DECOMMISSIONING AS A CONSTITUTIONAL DUTY: RECONCILING THE TRUST DOCTRINE WITH PETROLEUM GOVERNANCE IN GHANA

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Ghana's 1992 Constitution ("Constitution") vests all minerals and petroleum resources "in the President on behalf of, and in trust for, the people of Ghana." This clause recasts resource management from an exercise of sovereignty into a fiduciary duty of stewardship. Yet Ghana's petroleum laws, particularly the Petroleum (Exploration and Production) Act 2016, translate that constitutional obligation into a technocratic framework characterized by ministerial discretion and limited accountability. This Article argues that Ghana's decommissioning regime, which governs the closure and dismantling of offshore oil facilities, fails to satisfy the fiduciary duties of loyalty, prudence, accountability, transparency, and preservation implied by Article 257(6) of the Constitution. Drawing on comparative models from Norway, the United Kingdom, and the United States, this Article develops a framework for constitutionalizing decommissioning through multi-stakeholder oversight, robust financial assurance, and par-ticipatory accountability. It concludes that decommissioning is not a tech-nical afterthought, but a constitutional test of democratic trusteeship, and that aligning petroleum governance with the Constitution's trust clause is essential to ensure that the end of production does not become the beginning of long-term environmental degradation and fiscal indebtedness.

Keywords: Public Trust Doctrine; Article 257(6) (Ghana Constitution); Constitutional Fiduciary Duty; Petroleum Decommissioning; Residual Liability; Natural Resource Governance; Technocratic Governance; Comparative Law

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INTRODUCTION

When the oil stops flowing, the real test begins. Every petroleum economy eventually confronts the moment when extraction gives way to restoration, when it must dismantle its extraction infrastructure and repair what its exploitation has scarred. Decommissioning "is the process of removing a facility from an operational state once a field ceases production, and returning the seabed, as closely as possible, to its natural state."[1] Global offshore decommissioning expenditures are projected to approach nearly US $100 billion between 2021 and 2030, a period S&P Global Commodity Insights has characterized as "the decade of offshore decommissioning."[2]

International practice recognizes a range of options, including complete removal, partial removal, toppling in place ("rigs-to-reefs"), relocation for reuse or recycling, and on-site conversion for alternative use, each with distinct environmental and financial implications.[3] Those choices shape how the consequences of extraction are distributed across the State, private operators, and the public. Decommissioning is therefore not merely a technical exercise; it is the point at which those consequences are realized.[4]

In Ghana, decommissioning assumes a distinctive character because it flows directly from the Constitution's fiduciary framework for natural resources. Article 257(6) of the Constitution vests "every mineral in its natural state … in the President on behalf of, and ***in trust for***, the people of Ghana."[5] This clause recasts petroleum governance from an exercise of sovereignty into fiduciary stewardship.[6] It commands the State to act as trustee for both present and future generations, subject to fiduciary

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[1] DEP'T FOR BUS., ENERGY & INDUSTRY STRATEGY, STRENGTHENING THE UK'S OFFSHORE OIL AND GAS DECOMMISSIONING INDUSTRY: CALL FOR EVIDENCE at 9 (Mar. 2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943745/strengthening-uk-offshore-oil-gas-decommissioning-industry-cfe-.pdf. [https://perma.cc/B5QM-8Q66].

[2] MARTIN LOCKMAN & MARTIN DIETRICH BRAUCH, DECOMMISSIONING OFFSHORE OIL AND GAS INFRASTRUCTURE IN THE FACE OF CLIMATE CHANGE AND THE ENERGY TRANSITION 2 (Columbia Ctr. on Sustainable Inv. & Sabin Ctr. for Climate Change L., Aug. 2023) (internal quotation marks omitted), https://ccsi.columbia.edu/news/decommissioning-offshore-oil-and-gas-infrastructure-face-climate-change-and-energy-transition [https://perma.cc/5Y34-K53X].

[3] Ashley M. Fowler et al., *A Multi-Criteria Decision Approach to Decommissioning of Offshore Oil and Gas Infrastructure*, 87 OCEAN & COASTAL MGMT. 20, 22–23 & tbl.1 (2014).

[4] Brigitte Sommer et al., *Decommissioning of Offshore Oil and Gas Structures–Environmental Opportunities and Challenges*, 658 SCI. TOTAL ENV'T 973, 981 (2019).

[5] GHANA CONST., art. 257(6) (1992) (emphasis added).

[6] GHANA CONST., pmbl., art. 257(6).

obligations of loyalty, prudence, accountability, transparency, and preservation.[7]

The stakes of that constitutional command are already visible in the Saltpond Field, Ghana's first offshore decommissioning project. Estimated decommissioning costs range from U.S. $73.5 million to U.S. $96 million, with more than U.S. $63 million already expended by 2023.[8] Yet the field produced only modest output over its lifetime, underscoring the growing disparity between the benefits of extraction and the costs of closure.[9] Following a series of ownership transitions, the Ghana National Petroleum Corporation ("GNPC") has inherited substantial end-of-life liabilities, with no clear allocation of responsibility among prior operators.[10] The result is a familiar pattern in resource governance in which gains are privatized while environmental and fiscal costs are socialized.[11]

This outcome is not incidental. It reflects deeper features of Ghana's statutory framework, reinforced by judicial interpretations such as *Adjaye v. Attorney-General*, which have tended to treat Article 257(6) as

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[7] For the content of fiduciary obligations, *see* RESTATEMENT (THIRD) OF TRUSTS §§ 76–79, 82–83 (Am. Law Inst. 2007) articulating duties of good-faith administration, prudence, loyalty, impartiality, and information and reporting; the duty to protect and manage trust property under § 76 and the duty of prudence under § 77 together support an obligation of preservation, while §§ 82–83 ground transparency and accountability); on the public-trust character of state stewardship over natural resources, *see* Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 478–89 (1970); *see also* MARY CHRISTINA WOOD, NATURE'S TRUST: ENVIRONMENTAL LAW FOR A NEW ECOLOGICAL AGE 83–110, 165–205 (2014).

[8] PUB. INT. & ACCOUNTABILITY COMM. (PIAC), ANNUAL REPORT ON THE MANAGEMENT AND USE OF PETROLEUM REVENUES: JAN.–DEC. 2023, at 123 (2024) (reporting estimated Saltpond decommissioning costs of US$73.5 million excluding taxes and US$96 million including taxes, with US$63.01 million already spent by GNPC as of 2023).

[9] *See* Thomas Kojo Stephens & Theophilus Acheampong, *Funding Decommissioning in Emerging Petroleum Producing Countries: Ghana's Experience with Decommissioning Costs and Guarantees*, J. ENERGY & NAT. RES. L. at 8 (Dec. 11, 2024), https://doi.org/10.1080/02646811.2024.2426353 (noting that the Saltpond Field produced approximately 3.47 million barrels between 1978 and 1985); *see also* MINISTRY OF PETROLEUM, REPORT OF COMMITTEE ON DECOMMISSIONING OF SALTPOND OFFSHORE PRODUCING COMPANY LIMITED ("SOPCL") PRODUCTION PLATFORM, Mr. Louie 5–6 (2016) (reporting that, following redevelopment, the field produced approximately 1.6 million barrels between 2002 and 2015).

[10] *See* KEN OFORI-ATTA, MINISTER OF FIN. (GHANA), 2018 ANNUAL REPORT ON THE PETROLEUM FUNDS: PRESENTED TO PARLIAMENT (Nov. 15, 2018), https://www.mofep.gov.gh/sites/default/files/reports/petroleum/2018-Petroleum-Annual-Report.pdf [https://perma.cc/3SC6-RCWB].

[11] Stephens & Acheampong, *supra* note 9; SOPCL, *supra* note 9*; see also* TERRY LYNN KARL, THE PARADOX OF PLENTY: OIL BOOMS AND PETRO-STATES (1997).

declaratory rather than as a source of enforceable fiduciary obligations.[12] The extant Petroleum Act ("Act 919") and its regulations centralize nearly all decision-making power in the Minister for Energy ("Minister"), who approves decommissioning plans, determines financial security arrangements, and may ultimately execute decommissioning obligations.[13] While Act 919 gestures toward balance, requiring the Minister to consider the impact on local communities, agriculture, fisheries, and the environment, as well as safety, technical, and economic factors in evaluating disposal alternatives, this duty remains purely administrative, lacking any enforceable fiduciary constraint.[14] The result is a system in which the State manages the retirement of national assets through a technocratic framework that privileges executive discretion over participatory accountability.[15]

This Article contends that Ghana's decommissioning regime, as currently structured, falls short of the constitutional trust embodied in Article 257(6). Properly understood, the provision is not merely declaratory.[16] It imposes fiduciary obligations that require the State to structure resource governance in a manner that protects the interests of the people as beneficiaries of the trust.[17] Decommissioning, as the final stage of the resource lifecycle, is the point at which those obligations are most fully tested. Reconciling Ghana's statutory regime with its constitutional framework requires a fundamental re-orientation: from ministerial discretion to multi-stakeholder trusteeship; from administrative expediency to fiduciary accountability; and from short-term fiscal management to intergenerational stewardship. Drawing on comparative experience from Norway, the United Kingdom, and the United States, this Article demonstrates that mature petroleum regimes have increasingly embedded these principles into their decommissioning frameworks through mechanisms of financial assurance, continuing liability, and participatory oversight.[18] Ghana's legal architecture can, and should, evolve in the same

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[12] *Adjaye & Ors v. Att'y Gen. & Ors*, Suit No. C.144/94 (High Ct. Ghana Mar. 30, 1994).

[13] Petroleum (Exploration and Production) Act, 2016, Act 919, §§ 43–49 (Ghana).

[14] Petroleum (Exploration and Production) Act, 2016, Act 919 § 44(3) (Ghana).

[15] "Technocratic," as used in this Article, refers to a mode of governance in which decision-making authority is concentrated in specialized administrative actors and guided primarily by technical expertise, managerial efficiency, and executive discretion, rather than by participatory accountability, democratic deliberation, or enforceable fiduciary constraints.

[16] Rose Rameau & Abdul Baasit Aziz Bamba, *Reshaping Government's Fiduciary Role Under the 1992 Constitution of Ghana*, 128 DICK. L. REV. 413, 413–15, 428–30 (2024).

[17] *Id.* at 454–56.

[18] *See* INT'L ASS'N OF OIL & GAS PRODUCERS ("IOGP"), OVERVIEW OF

direction.[19]

The Article proceeds as follows. Part II examines the constitutional trust established by Article 257(6), its fiduciary content, and its implications for decommissioning, before turning to Ghana's statutory regime and its technocratic structure. Part III identifies the structural breaches of fiduciary duty embedded in the current regime. Part IV situates Ghana's approach within international and comparative practice, highlighting converging norms of fiduciary governance. Part V advances a reform framework for constitutionalizing decommissioning through institutional, financial, and procedural design. The Article concludes that fulfilling Ghana's constitutional duty requires embedding fiduciary safeguards throughout the lifecycle of resource governance, rather than deferring them until extraction ends.

I. CONSTITUTIONAL TRUST AND TECHNOCRATIC GOVERNANCE IN GHANA

A. The Constitutional Trust Clause

Article 257(6) of the Constitution creates a conceptually rich doctrine with its declaration that:

> [E]very mineral in its natural state in, under or upon any land, rivers, streams, water courses, the exclusive economic zone, any area covered by the territorial sea or continental shelf is the property of the Republic and shall vest in the President on behalf of, and in

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INTERNATIONAL OFFSHORE DECOMMISSIONING REGULATIONS – VOLUME 1 – FACILITIES, Rep. No. 584 (July 2017), https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/327915/3546272/3575801/3737852/A96862%2D5_Attachment_to_Appendix_I_%2D_IOGP_%2D_Overview_of_International_Offshore_Decommissioning_Regulations_%2D_A6Q3V3.pdf?nodeid=3737438&vernum=-2 [https://perma.cc/3STG-TZYZ].

[19] While this Article frames decommissioning through a fiduciary-trust lens, alternative models of resource governance exist. The sovereign-ownership paradigm, inherited from colonial mineral codes, treats the State as proprietor, emphasizing executive discretion and fiscal returns rather than duties owed to citizens. The public-interest regulatory model introduces procedural balancing but remains technocratic. The environmental-justice model centers distributive and participatory fairness but lacks legal mechanisms for enforcement. The fiduciary model departs from all three by converting moral stewardship into an enforceable constitutional duty of loyalty, prudence, and transparency. *See, e.g.*, Sax, *supra* note 7, at 476–77, 485; Sheila R. Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CAL. L. REV. 775 (1998); Mary Christina Wood, *Advancing the Sovereign Trust of Government to Safeguard the Environment for Present and Future Generations (Part I): Ecological Realism and the Need for a Paradigm Shift*, 39 ENV'T L. 43 (2009).

trust for, the people of Ghana.

This clause constitutionalizes a public trust over the nation's natural resources. It neither confers ownership on the President personally nor treats natural resources as a domain of unfettered state sovereignty; rather, it establishes a fiduciary relationship between the State and its citizens.[20] The President, and by extension the entire machinery of government, therefore acts as *trustees* for the people of Ghana.[21] Thus, this clause operates as a constitutional trust, transforming resource management from a domain of executive control into one of obligation to the people.[22] The clause thus imports into public law the private-law duties of loyalty, prudence, accountability, transparency, and preservation.[23]

Within this constitutional structure, Article 257(6) transforms the President into a trustee holding minerals in their natural state on behalf of the people, who are the designated beneficiaries. This fiduciary characterization is consequential because it subjects the state's management of natural resources to legal constraints that both limit the discretion and require decisions to be justified in terms of the beneficiaries' interests.[24] Thus, the constitutional trust replaces discretionary ownership with legally constrained stewardship. Decisions about exploration, production, and decommissioning must therefore be guided by the principle that the State, as trustee, cannot exploit or dissipate the entrusted property for self-interested or partisan ends. Instead, it must manage the resource corpus, including minerals, petroleum, and associated environmental and fiscal interests, prudently and transparently for the people's collective benefit, including the preservation of environmental integrity for future generations.

B. Historical and Jurisprudential Foundations

The constitutional trust embodied in Article 257(6) is not an isolated

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[20] Rameau & Bamba, *supra* note 16, at 438–39, 454–55.

[21] *Id.* at 454–55.

[22] A "trust" is a fiduciary relationship in which one party (the trustee) holds and manages property for the benefit of another (the beneficiary), subject to enforceable duties of loyalty, prudence, accountability, transparency, and preservation. The property held in trust is referred to as the corpus (or *res*), derived from the Latin for "body." The person who creates the trust is the settlor. Although the Constitution formalizes this fiduciary framework, the people of Ghana, who "adopt, enact and give to [themselves] this Constitution," function conceptually as the settlor of the public trust. RESTATEMENT (THIRD) OF TRUSTS § 3; GHANA CONST., pmbl., art. 257(6).

[23] *See* John C. Dernbach, *The Role of Trust Law Principles in Defining Public Trust Duties for Natural Resources*, 54 U. MICH. J.L. REFORM 77, 80–82, 93 (2020) (explaining that courts use trust law principles as background rules for interpreting public trusts).

[24] RESTATEMENT (THIRD) OF TRUSTS §§ 76–79, 82–83.

textual innovation. It forms part of a broader legal tradition that treats state control over natural resources as a form of fiduciary stewardship.[25] The Public Trust Doctrine reflects a global evolution from models of sovereign ownership of natural resources toward stewardship-based governance.[26] Its roots are commonly traced to Roman law, which recognized certain resources such as the sea, air, and shores as *res communis*, held for common use,[27] and to early English common law, which vested control of such resources in the Crown subject to public rights.[28] Over time, courts recognized that certain natural resources could not be treated as ordinary property because they were held in the public interest. This principle found early expression in *Arnold v. Mundy*,[29] and was later articulated more fully in *Illinois Central Railroad Co. v. Illinois* (1892), where the Court held that the State holds certain natural resources "in trust for the people" and cannot abdicate control over them without violating that trust.[30] The doctrine has since been recognized and developed in several constitutional systems, including the United States, India, and South Africa.[31]

In adopting Article 257(6)'s language, vesting minerals in the President "on behalf of, and in trust for, the people of Ghana," the Constitution articulates a comparable fiduciary principle. The clause reflects the constitutional consolidation of an inherited legal idiom that seeks to balance

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[25] Michael C. Blumm & Rachel D. Guthrie, *Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 U.C. DAVIS L. REV. 741, 750–55 (2012) (describing the public trust doctrine as imposing fiduciary obligations on the State in the management of natural resources).

[26] *Id.* at 745–46, 749–50, 777–94 (describing the international expansion of the public trust doctrine, including within African constitutional and statutory frameworks emphasizing environmental stewardship and public accountability).

[27] *See* J. INST. 2.1.1 (J.B. Moyle trans., 5th ed. 1913) (recognizing that "by the law of nature these things are common to mankind—the air, running water, the sea, and consequently the shores of the sea"); *see also* Sax, *supra* note 7, at 475–78.

[28] *See Att'y Gen. v. Parmeter*, (1811) 147 Eng. Rep. 345, 353 (recognizing that Crown rights in coastal resources remain subordinate to public rights); *Gann v. Free Fishers of Whitstable*, (1865) 11 H.L. Cas. 192, 221–22 (holding that while the Crown may grant private rights, it cannot alienate or impair public rights in navigable waters); *see also Illinois Cent. R.R. Co. v. Illinois*, 146 U.S. 387, 452 (1892) (tracing the doctrine to English law and recognizing that the Crown held navigable waters and submerged lands in trust for public uses such as navigation and fishing); Ralph W. Johnson, *Oil and the Public Trust Doctrine in Washington*, 14 U. PUGET SOUND L. REV. 671, 673 (1991).

[29] *Arnold v. Mundy*, 6 N.J.L. 1 (1821) (holding that the State holds navigable waters and their resources in trust for public use and cannot alienate them for private purposes).

[30] *Illinois Cent.*, 146 U.S. at 452–53.

[31] *See M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388 (India); *Fuel Retailers Ass'n v. Dir. Gen. Env't Mgmt.*, 2007 (6) SA 4 (CC) (S. Afr.); Blumm & Guthrie, *supra* note 25 (documenting the doctrine's recognition and expansion across multiple constitutional systems beyond the United States, including in Africa and South Asia).

sovereign management of subsoil resources with accountability to the citizenry.[32] In *Adjaye*, the Court held that the President's trusteeship over mineral resources was a "trust in the higher sense," but it recognized only the clause's normative force.[33] The Court reasoned that Article 257(6) was declaratory of sovereignty rather than a source of enforceable rights, thereby denying citizens standing to compel fiduciary performance in the management of natural resources.[34]

However, *Adjaye* was a High Court decision, and under Ghana's constitutional hierarchy, only the Supreme Court has jurisdiction to render binding interpretations of the Constitution.[35] A purposive interpretive approach, such as the one championed by the Supreme Court in *Asare v. Attorney General*, would reject formalistic readings like that of *Adjaye* in favor of an interpretation that gives effect to the Constitution's spirit and purpose.[36] Under such an approach, Article 257(6) should be understood as creating an enforceable fiduciary duty of loyalty, prudence, accountability, transparency, and preservation in the State's management of natural resources because the constitutional language of trusteeship necessarily implies accountability to the beneficiaries of the trust.

This fiduciary reading is reinforced by subsequent statutory, jurisprudential, and scholarly developments. The Petroleum Revenue Management Act ("PRMA") institutionalizes elements of fiduciary accountability through its dual-fund architecture and its emphasis on transparency, intergenerational stewardship, and public oversight.[37] Ghanaian courts have likewise moved incrementally toward recognizing fiduciary-like duties in environmental and resource governance. In *Center*

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[32] For instance, the Mineral Act of 1962 (Act 126) vested the ownership of minerals in the "President on behalf of the Republic and in trust for the People of Ghana." *See* Fui S. Tsikata, *The Vicissitudes of Mineral Policy in Ghana*, 23 RES. POL'Y 9, 14 (1997).

[33] *Adjaye*, Suit No. C.144/94, at 15.

[34] *Id.*; *see also* Rameau & Bamba, *supra* note 16, at 416–18.

[35] GHANA CONST., art. 1(2).

[36] *Asare v. Att'y Gen.* [2003-2004] SCGLR 823 (Ghana).

[37] Petroleum Revenue Management Act, 2011, Act 815 (Ghana). The Act establishes the Ghana Petroleum Funds, consisting of the Stabilization Fund and the Heritage Fund (§§ 9–11). The Heritage Fund is designed to provide an endowment for future generations once petroleum reserves are depleted, while the Stabilization Fund cushions the national budget against petroleum revenue volatility. The Act further embeds transparency and accountability as governing principles and establishes the Public Interest and Accountability Committee to monitor petroleum revenue management and report publicly on government compliance (§§ 8, 49–53) and imposes management obligations on the Minister consistent with prudent stewardship (§ 25). These features reflect a statutory operationalization of fiduciary principles, particularly duties of prudence, transparency, and intergenerational stewardship.

for Public Interest Law v. Environmental Protection Agency, the High Court treated environmental regulatory authority as carrying enforceable public duties, holding that regulators entrusted with control over natural resources may be liable where they fail to exercise that authority to prevent environmental harm.[38] In *Kpodo,* the Supreme Court interpreted Article 252(2), which requires that not less than five percent of Ghana's total annual revenue be allocated to the District Assemblies Common Fund, and held that petroleum revenues used to support the national budget form part of "total revenue," thereby limiting Parliament's ability to exclude such revenues from constitutionally mandated allocations.[39]

In addition to decided cases, recent environmental litigation further reflects an emerging shift toward constitutionalized resource governance. In *A Rocha Ghana*, civil society organizations challenged regulations permitting mining in forest reserves on the grounds they violate the State's constitutional obligation to protect the environment.[40] Similarly, litigation concerning proposed mining in the Atewa Range Forest has framed environmental protection and biodiversity preservation in terms consistent with intergenerational stewardship and the State's constitutional obligation to safeguard ecological resources for present and future generations.[41] Although many of these cases remain pending or are framed in rights-based terms, they underscore a broader doctrinal movement away from unfettered executive discretion and toward constitutionalized resource governance.

Recent scholarship converges on the same conclusion. Critiquing *Adjaye* for reducing Article 257(6) to a "trust in the higher sense," Rameau and Bamba argue that such interpretive minimalism undermines the Constitution's fiduciary structure and advocate grounding it in the Public Trust Doctrine so as to render its fiduciary obligations judicially enforceable.[42] Ngaanuma likewise situates Article 257(6) within a broader

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[38] *Ctr.* for Pub. Interest L. *v. Env't. Prot. Agency*, No. A (EN)1/2005 (High Ct. Ghana Mar. 27, 2009) (holding that environmental regulators are under mandatory statutory duties to monitor and control mining activities and may be held jointly and severally liable to affected communities for failure to prevent environmental harm).

[39] *Kpodo v. Att'y Gen.*, No. J1/03/2018 (Sup. Ct. Ghana June 12, 2019).

[40] *See*, *e.g.*, *A Rocha Ghana & Ors v. Att'y Gen. & Ors*, Suit No. GJ/1055/2024 (High Ct. Ghana Sept. 18, 2024) (pending) (challenging regulations permitting mining in forest reserves as inconsistent with statutory environmental protections and the State's constitutional obligation to protect ecologically significant forest reserves).

[41] *Concerned Citizens of Atewa Landscape & Ors v. Att'y Gen.* Suit No. GJ/1158/2020 (High Ct. Ghana July 1, 2020) (pending) (arguing that the Constitution protects the environment for the benefit of present and future generations and obligates the State to preserve the ecologically significant Atewa Range Forest).

[42] Rameau & Bamba, *supra* note 16, at 428–30 (arguing that Article 257(6) creates an enforceable fiduciary relationship between the government and the people of Ghana and

model of constitutional governance, emphasizing that a genuine constitutional trust requires not only substantive duties of stewardship but also institutional mechanisms that enable transparency, participation, and accountability in resource management.[43] These accounts converge on the proposition that Article 257(6) is best understood as a constitutional trust that structures the State's fiduciary responsibilities toward the Ghanaian public.[44]

Yet the statutory framework governing petroleum operations reveals a more complicated institutional reality. Stephens' historical account of Ghana's decommissioning law traces the evolution of the regime from the single restoration clause in the Petroleum (Exploration and Production) Law, 1984 (PNDCL 84), to the more comprehensive framework introduced under Act 919. This evolution reflects significant administrative and regulatory reform. But viewed through the fiduciary framework of Article 257(6), the reforms remain largely administrative rather than constitutional in character.[45] They focus on regulatory adequacy and fiscal assurance rather than trusteeship and beneficiary accountability.[46] Operators must submit decommissioning plans and provide financial security for abandonment and site restoration, but the design and approval of those plans remain largely with the minister's and the Petroleum Commission's discretion.[47]

The result is a persistent divergence between doctrine and design. While constitutional text, judicial development, and scholarly analysis converge on a fiduciary understanding of Article 257(6), the statutory regime governing petroleum exploitation and closure continues to operate within a technocratic model of executive administration. This divergence underscores a central tension in Ghana's resource governance framework: a constitutional commitment to trusteeship coexists with institutional

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advocating application of Public Trust Doctrine principles to natural resource governance). Rameau & Bamba provide one of the most detailed doctrinal analyses of Article 257(6) and its relationship to public trust principles in Ghana's constitutional resource governance.

[43] Vitus Ngaanuma, *The Constitutionality of Nominal Trusteeship in the Regalian Mineral Ownership Regime in Ghana*, J. ENERGY & NAT. RES. L. 83, 104 (2020).

[44] *See* Rameau & Bamba, *supra* note 16, at 428–30; Ngaanuma, *supra* note 43, at 76–79, 82 (challenging the theory of nominal trusteeship adopted in *Adjaye* and arguing that Article 257(6) should entail enforceable obligations of accountability, judicial review, and public participation).

[45] Thomas Kojo Stephens, *Sustainable Decommissioning in Ghana: Historical Developments, Current Practice and Challenges*, 14 J. SUSTAINABLE DEV. L. & POL'Y 82, 92–98 (2023).

[46] *Id.* at 87–91, 92–98.

[47] Petroleum (Exploration and Production) Act, 2016, Act 919 (Ghana).

structures that remain only partially aligned with fiduciary accountability.

C. Fiduciary Obligations in Resource Governance

Although Article 257(6) establishes that petroleum resources are held in trust for the people of Ghana, it provides limited guidance on the precise content of that trusteeship. That indeterminacy is not unusual.[48] Public trust provisions often contain only basic terms, requiring courts and scholars to look to trust law for guidance in defining trustee duties and limits.[49] Trust law thus provides the background principles that give operational content to otherwise general constitutional commitments.[50]

In private trust law, a trustee holds property for the benefit of designated beneficiaries and must administer that property in accordance with established fiduciary duties.[51] Courts have long relied on these principles to give content to public trust obligations.[52] Accordingly, Article 257(6) is best understood as a constitutional trust whose content is informed by fiduciary principles and which imposes fiduciary obligations on the State in its management of petroleum and other mineral resources.[53]

Within this framework, the State acts as trustee of the trust corpus. In the context of Article 257(6), the corpus includes not only the nation's mineral and petroleum resources themselves but also the environmental, fiscal, and institutional assets derived from their extraction and management. Several interrelated fiduciary duties follow from this constitutional trusteeship, including loyalty, prudence, transparency and accountability, and preservation.[54]

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[48] *See* Dernbach, *supra* note 23 at 79–82 (explaining that public trust provisions often contain only basic terms and that trust law provides background principles for interpreting trustee duties).

[49] *Id.* at 80 (noting that public trust provisions may contain just "a sentence or two").

[50] *Id.* at 80–81 (explaining that courts and scholars look to trust law when public trust provisions do not fully answer questions concerning trustee duties).

[51] RESTATEMENT (THIRD) OF TRUSTS § 3.

[52] *Illinois Cent.*, 146 U.S. at 388–90.

[53] Rameau & Bamba, *supra* note 16; *see also* Evan J. Criddle, *Fiduciary Foundations of Administrative Law*, 54 UCLA L. REV. 117, 126–28 (2006).

[54] These fiduciary principles have been elaborated in both comparative scholarship and jurisprudence. *See generally* RESTATEMENT (THIRD) OF TRUSTS §§ 76–79, 82–83 (articulating core fiduciary duties from which obligations of loyalty, prudence, transparency, accountability, and preservation are derived); *see* Wood, *supra* note 7, at 167–87 (articulating a comprehensive framework of substantive and procedural fiduciary duties for public trustees, including duties to protect and restore the trust *res*, prevent waste, maximize societal value, and maintain loyalty and transparency). This Article adopts a more targeted set of fiduciary principles, selected for their relevance to the governance of

1. Duty of Loyalty

At the core of fiduciary stewardship lies the duty of loyalty, requiring the trustee to administer the trust solely in the beneficiaries' interests and to avoid conflicts between public obligations and competing political or institutional incentives.[55] Courts and scholars have recognized that the State may not subordinate the interests of beneficiaries to administrative convenience or third-party advantage.[56] Applied to Article 257(6), the duty of loyalty should require that petroleum resources be managed exclusively for the benefit of the people of Ghana, both present and future, rather than for short-term fiscal, political, or institutional gain. On this understanding, decisions that allow private actors to externalize environmental or financial liabilities onto the State, or that prioritize expedient closure over responsible restoration, would be difficult to reconcile with this obligation.[57]

A technocratic objection may be that resource governance necessarily entails balancing competing objectives, including revenue generation, energy security, and investment attractiveness, and that strict fidelity to beneficiary interests may unduly constrain executive discretion. But fiduciary law does not eliminate discretion; it disciplines it. The duty of loyalty does not prohibit balancing. It prohibits self-dealing, abdication, and decision-making that systematically privileges non-beneficiary interests over those of the trust. In this sense, fiduciary governance requires that any balancing be justified as consistent with, rather than contrary to, the interests of the beneficiaries. Properly understood, the duty of loyalty transforms Article 257(6) from a statement of custodial ownership into a standard of accountable governance.

2. Duty of Prudence

Complementing the duty of loyalty is the duty of prudence, which requires a trustee to administer the trust with the care, skill, and caution that a prudent person would exercise in managing the property of another.[58] This duty is forward-looking and risk-sensitive. It obliges the trustee to anticipate foreseeable harms, evaluate alternatives with due care, and adopt measures to protect the trust corpus from avoidable loss. In the public trust context, scholars have emphasized that fiduciary stewardship requires not merely

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decommissioning, where the central concerns are the safeguarding, restoration, and allocation of residual resource risks and obligations.

[55] *See* RESTATEMENT (THIRD) OF TRUSTS § 78.

[56] Dernbach, *supra* note 23, at 136–38.

[57] *See* A.C. PIGOU, THE ECONOMICS OF WELFARE 170–85 (4th ed. 1932) (explaining divergences between private and social net product, which form the basis for modern externality analysis).

[58] *See* RESTATEMENT (THIRD) OF TRUSTS § 77.

reactive compliance but proactive planning to safeguard natural resources for present and future beneficiaries.[59] Courts have likewise required that public trustees exercise informed and precautionary judgment in managing natural resources.[60]

Applied to Article 257(6), prudence should require the State to anticipate and internalize the full lifecycle costs of petroleum extraction, including decommissioning. On this understanding, prudence would entail, at a minimum, establishing credible financial assurance mechanisms prior to production, rigorously verifying decommissioning cost estimates, and selecting closure options that minimize long-term environmental and fiscal risk. A prudent trustee does not wait for liabilities to materialize; it structures the regime so that such liabilities are identified, funded, and managed ex ante.

The technocratic counterargument is that uncertainty in decommissioning costs and technological conditions makes precise ex ante provisioning both impractical and potentially inefficient. On this view, rigid financial requirements risk misallocating capital, deterring investment, and failing to adapt to changing operational realities. But fiduciary law does not demand perfect foresight; it demands reasonable precaution. The duty of prudence is satisfied not by eliminating uncertainty but by managing it through robust verification, periodic reassessment, and conservative financial safeguards.

3. Duties of Transparency & Accountability

Equally central are the duties of transparency and accountability, which obligate the trustee to keep beneficiaries reasonably informed about the administration of the trust and to account for decisions affecting the trust corpus.[61] This duty reflects a foundational principle of fiduciary law: beneficiaries cannot protect their interests if they are excluded from information about how the trust is managed. In the public trust context, courts and scholars have similarly emphasized that transparency and accountability are essential conditions of legitimate stewardship, ensuring that the State's exercise of discretion remains subject to public scrutiny.[62] This requires continuing oversight and accountability in resource

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[59] Dernbach, *supra* note 23, at 136–39.

[60] *See, e.g.*, *United Plainsmen Ass'n v. N.D. State Water Conserv. Comm'n*, 247 N.W.2d 457, 462–63 (N.D. 1976) (requiring informed and precautionary decision-making in the management of natural resources subject to public trust obligations).

[61] *See* RESTATEMENT (THIRD) OF TRUSTS §§ 82–83.

[62] Dernbach, *supra* note 23, at 136–38.

management decisions.[63]

Applied to Article 257(6), this duty should require that decisions concerning petroleum development and decommissioning be made in a manner that is open, reasoned, and accessible to the public as beneficiaries of the constitutional trust. This understanding would include disclosure of decommissioning plans, cost estimates, financial assurance arrangements, and environmental assessments, as well as the provision of meaningful opportunities for public participation prior to the approval of such plans. Without these safeguards, the constitutional designation of the people as beneficiaries risks becoming purely formal.

A technocratic response may be that decommissioning decisions involve technical complexity and commercially sensitive information, justifying a degree of confidentiality and administrative discretion. But fiduciary law does not permit opacity simply because decisions are complex. It instead suggests that complexity be managed through disclosure, explanation, and structured participation, subject only to narrowly tailored protections for genuinely confidential information. Properly understood, the duty of transparency and accountability transforms Article 257(6) from a passive declaration of public ownership into an active framework of public oversight.

4. Duty of Preservation

Extending these obligations across time is the duty of preservation, which requires that the corpus be conserved and restored for future generations. It is grounded in several core trustee obligations, including the duty to take and keep control of trust property, the duty to preserve the trust corpus, and the duty to make the property productive.[64] Together, these duties require the trustee not only to safeguard the integrity of the trust assets but also to prevent their dissipation and ensure their continued value for the benefit of present and future beneficiaries.[65] In the context of Article 257(6), the corpus includes not only petroleum resources themselves but also the environmental, fiscal, and institutional interests derived from their extraction and management. The constitutional trust, therefore, extends beyond immediate management to the long-term preservation of the trust

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[63] *See, e.g.*, *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709, 728 (Cal. 1983) (emphasizing the State's continuing supervisory duty over public trust resources and the need for ongoing accountability in resource management decisions).

[64] RESTATEMENT (THIRD) OF TRUSTS §§ 76–77, 79.

[65] *See* Blumm & Guthrie, *supra* note 25, at 741 (noting that international public trust jurisprudence incorporates principles of precaution, sustainable development, and intergenerational equity).

corpus for the benefit of present and future beneficiaries.[66]

Applied to Article 257(6), the duty of preservation should require that petroleum resources and their surrounding environment be managed in a manner that safeguards their long-term ecological and economic integrity. This duty does not end with extraction; rather it should extend fully into the decommissioning phase, where decisions about removal, restoration, and post-closure monitoring determine whether the resource base is returned to the public in a condition that reflects responsible stewardship. On this understanding, a trustee who extracts value without ensuring restoration effectively diminishes the trust corpus, transferring environmental degradation and fiscal burdens to future generations in violation of the constitutional trust.

A technocratic counterargument is that complete restoration may not always be environmentally or economically optimal, particularly where alternative uses, such as artificial reefing or partial removal, may yield ecological or social benefits. Fiduciary law accommodates such flexibility but imposes a constraint: any departure from full restoration must be justified as consistent with the beneficiaries' long-term interests. Preservation does not mandate a single technical outcome; it requires that the chosen outcome be demonstrably aligned with sustaining or enhancing the value of the trust corpus over time.

These duties define the content of the constitutional trust established by Article 257(6). They transform the State's role from that of a sovereign owner exercising discretionary control into that of a fiduciary bound by enforceable standards of stewardship. When viewed through this fiduciary lens, the deficiencies of Ghana's current decommissioning regime become clearer. The concentration of decision-making authority in the executive, the absence of robust financial assurance mechanisms, the limited visibility into key decisions, and the uncertainty surrounding long-term environmental restoration reflect governance pattern difficult to reconcile with fiduciary stewardship.

D. Decommissioning as a Fiduciary Moment

Reconciling the tension between constitutional trusteeship and statutory discretion requires reading the Petroleum Act and its regulations through the lens of the trust clause. Under Ghana's constitutional hierarchy, statutory discretions must yield to constitutional duties.[67] The constitutional

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[66] *See* RESTATEMENT (THIRD) OF TRUSTS §§ 76–77, 79 (requiring trustees to take control of trust property, preserve it from loss or waste, and maintain its value for beneficiaries).

[67] GHANA CONST., art. 1(2).

trust, therefore, constrains how decommissioning decisions are made and evaluated. First, it requires that decisions on decommissioning plans be guided by transparent, participatory, and accountable processes, rather than opaque administrative determinations made solely within the executive branch. The people of Ghana, who are the beneficiaries of the constitutional trust, must therefore have meaningful access to information and meaningful opportunities to participate in decisions affecting the closure of petroleum operations. Second, it implies a framework of oversight in which institutions such as Parliament and civil society function not as peripheral observers but as mechanisms through which fiduciary accountability is expressed and enforced. Third, it requires that financial arrangements for decommissioning be structured in a manner consistent with financial stewardship, ensuring that end-of-life obligations are identified, secured, and managed to protect the public from avoidable fiscal and environmental risks.

Decommissioning is not merely a technical or administrative process, but a part of the State's continuing fiduciary obligation to manage the resource corpus in accordance with duties of loyalty, prudence, transparency, accountability, and preservation. Such an approach to decommissioning thus serves as an integrity test of the State's commitment to its constitution and people.

E. Ghana's Technocratic Decommissioning Regime

If Article 257(6) establishes a constitutional trust over the nation's natural resources, then the legal structures governing the end-of-life phase of petroleum operations must reflect the duties of loyalty, prudence, accountability, transparency, and preservation owed to the Ghanaian public. This section examines Ghana's existing statutory and regulatory framework for offshore decommissioning, focusing on Act 919 and its implementing regulations. Act 919 is significant not merely as a regulatory framework but as the primary statutory vehicle through which constitutional trust obligations are either operationalized or, as this Article argues, structurally diluted.

1. Centralized Authority and Statutory Design

Ghana's decommissioning framework is anchored in Act 919 and its implementing regulations.[68] The framework originates from decades of incremental statutory development.[69] The Act mandates decommissioning

[68] Petroleum (Exploration and Production) Act, 2016, Act 919 (Ghana); Petroleum (Exploration and Production) (General) Regulations, 2018, L.I. 2359 (Ghana).

[69] Stephens, *supra* note 45, at 92–96.

plans (§ 43), subjects those plans to Ministerial approval (§ 44), establishes a Decommissioning Fund (§ 45), requires the plugging and abandonment of wells (§ 46) and the restoration of affected areas (§ 47), and imposes strict liability for decommissioning obligations (§ 48).[70] The regulations translate these broad obligations into detailed procedural requirements governing the content, approval, execution, and reporting of decommissioning activities.[71] The regime is complemented by financial assurance mechanisms, including statutory security requirements, and is embedded within a broader environmental governance framework that incorporates impact assessment, pollution liability, and risk mitigation.[72]

The framework is comprehensive in administrative terms, but its core logic is technocratic. The Minister, acting on the advice of the Petroleum Commission, may approve, amend, or reject decommissioning plans; determine whether facilities may be removed, reused, or abandoned; require security; and in some cases, carry out decommissioning obligations on behalf of operators.[73] The Petroleum Commission's role reinforces this design by concentrating expertise within executive channels without corresponding accountability to the beneficiaries of the constitutional trust. Although the Act requires the Minister to consider impacts on local communities, agriculture, fisheries, the environment, safety, and economic factors, these considerations remain administrative rather than fiduciary.

Parliament, civil society, and affected communities have no formal role in evaluating or approving decommissioning plans. The absence of statutory provisions for public notice, participatory review, or independent audit stands in tension with the fiduciary architecture one would expect under a constitutional trust.[74] Thus, while Stephens describes Ghana's framework as "effective enough to meet the three pillars of sustainability … profit, people, and planet,"[75] the constitutional lens advanced here demands a higher threshold: sustainability must be grounded in fiduciary enforceability rather than administrative efficiency.

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[70] Petroleum (Exploration and Production) Act, 2016, Act 919, §§ 43–48 (Ghana); *see also* Stephens, *supra* note 45, at 96–99 (discussing the creation of the Decommissioning Fund and the Bank of Ghana's trustee role).

[71] Petroleum (Exploration and Production) (General) Regulations, 2018, L.I. 2359 (Ghana).

[72] Petroleum (Exploration and Production) Act, 2016, Act 919, §§ 58, 81–84 (Ghana).

[73] Petroleum (Exploration and Production) Act, 2016, Act 919, § 43(1) (Ghana).

[74] Ngaanuma, *supra* note 43, at 91–95 (explaining that the absence of enforceable mechanisms for judicial review and citizen participation undermines accountability in natural resource governance).

[75] Stephens, *supra* note 45, at 85.

2. Current and Residual Liability: The "Trust Without a Trustee" Problem

A second weakness in Ghana's regime concerns the treatment of both current decommissioning liability and residual liability.[76] Current liability refers to the obligation to plug, remove, and restore petroleum infrastructure at the end of operations and to ensure that the costs of those activities are borne by the responsible operators.[77] Residual liability, by contrast, concerns responsibility for degradation or environmental harm that arises after decommissioning decisions have been implemented, particularly where infrastructure is left in place or inadequately remediated.[78] Although analytically distinct, these two forms of liability are closely related. Weaknesses in the allocation and enforcement of current decommissioning liability can result in its premature transfer to the State, while gaps in the legal framework governing residual liability can leave long-term environmental risks unallocated or inadequately secured. Collectively, they reveal a structural deficiency in the regime's ability to internalize both present and future risks associated with petroleum closure.

Act 919 empowers the Minister to decide whether facilities may be removed, reused, or abandoned and requires consideration of potential impacts on local communities, agriculture, fisheries, and other affected interests.[79] Yet it does not clearly specify how compensation for resulting harms should be calculated, who bears ongoing responsibility if an abandoned structure later causes damage, or when residual liability terminates.[80] This ambiguity effectively externalizes both present and contingent environmental risks. Operators may exit petroleum projects with limited exposure, leaving residual hazards such as corroding pipelines, contaminated sediments, or navigational obstacles, to the State and, ultimately, to the public. In this respect, Ghana's framework reflects a broader pattern observed in offshore petroleum regimes, in which the State

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[76] *See* MARTIN LOCKMAN ET AL., DECOMMISSIONING LIABILITY AT THE END OF OFFSHORE OIL AND GAS: A REVIEW OF INTERNATIONAL OBLIGATIONS, NATIONAL LAWS, AND CONTRACTUAL APPROACHES IN TEN JURISDICTIONS 17–21 (Sabin Ctr. for Climate Change L. & Columbia Ctr. on Sustainable Inv. 2023) (distinguishing between decommissioning obligations, post-decommissioning liability, and residual government responsibility).

[77] *Id.* at 17–21.

[78] *Id.*; *see also* King & Spalding, *Managing Decommissioning Risks in Asian M&A Transactions*, Client Alert, at 1–2 (Aug. 11, 2017), https://www.kslaw.com/attachments/000/005/204/original/ca081117.pdf?1502371123 [https://perma.cc/M2WU-XGWD].

[79] Petroleum (Exploration and Production) Act, 2016, Act 919, § 44(3) (Ghana).

[80] *See* Stephens & Acheampong, *supra* note 9.

ultimately becomes the "decommissioner of last resort" when private operators fail to meet their obligations or when financial assurance mechanisms prove inadequate.[81]

The problem is compounded by asset transfers, operator insolvency, and the use of special-purpose entities that ring-fence liabilities from parent corporations. If the operator dissolves or transfers its assets prior to decommissioning, the State may therefore be left with an uncollectible judgment debt.[82] From a constitutional perspective, this allocation of risk between private operators and the State raises a serious fiduciary concern. Under Article 257(6), the State acts as trustee of the nation's natural resource corpus for the benefit of the people. The duties of prudence and preservation, thus require the trustee to ensure that foreseeable environmental liabilities are adequately secured before permitting transfer, abandonment, or cessation of petroleum infrastructure. Statutory silence on residual liability and inadequate financial assurance for decommissioning obligations, therefore, undermine the Constitution's trust clause and invite future fiscal burdens inconsistent with the principle of intergenerational equity.

3. Fiscal Design and Funding Gaps

Act 919's provision for a Decommissioning Fund is conceptually sound, but ultimately procedurally deficient because the framework neither defines a transparent cost-estimation methodology nor prescribes how contributions are calculated or independently verified.[83] Without a verified cost base, the fund risks becoming an incomplete financial mechanism that cannot reliably ensure sufficient resources will be available when decommissioning obligations arise.[84] Moreover, in the absence of independent oversight and transparency mechanisms, it operates more as an administrative account than a true fiduciary instrument designed to safeguard the trust corpus. Determining accurate decommissioning cost estimates and establishing reliable financial security arrangements are critical components of effective

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[81] Lockman et al., *supra* note 76, at 2–3 (explaining that governments often become the "decommissioner of last resort" when private operators fail to satisfy decommissioning obligations and existing financial assurance mechanisms prove insufficient).

[82] *Id.* Discussing risks associated with insolvency, asset transfers, self-insurance arrangements, and corporate structures that may leave governments responsible for decommissioning liabilities when operators cannot pay.

[83] Petroleum (Exploration and Production) Act, 2016, Act 919, § 45 (Ghana).

[84] Stephens, *supra* note 45, at 106–07 (noting that without periodic review of projected decommissioning costs and corresponding adjustments to fund contributions, the decommissioning fund may prove inadequate when liabilities crystallize).

petroleum governance.[85]

The statutory scheme attempts to encourage financial provisioning through tax incentives. Amounts accumulated in or withdrawn from a decommissioning fund for decommissioning purposes are exempt from tax.[86] Contributions to and other expenses incurred in respect of a decommissioning fund established for a petroleum operation are deductible in calculating the operator's assessable income for the relevant year of assessment.[87] Decommissioning expenses incurred during the closure of a petroleum operation are also deductible where the fund is unavailable or insufficient.[88] However, where a surplus remains in the fund after completion of decommissioning or following a breach of an approved plan, that surplus is treated as taxable income in that year.[89]

These provisions are designed to incentivize operators to accumulate funds during production for decommissioning. Yet, the statutory framework does not link the tax deductions claimed by operators to the actual deposit of corresponding funds into the decommissioning account. Companies may therefore claim deductions years before decommissioning occurs, creating the possibility of fiscal leakage and moral hazard. Neither the tax regime nor Act 919 establishes a mechanism to verify that deductible amounts are deposited, to prevent inflated deductions, or to require repayment of tax advantages when actual decommissioning costs fall below earlier projections.[90] Effective decommissioning regimes often require progressive financial provisioning throughout the life of a petroleum project and may incorporate trigger mechanisms requiring additional financial security when risk thresholds are reached, such as declining production levels, asset transfers, or corporate restructuring of operators.[91]

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[85] *Id.*

[86] Income Tax Act, 2015, Act 896, § 70 (Ghana) (permitting deductions for contributions and decommissioning expenditures related to petroleum operations).

[87] *Id.* § 67(1)(c).

[88] *Id.* § 67(1)(d).

[89] *Id.* § 70(2).

[90] *See* Stephens & Acheampong, *supra* note 9, at 13–14, 18–21 (discussing weaknesses in Ghana's financial assurance framework for decommissioning); Stephens, *supra* note 45, at 106–07 (explaining that the Saltpond decommissioning fund lacked adequate monitoring, auditing, trustee safeguards, and periodic reassessment mechanisms, allowing the fund to be dissipated before decommissioning obligations crystallized).

[91] Stephens & Acheampong, *supra* note 9, at 12–13, 15–19 (discussing trigger dates for decommissioning contributions, periodic reassessment of liabilities, progressive funding obligations, and mechanisms for increasing or replacing financial security as decommissioning risks evolve).

4. Institutional Conflict: GNPC's Dual Role

The GNPC is the state-owned enterprise charged with "undertaking the exploration, development, production, and disposal of petroleum."[92] It has also issued a Model Petroleum Agreement ("MPA") for use in petroleum operations.[93] However, the GNPC occupies an ambiguous institutional position. It functions both as a commercial participant in petroleum operations and as a public entity associated with the State's broader stewardship of natural resources.[94] GNPC holds equity interests in petroleum projects, negotiates asset acquisitions, and, in some instances, assumes responsibility for aging fields without fully pricing the associated decommissioning liabilities.[95] This duality creates a structural conflict. GNPC's commercial incentives to acquire assets or prolong production may conflict with the State's fiduciary duty to safeguard public finances and environmental integrity. It also raises potential conflicts with the fiduciary duty of loyalty, as revenue generation may compete with long-term stewardship.

The Saltpond acquisition further illustrates this institutional tension. GNPC's assumption of a late-life asset without clearly priced decommissioning obligations illustrates how commercial incentives can conflict with the State's fiduciary duty to safeguard public resources.[96] More broadly, Ghana's conflation of roles, with the State acting simultaneously as operator through GNPC and as regulator through the Ministry and Petroleum Commission, raises serious concerns about the institutional objectivity expected of a constitutional trustee. This design creates conditions under which fiduciary obligations may be compromised by fiscal exposure.

5. Consequences of Technocratic Stewardship

The centralization of ministerial discretion, the uncertainty surrounding current and residual liability, the procedural deficiencies in

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[92] Ghana National Petroleum Corporation Law, 1983, P.N.D.C.L. 64, § 2(1) (Ghana).

[93] GHANA NAT'L PETROLEUM CORP., MODEL PETROLEUM AGREEMENT OF GHANA (2000), https://www.gnpcghana.com/download/pl/ghana_model_petroleum_agreement1.pdf [https://perma.cc/V5CV-CM58]. A Model Petroleum Agreement is a standardized contractual template used by the Government of Ghana when negotiating petroleum agreements with private contractors. It establishes the legal and fiscal framework governing exploration and production operations and forms the basis of the contractual relationship among the State, GNPC, and petroleum contractors.

[94] Ghana National Petroleum Corporation Law, 1983, P.N.D.C.L. 64.

[95] Ofori-Atta, *supra* note 10, at 17–18.

[96] *Id.*

decommissioning funding, and the institutional conflicts created by GNPC dual role produce what may be described as technocratic stewardship without fiduciary accountability. The framework treats decommissioning as a regulatory checklist rather than as a constitutional duty owed to the Ghanaian public. Decisions that implicate major fiscal exposures and long-term ecological welfare are made within a closed administrative process with minimal public oversight or transparency.

From a regulatory perspective, the framework may appear functional. From a constitutional perspective, however, it remains fragile. By concentrating authority within the executive while leaving liability continuity, funding transparency, and institutional conflicts insufficiently addressed, the regime risks shifting environmental and fiscal burdens onto future generations. As Ghana moves from extraction to restoration, aligning petroleum governance with the trust clause will be essential to ensuring that the end of production does not become the beginning of long-term environmental and fiscal indebtedness.

F. The Saltpond Field as a Constitutional Stress Test

The Saltpond field provides a concrete illustration of the constitutional and institutional tensions identified above. Now wholly owned by GNPC, it demonstrates how the absence of clearly structured fiduciary safeguards can shift decommissioning liabilities from private operators to the public.[97] Over the life of the field, operational control passed through multiple entities before responsibility for dismantling infrastructure and managing associated risks ultimately reverted to public institutions.[98]

This trajectory is not anomalous. It reflects a broader structural pattern in which decommissioning obligations are insufficiently priced, inadequately secured, and weakly monitored during the productive life of petroleum operations, allowing liabilities to crystallize only after private actors have exited. The result is a governance framework in which fiscal exposure, environmental risk, and restoration obligations shift to the State, notwithstanding the Constitution's allocation of stewardship responsibility. Although the Saltpond decommissioning arose largely under an earlier statutory framework, many of the structural weaknesses it exposed, including uncertainty over residual liability, inadequate financial

[97] SOPCL, *supra* note 9, at 10–15 (explaining that only a fraction of the required decommissioning funds had been set aside, that the operator lacked the financial and technical capacity to manage the field, and recommending that GNPC maintain health, safety, security, and environmental conditions on the platform while decommissioning proceeded).

[98] *Id.* at 5–6, 14–15 (tracing the field's transition from private operation back to GNPC amid mounting operational, financial, and decommissioning challenges).

safeguards, and the risk of public assumption of private obligations, remain only partially addressed under Act 919.

Saltpond should therefore be understood not merely as a case study, but as a constitutional stress test. It reveals how a regime formally grounded in trusteeship can, in practice, operate as a technocratic system in which administrative control substitutes for fiduciary accountability. The analysis that follows examines these structural deficiencies in detail, showing how Ghana's decommissioning framework departs from the constitutional requirements of loyalty, prudence, transparency, and preservation.

II. STRUCTURAL BREACHES OF FIDUCIARY DUTY

Article 257(6) creates a relationship of public entrustment in which the State exercises control over national resources for the benefit of the citizenry. Interpreted through fiduciary principles that govern relationships of entrusted authority, this constitutional structure imposes four interlocking obligations on the State: loyalty to the beneficiaries, prudence in decision-making, transparency and accountability in operations, and preservation of the trust corpus for future generations.[99] The Petroleum Act (2016) though progressive in intent, systematically weakens each of these duties. This section maps those breaches.

A. Breach of Loyalty: Executive Discretion over Beneficiary Interests

The duty of loyalty requires the trustee to act solely for the benefit of the beneficiaries, not for institutional convenience, political advantage, or private gain.[100] In fiduciary law, discretionary authority does not eliminate this obligation; rather, it heightens it, because discretion entrusted to a fiduciary must be exercised exclusively for the beneficiaries' interests and within a framework that prevents self-interested or opaque decision-making.[101] Yet Ghana's decommissioning framework elevates ministerial discretion above public accountability.[102] The Minister exercises near-plenary authority to approve, modify, or defer decommissioning plans, to decide whether facilities are to be removed or abandoned, and to determine any compensation for residual infrastructure.[103] Parliament and the public are confined to the margins, with no statutory right to information, consultation, or participation in decommissioning decisions.[104]

Such concentration of power is incompatible with a trust model. In

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[99] *See* Wood, *supra* note 7; Dernbach, *supra* note 23, at 93.
[100] *See* RESTATEMENT (THIRD) OF TRUSTS § 78.
[101] *Id.*; *see* Wood, *supra note* 7; *see also* Dernbach, *supra* note 23, at 110–19.
[102] Petroleum (Exploration and Production) Act, 2016, Act 919 (Ghana).
[103] *Id.* §§ 43–44.
[104] Petroleum (Exploration and Production) Act, 2016, Act 919 (Ghana).

fiduciary logic, discretion is acceptable only when exercised for the beneficiaries' welfare and within a transparent oversight structure.[105] By contrast, Ghana's regime internalizes decision-making within the executive, rendering the "people" beneficiaries in name but not in fact. This displacement of beneficiaries represents a constitutional breach. In fiduciary law, a trustee must administer the trust solely in the interests of the beneficiaries and must provide them with sufficient information to protect their interests in the trust property. Excluding beneficiaries from decisions concerning the management or disposition of trust assets, therefore, conflicts with the fiduciary duty of loyalty, even where the trustee formally possesses discretionary authority.[106] Courts applying the public trust doctrine have emphasized that governments acting as trustees may not exercise their authority in ways that substantially impair the interests of the public beneficiaries.[107] Ghana's reliance on ministerial fiat marks a reversion to the sovereign-ownership model that the 1992 Constitution was designed to repudiate.

B. Breach of Prudence: Inadequate Provision for End-of-Life Liabilities

A prudent trustee must anticipate foreseeable risks and implement reasonable safeguards to address them, particularly where long-term liabilities or environmental harms may arise from the management of trust assets.[108] In the context of petroleum operations, these risks extend across the full spectrum of end-of-life obligations, including both the immediate costs of decommissioning and the residual liabilities that may persist after abandonment. Prudence requires clear allocation of responsibility, adequate financial security, and enforceable continuity of liability beyond the cessation or transfer of operations.

The Petroleum Act addresses these issues only partially. It allows the Minister to approve abandonment and to require "agreed compensation," but fails to specify how such compensation is determined, whether it constitutes full indemnification for decommissioning and post-closure risks, or who bears responsibility if environmental harm materializes after abandonment.[109] In fiduciary terms, this structure permits the trustee to externalize uncertain end-of-life liabilities onto the beneficiaries without

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[105] *See* Criddle, *supra* note 53, at 131.

[106] RESTATEMENT (THIRD) OF TRUSTS § 78 (duty of loyalty requires trustees to administer the trust solely in the interests of the beneficiaries).

[107] *Illinois Cent.*, 146 U.S. at 452–53.

[108] RESTATEMENT (THIRD) OF TRUSTS § 77; Wood, *supra* note 7, at 167–68; Dernbach, *supra* note 23, at 88, 95–102.

[109] Petroleum (Exploration and Production) Act, 2016, Act 919, §§ 43–49 (Ghana).

ensuring that those liabilities are properly quantified, priced, and secured in advance.

This ambiguity leaves the State vulnerable to unquantified environmental and fiscal exposure because the statute provides no clear mechanism for valuing decommissioning costs, no assurance that sufficient financial provision will be available at the point of abandonment, and no framework for assigning continuing responsibility for residual harm. Ghana's history of asset transfers, including the GNPC's assumption of the Saltpond rig without clearly priced liabilities, illustrates the consequences: the State may become the "decommissioner of last resort."[110] Where a trustee assumes control of an asset without securing adequate provision for foreseeable end-of-life liabilities, fiduciary law treats the resulting losses as a failure of prudent administration.[111] In fiduciary terms, this is akin to a trustee exposing the trust corpus to foreseeable loss without adequate safeguards.

Empirical evidence reinforces this point. At Saltpond, decommissioning activities restricted fishing access, reduced incomes by more than 50 percent, and depleted household savings, while the legal framework provided no compensatory or livelihood-restoration mechanisms.[112] This reflects not only inadequate financial planning but a broader failure to internalize the full social and environmental costs of decommissioning. Comparative regimes show how robust frameworks treat end-of-life liabilities as continuous and enforceable obligations.[113] These mechanisms ensure that the immediate costs of dismantling infrastructure and any residual environmental risks remain with the parties that benefited from extraction.[114] Thus, Ghana's statutory silence breaches the duty of prudence.

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[110] Stephens & Acheampong, *supra* note 9, at 12–14 (explaining how inadequate safeguards for the Saltpond decommissioning fund, contractor financial distress, and the dissipation of decommissioning monies ultimately left Ghana bearing the costs of decommissioning notwithstanding the contractor's primary obligation); SOPCL, *supra* note 9, at 14–15 (describing the deteriorating condition of the Saltpond Field and recommendations that GNPC maintain the platform while decommissioning obligations were pursued against the contractor); Lockman et al., *supra* note 76, at 2–3 (describing circumstances in which governments become the "decommissioner of last resort" when private decommissioning obligations are inadequately secured or enforced).

[111] RESTATEMENT (THIRD) OF TRUSTS § 77.

[112] Ohenewaa Boateng Newman *et al.*, *The Effects of Oil Rig Decommissioning on the Livelihoods of Fishermen: Lessons from the Saltpond Oil and Gas Field, Ghana*, 51 HUM. ECOL. 1045, 1048–52 (2023).

[113] Lockman et al., *supra* note 76, at 22–39, 97–119 (showing that some comparative regimes address decommissioning through ongoing planning, financial assurance, and continuing liability mechanisms designed to prevent liabilities from reverting to the public).

[114] *Id.* at 17–26, 32–37 (discussing owner/operator liability, trailing liability,

By failing to comprehensively define, allocate, and secure end-of-life liabilities, the framework exposes beneficiaries to environmental, fiscal and social risks that a diligent trustee would have anticipated, quantified, and safeguarded against in advance.

C. Breach of Transparency and Accountability: the Opaque Decommissioning Fun

Transparency is the operational expression of fiduciary accountability, ensuring that beneficiaries can monitor the trustee's performance and hold the trustee accountable through meaningful access to information concerning the administration of the trust.[115] Yet Ghana's Decommissioning Fund, the central fiscal instrument for managing end-of-life obligations, operates with minimal transparency and limited public oversight.[116] The law neither mandates public disclosure of fund balances nor specifies independent auditing requirements.[117] Moreover, the methodologies for estimating decommissioning costs, determining contributions, and reconciling tax deductions remain undefined.[118] In effect, the Fund functions as a legal structure on paper but remains operationally invisible to its beneficiaries.

Companies may claim tax deductions for projected decommissioning expenses without a statutory mechanism requiring that equivalent funds be verified as deposited into the decommissioning fund. This creates an asymmetry that benefits private operators at public expense. The absence of transparent accounting violates both the fiduciary duty of disclosure and the constitutional demand for accountability in the management of public resources. In traditional trust law, a trustee must maintain accurate accounts of trust property and provide beneficiaries with sufficient information to monitor the trust's administration.[119] Failure to disclose a trust's financial status or to account for transactions involving trust assets is a fundamental breach of fiduciary duty because it prevents beneficiaries from exercising meaningful oversight.[120] Comparative practice suggests minimum safeguards, including independent verification of cost estimates, public reporting of contributions and disbursements, and audit by an independent

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designated funds, bonding arrangements, and other mechanisms intended to prevent decommissioning liabilities from reverting to the public).

[115] RESTATEMENT (THIRD) OF TRUSTS §§ 82–83 (duty to inform and account to beneficiaries).

[116] Petroleum (Exploration and Production) Act, 2016, Act 919, § 45 (Ghana).

[117] *Id.*

[118] *Id.*

[119] RESTATEMENT (THIRD) OF TRUSTS § 83.

[120] *Id.*

authority. Without these, the Fund risks functioning as a symbolic rather than substantive instrument of stewardship.[121]

D. Breach of Preservation: Neglect of Intergenerational and Ecological Stewardship

The duty of preservation obliges the trustee to protect the trust corpus, not only in its economic form but also in its ecological and intergenerational dimensions.[122] In the context of decommissioning, this means ensuring that marine ecosystems are restored or repurposed sustainably and that future generations are not burdened by deferred cleanup costs. Ghana's legal framework is largely silent on these concerns. While the Act permits decommissioning options such as partial removal or abandonment, it provides no structured framework for ecological assessment, biodiversity management, or alternative use of platforms. Nor is there systematic integration of scientific research on the ecological potential of aged infrastructure, including artificial reef programs and "rigs-to-reefs" approaches observed in jurisdictions such as the Gulf of Mexico.[123] This omission reflects an underdeveloped concept of preservation, which can reasonably constitute a breach of the trustee's obligation to maintain the trust property's long-term value. Fiduciary law requires not merely extraction of value but maintenance of the corpus's long-term integrity.[124]

This omission is particularly troubling given the Constitution's environmental directive principles, which require the State to safeguard natural resources for posterity.[125] Interpreted together with Article 257(6), which vests mineral resources in the President "on behalf of, and in trust for, the people of Ghana," these provisions impose a constitutional obligation to manage natural resources in a manner that preserves their ecological integrity and economic value for future generations. A decommissioning regime that neglects ecological restoration and long-term environmental stewardship; therefore, undermines the constitutional trust.

E. Cumulative Effect: From Fiduciary Duty to Fiduciary Failure

Each of these breaches may appear technical when viewed in isolation.

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[121] RESTATEMENT (THIRD) OF TRUSTS § 83 (duty of trustees to keep beneficiaries reasonably informed and to provide accounts); Petroleum Act 1998, c.17 (UK) (regulating decommissioning estimates and operator liabilities through the Offshore Petroleum Regulator for Environment & Decommissioning ("OPRED") oversight framework).

[122] *See* Wood, *supra* note 7, at 167.

[123] *See* Sommer et al., *supra* note 4, at 980–82.

[124] RESTATEMENT (THIRD) OF TRUSTS § 76 (duty to administer trust in accordance with its purposes).

[125] GHANA CONST., art. 36(9).

But cumulatively, they constitute a structural violation of the constitutional trust doctrine by dismantling the institutional safeguards that fiduciary governance requires to protect beneficiaries from opportunism, negligence, and short-term political decision-making.[126] In doing so, they reveal a systemic failure to translate the fiduciary obligations embedded in Article 257(6) into an enforceable regulatory framework for decommissioning.

In fiduciary terms, Ghana's regime resembles a trust administered without enforceable fiduciary safeguards. Decision-making remains discretionary, financial arrangements remain opaque, and the system operates without meaningful standards of accountability. The result is not merely inefficiency but constitutional deficiency. It reflects a failure to translate Article 257(6)'s command that natural resources be held "in trust for the people" into an enforceable architecture of fiduciary governance.[127] Correcting this failure requires not new rhetoric but a new design that embeds fiduciary duties into the procedural DNA of petroleum regulation.

III. INTERNATIONAL AND COMPARATIVE FIDUCIARY MODELS

This Part situates Ghana's trust clause within international and comparative fiduciary models, showing convergence with international stewardship norms and comparative practice, while also highlighting tensions with Ghana's technocratic petroleum regime.

A. The Global Architecture of Marine Stewardship

The fiduciary duty, which can be read in Article 257(6), is not an isolated innovation. It reflects a broader evolution in international environmental law that reconceives state sovereignty over natural resources as stewardship responsibility.[128] That shift is especially visible at the decommissioning stage, when the State must decide whether the costs of removal, restoration, and residual environmental risk will be borne by the polluter or externalized to the public. The global framework governing offshore decommissioning is anchored principally in the United Nations Convention on the Law of the Sea ("UNCLOS"),[129] the 1972 London

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[126] *See* Dernbach, *supra* note 23, at 80–82, 93–98 (explaining that public trust doctrines incorporate fiduciary duties derived from trust law, including duties of loyalty, care, and accountability, and that these principles constrain governmental discretion in managing trust resources); Robert H. Sitkoff, *Fiduciary Principles in Trust Law*, *in* THE OXFORD HANDBOOK OF FIDUCIARY LAW 41 (Evan Criddle, Paul Miller & Robert Sitkoff eds., 2019) (explaining that trustees possess broad administrative powers but must exercise them in accordance with fiduciary duties owed to beneficiaries).

[127] GHANA CONST., art. 257(6).

[128] Blumm & Guthrie, *supra* note 25.

[129] U.N. Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter "UNCLOS"].

Convention and Protocol ("Convention"),[130] and the International Maritime Organization ("IMO") Resolution A.673(16).[131]

UNCLOS imposes a general obligation for States to "protect and preserve the marine environment,"[132] prevent and control pollution from offshore activities,[133] and regulate the removal of abandoned or disused installations with due regard for the safety of navigation, fishing, environmental protection, and the rights of other States.[134] Collectively, these provisions impose a continuing duty across the life cycle of offshore operations.[135] It requires States to regulate disposal pathways such as dumping, control pollution risk, and ensure that liability for environmental harm remains internalized by operators rather than shifted to the public.[136]

That obligation is operationalized by the IMO's 1989 Guidelines, which, although not formally binding, have acquired *quasi-normative* status, setting out a presumption of full removal of installations by the responsible coastal State unless specific safety or environmental grounds justify partial retention.[137] In fiduciary terms, these safeguards reflect prudence and transparency because they require the coastal State to justify removal decisions through structured assessment rather than administrative fiat and to ensure that removal determinations are justified in light of the broader public interest. These procedural safeguards reflect an emerging international expectation that decisions concerning offshore installations are guided not only by technical feasibility but also by principles of environmental stewardship and public accountability.[138]

The Convention and its 1996 Protocol reinforce the fiduciary dimension of state responsibility through the "polluter-pays" principle.[139] They prohibit

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[130] Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Dec. 29, 1972, 1046 U.N.T.S. 120 [hereinafter "London Convention"].

[131] INT'L MARITIME ORG. [hereinafter "IMO"], Res. A.672(16), GUIDELINES AND STANDARDS FOR THE REMOVAL OF OFFSHORE INSTALLATIONS AND STRUCTURES ON THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONE (Oct. 19, 1989), https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.672(16).pdf.

[132] UNCLOS, *supra* note 129, art. 192.

[133] *Id.* art. 194.

[134] *Id.* art. 60(3).

[135] *Id.* arts. 192, 194, 208, 210, 235.

[136] *Id.* arts. 60(3), 208, 210, 235 (requiring regulation of offshore installations, control of dumping, and responsibility and liability for environmental harm).

[137] IMO, *supra* note 131, Res. A.672(16).

[138] *See id.*

[139] London Convention, *supra* note 130; 1996 Protocol to the Convention on the

the dumping of industrial waste, including dismantled offshore structures, unless authorized under strict environmental conditions and subject to permitting procedures that require environmental assessment and regulatory approval.[140] The "polluter-pays" logic is fiduciary: those who profit from exploiting a shared resource must bear the cost of its restoration. The Convention thus codifies a continuing obligation beyond the operational life of an installation, ensuring that environmental burdens are not externalized onto the public but are instead internalized by the polluter responsible for the activity.

While Ghana's participation in the London Convention reflects its commitment to the international legal framework governing the disposal of wastes at sea,[141] the absence of clear rules on liability allocation in its Petroleum Act therefore sits uneasily with these international commitments, because a regulatory system that allows cleanup costs to shift to the State undermines the Convention's polluter-pays principle.

Africa's regional environmental architecture reinforces the same logic. The Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention, 1981), to which Ghana is a party, requires States to prevent, reduce, and control pollution from offshore installations (Article 8) to undertake environmental impact assessment and information-sharing (Article 13), to avoid the transfer of environmental harm, and to develop liability and compensation frameworks for pollution damage (Article 15).[142] Its 2019 *Protocol on Environmental Norms and Standards for Offshore Oil and Gas Activities* introduces more specific obligations, requiring States to adopt decommissioning frameworks that ensure financial guarantees, operator liability, and post-abandonment monitoring.[143] Complementing the Abidjan Convention, the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes (1991) prohibits the dumping of hazardous waste in

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Prevention of Marine Pollution by Dumping of Wastes and Other Matter, arts. 3–4, Nov. 7, 1996, 36 I.L.M. 1 (1997).

[140] *Id.*

[141] *E.g.*, Ghana Supports Efforts to End Marine Pollution, CLIMATEACTION (May 25, 2017), https://www.climateaction.org/news/ghana-supports-efforts-to-end-marine-pollution [https://perma.cc/U47M-Y7EP].

[142] Abidjan Convention for Co-Operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, arts. 8, 13, Mar. 23, 1981, 20 I.L.M. 746.

[143] Additional Protocol to the Abidjan Convention on Environmental Standards and Guidelines for Offshore Oil and Gas Activities, arts. 6(1), 7(1)(a), May 3, 2019, 31 I.L.M. 34. [hereinafter "Abidjan Convention"].

Africa's territorial waters.[144] The African Charter on Human and Peoples' Rights ("Charter") constitutionalizes this regional stewardship model, recognizing a collective right to "a general satisfactory environment favorable to development."[145] This provision has been interpreted as imposing positive obligations on States to prevent environmental degradation and to ensure public participation in environmental decision-making.[146]

These regional instruments therefore create a fiduciary ecosystem by requiring States to prevent and control marine pollution, regulate pollution arising from seabed exploration and exploitation activities, and conduct environmental assessments for projects likely to significantly affect the marine environment.[147] In doing so, they emphasize precaution, accountability, and long-term stewardship of marine resources, positioning African States as custodians of regional shared environmental patrimony. Read against this international and regional backdrop, Article 257(6) cannot plausibly be treated as a mere declaration of sovereign ownership. These international norms reinforce a constitutional reading of the trust clause under which the State must manage petroleum resources with due diligence, transparency, and financial responsibility, ensuring that the burdens of extraction are not externalized to present or future beneficiaries.

B. Norway: Multi-Agency Oversight and Public Accountability

Norway's petroleum regime illustrates the institutionalization of fiduciary safeguards in decommissioning through a regulatory framework that requires State approval of decommissioning plans, multi-factor evaluation of disposal options, public consultation, and continuing liability among operators.[148] Under the *Petroleum Activities Act* 1996, licensees must submit a Cessation Plan, comprising a Disposal Report and an

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[144] Bamako Convention on the Ban of Imports into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, art. 4, Jan. 30, 1991, 30 I.L.M. 773.

[145] African Charter on Human and Peoples' Rights, art. 24, June 27, 1981, 21 I.L.M. 58 (entered into force Oct. 21, 1986), ("All peoples shall have the right to a general satisfactory environment favourable to their development.")

[146] *Soc. & Econ. Rights Action Ctr. (SERAC) v. Nigeria, Communication* 155/96, African Comm'n on Hum. & Peoples' Rts. ¶¶ 50–53 (Oct. 27, 2001) (holding that the right to a "general satisfactory environment favorable to development," under Article 24 of the African Charter imposes obligations on states to prevent and remedy environmental degradation and to protect communities from harmful corporate activities).

[147] Abidjan Convention, *supra* note 143, arts. 4, 8–11, 13.

[148] *See* Dag Erlend Henriksen, *Decommissioning Practice in Norway*, *in* EUROPEAN ENERGY LAW REPORT XIII 351, 357–61 (Martha M. Roggenkamp & Catherine Banet eds., 2020).

Environmental Impact Assessment ("EIA"), to the Ministry of Petroleum and Energy ("MPE") two to five years before production ends.[149] The MPE then coordinates a multi-agency review, involving the Norwegian Petroleum Directorate ("NPD") for resource management, the Petroleum Safety Authority ("PSA") for safety, and the Norwegian Environment Agency ("NEA") for pollution control in its consideration of the technical, safety, environmental, and economic implications of the proposed decommissioning plan.[150] The EIA component of the cessation plan is subject to a public hearing, and the Disposal Report will be evaluated by the MPE, the Ministry of Local Government and Regional Development and the NPD.[151] Where a Cessation Plan proposes to leave structures in place or to permit partial removal, the proposal must be presented to the OSPAR Commission under the Convention for the Protection of the Marine Environment of the North-East Atlantic ("OSPAR Convention"), before the Norwegian Parliament considers the disposal decision.[152]

Norwegian petroleum law embeds decommissioning obligations within a framework of continuing regulatory control and layered liability.[153] Once a disposal decision is made, licensees and facility owners remain responsible for implementing it, and this obligation persists even after the petroleum license has expired.[154] The statutory scheme further prevents operators from avoiding disposal responsibilities through transfers of license interests.[155] Parties that assign their participation in a license may retain residual financial responsibility for disposal costs associated with installations that existed at the time of the transfer, with liability potentially extending through successive transfers of license interests.[156] Norwegian law also imposes joint and several liability on responsible parties for damage or inconvenience arising from disposal activities or abandoned facilities, unless

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[149] IOGP, *supra* note 18, at 58.

[150] *Id.* at 58–60.

[151] *Id.* at 59.

[152] *Id.* at 58.

[153] Petroleum Activities Act, 1996, No. 72, §§ 5-3 to 5-6 (Nor.) (establishing continuing obligations to implement disposal decisions, assignor liability following license transfers, and joint and several liability for damage associated with disposal or abandonment).

[154] *Id.* § 5-3 (providing that the licensee and owner must ensure that a disposal decision is carried out, even where the decision is made or implemented after the license has expired).

[155] *Id.* § 10-12 (requiring ministerial approval for transfers of license interests and petroleum facilities).

[156] *Id.* §§ 5-3, 10-12; Regulations to Act Relating to Petroleum Activities of 27 June 1997 No. 653 § 72a (Nor.); NORWEGIAN OFFSHORE DIRECTORATE, REGULATIONS FOR SHUTDOWN AND DISPOSAL, ch. 5 (explaining that transferring parties may retain secondary financial liability for disposal costs if new licensees default).

the Ministry determines otherwise.[157]

These provisions create a regime in which responsibility for offshore infrastructure remains legally anchored to the license group and its predecessors until disposal obligations are fulfilled.[158] By extending liability beyond license expiry and through subsequent transfers of license interests, the framework substantially reduces the risk that the State will be left to assume the financial or environmental burdens associated with decommissioning disused petroleum installations.[159]

Norway's decommissioning framework illustrates how institutional design can operationalize fiduciary stewardship over natural resources. Decision-making authority is dispersed across specialized agencies, public participation is embedded through environmental impact assessment procedures, and international oversight arises through the OSPAR regime. At the same time, the Petroleum Activities Act anchors responsibility for disposal decisions firmly to the license group: licensees remain obligated to implement disposal decisions even after license expiry, prior assignors may retain residual financial liability following transfers of license interests, and responsible parties may be held jointly and severally liable for damage associated with disposal or abandonment.

This institutional pluralism functions as a fiduciary safeguard. By dispersing regulatory authority across agencies, incorporating public participation, and maintaining continuing liability for operators and their predecessors, the Norwegian regime minimizes the risk that executive discretion or private exit strategies could erode the State's stewardship obligations over offshore petroleum resources. In functional terms, responsibility for offshore infrastructure remains legally anchored to those who developed and benefited from the resource.

The contrast with Ghana's experience at the Saltpond Field underscores the importance of such a framework. As discussed above, the State, acting through GNPC, is already bearing the financial and operational responsibilities associated with dismantling the field's offshore infrastructure. Norway's regime reflects the opposite institutional logic:

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[157] Petroleum Activities Act, 1996, No. 72, § 5-4(3) (Nor.) (imposing joint and several liability for financial obligations arising from disposal activities and abandoned facilities unless otherwise determined by the Ministry).

[158] Henriksen, *supra* note 148, at 358–63 (explaining that disposal obligations remain binding after license expiry and that assignors may retain secondary liability for decommissioning obligations following transfers of license interests).

[159] *Id.* at 360–63 (explaining that Norway's secondary-liability regime is designed to ensure that sufficient financial resources remain available to satisfy decommissioning obligations notwithstanding license transfers or operator default).

while private operators may exploit petroleum resources, the legal framework ensures that responsibility for their safe disposal remains with the operators and their successors, rather than shifting responsibility to the State.

C. United Kingdom: Liability Continuity and Financial Assurance

The United Kingdom's offshore decommissioning regime is governed by the *Petroleum Act 1998* (as amended by the *Energy Acts 2008* and *2016*).[160] The statutory framework reflects a system of layered regulatory oversight designed to ensure that offshore petroleum installations are decommissioned in a manner that protects the public interest and prevents the transfer of cleanup liabilities to the State.[161] Operators must submit a Decommissioning Program to the Offshore Petroleum Regulator for Environment and Decommissioning ("OPRED"), a regulatory unit within the Department for Energy Security and Net Zero.[162]

OPRED reviews operators' decommissioning cost estimates and may request supporting evidence or assurance of reasonableness.[163] Operators must also maintain comprehensive environmental and safety documentation, which forms part of the regulatory review and public consultation process.[164] Transparency is reinforced through periodic government reporting and National Audit Office reviews assessing the government's potential exposure to offshore decommissioning liabilities.[165] Decommissioning programs undergo consultation with government agencies, stakeholders, and the public.[166]

Under the Petroleum Act, once the Secretary of State issues a

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[160] Petroleum Act 1998, c.17, §§ 29–45 (U.K.); Energy Act 2008, c.32 (U.K.); Energy Act 2016, c.20 (U.K.).

[161] Petroleum Act 1998, c.17, §§ 29–45 (U.K.); *see* DEP'T FOR ENERGY SEC. & NET ZERO, GUIDANCE NOTES: DECOMMISSIONING OF OFFSHORE OIL AND GAS INSTALLATIONS AND PIPELINES UNDER THE PETROLEUM ACT (Nov. 2018) [hereinafter DESNZ], https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760560/Decom_Guidance_Notes_November_2018.pdf [https://perma.cc/T78G-CDV3]; NAT'L AUDIT OFFICE, OIL AND GAS IN THE UK—OFFSHORE DECOMMISSIONING (2019), https://www.nao.org.uk/wp-content/uploads/2019/01/Oil-and-gas-in-the-UK-offshore-decommissioning.pdf [https://perma.cc/X5QE-KRA7].

[162] DESNZ, *supra* note 161, §§ 3.3, 5.1–5.16 (explaining the statutory requirement to prepare and submit decommissioning programs under the Petroleum Act 1998 and the approval process administered by OPRED within DESNZ).

[163] *Id.* §§ 5.4–5.16.

[164] *Id.* §§ 5.4–5.16, 6.1–6.8.

[165] UK COMPTROLLER AND AUDITOR GENERAL, NAT'L AUDIT OFFICE, OIL AND GAS IN THE UK—OFFSHORE DECOMMISSIONING, 27–33, (National Audit Office, Jan. 25, 2019).

[166] DESNZ, *supra* note 161, §§ 5.8–5.12.

decommissioning notice, liability attaches to the parties responsible for the installation.[167] That liability remains joint and several among all parties within the chain of title to a petroleum operation, including prior licensees.[168] This "trailing liability" ensures that obligations persist beyond transfers of ownership and prevents operators from externalizing end-of-life costs through asset sales.

Financial assurance mechanisms reinforce this structure. The Secretary of State may require licensees to provide financial assurance instruments throughout the life cycle of the operation where the potential risk of burden shifting to the taxpayer is deemed unacceptable.[169] These measures allow regulators to address financial risk dynamically throughout a field's lifecycle and ensure sufficient resources are available to fulfill decommissioning obligations.

Thus, the United Kingdom's regime operationalizes fiduciary governance through two complementary mechanisms. First, it extends responsibility across time by preserving liability along the chain of licensees. Second, it secures that responsibility through enforceable financial assurance. The combined effect is to anchor decommissioning obligations firmly to those who benefited from extraction and to prevent the migration of environmental and financial burdens to the State.

D. United States: Layered Oversight and Enforcement-Backed Accountability

The United States applies a statutory model of enforceable accountability for offshore decommissioning under the Outer Continental Shelf Lands Act ("OCSLA") and its implementing regulations at 30 CFR 250 Subpart Q.[170] Federal oversight is divided between the Bureau of Safety and Environmental Enforcement ("BSEE"), which supervises operational compliance and decommissioning execution, and the Bureau of Ocean Energy Management ("BOEM"), which administers leasing and financial assurance requirements designed to secure performance. OCSLA authorizes the federal government to regulate offshore operations on the Outer Continental Shelf to ensure the orderly development of offshore resources

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[167] Petroleum Act 1998, c.17, §§ 29–30 (U.K.) (decommissioning notices and joint and several liability).

[168] *Id.*

[169] Petroleum Act 1998, c.17, § 38 (U.K.) (power to require financial security).

[170] Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331–1356 (2018); 30 C.F.R. pt. 250, subpt. Q (2024) (Decommissioning Activities). In the United States, decommissioning obligations may arise under federal or state law depending on whether operations occur in federal or state waters. This discussion focuses on the federal regime under the Outer Continental Shelf Lands Act.

and the protection of the marine and coastal environment.[171]

Within this framework, BSEE oversees the approval and implementation of decommissioning activities, including platform removal, pipeline decommissioning, and site clearance. The regulations require that facilities be removed and sites restored in a manner that protects navigation, other users of the Outer Continental Shelf, and the marine environment.[172] BOEM complements this operational oversight by requiring operators to maintain financial assurances sufficient to cover estimated decommissioning liabilities. These assurances typically take the form of surety bonds, supplemental bonding, or other financial guarantees tied to the projected costs of dismantling offshore infrastructure and restoring the seabed.[173] In addition, federal regulations impose timing requirements, often referred to as "idle iron" rules, that require operators to commence decommissioning within specified periods after production ceases, thereby preventing indefinite deferral of environmental obligations.[174]

The liability structure under U.S. law is deliberately continuing and enforcement backed. Federal regulations provide that lessees, owners of operating rights, and their predecessors are jointly and severally liable for decommissioning obligations as those obligations accrue and until each obligation is satisfied.[175] As a result, responsibility for dismantling offshore installations remains attached to the chain of title rather than shifting to the federal government if a current operator defaults. Prior interest holders may therefore be required to finance or perform decommissioning work if subsequent operators fail to meet their obligations. Scholars have described this framework as imposing "joint and several trailing liability" designed to prevent operators from transferring decommissioning obligations to financially weaker entities.[176]

Transparency and public accountability are reinforced through the National Environmental Policy Act ("NEPA"), which requires federal

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[171] Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331–1356 (2018).

[172] 30 C.F.R. pt. 250, subpt. Q (2025) (Decommissioning Activities).

[173] 30 C.F.R. §§ 556.900–.905 (2025) (BOEM financial assurance requirements).

[174] *See* Keith B. Hall, *Decommissioning of Offshore Oil and Gas Facilities in the United States*, 14 CHARLESTON L. REV. 437, 452 (2020) (describing the "Idle Iron" policy requiring timely decommissioning of inactive facilities).

[175] 30 C.F.R. § 250.1701 (2023) (joint and several liability for decommissioning obligations).

[176] MARTIN LOCKMAN & ROMANY M. WEBB, ENFORCING LEGACY ENVIRONMENTAL LIABILITIES FOR OFFSHORE OIL AND GAS INFRASTRUCTURE 11 (Sabin Ctr. for Climate Change L., Oct. 2024), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1235&context=sabin_climate_change [https://perma.cc/SV84-46AM].

agencies to prepare a "detailed statement" for major federal actions significantly affecting the quality of the human environment.[177] That statement must evaluate environmental impacts, unavoidable adverse effects, alternatives to the proposed action, and irreversible commitments of resources, and it must be circulated to other agencies and made available to the public before final federal action is taken.[178] Environmental assessments and environmental impact statements prepared under NEPA expose the environmental consequences and mitigation measures associated with offshore activities to public scrutiny and interagency review. U.S. law also permits certain alternative decommissioning outcomes, including the conversion of offshore structures into artificial reefs under approved programs, provided they are consistent with environmental and regulatory objectives.[179]

These mechanisms reflect three core safeguards within the U.S. decommissioning framework: procedural transparency through environmental review under NEPA, financial prudence through bonding and financial assurance requirements administered by BOEM, and continuing operator responsibility through joint and several trailing liability enforced by BSEE. Through these interlocking safeguards, the U.S. regime seeks to ensure that offshore installations are decommissioned responsibly and that the financial and environmental burdens of restoring offshore environments remain with the operators who benefited from resource extraction; rather, than being shifted to the public.[180]

E. Normative Convergence: Toward Fiduciary Governance

A comparison of these international and comparative models reveals a common institutional pattern. Although they differ in legal form, they converge around several fiduciary principles relevant to decommissioning.[181] First, they reject decommissioning as a purely internal administrative matter. Instead, they structure decisions through disclosure, environmental assessment, consultation, or multi-agency review.

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[177] National Environmental Policy Act, 42 U.S.C. § 4332(C).

[178] *Id.*

[179] *See* Hall, *supra* note 174, at 459 (discussing the Rigs-to-Reefs program permitting conversion of offshore structures into artificial reefs subject to regulatory approval); *see also* Lockman et al., *supra* note 76, at 115 (noting that some jurisdictions permit alternative uses of offshore infrastructure, including reefing, under regulated conditions).

[180] Hall, *supra* note 174, at 449–56 (describing the federal regime's joint-and-several decommissioning liability rules, continuing liability of former leaseholders, and financial assurance requirements); *see also* Lockman & Webb, *supra* note 176, at 3–4 (explaining that "joint and several trailing liability" enables regulators to recover decommissioning costs from prior operators if current owners default).

[181] *See* Lockman et al., *supra* note 76.

Transparency and participation are treated not as optional political goods but as integral features of legitimate stewardship. Second, they internalize end-of-life liabilities. Through joint and several liability, trailing liability, financial guarantees, or decommissioning funds tied to verified obligations, these regimes seek to ensure that those who benefit from extraction remain responsible for its closure. This reflects fiduciary prudence and loyalty by preventing the transfer of financial and environmental burdens to the public. Third, they extend responsibility across time. Whether through post-abandonment monitoring, continuing operator liability, or environmental review of alternatives to full removal, these models recognize that preservation is an intergenerational obligation rather than a narrow technical endpoint.

Emerging African practice reflects similar fiduciary trends. Nigeria's Petroleum Industry Act requires operators to contribute to dedicated decommissioning and abandonment funds calibrated to projected closure costs, thereby internalizing end-of-life liabilities during the productive life of a field.[182] The regime also preserves continuity of responsibility through regulatory oversight and post-transfer obligations, reducing the risk that liabilities will be externalized to the State.[183] South Africa's constitutional jurisprudence reinforces this trajectory from a different doctrinal starting point. Section 24 of the Constitution has been interpreted as imposing a custodial duty on the State to protect the environment for present and future generations, embedding principles of sustainability and intergenerational equity in resource governance.[184] These emerging developments illustrate a broader regional movement toward fiduciary stewardship, in which environmental protection, financial assurance, and continuing accountability are treated as integral features of petroleum governance. They also underscore a recurring structural risk that, absent credible funding mechanisms and enforceable liability frameworks, the State may become the decommissioner of last resort. Read in this light, Ghana's constitutional trust clause aligns with emerging African practice at the level of principle but diverges at the level of institutional design.

For Ghana, the comparative lesson is not that institutional forms must be copied wholesale. It is that the fiduciary logic already embedded in Article 257(6) must be translated into the legal architecture of decommissioning. The Constitution already frames natural resources as held in trust for the people. What remains is to align decommissioning governance with that trust through clearer liability continuity, robust

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[182] Petroleum Industry Act, 2021, §§ 232–233 (Nig.).

[183] *Id.*

[184] *Fuel Retailers*, 2007 (6) SA ¶¶ 43–45 (CC).

financial assurance, transparent procedures, and institutional safeguards against executive concentration and public burden shifting.

IV. TOWARD A CONSTITUTIONALIZED DECOMMISSIONING REGIME

Ghana's decommissioning framework reflects a fundamental tension identified in the preceding Parts, where a constitution that establishes fiduciary stewardship coexists with a statutory regime that permits discretion without corresponding accountability. Bridging this gap requires not only administrative refinement but doctrinal and institutional realignment grounded in Article 257(6)'s command that petroleum resources be held "on behalf of, and in trust for, the people of Ghana." This Part advances reforms derived from fiduciary principles, comparative petroleum governance, and constitutional interpretation. It proposes doctrinal, institutional, fiscal, participatory, and capacity-building reforms designed to translate the constitutional trust from a declaratory norm into an enforceable framework governing decommissioning.

These reforms correspond to a specific dimension of the constitutional trust. Doctrinal reform gives effect to the duty of loyalty by making fiduciary obligations judicially enforceable. Institutional reform operationalizes collective trusteeship and constrains conflicted discretion. Fiscal reform implements the duty of prudence through ex ante financial assurance and verification. Participatory and procedural reform gives effect to transparency and accountability. Capacity-building reform advances preservation by ensuring that Ghana can sustainably manage and restore its resource base over time. These reforms convert fiduciary principles from abstract constitutional commitments into enforceable structures of governance. They also respond directly to failures observed in the decommissioning of the Saltpond field.

A. Doctrinal Foundation: Making the Trust Clause Judicially Enforceable

The starting point is doctrinal. This doctrinal reform gives legal effect to the duty of loyalty by ensuring that the State's management of petroleum resources is subject to judicial review for fidelity to the interests of the beneficiaries of the constitutional trust. Ghanaian courts and policymakers have often treated the trust clause as a symbolic declaration of ownership rather than a binding fiduciary standard.[185] This interpretive minimalism cannot be sustained. Ghana's judiciary should recognize that the constitutional trust clause imposes substantive and procedural obligations on the State. These include a duty to act in the public interest when managing

[185] *Adjaye*, Suit No. C.144/94, at 15.

resource assets, a duty to avoid decisions that unduly risk the environmental corpus, and a duty to ensure public participation and accountability in resource decision-making.[186] These obligations reflect a broader constitutional logic in which trust language carries enforceable duties of stewardship.

Comparative public trust jurisprudence confirms this position. In *Illinois Central Railroad Co. v. Illinois*, the U.S. Supreme Court held that the State may not exercise its authority in a manner that substantially impairs public trust resources.[187] Similarly, in *M.C. Mehta v. Kamal Nath*, the Indian Supreme Court emphasized that natural resources are held by the State as a trustee for the public,[188] while South Africa's Constitutional Court in *Fuel Retailers* required decision-makers to consider long-term environmental sustainability in exercising statutory discretion.[189] Together, these decisions demonstrate that trust language in constitutional or quasi-constitutional settings is not merely declaratory but carries enforceable duties of stewardship, prudence, and accountability. Although not binding in Ghana, these authorities reflect a shared constitutional logic in which trust language carries enforceable obligations of stewardship.

The principal doctrinal obstacle is the reasoning in *Adjaye*, which characterized the President's trusteeship over mineral resources as a "trust in the higher sense" and treated Article 257(6) as declaratory of sovereignty rather than a source of enforceable rights.[190] This position reflects the concern that judicial enforcement of fiduciary duties would draw courts into policy-laden decisions traditionally reserved for the executive.

That concern, however, is overstated. Comparative jurisprudence demonstrates that fiduciary review does not displace administrative discretion or require courts to substitute their judgment for that of the agency on technical matters. Rather, it disciplines discretion by requiring executive decisions be justified by reasoned explanation, environmental prudence, and accountability to the public beneficiaries of the trust. Under this approach, the doctrinal shift has immediate implications for decommissioning. Ministerial approvals would no longer be insulated acts of executive discretion but trustee decisions subject to fiduciary review. Courts could require the Minister to demonstrate that decommissioning approvals satisfy the duties of loyalty, prudence, transparency, and

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[186] *Illinois Cent.* 146 U.S. at 452–53; *M.C. Mehta v. Kamal Nath*, (199) 1 SCC ¶¶ 34–35; *Fuel Retailers*, 2007 (6) SA ¶¶ 50–60 (CC).

[187] *Illinois Cent.*, 146 U.S. at 452–53.

[188] *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC ¶¶ 34–35.

[189] *Fuel Retailers*, 2007 (6) SA ¶¶ 58–60 (CC).

[190] *Adjaye*, Suit No. C.144/94, at 15.

preservation, thereby transforming constitutional rhetoric into justiciable duty. Properly understood, this approach gives substantive effect to Article 257(6)'s command that natural resources be held "on behalf of, and in trust for, the people of Ghana." Under Ghana's purposive approach to constitutional interpretation, the trust clause cannot be reduced to symbolic surplusage but must operate as a source of enforceable fiduciary obligation governing the State's management of petroleum resources, particularly at the point of decommissioning, where environmental and fiscal risks crystallize.

B. Institutional Design: From Ministerial Control to Multi-Stakeholder Trusteeship

A constitutionalized decommissioning regime requires institutional design consistent with fiduciary constraints on discretion. Ghana's current framework concentrates decision-making authority in the Minister, thereby permitting a single actor to determine outcomes that affect the trust corpus. This structure is difficult to reconcile with the fiduciary principle that trustees must be subject to checks that prevent self-dealing, conflicts of interest, and unreviewable discretion.[191] To align institutional design with Article 257(6), Parliament should amend the Petroleum Act to establish an independent Decommissioning Oversight Board (DOB), composed of representatives from the Ministry of Energy (policy oversight), the Petroleum Commission (technical regulation), the Environmental Protection Agency (environmental review), the Ministry of Finance (fiscal accountability), as well as representatives of coastal communities and civil-society organizations with expertise in environmental governance. This institutional restructuring operationalizes fiduciary governance by diffusing decision-making authority, thereby reducing the risk that discretionary power will be exercised in ways that diverge from the interests of the beneficiaries.

Comparative petroleum regimes support such institutional dispersion. In jurisdictions such as Norway and the United Kingdom, decommissioning decisions are not vested in a single ministerial authority but are subject to multi-agency oversight that integrates technical, environmental, and fiscal review.[192] These arrangements reflect an underlying fiduciary logic: where decisions impose long-term environmental and financial consequences on

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[191] RESTATEMENT (THIRD) OF TRUSTS §§ 78–79 (duty of loyalty; duty to avoid conflicts); *see* Dernbach, *supra* note 23, at 102; Criddle, *supra* note 53, at 129–31 (describing fiduciary accountability mechanisms that constrain discretion and guard against self-dealing, conflicts of interest, and abuse of entrusted authority).

[192] Petroleum Activities Act, 1996, No. 72 (Nor.); Energy Act 2008, c. 32 (U.K.); IOGP, *supra* note 18.

the public, authority must be distributed across institutional actors to ensure accountability and reduce the risk of unilateral error.

A possible objection is that multi-stakeholder oversight may introduce administrative complexity and delay decision-making in a technically demanding domain. That concern, however, reflects a preference for administrative efficiency over fiduciary accountability. Under fiduciary governance, discretion is not displaced but disciplined. Public actors retain authority to make policy-laden judgments, yet that authority must be exercised within a framework of accountability that ensures fidelity to public purposes and the interests of those subject to their power.[193] The proposed Board would not displace ministerial authority but would structure it through collective review, thereby operationalizing the concept of shared trusteeship implicit in Article 257(6).

Parliamentary oversight further reinforces this structure. Requiring the Minister to table an annual Decommissioning Report detailing approved plans, fund balances, and end-of-life liabilities would transform oversight from abstract supervision into concrete accountability. Properly understood, these institutional reforms give effect to the constitutional requirement that natural resources be managed "in trust for" the people by ensuring that no single trustee exercises unreviewable control over decisions affecting the trust corpus.

C. Financial Architecture: Securing End-of-Life Obligations

Financial architecture is central to fiduciary performance because it determines whether the costs of decommissioning are internalized by operators or externalized to the public.[194] Ghana's existing Decommissioning Fund lacks the structural safeguards necessary to ensure that sufficient and verifiable resources will be available when liabilities crystallize.[195] To satisfy the fiduciary duties of prudence and accountability, the Fund should be reconstituted by statute as a Public Trust Account managed under the joint supervision of the Ministry of Finance, the Auditor-General, and the DOB.

This reform should incorporate mechanisms widely recognized in comparative petroleum regimes, including independent verification of decommissioning cost estimates, mandatory financial assurance through

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[193] Paul B. Miller & Andrew S. Gold, *Fiduciary Governance*, 57 WM. & MARY L. REV. 513, 575–76 (2015); Criddle, *supra* note 53, at 121–22 (arguing that fiduciary governance preserves administrative discretion while disciplining it through structures of accountability and duties of fidelity to public purposes).

[194] Lockman et al., *supra* note 76; Pigou, *supra* note 57.

[195] Stephens & Acheampong, *supra* note 9; SOPCL, *supra* note 9.

bonds or escrow arrangements established prior to production, synchronization of tax deductions with verified contributions to the Fund, and the publication of audited financial statements laid before Parliament.[196] In jurisdictions such as the United Kingdom and Norway, regulators require operators to demonstrate financial capacity to meet decommissioning obligations and maintain ongoing oversight of provisioning arrangements. These mechanisms reflect the fiduciary requirement that trustees safeguard the trust corpus against foreseeable loss.

Financial assurance, however, cannot operate effectively in the absence of a clear allocation of ultimate liability.[197] Comparative regimes, therefore, complement funding mechanisms with liability rules designed to prevent the State from becoming the decommissioner of last resort.[198] In jurisdictions such as the United Kingdom and the United States, decommissioning obligations are structured as joint and several liabilities that extend not only to current operators but also to prior interest holders, ensuring that liability trails the asset and cannot be extinguished through assignment or divestment.[199] This approach reflects a core fiduciary principle that those who benefit from resource extraction must bear the full lifecycle costs of restoration.

By contrast, Ghana's current framework permits the dissipation of liability through ownership transfers and weakly specified residual obligations, thereby exposing the public to unfunded end-of-life costs.[200] A constitutionalized regime must therefore require that decommissioning liability be joint, several, and continuing, attaching to all present and former licensees unless expressly discharged by the State upon verified satisfaction of obligations, and supported by enforceable financial assurance calibrated to the full estimated cost of decommissioning.

Critics may argue that stricter financial assurance requirements increase

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[196] *See* RESTATEMENT (THIRD) OF TRUSTS §§ 82–83 (duty to inform and account); Criddle, *supra* note 53, at 128–32 (describing fiduciary accountability mechanisms, including residual controls, accounting obligations, and oversight structures designed to safeguard entrusted resources and deter opportunism); Petroleum Act 1998 (UK) and associated OPRED oversight framework (requiring regulatory scrutiny of decommissioning liabilities); IOGP, *supra* note 18.

[197] Lockman et al., *supra* note 76, at 23–26 (explaining that guarantee, bonding, and security arrangements depend upon clearly allocated decommissioning liability and may fail where ultimate responsibility is uncertain or inadequately secured).

[198] *Id.* at 2–3 (explaining that governments often become the "decommissioner of last resort" when private actors fail to satisfy decommissioning obligations).

[199] *Id.* at 17–19, 104–05, 113–15 (describing joint and several and trailing liability regimes in jurisdictions including the United Kingdom and the United States).

[200] Stephens & Acheampong, *supra* note 9; SOPCL, *supra* note 9.

investment costs and may discourage marginal operators. However, that objection fails to account for the core fiduciary principle that the true cost of resource extraction includes end-of-life obligations.[201] A regime that permits operators to externalize decommissioning costs to the public effectively subsidizes private extraction at the expense of future taxpayers.[202] Fiduciary stewardship requires that these costs be internalized ex ante, even if doing so affects investment decisions.

Under Article 257(6), the State is not merely a regulator, but a trustee obligated to preserve the fiscal and environmental integrity of the resource base. Reconstituting the Decommissioning Fund as a Public Trust Account ensures that financial provisioning is transparent, verifiable, and sufficient to meet future obligations, while a clear allocation of continuing liability ensures that those obligations remain firmly anchored to the actors who generated them. These measures give practical effect to the duties of prudence and accountability embedded in the constitutional trust.

D. Procedural Legitimacy: Transparency, Participation & Review

A defining feature of fiduciary governance is that beneficiaries must be able to monitor and influence decisions affecting the trust property.[203] Ghana's current decommissioning framework largely excludes the public from meaningful participation, rendering the beneficiaries of the constitutional trust effectively invisible. To align the regime with Article 257(6), participation must be embedded as a legal entitlement rather than an administrative option.

Statutory reform should therefore require public notice and hearings prior to the approval of any decommissioning plan, mandate Environmental and Social Impact Assessment (ESIA) subject to independent review and public input and establish robust disclosure obligations under right-to-information principles. These procedural safeguards implement the fiduciary duty of transparency and accountability by ensuring that beneficiaries of the constitutional trust have meaningful access to information and opportunities to influence decisions affecting the trust corpus. These requirements are also consistent with comparative environmental frameworks such as NEPA, which treats public participation as a condition of legitimate decision-making in matters affecting

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[201] Lockman et al., *supra* note 76.

[202] Pigou, *supra* note 57.

[203] Miller & Gold, *supra* note 194, at 553–54 (explaining that fiduciary governance depends upon accountability structures enabling oversight of decisions affecting entrusted purposes and assets); Criddle, *supra* note 53, at 121–22 (describing fiduciary governance as relying upon monitoring and residual control to ensure fidelity in the administration of entrusted authority).

environmental resources.[204]

It may be argued that expanded participation introduces delay and politicization into technically complex decisions. However, participatory processes enhance the legitimacy of decision-making and improve the quality of outcomes, while also reducing the likelihood of downstream conflict by fostering stakeholder commitment and discouraging recourse to adversarial forums.[205] From a fiduciary perspective, participation is not an obstacle to efficiency but a mechanism for ensuring that trustees remain accountable to beneficiaries.[206]

Article 257(6) vests natural resources in the State "on behalf of" the people. That language implies not only substantive stewardship but procedural inclusion. A regime that excludes beneficiaries from decisions affecting the trust corpus fails to satisfy the constitutional requirement of transparency and accountability. Embedding participation within the decommissioning process thus operationalizes the fiduciary relationship between the State and its citizens.

E. Implementation Capacity: A Domestic Decommissioning Ecosystem

Fiduciary stewardship extends beyond immediate regulatory compliance to the long-term preservation and enhancement of the trust corpus.[207] Ghana's current reliance on external expertise for decommissioning raises concerns about costs, sustainability, and institutional capacity, given the limited local expertise to handle complex decommissioning projects.[208] As

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[204] 42 U.S.C. §4332(C) (requiring environmental impact statements and public participation in federal decision-making); *see also* 40 C.F.R. §§ 1500–1508.

[205] *See* Chris Ansell & Alison Gash, *Collaborative Governance in Theory and Practice*, 18 J. PUB. ADMIN. RES. & THEORY 543, 550–57 (2008) (discussing how stakeholder participation enhances legitimacy, improves decision-making, and reduces conflict by fostering commitment to collaborative processes).

[206] RESTATEMENT (THIRD) OF TRUSTS § 82 (duty to inform and report); Miller & Gold, *supra* note 194, at 553–54 (explaining that fiduciary governance depends upon institutional accountability mechanisms through which affected parties may monitor and influence fiduciary administration); Criddle, *supra* note 53, at 121–22, 147–48 (describing fiduciary governance as relying upon monitoring, residual control, and accountability mechanisms to ensure fidelity in the exercise of entrusted authority).

[207] RESTATEMENT (THIRD) OF TRUSTS §§ 76–77, 79; *see also* Dernbach, *supra* note 23 (examining *Pennsylvania Environmental Defense Foundation v. Commonwealth* as a case study illustrating that public trust obligations require the conservation and maintenance of natural resources for present and future generations and impose affirmative fiduciary duties on the state as trustee).

[208] *See, e.g.*, Bhawna Singh, *Ghana Offshore Decommissioning Market*, 6Wresearch (last updated Aug. 2025), https://www.6wresearch.com/industry-report/ghana-offshore-decommissioning-market [https://perma.cc/T9RH-PZKE] (noting limited local capacity

global demand for decommissioning services increases, reliance on foreign contractors may expose the State to higher costs and reduced control over critical processes.

To address this structural vulnerability, Ghana should develop a domestic decommissioning ecosystem through targeted investments in training, research, and industry development.[209] This includes establishing specialized academic programs, incentivizing local participation in decommissioning projects, and promoting partnerships in areas such as waste recycling and marine restoration. These measures advance the duty of preservation by ensuring that Ghana possesses the institutional and technical capacity to restore and sustain the value of its natural resource base over time. Comparable local content strategies in the petroleum sector suggest that capacity-building can be integrated into regulatory frameworks in ways that support domestic capability development while maintaining operational efficiency when appropriately designed and implemented.[210]

A potential objection is that capacity-building initiatives fall outside the scope of legal reform and are better addressed through policy rather than law. However, fiduciary theory recognizes that trustees must take reasonable steps to ensure the sustainable management of trust property over time. This includes developing the institutional and technical capacity necessary to discharge fiduciary obligations effectively. A trustee who lacks the capacity to manage the trust corpus cannot be said to have fulfilled the duty of prudence.

Under Article 257(6), the State's obligation is not merely to oversee decommissioning but to ensure that it is carried out in a manner that preserves long-term value for present and future beneficiaries. Capacity-building is therefore not ancillary but integral to the fiduciary duty of preservation.

F. Accountability Framework: From Administrative Compliance to Fiduciary Oversight

The foregoing reforms collectively reframe decommissioning from regulatory compliance to constitutional stewardship. Ghana's existing framework treats decommissioning as a technical and administrative

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and expertise for handling complex decommissioning projects).

[209] *See* Ghana Petroleum Local Content and Local Participation Regulations, 2013, L.I. 2204 (Ghana).

[210] MICHAEL WARNER ET AL., LOCAL CONTENT IN THE OIL AND GAS SECTOR 5–8, 19–23 (World Bank 2013) (explaining that well-designed policies can build domestic capacity while limiting efficiency losses).

endpoint, governed primarily by ministerial discretion.[211] A fiduciary approach, by contrast, understands decommissioning as a constitutional moment in which the State must account for how it has managed the nation's natural resources on behalf of its citizens.[212]

Under this framework, each institutional actor, including the Minister, the Petroleum Commission, GNPC, operators, and Parliament, functions as a co-trustee subject to duties of loyalty, prudence, transparency, accountability, and preservation. These duties constrain discretion and require that decisions be justified by their impact on the trust corpus and its beneficiaries. This reconceptualization reflects the cumulative force of fiduciary governance, integrating loyalty, prudence, accountability, transparency, and preservation into a unified framework of constitutional stewardship. It aligns with broader developments in public law scholarship that treat administrative actors as fiduciaries obligated to exercise power in the public interest.[213]

One might object that such a shift imposes an unduly rigid framework on a complex and evolving sector. Yet fiduciary governance does not eliminate flexibility; it ensures that flexibility is exercised within a structure of accountability.[214] The absence of such a structure has already produced outcomes in which decommissioning liabilities are effectively transferred to the public, as illustrated by the State's assumption of significant obligations in the Saltpond Field.

Article 257(6) demands more. By framing natural resources as held "in trust for" the people, the Constitution requires that the State manage both extraction and closure in a manner consistent with fiduciary principles.[215] Reimagining accountability in these terms transforms decommissioning from an administrative afterthought into a constitutional obligation, ensuring that the end of production does not become the beginning of long-term environmental and fiscal harm. The ongoing decommissioning of the Saltpond field confirms that these constitutional questions are not theoretical but immediate. It demonstrates how the absence of fiduciary safeguards can

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[211] Petroleum (Exploration and Production) Act, 2016, Act 919 (Ghana).

[212] Sax, *supra* note 7, at 471–73 (arguing that the public trust doctrine transforms resource governance from ordinary administration into a continuing obligation of public stewardship enforceable against the State); Wood, *supra* note 7, at 83–88, 101–03 (describing environmental governance as constitutional stewardship in which the State must account for its management of ecological assets held in trust for present and future generations).

[213] Criddle, *supra* note 53, at 121–22; Miller & Gold, *supra* note 193, at 565–76.

[214] Miller & Gold, *supra* note 193, at 553–54.

[215] GHANA CONST., art. 257(6).

transform resource governance into a system in which private gains are realized during production while public burdens emerge at closure. With multiple offshore fields nearing end-of-life and a growing decommissioning market, a constitutionalized decommissioning regime would ensure that future projects do not replicate this trajectory.[216]

CONCLUSION: FROM TECHNOCRACY TO TRUSTEESHIP

When the oil stops flowing, a nation's constitutional commitments are tested. Decommissioning is not only a technical or fiscal exercise; it is a measure of whether the State that profited from extraction can also govern the aftermath with integrity. In Ghana, the task exposes a constitutional paradox: the same Constitution that vests minerals and petroleum "in the President on behalf of, and in trust for, the people" also permits statutes that concentrate near-absolute discretion in the executive branch.[217] The Petroleum Act (Act 919) translates a principle of trusteeship into a practice of administration, reducing fiduciary stewardship to bureaucratic compliance.

This Article has argued that such a technocratic structure is inconsistent with Article 257(6)'s fiduciary command, which applies throughout the lifecycle of resource governance rather than only at the point when extraction ends, and restoration begins. The constitutional trust clause is not ornamental; it establishes a binding standard of legal conduct that constrains how public authorities manage natural resources held on behalf of the people. Read through the lens of fiduciary theory, the clause imposes duties of loyalty, prudence, accountability, transparency, and preservation.[218] Ghana's current regime breaches each of these duties, replacing collective trusteeship with ministerial discretion, leaving decommissioning liabilities inadequately defined, administering a fund without fiscal visibility, and neglecting ecological and intergenerational preservation.

Comparative experience demonstrates that another path is possible.[219]

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[216] *See* Singh, *supra* note 208 (noting the growing demand for decommissioning services as offshore fields reach end-of-life).

[217] GHANA CONST., art. 257(6); Petroleum (Exploration and Production) Act, Act 919, 2016, (Ghana) (granting broad discretionary authority to the Minister over petroleum operations, including approval of plans and operational decisions).

[218] *See* Sax, *supra* note 7, at 474–77 (arguing that the public trust doctrine imposes enforceable obligations on government in the management of public resources); Wood, *supra* note 7, at 83–110 (describing environmental governance through a framework of public trusteeship and ecological stewardship); Criddle, *supra* note 53, at 121–22, 130–32 (describing public fiduciary governance as grounded in duties of care, loyalty, accountability, and recordkeeping/accounting obligations).

[219] Petroleum Act 1998, c.17 (U.K.); IOGP, *supra* note 18.

The argument developed here aligns with a growing body of Ghanaian constitutional scholarship that seeks to translate the trust clause from aspiration into enforceable obligation.[220] This Article complements that call by showing how those same fiduciary duties can be embedded in the specific institutional design of decommissioning. Where the proposal by Rameau & Bamba focuses on doctrinal reform, this analysis demonstrates implementation: transforming fiduciary stewardship from a principle of constitutional theory into a system of regulatory practice that governs the restoration of the resource corpus to the people in whose name it was held.

Norway, the United Kingdom, and the United States have embedded fiduciary norms into their decommissioning laws through joint and several liability for licensees, mandatory financial assurance, public hearings through environmental impact assessments and consultation processes, and multi-agency oversight.[221] These mechanisms transform discretion into accountability and convert fiscal planning into constitutional performance. While these mechanisms do not eliminate risk, they allocate it transparently and equitably and honor the principle that the burdens of extraction should not outlast its benefits, a risk already reflected in Ghana's experience with the Saltpond Field.

For Ghana, the constitutional way forward is clear. Decommissioning must be reimagined as an act of restoration, not retreat, and should provide an opportunity to reaffirm the public trust rather than to exhaust it. That obligation does not arise at the end of extraction; it is the culmination of fiduciary duties that attach from the outset and persist throughout the lifecycle of resource governance. The proposed doctrinal, institutional, fiscal, participatory, and developmental reforms are not mere administrative refinements but constitutional necessities. They give institutional form to the fiduciary duties imposed by Article 257(6), ensuring that those duties are not left to executive discretion but embedded in enforceable governance structures. A multi-stakeholder Decommissioning Oversight Board, a publicly audited trust fund, and enforceable transparency requirements would give legal meaning to the trust clause and ensure that the people for whom the resource is held can see, and shape, how it is restored. Absent such reforms, Ghana risks perpetuating a regime in which the benefits of extraction are privatized while the costs of decommissioning are socialized,

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[220] Rameau & Bamba, *supra* note 16, at 416–18, 429 (urging Ghana adopt the Public Trust Doctrine to make fiduciary duties enforceable and extend the Petroleum Revenue Management Act's accountability framework to all natural resources).

[221] Petroleum Activities Act, 1996, No. 72 (Nor.); Petroleum Act 1998, c.17 (U.K.); Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331–1356b (2018); IOGP, *supra* note 18.

a result that is incompatible with the fiduciary obligations imposed by Article 257(6) and already foreshadowed by the experience of the Saltpond Field.

Ultimately, constitutional stewardship is not measured by how resources are discovered, but by how they are decommissioned. The true legacy of Ghana's petroleum era will be measured not by the barrels it extracted, but by the integrity with which it dismantles the platforms that once produced them. Stephens concludes that Ghana's decommissioning regime has achieved relative sustainability.[222] Yet, sustainability without constitutional accountability remains a managerial achievement rather than a legal standard. By reinterpreting decommissioning through the constitutional trust, this Article transforms sustainability into stewardship, a standard enforceable against both state and operator. By aligning decommissioning with the Constitution's fiduciary mandate, Ghana can move from technocratic management to democratic trusteeship and, in doing so, set a model for other emerging resource states seeking to reconcile extraction with accountability and wealth with justice

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[222] Stephens, *supra* note 45, at 85.