Governing African Extractives for Development

Lessons from Ghana’s Petroleum Revenue Management Law

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Ghana, Liberia, Mozambique, Sierra Leone, Tanzania, Uganda and, to an extent, Kenya are Africa’s new kids on the ‘Big Oil’ block. They have each recently discovered significant oil, gas or mineral reserves. These countries are important for re-setting Africa’s new narrative in resource exploration and exploitation, because their policy and legal frameworks have just been formulated or are still being developed. This gives these countries a chance to develop better systems and institutions, taking into account ‘resource curse’ lessons and best practice gleaned from their forerunners who did not perform so well in governance or economic development.

Ghana introduced the Petroleum Revenue Management Act in 2011. This was driven by policy aimed at using Ghana’s new hydrocarbon wealth to achieve viable socioeconomic development. The law and its supporting frameworks remain strong counterweights to the resource curse paradigm experienced by other African and international resource-endowed countries. But the success of these counterweights is dependent on commodity prices, prudent budgeting, good fiscal regimes and implementation. It is also dependent on wise revision of the resource governance framework in line with Ghana’s continuously changing needs, including the adoption of adequate supporting regulations and statutes. Whilst the policy and its associated frameworks are laudable, hurdles remain in implementing, institutionalising and overseeing them. Cooperation between public, private and civil society stakeholders will be a strong pillar in ensuring the success of the framework.

Introduction

Africa as a whole accounts for approximately 12 per cent of the world’s oil reserves, 40 per cent of its gold, 80 per cent to 90 per cent of its chromium and platinum metals, and 85 per cent of its phosphate reserves. Still, very little of the profits from the extractive industry tend...
As illustrated below (Figure 1), revenue management is a process highly intertwined with annual budget allocation, national development plans, and other fiscal policies. It is crucial for African countries to design robust revenue management systems that can help transform their economies and reduce the risk associated with resource dependence. By ensuring that revenues are allocated in a transparent, accountable, and sustainable manner, governments can promote economic growth, reduce poverty, and enhance their overall reputation on the international stage. However, achieving this objective requires a comprehensive approach that addresses both short-term and long-term challenges. In conclusion, the extraction of natural resources presents both opportunities and risks for African countries. It is up to policymakers to design effective revenue management strategies that can help unlock the potential of these resources while minimizing their negative impacts on society and the environment.
(including being easily influenced by economic and social policies), and fiscal regulation. There is lack of a revenue management legal framework, yet it is important in managing resource revenues as investments for human development.

For countries that have discovered natural resources, this poses an immediate challenge. The key lies in ensuring that legal and administrative frameworks for the sector as a whole and for revenue management in particular are effective. Addressing this challenge involves updating policies, drafting and approving a range of laws to reflect policy and guide implementation, and assigning clear responsibility to government agencies for administration. Accordingly, various African countries well-endowed with extractive wealth have opted to update, review or enact new mineral and petroleum legislation to better manage their industries and ensuing revenues in order to optimise the utilisation of their resources. Africa’s new extractors too have put in place legislation to regulate the sector of them. A number of them have opted for specific revenue management laws, such as Sao Tome and Principe’s 2004 Oil Revenue Management Law, Chad’s 1999 Revenue Management Law, the Tanzanian Oil and Gas Revenues Management Act of 2015, Uganda’s Public Finance Management Act of 2015, South Sudan’s Petroleum Revenue Management Act of 2012 and, of course, Ghana’s 2011 Petroleum Revenue Management Act.

### Background to the Ghanaian Hydrocarbon Industry

Ghana’s extractive governance initiatives, within the new oil and gas sector in particular, have been eminently responsible and to a large extent can be said to provide lessons for the rest of Africa. With the introduction of its Petroleum Revenue Management Act in 2011, Ghana took an exemplary step to govern its hydrocarbon sector revenues, the one aspect that most resource-rich African countries have failed to do.

Hydrocarbon exploration in Ghana started in 1896 in the Western Basin but was only fast-tracked in July 2007 when the national oil company, Ghana National Petroleum Corporation (GNPC), and its partners announced the discovery of commercial crude oil and associated gas in the offshore Tano Basin in western Ghanaian waters within the Jubilee oil field. Ghana has claimed 25 new oil discoveries within its offshore maritime boundary since the 2007 oil find by Kosmos Energy. These subsequent discoveries are all located around the Jubilee region, where oil and gas production has been ongoing. The Tweneboa, Enyenra (formerly Owo) and Ntomme (TEN) project within the Deep Water Tano block is expected to start production in August 2016. This will be followed by the commencement of gas production in Sankofa and Gye Nyame in 2018 as part of the development envisaged under the Offshore Cape Three Points (OCTP) project.

With these discoveries, Ghana is set to become one of the biggest oil and gas producers in Africa, in addition to its already thriving mining sector. It was estimated by the International Monetary Fund (IMF) that revenues from Ghana’s oil production would reach $1.3 billion by the end of 2013 and probably maintain or rise slightly above that until 2022. This estimation has now changed, largely as a result of the dipping commodity prices. The government forecasted 2015 growth easing to 3.9 per cent from just over four per cent in 2014, in part because of fiscal challenges. Increasing oil production, even in a lower price environment, will be important to Ghana, considering its struggle with a budget deficit estimated at 7.5 per cent of GDP, prompting the government to seek assistance from the IMF and plan for the sale of a $1 billion Eurobond, its second in as many years.

### Emergence of the Petroleum Revenue Management Act (PRMA) 815

#### Why a Petroleum Revenue Management Law?

The PRMA came into being as a result of Ghana’s determination not to fall into the governance predicament faced by established extracting African countries such as Nigeria, Equatorial Guinea, Gabon and Angola. In devising the law, Ghana was guided by best practices in Norway, Timor-Leste, Trinidad and Tobago, which have developed laws to better govern oil and gas exploration and production, and to manage revenues. Ghana’s law was drafted on the heels of the formulation of the African mining vision, an African Union mechanism driving emerging practices to improve resource governance in Africa. At the same time there was a rising global narrative calling for better resource governance for development through the establishment of governance frameworks guided by multi-stakeholder initiatives such as the International Council on Mining and Metals, the Extractive Industries Transparency Initiative, the Natural Resources Charter and many other global, country and industry self-monitoring regulations.

Other emerging oil producers had already put in place resource governance frameworks. For instance, Sao Tome and Principe had devised
Petroleum Revenue Management laws in 2004, and Chad had done so in 1999 as part of a World Bank condition of the Cameroon-Chad oil pipeline project, although this law was later suspiciously amended. These laws created best practice for managing extractive industries, while at the same time providing lessons for better resource governance. Ghana’s production profile was provisionally depicted to run from 2011, reaching its peak in 2016 and starting to decline towards resource depletion from 2029 onwards. While Nigeria was estimated to have proven petroleum reserves of as much as 362,000 million barrels, Ghana’s proven reserves were estimated at only 490 million barrels in 2009. This required the country to act fast if it were to benefit from exploration and protect its petroleum revenues from predatory expenditure earmarking.15

Ghana was also faced by various challenges that further prompted it to promulgate the PRMA. The legal and fiscal regimes that were in place did not provide for a strategic approach that would allow the country’s resources to be used as a foundation for economic development or to be leveraged for private sector development. For instance, Ghana failed to operationalise the Minerals and Mining Act to its advantage. It accepted the lower end of the three per cent to six per cent royalty range, provided over-generous tax incentives, carried forward losses and accelerated depreciation. Local content was not strengthened in previous regimes, and fiscal systems were inadequate.16 Foresight has benefitted the oil sector through a good Local Content and Local Participation Policy framework and the Petroleum Local Content and Local Participation Regulations of 2013 (L.1.2204).

There were also no clear-cut fiscal guidelines or administrative processes for dealing with revenues, including assessment, collection and accounting. For instance, the 1984 Model Petroleum Agreement (section 10.3) very generally assigned the task of revenue collection to the Ghana National Petroleum Corporation. Whilst this law and others served the country well in petroleum promotion, licencing and exploration, they failed to provide specific guidelines on how petroleum revenues should be collected and managed.

Consequently, budget execution and fiscal policy management were vulnerable to price fluctuations. Additionally, there was poor transparency and accountability in revenue collection. There were also no strategic savings from all of Ghana’s natural resources, including cocoa, timber and minerals, to provide for intergenerational equity. Revenue management seemed a good option: with its double-edged mechanism to buffer price volatility whilst reducing poverty and promoting sustainable development through controlling the allocation of natural resource receipts by the public sector, it presented inclusion and empowerment for all Ghanaians. Thus international best practice dictated that a revenue management law be enacted that would ensure transparency and accountability.

Public participation, preferences and making of the PRMA

Public consultations were conducted through regional ‘town hall’ meetings, a public survey and institutional consultations. The timetable for the meetings was publicised in the newspapers and on the radio. Attendance was registered at 500 to 500 people per meeting, and some written submissions followed. The World Bank, civil society platforms, Council of Churches and UNIDO organised additional dialogues, including a consultation with children. Key queries touched on identifying who would collect and account for the revenues, how much would be spent in current budgets and how much saved for future generations, and how the natural resource fund would be managed and safeguarded.

The consultations were essentially about the institutional design of petroleum sector governance, contracting approaches, regulation, and revenue management experiences. From these consultations it was established that there was a need to develop a holistic petroleum policy framework and that further consultations were needed on the regulatory frameworks, institutional structures, management of revenues and expectations, capacity building, and promotion of local content and infrastructure development. A petroleum policy was subsequently drafted in July 2008. Unfortunately, though, electioneering took its toll on the process, and the policy was never implemented after the National Democratic Congress took the helm in 2009. Instead, a decision was made to separate issues of revenue collection from other legal and contractual matters relating to the petroleum sector. A fiscal regime and related frameworks and laws were to be developed under the guidance of the Ministry of Finance and Economic Planning, in collaboration with the Ministry of Energy, the Bank of Ghana and the Ghana National Petroleum Corporation.
The process was aided by a review of international practices in Alaska, Alberta, Azerbaijan, Botswana, Chile, East Timor, Nigeria, Norway, Sao Tome and Principe, Trinidad and Tobago. Consultative meetings were also held with various government, civil society and private sector institutions, but mostly in the capital, Accra, after which the outline of the building blocks of the revenue management framework was developed. The consultations addressed issues of spending vis-à-vis saving, budget allocation, accountability and transparency. The PRMA was a reflection of public preferences, requiring, among other things, the publication of revenues and payments, and mandating public access to information.

The Petroleum Revenue Management Act 815

The Petroleum Revenue Management Act of 2011 is an innovative legal instrument for the promotion of transparency, fiscal regulation and investment of funds accruing from petroleum exploration. The Act provides mechanisms for the collection, allocation and management of revenues in a responsible, transparent, accountable and sustainable manner. The ability to emphasise the longevity of revenues from non-renewables and the forward-looking mechanisation of the PRMA highlight its uniqueness and capacity to sustainably manage Ghana's hydrocarbon revenues.

Reporting, governance and auditing

The scope and context of the Act is vast, encompassing funds; taxation; public spending; royalties; beneficiation and local content; job creation; and transparency, accountability and public oversight around contracts and bidding. The Act is divided into nine sections which collectively provide, among other things, for various governance mechanisms for ensuring maximum beneficiation from Ghana's extractive resources. The mechanisms include:

- Funds/Schemes set up to cater for volatility as well as intergenerational socio-economic development;
- Oversight mechanisms to improve transparency and accountability for quality governance;
- Provision for taxation issues, including company income tax as well as windfall tax allocations from extractive industries;
- Provision for public spending, pinpointing which areas the government can spend the funds on. Priority has been given to modernising the agricultural sector and to manufacturing, road and infrastructural development, capacity development and debt repayment. On deeper scrutiny, however, funds are not necessarily used for projects complying with the earmarked priorities; and
- Clauses catering for royalties and benefits, including the promotion of local content, job creation, transparency, accountability and public oversight over contracts and bidding.

The PRMA also proposes which institutions should be responsible for implementing its provisions and coordinating governance processes. Notable institutions created or assigned a role include Ghana Petroleum Funds (a petroleum holdings, stabilisation and heritage fund which will be amalgamated into a ‘consolidated fund’ upon the depletion of resources) and the Bank of Ghana; Parliament of Ghana; Public Interest Accountability Committee (PIAC); Ghana Revenue Authority; Ghana National Petroleum Corporation; Petroleum Commission; Ghana Ministry of Energy and Petroleum; Public Accounts Committee; Ghana Ministry of Finance and Economic Planning; Auditor General; and Investment Advisory Committee.

Public oversight

Key public oversight mechanisms include the Petroleum Commission, the Public Accounts Committee, the Select Committee on Minerals and Energy and, most importantly, the PIAC. These are bodies appointed by Parliament which exercise oversight responsibilities. Of note is the PIAC, which comprises various Ghanaian stakeholders that include civil society and community-based organisations, the Bar Association, the Association of Queen Mothers, the National House of Chiefs, Christian groups, the Muslim Council and Ahmadiyya missions, the Trade Union Congress, the Journalists' Association, independent policy research think tanks, the Extractive Industries Transparency Initiative, and the Chamber of Commerce.

The PIAC has been mandated under the PRMA to monitor extractive governance and report to parliament. The work they do is commendable and necessary despite a lack of capacity, funding and secretariat offices. Reporting lines were also not clarified by the PRMA, leaving the PIAC in limbo. Furthermore, to the detriment of Ghana’s economy, important Committee recommendations had not been acted upon, despite the timeous delivery of its reports to the Assembly House for debate and accountability. These issues have,
However, been addressed in the amendment to the PRMA. Complementary oversight mechanisms fill in outstanding gaps by ensuring that systems that have been set up are functioning efficiently. They include the media, think tanks, research and policy institutes, and international Non-governmental organisations (NGOs) and governance initiatives such as the Extractive Industries Transparency Initiative (EITI), the Natural Resources Governance Institute (formerly Revenue Watch Institute), and World Bank Ghana Representation on Extractives.

Civil society oversight is an important aspect of resource governance, but it is often missing or weak, leaving loopholes for corruption, illicit financial flows and botched extracting contracts in most natural resource-endowed countries. Ghanaian civil society has played an active role in strengthening resource governance. It has been responsible for convening its own forums and training workshops locally and internationally to inform itself and prepare itself to better exercise its oversight mandate and rights. For instance, the Ghana civil society platform on oil and gas has provided resource revenue oversight and also co-drafted relevant bills and policies, and provided technical and advisory support during the drafting thereof. Civil society platform KASA coordinates groups working in natural resources and environmental advocacy in Ghana. Encouragingly, civil society has been sought out by the government, which has involved it as a key partner in resource governance, but the process is not without challenges. Duplication of efforts, competition for funding, and ‘politics of the belly’, including political fronting and at times corrupt practices, limit the efficiency of civil society.

The PRMA, Revenue Collection and Allocation, and Current Status

The political hype and high expectations around the relatively nascent hydrocarbon sector in Ghana have damaged its outlook. Oil management was used as a campaign slogan by both the New Patriotic Party (NPP) and the National Democratic Congress, who promised to use oil revenues to propel Ghana to accelerated economic growth and development, and improve socioeconomic conditions. This not only placed higher expectations on government to deliver evidence of outputs to citizens, but was also a contributing factor to its over-borrowing against expected reserves, eventually plunging Ghana into an economic crisis.

Revenue inflows from the sale of oil slowed down in the first half of 2015 as a result of a decline in petroleum revenue streams and global crude oil prices. Oil revenues decreased from US$562.48 million in the first half of 2014 to US$274.47 million in the same period in 2015. The 2015 budget statement had estimated government revenue from the petroleum sector for 2015 at around US$1.236 billion. Out of this, US$618.19 million, which was 50 per cent of the budgeted amount, was expected to be received during the first half of the year. This indicates a shortfall in actual revenue of approximately US$343.72 million, which is a 56 per cent shortfall.

The 2015 preliminary information from the petroleum report of the Ministry of Finance, covering the January to September period, estimated that Ghana’s revenues for 2015 were likely to be US$780 million, 63 per cent lower than the initial projection (a $500 million shortfall). The budget projections had been based on a $99-per-barrel benchmark projected on a five-year average, according to the PRMA. It is based on this standard that an allocation to the oil funds and the budget was made. Petroleum prices then fell to an average of $55 and lower per barrel over first nine months of 2015. Lower corporate income tax revenues and shortfalls in gas revenues have also resulted in less revenue than projected for Ghana. Ghana's government now projects oil revenues to be as little as 0.8 per cent of GDP in 2018.

This decline in revenues automatically affected the Ghana Petroleum Funds (GPF). According to the PLAC, for the first time since the PRMA came into force, no transfers were made into the funds. The total benchmark revenue had to go into the Annual Budget Funding Amount (ABFA). This contravened provisions of the PRMA which had allocated 70 per cent benchmark revenue to ABFA and 30 per cent to the GPF.

The 2016 budget statement reiterated Ghana’s financial difficulties, which have been compounded by its mounting debt as a result of borrowing against projected revenues. This has resulted in double-digit inflation and an IMF bailout conditioned on government spending cuts and inflated taxes, which have had a negative impact on human development. For this reason, the country remains ill-equipped to manage swings in commodity prices and transform its resource revenues into meaningful development outcomes. Fiscal rules, legislative limitations on total expenditure growth, fiscal deficit limits and debt rules have become necessary. This is largely because the effectiveness and
functionality of the PRMA have been weakened. Revising the PRMA has come to seem apposite, especially for purposes of addressing outstanding issues relating to petroleum revenues. It has been suggested that fiscal limits on the whole budget should be included in the PRMA. As the Tanzanian Oil and Gas Revenue Management Law recently demonstrated, fiscal rules in petroleum revenue management laws need not focus solely on petroleum revenues.

The lesson from Ghana’s management of its petroleum revenues is that the benefits of enacting rules for resource revenues are lost if the broader budget is not managed with the same diligence. What the first four years of oil production have taught Ghana is that it must carry the spirit of good fiscal governance embodied in the PRMA over to the broader budget. This is something that other resource-rich African countries must carefully contemplate. The ‘resource curse’ will not be managed by the effective management of petroleum revenues alone.

Reflecting the above, PRMA Amendment 893 was subsequently acceded to on 11 July 2015. It sought to amend some inconsistencies and operational challenges within the existing Act, including providing for the allocation of funds for the Ghana Infrastructure and Investment Funds, addressing some issues with the Ghana Stabilization Fund, revising the benchmark revenue projection and empowering the Ghana National Petroleum Company (GNPC) to become a commercial entity and a strong operator in the oil and gas sector. It also provides for regular funding for the PIAC and determines the composition of the Investment Advisory Committee.

Despite the amendments, the PRMA has not succeeded in addressing all governance matters within the sector. Lack of adequate institutional capacity and the ability to fully implement the said policy and laws to the extent of yielding the desired results requires resolution. A number of bills have been brought before parliament, including the Petroleum (Exploration and Production) Bill, the Marine Pollution Bill, the Right to Information Bill and the Ghana Extractive Industries Transparency Bill. These bills are yet to be adopted into law, though. Their adoption and dissemination remain highly necessary for the overall implementation of comprehensive extractive governance in Ghana.

Conclusion

Ghana’s initiatives towards ensuring transparency, accountability and good governance and its efforts to guarantee the sustainability of revenues from the hydrocarbons sector have been largely informed by mistakes the country made in managing its own gold sector as well as the mistakes of its neighbours. The initiative not to use oil revenues for recurrent expenditures was aimed at ensuring that the funds were not immediately consumed but saved for when there is high volatility in oil prices as well as for future generations. Ghana accordingly set out to implement satisfactory governance, including strong governmental institutions with effective checks and balances, effective oil policies and a diversified economy, while nipping corruption in the bud and promoting the rule of law.

But it failed to ensure that its budget was not overly reliant on oil revenues, that clear benefits were accruing to the population as a result of the petroleum endowment and that volatility was limited. This led to over-indebtedness and eventually an economic crisis. The amendment of the PRMA is seen as a positive step towards rectifying Ghana’s mistakes. Ghana would do well to expedite the adoption of regulations to assist with the implementation of the PRMA in order to limit ministerial discretion. It also needs to further encourage civil society, grassroots organisations and government institutions to go on working together towards better governance of the extractives sector through drives for transparency, accountability and capacity building.
**Policy Implications for Other Resource-Rich African Countries**

In the last decade, resource discoveries have been made in Ghana, Liberia, Mozambique and Sierra Leone. East African neighbours Kenya and Uganda are poised to become major oil producers and Tanzania and Mozambique, major gas producers. Revenue management in these countries already is, or could be, a smart option for ensuring responsible beneficiation and equitable development. Ghana’s experience could provide some lessons for itself and other African oil-producing countries. These guidelines towards exemplary extractive governance for development have already been displayed through the application of the PRMA:

1. **Participatory legislation, policies and planning**
   This will help governments to ensure that the necessary institutions and legislative frameworks are in place before extraction gets underway. Factors for consideration include:
   - Deciding whether or not to exploit natural resources, and at what rate; the level of state and private ownership and the extent of their involvement; the level of taxes and royalties; the management and distribution of the resources involved; and the appropriate environmental standards and safeguards to apply.

2. **Society-oriented exploration and extraction**
   This will ensure that exploration and extraction are environmentally and socially sustainable, including re-balancing asymmetrical relationships between governments and multinational corporations. It can be achieved through:
   - Effective contract negotiation; conducting transparent and accountable contract awarding processes that are free from patronage and rent seeking; carrying out social and environmental impact assessments; introducing grievance and conflict management systems; leveraging private sector investments at project sites; engaging with companies in the broader economy; and ensuring adherence to national laws and regulations by extracting companies.

3. **Prudent revenue collection, allocation and management**
   Unprecedented revenues resulting from mineral, oil and gas exports require systems that have been pre emptively set up to manage them. Steps to be taken can include:
   - Developing capacity to collect taxes and royalties; setting up remedies for capital flight, corruption and fund misappropriation; and achieving sound revenue management (this includes capacity to deal with revenue volatility arising from fluctuations in commodity prices). Countries must also be realistic about the timing and amounts of new revenues, and communicate their expectations appropriately. This will help them manage macroeconomic risks and limit the spending of revenues before they arrive.

4. **Wise investment for (human, physical, social, and financial) development**
   To avoid selling off non-renewables cheaply or squandering them, there is a need to have in place:
   - National plans and public expenditure allocations that focus on investment in human, social, physical and financial capital to advance sustainable human development and economic structural change or diversification. Countries must define and commit to clear, achievable human development goals that are linked to natural resource revenues; identify human development priorities and the best and most feasible interventions, given the revenue projections; and use multiple channels to direct extractives resources toward human development outcomes.

**Notes and References**

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