.1, 3.2 and 4.

<sup>2041</sup> Section 23 (3) and (4) of Act 815.

<sup>2042</sup> Chapter 7, sections 2.2.1, 2.2.2, and 2.2.3.

<sup>2043</sup> Section 23 (5) of Act 815.

thesis further argues against the operation of SWFs.<sup>2044</sup> Ghana cannot invest the oil revenue and borrow money with interest to finance development.<sup>2045</sup> The interest earned on the investments when Ghana decides to use it would have lost its value. This thesis suggests the use of money to create the necessary infrastructure for building the economy.<sup>2046</sup>

Concerning capping the Ghana Stabilisation Fund, the Minister of Finance, a political appointee, would continue to use that power to favour their government. As argued in Chapter 7, the maintenance of these provisions in the PRMA would not curb the mismanagement of the oil revenue, defeating the purpose of enacting the PRMA.

The reports of the Auditor-General and the PIAC reveal infractions, non-compliance with the PRMA, the misapplication of the ABFA, and the manipulation of the Ghana Stabilisation Fund.<sup>2047</sup> These infractions show signs of mismanagement of the oil revenue, the reason for enacting the PRMA.<sup>2048</sup> The PIAC and the Auditor-General's reports issued yearly reveals these infractions due to the absence of power in the PIAC to prosecute offenders.<sup>2049</sup> The lack of authority for PIAC to prosecute offenders has necessitated the signing of a memorandum of agreement with the Economic and Organised Crime Office (EOCO) to investigate and prosecute offenders of cases of oil-funded projects that do not exist.<sup>2050</sup> Under Ghana's constitution, the Attorney-General is vested in initiating and prosecuting criminal offences or at the office's authorisation.<sup>2051</sup> Amending the PRMA to clothe PIAC with prosecutorial powers would help ameliorate the infractions.<sup>2052</sup> PIAC must have prosecutorial powers so that violations of the PRMA would elicit prosecutions and the application of sanctions if found liable.<sup>2053</sup> Alternatively, since Ghana now has established the office of a Special Prosecutor, PIAC may resort to the office to handle prosecutions regarding infractions of the PRMA.<sup>2054</sup> Be that as it may, this power seems to have been diluted by the same

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<sup>2044</sup> Chapter 6, section 3 and chapter 7 sections 3.1 and 3.2.

<sup>2045</sup> Chapter 6, sections 3 and 4.

<sup>2046</sup> Chapter 6, section 3.

<sup>2047</sup> Chapter 7, sections 3.1 and 3.2.

<sup>2048</sup> See (note 1334) above.

<sup>2049</sup> Chapter 7, sections 3.1 and 3.2.

<sup>2050</sup> Chapter 7, section 4.

<sup>2051</sup> Article 88 (3) and (4) of Ghana's Constitution.

<sup>2052</sup> Chapter 7, section 4.

<sup>2053</sup> Chapter 7, section 4.

<sup>2054</sup> See Office of the Special Prosecutor Act, 2017, Act 959. Sections 2 and 3 particularly mandate the office to investigate alleged and specific cases of corruption and corruption related offences as well as recover proceeds of crime.

Act, which states that the Attorney-General shall authorise the office to initiate and conduct prosecution of corruption and corruption-related offences.<sup>2055</sup> This thesis argues that once the Special Prosecutor has the power to prosecute, PIAC must also be vested with the ability to prosecute but without the fiat of the Attorney-General. The acceptance of permitting the PIAC to prosecute with the authority of the Attorney General would not solve the issues raised in this thesis since the government may not be prepared to prosecute one of their own, which is the status quo. The challenge the reforms proposed will face, is the political will of implementing these recommendations.

This thesis recommends adopting the practice in Botswana regarding financing projects approved under the National Development Plans (NDPs).<sup>2056</sup> The development of NDPs in Botswana based on consensus discussion and the Parliament's involvement through legislating for the legal framework to implement the NDPs can help Ghana.<sup>2057</sup> The adoption of NDPs backed by law to guide development in Botswana is a better option for Ghana to adopt.<sup>2058</sup> It is challenging to see the actual effect of Ghana's oil revenue regarding the country's development landscape due to applying the oil revenue thinly in many areas, as observed by PIAC.<sup>2059</sup>

## 6. Moving Forward

The discovery of oil in commercial quantities in Ghana marked a 'turning point' in the country's search for hydrocarbons.<sup>2060</sup> The discovery of oil in commercial quantities is the first since independence made Ghanaians jubilate.<sup>2061</sup> If the resource-rich government fails to use the income for public investment but uses it for consumption, it creates developmental challenges.<sup>2062</sup> Ghana's quest to optimise its oil revenue resulted in the enactment of the PRMA.<sup>2063</sup> This thesis has explored

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<sup>2055</sup> See section 4(2) Act 959.

<sup>2056</sup> Chapter 8, sections 2.2.2 and 3.1.4.

<sup>2057</sup> Chapter 8, section 3.1.4.

<sup>2058</sup> Chapter 8, sections 2.2.2 and 3.1.4.

<sup>2059</sup> Chapter 7, section 2.2.3.

<sup>2060</sup> Manteaw, 'Oil's Challenge to Ghana's Democratic Development', Institute of Economic Affairs, Ghana, Monograph, 2009.

<sup>2061</sup> Gyampo, 'Saving Ghana from Its Oil: A Critical Assessment of Preparations so Far made', African Research Review, Vol. 4 (3a) 2010, 4.

<sup>2062</sup> Sachs, 'How to handle the Macroeconomics of Oil Wealth', in Humphrey et al., 'Escaping the Resource Curse', Columbia University Press, 2007, 173.

<sup>2063</sup> Chapter 1, section 2.3.

whether PRMA would improve transparency and accountability in managing Ghana's oil revenue. The thesis has done so by evaluating the provisions of the PRMA. It further discussed the regimes for managing resource revenues of Botswana and Norway. The examples from Norway and Botswana offer valuable lessons, the implementation of which would help Ghana maximize Ghana's oil revenue.<sup>2064</sup>

The enactment of the PRMA is laudable because it is Ghana's first attempt to separate a resource revenue from the Consolidated Fund.<sup>2065</sup> However, the analysis of PRMA's provisions discussed in this thesis, coupled with the reports issued by the PIAC and the Auditor-General, reveals disquieting findings.<sup>2066</sup> The discussion of the examples of revenue management from Botswana and Norway demonstrates that it is possible to use resource-revenues to improve the economic conditions of a resource-rich country,<sup>2067</sup> which has become the dilemma of oil-exporting countries.<sup>2068</sup>

This thesis argues for a paradigm shift in the following areas of managing Ghana's oil revenue to optimise oil revenues. First, institutions involved with the management of the oil revenues must reflect the principle that the oil revenue is for the State and serve as a check on the politicians.<sup>2069</sup> Second, a re-consideration at the Minister of Finance's discretionary powers allows him to make decisions alone and further capp the Ghana Stabilisation Fund and transfer money from the Ghana Stabilisation Fund into the Contingency Fund not subject to the audit of the PRMA.<sup>2070</sup> Third, the various funds created under the PRMA and the Sovereign Wealth Funds' operation must change to utilise the oil revenue.<sup>2071</sup> Fourth, the usage of resource revenue must be through the evolution of national development plans and sanctions for non-compliance.<sup>2072</sup> Fifth, the lack of NDPs has resulted in spreading oil revenues thinly with little impact on development.<sup>2073</sup> The need to have a broad-based consensus of evolving NDPs seems to be one way to address the deficit in Ghana's

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<sup>2064</sup> See chapter 8, sections 2.1 (2.1.1-2.1.3) and 2.2 (2.2.1-2.2.3).

<sup>2065</sup> See Article 176 (1) (a) and (b) of the Constitution.

<sup>2066</sup> Chapters 4, 5, 6 and 7.

<sup>2067</sup> See chapter 8, sections 2.1 (2.1.1-2.1.3) and 2.2 (2.2.1-2.2.3).

<sup>2068</sup> Karl, 'Ensuring Fairness: The Case for a Transparent Fiscal Social Contract', in Humphrey et al., *Escaping the Resource Curse*, Columbia University Press, 2007, 259.

<sup>2069</sup> Chapter 5, sections 2.2, 4 and 5.

<sup>2070</sup> Chapter 4, 5, 6, and 7.

<sup>2071</sup> Chapter 6, section 3 and chapter 7, section 4.

<sup>2072</sup> Chapter 8, sections 2.2.2 and 3.1.4.

<sup>2073</sup> Chapter 7, section 2.2.3.

development agenda against development based on political parties manifestos abandoned by new governments.<sup>2074</sup> Sixth, it is essential to vest prosecutorial powers to the PIAC in the PRMA.<sup>2075</sup>

The need to vest the PIAC with prosecutorial powers may present a challenge. The giving of prosecutorial powers to PIAC to initiate prosecutions under the PRMA must be with the authorisation of the Attorney-General of Ghana, who has the constitutional mandate to initiate criminal proceedings.<sup>2076</sup> Under the current constitutional dispensation, the head of State institutions are politicians belonging to the same political party as the Attorney-General. The Attorney-General may not be willing to prosecute a party member. The lack of prosecutions under the PRMA confirms this fact. This puzzle requires a constitutional amendment to allow PIAC to initiate the proceedings in court without the Attorney-General authorisation.

Drawing on the examples from Norway and Botswana shows that if Ghana fails to act on the recommendations offered in this thesis, the enactment of the PRMA cannot avert the resource curse and permit the utilisation of oil revenue in an accountable manner.<sup>2077</sup> As argued in Chapter 6, the SWF creation may not be appropriate for Ghana's position now.<sup>2078</sup> Ghana requires a legal framework that will commit the use of the money to the development of Ghana and restrict the influence of politicians.<sup>2079</sup> It is the independence of the PIAC vested with prosecutorial powers that will serve to check the predatory forces of the politicians in the management of the oil revenue.<sup>2080</sup> The implementation of these recommendations would help Ghana optimise the utilisation of the oil revenue.

The thesis resolves that disguised resource curse symptoms manifest in managing oil revenues, including issues of governance, accountability, institutional weakness, and thin spreading of oil revenues.<sup>2081</sup> As posed under the research questions, despite the enactment of the PRMA meant to safeguard the management of oil revenue, Ghana may not benefit from the PRMA if Ghana fails to implement the recommendations in this thesis. The creation of numerous funds under the PRMA

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<sup>2074</sup> Chapter 8, section 3.1.4.

<sup>2075</sup> Chapter 7, section 4.

<sup>2076</sup> Article 88 (3) and (4) of Ghana's Constitution.

<sup>2077</sup> See the preamble of the PRMA.

<sup>2078</sup> Chapter 6, section 2.2.1, 2.2.2, and 3.

<sup>2079</sup> Chapter 8, section 4.3.

<sup>2080</sup> Chapter 7, section 4.

<sup>2081</sup> Graham et al., 'Escaping the Oil Curse': Is Ghana on the Right Path?, *The African Review*, Vol. 46 (1), 2019, 247.

needs reconsideration. The operation of these funds, notably the Ghana Stabilisation Fund and the Ghana Heritage Fund, leaves Ghana worse.<sup>2082</sup> The thesis concludes that the creation of these funds may not be appropriate for Ghana now.

The constitutional architecture of Ghana makes the institutions with responsibility under the PRMA unable to serve as a check on the executive.<sup>2083</sup> The PIAC, as an institution under PRMA charged with oversight responsibility, cannot function well due to its inability to prosecute offenders under the PRMA.<sup>2084</sup> The thesis suggests that the PIAC would work better and perform its oversight roles once empowered to prosecute. Further to this, the PIAC has made excellent recommendations regarding the management of oil revenues.<sup>2085</sup> The PRMA states Parliament must debate these reports, but the PRMA fails to name the committee, and the reports remain undebated.<sup>2086</sup> This is a weakness in the operation of the PRMA, which needs immediate address to ensure transparency and accountability.<sup>2087</sup> Until implementing these measures, Ghana may not benefit from the revenue from the commercial discovery of oil.

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<sup>2082</sup> Chapter 6, section 3 and chapter 7, section 2.2.3.

<sup>2083</sup> Chapter 5, sections 4 and 5.

<sup>2084</sup> Chapter 7, section 4.

<sup>2085</sup> Lwabukuna, (note 1956), 5.

<sup>2086</sup> Section 56 (d) of Act 815.

<sup>2087</sup> Lwabukuna, (note 1956), 5.

## Annexure

SN.	Section	Flaws	Recommendations
1.	7 (2b) Act 815 & Clause 6 (1)(a) & 2 Act 893	The Ghana National Petroleum Corporation, upon receipt of petroleum revenue, spend it outside its core duties.	Empower PIAC to prosecute state officials of GNPC for spending outside their core mandate.
2.	19 (1)	The Annual Budget Funding Amount (ABFA) transfer into the Consolidated Fund to support the national budget takes Ghana to the pre-PRMA era. Further PIAC is unable to audit although its oil revenue.	The Finance Ministry must open an account to receive the ABFA. The Ministry must account for expenditure instead of paying the same into the Consolidated Fund associated with mismanagement and corruption. The opening of the account would allow for transparency and accountability.
3.	21 (5)	Power of the Minister to select four areas to benefit from the ABFA without any input.	The selection of the beneficiary sectors must be in consultation with other stakeholders, as discussed.
4.	23 (3)	The power of the Minister to cap the Ghana Stabilisation Fund (GSF) without any guidelines.	The PRMA must state conditions for capping the GSF and the total amount. The capping would not cause the GSF to grow and perform its function.
5.	23 (4)	The transfer of the excess from the GSF account after the capping into Contingency Fund or payment of debt approved by Parliament. Such transfers escape the audit regime under the PRMA and make extra revenue available to State.	If it is to pay a debt, the PRMA must state the type of debt. The GSF exist to cushion the state during shortfalls in oil revenue. Such transfers will hamper the growth of the fund and defeat the purpose of setting them up.
6.	58	The PRMA has a section on penalties. However, no prosecution has taken place despite infractions by the state officials of their mandate under the PRMA.	The state must amend the PRMA to clothe PIAC with powers of prosecution since the Attorney General has failed to commence any prosecutions despite the infractions of the PRMA. The prosecutions and sanctions would compel officials of State institutions to act within the PRMA.
7.	6, 9, 10, 18, 19 of Act 815 & Clause	The creation of several funds within and out of the PRMA making the operation of the funds complex.	The funds and their operation requires simplification to curb mismanagement of the oil revenue.

	3 of Act 893		
8.	21 (3) of Act 815	Lack of national development plan to guide development.	Ghana must develop and stick to national development plans to ensure coordinated development of the nation.
9.	25, 26, 29 & 45	Institutional weakness and inability to check the political elite.	There is the need for independent and strong institutions to serve as a check on the elite.

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