

Resource Governance
for Oil and Gas

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1. Background

Ghana, then Gold Coast, started exploration for oil and gas in 1896. About 75 years later, in 1970, the first oil discovery was made in Saltpond/Central Basin. Though production began in the early 70s, it was not commercially attractive enough. The discovery, however, gave an indication of the country's petroleum potential. Successive governments took a number of steps to fast track the rate of data gathering and legislation. For instance, the Ghana National Petroleum Corporation (GNPC) was established in 1983, the Petroleum Exploration and Production (E&P) Act was passed in 1984, whilst the Petroleum Income Tax (PIT) Law was passed in 1987. These were followed by investment in data and reforms, and the development of a model petroleum agreement in August 2000. The Model Petroleum Agreement (MPA) was created to govern future petroleum contracts between the Republic and Contractors, and provides guidance for the execution of petroleum agreements. A number of Petroleum Agreements (PAs) were signed between 2004 and 2007 and include the West Cape Three Points PA (July 22, 2004), the Deepwater Tano PA (March 10, 2006), and the Deepwater Tano/Cape Three Points PA (July 19, 2006). The discovery of oil in commercial quantities in 2007 on the Jubilee Field straddled two licensed blocks; namely West Cape Three Points and Deepwater Tano. This discovery with its light sweet crude was a major boost to the petroleum sector in Ghana. The Jubilee Field was reported¹ to have taken a record 41 months from discovery to commercial production in 2010. Though political leaders greeted this discovery with optimism, some citizens were cautiously optimistic or not enthused at all.

On the part of political leaders, oil will bring additional revenue to the existing national revenue sources. Indeed, President Kufuor indicated on BBC² (in June, 2007) that, "*even without oil, we are doing so well. With oil as a shot in the arm, we're going to fly.*" On the other hand, the poorly- managed solid mineral sector, the 'oil curse' stories of some African countries and the lack of a national consensus on how the oil should be governed were a source of worry to some citizens and Social Accountability Actors.

Based on a number of domestic and international consultations, laws such as the Petroleum Revenue Management Act (PRMA), the Petroleum Commission Act (PCA), Local Content Regulations and related ones were passed. In 2016, a new Petroleum Exploration and Production Act was enacted that makes open and competitive bidding the default means of issuing petroleum licenses.

Ghana's first licensing rounds was launched in October 2018 in line with the Petroleum Exploration and Production Act, 2016 (Act 919)³ and Section 4.4.13(b) of the Coordinated Programme of Economic and Social Development Policies (2017-2024).⁴ In addition to these legal provisions, the Ghana Extractive Industries Transparency Initiative⁵ strongly

¹ <https://www.offshore-mag.com/regional-reports/article/16755206/jubilee-brings-ghana-to-the-fore-among-west-african-deepwater-regions>

² <http://news.bbc.co.uk/2/hi/africa/6766527.stm>

³ Petroleum (Exploration and Production) Act, 2016 (Act 919)

⁴ See [https://s3-us-west-2.amazonaws.com/new-ndpc-static1/CACHES/PUBLICATIONS/2018/04/11/Coordinate+Programme-Final+\(November+11,+2017\)+cover.pdf](https://s3-us-west-2.amazonaws.com/new-ndpc-static1/CACHES/PUBLICATIONS/2018/04/11/Coordinate+Programme-Final+(November+11,+2017)+cover.pdf)

⁵ See https://eiti.org/sites/default/files/documents/2015_annual_activity_report_-_final_1_o.pdf

recommended in 2015 that Ghana adopt an open and competitive bidding process, and civil society sustained advocacy for a competitive bidding process. Though a deadline of August 30, 2019 was set to complete the process, the Ministry of Energy has still not been able to meet this target.

A number of institutional structures were put in place to facilitate the conversion of petroleum resources into benefits for citizens. Following the passage of the Petroleum Commission Act in 2011, the Petroleum Commission was established as a regulator for the upstream petroleum sector, a function which hitherto was performed by GNPC.

In the same year, following the passage of the PRMA, the Public Interest and Accountability Committee (PIAC) was established and inaugurated on 15th September, 2011 as an additional public oversight body to monitor and evaluate compliance with the Act, provide a medium for public debate and independently assess the management and use of petroleum revenues. The PRMA also provided for an Investment Advisory Committee (IAC) to, among others, advise the Minister of Finance on the investment of the Ghana Petroleum Funds (GPFs), which comprised the Ghana Stabilization Fund (GSF), meant to cushion the budget from shocks to petroleum revenues, and the Ghana Heritage Fund (GHF), earmarked for future generations. The IAC was constituted in January 2012⁶.

2. Petroleum Resource Governance in Ghana

For a non-renewable natural resource, governance plays a key role in ensuring efficient extraction, securing of benefits and applying the benefits for sustainable development. The governance structure in Ghana's petroleum sector is composed of a network of policies, laws, regulations, institutions, systems, rules and processes that guide the entire value chain. This structure in Ghana like in many other resource rich countries is not static, much as the industry itself is dynamic. Ghana recognized the importance of a robust governance structure and started putting same in place decades ahead of commercial production.

2.1 The Legal and Regulatory Framework

The supreme law of Ghana, the Constitution vests all mineral resources (including petroleum) in the President in trust for the people of Ghana. It also provides that all agreements related to the country's natural resources be ratified by Parliament. Petroleum Agreements entered into before August 2016 were under the Petroleum Exploration and Production Law, 1984, P.N.D.C.L. 84 and the Model Petroleum Agreement of Ghana. Currently, the processes for the conduct of petroleum operations including the institutional arrangements and functions are set out in the Petroleum (Exploration and Production) Act, 2016 (Act 919). A set of complementary laws and regulations also exists to guide the conducted of petroleum operations. These include the Ghana National Petroleum Corporation Law, 1983, PNDCL 64 which establishes the Corporation primarily to undertake exploration, development,

⁶ https://www.piacghana.org/portal/files/downloads/piac_reports/piac_2011_annual_report.pdf

production and disposal of petroleum. The Income Tax Act, 2015 (Act 896) provides for the taxation of income of Contractors and Subcontractors. It also provides for transactions outside the scope of the Petroleum Agreements in instances where there is a fiscal stability clause in those PAs. Petroleum Commission Act, 2011 (Act 821) mandates the Commission to regulate and manage the utilization of petroleum resources and, coordinate the policies in the upstream petroleum sector. The Petroleum Revenue Management Act, 2011 (Act 815) regulates the collection, allocation and management by government of petroleum revenue derived from upstream and midstream petroleum operations. More broadly, the Revenue Administration Act, 2016 (Act 915) provides for the administration and collection of revenue by the Ghana Revenue Authority.

Petroleum Agreements (PAs) are signed between the GNPC, Government of Ghana and the Contractor(s) of oil blocks and ratified by the Parliament in accordance with the Constitution. These agreements to a large extent reflect provisions in the Model Petroleum Agreements which sets out parameters such as contract scope, exploration period, minimum exploration requirements, joint management, contractor rights and obligations, commerciality, sole risk accounts, oil sharing, measuring and pricing, taxation, domestic supply requirements, inspection and environmental protection, accounting and auditing and other aspects of petroleum agreements. A total of 18 Petroleum Agreements have been signed between 2004 and 2018, and disclosed publicly via the Petroleum Register hosted on the website of the Petroleum Commission. In addition to the PAs, other supplementary permits, licenses and certifications are also publicly available on the website of the Commission.

To facilitate the implementation of the various laws, a number of Regulations have been passed. According to the Legal Dictionary⁷, Regulations are rules of order having the force of law, prescribed by a superior or competent authority, relating to the actions of those under the authority's control. In the upstream petroleum sector, these regulations are made under the authority of the Minister responsible for Petroleum to provide guidance for the operationalization of the parent Acts of Parliament. The Petroleum (Local Content and Local Participation) Regulations, 2013 L.I 2204 for instance have been introduced to ensure the participation of Ghanaian individuals and companies in the petroleum industry as envisaged by the E&P Act. More specifically, the Regulations seek to promote the maximization of value-addition and job creation, develop local capacities in the petroleum value chain, achieve the minimum local employment level and in-country spend, increase the capability and international competitiveness of domestic businesses, among others. The Petroleum Commission Fees and Charges Regulations L.I 2221 were passed in 2015 to provide for requirements (including fees and charges) related to the acquisition of permits, extension of exploration working period and appraisal, grant of access to use of facilities, registration of interests and regulatory supervisory services. Petroleum (Exploration and Production) (Measurement) Regulations (L.I. 2246) was passed in 2016 to ensure an accurate measurement and allocation of petroleum and forms the basis for the determination of revenue that accrues to the Republic, a contractor, licensee or the Corporation (GNPC). They are applied in planning, designing, testing, calibration, operation and maintenance of a

⁷ <https://legal-dictionary.thefreedictionary.com/regulation>

metering system, equipment and methods for measuring the quantities of petroleum produced, transported or sold among others. Other regulations include the Petroleum (Exploration and Production) (Data Management) Regulations (L.L. 2257) which apply to the reporting and management of petroleum data obtained from the conduct of petroleum activity including receipt, interpretation, analysis and retrieval of petroleum data. Petroleum (Exploration and Production) (Health, Safety and Environment) Regulations (L.I. 2258) were passed in 2017 to prevent adverse effects of petroleum, provide minimum requirements, provide high standards of health, safety and environment. The Petroleum (Exploration and Production) (General) Regulations (L.I. 2359) were passed in 2018 and applies to general petroleum activities. Regulations for the PRMA were passed in 2019 following repeated calls by civil society.

A number of guidelines have also been developed for the sector. These include guidelines for the formation of joint venture companies in the upstream petroleum industry of Ghana, pursuant to Regulation 43(1) of the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204). Protocols have also been set up by the Petroleum Commission in collaboration with the National Insurance Commission, establishing the principles underlying the placement of insurance within the upstream petroleum industry in accordance with the Insurance Act and the Local Content Regulations. Guidelines have also been developed by the Commission for the smooth application of the Petroleum (Exploration and Production) (Data Management) Regulations (L.L. 2257) in the inspection and supervision of metering or management systems to ensure compliance.

2.2 Institutional Governance Arrangements – Petroleum Upstream Sector

Institutions are crucial in the success of a governance system, in setting policy, regulating the sector, ensuring state participation, environmental protection, revenue collection and management, and ensuring oversight, transparency and accountability.

The institutional arrangement for managing the extraction and utilization of petroleum resources as situated within the energy industry is outlined in the schema below:

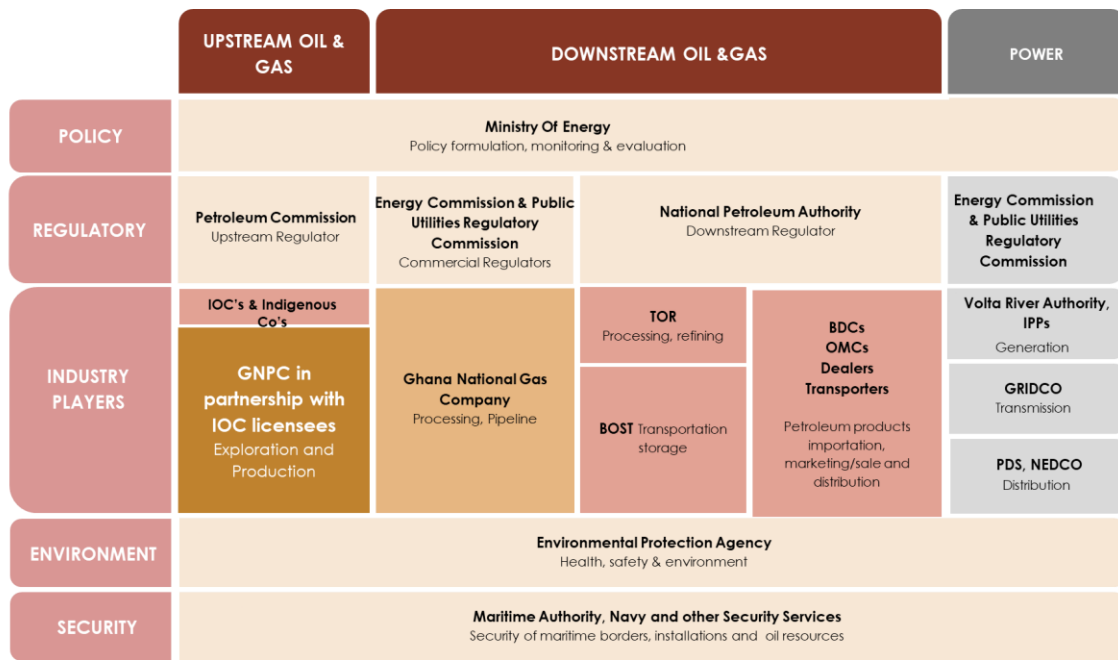


Figure 1. Institutional Set-up for the Energy Industry. Source: GNPC, 2019

The Ministry of Energy is responsible for setting policy, leadership and overall strategy for the petroleum sector. In particular, the Minister is responsible for preparation of the reference map in consultation with the regulator, opening up, redefinition, and closure of areas for petroleum activity and granting of reconnaissance licenses. The reference map shows areas of potential petroleum accumulation. The Minister also represents the Republic of Ghana in negotiation of terms, signing petroleum agreements with companies and approving the operator. It is also the Minister's responsibility to approve proposals for extension or relinquishment, and approve or postpone a plan of development for contract areas. Applications for the installation of facilities for the transport, storage and treatment of petroleum, such as pipelines, processing plants, among others, are also approved by the Minister. The Minister also approves decommissioning plans and oversees the decommissioning process. In many instances, the Minister is required to consult with the Petroleum Commission as regulator in arriving at decisions.

The Petroleum Commission was set up to regulate and manage the utilization of petroleum resources and coordinate policies in the sector. More specifically, the Commission is mandated by the Petroleum Commission and E&P Acts to work with the Minister to prepare reference maps of areas with petroleum potential, evaluate interests in petroleum areas and approve sub-contracting arrangements. The Commission also receives, makes proposals to the Minister and grants various permits, licenses and proposals for extension or relinquishments of contract areas, approval of extensions of exploration and appraisal licenses, and set, approve or change tariffs. Approvals for the commencement of petroleum production or injection and, where necessary, for flaring/venting of petroleum are granted by the Commission. Directives for use of facilities by third parties are also issued by the Commission. The Commission advises the Minister on a range of issues including from licensing to decommissioning. In addition to the above, the Commission is required to

establish and host a register of publicly disclosed contracts, the Local Content Committee, and approve the local content plan. The plan includes requirements for the provision of goods and services, technology transfer and employment and training. The Commission also receives the plan and related documents for the implementation of safety measures.

The GNPC is a party to all Petroleum Agreements and is mandated to undertake exploration, development, production and disposal of petroleum. The Corporation holds the interest of the republic in petroleum contracts in trust for the State and undertakes petroleum activities in accordance with the E&P Act. The Corporation is mandated to ensure that Ghana obtains the greatest benefit from petroleum extraction and that appropriate technology is transferred. It also plays the role of the national gas aggregator. Recently, a cabinet memo came into the public domain indicating plans to cede this role to the Ghana National Gas Company. It is yet to be seen whether this decision will see the light of day as leading civil society bodies have kicked against the move.

Parliament is mandated under Article 268 of the Constitution and in accordance with Section 10 of the E&P Act to ratify all Petroleum Agreements before they can be effective.

Parliament is also required to ratify an authorization by the Minister of Energy for the Corporation to undertake petroleum activities in an opened area not covered by a petroleum agreement.

The Ghana Standards Authority works with the Corporation to approve the measurement systems and calibration of equipment used by contractors and the Corporation.

The Environmental Protection Agency (EPA) ensures adherence to environmental and safety standards in the conduct of petroleum activities in accordance with the Environmental Protection Agency Act (Act 490) and related legal provisions such as the E&P Act (Sections 81 to 84).

The National Insurance Commission (NIC) collaborates with the Petroleum Commission to give approval to contractors and licensees to arrange other forms of security other than insurance. Petroleum activities under a Petroleum Agreement or transportation, treatment or storage licenses must mandatorily be covered by an insurance.

3. Upstream Governance Processes

The E&P Act and related legislations provide some important processes to guide the efficient extraction of petroleum resources to the benefit of citizens.

The E&P Act establishes the Local Content Fund to be managed by the Local Content Committee. The Fund provides financial resources for local content implementation in relation to education, training, research and development by indigenous companies. It also provides loanable funds for small and medium enterprises operating in the petroleum sector. The Local Content Committee keeps the books of account for audit within three months after the end of the financial year. In 2019, the Commission established the necessary structures for the administration of the Fund, including the setting up of two bank accounts (GHC and USD) at the Bank of Ghana (BoG) for the purposes of funds mobilization. The Petroleum

Commission, again, continued to implement the deduction of the stipulated one percent (1%) on contract sums⁸.

The E&P Act provides for petroleum agreements to be made only through an open, transparent and competitive public tender process albeit with some ministerial discretion to set aside the outcome of the process. This process is important for ensuring that companies with the right capacity (technical and financial), technology and human capital are selected. It also helps to reduce some of the corruption risks associated with other methods such as direct negotiation. Figure 2 shows the process for allocating oil blocks or contract areas for exploration through the first ever competitive bidding in Ghana.

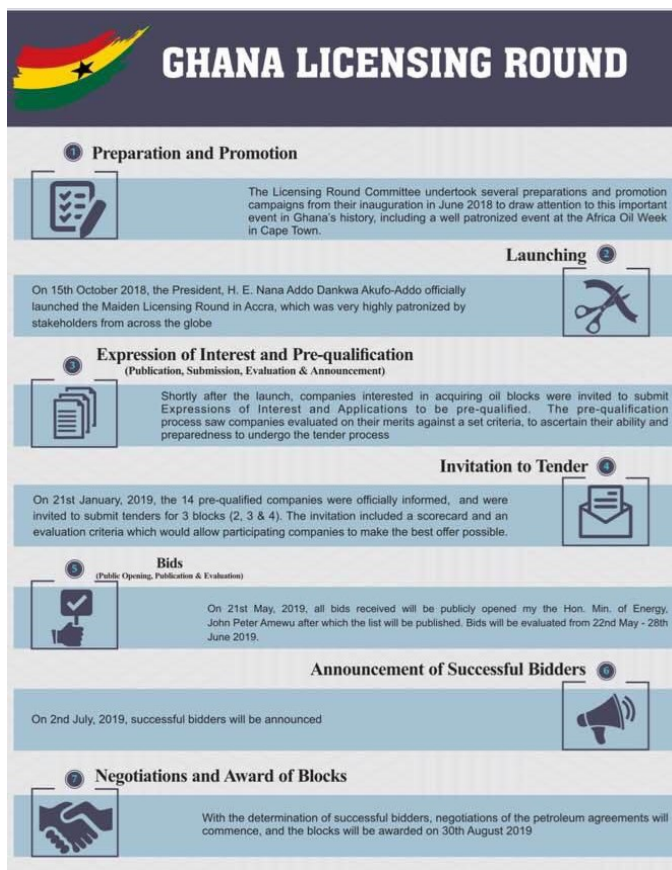


Figure 2. Competitive Process for Oil Block Allocation. Source: Ministry of Energy, 2019

The first licensing round which was announced in 2018 had 16 companies expressing interest. Six blocks⁹ were made available for the licensing round; three blocks to be awarded through an open and competitive bidding process, two through direct negotiations and one to be solely operated by GNPC, the national oil company.

The institutional set up for the mid-stream gas sector differs slightly from the upstream petroleum sector. To utilize upstream gas resources, the Ghana National Gas Company

⁸ https://www.piacghana.org/portal/files/downloads/piac_reports/piac_2019_annual_report.pdf

⁹ <http://www.reportingoilandgas.org/wp-content/uploads/GHANAs-BID-ROUND-REPORT-1-9.pdf>

(GNGC) was incorporated in July 2011 as a mid-stream gas business company that builds and operates infrastructure required for the gathering, transporting and marketing of natural gas resources in Ghana and internationally. Despite being incorporated in 2011, it was not until November 2014 that the Company started processing natural gas into lean gas, condensate, LPG and isopentanes for the Ghanaian market through the Atuabo Gas Processing Plant (AGPP). The processed gas is sold mainly to Volta River Authority (VRA), Independent Power Producers (IPPs) and some manufacturing and mining firms.

The Energy Commission is the technical regulator of the natural gas sector. The Commission regulates some aspects of the technical, operational and standards of performance in relation to the sale and distribution of natural gas. It also regulates the technical, operational and standards of performance in relation to natural gas transmission.

The Ghana Standards Authority promotes the standardization of measurement equipment. The Public Utilities Regulatory Commission (PURC) is the economic regulator of the gas sector, setting and regulating gas tariffs and prices.

4. Petroleum Revenue Governance Framework

On revenue management, the Petroleum Revenue Management Act (PRMA) was passed in 2011 and amended in 2015. The Act (as amended) provides the framework for the collection, allocation and management of petroleum revenue in a responsible, transparent, accountable and sustainable manner for the benefit of Ghana. Figure 3 shows the petroleum revenue management framework.

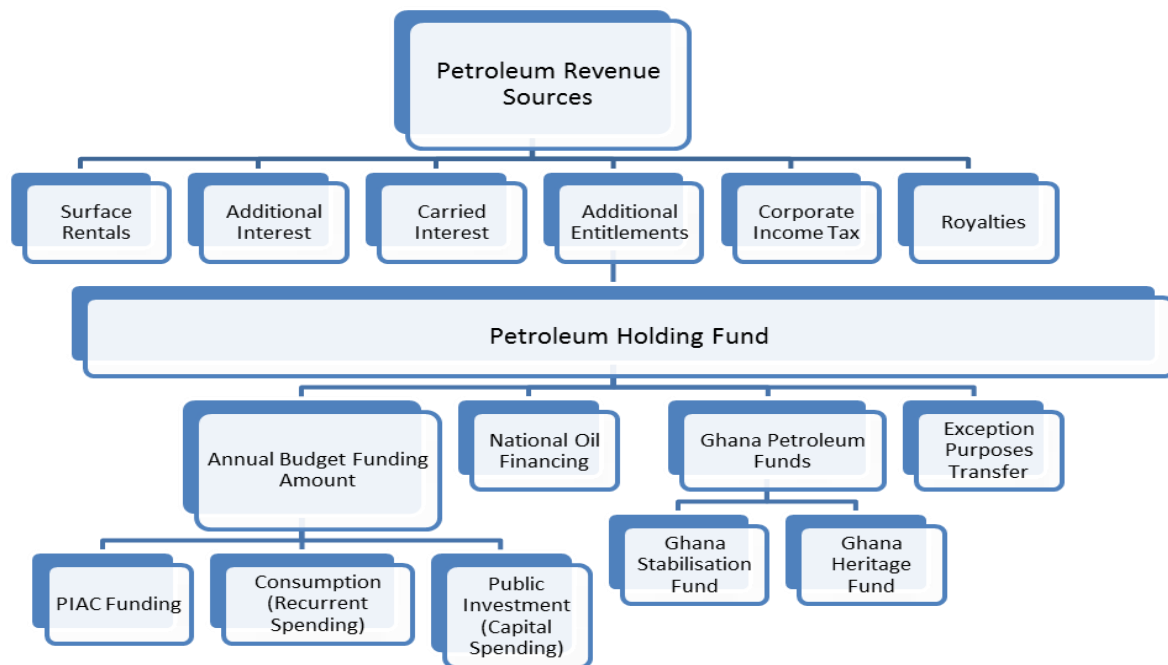


Figure 3. Ghana's Petroleum Revenue Management Framework. Source: Ministry of Finance, 2019.

Under the PRMA, the national oil company, GNPC receives 55 per cent or less of the carried and participating interest. The budget receives 70 per cent or less of the benchmark revenue.

The benchmark revenue is the projected petroleum revenue based on a seven-year moving average.¹⁰ The percentage of petroleum revenue that goes into the budget is the annual budget-funding amount (ABFA). The ABFA is shared between selected priority areas, the Ghana Infrastructure Investment Fund and the Public Interest and Accountability Committee. The remaining 30 per cent of the benchmark revenue goes to the Ghana Petroleum Funds, which is shared between the Ghana Stabilization Fund (GSF) (21 per cent) and the Ghana Heritage Fund (GHF) (9 per cent). The GSF is used to cushion government expenditure when there is a petroleum revenue shortfall. The Minister of Finance, with the approval of Parliament, has the discretion to cap the GSF and transfer any amounts in excess of the cap to the sinking (debt repayment) and contingency funds. The GHF is an endowment for future generations.

In terms of institutional governance, the PRMA sets out the roles and responsibilities of institutions concerned with the management of the petroleum revenues.

Petroleum revenue due the Republic derived from whatever source are assessed, collected and accounted for by the Ghana Revenue Authority. The Ghana Revenue Authority also receives notifications in writing of payments into the Petroleum Holding Fund (PHF), which holds all petroleum revenues prior to distribution to the GNPC, government (ABFA) and the GPFs.

The Bank of Ghana hosts the Petroleum Holding Fund as a designated public fund to receive and disburse petroleum revenue due the Republic. The Bank also undertakes operational management of the GPFs, presents quarterly reports on the performance of the GPFs to the Minister of Finance and the Investment Advisory Committee (IAC) and publishes semi-annual reports on the GPFs, submitting same to Parliament. In addition, the Central Bank keep books of accounts and records on the PHF and the GPFs with the Bank's Internal Audit Department auditing the books, records, systems and procedures on the Petroleum Funds.

The Ministry of Finance is responsible, among others, for estimating the Benchmark Revenue using a formula outlined in the PRMA, allocates and distributes petroleum revenues in accordance with fiscal provisions in the PRMA, publishes quarterly and annual reports of the management of Petroleum Funds and the ABFA. The Ministry, working with the IAC, develops the investment policy for the investment of the GPFs and takes decisions on the investment strategy of the GPFs on the advice of the IAC.

Parliament receives reports of reconciliation of actual petroleum receipts and expenditure. The House also exercises oversight and approves proposed withdrawals from the GSF. Parliament also receives and sits on a number of reports from the Bank of Ghana, the Ministry of Finance, the Public Interest and Accountability Committee (PIAC) and the Auditor General. Parliament also approves the investment policy prepared by the IAC,

¹⁰ See the first schedule (Section 17) of the Petroleum Revenue Management Act (PRMA), 2011 (815) for the formula. According to Section 7 of the amended PRMA (Act 893), the Minister for Finance can recommend a revision of the benchmark revenue to parliament if it becomes evident that unexpected changes in price or quantity can lead to high over or under projection.

submitted by the Minister of Finance. The budgets of GNPC and PIAC are also approved by Parliament.

The PIAC was established as an additional public oversight body with representation from civil society, professional associations, Trades Union Congress, and traditional and religious groups. The committee is mandated to monitor and evaluate compliance with the PRMA by government and relevant institutions, provide space and platform for the public to debate on spending prospects and use of revenues, and provide independent assessment of the management and use of petroleum revenues. It is a novel institutional arrangement and accountability mechanism in the petroleum revenue governance framework.

The IAC is a seven-member Committee of persons with proven competence in finance, investment, economics, business management, and related disciplines mandated to monitor performance and management of the GPFs. The IAC advises the Minister on the investment strategy and management of the GPFs and the choice of investment instruments. It formulates and proposes an investment policy to the minister for the investment of the GPFs.

The Auditor-General is responsible for external audit of the Petroleum Funds and receives financial statements on the Petroleum Funds from the Minister and the Bank of Ghana. The Auditor General also publishes audited reports of the Petroleum Funds and submits the reports to Parliament.

5. Petroleum Resource Governance Challenges

Despite these elaborate governance and regulatory arrangements, there are still challenges. First, data on Ghana's petroleum resources is relatively limited in terms of quality and geographic coverage. Second, these laws have discretionary provisions that grant the Minister of Energy much authority to, for instance, set aside the outcome of a competitive bidding process. In the case of the PRMA, the Minister for Finance selects priority spending areas for the ABFA in the absence of a long-term development plan, which is intended to guide the areas. Since 2011, the priority areas have been arbitrarily selected based on the promises in the manifesto of the party in power. Third, whilst the General Petroleum Regulations mandate the Minister for Energy to publish information on petroleum licensing, it does not create any space for Social Accountability Actors. Fourth, the quality and efficiency of spending which has been a public financial management challenge, manifests in the spending of petroleum revenue. This is seen in the thin spread of petroleum revenue across several projects, delays in execution of projects and associated cost overruns, poor quality of projects and increasing unspent ABFA¹¹ over the years. These challenges demonstrate the need for continual reforms to petroleum governance.

¹¹ https://www.piacghana.org/portal/files/downloads/piac_reports/piac_2019_annual_report.pdf