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# TABLE OF CONTENTS

01	Editorial
02	Lead Story: From discovery to commerciality: Evaluating the Eban-Akoma prospects and the way forward in Ghana's upstream sector
03	Mining Sector: Ghana's Lithium Agreement: 6 key points to consider and reconsider
04	Power Sector: The Energy Sector Recovery Levy: an examination of Ghana's latest approach to obtaining power stability.
05	Oil and Gas Distribution Sector: Downstream law on refinery of crude oil, distribution, marketing and pricing of petroleum products
06	Sustainability: The effective management of revenue from natural resource exploitation: Legal, economic, and institutional perspectives in Ghana
07	Petroleum Sector: The petroleum sector in Ghana: Key institutions and their roles
08	Forestry Sector: Legal timber: Legal framework for forest management and timber trade in Ghana
09	Personality Spotlight: An enduring legacy: The journey of Sir Dr. Samuel Esson Jonah

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September 2025 edition



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## Editorial

The Edfields Natural Resource Journal is a quarterly journal that discusses issues relating to the discovery, exploitation, management and sustenance of natural resources in Ghana. It takes a holistic look at all the sub sectors within the sector to shape the discussion into a more meaningful and policy- driven one.

Ghana's natural resources sector stands at a defining moment. In one breath, the Eban-Akoma offshore oil discoveries is advancing toward commerciality and national debates on the Ewoyaa lithium agreement are progressing. In another breath some activities of citizens and companies in the extraction sector coupled with government's decision to impose more taxes are raising serious issues as to the sustenance of our natural resources. Where do we achieve a balance? The country finds itself navigating both old and new frontiers of extractive governance and these developments are more than technical or commercial milestones.

Is this a test of Ghana's ability to manage resources in ways that secure long-term national prosperity rather than short-term gain? How will Ghana navigate through this era to ensure that we do not deepen the cycle of resource dependency?

In this edition, we primarily focus on the current opportunities and problems that exist within Ghana's natural resource sector and the various legal frameworks that govern the sub sectors. Aside from assessing the prospects of the Eban-Akoma fields, we also consider the viability of Ghana's Lithium Agreement and draw the attention of stakeholders to six fundamental components of the agreement that need to be given attention. The second part of the journal assesses the various legal frameworks that serve as the backbone of the oil and gas sector, particularly the downstream sector, the petroleum sector and forest management and timber trade in Ghana.

Finally, bearing in mind that sustainability is the most fundamental challenge to the growth and development of natural resources in Ghana, we assess one of the tax regimes in this sector and its propriety and how revenue from natural resource exploitation has been, is and should be.

We set the tone for a holistic, useful and constructive discussion of Ghana's natural resources. We believe that resource wealth does not automatically translate into national wealth and as such, it is only through robust governance, transparent negotiation, and strategic foresight that Ghana can ensure that its oil and other natural minerals fuel not just the present budget, but a diversified, resilient, and equitable future.

## LEAD STORY

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# FROM DISCOVERY TO COMMERCIALITY: EVALUATING THE EBAN-AKOMA PROSPECTS AND THE WAY FORWARD IN GHANA'S UPSTREAM SECTOR



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### Introduction

Ghana's upstream petroleum sector continues to evolve, marked by new discoveries and sustained exploration interest across its sedimentary basins. The Eban-Akoma prospects, as two significant offshore discoveries, represent the latest additions to Ghana's petroleum story. As commerciality assessments move forward, the focus has shifted from mere resource identification to the real-world feasibility of full-scale exploration, development and production.

This paper narrows the discussion to the commercial viability of the Eban-Akoma fields and examines the key economic, legal, and policy dimensions that support the declaration of commerciality.

### Economic Viability of the Eban-Akoma Discoveries

The core of any commerciality declaration lies in the ability of the project to generate economic returns that justify full field development. In essence, for an announcement of a declaration of commerciality to be made in respect of an oil field, the country

should have completed an appraisal process that concluded that developing such fields will be economically viable. For the Eban-Akoma fields, preliminary economic models indicate a strong case for commercial viability based on projected recoverable volumes, infrastructure access, and Ghana's stable fiscal environment.

Studies conducted following the discovery of the Akoma field indicate that the combined Eban-Akoma reservoirs could hold an estimated 500 - 700 million barrels of oil equivalent in place. This assessment is based on preliminary resource modelling. The declaration was submitted by the Joint Venture (JV) partners comprising Eni Ghana Exploration & Production Ltd, Vitol Upstream Tano Ltd, Woodfields Upstream Ghana Ltd, and GNPC Exploration & Production Company Ltd (Explorco) in collaboration with the Ghana National Petroleum Corporation (GNPC).

Even though operating expenditure (OPEX) is projected to be competitive due to the shared infrastructure model, the discoveries are in close proximity to existing infrastructure such as the Floating Production Storage and Off-loading (FPSO) John Agyekum Kuffour and subsea tiebacks. This proximity reduces capital expenditure (CAPEX) significantly when compared to green-field developments.

Moreover, Ghana's Petroleum Revenue Management Act, 2011 (Act 815) and predictable royalty and tax regime (35% corporate tax, 5-10% royalty depending on the contract) provide clarity to investors as to the use, and roadmap for management of revenue from the fields. The economic case is therefore not just viable, but resilient according to industry experts.

## **Legal and Regulatory Context**

The legal framework for petroleum exploration and development in Ghana is anchored in the Petroleum (Exploration and Production) Act, 2016 (Act 919), Petroleum Revenue Management Act 2011 (Act 815), Petroleum (Exploration and Production)(General) Regulations, 2018 (L.I 2359), Petroleum (Exploration and Production)(Health, Safety and Environment ) Regulations, 2017 (L.I 2258) and other relevant laws. These legislations establish the procedures and requirements for exploration licence holders to progress towards development, including the criteria for declaring a discovery commercially viable.

In the case of the Eban-Akoma prospects, following the declaration of commerciality, a license holder is required to submit a formal robust Plan of Development ("PoD") for onward determination and approval by the Minister for Energy and Green Transition<sup>1</sup>. The PoD must demonstrate that the project is technically feasible, economically sound, and socially responsible<sup>2</sup>. To date, engagement with the Petroleum Commission and the Ministry of Energy and Green Transition has proceeded in line with statutory expectations. The operators (partners) are expected to comply with data submission requirements, including seismic interpretations, well logs, flow test results, and economic evaluations. Pre-submission consultations with Petroleum Commission (the regulator) will also shape a development path that is tech-

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<sup>1</sup>Section 27 of Act 919

<sup>2</sup>Regulation 43(2) of Petroleum (Exploration and Production) (General) Regulations, 2018 L.I 2359

nically sound, and policy aligned.

Of equal importance is compliance with Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204)<sup>3</sup>. The Eban-Akoma project presents a renewed opportunity for enhanced Ghanaian participation in upstream activities ranging from procurement and fabrication to upstream services and training<sup>4</sup>. Legal provisions for environmental impact assessments are also being addressed, with preliminary scoping and stakeholder engagements already underway<sup>5</sup>.

The Eban-Akoma development is subject to a comprehensive Environmental Impact Assessment (EIA) process before the commencement of full field activities. This involves baseline environmental studies to establish current marine and coastal conditions, assessment of potential impacts from drilling and production operations, and the design of mitigation measures to minimize adverse effects<sup>6</sup>.

The regulatory process thus far reflects an alignment between state policy objectives and operator commercial interests. The timely declaration of commerciality will now serve as a trigger for the conversion of the exploration licence into a development and production lease, enabling the project to enter its execution phase.

## **Strategic and Policy Implications**

At a national level, the commercialization of Eban-Akoma fits neatly into Ghana's broader strategy of building a resilient and diversified petroleum economy. As maturing fields such as Jubilee and Tweneboa Enyenra Ntomme (TEN) Oil Field enter plateau and eventual decline, new discoveries are vital to sustaining production volumes and safeguarding state revenue.

The Government of Ghana has in recent years adopted a "hub-based" development model, encouraging operators to leverage existing infrastructure for new tiebacks. The Eban-Akoma fields are ideal candidates for this strategy, given their location near existing FPSOs and subsea systems. This infrastructure-sharing approach not only lowers development costs but also extends the economic life of existing assets.

In terms of revenue generation, production from Eban-Akoma is expected to contribute significantly to the Ghana Petroleum Holding and Stabilization Funds and the Annual Budget Funding Amount (ABFA), in line with the Petroleum Revenue Management Act, 2011 (Act 815). Early revenue inflows from this field could provide fiscal space for national infrastructure, health, road and education priorities.

There is also a strong local content opportunity. The commercial development of Eban-Akoma is expected to deepen the role of Ghanaian companies in the petroleum value chain and create skilled employment through the on-the-job training that partners are required to incorporate into their operations in Ghana. From fabrication yards in Takoradi to service companies and logistics hubs, the multiplier effect of commercial production will be felt

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<sup>3</sup>Regulation 3 of L.I 2204

<sup>4</sup>Regulation 9(1) of L.I 2204

<sup>5</sup>Section 12 of the Environmental Protection Agency Act, 1994 (Act 490)

<sup>6</sup>Sections 73, 81 and 82 of Act 919

across the economy<sup>7</sup>.

Strategically, the Eban-Akoma project also enhances Ghana's positioning as a reliable hydrocarbon producer in West Africa. At a time when some international oil companies are reviewing their African portfolios, Ghana's predictable policy environment and efficient regulatory regime send a positive signal to investors.

## **Challenges and Risks**

While the economic and regulatory outlook is positive, several challenges remain. Aside from the oil curse which Ghana as a developing country is still struggling with, on the technical side, reservoir uncertainties such as compartmentalisation or pressure maintenance could affect ultimate recovery and project economics. Continued appraisal and early reservoir modelling will be key to de-risking development.

On the commercial front, price volatility remains a core concern. Although the field's break-even is competitive, prolonged low oil prices or a rapid global energy transition could affect long-term profitability. Project proponents must therefore factor in future carbon regulations and climate-related disclosures.

Regulatory delays or misalignment of stakeholder expectations could also introduce risk. The approval of the PoD and timely grant of the production lease require efficient coordination among regulators, communities, and the operator. Moreover, compliance with local content thresholds must be managed without undermining project efficiency.

Finally, community engagement poses both a risk and an opportunity. Without inclusive dialogue and benefit-sharing frameworks, local resistance could derail timelines. Operators must therefore adopt transparent social investment strategies aligned with community priorities.

## **Conclusion**

With a strong economic foundation and a supportive legal framework, the Eban-Akoma discoveries are on course to transition from promising prospects to producing assets. Following the declaration of commerciality, the next major milestone will be the approval of the PoD and subsequent Final Investment Decision by the Ministry and the Regulator, and the partners. The development strategy is likely to follow a phased approach starting with early production via tiebacks and progressing towards full-scale exploitation based on reservoir performance. If timelines hold, first oil could be achieved within three to four years of PoD approval.

Long term, the successful commercialisation of Eban-Akoma may spur renewed exploration activity in adjacent blocks and deepen Ghana's upstream ecosystem. It will also set a useful precedent for how technically sound and economically resilient projects can progress through Ghana's regulatory framework in a transparent and efficient manner.

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<sup>7</sup>Sections 60, 61 and 63 of Act 919

# MINING SECTOR

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## GHANA'S LITHIUM AGREEMENT: 6 KEY POINTS TO CONSIDER AND RECONSIDER



### Introduction

As the global green energy transition accelerates, critical minerals like lithium have become central to emerging technologies, electric vehicles, and large-scale energy storage systems. Ghana, with its recent discovery of significant lithium reserves, has stepped into the global spotlight.

In 2012, Barari DV Ghana Limited, a subsidiary of Atlantic Lithium, an Australian exploration and development company was granted a reconnaissance licence from exploration in the Ewoyaa concession. This exploration led to the discovery of high-grade lithium in commercial quantities in 2017. Following this breakthrough, the reconnaissance licence was converted to a mining prospecting licence on 23rd March 2018 enabling the company to undertake further assessments and feasibility studies.

Five years later, in October 2023, Barari DV was granted a mining lease under the Green Minerals Policy, giving them the exclusive right to mine and process lithium for export in the Ewoyaa lithium deposit in the Mfantseman Municipality for a term of fifteen (15) years<sup>8</sup>.

While the agreement represents a significant milestone in Ghana's extractive sector, it also raises critical questions about equity, long-term national benefit, and regulatory compliance. This article distills the agreement into six key points for consideration or reconsideration.



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<sup>8</sup><https://carnegieendowment.org/research/2025/07/can-critical-mineral-deals-benefit-local-communities-insights-from-ghanas-lithium-project?lang=en>

## Reconsider: Equity Stake – Who Really Owns the Resource?

The Government of Ghana negotiated a 13% free carried interest, supplemented by an additional 6% additional stake acquired through the Minerals Income Investment Fund (MIIF), bringing the total state interest to 19% in the lithium venture. While this surpasses the standard 10% free carried interest mandated under the Minerals and Mining Act, 2006 (Act 703), it remains modest in comparison to setups seen elsewhere in Africa.

In Namibia, policymakers are currently considering a bold new proposal that would require a 51% Namibian ownership stake in all new mining projects, signifying a serious policy shift toward domestic control and benefit-sharing over critical resources<sup>9</sup>.

Zimbabwe offers an even starker contrast. The state-owned entities, Kuvimba Mining Household controls approximately 65% of the Santawana lithium mine, a flagship project in the country's growing battery mineral sector<sup>10</sup>.

In addition, Chinese companies, Sino mine and Zhejiang Huayou Cobalt have collectively invested over USD 1 billion in Zimbabwe's lithium industry, including a \$270 million lithium concentrator designed to remain under substantial public ownership after completion. These arrangements demonstrate how host countries can leverage resource endowments for not only immediate revenue but also industrial development and value retention<sup>11</sup>.

Under **Act 703**, Ghana is also required to promote local participation beyond state equity. While Barari DV Ghana Ltd. has pledged to prioritise local employment and supplier development, critics point out that this is not the same as true local ownership. Without significant domestic stakes, whether through community trusts, local equity partners, or public-private joint ventures, Ghana risks remaining primarily an exporter of raw lithium, with most value addition occurring offshore. The question looms: Does a 19% stake truly reflect the full strategic value of Ghana's emerging lithium wealth?

## Reconsider: Value Addition Clauses – Genuine Industrialization or Lip Service?

The Agreement mandates that Barari DV Ghana Ltd. establish a lithium hydroxide processing plant in Ghana, signalling a commitment to value addition rather than mere raw ore exports. On the surface, this signals forward-thinking inclusion of industrial development in the contract.

However, significant concerns remain about Ghana's current industrial and logistical capacity to sustain such a capital-intensive operation. Lithium processing is highly energy-dependent and demands advanced infrastructure. Without clear timelines, government-backed guarantees, or a robust industrial policy framework, this clause risks being symbolic or waived as "infeasible" by the company.

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<sup>9</sup><https://southernafRICANTimes.com/hamibia-weighs-majority-local-ownership-requirement-in-future-mining-projects/>

<sup>10</sup><https://www.mining.com/web/zimbabwe-state-miner-says-lithium-assets-attractinvestors/>

<sup>11</sup><https://www.reuters.com/world/africa/zimbabwe-aims-break-ground-270-million-new-lithium-plant-this-year-2025-07-16/>

A powerful cautionary tale lies with the Ghana Manganese Company Limited (GMCL). Despite contractual obligations to establish on-site value addition, namely a smelter, GMCL failed to deliver. In 2019, the Ministry of Lands and Natural Resources ordered a shutdown of operations<sup>12</sup>, citing:

- Failure to build the required smelter, undermining value-addition mandates.
- Defaults on financial obligations, including annual mineral rights fees over \$4 million.
- Losses to the state estimated at:
  - \$12.8 million in additional royalties,
  - \$79 million in corporate taxes,
  - \$6.1 million in non-transferred dividends,
  - \$259 million in revenues held offshore via transfer-pricing loopholes,
  - Plus \$3.64 million from manipulation of sales agreements

This case underscores Ghana's recurring issue of failing to enforce value-addition commitments in mineral contracts. Without real enforcement capacity, value addition clauses are vulnerable to non-compliance and abuse. Will lithium be any different?

### **Reconsider: Royalties and Tax Benefits – Is the State Getting a Fair Share?**

Under the Ewoyaa lithium agreement, the Government of Ghana has secured a 10% royalty rate on total revenues from mineral sales in the lease area—significantly higher than the 6% maximum prescribed under **Section 25 of the Minerals and Mining Act, 2006 (Act 703)**.

While this headline rate is commendable and positions Ghana above its legislative benchmark, the structure of the royalty is crucial. The agreement does not clearly indicate whether the 10% is fixed or progressive, that is, whether it scales with profit margins or global lithium prices. This distinction is critical, given the volatility of commodity markets.

The Natural Resource Governance Institute (NRGI) advocates for variable-rate royalty systems to maximize public benefit. Fixed royalties can be regressive during periods of low profitability (when the state's take still burdens operators) and suboptimal during price booms (when the state fails to capture windfall gains). NRGI recommends<sup>13</sup>:

- Price benchmarks tied to recognized indices (e.g., Spodumene CIF index for lithium).
- Caps on interest deductions to prevent aggressive tax avoidance.
- Non-dilution clauses to protect state equity.
- Clear dividend-sharing rules to ensure timely payments.

While Ghana's deal is stronger than typical royalty terms, other mineral rich countries adapt progressive models: Chile applies a sliding-scale royalty; between 8% and 26% for copper, depending on metal prices<sup>14</sup>. Mali also recently raised its royalty on gold from 6% to 10.5% and increased state equity in new projects to 35%, drawing mixed feedback from mining CEOs who warn

<sup>12</sup><https://iwatchafrica.org/2019/08/ghana-manganese-company-shut-down-following-iwatch-africas-investigation/>

<sup>13</sup>Assessing the Fiscal Regime in Ghana's Lithium Agreement | Natural Resource Governance Institute

<sup>14</sup>Chile | New mining royalty is approved and ready to become law | EY - Global

this may deter investment.<sup>15</sup>

The 10% royalty, while above legislative minimum, may be insufficient over time especially if fixed. Ghana risks losing out on a better fiscal take unless the terms include scalability and transparency in tax treatment. With price volatility in lithium markets, a progressive royalty and clear tax framework would shield Ghana from revenue erosion and enhance long-term benefits.

### **Reconsider: Environmental and Social Safeguards**

The lithium agreement mandates the establishment of a Community Development Fund (CDF) and a Community Development Agreement (CDA) as part of its environmental and social safeguards. These are commendable in their intent but without clearly defined regulatory parameters, they risk being hollow commitments.

To protect and empower affected communities such as Ewoyaa, Krampakrom, Afrangua, and Krofu, the CDA should be made mandatory and include:

- Community oversight and monitoring mechanisms, to enable local participation in implementation and accountability.
- A grievance redress system, allowing residents to lodge complaints about Barari's performance under the CDA or the broader environmental and social framework.
- Mine closure and sustainability provisions, ensuring post-closure benefits and rehabilitation are embedded from the outset.

Currently the Residents of Ewoyaa and surrounding villages including Krampakrom, Afrangua, Krofu face the threat of displacement without transparent resettlement plans. Construction has partially begun; areas have been demarcated and locals barred from farming or expanding their homes yet there is little communication on fair compensation or resettlement plans<sup>16</sup>. Though the Parliament is yet to ratify the grant of the mining lease to Barari DV, residents have been left in a limbo with little to no information about their fate. Leaving these obligations entirely to the company risks a flawed process that could undermine expected benefits to communities

Moreover, Ghana's Environmental Protection Agency (EPA) has approved the project's Environmental Impact Statement (EIS), following public hearings in Ewoyaa and Krofu, signalling procedural compliance<sup>17</sup>. Nonetheless, the broader concern remains: does the EPA, and the Minerals Commission, truly have the technical capacity, logistical resources, and political independence to enforce these safeguards? Past extractive projects in Ghana have revealed limits in enforcement, often yielding reactive or compromised oversight.

Environmental risks in mining are significant, particularly water pollution, soil erosion, and biodiversity loss, as mining operations can disrupt ecosystems and contaminate water bodies with chemicals or silt. In communities dependent on the Ochi-Amissah River, such risks are heightened by potential brine-related contamination from lithium extraction.

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<sup>15</sup><https://www.mining-technology.com/news/malis-mining-law-investment/>

<sup>16</sup><https://gna.org.gh/2025/03/lithium-exploration-communities-demand-bottom-up-compensation-negotiations/>

<sup>17</sup><https://www.mining-technology.com/news/atlantic-lithiums-ewoyaa/>

## **Consider: Transparency and Parliamentary Oversight.**

As required by **Article 268(1) of the Constitution** and **Section 5(4) of Act the Minerals and Mining Act**, the government has presented its mining lease with Barari DV to parliament for ratification. The Committee on Mines and Energy is currently considering the agreement before it proceeds to a wider parliamentary debate.

However, this proposed deal has ignited a significant debate on transparency, accountability, and parliamentary oversight among civil society and governance experts, including ACEP, IMANI, and the NRG. Critics argue that the agreement bypassed essential transparency protocols by being negotiated directly with Atlantic Lithium/Barari DV without an open, competitive tender process, raising doubts about whether Ghana obtained the most favourable terms.

Concerns also extend to limited public disclosure. While headline terms such as a 13% royalty and state equity participation have been publicised, the full agreement and key annexes including the feasibility study, detailed cost structures, environmental mitigation plans, and refined chemical specifications, were not made publicly accessible during the critical review stage. This lack of disclosure has hindered independent technical and public scrutiny.

Further controversy arose when Atlantic Lithium, in representations to its investors, disclosed that the company had secured a 10-year tax holiday and electricity tariffs 30–50% below standard industrial rates, terms that were not explicitly highlighted in the government’s public communications.

This suggests its subsidiary company, Barari DV has been registered in Ghana as a “free zone” entity, a designation not typically granted to mining companies<sup>18</sup>.

Observers have also questioned whether the legislative process is being unduly expedited. Given the strategic significance of Ghana’s lithium resources, many argue that Parliament should resist rubber-stamping the agreement and instead ensure thorough deliberation, structured public consultation, and possibly an independent technical audit before any vote is taken.

## **Reconsider: Strategic Vision or Short-Term Deal?**

One of the core debates around the lithium agreement is whether it reflects a long-term strategic vision or a short-term revenue grab. A “resource-for-now” approach risks prioritizing immediate fiscal gains over the sustainable management of a finite resource.

This could leave Ghana with depleted reserves, minimal local industrial capacity, and lingering environmental damage. By contrast, a “resource-for-the-future” approach would prioritize:

- Maximizing local value addition (e.g., refining and battery production within Ghana).

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<sup>18</sup><https://africachinareporting.com/can-ghanas-lithium-boom-avoid-the-gold-curse/>

- Investing revenues into diversified economic sectors.
- Aligning extraction timelines with long-term national development goals.

Lithium is a strategic mineral for the global clean energy transition, powering batteries for electric vehicles, renewable energy storage, and technology manufacturing. This positions Ghana to:

- Become a key player in the green industrial supply chain.
- Negotiate for technology transfer and skills development.
- Integrate lithium extraction into a broader industrialization and energy transition plan.

The challenge is ensuring that the deal is not an isolated contract, but rather part of a coherent national strategy that leverages Ghana's mineral wealth for industrial upgrading, job creation, and climate resilience.

## **Conclusion**

The lithium mining lease between the Government of Ghana and Barari DV/Atlantic Lithium presents both a historic opportunity and a cautionary tale. While the deal is framed as a strategic milestone in Ghana's green minerals agenda, the process and content reveal deep governance gaps that could undermine its potential benefits.

The absence of an open, competitive bidding process deprives Ghana of a verifiable basis to claim that the best possible terms were secured. This is compounded by the lack of transparency surrounding critical annexes such as the feasibility study, environmental mitigation commitments, and cost structures contrary to the principles of the Extractive Industries Transparency Initiative (EITI, 2023). Allegations of concealed incentives, including a decade-long tax holiday and discounted electricity tariffs, raise red flags about whether the deal disproportionately favors the investor at the expense of public revenue and long-term development goals.

Beyond governance, the strategic orientation of the deal appears ambiguous. Ghana's broader Minerals and Energy Transition Framework emphasizes value addition, technology transfer, and industrial linkages. Yet, the current lease terms suggest a "resource-for-now" approach focusing on extraction without binding commitments to domestic refining, battery manufacturing, or skills development. Such a path risks leaving the country with depleted reserves, environmental liabilities, and an unfulfilled promise of industrial transformation, as has occurred with other resource booms in sub-Saharan Africa.

Environmental and social safeguards, while acknowledged, hinge on the capacity of the EPA and Minerals Commission to enforce them. Historical trends suggest chronic under-resourcing and political interference in these agencies, making effective oversight uncertain. Without robust enforcement, environmental degradation, community displacement, and unmitigated

social costs could overshadow the economic gains.

Ultimately, the Barari DV agreement will be a litmus test of Ghana's ability to align resource governance with long-term national interest. The stakes extend beyond lithium; they touch on the credibility of parliamentary oversight, the integrity of extractive sector governance, and the country's positioning in the global clean energy supply chain. As such, parliament's role must transcend procedural ratification. A delay to allow for independent technical review, public consultation, and renegotiation of terms that guarantee transparent, value-adding, and environmentally sustainable extraction would not be a sign of weakness. It would be an assertion of sovereign stewardship over strategic resources.

# POWER SECTOR

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## THE ENERGY SECTOR RECOVERY LEVY: AN EXAMINATION OF GHANA'S LATEST APPROACH TO OBTAINING POWER STABILITY.



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### Introduction

Over the years, Ghana's energy sector has witnessed significant transformation from the landmark Akosombo Hydroelectric Project to the use of liquid fuels in thermal power generation, and now to the emerging shift towards renewable energy sources. The sector has been instrumental in shaping the country's socioeconomic structure by contributing to job creation, attracting foreign investment, and facilitating industrialisation, among other gains.



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Despite these strides, the sector continues to grapple with deep-rooted structural challenges, including looming legacy debts owed to power producers and other stakeholders, inefficient subsidy regimes and a cumbersome system of levies. These issues have taken a toll on public finances and exposed persistent governance gaps in the management of the sector and to a large extent, affected economic growth in the country.

A prime example of the consequences was the power crisis of 2014, commonly known as “dumsor” which revealed the fragilities of the energy supply system. In response, the Government of Ghana introduced the **Energy Sector Levies Act (ESLA), 2015 (Act 899)**, aimed at consolidating the fragmented levy system

into a more transparent framework. The Act sought to promote efficient utilisation of revenue from energy levies and established dedicated accounts for the collection and management of the funds, while also introducing a price stabilisation and recovery levy.<sup>19</sup>

## Revision of the Levy

Over time, Act 899 has undergone various amendments to align with changing market conditions and policy priorities. The Energy Sector Levies (Amendment) Act, 2017 (Act 946) revised transfers into the Power Generation and Infrastructure Support Sub-Account and reduced certain levies on petroleum products.

The 2019 amendment (Act 997)<sup>20</sup> raised levy rates to support power generation and infrastructure financing, while the 2021 amendment (Act 1064) introduced the Energy Sector Recovery Levy and the Sanitation and Pollution Levy. The Energy Sector Levies (Amendment) Act, 2025 (Act 1135)<sup>21</sup> preceded the latest amendment, introducing a consolidated levy known as the **Energy Sector Shortfall and Debt Recovery Levy (ESSDRL)** to raise additional revenue to support the payment of energy sector shortfalls, reduce energy sector legacy debts and stabilize power supply.

In an effort to streamline energy-related fiscal policy and restore confidence in the sector, Parliament passed the Energy Sector Levies (Amendment) Act, 2025 (Act 1141) on 3rd June 2025, under a Certificate of Urgency. This article examines the key provisions of Act 1141, its intended impact on the energy sector, and the challenges likely to arise from its implementation.

## The Levy and Key Provisions

Contrary to popular perception, the Energy Sector Levies (Amendment) Act, 2025 (Act 1141) does not introduce any new levies on fuel users. Rather, it increases the rate of the already existing Energy Sector Shortfall and Debt Recovery Levy (ESSDRL), as introduced under Act 1135.

Act 1141 imposes a **GH¢1.00 increment** on the ESSDRL, applicable to selected petroleum products -being petrol, diesel, naphtha, fuel oil, marine gas oil, and liquefied petroleum gas (LPG). This levy is not applied at the point of retail, such as fuel stations, but rather at the point of lifting by Petroleum Product Marketing Companies (PPMCs). The aim is to boost revenue collection, support debt servicing, and ultimately stabilise electricity supply.<sup>22</sup>

As of the end of March 2025, Ghana's energy sector faced debts amounting to **US\$1.3 billion**, stemming from unpaid bills to power producers and suppliers. The unpaid bills are compounded by drawn-down guarantees and shortfalls in electricity revenue, especially as current tariffs fail to account for the true cost of thermal generation. The government estimates that at least **US\$3.7 billion** is needed to stabilise the sector.<sup>23</sup>

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<sup>19</sup>Energy Sector Levies Act, 2015 (Act 899), Long Title.

<sup>20</sup>Energy Sector Levies (Amendment) Act, 2019 (Act 997)

<sup>21</sup>Energy Sector Levies (Amendment) Act, 2021 (Act 1064)

<sup>22</sup>Energy Sector Levies (Amendment) Act, 2025 (Act 1141), Memorandum.

<sup>23</sup>Energy Sector Levies (Amendment) Act, 2025 (Act 1141), Memorandum.

The rationale behind Act 1141 is to strike a balance between debt recovery and avoiding a sharp increase in electricity tariffs, which would have far-reaching consequences for households and businesses. The idea behind the accruing amount is that the government will ring-fence it to ensure that it is not paid into or form part of the Consolidated Fund. In effect, it will not be subjected to the “hazards of the consolidated fund” as President Mahama put it.

## **Implementation and Enforcement**

The Ghana Revenue Authority (GRA) is the agency tasked with enforcing the provisions of Act 1141. All collected levies are to be deposited into the Energy Sector Support Account.

Although the Act was passed in early June 2025, its implementation faced initial delays due to concerns raised by stakeholders and industry players.<sup>24</sup> Following a review of market conditions and internal consultations, the GRA announced 16th July 2025 as the effective implementation date.

To ensure seamless execution, the GRA updated its Integrated Customs Management System (ICUMS) to reflect the new levy rates, automating the calculation and application of the charges at the point of lifting.<sup>25</sup>

Is this levy a masterstroke? Two arguments have been advanced. First, the timing of its implementation has been applauded on the basis that it came at a time the cedi's strength was soaring thereby ensuring some stability at the pump stations and at a time that comparatively, the prices of crude oil had seen reductions. Second, if the energy challenges are primarily financial, then the extra GHS 5.7 billion this levy will rake in annually, will significantly contribute to the resolution of that legacy problem.

But is the problem of the energy sector primarily financial?

## **Potential Challenges**

It is statistically and sociologically proven that majority of the problems of Ghana are attributable to poor management of resources and corruption. A legitimate question in this regard is whether ringfencing the fund and separating same from the Consolidated Fund is enough to ensure prudent and efficient use of the revenue. Indeed, some have argued that the problems are systemic. Aside from the revenue which this levy will bring in, how do we achieve the aim of providing stable power and debt servicing? These are legitimate questions.

The Ministry of Energy and Green Transition has justified the absence of a sunset clause in the Act that they want to focus on fixing the challenges first. Inherent in that justification is the indication that the ministry does not have a clear plan with timelines within which they intend to clear the legacy debt and to what extent they would want to burden the populace with the levy.

While the Act does not directly influence pump prices, the GH¢1.00 per litre increase effectively translates to an estimated 8% rise in fuel-related costs,

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<sup>24</sup>GRA Tariff Interpretation Order (TIO) No. 2025.003

<sup>25</sup>GRA “Commencement of the Implementation of the Energy Sector Levies (Amendment) Act, 2015” <[https://external.unipassghana.com/co/notice/selectNoticeDetail.do?MENU\\_ID=IIM01S01V01](https://external.unipassghana.com/co/notice/selectNoticeDetail.do?MENU_ID=IIM01S01V01)> accessed 10th August 2025.

which could have cascading effects on the broader economy. Transport unions are expected to pass the added cost to passengers, resulting in increased fares. This in turn affects farmers transporting produce, traders in urban markets, and ultimately, the final consumer.

The broader impact may be felt in an upward surge of prices, especially on food and transport costs, further straining lower-income households. Without clear mitigating measures, such as subsidies or targeted social reliefs, the policy may deepen existing inequalities.

Beyond the economic impact, the implementation is also vulnerable to technical and administrative challenges. Reliance on systems like ICUMS raises the risk of operational glitches, miscalculations, or enforcement delays. Public scepticism remains high, driven by previous experiences of mismanagement or opaque handling of energy levy proceeds.

## **Conclusion**

The passage of the Energy Sector Levies (Amendment) Act, 2025 (Act 1141) on paper represents a strategic effort to address the sector's financial challenges and ensure long-term power stability. If effectively enforced, the Act could play a pivotal role in averting a full-blown crisis within the energy value chain.

Nonetheless, while it may be a step in the right direction, its success hinges on addressing key administrative, technical, and political challenges. Primary among these, are the potential rise in the cost of living for vulnerable households, doubts over government accountability, and the readiness of institutions to manage the levy efficiently. Clear communication, transparent fund management, and a well-structured implementation plan will be critical to realising the full benefits of the reform.

# OIL AND GAS DISTRIBUTION SECTOR

## DOWNSTREAM LAW ON REFINERY OF CRUDE OIL, DISTRIBUTION, MARKETING AND PRICING OF PETROLEUM PRODUCTS



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### INTRODUCTION

The petroleum/oil industry involves the processes of exploration, extraction, refinery, storage, transportation and marketing of petroleum products such as diesel fuel, petrol, kerosene and many others, which are derived from the refinery of crude oil.

The petroleum industry is categorised into three main sectors: upstream, midstream and downstream. Whereas the upstream sector pertains to exploration and production of crude oil, the midstream sector deals with bulk storage, transportation and marketing of petroleum products.<sup>26</sup> The downstream sector is the final stage of the oil industry. It involves refining crude oil into usable products (petroleum products) for consumption.

Thus, at the downstream sector, the main aim is to make these petroleum products properly available to consumers through the provision of petroleum services by Petroleum Service Providers (PSPs). According to Thomson Reuters' Practical law, the downstream is characterized only by the sale and distribution of oil & gas and their by-products, while the refining, storing and transportation activities are deemed as midstream activities<sup>27</sup>.

<sup>26</sup>Richard Amponsah (Dr.) and Francis Kelvin Opei, 'Ghana's Downstream Petroleum Sector: An Assessment of Key Supply Chain Challenges and Prospects for Growth' (2017) Vol. 7(3) International Journal of Management and Business Studies 441.

<sup>27</sup>Thomson Reuters, "Glossary: Downstream" UK Practical Law. Accessed on <https://shorturl.at/521Bn> 16 September 2025

In Ghana, in accordance with the National Petroleum Authority Act, 2005 (Act 691), downstream petroleum services include importation, exportation, re-exportation, shipment, transportation, processing, refining, storage, distribution, marketing and sale of petroleum products like gasoline, diesel, LPG, kerosene and like products.<sup>28</sup> Major stakeholders in the downstream sector of Ghana include: Tema Oil Refinery (TOR) Ltd, GOIL PLC, TotalEnergies Marketing Ghana PLC, consumers of petroleum products and several others. Although Act 691 does not identify the pricing of petroleum products as a service or activity, it is believed that same is critical to the petroleum downstream industry.

The key regulatory body of the downstream sector is the National Petroleum Authority (NPA), established by Section 1 of Act 691, to regulate, oversee and monitor activities in the petroleum downstream industry. In so doing, the NPA has been conferred with monitoring and enforcement powers including the power to enact Regulations to govern the petroleum downstream sector. Although the NPA is the prominent regulator, there are other cross-sectorial regulatory bodies that also govern operations in the downstream sector such as: the Ghana Standards Authority, Ghana Revenue Authority and the Environmental Protection Agency.

This article aims to explore the Ghanaian legal and regulatory framework governing the provision of, or engagement in the downstream petroleum services or activities.

## **THE LEGAL AND REGULATORY FRAMEWORK**

### ***Crude Oil Refinery***

The refinery of crude oil involves the employment of complex scientific processes. Act 691 does not expressly define refinery. Yet, from a comprehensive reading of Act 691, it is apparent that it is defined as the creation of petroleum products (liquefied petroleum gas, naphtha, gasoline, kerosene, aviation turbine kerosene, gas oil, residual fuel oils, waxes and petrolatum, asphalt, bitumen) through the conversion of crude oil by distillation, cracking, solvent refining and chemical treatment.

While refining is a complex process, the goal is straightforward: to take crude oil, which is virtually unusable in its natural state, and transform it into petroleum products used for a variety of purposes such as heating homes, fueling vehicles and making petrochemical plastics.<sup>29</sup> Currently the only state-owned petroleum refinery in Ghana is Tema Oil Refinery (TOR) Ltd.

Arguably, the sole part of the commercial activity of crude oil refinery which remains unregulated is the initial conception by a prospective petroleum service provider (PPSP) of the brilliant idea to engage in such an enterprise. Once the idea takes shape, or even approaches realisation, this PPSP becomes subject to a plethora of regulations governing every stage involved in this enterprise.

To begin with, no person can engage in this activity of refining unless they

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<sup>28</sup>Sections 11, National Petroleum Authority Act, 2005 (Act 691).

<sup>29</sup>Burclaff, Natalie. "Research Guides: Oil and Gas Industry: A Research Guide: Downstream: Refining and Marketing". Library of Congress. Accessed 8 August 2025.

possess the requisite qualifications, have performed all conditions imposed by the Board of the NPA and other relevant bodies, and have obtained the relevant license from the Board of the NPA.<sup>30</sup>

Ordinarily, the acquisition of such a licence (which is identified by Act 691 as the refinery licence) ought to enable the licensee to engage in all activities necessary for the smooth operation of this particular enterprise.

Interestingly, however, the prospective PsP or licensee is required to obtain prior written authorisation of the Board of the NPA (the Board) to construct the oil refinery within which the commercial activity will occur.<sup>31</sup> This written authorisation is necessary as it enables the NPA to ensure that the quality of such infrastructure is at its optimum and remains uncompromised. Presently, Tema Oil Refinery (TOR) Limited is the sole refinery in Ghana authorised to process crude oil.

The respective requirements for prior written authorisation to construct an oil refinery and the acquisition of the licence to engage in the enterprise creates a conundrum; “Which ‘authorization’ should be obtained first?” Act 691 does not expressly provide an answer to this. However, taking into consideration factors such as the probable refusal of the Board to grant the refinery licence as well as the existence of the licence influencing the Board in granting the prior written authorisation, it is believed that it is commercially viable for the PPSP to take steps to first obtain the refinery licence. This belief is fortified by the fact that the acquisition of the refinery licence is critical for legitimate and real operations to commence.

Nevertheless, where the acquisition of the prior authorisation is a pre-condition to the licence being granted, same ought to be obtained first, as non-compliance with this pre-condition would generally justify a refusal to grant the refinery licence.<sup>32</sup>

Every stage of this enterprise, including the conduct of real operations, is subject to regulation. Upon the grant of the licence, the licensee or refiner is mandated to ensure that the licence is visibly displayed in a prominent place on the business premises.<sup>33</sup> Also, the licensee is required to conform with standards and protocols of operation as provided by the Board of the NPA, ranging from technical competence to adherence to environmental and security measures.<sup>34</sup> Additionally, the licensee is under the mandate to submit a monthly report as well as a quarterly report to the Board covering details of actual inventory of crude oil, and other issues as specified by the Board.<sup>35</sup>

The regulations governing petroleum service providers engaged in refinery transcends their internal operations and impact their relations with external persons, particularly with the aim of preventing unfair competition. In this regard, these persons are precluded from indulging in cartelisation, gaining, holding or securing a monopoly of the said enterprise within the petroleum downstream industry.<sup>36</sup>

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<sup>30</sup>Sections 11, 12, 14 and 24, National Petroleum Authority Act, 2005 (Act 691).

<sup>31</sup>Section 30, National Petroleum Authority Act, 2005 (Act 691).

<sup>32</sup>Section 14, National Petroleum Authority Act, 2005 (Act 691).

<sup>33</sup>Section 16, National Petroleum Authority Act, 2005 (Act 691).

<sup>34</sup>Section 34, National Petroleum Authority Act, 2005 (Act 691).

<sup>35</sup>Sections 37, 39, National Petroleum Authority Act, 2005 (Act 691).

<sup>36</sup>Section 43, 44 of the National Petroleum Authority Act, 2005 (Act 691).

"Cartelization" means an agreement, combination of or concerted action by refiners, importers or dealers or their agents, to fix prices, restrict outputs, divide markets either by product or by area to restrain trade or free competition.

The most obvious consequence of non-compliance with these rules by this licensee or prospective PSP is the decision of the NPA to revoke or suspend an already issued licence, to refuse to grant the licence or to refuse to renew the licence.<sup>37</sup>

## **Distribution**

The distribution of petroleum products involves the dissemination and transportation of these commodities usually through oil tankers whereas marketing is the wholesale and retail distribution of refined petroleum products to business, industry, government, and public consumers.<sup>38</sup> Clearly then, the distribution and marketing of petroleum products may be regarded as two peas in a pod. Nonetheless, they each have their peculiar legal and regulatory framework.

Section 11(2) of Act 691 lists the petroleum services of distribution, storage and transportation of petroleum products as separate businesses or commercial activities. However, from a comprehensive reading of Act 691, it appears that storage and transportation of petroleum products are contemplated to be a combined activity, especially when the licence is obtained for operating a storage depot.<sup>39</sup>

It is therefore understood that the core aspects of distribution primarily entail the storage and transportation of petroleum products. Accordingly, any examination of the regulatory framework governing distribution will also take into account the activities of storage and transportation.<sup>40</sup>

The rules on licensing for refining of crude oil as discussed in the previous section, including the obligation of the licensee to display the said licence, also apply to the enterprise of distributing petroleum products; storage and transportation.<sup>41</sup>

Notably, a person who seeks to construct a petroleum products storage depot and pipeline is mandated to obtain prior written authorisation from the Board. Any application for a permit to construct a petroleum product storage and distribution depot shall be submitted to the National Petroleum Authority giving details of the proposals and any information that may be relevant to the project.<sup>42</sup>

If the permit to construct the Depot has been granted and the execution of the works has not commenced at the expiry of twenty four (24) months from the date on which permit was granted, or at the expiration of any extension of that period which the Authority may allow, the permit shall cease to have effect.<sup>43</sup>

It appears that the rules governing the operation of this enterprise is extensive. Where a licence is obtained for the storage of petroleum products, the licensee becomes an operator of storage depots. The operator is under an

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<sup>37</sup>Section 18 of the National Petroleum Authority Act, 2005 (Act 691).

<sup>38</sup>*ibid*

<sup>39</sup>Section 26, 27 and 81 of the National Petroleum Authority Act, 2005 (Act 691); the licensee is permitted to store and transport petroleum products in accordance with specified conditions.

<sup>40</sup>Sections 11, 12, 14, 16, 26 and 28, National Petroleum Authority Act, 2005 (Act 691).

<sup>41</sup>Section 30, National Petroleum Authority Act, 2005 (Act 691).

<sup>42</sup>National Petroleum Authority, Public Notice – NPA. N. 009: Bulk Import, Distribution and Export Company License.

<sup>43</sup>*ibid*

obligation to provide without discrimination, services on request for the storage and trans-shipment of petroleum products to bulk customers and persons licensed for the transportation and marketing of petroleum products.<sup>44</sup>

The operator may only transport the petroleum products to specific persons; bulk customers and the appropriate licensees.<sup>45</sup> On the other hand, for the acquisition of a licence for bulk transportation of petroleum products, the licensee enters into an agreement to provide services without discrimination to its customers. This licensee is however only licensed to transport in bulk, through means as determined by the Board, a minimum of four thousand, five hundred litres of petroleum products.<sup>46</sup>

For both activities- storage and transportation, the charges for the service(s) rendered are subject to approval by the NPA Board.<sup>47</sup>

The licensee is required to conform to standards and protocols of operation as provided by the Board of the NPA, ranging from technical competence to adherence to environmental and security measures, and to ensuring the quality of these petroleum products.<sup>48</sup>

Just like a refiner, this licensee is under a duty to submit reports to the NPA Board. However, unlike a refiner, this licensee is only mandated to submit a written quarterly report to the NPA Board relating to the business or activity undertaken.<sup>49</sup> This enables proper monitoring of activities by the Board to ensure compliance.

The rules precluding a refiner from engaging in unfair competition practices also apply to a petroleum service provider engaged in the enterprise of 'distributing' petroleum products.<sup>50</sup>

The main consequence of non-compliance with these rules by this licensee, or PPSP is the decision of the NPA to revoke or suspend an already issued licence, to refuse to grant the license or to refuse to renew the licence.<sup>51</sup>

## **Marketing**

As earlier stated, the distribution of petroleum products involves the dissemination and transportation of these commodities usually through oil tankers. Marketing, on the other hand, is the wholesale and retail distribution of refined petroleum products to business, industry, government, and public consumers.

Clearly, the distribution and marketing of petroleum products may be regarded as two peas in a pod. Nonetheless, they each have their peculiar legal and regulatory framework.

Although marketing and sale of petroleum products are listed under section 11 of Act 691 as two distinct commercial or business activities in the downstream sector, the regulatory framework of these activities would be jointly

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<sup>44</sup>Sections 26 and 27 of National Petroleum Authority Act, 2005 (Act 691).

<sup>45</sup>Section 81 of Act 691 defines a bulk customer as customer that takes delivery of quantities of petroleum products in excess of four thousand five hundred litres.

<sup>46</sup>Section 81 of National Petroleum Authority Act, 2005 (Act 691).

<sup>47</sup>Section 27 (b) and 28(b) of National Petroleum Authority Act, 2005 (Act 691).

<sup>48</sup>Section 34, National Petroleum Authority Act, 2005 (Act 691).

<sup>49</sup>Section 39 of National Petroleum Authority Act, 2005 (Act 691).

<sup>50</sup>Section 43 of National Petroleum Authority Act, 2005 (Act 691).

<sup>51</sup>Section 18 of the National Petroleum Authority Act, 2005 (Act 691).

explored under this section, as they are one and the same.

The rules on licensing governing the distribution of petroleum products, including the obligation of the licensee to display the said licence, apply to the activity of marketing of petroleum products.<sup>52</sup> Where a licence is granted to market petroleum products (Petroleum Products Marketing License), the licensee is permitted to procure and sell petroleum products to bulk customers and to the public, through retail stations or reseller outlets.<sup>53</sup>

Arguably, the main distinction between a licence granted to distribute petroleum products and a licence granted to market petroleum products is that as per the latter, there is no restriction on the quantity of petroleum products and the kind of customers to whom the products are sold.

It is no surprise that just like the enterprises already discussed in the previous sections, the conduct of operations under this activity is subject to a host of regulations. For one, a person cannot construct a petroleum products retail station or a liquefied petroleum gas depot without prior written authorisation (Construction Permit) from the Board.<sup>54</sup>

An Oil Marketing Company or an individual who fails to obtain the required Construction Permit is liable to pay a penalty fine amounting to five times the fee for a Construction Permit.<sup>55</sup> With the conundrum identified in the discussion on the regulation of Crude Oil Refinery in this article, it is believed that the Petroleum Products Marketing Licence should be obtained first, unless certain circumstances suggest otherwise.

The licensee is required to conform with standards and protocols of operation as provided by the Board of the NPA, ranging from technical competence, provision of quality products, to adherence to environmental and security measures.<sup>56</sup> The reporting duties imposed on a refiner as well as the obligation to refrain from unfair competition practices are also imposed on the licensee under this enterprise.<sup>57</sup> The licensee is mandated to report to the Board on matters such as domestic sales and consumption and other relevant issues identified by the Board.

Where a person fails to comply with these rules, the person is subjected to regulatory sanctions which include the payment of penalties, the revocation or suspension of the licence by the NPA or the refusal of the NPA to renew the licence.<sup>58</sup>

## **Pricing**

The pricing of petroleum products may simply be the methods used to determine the cost or value to be provided by a consumer in order to obtain a petroleum product. Presently, the legal and regulatory framework of pricing of petroleum products generally consists of two parts: the pricing of deregulated petroleum products and the pricing of regulated petroleum products. Given the expansive nature of the petroleum industry, there are two main cat-

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<sup>52</sup>Sections 11, 12, 14, 16, 29 and 32 National Petroleum Authority Act, 2005 (Act 691).

<sup>53</sup>Section 29 of the National Petroleum Authority Act, 2005 (Act 691).

<sup>54</sup>Section 30 of National Petroleum Authority Act, 2005 (Act 691).

<sup>55</sup>National Petroleum Authority, Public Notice – NPA. N. 004: Petroleum Product Retail Outlet Construction Permit.

<sup>56</sup>Section 34, National Petroleum Authority Act, 2005 (Act 691).

<sup>57</sup>Sections 37, 39, and 43, National Petroleum Authority Act, 2005 (Act 691).

<sup>58</sup>Section 18 National Petroleum Authority Act, 2005 (Act 691).

egories of prices of petroleum products in Ghana: ex-refinery price, which is applied by Bulk Import, Distribution and Exports Companies (BIDECs), and ex-pump price, which is used by Oil/LPG Marketing Companies (OMCs/LPG-MCs).<sup>59</sup>

The Government of Ghana in June 2015 introduced a deregulation policy which allowed PSPs: BIDECs, OMCs/LPGMCs to independently set their own prices of petroleum products by using market forces. Presently, the legal and regulatory framework of the pricing of petroleum products comprises of deregulated products and regulated products. For the latter group, the prices of these products are set by the government.

Premix Fuel	Gasoline (Petrol)
Residual Fuel Oil (RFO)	Gasoil (Diesel)
Aviation Turbine Kerosene (ATK)	Liquefied Petroleum Gas (LPG)
Gasoil Mines	Kerosene
Gasoil Rig	Marine Gasoil (MGO) Local
Marine Gasoil (MGO) Foreign	

*Figure 1: The table above presents, on the left, the petroleum products whose prices are regulated, and on the right, those whose prices are deregulated, as specified by the NPA in the Petroleum Products Pricing Guidelines 2024.*

Notwithstanding the deregulation policy, it appears that the pricing of petroleum products is to an extent, nominal or otherwise, subject to certain regulations.

This assertion is made firstly because, in setting the prices of deregulated petroleum products, the relevant players are mandated to use the prescribed pricing formula approved by the NPA within a specific pricing window.<sup>60</sup> The formula for ex-refinery and ex-pump prices are respectively stated below:

**Ex-Refinery Price = FOB Price + Suppliers' Premium**  
**Ex-Pump Price = Ex-Refinery Price + Taxes + Levies + Margins**

The taxes, levies and margins applicable for each pricing window are periodically provided by the NPA and include taxes approved by Parliament, Tema Oil Refinery Debt Recovery Levy, Road Fund Levy, Price Stability Margin, Fuel Marking Margin and Distribution Margin.<sup>61</sup>

<sup>59</sup>Per Section 81 of Act 691, whereas the ex-refinery price means the amount of money equivalent to the actual cost of importing finished petroleum products and not exceeding the import parity price, the ex-pump price means the price at which a given quantity of a petroleum product is sold at a retail station dispensing pump

<sup>60</sup>Petroleum Pricing Guidelines 2024

<sup>61</sup>Regulations 7 – 11, National Petroleum Authority (Prescribed Petroleum Pricing Formula) Regulations, 2012 (L.I 2186); Petroleum Pricing Guidelines 2024

Again, despite the price deregulation, the NPA sets price floors, for these petroleum products in each pricing window, below which the relevant stakeholders are prohibited from selling petroleum products.<sup>62</sup> For instance, in February 2025, the NPA set a price floor effective for the second pricing window of February 2025. Petrol and diesel were priced at a minimum of GH¢12.56 and GH¢13.45 per litre, respectively, while Liquefied Petroleum Gas (LPG) was priced at GH¢14.26 per kilogram.<sup>63</sup>

Whether deregulated or otherwise, the relevant stakeholders are mandated to comply with certain rules governing the pricing of petroleum products. Some of the rules as stated in the Petroleum Pricing Guidelines, 2024 are listed below:

- a. The PSPs engaged in selling petroleum products are compelled to display the price of the petroleum product in cedis and in pesewas;<sup>64</sup>
- b. OMCs and LPGMCs shall visibly display the ex-pump prices for all types of petroleum products sold at a retail outlet on their price billboards and must always be the same as the prices on the dispensing pumps at the retail outlet;
- c. OMCs and LPGMCs are to notify the NPA of their actual ex-pump prices and revised ex-pump prices by 12 noon of the working day before the effective date of the new ex-pump price;
- d. BIDECS shall ensure that the ex-refinery prices reported in the Enterprise Relational Database Management System (ERDMS) are the exact prices at which products were sold to OMCs and LPGMCs for all finalised transactions in the system;
- e. PSPs shall comply with the price floors set for the deregulated petroleum products for each window by not selling products below those prices.

## CONCLUSION

A robust downstream regulatory regime is indispensable for safeguarding the efficiency and fairness of petroleum supply in Ghana.

The downstream petroleum industry in Ghana operates within a clearly defined regulatory framework, with the prominent regulatory body being the NPA. These regulations which govern critical activities of the downstream sector aim to protect the environment, consumers from exploitative pricing, and competitors and promote economic development.

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<sup>62</sup>Petroleum Pricing Guidelines 2024

<sup>63</sup>JoyOnline, 'NPA Announces New Petroleum Price Floor' (18th February 2025) <<https://www.myjoyonline.com/npa-announces-new-petroleum-price-floor/>> accessed 10 August 2025.

<sup>64</sup>Section 31 of National Petroleum Authority Act, 2005 (Act 691).

# SUSTAINABILITY

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## THE EFFECTIVE MANAGEMENT OF REVENUE FROM NATURAL RESOURCE EXPLOITATION: LEGAL, ECONOMIC, AND INSTITUTIONAL PERSPECTIVES IN GHANA



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### INTRODUCTION

The discovery of natural resources in commercial quantities is often met with celebration and optimism, as it is perceived to drive the economic prosperity of the nation. In Ghana, this sentiment was upheld when oil was discovered in commercial quantities in the Jubilee Field on 6 June 2007, triggering widespread national euphoria. Ghana is blessed with a variety of natural resources, including gold, bauxite, lithium, and diamonds. For a country once known as the Gold Coast, the addition of oil to its resource portfolio was regarded as a historic economic turning point, raising hopes of accelerated national development.

The anticipation of prosperity was immense; oil was hailed as a catalyst for job creation, infrastructure expansion, and long-term economic growth. This optimism was reinforced when Ghana marked its “first oil” on 28 November 2010, an event celebrated nationwide and symbolically linked to the country’s proud legacy of natural resource wealth.

Despite the optimism, there is an overriding duty to manage the revenues generated from natural resources effectively. Such

management must ensure that resource wealth delivers lasting benefits, not only for the present generation but also for those to come. Without prudent governance, the fleeting nature of extractive resources risks leaving citizens with little more than environmental scars and unfulfilled promises.

However, the excitement that accompanies such discoveries can mask the deeper challenges of turning resource revenues into lasting benefits. Volatile commodity prices, governance weaknesses, and institutional gaps have too often meant that the promise of resource wealth is not fully realised, risking the repetition of the so-called “resource curse” seen in other nations.

The experience of other nations serves as a cautionary tale. Angola, the second-largest oil producer in sub-Saharan Africa and one of the continent’s wealthiest countries in resource terms, still records some of the highest under-five child mortality rates in the world.<sup>65</sup>

Despite its resource windfall, Angola’s inability to establish robust institutions for effective revenue management has meant that much of its population continues to live in poverty. This example underscores a broader reality: many resource-rich nations lack the governance structures needed to convert natural wealth into lasting prosperity. While a few jurisdictions, such as Botswana, Chile, Norway, and the U.S. state of Alaska, have demonstrated that resource wealth can be managed successfully, they remain the exception rather than the rule.

## What is the Problem?

Recognising these challenges, Ghana has taken steps to avoid the pitfalls experienced by other resource-rich countries. Examples of such measures are the establishment of the Petroleum Revenue Management established by the Petroleum Revenue Act, 2011 (Act 815), Minerals Income Investment Fund (MIIF) through the MIIF Act, designed to collect and manage Petroleum revenue and manage and invest the country’s mineral revenues strategically.

Under Section 2 of the Act,<sup>66</sup> the objects of the Fund are to:

- a. Maximise** the value of the income due to the Republic from the mineral wealth of the country for the benefit of its citizens;
- b. Monetise** the minerals income accruing to the Republic in a beneficial, responsible, transparent, accountable, and sustainable manner; and
- c. Develop and implement measures** to reduce the budgetary exposure of the Republic to fluctuations in minerals income.

Recent improvements in macroeconomic management, combined with fresh analytical thinking that takes account of the specific circumstances of developing countries, offer hope that natural resource revenues can drive poverty reduction and growth. The decision of how much of their resource revenue flow to consume and how much to save and invest saddles resource-rich developing countries with difficult trade-offs.

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<sup>65</sup>Sanjeev Gupta, Alex Segura-Ubierno, and Enrique Flores, *Sharing the Wealth*, Finance & Development December 2014, Vol. 51, No. 4

<sup>66</sup>Minerals Income and Investment Fund Act, 2018 (Act 978).

For advanced economies rich in natural resources, it may be optimal to save or invest resource revenues in financial assets abroad and then to consume a constant portion of resource wealth each period, equal to the permanent income on their total resource wealth. This is known as the permanent-income approach.<sup>67</sup>

However, the Government, through the 2025 Budget Statement, has proposed an amendment to the MIIF Act to redirect 80% of the Fund's mineral royalties into the Consolidated Fund for infrastructure development. This proposal exemplifies how legal, and policy decisions can compromise the Fund's long-term objectives. Analysts warn that such a move could severely weaken MIIF's capacity to invest in high-yield assets, effectively undermining its statutory purpose and exposing the country to the boom-and-bust cycles seen in other resource-rich nations.

## LEGAL AND REGULATORY CHALLENGES

The laws governing the extractive sector, including the **Minerals and Mining Act**<sup>68</sup>, the **Petroleum Revenue Management Act**<sup>69</sup>, the **Environmental Protection Act**<sup>70</sup>, and the **Minerals Income and Investment Funds Act**<sup>71</sup>, often operate in silos. This fragmentation can lead to conflicting mandates, duplication of efforts, and gaps in enforcement. While the MIIF Act focuses on the investment of mineral revenues, the Petroleum Revenue Management Act governs the oil sector, and there is no overarching legal instrument to integrate the governance of all extractive resources under a unified vision.

### 1. Economic Challenges

#### a. Overreliance on Commodity Revenues

Ghana's fiscal framework remains heavily dependent on mineral and petroleum revenues, making the economy vulnerable to commodity price volatility. Sharp declines in gold or oil prices can significantly reduce government revenue, force sudden budget adjustments and limit the scope for long-term investment. The proposed diversion of MIIF funds exacerbates this vulnerability by eroding the Fund's capacity to serve as a buffer against commodity price shocks.

One critical point the Honourable Minister may have overlooked is that the Fund was deliberately created to mitigate such volatility. Redirecting these resources for purposes beyond their intended mandate is a slippery slope towards the very "resource curse" the MIIF was designed to avert.

#### b. Limited Diversification of Investment Portfolios

Although the MIIF's mandate includes building a sustainable investment portfolio, there is limited public information on the diversification of its holdings. Heavy concentration in the extractive sector risks reinforcing the very

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<sup>67</sup>IMF, *Macroeconomic Policy Frameworks for Resource-Rich Developing Countries* (Policy Paper, 2012); IMF, *Norway's Fiscal Framework: Building Resilience for the Future* (IMF Country Report No 21/97, 2021)

<sup>68</sup>Minerals and Mining Act, 2006 (Act 703)

<sup>69</sup>Petroleum Revenue Management Act, 2011 (Act 815)

<sup>70</sup>Environmental Protection Act, 2025 (Act 1124)

<sup>71</sup>Ibid, 2

volatility the Fund seeks to mitigate. Diverting 80% of the Fund to immediate spending further limits its ability to pursue diversified, long-term investment strategies.

## **2. Institutional and Governance Challenges**

### **a. Institutional Capacity Constraints**

For the MIIF to succeed, it must be supported by skilled professionals capable of managing complex investment strategies, conducting due diligence, and ensuring compliance with international best practices. Institutional capacity gaps in technical expertise, financial modelling, and risk management remain a concern, and a sudden transfer of funds could strain these capacities further by constraining operational resources.

### **b. Transparency and Public Engagement**

Despite statutory provisions on accountability, public awareness of the MIIF's operations, investment decisions, and performance remains low. Without robust citizen engagement and transparent reporting, there is a risk of public mistrust and reduced scrutiny of fund management. The proposed fund transfer may fuel public scepticism about the government's commitment to long-term resource management.

### **c. Risk of Political Interference**

As with many sovereign wealth and natural resource funds, political influence in investment decisions can undermine long-term objectives. Short-term political priorities, particularly during election cycles, may take precedence over sustainable wealth preservation. The 80% fund transfer is a tangible example of such interference, prioritising immediate infrastructure spending over strategic wealth accumulation and intergenerational equity.

## **POLICY AND MACRO-ECONOMIC IMPLICATIONS OF THE 80% MIIF FUND TRANSFER**

The government's proposal to transfer 80% of the Minerals Income Investment Fund (MIIF) into the Consolidated Fund for infrastructure development raises significant macroeconomic concerns. While the intent is to address immediate fiscal needs, this policy could have long-term detrimental effects on Ghana's economic stability and growth prospects.

### **Erosion of Sovereign Wealth and Investment Capacity**

The MIIF was established to manage mineral royalties, ensuring that Ghana's resource wealth contributes to sustainable development. By diverting a substantial portion of these funds, the government diminishes the nation's ability to invest in high-yield assets, potentially leading to a depletion of sovereign wealth. This reduction in investment capacity could hinder future economic growth and the ability to respond to economic shocks.

## **Increased Fiscal Vulnerability**

While the immediate fiscal deficit may appear to improve by reallocating funds, this approach does not address the underlying structural issues. Relying on one-time transfers from resource revenues can lead to increased fiscal vulnerability, especially if commodity prices fluctuate or if there is a downturn in the mining sector. Sustainable fiscal health requires consistent and diversified revenue streams, which this policy undermines.

## **Potential for Inflationary Pressures**

The infusion of a significant amount of funds into the Consolidated Fund could lead to increased government spending. Without corresponding increases in domestic production, this could result in inflationary pressures, eroding the purchasing power of citizens and potentially leading to macro-economic instability.

## **Impact on Investor Confidence**

International investors closely monitor a country's management of its natural resources. The decision to divert a substantial portion of MIIF funds may signal to investors a lack of commitment to long-term economic planning and resource management. This perception could lead to reduced foreign direct investment and capital outflows, adversely affecting economic growth and business interests in Ghana.

## **Long-Term Development Implications**

While the policy aims to fund infrastructure development, it is crucial to consider the opportunity cost. The funds allocated to short-term infrastructure projects could have been invested in long-term assets that generate returns over time. Diverting these funds may result in missed opportunities for sustainable development and wealth generation for future generations.

In conclusion, while the government's proposal to transfer 80% of MIIF funds into the consolidated fund may provide short-term fiscal relief, it poses significant risks to Ghana's long-term economic stability and growth. A more balanced approach, focusing on both immediate needs and long-term investments, would be prudent to ensure sustainable development and economic resilience.

## **PROPOSED SOLUTIONS & SAFEGUARDS**

To ensure that Ghana's mineral wealth delivers sustainable benefits, a combination of legal, economic, and institutional measures must be implemented. These solutions aim to protect the Minerals Income Investment Fund (MIIF), strengthen governance, and maximise the long-term value of resource revenues.

The experience of global success stories suggests that natural resource

wealth management requires a commitment to three interrelated principles: fiscal transparency, a rules-based fiscal policy, and strong institutions for public financial management. These principles provide the foundation for sustainable management and can guide Ghana in strengthening MIIF's role as a long-term sovereign wealth fund.

### **Legal and Regulatory Safeguards**

The following are essential to legally regulate the management of these funds:

- a. Amend the MIIF Act to clearly limit the transfer of funds for short-term expenditures, ensuring that a core portion is ring-fenced for long-term investment.
- b. Harmonise existing laws governing mining, petroleum, and resource revenues to avoid conflicting mandates and ensure cohesive oversight.
- c. Mandate full disclosure of mineral contracts and revenue allocations, increasing public scrutiny and accountability.
- d. Equip regulatory agencies with the independence, authority, and resources necessary to enforce compliance and deter mismanagement or corruption.
- e. Government must sign agreements with Multinational mining companies to use their funds to provide some basic amenities for the mining communities.

### **Economic Measures**

In terms of economic measures to sustain a robust investment and/or profitable management of the funds, government may:

- a. Allow MIIF to invest strategically in diversified, high-yield domestic and international assets to buffer against commodity price volatility.
- b. Adopt a hybrid approach that allocates a portion of resource revenues to immediate infrastructure and social development needs while preserving the majority for investment growth.
- c. Implement policies that protect other sectors, such as agriculture and manufacturing, from currency appreciation due to resource inflows.

### **Institutional Strengthening**

There is also the need to build and strengthen institutions mandated to manage resources in the country for and on behalf of the people. To achieve this, it will be useful to :

- a. Develop specialised technical and financial expertise within MIIF and related regulatory bodies to manage complex investments and evaluate risks effectively.
- b. Establish an autonomous board with professional and civic representation to oversee fund management, investment strategy, and reporting.
- c. Foster citizen participation and transparent reporting mechanisms to build trust and ensure that resource wealth benefits both local communities

and the nation at large; and

d. Introduce clear metrics and regular audits to evaluate MIIF's performance, linking outcomes to the Fund's statutory objectives.

### **Learning from Global Best Practices**

Benchmark Against Successful Funds: Adopt lessons from Norway's Government Pension Fund Global (GPF) and Bahrain's Mumtalakat Fund, where long-term investment strategies have protected wealth from short-term political pressures. We also need to avoid sudden large-scale transfers of MIIF resources; instead, implement phased allocation models that maintain fund integrity while contributing to development projects

### **CONCLUSION**

Ghana's experience with natural resource management underscores the critical importance of strong institutions, clear legal frameworks, and disciplined fiscal policies. The establishment of the MIIF and the Petroleum Revenue Management framework represents a deliberate attempt to harness resource revenues sustainably, mitigate commodity price volatility, and ensure intergenerational equity.

However, the proposed diversion of 80% of MIIF funds into the Consolidated Fund threatens to undermine these objectives, exposing the country to fiscal instability and the classic boom-and-bust cycles associated with resource dependent economies. Preserving the integrity of the MIIF, adhering to rules-based fiscal management, and following macroeconomic principles such as the permanent income approach are essential to converting Ghana's mineral wealth into a long-term engine of sustainable growth, poverty reduction, and economic transformation.

# PETROLEUM SECTOR

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## THE PETROLEUM SECTOR IN GHANA: KEY INSTITUTIONS AND THEIR ROLES



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### Introduction

The petroleum sector in Ghana is a composite term that is used to describe the industry that engages in all activities for the exploitation, extraction, refinery, marketing and distribution of oil and gas resources. It therefore encompasses the upstream, mid-stream and downstream sectors.

Within these sectors, there exist vital institutions that play various regulatory, oversight and operational roles that are essential to the efficient and proper functioning of the industry. It is therefore imperative for players in the petroleum sector to be adequately informed of the nature and operations of these important institutions.

This paper seeks to provide a comprehensive analysis of the key institutions that govern Ghana's petroleum sector. It highlights their respective statutory mandates, the legal and operational interdependencies that define their relationships, and the persistent challenges that shape the industry's governance landscape.

## The Legal Foundation of Ghana's Petroleum Sector

The bedrock of Ghana's petroleum governance lies in its constitutional provisions and a series of legislative enactments. A holistic reading of the 1992 Constitution of Ghana and the Petroleum (Exploration and Production) Act, 2016 (Act 919) puts it beyond doubt that all-natural petroleum existing in its natural state within the jurisdiction of the Republic is vested in the President on behalf of the people.<sup>72</sup> These provisions underscore the state's ultimate ownership and control over these strategic resources.

In line with the country's strategic approach to create an efficient and sustainable institutional framework for the petroleum sector, several laws have been passed to delineate the roles and responsibilities of various institutions, namely;

**a. Petroleum (Exploration and Production) Act, 2016 (Act 919):** This Act, building upon its predecessor, the Petroleum (Exploration and Production) Law, 1984 (PNDCL 84), governs the upstream sector, including exploration, development, and production activities.<sup>73</sup> Among other key provisions, it stipulates that a person, other than the Ghana National Petroleum Corporation (GNPC), shall not engage in these activities except through a petroleum agreement with the Republic and GNPC.<sup>74</sup>

**b. Ghana National Petroleum Corporation Act, 1983 (PNDCL 64):** This foundational law established the Ghana National Petroleum Corporation, defining its objects, functions, and powers in the petroleum sector.

**c. National Petroleum Authority Act, 2005 (Act 691):** This Act established the National Petroleum Authority (NPA), providing the legal basis for regulating the downstream petroleum industry.

**d. Petroleum Commission Act, 2011 (821):** This Act established the Petroleum Commission, providing the legal basis for regulating and managing the upstream petroleum industry in Ghana.

**e. Petroleum Revenue Management Act, 2011 (Act 815):** This Act provides the framework for the collection, allocation, and management of petroleum revenues, establishing key oversight bodies like the Public Interest and Accountability Committee (PIAC).

### Key Institutions and Their Mandates

Ghana's petroleum sector is governed by a multi-faceted institutional landscape, broadly categorized into upstream (exploration and production) and downstream (refining, distribution, and marketing) segments.

#### ***Ministry of Energy (and Green Transition)***

The Ministry of Energy, headed by the Minister responsible for petroleum and power, plays a crucial policy, supervisory, and oversight role in the petroleum sector.

The Minister represents the Republic in negotiations for and entry into petroleum agreements. The Ministry monitors the release and storage of petro-

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<sup>72</sup>1992 Constitution of Ghana, Article 257(6); Petroleum (Exploration and Production) Act, 2016 (Act 919), Section 3

<sup>73</sup>Petroleum (Exploration and Production) Act, 2016 (Act 919), Sections 1 and 2

<sup>74</sup>Petroleum (Exploration and Production) Act, 2016 (Act 919), Sections 10 and 11

leum products at strategic storage depots to ensure a minimum reserve stock. It also receives reports from the NPA Board on industry activities.

The Minister has the authority to prescribe policy guidelines for the GNPC and is actively involved in ongoing reforms, such as the review of the downstream petroleum sector to align with modern standards and the development of a comprehensive downstream law. The Ministry also spearheads the ambitious Petroleum Hub project, aiming to expand Ghana's energy infrastructure with new refineries, hydro chemical plants, and tank farms. It emphasizes promoting indigenous capacity in the oil and gas sector.

### ***Ghana National Petroleum Corporation (GNPC)***

Established under the Ghana National Petroleum Corporation Act, 1983 (PNDCL 64), GNPC is the national oil company and a principal player in Ghana's petroleum sector.

GNPC's core mandate is to undertake the exploration, development, production, and disposal of petroleum. This includes promoting the orderly and planned development of petroleum resources, ensuring Ghana derives maximum benefits, facilitating technology transfer, developing national capabilities in all aspects of petroleum operations, and ensuring environmentally sound practices.

GNPC can engage in petroleum operations alone or in association with other contractors through petroleum agreements. It also advises the Minister responsible for Fuel and Power and the National Energy Board on petroleum operations.

Beyond exploration and production, GNPC is empowered to buy, sell, trade, store, import, and export petroleum, and to acquire or operate related installations and transportation means. It also conducts research and development programs. GNPC is mandated to operate on sound commercial principles.

Historically, it has been involved in the collection of specific levies, such as the strategic stock levy and the exploration levy, intended for infrastructure development and exploration projects.

### ***National Petroleum Authority (NPA)***

The National Petroleum Authority, established by the National Petroleum Authority Act, 2005 (Act 691), is the primary regulator of the petroleum downstream industry.

The NPA's main objective is to regulate, oversee, and monitor activities within the petroleum downstream industry, including the application of the prescribed petroleum pricing formula.

Its extensive functions include prescribing the pricing formula for the prices

of petroleum products and monitoring its enforcement and implementation, granting and regulating licenses for various downstream activities such as refinery operations, storage depots, bulk transportation, and marketing, maintaining a comprehensive register of licensees, petroleum products, and service providers, and providing guidelines for petroleum marketing operations and promoting fair competition, among others.

### ***Petroleum Commission (PetCom)***

The Petroleum Commission is the key regulatory body for the upstream petroleum industry, distinct from the NPA, which handles the downstream. It is established by the Petroleum Commission Act, 2011 (821).

The Petroleum Commission is responsible for regulating and managing the country's petroleum resources in the upstream sector. This includes empowering and assisting local suppliers and companies to become sustainability oriented.

The Commission signs agreements for advanced geological data acquisition, such as 3D seismic data, to deepen understanding of Ghana's oil reserves and attract investment. It is also actively pursuing amendments to the fiscal regime to introduce tailor-made fiscal elements for specific oil blocks, aiming for a more progressive two-tier royalty scheme. The Petroleum Commission encourages existing operators to invest more in exploration and reviews regulatory requirements to make them more flexible and attractive to new investments. The government has specifically directed the Petroleum Commission to build the capacity of indigenous oil and gas entities to increase their participation in the upstream industry.

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

Established under the Petroleum Revenue Management Act, 2011 (Act 815), the PIAC is an independent oversight body.

PIAC is tasked with monitoring the management and use of Ghana's petroleum revenues. It prepares and publishes statutory reports to inform the public and stakeholders on petroleum production, liftings,<sup>75</sup> total revenues, and their utilization, including allocations to the Annual Budget Funding Amount (ABFA) and the management of the Ghana Petroleum Funds (Ghana Stabilization Fund and Ghana Heritage Fund). PIAC plays a crucial role in identifying challenges in the sector, such as declining production trends and discrepancies in fund management, and advocates for policy reforms to ensure prudent management of petroleum revenues.

### **Other Related Institutions**

Several other institutions contribute to the governance and operations of Ghana's petroleum sector:

**Parliament of Ghana:** Parliament holds a critical oversight role, particularly through its power to ratify petroleum agreements and approve loans to state entities like GNPC. It is also the body to which PIAC makes recommendations

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<sup>75</sup>"Lifting" in this sense refers to the physical process of loading a petroleum product unto a vessel for transport

regarding the management of petroleum revenues, including proposals for legislative amendments.

**Ministry of Finance:** This Ministry plays a vital role in fiscal policy related to petroleum, including petroleum income tax and the management of petroleum funds. It approves aspects of GNPC's financial operations, such as the management of its reserve fund.

**Ghana Standards Authority (GSA):** In consultation with the NPA Board, the GSA is responsible for setting specifications for all types of fuel and fuel-related products, including the allowable content of additives.

**Environmental Protection Agency (EPA):** As a relevant institution, the EPA collaborates with the NPA and other bodies to ensure that petroleum operations are conducted in an environmentally responsible manner. While the Petroleum (Exploration and Production) Law holds operators responsible for pollution, there is an ongoing need for specific regulations to prevent, reduce, and control environmental damage.

**Ghana Revenue Authority (GRA):** The GRA is responsible for the collection and administration of various taxes and levies on petroleum products and operations, including income tax, petroleum taxes, and energy sector levies. PIAC often makes recommendations to the GRA regarding the recovery of outstanding payments and ensuring timely adherence to regulations.

**Ghana National Gas Company (GNGC):** Incorporated in 2011, GNGC is responsible for the construction, ownership, and operation of Ghana's natural gas infrastructure. Its mandate includes the gathering, processing, transportation, and marketing of natural gas resources. GNGC supplies gas to the Volta River Authority (VRA) for power generation and is actively developing a second gas processing facility to manage growing gas output and reduce the environmentally and economically wasteful practice of gas flaring.

**Petroleum Hub Development Corporation (PHDC):** This new entity was established pursuant to the Petroleum Hub Development Corporation Act 2020 (Act 1053) to promote and develop a petroleum and petrochemical hub. The institution is also mandated to coordinate with regulatory bodies such as EPA, NPA, Petroleum Commission and Ghana Ports and Harbours Authority (GPHA) for the provision of relevant licences and permits. It further expedites collaboration with investors involved in the development of Ghana's ambitious Petroleum Hub project.

### **Interrelationships and Synergies**

The effective governance of Ghana's petroleum sector relies heavily on the collaboration and clear delineation of responsibilities among these institutions. The NPA, for instance, works closely with the Ghana Standards Authority to ensure product quality and with petroleum service providers to enforce performance standards in the downstream industry.

GNPC, while an operational entity in the upstream, also advises the Ministry

of Energy and engages with Parliament on petroleum agreements. PIAC serves as a crucial independent watchdog, providing accountability by monitoring revenue utilization and making recommendations to both the Executive and Legislative branches. The Ministry of Energy acts as the central policy-making body, coordinating efforts across the sector and initiating reforms that impact all players.

## **Historical Evolution, Current Challenges, and Ongoing Reforms**

Ghana's petroleum institutional framework has evolved significantly since the initial discoveries in 2007, transitioning from earlier PNDC Laws to more comprehensive Acts of Parliament.

Prior to the 2007 oil discovery, Ghana's legal framework for upstream activities was governed by the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84), which was characterized by an "open-door" licensing policy based on direct negotiations. This era saw the Ghana National Petroleum Corporation (GNPC), established by the GNPC Act, 1983 (PNDCL 64), functioning not only as the national oil company but also as the de facto regulator, as most of the sector's technical expertise was concentrated within it. This concentration of both commercial and regulatory power in a single entity presented inherent conflicts of interest.

The significant oil discovery in 2007 prompted a critical re-evaluation of this governance model. The subsequent legislative reforms, as highlighted in the paragraphs above, were a deliberate legal response to unbundle these conflicting roles, separating the commercial function of exploration and production from the regulatory and oversight responsibilities. This new legal architecture was designed to create a more transparent and accountable system. The aim was to establish a multi-agency, specialized structure that would foster a mature and well-governed petroleum industry, thereby ensuring that Ghana's natural resources are managed for the collective benefit of its citizens. This evolution reflects a growing understanding of the sector's complexities and the need for specialized regulatory bodies.

The institutional framework of Ghana's petroleum sector, while robust in its design, faces significant legal and operational challenges that undermine its effectiveness. A critical analysis reveals that the persistent challenges of the institutional framework of Ghana's petroleum sector are primarily rooted in the complex interplay between these institutions. Some of these challenges are highlighted below:

**Independence of Oversight Institutions:** Perhaps the most prominent concern regarding the independence of bodies with oversight responsibilities is the jurisdictional overlap between GNPC and the Petroleum Commission. While the law mandates the Petroleum Commission to regulate all upstream activities, GNPC's historical and institutional dominance creates a clear power asymmetry. This situation means the regulator, a relatively young institution, must constantly navigate a complex relationship with the very entity it is tasked with overseeing, which poses a significant threat to its independence. Furthermore, the PIAC, while mandated to ensure accountability,

faces challenges related to its funding mechanisms, which can potentially compromise its independence.

**Declining Production:** Ghana has experienced a worrying decline in crude oil production since 2019, attributed to factors such as natural depletion of mature fields, investment challenges (including unfavorable fiscal terms and global energy transition policies), operational difficulties, and a lack of high-quality data to attract new exploration.<sup>76</sup>

**Political Interference:** There are concerns that political interference can stifle the potential of key institutions like GNPC and the Petroleum Commission, leading to inefficiencies and impacting investor confidence.<sup>77</sup> Beyond the upstream and downstream sectors, the Ministry of Energy's centralized authority, with its Minister having final approval over critical agreements and the power to issue policy directives, can potentially circumvent the autonomy of regulators like the Petroleum Commission and the National Petroleum Authority. This concentration of power, while ensuring policy cohesion, provides a legal basis for the kind of political economic factors that have historically influenced contract outcomes in the petroleum sector.

**Infrastructure and Efficiency:** Issues persist in the downstream sector, including concerns about "hidden margins" on petroleum products not subject to parliamentary approval, and the need to improve the efficiency of state-owned enterprises like BOST and Tema Oil Refinery.<sup>78</sup>

**Investment Climate:** The country has struggled to attract major new investments and petroleum agreements since 2018, with concerns raised about regulatory unpredictability, contract sanctity, and fiscal instability.<sup>79</sup>

In response, several reforms and initiatives are underway to address these challenges. For instance, the Ministry of Energy is undertaking a holistic review of the downstream petroleum sector to formulate a comprehensive law, aiming for improved operational efficiency and accountability.<sup>80</sup>

Additionally, the Petroleum Hub project signifies a major push to expand domestic refining and storage capacity, with the Petroleum Hub Development Corporation established to streamline investment. The GNPC is implementing a roadmap to revitalize upstream production through technological innovation, enhanced reservoir management, and new exploration in areas like the Volta Basin.<sup>81</sup>

Similarly, the Petroleum Commission is actively working on fiscal regime reforms and reviewing regulatory requirements to attract and retain invest-

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<sup>76</sup>PIAC News, 'GHANA'S OIL PRODUCTION FALLS FOR FIFTH CONSECUTIVE YEAR – PIAC REPORT' (PIAC, 2 May 2025) <[https://www.piac-ghana.org/ghanas-oil-production-falls-for-fifth-consecutive-year-piac-report/#:~:text=Ghana's%20crude%20oil%20production%20has,and%20Accountability%20Committee%20\(PIAC](https://www.piac-ghana.org/ghanas-oil-production-falls-for-fifth-consecutive-year-piac-report/#:~:text=Ghana's%20crude%20oil%20production%20has,and%20Accountability%20Committee%20(PIAC)>.

<sup>77</sup>The Business and Financial Times, 'Political interference tops concerns in oil and gas sector – Deloitte' (9 October 2024) <https://thebftonline.com/2024/10/09/political-interference-tops-concerns-in-oil-and-gas-sector-deloitte/>; Ghana Upstream Petroleum Chamber, Joshua Batsa Narh, 'Breaking free: why oil and gas institutions must escape political shackles' (13 January 2025) <https://ghanaupstream.com/breaking-free-why-oil-and-gas-institutions-must-escape-political-shackles/>.

<sup>78</sup>Business and Financial Times, 'Ghana's SOE Performance (1983–2025)' (20 May 2025) <https://thebftonline.com/2025/05/20/ghanas-soe-performance-1983-2025/>.

<sup>79</sup>PIAC News, 'PIAC ALARMED BY STAGNATION IN UPSTREAM PETROLEUM INVESTMENT' (PIAC, 5 June 2025) <https://www.piacghana.org/piac-alarmed-by-stagnation-in-upstream-petroleum-investment/>.

<sup>80</sup>Graphic Online, 'We'll ensure best practices in downstream petroleum sector — Jinapor' (5 February 2025) <https://www.graphic.com.gh/news/general-news/ghana-news-well-ensure-best-practices-in-downstream-petroleum-sector-jinapor.html>.

<sup>81</sup>Ghana National Petroleum Corporation, 'GNPC Acting CEO Details Strategic Upstream Overhaul at Africa Energies Summit, Targeting Production Revival Through Innovation and Investment' (Ghana National Petroleum Corporation, 16 May 2025) <https://www.gnpcghana.com/news/gnpc-acting-ceo-details-strategic-upstream-overhaul-at-africa-energies-summit-targeting-production-revival-through-innovation-and-investment>.

ments.<sup>82</sup> The NPA is implementing technology-driven initiatives to curb illicit fuel activities, enhance product quality, and promote the Cylinder Recirculation Model for LPG distribution.<sup>83</sup>

It therefore appears that ultimately, the governance of Ghana's petroleum resources is not a story of a lack of institutions or laws but a struggle for institutional independence and the political will to enforce them, which is the ultimate test of the framework's ability to deliver efficient and commendable results.

## Conclusion

The institutional architecture of Ghana's petroleum sector is a sophisticated network of specialized agencies, each with a distinct and legally defined role, from policy formulation and commercial operation to regulation, infrastructure management, and public oversight.

The Ministry of Energy stands as the supreme policy-making body, while GNPC serves as the national oil company, and the Petroleum Commission and National Petroleum Authority act as dedicated upstream and downstream regulators, respectively. The National Gas Company, BOST, and the Petroleum Hub Development Corporation manage the midstream and downstream infrastructure and investment, while PIAC provides a vital, independent layer of public accountability.

These institutions are instrumental in managing resource exploration, production, distribution, and revenue. While significant strides have been made in establishing a robust regulatory environment, the sector continues to grapple with challenges such as declining production, attracting investment, and ensuring institutional independence and efficiency. The ongoing reforms and commitment to strengthening governance frameworks are critical for Ghana to unlock the full potential of its petroleum resources, foster sustainable development, and ensure equitable benefits for its citizens.

Continuous dialogue, adherence to best practices, and a steadfast commitment to transparency will be paramount in navigating the evolving global energy landscape and securing a prosperous future for Ghana's petroleum industry.

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<sup>82</sup>Petroleum Commission, Ghana, "Ghana Upstream Petroleum Business Outlook Report 2025", available at <https://petrocom.gov.gh/wp-content/uploads/2025/05/Final-2025-Ghana-Upstream-Petroleum-Business-Outlook-Report-GUPBO-.pdf>  
<sup>83</sup>MyJoyOnline.com, 'NPA launches electronic cargo tracking system to clamp down on illicit fuel diversion' (14 January 2020) <https://www.myjoyonline.com/npa-launches-electronic-cargo-tracking-system-to-clamp-down-on-illicit-fuel-diversion/>

# FORESTRY SECTOR

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## LEGAL TIMBER: LEGAL FRAMEWORK FOR FOREST MANAGEMENT AND TIMBER TRADE IN GHANA



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### Introduction

Ghana's equatorial climate has blessed the nation with a wealth of forest cover. The forest area of Ghana is estimated at a remarkable 7.98 million hectares accounting for about 34% of the total national land<sup>84</sup>. The classification of these forests, based on ecological conditions, puts the Closed Forest Zone area at 8.1342 million ha, 1.036 million Transitional Forests and the Savanna Forest Zone at 14.66 million ha, giving the total area 23.85 million ha. The Closed Forest Zone is further categorized into Evergreen Rainforest, Evergreen Moist Forest and Moist Semi-deciduous Forest<sup>85</sup>.

Globally, the forest sector contributes about 600 billion dollars or 0.6% to the global GDP, with the proportion of contribution being higher for developing countries than developed ones<sup>86</sup>.

Agriculture (including forestry) is the backbone of the Ghanaian economy. It provides an estimated 43% of the Gross Domestic Product, 50% of export earnings and 70% of total employment. Forestry as a sub-sector accounts for 6% of the GDP, 11% of export earnings and directly employed a labour force of about 100,000 people as of 2019. Most of the rural population depend on the forests for their survival as forestry has played a significant role in the provision of food, clothing, shelter, furniture, potable water

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<sup>84</sup>Global Forest Resources Assessment (FAO, 2020)

<sup>85</sup>Tabi Agyarko, 2001, Forestry Outlook Study for Africa (FOSA) Country Report for Ghana, Ministry of Lands & Natural Resources

<sup>86</sup>Campos Arce Jose J., Background Analytical Study Forests, inclusive and sustainable economic growth and employment, February-March 2019

supply sources and bushmeat<sup>87</sup>, thus providing livelihood for over 2.5 million people. The forests are also highly valued as sources of natural medicines, which are essential components of health treatment, used in conjunction with mystical and ritual practices.

The timber industry is the third most important foreign exchange earner of the country (after mining and agriculture). It is one of the fastest growing manufacturing units in the country and generates considerable employment and income to a majority of Ghanaians.

In light of this immense ecological and economic endowment, the management of Ghana's timber resources must not be left to unregulated exploitation. The sector's contribution to national livelihood and foreign exchange reflects the legal framework put in place over the years in Ghana's evolving legal regime; from the Concessions Act of 1962 through NRCD 273 of 1974 to the Timber Resources Management Act of 1997 and the erstwhile constitutional directives.

All these efforts (with their respective varying degrees of success) must be studied as successive attempts to harness timber wealth under the canopy of law, ensuring that what is a blessing to the nation does not, through mismanagement, become its undoing.

Against this backdrop, the authors proceed to examine the legal regime governing timber exploitation and management in Ghana, not merely as a body of technical regulations, but also as the principal instrument through which the State exercises its stewardship over this natural resource with sustainability.

### **Legal and Institutional Framework of Forestry and Timber Now and Its Development Over the Years**

To be able to analyze the legal arrangement and framework, we need to first understand the land use classifications and the legal distinctions that govern the sources of timber in Ghana.

Timber is harvested from two principal land-use types: **on-reserve areas** (*forest reserves formally constituted under law*) and **off-reserve areas** (*lands outside forest reserves*). The law further distinguishes between naturally occurring trees and planted trees, another very important distinction with legal ramifications. Timber rights, as part of the broader regime of natural resource rights, are concerned solely with naturally occurring trees.

This is so irrespective of their location, whether on lands previously subject to timber rights, on public or stool lands, or even on alienated holdings such as family and private lands.

### **Timber Rights Under the 1992 Constitution of Ghana**

The importance of Ghana's timber resources and the regime for its exploitation are laid down right from the apex laws of the land. Under the country's

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<sup>87</sup>Referred to as Non-Wood Forestry Products (NWFPs) or Non-Timber Forest Products (NTFPs)

1992 Constitution, timber (as part of other natural resources) is vested in the President in trust for the respective stools, skins and the people of Ghana<sup>88</sup>. Therefore, the Constitution recognizes and preserves customary ownership but ensures that exploitation of timber is subject to state trusteeship and statutory regulation.

Grants of timber concessions require Parliamentary ratification<sup>89</sup>, and all timber revenues are collected and disbursed through the Office of the Administrator of Stool Lands<sup>90</sup>. Further, foreign participation in the timber industry is permitted only within the bounds of national interest and subject to constitutional and statutory safeguards which we will discuss subsequently in this statutory digest and commentary.

Chapter Six, Article 36 of the 1992 Constitution under the broader heading, Directive Principles of State Policy sets out the State's obligation to ensure the "just and equitable distribution" of national resources and their use for the "benefit of the people".

In the context of timber, this provision mandates all governments of Ghana to adopt a policy of sustainability, equity, and accountability in resource management. It requires that timber exploitation be conducted not merely for economic gain, but in a manner that safeguards the environment, preserves the resource for future generations, and secures fair returns for the communities whose lands bear the forests. Article 36 therefore provides the constitutional ethic against which future legislative and executive action in the timber sector must be measured.

### **The Concessions Act, 1962 (Act 124)**

After independence up to the year 1998, timber rights were granted through a variety of concessions, leases, and permits under the Concessions Act of 1962 (Act 124) which was assented to on 14th June 1962 to replace the colonial-era Concessions Ordinance of 1939 and the Forest Act (CAP 157).

It was the first modern legislation that setup the rights of timber ownership in relation to stool lands, forest reserves, and the process of making timber concessions in Ghana<sup>91</sup>. It also ended the applicability of the old Concessions Ordinance of 1939 to timber resources on stool lands .

Crucially, it was also the first legislation to vest significant authority in the President, acting in trust for the stools concerned. The President was clothed with trustee powers, including the ability to execute deeds and enforce sanctions against concessionaires found in breach of statutory restrictions on timber exploitation.

Act 124 went further to introduce clear constraints on foreign participation. Concessions held by non-citizens, or by bodies corporate effectively controlled from outside Ghana, were liable to cancellation by the President if

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<sup>88</sup>Article 257 of the 1992 Constitution of Ghana

<sup>89</sup>Article 268 of the 1992 Constitution of Ghana

<sup>90</sup>Article 267(6) of the 1992 Constitution of Ghana; twenty-five per cent to the stool through the traditional authority for maintaining the stool in keeping with its status; 20% to the traditional authority; 55% to the District Assembly, within the area of authority of which the stool lands are situated.

<sup>91</sup>Section 1 of the Concessions Act however saves section 30, Part IV and section 40 of the Concessions Ordinance of 1937 as these provisions apply to stool lands.

deemed prejudicial to the public interest<sup>92</sup>. Moreover, non-resident concessionaires were obliged to appoint resident attorneys, ensuring a local legal presence for accountability<sup>93</sup>. Assignments or transfers of concession rights required the Sector Minister's prior consent, thereby preventing unregulated alienation of timber and land-related rights to external entities.

The Concessions Act effectively reconstituted the framework for timber concessions in Ghana. It subordinated customary and private claims under a national trusteeship model, tightened the regime for foreign investment in timber, and anchored ownership in the custodial role of the President. Ghana's legislative policy under the Act was one of curtailing unrestrained private exploitation and securing state oversight in the exploitation of the country's timber resources.

As will be seen in the subsequent discussion, these goals though laudable, were rarely met.

### **The Trees & Timber Act, 1974 (NRCD 273)**

By the early 1970s, Ghana's timber industry was in a state of considerable disorder. Timber Concessionaires operated under a patchwork of laws (notably Act 124 and remnants of colonial ordinances), but enforcement was weak. Timber felling was widespread and largely unregulated, and the industry was plagued by a host of issues. The first of these issues was over-exploitation; essentially, timber extraction outpaced regeneration, and what was happening was that logging companies were clearing vast tracts without corresponding replanting or sustainable management of the trees.

Secondly, there was rampant revenue leakages which meant that the State was losing significant income because much of the timber trade was unrecorded or under-assessed. Logs were exported without proper markings, making it difficult to track origin or calculate dues. Thirdly, there was a lot of illegal logging & smuggling due to weak institutional oversight and dominance by foreign companies which repatriated most profits to their countries.

In 1974 the National Redemption Council seized power, and Ghana had a military government at the helm of affairs of the State for the second time in her history. The National Redemption Council, led by Chairman Acheampong, sought to reassert state control over forest resources as part of a wider nationalist and self-reliance economic policy ("Operation Feed Yourself" and related programmes).

It was in this context that NRCD 273 was passed. NRCD 273 imposed a mark-based system of timber harvesting. The Chief Conservator of Forests divided Ghana into localities with each assigned a "property mark"<sup>94</sup>. No timber could be felled, milled, or exported without such marks, and all unmarked timber was subject to prohibition and penalties<sup>95</sup>. NRCD 273 also empowered government to designate protected zones outside forest reserves<sup>96</sup>. Persons already farming in these zones were required to obtain

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<sup>92</sup>Section 5 of the Concessions Act, 1962 (Act 124)

<sup>93</sup>Section 9 of the Concessions Act, 1962 (Act 124)

<sup>94</sup>Section 1 of the Trees & Timber Act, 1974 (NRCD 273)

<sup>95</sup>Sections 2 and 3 of the Trees & Timber Act, 1974 (NRCD 273)

<sup>96</sup>Section 1 of the Trees & Timber Act, 1974 (NRCD 273) <sup>97</sup>Section 12 of NRCD 273

licences<sup>97</sup>, and unauthorized destruction of any timber in these zones incurred fines or imprisonment<sup>98</sup>.

## **The Timber Resource Management Act of 1997 and the Prevailing Regime of Legislation Re Ghana's Timber Resources**

After more than three decades of Act 124 regulating the exploitation of timber resources in Ghana with modest degrees of success, the Timber Resources Management Act, 1997 (Act 547) was assented to on 10th March 1998 to provide a more modern, structured and comprehensive regime for the management of timber.

Presently, this Act is the flagship legislation that regulates the grant of timber rights, ostensibly, in a manner that secures the sustainable management and utilization of the timber resources of Ghana and to provide for related purposes<sup>99</sup>. Act 547 repealed the erstwhile Act 124 save for sections 1 and 16. A further amendment was passed by parliament in 2002<sup>100</sup>.

What this new Act did was, it abolished the old concessions and permit regime, replacing it with a system wherein timber harvesting is legally permissible only under a **Timber Utilization Contract (TUC)**. All applications for timber concessions must now include a sustainable harvesting plan, environmental impact assessment, proof of financial and technical capability, and proposals for community benefit. These are reviewed by a Timber Rights Evaluation Committee setup under section 3 of the Act<sup>101</sup>.

TUCs are granted for a period of 40 years<sup>102</sup> and may be granted over expired timber- rights lands, unallocated public or stool lands designated for timber production, or alienable holdings but explicitly exclude privately forest-planted land or farms without the consent of the landowners<sup>103</sup>.

Section 7 of the Act allows the Minister to sign other types of felling permits on the recommendation of the Forestry Commission. This highly confusing provision can however not be used to justify the granting of timber rights without parliamentary ratification (see article 268 of the 1992 Constitution). Section 19 of the Act further mandated that existing concessions, leases, and permits be converted to TUCs within six months of the Act's commencement in 1998.

It is a lamentable commentary on the sector, that this long-mandated conversion only materialized on 11th July 2024, with Cabinet approval and Parliamentary ratification of a mere 11 out of 156 Timber Utilization Contracts<sup>104</sup>. This belated step marked the fulfilment of a crucial obligation that Ghana had been deferring for years now, and with its implementation in 2024, the country is now positioned to unlock the issuance of FLEGT licences under the EU's Voluntary Partnership Agreement (VPA) framework<sup>105</sup>.

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<sup>97</sup>Section 13 of NRCD 273

<sup>98</sup>Section 14 of NRCD 273

<sup>99</sup>The Long Title of the Timber Resources Management Act, 1998 (Act 547)

<sup>100</sup>The Timber Resources Management (Amendment) Act, 2002 (Act 617)

<sup>101</sup>Section 3 and 5 of Act 547

<sup>102</sup>Section 6A of Act 547 as inserted by section 2 of the Timber Resources Management (Amendment) Act, 2002 (Act 617)

<sup>103</sup>Section 4 of Act 547

<sup>104</sup><https://citinewsroom.com/2024/07/parliament-ratifies-timber-utilisation-contracts-for-sustainable-timber-trade/>

<sup>105</sup><https://thecustodianghonline.com/govt-promotes-legal-timber-exports/>

Act 617 inserted sections 14A to 14J, creating a package of investor incentives and guarantees such as tax and customs incentives<sup>106</sup>, free transferability of capital and profits in convertible currency, protection against arbitrary expropriation subject to compensation, and an express dispute-settlement clause that allows investors (including foreigners) to choose arbitration under for instance, the UNCITRAL rules or to rely on bilateral/multilateral investment treaties where applicable. It basically mitigated sovereign risk investors and served as a check of sorts on state power over the sector.

### **Environmental Protection Agency Act, 1994 (Act 490)**

The Environmental Protection Agency Act, 1994 (Act 490) established the Environmental Protection Agency (EPA) as the central regulatory authority for environmental management in Ghana. Although not timber-specific, the Act is of direct consequence to the forestry and timber sector, because it created the institutional and legal foundation for what is known as **Environmental Impact Oversight** in resource exploitation.

Under section 2, the EPA is charged with ensuring compliance with environmental policy and standards across all sectors, including forestry. The Agency is empowered to issue Environmental Permits and enforce compliance with conditions relating to the exploitation of natural resources. For timber specifically, this mandate translates into the requirement that any timber harvesting operation, particularly large-scale concessions under the Timber Resources Management Act (Act 547) [as amended by Act 617] must undergo Environmental Impact Assessments (EIAs). No Timber Utilization Contract (TUC) is operationally valid without an accompanying environmental permit from the EPA.

The Act also grants the EPA supervisory and enforcement powers. Under section 13, the Agency may impose sanctions, suspend or cancel environmental permits, and prosecute offenders.

### **Timber Resources Management Regulations, 2017 (L.I. 2254)**

LI 2254 is the domestic regulatory instrument promulgated to operationalize the Timber Resources Management Act, 1997 (Act 547) and its amendment, Act 617. Whereas the two Acts established the broad statutory framework for Timber Utilization Contracts (TUCs), L.I. 2254 was passed to furnish the detailed procedural and administrative rules necessary to render the system functional, transparent, and internationally credible. The purpose of the Regulations are to:-

- a) *Regulate the identification of land suitable for the grant of timber rights*
- b) *Regulate the terms and conditions for small- and large-scale timber rights,*
- c) *Regulate other sources of timber, and*
- d) *Provide for a legality licensing scheme.*<sup>107</sup>

Under the regulations, the Chief Executive of the Forestry Commission is mandated to prepare an inventory as well as a general report of forest and

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<sup>106</sup>reference to the Internal Revenue Act and Customs schedule  
<sup>107</sup>Rule 1 of L.I. 2254

timber on public lands, existing forest reserves, stool lands and any other lands as may be determined<sup>108</sup>. It would seem that with the promulgation of the Act the state wants to consolidate authoritative knowledge over the extent and quality of the nation's timber resources, replacing the historical mode of granting concessions without any scientifically verifiable inventory.

L.I. 2254 signals a clear policy intention: to transform Ghana's forestry sector from one historically driven by discretionary allocation and fragmented data into one governed by evidence, traceability and accountability. By mandating official inventories and reports, the Regulations should ensure that only properly surveyed and verified areas enter the competitive bidding process for TUCs. This is to prevent speculative or overlapping allocations.

The Regulations entrenched the competitive bidding system introduced by Act 547 as amended by Act 617. Timber rights are now to be allocated through an advertised, open bidding process, overseen by the Timber Rights Evaluation Committee. Applicants are required to demonstrate financial capacity, technical expertise, environmental compliance, and a record of community engagement.

The Regulations also require submission of a **timber utilisation and management plan**, thereby aligning contractual rights with sustainable forestry principles. On the flipside, No TUC may be granted without an **Environmental Impact Assessment (EIA)**, in line with the EPA Act. Further, all applicants are to provide **Social Responsibility Agreements (SRAs)** with local communities, covering commitments such as infrastructure, social services, and employment.

The element of legality of every log of timber harvested is very important under L.I. 2254 so much so that "Legality" is defined in the Third Schedule titled "*Legality Definition for Issuance of Legality Licences*"<sup>109</sup> made under regulations 40(2) and 41(4)(a).

Royalties are payable on **all timber** harvested under a TUC. The rate is determined by the Forestry Commission in consultation with the Minister for Lands and Natural Resources, taking into account species, volumes, and market values<sup>110</sup>. Under L.I. 2254 the Forestry Commission requires payment of **stumpage fees**<sup>111</sup> which are royalties based on the volume and species of timber harvest, and other contractual rents for TUC areas<sup>112</sup>.

Finally, the Regulations empower the Forestry Commission to monitor and impose penalties for breaches and recommend suspension or revocation of rights in cases of non-compliance. Logs and products must carry traceability documentation, a requirement that dovetails with Ghana's commitments under the EU's FLEGT-VPA framework.

## Tree Tenure & Forest Ownership

Tree Tenure is defined as a bundle of rights over trees and tree products,

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<sup>108</sup>Rule 2 of L.I. 2254

<sup>109</sup>Third Schedule of L.I. 2254

<sup>110</sup>Regulation 30 of L.I. 2254

<sup>111</sup>Regulation 60 and the Fifth Schedule of L.I. 2254

<sup>112</sup>Regulation 65 of L.I. 2254

each of which may be held by different people at different times<sup>113</sup>. These rights include the right to own, inherit, dispose, use, and exclude others from using trees and tree products. The system of tree tenure practiced in Ghana is a union of two systems; the statutory and customary tenure systems operating side by side. Under this hybrid system, several usufruct rights exist, depending on whether the tree is planted or naturally occurring, and whether it occurs in family, communal or rented land.

Customarily, as observed by Klutse, interest in the land itself is distinct from interests in things on, or attached to the land<sup>114</sup>. Thus, planted or naturally growing trees are not usually regarded as part of a land in almost all Ghanaian societies<sup>115</sup>. Many native people hailing from forest-fringe communities have a customary freehold interest in their farmlands, as have been passed on from their predecessors to them. This interest is exercised by the paramount chief of the peculiar community acting with the concurrence of his principal elders.

Even during the creation of forest reserves by the state, portions that were under settlement or cultivation were demarcated as 'admitted farms', and these lands have been cultivated till date<sup>116</sup>. When a tree occurs naturally on family lands, tenants can harvest it or parts of it, but they are not allowed to sell them. They can, however, dispose of planted commercial trees after consulting with the landlord, who normally requests a percentage of the revenue. In the 1950s, the practice was that in the Eastern and Ashanti Regions where most of the land had been converted to cocoa plantations, the farmers claimed ownership of the trees on their land and transacted them with pit sawyers. In the timber-rich areas of the Western Region, traditional chiefs claimed ownership of timber resources and transacted them with large concessionaires<sup>117</sup>. It was later in 1962 that the transformation of timber tenure was completed with the passage of the Concessions Act which vested all trees in Ghana in the President to manage for the chiefs and people.

### **The Taungya System**

The Taungya System is a method of plantation establishment in which farmers are allotted parcels of degraded forest reserves to produce food crops and to help establish and maintain timber trees. It was introduced in the country in the early 1920s with the primary aim of obtaining a mature crop of plantation timber in a short time. It was started in Ghana when it was realized that some communities bordering forest reserves were experiencing land scarcity in their farming ventures, whereas portions of such reserves had very few commercial timber species. Under such circumstances, the farmers would apply for portions of such reserves for Taungya purposes and, after verification from field staff of the Forestry Commission, areas would then be allocated to the farmers.

Crops such as plantain, cocoyam, vegetables, and other annual crops are normally cultivated for 3 years after which the overcast shade from the trees prevents any further reasonable cultivation of the crops. Farmers are, therefore, urged to discontinue cultivating any fresh crops on the allocated plot; but

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<sup>113</sup>Fortman, L. (1985) The tree tenure factor in agro-forestry with particular reference to Africa. In *Agroforestry systems* 2 (4),229-240. Martinus Nijhoff/Dr. W. Junk Publishers in cooperation with ICRAF.

<sup>114</sup>Klutse, A. K. P. (1973) Ghana J: Ewe law of property. Restate of African law. Sweet and Maxwell: London.

<sup>115</sup>Agyeman, V. K. (1994) Land, tree and forest tenure systems: Implications for forestry development in Ghana. African Development Foundation Research Report Series

<sup>116</sup>Marfo, E., (2009) Security Of Tenure And Community Benefits Under Collaborative Forest Management Arrangements in Ghana: A Country Report, 2009

<sup>117</sup>ibid

they are allowed to harvest from the previously planted crops for about 2 years, beyond which the farmers quit the plots permanently.

Due to the type of arrangements governing the Taungya scheme, farmers were not entitled to any rights of benefit whatsoever accruing from the planted timber trees, apart from the produce from the crops at the initial stages of the plantation establishment.

Significant tenure reforms have occurred with the passage of Act 547. The Act redefined lands that are subject to the granting of timber utilization rights by the State and those that are not.

Section 4(2) of Act 547 states that

No timber rights shall be granted in respect of (a) land subject to alienation holding or (b) land with farms without the written authorization of the individual, group or owners concerned.

Again, Section 4(3) of the same amended Act states that:

No timber rights shall be granted in respect of (a) land with private forest plantation or (b) land with any timber grown or owned by any individual or group of individuals.

### **Timber Utilization Contracts, Stumpage Fees and Timber Rights Under Ghana's Prevailing Legal Regime**

In Ghana, a Timber Utilization Contract (TUC) is a written agreement granting someone the right to harvest timber from a specific area<sup>118</sup> for a fixed period. It is generally known as a category of a felling permit. These contracts are crucial for legal timber harvesting and are issued by the Forestry Commission. They are signed by the Minister and ratified by Parliament granting a timber harvesting right acquired upon competitive bidding by the right-holder. Under Ghana's modern regime of timber rights two types of rights are recognised. The rights may either be Large-Scale Timber Rights or Small-Scale Timber Rights.

As rightly discussed in previous sections, the relevant laws governing TUCs include Act 547 (as amended by Act 617) and L.I. 2254. Act 547 stipulates that timber harvesting requires a TUC. A person can thus not harvest timber in Ghana without Timber Utilisation Permit (TUP), which is a small-scale permit to harvest a defined number of trees for social, or community purposes signed by the Forestry Commission<sup>119</sup>. Timber from these permits cannot be sold or exported. For Large Scale permits, applicants must comply with the requirements and procedures set out in Rules 12 to 17 of L.I. 2254.

Timber rights that were granted erstwhile by Concessions, and lately by TUCs, do not affect other rights to the land or to non-timber trees. The community or farmer may use non-timber trees and their produce in the concession areas outside forest reserves (for instance under the Taungya System).

### **Social Responsibility Agreements (SRA)**

The SRA is a mechanism for ensuring that all TUC operations are carried out

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<sup>118</sup>Up to 124km<sup>2</sup>, though the Minister may extend this area.

<sup>119</sup>Rules 18 to 21 of L.I. 2254

in a socially responsible manner with respect for the rights of the resource-owning communities. Its secondary purpose is to ensure the contractor can operate without hindrance or obstruction as long as the terms are kept. It has been called long overdue especially for off-reserve forests because in the past, farmers often obstructed logging due to their anger at the destruction of their crops by timber operations.

The terms of the SRA are first negotiated between the Forest Services Division and the resource-owning communities prior to the advertisement of the TUC area for competitive bidding. The actual agreement is entered between the successful TUC applicant and the stool chiefs concerned.

Each SRA will then vary depending on local conditions; however, all are expected to contain a code of conduct for operations. The code of conduct ensures that operations are conducted with respect for local customs, beliefs, infrastructure and livelihoods. On-reserve, it is recognised that timber production is the primary objective in the TUC area, and the code may be limited to issues concerning respect for:

- Cultural norms such as taboo days;
- Rights of access to forest products for domestic use;
- Timely consultation concerning location of logging roads etc;
- Timely payments;
- Local infrastructure;

Outside of forest reserves where the primary land use is agriculture, the code of conduct may be concerned with a wider range of issues such as respect for farming operations, cultural norms of particular communities, local rights to NTFPs, consultation with communities during planning of timber operations, local infrastructure, compensation for crop damage, right of farmers to receive a payment for tree tending.

The social obligations are negotiated between the Forest Services Division and the communities. The Director for Forestry Operations ensures the requests are reasonable and for the benefit of the community at large. The law limits the assistance required to not more than 5% of the annual royalty accruing from operations in the area. Likely forms of support include materials or cash for development projects e.g. new schools, provision of lumber for community projects, employment of local labour etc.

## **Enforcement Challenges**

Despite the elaborate statutory framework from the Concessions Act of 1962, through NRCD 273, to Act 547 as amended by Act 617 and its implementing Regulations (L.I. 2254), the practical enforcement of Ghana's timber laws has been fraught with difficulties. In the authors' view, four interlocking challenges stand out:

### ***Illegal Chainsaw Milling***

Chainsaw milling remains one of the most pervasive forms of illegality in the sector. Although Acts 547 (as amended by 617) and L.I. 2254 restrict timber

exploitation to duly ratified TUC holders, a parallel economy of chainsaw operators continues to supply the domestic market.

Ghana has been plagued by this issue for decades, and much like the colloquial name for illegal mining, *galamsey*, the names *pit-saw gangs* and sometimes *timber pirates* are indicative of the proliferation of illegal loggers. The persistence of this practice highlights a disconnect between the law's exclusivity of TUCs and the economic realities of local timber demand.

### ***Weak Monitoring and Sanctions***

While L.I. 2254 provides elaborate mechanisms for field inspection, tracing and sanctioning of defaulting concessionaires, institutional capacity to enforce these provisions is very limited. Field monitoring is weak, and the Forestry Officers often apply sanctions inconsistently. Under-declaration of volumes and failure to honour Social Responsibility Agreements (SRAs) go unpunished.

### ***Corruption in Timber Allocation Processes***

Act 617's introduction of competitive bidding and mandatory Parliamentary ratification was intended to cure the abuses of ministerial discretion under Act 547. Yet, allegations of collusion, influence-peddling, and opacity in the bidding and allocation process persist. Even within the TUC regime, political patronage and rent-seeking can distort outcomes, undermining the transparency envisaged by the Regulations. The problem is exacerbated when concessionaires with political connections are shielded from sanctions or allowed to operate despite non-compliance.

### ***Lack of Harmonisation with Mining and Environmental Laws***

An enforcement challenge lies in the fragmented interface between forestry laws and other sectoral statutes, notably mining and environmental legislation. Conflicts arise where mining leases overlap with timber concessions or where environmental permits issued under the EPA Act (Act 490) are inconsistently paired with TUC approvals. At times, open disregard for forestry rules when confronted with mining interests perceived as economically superior.

## **Conclusion**

The evolution of Ghana's legal framework for forestry and timber management reflects the State's continuing efforts to balance economic gain, environmental sustainability and social equity. From the Concessions Act of 1962 through to the current Timber Resources Management Act, the EPA Act, and the 2017 Regulations, each legislative intervention has sought to refine the system of control, accountability, and sustainability. Yet, the persistence of problems such as illegal logging, weak enforcement and institutional fragmentation is a reflection of the gap between legal design and practical reality.

Currently, the framework is robust in its structure but demands greater commitment in implementation. Future reforms may therefore need to focus less on creating new laws and more on strengthening monitoring capacity, harmonizing the legislation across sectors, and ensuring that community benefit schemes translate into tangible development. In this way, the framework will not only preserve Ghana's forests for generations to come but also affirm the State's trusteeship as one rooted in accountability, transparency and equity.

# PERSONALITY SPOTLIGHT

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## AN ENDURING LEGACY: THE JOURNEY OF SIR DR. SAMUEL ESSON JONAH



**Prince Benson Mankotam,**  
*Senior Associate Attorney - Edfields Attorneys*

### INTRODUCTION

Few African leaders have simultaneously wielded both the pickaxe and the pen in the minerals and mining industry while directly influencing policy. Sir Samuel Esson Jonah is one of them.

A formidable figure whose name is nearly synonymous with the advancement of Africa's mining sector, Sir Sam Jonah's career exemplifies legacy, resilience, and unwavering determination. Born in Obuasi on November 19, 1949, Sir Sam Jonah received early education at Adisadel College in Cape Coast, Ghana and pursued a degree in Mining Engineering at the Camborne School of Mines in the UK. He later earned a Master's Degree in Mine Management from Imperial College London, providing a strong foundation for his rapid ascent in the mining industry.

### UNPRECEDENTED RISE IN MINING LEADERSHIP

Sir Sam Jonah's career commenced in 1969 at the Obuasi Anyenim Gold Mine, where he successfully secured a trainee position, which propelled him to further his studies at Camborne School of Mines.

He joined Ashanti Goldfields in 1979, serving in various roles, including as an underground operations officer, for 13 years. By

1982, Sir Sam Jonah had been nominated by the PNDC regime for the position of Deputy Managing Director of Goldfields and participated in International Finance Corporation (IFC) discussions aimed at raising capital for the company's expansion.

In a landmark move in the history of African mining, he became the Chief Executive Officer of Ashanti Goldfields at the age of 36 in 1986, marking a significant milestone as the first black individual to lead the company.

Under his leadership, Ashanti Goldfields transformed from a state-owned enterprise with a single-mine operation into a multinational corporation. By 1990, Goldfields achieved its production target of 400,000 ounces two years ahead of schedule, due to his dynamic stewardship.

Ashanti Goldfields subsequently became the first operating Sub-Saharan African company to list on the London Stock Exchange in 1995 and later on the New York Stock Exchange in 1996. This bold move positioned AGC as a global leader in the mining industry, attracting international investors and expanding its influence.

Sir Sam Jonah's visionary leadership was exemplified in 2004 when he facilitated a \$1.48 billion merger between Ashanti Goldfields and AngloGold, resulting in the creation of AngloGold Ashanti, the world's second-largest gold producer.

As the Executive President of the newly formed entity, Sir Jonah's strategic decisions and management skills were instrumental to the company's success.

Following his tenure at AngloGold Ashanti, Sir Sam Jonah became a sought-after director for several junior mining companies including Equinox Minerals and Moto Goldmines.

Samuel E. Jonah is recognized for his candid perspectives and has emerged as a prominent critic of corruption, leadership failure, mismanagement, and the "resource curse" that affects numerous African nations. His speeches reflect a profound commitment to African self-determination, urging policymakers to renegotiate resource contracts, enhance transparency, and prioritize value addition. In his own words: "Natural resources are not a curse. The curse is poor leadership." This conviction has informed his unwavering advocacy for institutional reforms in Ghana's mining and oil sectors.

Sam Jonah has held positions on several esteemed advisory committees, including the International Investment Advisory Council under South African President Thabo Mbeki and the Ghana Investors' Advisory Council under President Kufuor. In 2003, he served as Co-Chairman of the World Economic Forum in Durban, South Africa. That same year, Queen Elizabeth II of Great Britain conferred an Honorary Knighthood on him in recognition of his contributions as an African businessman, a distinguished executive from the Commonwealth, and an influential international figure.

In December 2004, CNN and Time Magazine recognized him as one of the world's top 25 most influential business leaders, establishing global benchmarks for management, ethics, marketing, and innovation.

Sir Sam Jonah has received numerous awards throughout his career, including an honorary Doctor of Science (D.Sc) degree from the Camborne School of Mines and the University of Exeter (UK) in 1996.

In December 2005, Ashesi University College awarded him the Honorary Doctor of Humanities degree through its affiliate, the University of Cape Coast in Ghana. In 2006, he received Ghana's highest national honour, the Companion of the Order of the Star.

In May 2022, he was awarded the Doctor of Science degree by Imperial College London for his significant contributions to the global community. He is also the recipient of five Lifetime Achievement awards, including the Albert Nelson Marquis Lifetime Achievement Award.

Currently, he is the founder and Chairperson of Green Africa Minerals, a consortium which aims to become a leading African company in the discovery, development, and value addition of battery minerals essential for the clean energy transition. He also holds the position of Chancellor at the University of Cape Coast in Ghana.

Sir Samuel E. Jonah's life and career offer invaluable lessons for aspiring business leaders. His journey from the depths of mining shafts to the helm of a global corporation exemplifies the power of resilience, continuous learning, and visionary leadership.

We at Edfields Attorneys are honoured to highlight his Contributions and work in the field of natural resources.

# EDITORIAL NOTE FOR THE EDFIELDS NATURAL RESOURCE JOURNAL

This inaugural issue of the Edfields Natural Resource Journal marks a significant milestone for our firm, serving as a dedicated platform for rigorous legal scholarship and practical insights into Ghana's crucial Natural Resource, Energy, and Minerals Extraction Sector, a sector that is crucial to our very development and sustenance as a nation.

The articles compiled within this volume, authored exclusively by our esteemed colleagues, collectively offer a comprehensive and authoritative survey of contemporary legal challenges and opportunities. Our contributors explore a range of critical issues, that provide significant and relevant insight into the Natural Resource sector in Ghana.

We believe that this Journal will be an invaluable resource for policymakers, industry stakeholders, the judiciary, and fellow legal practitioners seeking to navigate the often-complex intersection of law, policy, and practice in this vital sector.

The Journal shall be issued quarterly with the next issue due in December 2025. It seeks to focus directly and exclusively on the Natural Resource sector of our economy and sometimes drawing significantly useful lessons from best practices across the globe.

We extend our sincere gratitude to the authors for their scholarly dedication and welcome our readers into this critical discourse.

We trust that the insights shared herein will not only inform current debate but also inspire innovative legal thinking that contributes meaningfully to the sustainable governance of Ghana's natural wealth.

END.

