

# Assessing the Utilisation Regime of Ghana's Oil Revenue under the Petroleum Revenue Management Act

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## Abstract

*Ghana's Petroleum Revenue Management Act (PRMA) created two funds under the Act. The first comprises the Petroleum Holding Fund, the Ghana Petroleum Funds made up of the Ghana Stabilisation Fund and the Ghana Heritage Fund, referred to as Sovereign Wealth Funds (SWFs), and the Annual Budget Funding Amount (ABFA), which is subject to the accountability regime under the PRMA. The second, consist of the Consolidated Fund and the Contingency Fund, exists outside the PRMA; nevertheless, these funds receive a portion of Ghana's oil revenue. The PRMA has established an accountability regime to ensure effective oil revenue management by giving the Public Interest Accountability Committee (PIAC) and the Auditor-General the mandate to examine oil revenue management. Be that as it may, the second set of funds is not subject to the accountability regime existing under the PRMA. The article sees the practice as a disturbing trend and argues that the PRMA must be amended to allow the institutions to evaluate oil revenue management for accountability to prevail.*

**Keywords:** *Oil revenue, Institutions, Non-compliance, Misapplication, Manipulation.*

## Introduction

The PRMA discusses the various funds under the Petroleum Revenue Management Act. (PRMA, 2011& 2015). The first set of funds is the Petroleum Holding Fund provided in section 2 (1) of the PRMA. The Ghana Petroleum Funds in section 11(1) of the PRMA. This fund comprises the Ghana Stabilisation Fund and the Ghana Heritage Fund, described as Sovereign Wealth Funds (SWFs) in sections 9(1) and 10(1) of the PRMA. The Annual Budget Funding Amount (ABFA) is in section 18(1) of the PRMA. The Consolidated Fund and the Contingency Fund in articles 176 (1) and 177 (1) of the 1992 Constitution of Ghana are funds outside the PRMA; nevertheless, these funds receive a portion of Ghana's oil revenue.

The second set of funds outside the PRMA means the funds are not subject to the accountability regime provided for under the PRMA. This paper sees this as a disturbing trend and argues for an amendment of the PRMA to allow the PIAC to audit the expenditures of these funds. Under sections 25 and 48 of the PRMA, 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.

This paper has four sections. Section one is the introduction. Section two assesses the use of the oil revenue within the PRMA. The assessment is done by evaluating 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 paper seeks to verify whether using the funds enhances the optimisation of oil revenue. The reports of PIAC, particularly, will be done under four main headings, namely non-compliance with the PRMA, misapplication of the ABFA, manipulation of the Ghana Stabilisation Fund and Ghana National Petroleum's expenditures. Section three evaluates the reports issued by the Auditor-General and the PIAC regarding the utilisation of the oil revenue. The evaluation seeks to identify the challenges identified through the reports issued by the Auditor-General and the PIAC. Section 4 will conclude and make recommendations to ensure accountability in managing Ghana's oil revenue.

## 2. Assessment of the use of the revenue per reports

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Resource-rich countries must address three issues in managing resource revenues: balancing spending and saving, where to spend and save, and how to spend or invest efficiently (Amin, 2014). The PRMA in sections 16(2) and (3) and clauses (4) (a), (b) and (c) addresses the expenditures. Where to spend the oil revenue is in sections 21(3) and (5) of the PRMA. The investment of the oil revenue is in sections 9 and 10 of the PRMA. However, the law is silent on spending efficiency (Amin, 2014). Germane to the management of resource revenues is a legal regime that helps transform the income into development outcomes, which is at the core of the resource curse discussions (Amin, 2014). This article 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.

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. Per sections 45, 47, 52 and 53 of the PRMA, the audit undertaken by the Auditor-General and the PIAC promotes transparency and accountability in oil revenue management. 2023 marked twelve years of the PRMA's operation, which gives enough scope for its assessment concerning the utilisation of the funds. The reports of the Auditor-General and the PIAC are essential to evaluate the utilisation of the oil revenue. The article will assess the reports from 2013 to 2018.

### *The Reports of the Auditor-General*

Under section 45 (1) of the PRMA, the Auditor-General is an external auditor of the Petroleum Funds and must issue an annual report on the funds. Alternatively, under sections 45 (2) and (3) of the PRMA, it may appoint an external auditor for a non-renewable term of three years to audit the funds. 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. According to sections 46 (1) and (2) of the PRMA, the Auditor-General submits its report to Parliament. Under sections 46 (3) (a), (b) and (c) of the PRMA, the 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.

The PRMA, under section 30 (1) (a), mandates the Investment Advisory Committee (IAC), an independent body established under the PRMA, to formulate and propose an investment policy to manage the Ghana Petroleum Funds for the Minister of Finance (Minister) consideration. According to section 25 (a) of the law, the Minister must develop the investment policy on receipt of the proposals by IAC and submit it to Parliament for approval to invest in the Ghana Petroleum Funds. The Auditor-General's report stated that the IAC had failed to make proposals, and the Minister proceeded to invest in the Ghana Petroleum Funds without an investment policy (Auditor-General's Report, 2013). The Auditor-General's 2013 report found that due to IAC's failure to perform its duty, the finance minister invested in the Petroleum Funds without developing an investment policy. The conduct violated the provisions of the PRMA without any sanctions to the offending parties.

The Auditor-General described the investment so far undertaken as conservative (Auditor-General's Report, 2013). The description stems from investing in instruments that qualify as low-risk and yield low returns. Consequently, the Auditor-General urged the Minister to review the range of products funded to generate higher profits (Auditor-General's Report, 2013). The Auditor-General's warning is futile because more policy regarding investing in the Ghana Petroleum Funds is needed.

The PRMA, under section 3 (4), 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 original amount as the non-payment continues. 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. The non-payment means Ghana lost revenue since the amount could have been invested to yield returns. The amount comprised non-payment of gas supplied to Ghana Gas Company Limited by Ghana National Petroleum Corporation and non-payment of surface rentals by some upstream companies (Auditor-General's Report, 2015).

For example, the report shows that Oranto/Stone Energy owed US\$ 115,316, which represents non-payment of surface rentals and royalties for two years (Auditor-General's Report, 2015). The Ghana Revenue Authority, under section 3 (1) of the PRMA, is charged with collecting revenue under the PRMA but failed to demand the amount despite its power to assess, collect, and account for every income due to Ghana. Where the income becomes outstanding, the PRMA in section 3 (4) permits the Ghana Revenue Authority to charge a penalty of five per cent of the original amount for each day the default continues. It is strange for the rents to be outstanding when the PRMA vests the authority to demand the amount and levy a 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 (Auditor-General's Report, 2015). The IAC did not provide evidence of meeting the auditors, contrary to the requirement for a quarterly meeting under section 33 (1) of the PRMA (Auditor-General's Report, 2015). 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 31st December 2016, an amount of US\$ 130.07 million meant for the Petroleum Holding Fund was outstanding (Auditor-General's Report, 2016). The Ghana Revenue Authority had not decided to collect the accumulated amount. Lack of coordination and collaboration between the institutions means loss of revenue, which could have been invested to generate income. By the end of 2016, IAC had failed to meet as required under section 33 (1) of the PRMA (Auditor-General's Report, 2016). The investment policy guidelines were in place but have yet to be finalised, and the Auditor-General was thus unable to determine whether the investment undertaken was sound (Auditor-General's Report, 2016). The lack of meetings by IAC prompted the Auditor-General to suggest appointing persons who can make time for the committee meetings (Auditor-General, 2016). The inability of members of IAC to meet and develop the investment policy guidelines suggests a lack of commitment and devotion to applying themselves to the provisions of the PRMA.

The PRMA under section 16 (4) 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. The Bank of Ghana failed to transfer the money to GNPC regarding two oil consignments 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 (Auditor-General's Report, 2016). This was a lame excuse because section 16 (4) of the PRMA provides that the Minister of Finance and Bank of Ghana effect payment but not in conjunction with any other institution. The PRMA under section 58 (1) has a sanctions regime, but it has not been invoked when infractions occur.

Oranto/Stone Energy, as of 31st December 2016, owed surface rentals and royalties to the tune of US\$ 115 316, which was noted as outstanding in the 2015 report of the Auditor-General (Auditor-General's Report, 2016). The Auditor-General's reference to the company's continued indebtedness gives ground to amend the PRMA mandating PIAC to sue to recover 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 (Auditor-General's Report, 2016). It took a second letter to the Ghana Revenue Authority, and it replied that the upstream companies did a self-assessment but defaulted, and the Ghana Revenue Authority is now doing the assessment. This paper argues that the Ghana Revenue Authority has the power under section 3 (1) of the PRMA to assess, collect, and account for all revenues due to Ghana and has no justification for failing in this duty. Where the companies fail to pay after demand, the Ghana Revenue Authority must proceed to court to recover the money with interest. The PRMA, through amendment, must grant PIAC the power to prosecute defaulters.

The Auditor-General's report of 2017 indicated that as of 31st December 2017, US\$ 220.64 million had not been paid into the Petroleum Holding Fund (Auditor-General's Report, 2017). The non-payment violates section 3 (2) of the PRMA because an amount assessed becomes due on the fifteenth of the following month. 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 (Auditor-General's Report,

2017. The outstanding amount of US\$ 1.11 million represented non-payment of the surface rental by companies. If Ghana had sued the defaulting companies under section 3 (4) of the PRMA, an estimated amount of US\$ 3.4 billion would have accrued to the country (Auditor-General's Report, 2017). The non-payment amounts to a loss of income since the Ghana Revenue Authority has failed to initiate action for the money; the article suggests amending the PRMA to empower the PIAC to proceed against such defaulters (Section 3.2 below). The report indicates that IAC has failed to develop an investment policy for investing the Ghana Petroleum Funds; nevertheless, an investment took place, which violates section 30 (1) of the PRMA (Auditor-General's Report, 2017).

One major infraction of the PRMA in 2018 relates to the non-transfer of assessed petroleum revenue into the Petroleum Holding Fund, as provided under section 3(2). The Auditor-General put the figure as of 31st December 2018 to be US\$ 310.34 million was not transferred into the Petroleum Holding Fund (Auditor-General's Report, 2018). 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 rental fees by several entities working in the sector (Auditor-General's Report, 2018). The non-transfer of the amount has two effects. First, failure to invest as provided for under section 3 (4) of the PRMA and second, the late payment should attract interest, but there is no evidence of interest payment.

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 (Auditor-General's Report, 2018). 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 (Auditor-General's Report, 2018). This paper 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 its powers under section 3 (1) of the PRMA for assessment and collection accounting for oil revenue due to Ghana.

### *The Reports of the PIAC*

Under section 56 (a) of the PRMA, the Public Interest Accountability Committee (PIAC) must issue two reports yearly. 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. Under section 56 (b) and (d) of the PRMA, PIAC must publish these reports on its website and submit copies to the President and Parliament. According to sections 52 (a), (b), and (c) of the PRMA, the reports of PIAC examine 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. Their duties promote transparency and accountability in the management of oil revenue. The next section proceeds to discuss the various findings of PIAC under the following sub-themes provided hereunder.

### *Non-Compliance with the PRMA*

The PRMA in section 6 (a) lists the components of petroleum receipts to include surface rentals. 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 underestimating the Petroleum Holding Fund (PIAC Report, 2011). 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. PIAC reported that it could not 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 (PIAC Report, 2011). 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 (PIAC Semi-Annual Report, 2012).

PIAC further found that the allocation of funds to the Ghana Petroleum Funds fell by 82 per cent due to how the Finance Ministry interpreted section 23 (b) of the PRMA concerning the distribution into the

Ghana Petroleum Funds. The PRMA in section 23 (1) (b) 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. 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 (PIAC Annual Report, 2012). PIAC sought a legal opinion on the issue that revealed the Ministry's interpretation was in error of the PRMA (PIAC Annual Report, 2012).

The PRMA in section 25 (d) 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. PIAC's report showed that the bank invested in the Ghana Petroleum Funds without a contract with the Finance Ministry; the investment took place outside the purview of the PRMA (PIAC Annual Report, 2011). Section 23 (1) (b) of 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. 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 (PIAC Annual Report, 2011). The first year of implementation of the PRMA revealed these infractions. If subsequent reports have these breaches, that will require assessing what contributes to the violations and finding means of addressing the challenges of managing 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 (PIAC Annual Report, 2012). Of this amount, US\$ 38, 357, 884 meant for the Ghana Petroleum Funds, was allocated to the ABFA (PIAC Annual Report, 2012). The distribution contravened the PRMA and denied the Ghana Petroleum Funds' investible funds. PIAC's 2011 annual report identified an anomaly with transfers into the Ghana Petroleum Fund. 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 (PIAC Annual Report, 2012). The overpayment was deliberate because of the Minister of Finance's power to cap the Ghana Stabilisation Fund under section 23 (3) of the PRMA. The excess amount is transferred into the Consolidated Fund to make money available for government spending.

The non-allocation further shows that if money is available for use, the government will choose to spend it rather than invest it. Thus, the challenge has become whether to invest—or not invest—the Ghana Petroleum Funds or use them to meet society's needs. This article advocates using a significant part of the oil revenue and reducing investments due to Ghana's developmental challenges.

PIAC reported that the Ghana Petroleum Funds did not receive an allocation from January to June 2012, and there was no reason for the non-allocation (PIAC Semi-Annual Report, 2012). For such lapses, section 52 (c) of the PRMA requires PIAC to furnish the President and Parliament with copies of its report to assist the Parliament and the executive in performing their oversight functions. Parliament has not debated any of the reports issued as required under section 56 (1) (d) of the PRMA. 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 (PIAC Semi-Annual Report, 2012). 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 (PIAC Semi-Annual Report, 2012).

The compliance with the PRMA regarding the application of the ABFA could have been more forthcoming. The PRMA, as amended in clauses 8 (a) and (b), 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. Out of the 70 per cent, 36.73 per cent of the ABFA financed capital expenditure in 2017 (PIAC Annual Report, 2017). 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 (PIAC Annual Report, 2017).

PIAC report showed that, having passed the law in 2010, the regulations on the legislation were still outstanding, having raised the issue in 2011 (PIAC Annual Report, 2017)<sup>2</sup>. In 2017, two more oil fields, Tweneboa-Enyenra-Ntome (TEN) and Sankofa Gye Nyame (SGN), came onstream, and the Jubilee Field yielded a total revenue of US\$ 539.832 million to Ghana (PIAC Annual Report, 2017). It emerged from the PIAC report that contrary to paying petroleum receipts into the Petroleum Holding Fund at the Bank of Ghana, some companies paid petroleum revenues into the Ghana Revenue Authority's account, and the lodgments amounted to US\$ 13,518,852.98 million (PIAC Annual Report, 2017). This was a breach of the PRMA.

The inability to track the ABFA sent to the Consolidated Fund has been raised by PIAC (PIAC Semi-Annual Report, 2012). The committee recommended that the Finance Ministry open a separate account to receive this amount and render an account for its application to allow PIAC to examine the expenditures (PIAC Semi-Annual Report, 2012). 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 should have addressed this proposal. The Minister must report on the progress of projects financed with proceeds from the ABFA. The PIAC annual report of 2018 found that from 2011-2016, the Minister failed to file any such report (PIAC Annual Report, 2018). The Minister in 2017 attempted to report on project status but reported in percentage terms, which, according to PIAC, needs to be more accurate and helpful (PIAC Annual Report, 2018). The infringement of the PRMA continued in 2019. The PRMA states that 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. 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 (PIAC Annual Report, 2019).

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 article suggests that the government is comfortable sticking to the present arrangement with little accountability, and the call for amending the PRMA to equip the PIAC with the capacity to prosecute cannot be overemphasized.

#### *Misapplication of ABFA*

Sections 18 and 21 of the PRMA mandate the Ministry of Finance to propose four areas for utilising the Annual Budget Funding Amount (ABFA) in 2012 in the annual budget. The four areas selected were expenditure and amortization of loans for Oil and Gas infrastructure, road and other Infrastructure, agriculture modernisation and capacity building. 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 violate the PRMA (PIAC Annual Report, 2018).

The PIAC reported in 2013 that some projects reportedly financed with the ABFA were pretentious because the Ministry failed to provide the details (PIAC Annual Report, 2013). PIAC further said that, whereas the PRMA in section 21 (5) 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 (PIAC Annual Report, 2013). The committee concluded that the government used the ABFA as counterpart funding for government interventions contrary to the provisions of the PRMA (PIAC Annual Report, 2013). 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 (PIAC Annual Report, 2013). The Minister's failure to apply the ABFA in four areas of the economy per the PRMA continues to occur, and oil revenue has impacted the economy of Ghana minimally (PIAC Annual Report, 2015). PIAC was critical of using oil revenue for capacity building because capacity building is not defined in the PRMA and has become an "amorphous and ambiguous" expenditure (PIAC Annual Report, 2015).

PIAC's concern about the ABFA relates to the non-adherence to the provisions in the PRMA per section 21 (5), restricting its application to not more than four sectors (PIAC Annual Report, 2016). PIAC's report showed that the ABFA went to thirteen areas over the past years, contrary to being confined to four areas

set out in the PRMA (PIAC Annual Report, 2016). 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 (PIAC Annual Report, 2016).

In 2017 and 2018, the Minister breached the PRMA. Clause 21 (4) of the PRMA commits 70 per cent of the ABFA to public investment expenditures. 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 (PIAC Annual Report, 2018). The 2019 PIAC report showed that 45 per cent of ABFA was spent on goods and services, contrary to the provisions of the PRMA (PIAC Annual Report, 2019). 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 a challenge that requires a solution to prevent the resource curse from affecting Ghana.

#### *Manipulation of the Ghana Stabilisation Fund*

Per section 9 (2) of the PRMA, the Ghana Stabilisation Fund (GSF) exists under the PRMA to sustain Ghana's public expenditure during a shortfall in petroleum revenues. According to section 9 (3) of the PRMA, the Fund receives from the Petroleum Holding Fund an amount determined by Parliament. The PRMA in section 23 (3) further permits the Minister to cap the Fund prospectively with the approval of Parliament. The PRMA, unfortunately, has no guidelines regarding the Minister's power to cap the GSF. The Minister's power to cap the GSF has been manipulated to make part of the oil revenue available to the government. In 2013, 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 receiving US\$ 105.31 (PIAC Annual Report, 2013). The GSF earned US\$ 1.40 million, and US\$ 1.12 million accrued to the Ghana Heritage Fund as interest (PIAC Annual Report, 2013). The closing book balance of the GSF came up to US\$ 319, 034,153.16 at the end of 2013 (PIAC Annual Report, 2013).

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 government for spending (PIAC Annual Report, 2013). 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 section 12 (5) of the PRMA since transfers from the GSF to the Consolidated Fund occur only during shortfalls in petroleum receipts. There was no reported shortfall in petroleum revenues when the transfer took place (PIAC Annual Report, 2013).

PIAC further observed that the expenditures described as capacity building were 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 (PIAC Annual Report, 2013). Other agencies that benefitted from the money meant for capacity building included the 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 (PIAC Annual Report, 2013). PIAC, in the same report, observed that the payments to these organisations could not qualify as capacity building. This paper 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 per section 23 (4) of the PRMA into the Contingency Fund or for debt repayment (PIAC Annual Report, 2014). The Bank of Ghana transferred US\$ 17.43 million into the Contingency Fund, and the balance of US\$ 288.25 million was lodged into the debt service account to pay debts approved by Parliament (PIAC Annual Report, 2014). 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. 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 (PIAC Annual Report, 2014).

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. The practice continues but is not right, as the economy will suffer during a shortfall in petroleum revenues (PIAC Annual Report, 2014). This article argues for the amendment of the provisions on capping. As provided for in section 23 (4) of the PRMA, the transfer from the GSF needs revision, and Parliament must examine and approve it if satisfied with the rationale for such transfers. However, the finance minister failed to produce any written record that Parliament granted such approval to utilise the oil revenues (PIAC Annual Report, 2014). An amendment of the provisions discussed above, which gives the Finance Minister access to oil revenue, would minimise the effects of the mismanagement.

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 (PIAC Annual Report, 2015). The PIAC continues to lament that the fund cannot grow to cushion the nation during a shortfall in oil revenue if the trend continues and recommends a 'static' cap instead of the 'moving' cap operated by Finance Ministers (PIAC Annual Report, 2015). This article argues for the amendment of the PRMA to set a condition precedent before the Minister invokes the right to cap the GSF. Until the change takes care of these lapses, enacting the PRMA to ensure the management of the oil revenue to benefit all Ghanaians may be a mirage contrary to the preamble to the law.

The PIAC report of 2016 stated that the government received US\$ 207.78 million that year (PIAC Annual Report, 2016). The Minister transferred US\$ 21,292,307.70 from the ABFA to the scholarship secretariat to pay scholarship claims and classified it as capacity building, including oil and gas (PIAC Annual Report, 2016). The Ministry did not give details of the beneficiaries except money paid to the scholarship secretariat to pay for scholarship claims for 2016 (PIAC Annual Report, 2016). 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 (PIAC Annual Report, 2018). Per section 9 (2) of the PRMA, the GSF exist to cushion the public in the event of shortfalls in oil revenue. 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 (PIAC Annual Report, 2018). An amount of US\$ 53.69 million supported the national budget, which is the core function of the Fund (PIAC Annual Report, 2018). An amount of US\$ 619. 73 million and US\$ 41.19 million were applied to debt repayment and transfer into the Contingency Fund, respectively (PIAC Annual Report, 2018). Generally, the GSF is not serving its purpose, and PIAC expressed their misgivings regarding these withdrawals and questioned the Minister's action (PIAC Annual Report, 2018)

### *GNPC's Expenditures*

The Ghana National Petroleum Corporation (GNPC), through section 2 (1) of Act 64, is the national oil company charged with the exploration, development, production, and disposal of petroleum. According to sections 7 (2) (b) and (3) (a) and (b) and clauses 6 (1) (a) and (2) of the PRMA, GNPC 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. 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 (BOST), a government entity that stocks petroleum products for sale to oil companies which the GNPC guaranteed and was pursuing BOST for the money (PIAC Annual Report, 2015). The Minister requested a special advance of US\$ 50 million from GNPC and used US\$17.94 million to recapitalise the Ghana National Gas Company (GNGC). There was no information on the outstanding amount, while GNPC's demand from GNGC remains unanswered (PIAC Annual Report, 2015). The GNPC gave a loan of US\$ 25, 297,424.63 to GNGC, which stayed outstanding at the time of PIAC's report, and PIAC recommended an end to the practice of providing guarantees to State Enterprises (PIAC Annual Report, 2015).

These expenditures will adversely affect GNPC's core duties. Maybe GNPC receives more than 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. Although section 58 (1) of the PRMA prescribes penalties for infringing the PRMA, there is no evidence of any institution being reprimanded since the implementation of the Act.

The trend remains since the President appoints the head of the GNPC per Article 195 (1) of Ghana's 1992 Constitution. It is only the President that can appoint and disappoint. 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 (PIAC Annual Report, 2016). 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 (PIAC Annual Report, 2016). Similarly, staff costs increased from US\$ 10.23 million in 2015 to US\$ 16.64 in 2016 (PIAC Annual Report, 2016). 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 the higher side, which needs examination (PIAC Annual Report, 2016).

The 2016 PIAC report had fewer issues regarding infractions. However, it shows a need for more monitoring of 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.

The GNPC in 2017 received an amount of US\$ 182.04 million of the oil proceeds (PIAC Annual Report, 2017). 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 the GNPC (PIAC Annual Report, 2017). In 2018, Parliament approved an amount of US\$ 926.13 million for the activities of GNPC (PIAC Annual Report, 2018). The company received US\$ 286.66 million. 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 (PIAC Annual Report, 2018). 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, money used for road construction to facilitate transportation of gas from Jubilee Field but remains unpaid (PIAC Annual Report, 2018). 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 (PIAC Semi-Annual Report, 2018). 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 in 2019, more than twice the amount spent in 2018 (PIAC Annual). The institutions that benefited 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.

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 preamble to the PRMA. The contraventions require immediate attention regarding the volatile nature of oil revenue. The violations in the PRMA need redress if Ghana wants to overcome the resource curse. The article advocates that PIAC must have prosecutorial powers as an independent entity under the PRMA to address the abovementioned challenges.

### *Evaluation of Reports*

In the preceding section, I discussed the management of oil revenues through the reports of the Auditor-General and PIAC. 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.

#### *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 to implementing the PRMA.

The continued absence of investment policy guidelines is unsuitable for the effective utilisation and management of the Ghana Petroleum Funds and needs immediate attention. Parliament is responsible for audited reports prepared by the Auditor-General under section 46 (2) and (5) of the PRMA. 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. The actions of the Finance Ministry and IAC officers suggest an indifferent attitude. The solution is amending the PRMA to get another body (preferably the PIAC) to act on these reports. The suggestion stems from the independent composition and operations of PIAC, which is critical for all stakeholders mentioned in the PRMA.

The non-payment of the surface rentals by some upstream companies is unacceptable because the PRMA in section 3 (1) vests the Ghana Revenue Authority with the power to perform that function. The power available to the Ghana Revenue Authority under the PRMA is not being used, although a breach has occurred. The need for institutions to collaborate and share information on non-payments of revenue would reduce the debts incurred under the funds. This article 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. Secondly, an amendment to include the Attorney-General in the PRMA to pursue the arrears in court since article 88 (5) of the 1992 Constitution vests the office with the power to initiate civil cases on behalf of the State. Thirdly, PIAC may be empowered through the amendment of the PRMA to proceed against defaulters as an additional function.

The State institutions contravene their duties, and due to the lack of prosecutions in the PRMA, the same breaches occur over successive years. This article 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.

#### *Public Interest Accountability Committee (PIAC)*

The reports examined above show deficiencies in the PRMA that allow the State to act in a manner inconsistent with the provisions of the PRMA. The existence of the Act has not prevented the State from working against the prescriptions of the law. The issues remain unresolved despite earlier annual reports issued by the Auditor-General and the PIAC. 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. The inception of the PRMA has not witnessed any prosecution despite breaches of the PRMA. 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.

The inability of State institutions to fulfil their legislative mandate has become a significant challenge to enforcing the provisions of PRMA. As discussed in the Auditor-General's report *supra*, the IAC must submit investment proposals to the finance minister to develop investment guidelines for investing in the Ghana Petroleum Funds as contained in sections 25 (a) and 30 (1) (a) of the PRMA. The 2016 Auditor-General's report states that investment policy guidelines were in draft form and not finalised; meanwhile, the Ministry of Finance has continued to invest in the Ghana Petroleum Funds without the policy (Auditor-General's Report, 2016).

The IAC must meet at least once every quarter for deliberations per section 33(1) of the PRMA. 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. IAC was unable to comply with the PRMA, and no sanctions were applied to those who were committee members since no evidence exists on record for any sanctions being applied. Regarding meetings of IAC, the PRMA under section 33 (2) 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. 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 chairperson. 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.

The PRMA gives the Ghana Revenue Authority the responsibility to ensure payments into the Petroleum Holding Fund by entities. Upon payment, the body must write to inform the Ghana Revenue Authority of the said payment. In the event of non-payment, the PRMA in section 3 (4) empowers the Ghana Revenue Authority to charge a 5 per cent penalty on the original amount for default daily. The reports of the Auditor-General mention the non-payment of surface rentals and royalties by the upstream companies in 2013, 2015 and 2016. Although the PRMA in section 3 (1) grants power to the Ghana Revenue Authority to collect petroleum revenue due to Ghana, the potential remains unutilised to the detriment of Ghana.

The inaction of the Ghana Revenue Authority becomes disturbing when the Revenue Administration Act, 2016, Act 915 allows it to use other means to recover tax from taxpayers who default. Sections 51-57 of Act 915 discuss several ways the Ghana Revenue Authority can enforce tax payment through court actions, creating charges over the taxpayer's assets, taking possession of charged assets, selling charged assets and preventing the taxpayer from leaving the jurisdiction of Ghana. The PRMA under section 3(1) and the Revenue Administration Act from sections 51-62 vests the Ghana Revenue Authority with the mandate to collect outstanding revenue for the Petroleum Holding Fund. The inability of the Ghana Revenue Authority to use its mandate suggests inefficiency. This article recommends that another body supervise and monitor the power to collect outstanding revenues due to the Petroleum Holding Fund 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 and discussed above showed infractions and non-compliance with the provisions of the PRMA. The reports indicate that some of the breaches occurred yearly because the previous reports highlighted the violations. PIAC reports further revealed problems associated with the powers of the Minister regarding the implementation of the PRMA. The first relates to capping the Ghana Stabilisation Fund and transferring the excess into the Contingency Fund to pay debt approved by Parliament contained in sections 23 (3) and (4) of the PRMA. The second issue deals with the transfer of the ABFA into the Consolidated Fund because the scrutiny that exists under section 19 (1) (a) and (b) of the PRMA does not apply to the Consolidated Fund. The practice makes money available to the State to spend but unaccounted for under the PRMA. This is evident by the combined operation of sections 19(1) (a) and (b) and 23 (3) and (4) of the PRMA. 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' (PIAC Semi-Annual and Annual Reports, 2012). The

recommendation from PIAC is sound, but its implementation depends on amending the PRMA to take care of this situation.

PIAC reports discussed above show that contrary to the provisions of the PRMA, the Minister of Finance used the ABFA on projects not approved under the budget. The ABFA, instead of applying it to four sectors as set out under section 21 (5) of the PRMA, sometimes financed the twelve areas of the economy listed in the PRMA. With such conduct, the areas earmarked for utilising 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 (PIAC Annual Reports, 2012). The Ministry used part of the ABFA to finance goods, services, and assets for ministries, departments, agencies, and Parliament (PIAC Annual Report, 2012). 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. This article suggests that if Parliament had paid 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.

The GNPC is a national oil company. The corporation receives part of the oil revenues to aid its core duties of researching to prepare seismic reports for prospective investors. However, the reports discussed showed that GNPC granted loans to State institutions, paid for certain transactions and acted as a guarantor for some State institutions. 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. The lack of prosecution makes it more compelling for the amendment of the PRMA to empower the PIAC to undertake prosecutions because of breaches of the PRMA.

## Conclusions & Recommendations

This article has discussed the reports issued by the Auditor-General and the Public Interest Accountability Committee (PIAC) regarding the application of the oil revenue since Ghana's commercial exploitation commenced in 2010. One trend that runs through the report is State institutions acting contrary to the provisions of the PRMA. To date, the Ministry of Finance has failed to issue PRMA regulations (Gyimah-Boadi et al., 2012). The article laments the absence of regulations to operationalise the legislation in the petroleum sector, raising fears about the watering down of the safeguards in the statutes.

Evaluating the reports issued by the Auditor-General and the PIAC about managing Ghana's oil revenue reveals specific challenges. The implementation has shown the need to maximise the transparency and accountability of ABFA-funded projects and empower the PIAC to undertake its oversight responsibilities (Aisha, 2017).

The PRMA under section 52 (c) gives the PIAC power to provide 'independent assessments on the management and use of petroleum revenues...' However, all the information used to prepare its reports emanates from the government with no independent means to ascertain its authenticity (Amin, 2014). The Africa Centre for Energy Policy (ACEP, Ghana) argues that accountability institutions should develop their capability to undertake their accountability duties (Amin, 2014). The study supports the quest for an amendment to clothe the PIAC with more powers. Although PIAC was conceived as an oversight body to fight corruption, transparency, and accountability, it is a toothless bulldog in its present form (Oppong, 2016). The PIAC highlights the violations in its reports but lacks the power to take any further steps regarding sanctions. PIAC, which under the PRMA spearheads accountability, has become a reporting body that churns out reports without action (Aryeetey and Ackah, 2018). The need to amend the PRMA to clothe the PIAC with prosecutorial powers to sanction erring institutions is paramount to achieving the PRMA's objective. PIAC can competently spearhead the campaign to sanitise the petroleum sector regarding the role of institutions and the application of oil revenues.

The issues discussed highlight the need for proper governance and a legal framework that can help Ghana manage oil revenue to develop the nation. The PRMA needs an amendment to vest the PIAC with the

power to prosecute since the Attorney-General has not initiated any action to punish erring institutions. PIAC has signed a Memorandum of Understanding with the Economic and Organised Crime Office (EOCO) to facilitate the prosecutions, a laudable initiative. The position of PIAC requires more power to enable the body to undertake its functions and safeguard the oil revenues (Oppong, 2016).

For Ghana to develop economically and benefit from its oil revenue depends on the ‘autonomy, legitimacy, and discipline of leaders and institutions (Samatar, 1999).’ Ghana needs to tackle the problematic provisions of the PRMA, as discussed above, as well as articles 58 (1) and 70 (1) of the 1992 Constitution, the operations of which render State institutions ineffective. Ghana’s oil revenue management signifies uncoordinated execution of projects and misapplication of funds that cannot transform the economy (Stephens, 2019). The central issue is how Ghana would overcome the problems enumerated above by identifying these challenges.

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