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## Article

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#### Provided in Cooperation with:

International Journal of Energy Economics and Policy (IJEPP)

*Reference:* Ali-Nakyeya, Abdallah/Amoh, John Kwaku et. al. (2019). Are sub-Saharan African countries losing it on oil and gas revenue management too? : evidence from Ghana. In: International Journal of Energy Economics and Policy 9 (2), S. 89 - 97.  
doi:10.32479/ijeep.7285.

This Version is available at:  
<http://hdl.handle.net/11159/3161>

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## Are Sub-Saharan African Countries Losing it on Oil and Gas Revenue Management Too? Evidence from Ghana

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Received: 23 October 2018

Accepted: 26 January 2019

DOI: <https://doi.org/10.32479/ijee.7285>

### ABSTRACT

The judicious management of revenues from natural resources has been challenging. This paper examines the effectiveness of Revenue Management Laws for oil and gas revenues in Ghana. This is to assess whether Ghana has learnt any lessons from the challenges of mineral revenues management. The study found that the management of the minerals and mining sector revenues is disturbing and some imminent problems identified in the management of the recent oil and gas revenues. The study recommends the adoption of Drysdale's five principles of effective natural resource revenue management to avoid such problems associated with an influx of natural resource wealth. We recommend a consolidation of Petroleum Revenue Management Act, 2011 (Act 815) and the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893) to provide consistency in interpreting the oil and gas Revenue Management Laws. We posit that with the experiences in the minerals and mining sector emphasized and the implementation of our recommendations, Ghana would be better informed on how to establish an effective and efficient framework to manage oil and gas revenues to spur Ghana beyond aid.

**Keywords:** Ghana, Mining, Oil and Gas, Petroleum Revenues, Management, Natural Resources, Mineral Royalties, Resource Curse, Minerals

**JEL Classifications:** H2, Q2, Q3

### 1. INTRODUCTION

*"It (oil) is the devil's excrement. We are drowning in the devil's excrement."*

*(Juan Pablo Perez Afonso, Founder of OPEC).*

Questions have been posed as to why most sub-Saharan African (SSA) countries with enormous natural resource endowments (especially gold and oil and gas) underperform economically and render their people more impoverished than ever before. Debates and academic discourses continue as to whether natural resource-rich SSA countries even need foreign aid or should continue to rely on foreign aid in the mist of such abundance of natural resource endowments.

It is therefore, more than an appropriate policy direction for Ghana's current President, His Excellency Nana Addo Dankwa Akufo-Addo to be obsessed with the *ghana beyond aid*<sup>1</sup> agenda, which his government is driving towards sustainable development.

Arezki and Banerjee (2014) have argued that the huge oil discoveries in developing economies, considered as an indicator of growth, do not serve as an alternative to foreign aid *per se*. Their argument brings to the fore a new thinking: That notwithstanding the commonsensical thesis to the contrary, there exists no

<sup>1</sup> The theme for Ghana's 2017 Budget Statement. The first phase has been recently launched successfully.

statistically significant relationship between vast oil discoveries and changes in development aid.

The debate continues to suggest that these natural endowments from the resource sectors have become a *resource curse* (Salai-i-Martin and Subramaniam, 2013; Rundquist and Henrik, 2014; Porter and Watts, 2016) rather than the blessing intended by the creator of the universe.

Humphreys et al. (2007) refer to “resource curse” as a situation where countries with large endowments of natural resources, such as oil and gas, often perform worse in terms of economic development than do countries with fewer resources. Most of these poor economic development triggering factors and other challenges are anchored on poor and ineffective management of the natural resource endowments.

The 2017 Resource Governance Index released by the Natural Resource Governance Institute reports that revenue management is the weakest element in the governance of Ghana’s mining sector<sup>2</sup>. For example, Ghana scored 37 and 65 out of 89 countries for mining and oil and gas sectors respectively on the revenue management scorecard. The report suggests weak revenue management for the mining sector and satisfactory grade for oil and gas sector.

According to the Centre for Policy Analysis (CEPA, 2012)’s research, whereas countries in the developed world, such as Norway, have shown enterprise in their oil revenue management, experiences in African countries such as Nigeria and Zambia show that properly managing resource windfalls remains a challenge for many developing countries.

This shows that opportunities indeed exist for accelerated growth and development in an oil and gas economy, but only when the challenges confronting oil and gas revenue management are surmounted (Arezki and Banerjee, 2014). Therefore, the prudent management of natural resource revenues (Gilberthorpe and Rajak, 2016) is key to ensuring that Ghana and other SSA countries derive maximum benefits from their vast natural resource endowments.

According to Fosu (2013), although Ghana prides itself as one of the democratic regimes in Africa, there is a need to guard against conflict in the wake of the oil and gas production so as not to follow the route and experiences of Nigeria. He calls for strong, vibrant and independent institutions to manage resource revenues as key to achieving development, since resource rents, if not effectively managed, may lead to a greater risk of conflict. He further admonishes government to channel the revenue from oil and gas to productive sectors to avert the resource curse and put checks and balances on the executive arm of government, so as to stem the tide of corruption.

Arezki and Banerjee (2014) argue that to be successful in oil revenue management, there is the need to incorporate a robust mechanism to build capacity for enhanced macroeconomic

management of oil revenue. This they contend enables countries to tackle instability caused by oil price volatility and to manage uncertainty about the value of the resource - two crucial elements of oil revenue management.

The foregoing discussion gives impetus to the need for prudent management of revenues from the oil and gas sector, if Ghana is to avert the inimical effects that some countries have suffered in the wake of oil and gas discoveries.

The objective of this paper is to critically examine the effectiveness of management systems for oil and gas revenues in Ghana. The paper examines the legislation in place for the management of revenues from the minerals and mining sector as well as the oil and gas sector.

The need to examine what prevails in the minerals and mining sector currently will serve as a guide as to what lessons Ghana might have learnt from the mining sector in designing the legislation to govern the oil and gas/petroleum sector. Our discussion also highlighted what could have been done better and should be done for the minerals and mining sector, following what has been put in place in respect of the petroleum sector. This study has implications for other natural resource endowed SSA countries and other emerging economies.

The study found some challenges in the management of the minerals and mining sector revenues, which currently has implications for current and future generations alike. More disturbing are the looming challenges identified in the management of the recent oil and gas revenues.

The study recommends the adoption of Drysdale (2015)’s five principles of effective natural resource management to avoid the problems associated with an influx of natural resource wealth and spur the country towards sustainable development. The study further recommends a consolidation of Petroleum Revenue Management Act, 2011 (Act 815) and the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893) to provide consistency and clarity in interpretation of the oil and gas Revenue Management Laws. The inconsistencies in the Petroleum revenue management laws on the mortgaging of oil and gas revenues should also be clarified.

The rest of the paper is structured as follows. The next section discusses the distribution of mineral royalties and the perspectives on oil revenue management and the challenges associated therewith. Section 3 examines Ghana’s natural resource management position and reviews Ghana’s oil and gas revenue management. Section 4 provides an analysis of petroleum revenues in Ghana. Section 5 evaluates the effectiveness of the Petroleum Revenue Act, 2011 and its amendment, Act 893. Section 6 concludes with policy recommendations.

## 2. DISTRIBUTION OF MINERAL ROYALTIES AND PERSPECTIVES OF OIL REVENUE MANAGEMENT

In this section, we discuss the distribution of mineral royalties in the Mining and Minerals sector and the perspectives on oil

2 <https://resourcegovernance.org/sites/default/files/documents/2017-resource-governance-index.pdf>.

revenue management and the challenges associated therewith. This is because the revenues from mining and minerals collected by Ghana revenue authority (GRA) go directly into the Consolidated Fund, whereas revenues from oil and gas have specific provisions made for them in legislation, the Petroleum Revenue Management Act.

## 2.1. Distribution of Mineral Royalties and Challenges in the Mining and Minerals Sector

In Ghana, all stool lands are vested in the appropriate stool on behalf of, and in trust for, the subjects of the stool in accordance with customary law and usage and it is in line with this that the Office of the Administrator of Stool Lands was established, and is responsible for:

- a. The establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments, whether in the nature of income or capital from the stool lands;
- b. The collection of all such rents, dues, royalties, revenues or other payments, whether in the nature of income or capital, and to account for them and disburse them to the beneficiaries specified and as shown below (Article 267 [1][2] of the 1992 Constitution of Ghana).

The mineral royalties collected by the GRA and paid into the Consolidated Fund are distributed as follows:

- a. 10% is paid into a mineral development fund;
- b. 10% is given to the mining communities and this is further distributed to various interest groups; and
- c. 80% is used to finance the budget.

The distribution to the mining communities under (b) above is further distributed as follows:

- a. 10% of the allocated amount is given to the Office of the Administrator of Stool Lands to cover administrative expenses; and
- b. the remaining 90% of the allocation is further disbursed in the following proportions:
  - i. 25% to the stool through the traditional authority for the maintenance of the stool in keeping with its status;
  - ii. 20% to the traditional authority; and
  - iii. 55% to the district assembly, within the area of authority of which the stool lands are situated (constitution of Ghana, 1992).

Richard Kofi Afenu<sup>3</sup> of minerals commission documented some of the challenges of the management of the minerals and mining sector revenues:

- i. The royalties that have accrued to the traditional authorities and the municipal and district assemblies have not been appropriated for the benefit of the community,
- ii. The transparency in the receipt and utilization of mineral royalties has been absent,
- iii. Community members have not been involved in determination of priority projects for funding from mineral royalties,

- iv. There are no stringent measures attached to the use of royalties hence the Municipal/District Assemblies use them to support their recurrent expenditures.

Richard Kofi Afenu made some recommendations to address these challenges; full disclosure and transparency in the receipt and utilization of mineral royalties, proper labelling of all projects funded with funds from royalties, the need for mineral royalties received by MDAs to be tracked and their utilization accounted for, and prompt receipt of royalty payments from the government.

A review of the Mining and Mineral sector revenue raises certain questions. The critical question is that without a Mineral Revenue Management Law, which will set out guidelines for the procedure, which will be applied to these disbursements, how will the use of the mineral royalties be properly accounted for? Where is the guarantee and assurance that these revenues will be expended in growth-promoting sectors of the communities concerned, so as to ensure the required growth and development of those communities? An appropriate law to ensure this will obviously come with prohibitive sanctions, so as to deter the misuse and abuse of the mineral royalty.

## 2.2. Perspectives of Oil Revenue Management

*"We thought it was oil, but it was blood"* (Bassey, 1998).

According to Neves (2012), oil has different meanings for different societies. He observed that for developed societies such as the US, Japan and Western Europe, oil is like an addictive drug that people only want more and more since it enables them to go everywhere.

However, to most countries in the global south, Neves (ibid) discovered that oil comes with disaster, civil war, foreign intervention, human rights violations, authoritarian regimes, environmental degradation, corruption, social inequality and endemic poverty. Chad, Nigeria, Angola, Ecuador and Iraq are only a few of the countries to learn this difficult lesson. For example, a research Guidance Note (2013) by the United Nations Development Group and the Executive Committee on Humanitarian Affairs report that at least 17 violent conflicts have involved the exploitation of natural resources.

The Christian Aid (2003) observed that at the global level, the oil economy is irrelevant to poor people, who have no access to electricity or to cars, and whose fuel comes not from oil but from wood.

The above perspectives, albeit negative, are precipitated by a lack of efficient and effective oil revenue management. These perspectives sum up the statement by Juan Pablo Perez Alfonso, <sup>4</sup>speaking in the early 1970s, *"Ten years from now, 20 years from now, you will see, oil will bring us ruin. It's the devil's excrement. We are drowning in the devil's excrement."*

These perspectives on repercussions of a lack of prudent oil revenue management are justified. This is because according to

3 EITI presentation on Mineral Royalties-Ghana Extractive Industry(<http://gheiti.gov.gh/site/index.php?option>).

4 Former Venezuelan oil Minister and a founder of the Organization of Petroleum Exporting Countries (OPEC).



Sachs and Warner (1999), the lack of natural resources has not proven to be a fatal barrier to economic success, since the star performers of the developing world - the Asian Tigers (Hong Kong, Korea, Singapore and Taiwan) - all achieved booming export business based upon manufactured goods and rapid economic growth without large natural resource reserves.

Alongside the growth failures amongst resource-rich countries are strong associations between resource wealth and the likelihood of weak democratic development (Ross, 2001b), corruption (Salai-i-Martin and Subramanian, 2003) and civil war (Humphreys et al., 2007).

The United Nation's Human Development Index of 2012, reports that the well-being in some resource-rich countries is high, others are medium and yet others are low. The very high ranked countries include Norway (1), Brunei (30), Qatar (36), the United Arab Emirates (41) and Argentina (45). Those ranked high include Kuwait (54), Mexico (61) and Saudi Arabia (57). The medium rank includes Gabon (106), Botswana (119), South Africa (121), Ghana (135) and Equatorial Guinea (136). The low rank includes Congo (142), Angola (148), Nigeria (153), Senegal (154), Togo (159), Uganda (161), Zambia (163), Côte d'Ivoire (168), Liberia (174) and Sierra Leone (177), with Chad coming close to the bottom at 184 out of 186 countries in the report.

Indeed the inequalities within resource-rich countries are another perspective worth resolving. Weisbrot et al. (2006) noted that, Venezuela for example - the Latin American economy with the most natural resources - has approximately half of the population living in poverty. The percentage of people below the poverty line was 53.90% in the second half of 2004, and improved to 43.70% in the second half of 2005. The fruits of the country's resources accrued to a minority of the country's elite. To them this is a paradox.

On the contrary, some natural resource-rich countries have performed better than others in resource wealth management and long-term economic development. Ross (2001b) observed that some 40 years ago, Indonesia and Nigeria had comparable per capita incomes and heavy dependencies on oil sales. Yet in 2003, Indonesia's per capita income was 4 times that of Nigeria (Ross, 2001b). In 2008, the difference in per capita incomes was 1.6 times and in 2012, it was 2.2 times (World Bank, 2012).

### 2.3. Challenges of Oil Revenue Management and the Way Forward

Although Ghana is no novice in the management of its mineral resources (Addy, 1998), there is strong academic consensus around the idea that the country has largely mismanaged the revenues generated from these resources (Tsikata, 1997) due largely to factors such as inadequate sector governance policies, relatively weak national administration and defective laws and regulations (Terkper, 2011).

Manteaw (2010) observed that the country has failed to maximise its benefits from the mining sector, due to impeding factors such as systemic weaknesses, the absence of a clearly articulated national

policy, an unfavourable fiscal regime, poor planning, misuse of revenues from the sector, especially at the district level, perceived corruption and lack of transparency.

Rightly so, Ghana's Energy Policy (2010) recognizes "prudent management of revenue from oil and gas exploitation" as one major challenge in meeting the country's goal<sup>5</sup> for petroleum upstream and midstream activities. This is consistent with the Fundamental Petroleum Policy for Ghana<sup>6</sup>.

The other challenges of oil revenue management are encapsulated by the core questions of:

- a. The timing of spending,
- b. Allocation of the spending, and
- c. The constraint of oil price volatility.

The timing of spending has to do with determining current spending versus future spending, that is, how much revenue should be spent now and how much should be saved for the future for the benefit of future generations. Since oil is a non-renewable natural resource, it depletes as production goes on year on year. All things being equal, that will lead to reduced revenue inflows to the government of Ghana. This is the challenge for government as it tries to structure its spending levels between the current year and in the future.

The greatest challenge is whether a government would avoid the risk of using its revenue from the oil to fund the recurrent expenditure in its budget, instead of investing in long-term capital expenditure to impact other productive sectors. Related to this challenge of use of revenue from oil is the need for transparency, which is worth addressing. How prepared are governments to abide by the Extractive Industries Transparency Initiative (EITI) which places emphasis upon full disclosure and publication of reports on revenue and their use?

Responsible handling of revenue from natural resources can be a source of wealth, economic growth and stability for a country. However, the volatility, uncertainty and exhaustibility of these revenues are a challenge to policy (Organisation for Economic Co-operation and Development, 2009).

Many oil-producing countries have found it difficult to smooth government expenditure over time and decouple it from the short-term volatility of oil revenues leading to occasional boom-bust cycles. Thus, in practice, many countries have found oil to be more of a curse than a blessing. Despite the oil wealth, many oil-producing countries have a poor growth record (Gelb, 1988).

There is also the challenge of the previously mentioned resource curse syndrome. The issue of weak governance and high levels of corruption, which can reduce economic growth rates, is also worth addressing (CEPA, 2012).

5 "The goal is to sustain and optimise the exploitation and utilisation of Ghana's oil and gas endowment for the overall benefit and welfare of all Ghanaians, present and future.

6 Fundamental Petroleum Policy for Ghana (Final Draft), June 2009 at <http://www.energymin.gov.gh/>.

Another challenge is how to safeguard the other sectors of an economy against the weight of the oil sector, that is, oil revenue-led exchange rate depreciation (Dutch Disease), industry competitiveness and agriculture.

Rose and Spiegel (2009) reported that resource-rich countries also suffer from poorly developed financial systems and from financial remoteness, and are therefore likely to experience bigger macroeconomic volatility.

To surmount the above challenges, there is a need for properly designed fiscal rules, as that can have enormous benefits in terms of reduced volatility, inter-generational equity, building buffers for bad times, policy credibility and sustainability of priority expenditures. The rules should be transparent, make economic sense in view of a country's circumstances and be simple to understand and monitor. It is important to make the breach of fiscal rules costly, in order to prevent them from being overrun, as the rules can be particularly useful in allocating spending in countries that may be subject to political bias.

It is worth mentioning that with the history of mineral resource mismanagement in mind, and determined not to repeat that history, Ghana entered into Oil for Development Co-operation Agreement<sup>7</sup> with Norway in 2008, culminating in the signing in December 2010 of two 5-year agreements for institutional co-operation upon resource and environmental management.

Thus, the oil for development co-operation agreement provided the basis for Ghana's Fundamental Petroleum Policy and subsequently a direct legislation upon the management of petroleum revenue in line with relevant provisions under the directive principles of state policy contained in chapter six of the fourth republican constitution, 1992. This review covers the law and policy of petroleum revenue management in Ghana *vis-à-vis* the reality of its application and the accompanying impact upon the economy.

### 3. A REVIEW OF OIL AND GAS REVENUE MANAGEMENT IN GHANA

In this section, we discuss the natural resource management position in Ghana and review the Petroleum Revenue Management Act, 2011 (Act 815) and Petroleum Revenue Management (Amendment) Act, 2015 (Act 893).

Since the discovery of oil and gas in 2007, Ghana has made conscious efforts to enact laws and/or adopt international best practice that would help it effectively administer the use of revenues accruing from oil and gas production. The most direct and fundamental of these national laws upon the subject matter is the Petroleum Revenue Management Act, 2011 (Act 815).

<sup>7</sup> This was for Norwegian institutions to assist relevant Ghanaian institutions and agencies in various ways to prepare the ground for sustainable development, including in particular the management of petroleum revenues (Heikki and Oteng-Adjei, 2012).

#### 3.1. The Petroleum Revenue Management Act, 2011 (Act 815)

In Ghana, the Petroleum Revenue Management Act, 2011 (Act 815) is the law that regulates the management of the petroleum revenues. It is the law that regulates the collection, allocation and management of petroleum revenue derived from upstream and midstream petroleum operations.

Thus, where there is any conflict between the provisions of Act 815 and any other enactment, or the terms, conditions and stipulations in a petroleum authorization in respect of the collection, allocation and management of petroleum revenue, the provisions of Act 815 shall prevail.

Amongst others, Act 815 requires the establishment at the Bank of Ghana (BOG) of the Petroleum Holding Fund (PHF), the Ghana Petroleum Funds (GPFs), and the Ghana Petroleum Wealth Fund (GPWF), all of which are public funds for the purpose of Article 175 of the Constitution of Ghana (Petroleum Revenue Management Act, 2011 [Act 815]).

Additional requirements include extensive and detailed accountability and transparency initiatives (ATIs) such as transparency and accountability of petroleum receipts under Section 8 of Act 815, various degrees of audits under Sections 44-47 of Act 815, annual reports by the Minister of Finance on the GPFs under Section 48 of Act 815, transparency as a fundamental principle under Section 49 of Act 815, establishment of the Public Interest and Accountability Committee (PIAC) and related matters under Sections 51-57 of Act 815 and penalties for misappropriating, defrauding or otherwise breaching the relevant provisions of the Petroleum Revenue Management Act under Section 58.

##### 3.1.1. The PHF

This PHF which is a designated public fund, is established at the central bank, to receive and disburse all petroleum revenues due to the state (Petroleum Revenue Management Act, 2011 [Act 815]). According to Act 815, the GRA is mandated to assess, collect and account for the petroleum revenues by paying directly into the PHF all petroleum revenues.

However, it is important to note that the petroleum revenue is not to be treated as part of the normal tax revenue, neither is it to be used to provide credit to the government, public enterprises, private sector entities or any other person or entity, nor used as collateral for debts, guarantees, commitments or other liabilities of any other entity (Petroleum Revenue Management Act, 2011 [Act 815]). This is significant to prudent petroleum revenue management because it serves to preserve the revenue streams from petroleum, as well as to insulate the revenue from excessive borrowing by the government.

The sources of petroleum revenue include oil and gas royalties, additional oil entitlements (including surface rentals), other receipts from petroleum operations, sales and exports of petroleum, receipts from direct/indirect government participation in petroleum operations, corporate income tax from upstream/mid-stream,

national oil company receipts (including income tax), royalties and dividends (Petroleum Revenue Management Act, 2011 [Act 815]).

### 3.1.2. GPFs

The GPFs are made up of the Ghana Stabilisation Fund and the Ghana Heritage Fund and are established to receive petroleum revenues from the PHF which are in excess of the Annual Budget Funding Amount (ABFA). The Ghana Stabilisation Fund is established to cushion the impact upon or sustain public expenditure capacity during periods of unanticipated petroleum revenue shortfalls, whereas the Ghana Heritage Fund is established to provide an endowment to support development for future generations when petroleum reserves have been depleted and also to receive excess petroleum revenue (Petroleum Revenue Management Act, 2011 [Act 815]).

The Parliament of Ghana is the body mandated to determine the percentage of petroleum revenue that should be transferred into the Stabilisation and Heritage Funds.

### 3.1.3. GPWF

For optimum economic benefit, the GPWF is designed to receive moneys held in the GSF and GHF within 1 year after depletion of petroleum resources.

### 3.1.4. Disbursement of petroleum revenues

Referencing the Petroleum Revenue Management Act, 2011 (Act 815), all revenues are payable initially into the account of the PHF for subsequent disbursement into specified BOG accounts as follows: 70% into the accounts of the ABFA and 30% into the accounts of the GPFs. Out of the GPFs, 70% is expected to go to the Ghana Heritage Fund and the remaining 30% to the Ghana Stabilisation Fund. Transfers could also be made to the Consolidated Fund in support of the national budget, and for exceptional deductions in accordance with law.

In order to maximize the impact of the use of the petroleum revenue, the Minister of Finance is required to prioritize not more than four areas specified in the law for the use of the petroleum revenue, subject to a review every 3 years, except that he may make a special request for, and parliament may release, revenue to address national disasters as they occur. Revenue estimation, including the financing needs of the Ghana National Petroleum Corporation (GNPC) or any future national oil company (NOC) established by the government to participate directly in petroleum activities is part of appropriation. Finally, the Petroleum Revenue Management Act, 2011 overrides any conflicting laws.

### 3.1.5. Governance and institutional framework of the petroleum revenue management act, 2011 - The public interest and accountability committee (PIAC)

The Parliament of Ghana receives and deliberates upon the quarterly/annual reports of the GPFs (Petroleum Revenue Management Act, 2011 (Act 815). The Ministry of Finance and the BOG Investment Advisory Committee (IAC) are responsible for the fiscal revenues and investment policies in upstream and midstream petroleum operations, as well as the custody and management of all funds created under Act 815.

The BOG is itself responsible for the day-to-day operational management of the PHF, the GPFs and subsequently the GPWF under the terms of an Operations Management Agreement (OMA). The GRA is charged to secure all petroleum revenues.

The PIAC is an influential advisory body created to protect public interest through oversight monitoring of the management of petroleum revenues by the relevant executing institutions. Established pursuant to Section 51 of Act 815, the PIAC comprises representatives from all stakeholders, including government, the Ghana Extractive Industry Transparency Initiative (GHEITI), the Ghana Bar Association, the Association of Ghana Industries and the Ghana Chamber of Commerce, policy think tanks, the Trade Union Congress, the media, traditional leaders and religion based organisations.

The PIAC is established to increase transparency by opening up the decision making process to public debate, and moving the process towards more prudent and equitable management of petroleum resources in Ghana. By introducing the PIAC alongside other budget transparency and accountability initiatives contained in the PRMA, 2011(Act 815) aims at ensuring the timely disclosure of revenue information or allocation procedures as a means to reducing discretionary government spending. This has the effect not only of improving fiscal performance, but of reducing corruption and poverty.

The PIAC is aimed specifically at:

- Monitoring and evaluating compliance with Act 815 by the government and other relevant institutions in the management and use of petroleum revenues;
- Providing a platform for public debate on spending prospects of petroleum revenues in line with development priorities; and
- Providing an independent assessment on the management and use of revenues (Act 815).

A key accountability and transparency requirement of the PRMA is for the PIAC to, *inter alia*: Publish a semi-annual report and annual report by the 15<sup>th</sup> September and 15<sup>th</sup> March of each year, to be posted on the committee's website as well as published in daily newspapers, and delivered to parliament and to the President; and

- Hold public meetings at least twice each year to report on its mandate to the general public (Act 815).

Thus, public disclosure and critique of information about the use of oil revenue is a mandatory requirement of the PRMA that empowers the public to ensure transparency, probity and accountability, the very key principles underlying the global transparency and accountability agenda.

The institutional framework under the petroleum revenue management act, 2011 is outlined below:

- The Minister of Finance is required under Section 48 of the PRMA to present an Annual Report to parliament.
- The GRA is mandated under Section 3 of the PRMA to assess, collect and account for petroleum revenue due to Ghana.
- Obligations of the Ministry of Finance and related matters are provided for under Sections 25, 28 and 44(2) of the PRMA.



Under these obligations are found the following oversight roles:

- Management obligations of the BOG as provided for under Section 26 of the PRMA.
- The Investment Advisory Committee whose functions are spelt out under Sections 25(d), 27(2), 29, 30 to 40 of the PRMA.
- The PIAC whose role is provided for under Sections 51 to 57.
- Responsibilities of the Auditor-General are provided for under Sections 45, 46 and 47.
- The national oil company (GNPC) also has its roles set out in Sections 6(d), 7(2)(b), 7(3) and Section 20(2) of the PRMA.

Institutions outside the PRMA that promote transparency and accountability in petroleum revenue management in Ghana include the Ghana EITI (GHEITI) as well as foreign institutions. From the creation of the Kimberly Process Certification Scheme (KPCS)<sup>8</sup> through to the Publish What You Pay (PWYP)<sup>9</sup> Coalition to the EITI,<sup>10</sup> global actors such as bilateral and multilateral donor organisations, multi-national organisations, governments and their law and policy makers, private companies, non-governmental organisations, the media and civil society organisations across the world have embarked upon a global campaign for improving the economies of resource-rich countries, including Ghana, through the good governance of the revenues accruing from those resources. Transparency initiatives have over time been generally regarded as social rights.

### 3.2. The Petroleum Revenue Management (Amendment) Act, 2015 (Act 893)

The petroleum revenue management act 2011 (Act 815), passed by Parliament in March 2011 was labelled as progressive by stakeholders because it delivered a transparent structure for managing Ghana's petroleum revenues.

However due to some issues with the implementation of Act 815, inconsistencies and operational challenges in the management of revenue from the oil and gas sector, there were calls for the review of Act 815 if Ghana is to avoid the *resource curse* that bedevils most natural resource-endowed countries. Therefore, proposals from Civil Society Organizations such as ACEP, The Centre for Public Interest Law (CEPIL), and Friends of the Nation (FoN) were made to the Government of Ghana through Ministry of Finance and Economic Planning to Parliament for consideration, which led to the amendment of Act 815 into new The Petroleum Revenue Management (Amendment) Act, 2015 (Act 893).

One key amendment in Act 893 is, 'in order to preserve revenue streams from petroleum and ensure the object of this Act, there

shall not be any borrowing against the petroleum reserves'. However, this appears to be inconsistent with the provisions of The Petroleum (Exploration and Production) Act, 2016 (Act 919). Act 893 explicit provides that oil and gas revenue streams shall not be any borrowing against the petroleum reserves, Act 919 gave the Minister of Energy the latitude to grant oil and gas companies the authorisation to mortgage their revenues as collateral for borrowing. The prompt resolution and clarity of the inconsistency between Act 893 and Act 919 is critical towards the effective management of oil and gas revenues for not only the current generation but also future generations and propel Ghana towards desirable economic growth rates.

## 4. ANALYSIS OF PETROLEUM REVENUES IN GHANA: A SYNTHESIS OF PUBLIC INTEREST ACCOUNTABILITY COMMITTEE REPORTS (PIAC)

This section discusses the reporting requirements of the Petroleum Revenue Management Act, 2011 (Act 815). One of the most innovative provisions in the PRMA is the establishment of the PIAC, with the obligation to publish semi-annual and annual reports to, amongst other things, give an independent assessment of the management and use of petroleum revenues in accordance with the PRMA. The PIAC does this by relying on petroleum receipts reported by the Minister of Finance, the GRA, the BOG and the participating oil companies.

It is instructive that the Minister of Finance, in accordance with sub-sections (5) and (6) of Section 21 of the PRMA, prioritised and parliament approved in 2011 the following four areas to benefit from the use of the ABFA other than the GPFs:

- Road and other infrastructure;
- Capacity building (including oil and gas);
- Amortisation of loans for oil and gas infrastructure; and
- Agriculture modernization.

In the 2015 Budget Statement, the ABFA which totaled US\$306.80 million (GHS888.6 million) out of which GHS270.51 million (30.44%) was disbursed to the four priority areas as follows:

- GHS260.66 million (96.36%) to road and other infrastructure;
- GHS0.0 (0.0%) to capacity building (including oil and gas);
- GHS0.0 (0.0%) to amortization of loans for oil and gas infrastructure; and
- GHS9.85 million (3.64%) to agriculture modernisation.

The PIAC in pursuance of its mandate as an accountability initiative under the PRMA has consistently detailed its findings and recommendations upon the management of petroleum revenues. As a result, several bad governance measures have been spotted and good ones identified over the years.

Issues such as the following, as required by the PRMA, were additional findings of the PIAC:

- Non-compliance with the formulae for establishing the benchmark revenue,
- Over-estimation of the benchmark revenue due to the inclusion

<sup>8</sup> Established by UNGA Resolution 55/56 for the regulation of trade in 'conflict diamonds.'

<sup>9</sup> PWYP is a global network of Civil Society Organisations (CSO) that are united in their call for oil, gas and mining revenues to form the basis for development and improve the lives of citizens in resource-rich countries.

<sup>10</sup> The EITI is a global standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate and enhance trust.



- of corporate taxes that were unlikely to materialize,
- Non-compliance with institutional obligations under the petroleum revenue management act, 2011,
- Improper lodging of payments for the PHF, and
- The non-existence of neither a long term development plan nor an operational management agreement with the BOG for the management of the GPFs.

This PIAC, not only does it serve to inspire confidence and trust in the governance of petroleum revenues, it also serves as a mechanism for checks and balances, at least from the perspective of civil society and community based organisations.

## 5. THE EFFECTIVENESS OF THE PETROLEUM REVENUE MANAGEMENT ACT, 2011 (ACT 815)

From the beginning of the Fourth Republic in 1992 until the present, Ghana has grown from strength to strength in the enhancement of its democratic credentials, and respect for civil society organisations (CSOs) and the media by the political elite has attained its pinnacle. Civil society organisations and the media have seized the opportunity to make an impact in diverse areas of national concern, including revenue management in the extractive industries. For instance, both civil society organisations and the media have representation on the PIAC in their separate capacities, and have established credible partnerships with government and other development partners in developing all oil and gas legislation since 2007, when oil was discovered.

In Ghana today, it is inconceivable for government to make any key decision affecting the use of revenues accruing from the oil and gas resources without consulting civil society organisations and the media. However, in light of some disturbing revelations from PIAC reports, leading think tanks and non-governmental organisations (NGOs) have recently cautioned that Ghana may be heading for the *resource curse* in the management of its petroleum resources. For example, The Africa Centre for Energy Policy (ACEP)<sup>11</sup> is particularly vociferous in this regard. In its most recent public interest report on oil and gas revenue management in Ghana for the period 2011-2013, the Africa Centre for Energy Policy reiterates most of the observations contained in PIAC reports and opines that:

*“there is demonstrated evidence of inefficiency in the use of petroleum revenue...Furthermore, the Government of Ghana has exploited weaknesses in the Petroleum Revenue Management Act to increase its spending of petroleum revenues meant for savings in the Stabilisation Fund. The provision that allows the Minister of Finance the discretion to cap the Stabilisation Fund and to use any excess revenue for debt repayment or contingency fund has been exercised capriciously.”*

<sup>11</sup> The ACEP is a policy think tank that works to influence energy sector policies in Ghana and Africa by providing professional analysis of energy policy issues, training, advisory services and policy advocacy for the efficient and transparent management of Africa's energy resources. Another influential NGO is the civil society platform for oil and gas (CSPOG).

In an earlier report, the ACEP (2013) demonstrates how a good law such as the PRMA may not stop oil money from going down the drain. After a careful evaluation of the application of the PRMA upon certain projects and the accompanying impact of oil wealth upon the economy, the ACEP concludes:

*“...that oil revenues have not been managed efficiently so far as the projects evaluated are concerned. This is due to multiple factors including, but not limited to, poor project selection, project delays, operational lapses, and low absorptive capacity as a result of the high social and economic cost of investments. Thus the spending of the ABFA has not yet met the standard of efficiency (ACEP, 2013).”*

In both reports, the ACEP has argued that if Ghana is to avoid the miseries that have plagued many resource-rich developing countries, the country must revise its notes and follow the right path in spending or investing its petroleum revenue.

The critical analysis and discussion of the legislation governing the management of *mining revenues* gives impetus to the need for efficient management of revenue from the petroleum sector, if Ghana is to be able to avert the negative effects that some countries have suffered in the wake of oil and gas discoveries. This is because the discovery of natural resources, including oil, brings with it the challenges of how the revenue from the resource should be managed, in order to ensure that the find becomes a blessing rather than a curse on the economies concerned. The discovery of oil in commercial quantities off the coast of Ghana took place in June 2007, with the lift of the first oil from the Jubilee Field occurring in December 2010.<sup>12</sup>

## 6. CONCLUSION

The modest objective of this paper is to examine the effectiveness of oil and gas revenue management in Ghana. To achieve this objective, the paper critically examined the legislation in place for the management of revenues from the minerals and mining sector as well as the oil and gas/petroleum sector.

From the foregoing analysis and established institutions of Petroleum Revenue Management Act, 2011 (Act 815) and its amendments the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893), there seems to be a robust governance and institutional framework to efficiently and transparently manage oil and gas revenues in Ghana. However, it fails to address the challenges of overall budget sustainability and volatility of oil revenues, and it has no power to preclude the government from borrowing<sup>13</sup>. We propose the following recommendations for policy decision making.

First, the purpose of efficient oil and gas revenue management is to avert spending the revenue on current government consumption expenditure. Revenue from natural resources, especially oil and gas revenues should be invested in capital expenditure, in order

<sup>12</sup> Public Interest and Accountability Committee Annual Report, 2011.

<sup>13</sup> The government of Ghana issued its first Eurobond in 2007, shortly after the Jubilee oil discovery, and made four more issuances to the tune of USD 4.5 billion.

to promote growth, as well as to create an enabling environment for the private sector to thrive. Some of these capital investment areas include road infrastructure, water and sanitation, human capital development, through enhanced education, improved health delivery systems and sustainable and reliable energy supply. The provision of these by government will assist the private sector to also provide the required transportation and housing, as well as the development of petrochemicals, agriculture and agri-business.

Second, government should put in place a prudent fiscal policy to build a buffer in order to deal with oil revenue volatility, as well as to smooth out non-oil primary deficit. This is equally necessary for mining revenue, as is evident in the current low price of gold, for example, which has led to recent lay-offs of workers in the mining sector. There is a need for the Government of Ghana to design a long-term fiscal strategy dependent upon high quality long-term economic and revenue projections, which includes a sensitivity analysis. Medium-term frameworks that promote transparency, accountability and fiscal challenges should be pursued, as they would provide certainty for the segregation of expenditure into consumption expenditure and capital expenditure.

Third, we agree with Sachs (2006) that with the correct investment strategy, non-resource export sectors can benefit from increased natural resource earnings, and indeed it is possible to reverse the infamous “Dutch Disease<sup>14</sup>” by generating growth in sectors that are central for poverty alleviation, but which are in practice non-tradable (including food production), alongside real exchange rate depreciation.

Fourth, the study recommends that the Petroleum Revenue Management Act, 2011 (Act 815) and its amendment, the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893), should be consolidated to provide consistency and clarity in interpretation of the petroleum revenue laws.

Fifth, there should be prompt resolution and clarity on the inconsistency between the two Petroleum Revenue Management Laws (Act 893 and Act 919). This is with regards to the mortgaging of oil and gas revenues which is critical towards the effective management of oil and gas revenues for not only the current generation but also future generations which will propel Ghana towards desirable economic growth rates.

Finally, we recommend government policy to adopt the five principles for the effective management of natural resource revenue proposed by Drysdale (2015). The principles are ensuring that the responsibility for petroleum revenue management is defined; all natural resource revenue is received by the state; natural resource revenue is invested wisely; natural resource revenue is managed transparently; and some natural resource revenue benefits future generations. We believe that if Ghana adopts the five principles, the country can avoid the problems associated with an influx of natural resource wealth and achieve sustainable development.

The above recommendations, which has implication for SSA countries and other emerging economies is capable of guarding

against the natural curse in the oil and gas sectors and reversing the tide in the mineral and mining sectors as well.

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14 Dutch Disease refers to the oil revenue-led exchange rate depreciation phenomenon.