

## **NATURAL RESOURCES, THE ENVIRONMENT AND THE CONSTITUTIONAL REVIEW COMMITTEE'S RECOMMENDATIONS: WHY GOVERNMENT SHOULD RECONSIDER ITS POSITION**

The publication of Government's Position Paper on the Final Recommendations of the Constitution Review Committee (CRC) has brought some clarity to Ghana's latest constitutional reform exercise. Government accepts the need for constitutional reform but takes the view, quite properly, that not every desirable policy or administrative arrangement belongs in the Constitution. That caution is understandable because a constitution should state enduring principles of governance and leave matters of detail to legislation. The difficulty, however, is that Government appears to have carried this principle too far in its treatment of the final recommendations of the CRC on the lands, natural resources and environmental thematic areas.

The CRC proposed, among other things, a clearer public trust framework for natural resources, stronger parliamentary oversight of resource transactions, basic principles for natural resource governance, improved institutional coordination, constitutional recognition of ocean governance and the blue economy, the creation of an offence of ecocide, and a guaranteed share of mineral revenue for mining communities.<sup>1</sup>

Government has declined substantially all these proposals. Its recurring justification is that the existing constitutional provisions are adequate or that the objectives can be achieved through ordinary legislation, including the Minerals and Mining Act, 2006 (Act 703), the Fisheries Act, 2002 (Act 625), the Petroleum Revenue Management Act, 2011 (Act 815), and the Environmental Protection Act, 2025 (Act 1124).<sup>2</sup>

The difference between the CRC and Government is therefore not entirely about the desirability of better natural resource and environmental governance. It is principally about where the governing principles should reside. And that distinction deserves closer scrutiny.

### **Natural Resources Are Already a Constitutional Question**

The starting point is the 1992 Constitution itself. Article 257(1) vests public lands in the President on behalf of, and in trust for, the people of Ghana. Article 257(6) similarly vests every mineral in its natural state in, under or upon land in Ghana, rivers, streams and watercourses, as well as the territorial sea, continental shelf and exclusive economic zone, in the President on behalf of, and in trust for, the people.<sup>3</sup> Article 268 goes further by stating that transactions involving the grant of rights or concessions for the exploitation of Ghana's mineral, water or other natural resources are made subject to parliamentary ratification. Article 269, in turn, provides for commissions responsible for regulating and managing the utilisation of natural resources and coordinating policy concerning them.<sup>4</sup>

The framers, therefore, made a deliberate choice when they considered natural resources too important to be left entirely to ordinary legislation. Consequently, the proper question to be answered is whether more than three decades of experience under the 1992 Constitution justify improving the constitutional principles by which those resources are governed.

Government answers largely in the negative. In relation to public lands, it reasons that the present vesting in the President is already fiduciary and that the President holds no personal interest in those lands. It further considers the Lands Act, 2020 (Act 1036) adequate to deal

with fiduciary obligations, compensation, reversionary interests and compulsory acquisition.<sup>5</sup>

The first proposition may be accepted without accepting the second in that if the President already holds public lands and natural resources as trustee for the people, there is every reason for the Constitution to state with greater clarity what that trusteeship requires. Here, the language of Article 257 is important. The President holds the relevant resources “on behalf of, and in trust for” the people. Trusteeship ordinarily carries obligations. It is therefore insufficient to identify the trustee and the trust property without asking what duties accompany the trust, in whose interests they must be exercised and how breaches of those duties are to be addressed.

This difficulty in the present constitutional arrangement was elucidated by Rameau and Bamba in their examination of the fiduciary role of Government under the 1992 Constitution. They revisited the Supreme Court’s decision in *Adjaye v. Attorney-General* and questioned the conception of the constitutional trust as lacking the incidents of an enforceable fiduciary relationship.<sup>6</sup> Their argument is particularly relevant to the present constitutional review because it exposes the uncertainty surrounding the practical meaning of the trust created by Article 257.

The CRC proposal offered an opportunity to remove some of the uncertainty. At a minimum, constitutional trusteeship over natural resources should require public authorities to act transparently, sustainably and accountably, with proper regard to both present and future generations. These are not foreign concepts being introduced into Ghanaian constitutional law. Their foundations are already present. Article 36(9) requires the State to take appropriate measures to protect and safeguard the national environment for posterity. And Article 41(k) imposes a corresponding duty upon citizens to protect and safeguard the environment.<sup>7</sup>

Therefore, the Constitution already speaks both of trusteeship and posterity. The missing step is to connect the two more clearly as proposed by the CRC. The position of the Government, rather, promotes a disconnection.

### **The Case for Constitutional Principle**

Government’s strongest argument is that the Committee’s objectives can largely be achieved through legislation. In many instances, that is correct. The Lands Act, 2020 (Act 1036), the Minerals and Mining Act, 2006 (Act 703), the Water Resources Commission Act, 1996 (Act 522), the Land Use and Spatial Planning Act, 2016 (Act 925), the Fisheries Act, 2002 (Act 625), and the Environmental Protection Act, 2025 (Act 1124) provide substantial regulatory machinery.<sup>8</sup> But the existence of legislation does not resolve the constitutional question.

While ordinary legislation supplies the machinery for governance, a Constitution establishes the foundational principles within which that machinery must operate. Consequently, Parliament retains the power to amend or repeal statutes, whereas constitutional obligations uniquely bind the legislature itself.

The distinction becomes particularly important where natural resources are concerned because decisions taken today may have consequences extending far beyond the life of a

government or Parliament. A forest destroyed cannot always be recreated. A polluted water body may require generations to recover. An exhausted mineral deposit cannot be mined twice. Some decisions are effectively irreversible.

The case for constitutional protection therefore rests not upon a distrust of legislation but upon the peculiar character of the subject matter.

### **Statutory Precedents for Intergenerational Responsibility**

Government's preference for legislation also sits alongside an important development in Ghanaian statutory law.

The Petroleum Revenue Management Act, 2011 (Act 815) requires petroleum revenue to be managed in a responsible, transparent, accountable and sustainable manner for the benefit of the citizens of Ghana.<sup>9</sup> It also established the Ghana Petroleum Funds, including the Ghana Heritage Fund, thereby giving statutory expression to the principle that exhaustible resource wealth should not be consumed exclusively by the present generation.

The Minerals Development Fund Act, 2016 (Act 912) reflects another aspect of the same idea. Its stated object includes providing financial resources for the direct benefit of mining communities, persons holding interests in land within those communities, and traditional and local government authorities in mining areas.<sup>10</sup> Its Section 3 provides that among the Fund's sources, twenty per cent (20%) of mineral royalty received by the Ghana Revenue Authority (GRA) from holders of mining leases.

The Land Use and Spatial Planning Act, 2016 (Act 925), similarly places sustainable development and the judicious use of land within Ghana's planning framework.<sup>11</sup>

These enactments reveal something important that intergenerational responsibility, sustainability and community benefit are not novel constitutional theories imported from elsewhere. They already inform Ghanaian legislation.

The CRC's proposal was, in that respect, an invitation to gather existing national commitments into a coherent constitutional principle.

### **Reconceptualising Environmental Protection within the Directive Principles**

Article 36(9) represents an important constitutional commitment to environmental protection. Its location within the Directive Principles of State Policy, however, raises the familiar question of enforceability.

The Supreme Court has considered the constitutional status of the Directive Principles in cases including *New Patriotic Party v. Attorney-General*, the CIBA case, and *Ghana Lotto Operators Association v. National Lottery Authority*.<sup>12</sup> The law demonstrates that the Directive Principles form part of the constitutional architecture and cannot simply be dismissed as political aspirations. Yet, there remains a difference between a directive to the State and an express constitutional right vested in a person.

That difference matters to a community whose source of drinking water have been polluted, a farmer whose land has become unproductive because of extractive activity, or a coastal settlement confronting severe environmental degradation.

The constitutional review process should therefore consider an express right to a clean, healthy and sustainable environment. Such a right need not turn every breach of environmental legislation into a constitutional action. Parliament would remain responsible for environmental standards, permitting systems, environmental assessments and enforcement procedures. The constitutional right would instead provide the ultimate legal standard against which grave environmental injury and governmental failure may be tested. This would complement, rather than displace, the Environmental Protection Act, 2025.

### **Ex-Ante Resource Governance: The strategic Value of Prior Parliamentary Review**

The Committee also proposed strengthening Article 268 by requiring parliamentary approval before the Executive signs natural resource concessions or grants. Government rejects this recommendation, relying substantially on the Supreme Court's interpretation of Article 268 in *Ndebugre v. Attorney-General*.<sup>13</sup>

The reliance on *Ndebugre* does not entirely answer the question. Here, the Supreme Court was concerned with what Article 268 means and how the existing requirement of parliamentary ratification operates. The constitutional review exercise asks a different question, namely whether Article 268 should continue to operate in precisely that manner. Therefore, a judicial interpretation of the Constitution cannot itself foreclose an amendment to the Constitution.

There is also a practical consideration. Once the Executive has negotiated and executed a major resource agreement, contractual expectations arise. Investments may be planned and political pressure may develop around ratification. Parliament is then asked to review an arrangement which has already acquired considerable momentum.

Prior approval for transactions of exceptional national importance would allow parliamentary scrutiny before the State becomes committed. This need not apply to every transaction. The Constitution or implementing legislation could prescribe appropriate thresholds based on value, duration, strategic importance or the nature of the resource concerned.

Government could therefore accept the principle while refining the Committee's proposal.

### **Institutional Proliferation vs. Regulatory Coherence under Article 269**

Government also rejects the proposed coordinating authority for natural resources because it fears the creation of another layer of bureaucracy. It considers that coordination can be achieved through executive direction, particularly since the heads of the relevant commissions are presidential appointees.<sup>14</sup>

The first concern is legitimate. Ghana should not create a constitutional commission whenever existing institutions fail to coordinate effectively. But the proposed alternative is less satisfactory.

Natural resources do not fall neatly within administrative boundaries. A mining operation may involve mineral rights, land tenure, water resources, forestry, environmental permitting, spatial planning, local government and community interests. Different institutions may lawfully exercise authority over different aspects of the same ecosystem.

Article 269 itself recognises the need for coordination. It requires the relevant natural resource commissions to regulate and manage resource utilisation and coordinate policy relating to those resources.<sup>15</sup> The problem is therefore already constitutional in character.

Government could meet its own objection without abandoning the Committee's objective. Instead of creating a new Natural Resources Commission, the Constitution could impose a clear coordinating obligation while Parliament assigns the function to an existing institution or creates an inter-agency mechanism by statute.

### **Securing Local Equity in Mineral Wealth**

The CRC proposed allocating a percentage of gross mineral revenue to mining communities. Government, on the other hand, considers this a matter better regulated by legislation.<sup>16</sup> On the question of fixing a percentage permanently in the Constitution, Government has a respectable argument - mineral prices change, fiscal conditions change and revenue arrangements require some flexibility.

The principle underlying the recommendation is harder to dismiss. Parliament itself recognised that principle when it enacted the Minerals Development Fund Act, 2016 (Act 912). The Act expressly provides for resources to benefit mining communities and identifies twenty per cent of mineral royalties received by the State as a source of the Fund.<sup>17</sup>

Mining communities often bear costs that are not distributed evenly across the country. Land may be lost to extraction, water systems affected, livelihoods disrupted and local infrastructure placed under pressure. Those communities should have a legally secured interest in the wealth extracted from their surroundings.

The Constitution need not prescribe the percentage. It could instead establish the principle that communities directly affected by natural resource exploitation are entitled to an equitable share of the resulting public benefits, with Parliament determining the formula by legislation.

That approach preserves fiscal flexibility while protecting distributive justice.

### **A Pragmatic Approach to Ecocide to Integrate Criminal Accountability with Economic Governance**

Government also rejects constitutionalisation of the Committee's proposal for an offence of ecocide, taking the view that environmental offences can be dealt with through existing legislation.<sup>18</sup> Here, Government's caution is partly justified. The Constitution is not a criminal code. The elements of an offence, the required mental element, available defences, penalties and prosecutorial arrangements are properly matters for legislation.

However, it does not follow that the constitutional objective should be abandoned. Ghana's experience with illegal mining (*Galamsey*) demonstrates that environmental destruction can assume a scale beyond an ordinary regulatory infraction. The contamination of major water systems, destruction of forest reserves and extensive degradation of agricultural land can threaten communities and impose enormous restoration costs upon the State.

A more measured constitutional response would require Parliament to legislate against grave, widespread or long-term environmental destruction while leaving the precise offence

and punishment to statute. Government's legitimate concern about constitutional detail would then be answered without losing the substance of the Committee's recommendation.

### **Expanding the Constitutional Scope of Marine Regulation**

The Committee's proposal for constitutional attention to ocean governance and the blue economy was similarly rejected by the Government when it considered existing legislation, including the Fisheries Act, sufficient to address the subject.<sup>19</sup>

That approach understates the modern significance of Ghana's maritime domain. Ocean governance now concerns far more than fisheries. It encompasses offshore petroleum, shipping, ports, marine pollution, coastal development, biodiversity, tourism, coastal protection, climate adaptation and emerging blue-carbon interests.

The Constitution itself recognises Ghana's territorial sea, continental shelf and exclusive economic zone when vesting natural resources under Article 257(6).<sup>20</sup> The maritime domain is therefore already part of Ghana's constitutional conception of its natural wealth.

A constitutional provision on ocean governance need not regulate fishing seasons or marine permits. Those matters properly belong to legislation. It could instead require sustainable use of marine resources, protection of marine ecosystems, prevention of pollution and due regard to the livelihoods and resilience of coastal communities.

Once again, the Constitution would state the principle. Parliament would provide the machinery.

### **Transparency as an Incident of Trusteeship**

There is another matter which should feature more prominently in the reform discussion. If natural resources are held in trust for the people, the people should ordinarily be entitled to know how those resources are being disposed of and managed.

Article 21(1)(f) guarantees the right to information, subject to qualifications necessary in a democratic society. The Right to Information Act, 2019 (Act 989) gives statutory effect to that constitutional guarantee.<sup>21</sup>

Natural-resource governance presents a particularly strong case for transparency. Subject to legitimate protections for commercially sensitive information, the public should have meaningful access to resource agreements, beneficial ownership information, environmental obligations, rehabilitation commitments and the revenues accruing to the State.

This follows naturally from the idea of trusteeship. A public trustee who disposes of resources belonging beneficially to the people should be accountable to those people for the terms upon which that power is exercised.

### **Meeting Government's Concern Through Effective Legislative Compromises That Preserve Reform Intent**

The Government Position Paper proceeds from an understandable concern. It does not wish to overload the Constitution with matters better handled by Parliament. That concern should inform the final reform. It should not determine it.

Consequently, some of the CRC recommendations can plainly be refined. A fixed percentage of mineral revenue need not be constitutionalised. The ingredients of ecocide should remain statutory. A new Natural Resources Commission may be unnecessary. Technical environmental standards should remain within the Environmental Protection Act and subsidiary legislation.

The solution lies in distinguishing **constitutional principle from statutory machinery**. The Constitution may establish public trusteeship while leaving land administration to the Lands Act. It may protect the entitlement of mining communities while leaving Parliament to determine the revenue formula. It may require integrated resource governance without creating another commission. It may recognise the gravity of catastrophic environmental destruction while leaving criminal definitions and penalties to legislation. It may guarantee a healthy environment while leaving technical environmental standards to Act 1124.

That approach preserves constitutional economy without sacrificing constitutional purpose.

### **The Need to Realign the Constitution with the Pressing Demands of a Changing Socio-Ecological Landscape**

The 1992 Constitution was adopted more than three decades ago. Its provisions on natural resources and the environment were significant for their time and remain important.

Ghana, however, now confronts circumstances materially different from those of 1992. The country has become a petroleum producer. Mining has expanded in scale and complexity. Galamsey has become one of the gravest environmental governance problems of the Fourth Republic. Pressure on forests, agricultural lands and water bodies has intensified. Coastal communities face increasing environmental pressures. Parliament itself has responded by enacting substantial legislation on petroleum revenue, land administration, spatial planning, mining-community development and environmental protection.

The law has moved because the country has moved. The Constitution, therefore, should not remain static merely because statutes have developed beneath it. The constitutional review exercise presents a rare opportunity to decide which principles governing Ghana's natural resources are sufficiently important to bind governments beyond an electoral term.

Government is right to resist unnecessary constitutional detail. It should nevertheless reconsider its broad rejection of the Committee's natural-resource and environmental proposals.

There is a reasonable middle ground where existing institutional design may largely remain. Thus, technical regulation may remain with Parliament. And what the Constitution should do is to strengthen a limited set of enduring principles: public trusteeship, sustainability, intergenerational equity, meaningful community participation, equitable sharing of resource benefits, transparency, integrated natural resource governance and an enforceable right to a clean, healthy and sustainable environment.

None of these ideas is alien to Ghanaian law. Their foundations already appear, although separately, in Articles 36, 41, 257, 268 and 269 of the Constitution, the Petroleum Revenue Management Act, the Minerals Development Fund Act, the Land Use and Spatial Planning Act, the Lands Act and the Environmental Protection Act.

The task is to draw those scattered commitments together into a coherent constitutional settlement.

Natural resources may be exploited in the present, but the consequences of their exploitation are inherited by the future. A Constitution which expressly requires the State to protect the environment for posterity cannot be indifferent to that fact.

Government still has an opportunity to reconsider its position. It should do so.

## REFERENCES AND AUTHORITIES

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[8] Lands Act, 2020 (Act 1036); Minerals and Mining Act, 2006 (Act 703); Water Resources Commission Act, 1996 (Act 522); Land Use and Spatial Planning Act, 2016 (Act 925); Fisheries Act, 2002 (Act 625); Environmental Protection Act, 2025 (Act 1124).

[9] Petroleum Revenue Management Act, 2011 (Act 815)

[10] [17] Minerals Development Fund Act, 2016 (Act 912), ss 2 and 3.

[11] Land Use and Spatial Planning Act, 2016 (Act 925).

[12] *New Patriotic Party v Attorney-General* [1996–97] SCGLR 729 (CIBA); *Ghana Lotto Operators Association & Others v National Lottery Authority* [2007–2008] SCGLR 1088.

[13] *Ndebugre v Attorney-General* [2016] GHASC 12, Supreme Court, 20 April 2016.

## ABOUT AUTHOR

*Anthony Danquah, Esq. is an Associate at Sedi Legal Bureau, an LL.M. candidate at the University of Ghana, focusing on Law and Development and also Co-founder and COO of Agrointroductions Ghana (AiG), a UNCCD-accredited environmental NGO.*

*Email: [tony@sedilegalbureau.com](mailto:tony@sedilegalbureau.com)/tony@agrointroductionsgh.org*