



**IMO**  
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**AN ACT TO INCORPORATE THE INTERNATIONAL  
CONVENTION ON OIL POLLUTION  
PREPAREDNESS, RESPONSE AND CO-  
OPERATION, 1990 (OPRC CONVENTION) INTO  
THE LAWS OF GHANA AND TO ESTABLISH THE  
NATIONAL OIL SPILL PREPAREDNESS,  
RESPONSE AND CO-OPERATION AUTHORITY**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) in  
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## **DEDICATION**

*To all those who have contributed in diverse ways to my progress in life AND in loving memory of my Grandpa whom I affectionately called “dear Pa”, whose dream it was to see me succeed.*

## **ACKNOWLEDGEMENTS**

*I thank God Almighty for the gift of life and for His guidance and support. My presence here was made possible by the help of Kosmos Energy Limited, Ghana National Petroleum Corporation, Ghana Shippers Council and the Ghana Armed Forces. I indeed owe them all a debt of gratitude.*

*I am indebted to my supervisor for his patience and his willingness to help even at a short notice. God bless Him.*

*I express my sincere and profound gratitude to my Nominating Authority, Ghana Maritime Authority and to my indefatigable Chief of the Naval Staff for being an “anchor”.*

*I thank my family for all their love and support.*

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## **EXPLANATORY NOTES**

**1.**

### **INTRODUCTION**

Since the mid 1960's, the obvious need to protect the deteriorating environment has led to environmental legislation in most countries of the world to varying degrees and effect.<sup>1</sup> The influence

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<sup>1</sup> Malanczuk, Peter; Akehurst's Modern Introduction to International Law, 7<sup>th</sup> Revised Edition, Routledge, London, 1947, p. 241.

of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)<sup>2</sup> is especially pertinent in respect of marine environmental protection. The Convention is the first major undertaking among States to protect the world's oceans in their entirety against all potentially polluting maritime activities.<sup>3</sup> According to Article 192 of UNCLOS, States have an obligation to protect and preserve the marine environment. This obligation is supplemented by Article 194, which provides that States are to take all necessary measures to prevent, reduce and control all sources of pollution of the marine environment. Ghana is a Party to UNCLOS and therefore has an obligation to protect and preserve the marine environment.

Furthermore, Ghana is a member of the International Maritime Organization (IMO)<sup>4</sup> and active in the development and implementation of IMO Conventions. Ghana has adopted the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC Convention)<sup>5</sup> in a bid to collaborate with the international community to mitigate the consequences of oil pollution accidents involving ships, offshore units, seaports and oil handling facilities.

The proposed Oil Pollution Preparedness, Response and Co-operation Act ("the Act") therefore, is aimed at providing the requisite comprehensive legislative framework to facilitate and enable the implementation of the OPRC Convention.

The Act deals with different issues that would ensure that Ghana has in place various structures that would enable her deal with the different situations as and when they arise. Ghana, with her limited resources, would not be in a position to handle a major oil spill and hence needs to put in place other mechanisms for calling for assistance from other countries.

The Act also establishes the National Oil Spill Preparedness, Response and Co-operation Authority which would be the required institutional framework for enforcing and implementing the Act.

The Act contemplated will be in the form of a primary legislation.

## 2. **A HISTORICAL BACKGROUND OF THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION, 1990 (OPRC CONVENTION)**

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<sup>2</sup> The United Nations Convention on the Law of the Sea, Montego Bay, Jamaica, 10 December 1982, entry into force 16 November 1994.

<sup>3</sup> Fitzmaurice, Malgosia; Ong, David; Merkouris, P.; Research Handbook on International Environmental Law, Edward Elgar, Cheltenham, United Kingdom, Northampton, MA, USA, 2010, p. 568.

<sup>4</sup> The International Maritime Organization is the United Nations specialized agency with responsibility to develop and maintain a comprehensive regulatory framework for the safety and security of shipping and the prevention of marine pollution by ships. [www.imo.org](http://www.imo.org) (This web-page was visited on 10 March, 2012).

<sup>5</sup> The International Convention on Oil Pollution Preparedness, Response and Co-operation, adopted 30 November 1990, entry into force 13 May 1995. Currently 103 countries representing 69.58% of the world's tonnage are Parties to the Convention. [www.imo.org](http://www.imo.org) (This web-page was visited on 10 March, 2012).

In 1967, the *Torrey Canyon* disaster off the Isles of Scilly on the south-west coast of the United Kingdom in which an oil tanker registered in Liberia ran aground spilling about 120,000 tons of crude oil into the sea caused a great furor in the international maritime community.

Eleven years later, on 16<sup>th</sup> March 1978, another disaster was witnessed when the *Amoco Cadiz* ran aground off the coast of Brittany in France spilling about 228,000 tons of oil.

The devastating effects of these incidents and other oil spills which had taken place since the 1960's resulted in the recognition of the need for national contingency plans and regional agreements for co-operation between States in responding to oil spills in specific areas. Regarding offshore oil activities, UNCLOS aims to minimize to the fullest extent possible pollution from installations and devices used in the exploration and exploitation of natural resources.<sup>6</sup> In addition, UNCLOS requires a State who is aware of any pollution incident to notify other States likely to suffer damage and for States to co-operate with each other in developing and promoting oil spill contingency plans.<sup>7</sup>

In March 1989, the *Exxon Valdez* incident occurred spilling a large quantity of crude oil on the beaches in Prince William Sound and along the shoreline of the Gulf of Alaska. This refocused the attention of the world to the devastating environmental consequences of a major oil spill and the need for an adequate and timely response. It also once again demonstrated the difficulty of cleaning up coastlines which have been covered in oil. The major industrial nations now had the requisite impetus to convene a meeting with the view to developing a Convention on oil pollution preparedness and response and to ensure that future incidents would be dealt with as efficiently and quickly as possible. The IMO's General Assembly in October 1989 passed a Resolution to convene a Diplomatic Conference to consider the subject.<sup>8</sup> The Resolution recalled in its preamble, Article 15(j) of the Convention on the IMO relating to regulations and guidelines concerning maritime safety, prevention and control of marine pollution from ships. In addition, the Resolution recognized the severity of recent marine pollution accidents resulting from tankers and offshore installations. The IMO's successes in developing multilateral approaches to pollution were also indicated.

The preparatory work which took place in London in November 1990 was a marked success and at the Diplomatic Conference the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 ("OPRC Convention") was adopted together with a series of ancillary resolutions. The Convention entered into force on 13 May 1995.

## **2.1 OBJECTIVES OF THE OPRC CONVENTION**

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<sup>6</sup> Article 194(3) of UNCLOS.

<sup>7</sup> Ibid., Articles 197-206.

<sup>8</sup> IMO Resolution A.674 (16) of 19 October 1989.

The OPRC Convention as its name suggests aims at establishing preparative and responsive measures in cases of oil pollution incidents not just from ships but also from offshore oil exploration and production platforms, sea ports and oil handling facilities.

At the core of the Convention are provisions to develop and maintain adequate and effective capabilities to deal with oil pollution emergencies and for co-operation and mutual assistance in preparing for and responding to major oil pollution incidents. The OPRC Convention also encourages particular attention to be paid to the needs of developing countries.

### **3. OVERVIEW OF THE OPRC CONVENTION**

#### **3.1 General Provisions**

Article 1 is composed of three paragraphs.

Paragraph (1) states the general duty of each Party towards the implementation of the provisions of the Convention either through individual measures being taken, or jointly with other States Parties by bilateral or multilateral agreements to prepare for and respond to pollution caused by oil.<sup>9</sup>

Paragraph (2) stipulates that the Annex to the OPRC Convention shall be considered an integral part of the Convention. Consequently, a reference to the Convention constitutes at the same time a reference to the Annex.<sup>10</sup>

Paragraph (3) of the Article states categorically the ships to which the Convention shall not apply to. It does not apply to any warship, naval auxiliary or other ships owned or operated by the State and used for the time being, only on government non-commercial service. However, contracting States agree to ensure that such ships act in a manner consistent with the Convention, so far as is reasonable and practicable without impairing the operational capabilities of such ships.<sup>11</sup>

#### **3.2 Definitions**

Article 2 is made up of seven (7) key definitions of important terms used throughout the Convention.

The term “oil” is defined as petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products,<sup>12</sup> though the Convention applies only to incidents involving pollution or a threat of pollution by oil, and not by other hazardous or noxious substances.

“Oil pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response.<sup>13</sup>

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<sup>9</sup> Article 1(1) of the OPRC Convention.

<sup>10</sup> Ibid., Article 1(2).

<sup>11</sup> Ibid., Article 1(3).

<sup>12</sup> Ibid., Article 2(1).

<sup>13</sup> Ibid., Article 2(2).

A “ship” means any vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft of any type.<sup>14</sup>

The Convention is not only confined to ships but also to offshore units,<sup>15</sup> seaports and oil handling facilities.<sup>16</sup> It defines an “offshore unit” as any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil. “Sea ports and oil handling facilities” are defined as those which present a risk of an oil pollution incident and includes amongst others, sea ports, oil terminals, pipelines and other oil handling facilities.

### **3.3 Oil Pollution Emergency Plans**

Article 3 deals comprehensively with the requirements to be followed by flag States to ensure that their ships have onboard a shipboard oil pollution emergency plan which complies with internationally agreed standards.<sup>17</sup> Compliance with this requirement is subject to port state control in accordance with the relevant provisions of MARPOL<sup>18</sup> Annex 1.

In addition, operators of offshore units within the jurisdiction of a party to the OPRC Convention must also have an oil pollution emergency plan which must be approved by the competent authority of the State concerned.<sup>19</sup> The plans must be co-ordinated in the national system established under Article 6 of the Convention.

Furthermore, each Party shall require that authorities or operators in charge of seaports handling oil facilities under its jurisdiction as it deems appropriate, shall have pollution emergency plans or similar arrangements which are co-ordinated with the national system as established in Article 6 and approved in accordance with the procedures established by the competent national authority.<sup>20</sup>

### **3.4 Oil Pollution Reporting Procedures**

Article 4 provides for the uniform reporting procedures and mandatory reports. Such reports are to be made in accordance with MARPOL<sup>21</sup> and with the Guidelines adopted by the IMO for such ship reports.<sup>22</sup> The procedure is extended to offshore units, and also to any observed event at sea involving oil pollution whether or not the event occurs on the ship or unit making the report.

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<sup>14</sup> Ibid., Article 2(3).

<sup>15</sup> Ibid., Article 2(4).

<sup>16</sup> Ibid., Article 2(5).

<sup>17</sup> Ibid., Article 3(1)(a).

<sup>18</sup> International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978. It entered into force on 2<sup>nd</sup> October 1983. Annex 1 of MARPOL deals with the regulation for the prevention of pollution by oil. [www.imo.org](http://www.imo.org). (This web-page was visited on 10 March, 2012).

<sup>19</sup> Article 3(2) of OPRC Convention.

<sup>20</sup> Ibid., Article 3(3).

<sup>21</sup> Article 8 and Protocol 1 of MARPOL 73/78.

<sup>22</sup> General Principles for Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances/or Marine Pollutants, IMO Resolution A648 (16).

Parties must also instruct their maritime inspection services, naval forces and other relevant bodies or officials to make such reports either to their competent national authority or to the nearest coastal State.<sup>23</sup>

### **3.5 Action on Receiving Oil Pollution Report**

Article 5 of the OPRC Convention details the action to be taken upon the receipt of an oil pollution report. The authorities must assess the event to determine whether or not it is an oil “pollution incident”<sup>24</sup> as defined by Article 2(2) of the OPRC Convention. Once it is determined that it does fall within this category, the State is to assess the nature, extent and possible consequences of the oil pollution incident.<sup>25</sup> The State must inform without delay all States that are likely to be affected by it, together with details of its assessments and any action it has taken or intends to take to deal with the incident.<sup>26</sup>

The IMO must be provided with the information when the oil incident is severe<sup>27</sup> and other States that are also affected by it are urged to inform the IMO of their assessment of the extent of the threat of their interests and any action taken or intended.<sup>28</sup> The general principles for reporting systems adopted by the IMO in section II of its Manual on Oil Pollution<sup>29</sup> should be used where appropriate when exchanging such information.<sup>30</sup>

### **3.6 National and Regional Systems for Preparedness and Response**

Article 6 is considered the core provision of the Convention. The point should be made that, it is not every oil pollution incident which has the potential of impacting neighbouring States. Accordingly one of the basic obligations under the Convention is the establishment of a national system for responding promptly and effectively to oil pollution incidents. In this regard, each State Party shall establish a national system for responding promptly and effectively to pollution incidents.<sup>31</sup>

The system must as a minimum designate the body or bodies who are to carry out the functions of the State in pursuance of the Convention, the national operational contact point or points with responsibility for receiving and transmitting oil pollution reports and an Authority to act on behalf of the State to request assistance or to decide to render the assistance requested.<sup>32</sup> The system must also incorporate a national contingency plan for preparedness and response that must show the

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<sup>23</sup> Article 4(1) (d) of the OPRC Convention.

<sup>24</sup> *Ibid.*, Article 5(1)(a).

<sup>25</sup> *Ibid.*, Article 5(1)(b).

<sup>26</sup> *Ibid.*, Article 5(1)(c).

<sup>27</sup> *Ibid.*, Article 5(2).

<sup>28</sup> *Ibid.*, Article 5(3).

<sup>29</sup> This is contained in the Manual on Oil Pollution, Section II-Contingency Planning, Appendix 2, developed by the Marine Environment Protection Committee of the Organization.

<sup>30</sup> Article 5(4) of the OPRC Convention.

<sup>31</sup> *Ibid.*, Article 6(1).

<sup>32</sup> *Ibid.*, Article 6(1)(a).



organizational relationship of the various public or private bodies involved. The Guidelines developed by the IMO must be taken into account in drawing up the plan.<sup>33</sup>

Article 6(2) requires that States Parties establish, either on their own or in collaboration with other Parties, arrangements for dealing with pollution incidents, in particular stockpiles of equipment and personnel. Specifically, it requires the establishment of a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved and programmes for its use.<sup>34</sup>

States Parties must also establish detailed plans and communication for responding to incidents and the communication capability being continuously available.<sup>35</sup>

It is the duty of States Parties to provide the IMO either directly or through regional organizations information on the location, telecommunication data, information concerning pollution response equipment, expertise in disciplines related to oil pollution response and marine salvage amongst others.<sup>36</sup>

### **3.7 International Co-operation in Pollution Response**

Article 7 of the OPRC Convention refers to international co-operation and stipulates that a Party may ask the IMO to assist in identifying sources of provisional financing of the costs. Parties under the Convention agree to co-operate and provide advisory services, technical support and equipment for the purpose of responding to an oil pollution incident.<sup>37</sup> It must be noted however that, the commitment to assist in this way is always subject to the capabilities of the State receiving the request and the availability of the relevant resources.

In order to ensure that the assistance is provided with minimum delay, Parties must take the necessary measures to facilitate the passage of personnel and equipment to deal with an incident into or through their territories.<sup>38</sup>

### **3.8 Research and Development**

Article 8 underlines the consent of States Parties to co-operate bilaterally, regionally or through the IMO in a bid to promote and exchange results of research and development programmes relating to enhancing the state-of-the-art oil pollution preparedness and response.<sup>39</sup>

These include *inter alia* technologies and techniques for surveillance, containment and recovery. In addition, it is the duty of States Parties to co-operate in order to promote technological advances in techniques and equipment for the purpose of combating oil pollution. State Parties must also set up

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<sup>33</sup> Ibid., Article 6(1)(b).

<sup>34</sup> Ibid., Article 6(2)(a).

<sup>35</sup> Ibid., Article 6(2)(c).

<sup>36</sup> Ibid., Article 6(3).

<sup>37</sup> Ibid., Article 7(1).

<sup>38</sup> Ibid., Article 7(3).

<sup>39</sup> Ibid., Article 8(1).

research institutions and hold regular symposia on relevant subjects and to encourage the development of standards for compatible oil pollution combating techniques and equipment.<sup>40</sup>

### **3.9 Technical Co-operation**

Article 9 of the Convention requires the States Parties in respect of oil pollution preparedness and response to co-operate in technical matters especially by providing support to States which request technical assistance to train personnel, to ensure the availability of relevant technology, equipment and facilities and to initiate joint research and development programmes.<sup>41</sup>

The Annex to the Convention in paragraph (3) states that assisting States Parties shall give due consideration to the needs of the **developing countries**. Consequently, developing countries are afforded the opportunity to benefit from this sort of co-operation since undoubtedly developed countries possess advanced technology.

### **3.10 Promotion of Bilateral and Multi-lateral Co-operation in Preparedness and Response**

Article 10 of the OPRC Convention is indeed a valuable tool aimed at providing the requisite efficient international framework for the promotion of co-operation in oil pollution preparedness and response. It therefore encourages States Parties to conclude bilateral and multilateral agreements to attain this goal. Furthermore, States Parties are to deposit a copy of any agreement to that effect to the IMO for the purposes of their communication to States Parties at their request.

### **3.11 Relation to Other Conventions and International Agreements**

Article 11 expressly provides that no provision in the OPRC Convention shall be interpreted as altering the rights and obligations of any party under another convention or international agreement.

### **3.12 Institutional Arrangements**

Article 12 designates the IMO to perform various activities and functions. These include the provision of education and training, information services and technical assistance.<sup>42</sup> The IMO in carrying out these activities must endeavour to strengthen the ability of States to prepare for and combat oil pollution incidents, drawing upon the experience of States, regional agreements and industry arrangements, and paying particular attention to the needs of developing countries.<sup>43</sup>

### **3.13 Evaluation of the Convention**

Article 13 is geared towards ensuring the effectiveness of the OPRC Convention in the light of its set objectives, particularly with respect to the principles underlying co-operation and assistance.

### **3.14 Annex**

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<sup>40</sup> Ibid., Articles 8(2)-(4).

<sup>41</sup> Ibid., Article 9(1).

<sup>42</sup> Ibid., Art 12(1). The Oil Pollution Co-ordination Centre (OPCC) has been established at the IMO with the responsibility to carry out these functions.

<sup>43</sup> Ibid., Article 12(2)

The Annex to the OPRC Convention sets out the arrangements for financing the costs of assistance rendered to States Parties. This provides that, in the absence of any agreement to the contrary, the position will depend upon whether or not the action was taken at the express request of another State or whether instead the State taking the action did so on its own initiative. In the former case, the requesting State is to reimburse the assisting State the cost of its action and in the latter instance the assisting State is to bear its own costs.<sup>44</sup>

The need for the reimbursement of costs to be fairly calculated according to the law and current practice of the assisting State is also emphasized.<sup>45</sup> Paragraph 4 of the Annex expressly provides that the OPRC Convention is not to be interpreted in any way as prejudicing the rights of States to recover compensation or the cost of action taken to deal with pollution under any applicable legal regime.

#### 4. GHANA'S OIL INDUSTRY

The Ghanaian petroleum industry is an important contributor to the economy of Ghana. The upstream petroleum industry in Ghana has been energized in recent years with the commercial discovery of oil. In June 2007, Kosmos Ghana Plc, an oil prospecting company reported an oil find in the Deepwater Tano Basin<sup>46</sup> in the Western Region of Ghana. The oil field was christened the Jubilee Field in recognition of the Golden Jubilee anniversary of Ghana's independence which took place in the year of the oil discovery in Ghana. Oil production in the field started in December 2010. The field lies about 70 nautical miles off the coast of Ghana and straddles the boundary between the West Cape Three Points and the Deepwater Tano Blocks.

The euphoria that followed the discovery and the subsequent production was overwhelming and expectations of Ghanaians are that the new found natural resource would turn the fortunes of the country around. It is worthy of note that since the start-up of the production on the Jubilee Field at the

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<sup>44</sup> Ibid., Annex paragraph (1)(a).

<sup>45</sup> Ibid., Para (2).

<sup>46</sup> Gulf of Guinea's Tano Basin, about 12 km (about seven miles) from the Ghanaian coastline and 95 km (59 miles) southwest of the port city of Takoradi.

end of 2010, over 15 million barrels of oil have been produced and 15 oil cargoes have been safely exported. Ghana has earned about \$400 million as at December 2011.<sup>47</sup>

It is important to note that while these developments are impressive and stands the country in good stead for economic development, it also poses threats and challenges like pollution of the marine environment through tankers and pipelines and maritime security challenges amongst others. Ghana's oil rigs are located about 70 nautical miles offshore in deep waters of depths of more than two kilometers. Technological improvements have increased offshore deep water oil and gas exploration and production. Most of these explorations, like in Ghana, are concentrated in developing countries. Many developed countries restrict deep water offshore oil and gas exploration due to the risks of pollution to the marine environment. In offshore operations, the major sources of pollution spring from oil spills, drill cuttings,<sup>48</sup> drilling mud or drilling fluid,<sup>49</sup> atmospheric emissions among others.

The increasing offshore oil and gas exploration in the maritime domain of Ghana's territorial waters will undoubtedly increase environmental risks in the years to come. Deepwater wells, particularly in the Deepwater Tano and West Cape Three Points Blocks are remote, thereby increasing emergency response time. The said operations may be technically more sophisticated and produce at much higher rates, increasing considerably the scope of potential marine accidents such as spills.

In addition, the density of marine traffic, especially oil tankers, in close proximity to the coast and offshore petroleum exploration and production activities, present a fairly high risk of marine pollution from blowouts,<sup>50</sup> collisions, stranding and other marine accidents. Such pollution can threaten amenities such as beaches, the tourist industry, sea birds, and marine life in the inter-tidal zones, coastal installations and fisheries with subsequent loss of revenue and protein sources.

## 5. THE LEGISLATIVE LACUNAE IN GHANA ON OIL POLLUTION

There is currently no single integrated marine pollution legislation in Ghana. Marine pollution control exists as part of the environmental and water resource legislation and marine pollution is dealt with by the Oil in Navigable Waters Act (Act 235) of 1964, which was enacted to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil of 1954. The Act makes the discharge of any oil or mixture containing oil from any vessel or from land an offence. However,

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<sup>47</sup> Presented in Ghana's 2012 Budget Statement.

<sup>48</sup> A piece of rock which has been chipped, ground or scraped out of a formation by a drill bit which is carried to the surface in the drilling mud.

<sup>49</sup> The steam of gases, liquids and solids suspended in liquid, with additives which circulates through the drill strings at high pressure.

<sup>50</sup> The uncontrolled release of crude oil and/or natural gas from an oil well or gas well after pressure control systems have failed. It may cause an explosion, fire, loss of life and equipment and massive pollution.

this Act has since become obsolete and inadequate to provide the appropriate regulatory framework required. Up to date Ghana has no Marine Pollution Act.

The primary institution established to ensure environmental protection in Ghana is the Environmental Protection Agency, (EPA), created under the Environmental Protection Agency Act, Act 490 of 1994. The EPA is responsible for the issuance of environmental permits and pollution abatement notices for controlling waste discharges, emissions, deposits or other sources of pollutants which are hazardous or potentially dangerous to the quality of the environment.<sup>51</sup> It is the function of the EPA to prescribe standards and guidelines relating to air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances.<sup>52</sup>

The policy direction of the Agency is contained in the Environmental Assessment Regulations, 1999 (LI 1652).<sup>53</sup> There is a requirement for an Environmental Permit to be obtained for crude oil and natural gas activities in Ghana.<sup>54</sup>

Further, Appendix 2, of the EPA's "Environmental Assessment in Ghana, A Guide" requires registration with the Agency of all undertakings such as oil exploration. These two legislations empower the Agency to manage, control and monitor compliance with environmental regulations by specific industries.<sup>55</sup> Industries whose operations are likely to have adverse effect on the environment are to submit within a specified period, an environmental impact assessment and to register with the Agency for clearance and approval.<sup>56</sup> Beyond the current regime of Environmental Impact Assessments, there are no specific rules to cover areas like well drilling, well construction, blowouts, oil spill regulations amongst others.

These sweeping powers taken together imply that the EPA in theory can generally manage or control environmental risks resulting from such activities. The EPA regulations however do not address themselves specifically to the petroleum industry whether onshore or offshore.<sup>57</sup> There is also a lack of corresponding technical environmental regulations beyond the current regime of EIA's and

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<sup>51</sup> Section 2 (f) of EPA Act.

<sup>52</sup> Ibid., Section 2 (h).

<sup>53</sup> Marful- Sau, Samuel; "Is Ghana Prepared to Manage the Potential Environmental Challenges of an Oil and Gas Industry?", <http://www.dundee.ac.uk/cepmlp/gateway/index.php?news=30889>,

<sup>54</sup> Regulation 6 of the Environmental Assessment Regulation, 1999, LI 1652, Schedule 1 Part 1.

<sup>55</sup> Marful-Sau; *op. cit.*, p. 11.

<sup>56</sup> Section 12(1) of EPA Act.

<sup>57</sup> Dickson, O.B.; "Ghana's Environmental Protection Act of 1994 (Act 490) and the Offshore Petroleum Industry- Marine Environmental Pothole Filling". <http://ghanaoilwatch.org/index.php>.

environmental rules of general application.<sup>58</sup> The existing regime is thus neither substantive and/or specific enough to meet the potential problems related to the industry.<sup>59</sup>

## **6. NEED TO INCORPORATE THE OPRC CONVENTION INTO GHANAIAN LEGISLATION**

The draft is motivated by the concern for the need to protect the marine environment from oil pollution that has been an ecological nightmare for many decades. The incorporation would reflect Ghana's commitment to the protection of the marine environment. There is indeed a need for a legal mechanism for a proper response in cases of oil pollution in Ghanaian waters since Ghana presently lacks the requisite provisions under the current domestic legislation dealing with the protection of the sea against pollution arising from offshore activities. This Act would also give legal impetus to the obligations of the operators in the oil industry, which would compel them to put in place the necessary equipment and mechanisms for response to oil pollution incidents when they occur.

In the wake of the environmental catastrophe of the Deepwater Horizon oil spill<sup>60</sup> which has been characterized as the worst in the history of the United States many lessons have been learnt. The Deepwater Horizon oil spill made one wonder what had happened to a nation such as the United States that is seen to be experienced in averting such catastrophes taking cognizance of the fact that they have strong legislative and institutional arrangements to deter such occurrences. The United States adopted the Oil Pollution Act<sup>61</sup> which was passed in 1990 in the aftermath of the *Exxon Valdez* oil spill,<sup>62</sup> which revealed certain weaknesses in international response and preparedness when a major oil spill occurs,<sup>63</sup> and informed many nations' legislations on the need to improve their oil spill prevention and response.

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Also referred to as the BP oil spill, the Gulf of Mexico oil spill or the Macondo blowout is an oil spill which flowed unabated for three months in 2011. It is the largest accidental marine oil spill in the history and was caused by an explosion on the Deepwater Horizon offshore platform. [http://www.eoearth.org/article/Deepwater\\_Horizon\\_oil\\_spill](http://www.eoearth.org/article/Deepwater_Horizon_oil_spill). This web-page was last visited on 15 March 2012.

<sup>61</sup> The Act was passed by the 101<sup>st</sup> United States Congress and signed into law in August 1990 largely in response to the rising concern following the Exxon Valdez incident. It was obvious that the United States lacked adequate resources, to respond to spills amongst others. [http://www.uscg.mil/npfc/About\\_NPFC/opa.asp](http://www.uscg.mil/npfc/About_NPFC/opa.asp).

<sup>62</sup> On 24 March 1989, the *Exxon Valdez* oil spill occurred depositing a large quantity of crude oil on the beaches in Prince William Sound and along the shoreline of the Gulf of Alaska. It was the largest ever in United States waters until the 2010 Deepwater Horizon oil spill. [http://www.eoearth.org/article/Exxon\\_Valdez\\_oil\\_spill](http://www.eoearth.org/article/Exxon_Valdez_oil_spill).

<sup>63</sup> Gold, Edgar; Gard Handbook on Protection of the Marine Environment, Royle Corporate Print, London, 2003, p. 431.

A successful combating operation of a marine oil spill is, however, highly dependent not only on a national legislation but on a rapid response from the time the oil spill is reported until it has been fully combated. As an anonymous expert once said “where there is oil, there is spill.” Unfortunately, prevention is not always successful and accidents will inevitably continue to occur.<sup>64</sup> Therefore, preparedness, response and co-operation to tackle any eventuality must be of primary concern to any nation in the business of oil production to ensure that pollution is dealt with properly thus minimizing damage to the marine environment.<sup>65</sup>

It is worthy of note that Ghana has not been spared in the oil spill drama albeit in a very small way.<sup>66</sup> The fact is that incidents of pollution are always unexpected. Experience from other places indicate that response to accidental spillages of oil require very careful advance planning and preparedness. Ghana is a Party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and as such it has an obligation to protect and preserve the marine environment as evidenced in Part XII of UNCLOS. Ghana has adopted the OPRC Convention and as such the onus is therefore on Ghana to collaborate with the international community to mitigate the consequences of oil pollution accidents involving ships and offshore units, seaports and oil handling facilities.

Under the OPRC Convention, Ghana is under an obligation to undertake a number of activities. These include putting in place an effective oil spill contingency plan, co-operate to provide assistance to other Parties to the Convention in case of oil spill accidents, and to ensure that oil pollution incidents are reported to competent authorities amongst others. If Ghana is to implement the requirements of the OPRC Convention and put contingency plans in place with a complementary programme of training and exercises, it would ensure a highly pragmatic and confident approach to handling an oil spill catastrophe. It would recognize the duty of care that the Government of Ghana has for its citizens and the obligation they have for implementing the strategies identified in the Convention.<sup>67</sup>

In Ghana about forty percent of the population live along the coast and majority of these people are fishermen and people who one way or the other depend on the sea for their livelihood. It is therefore imperative that the necessary machinery is put in place to ensure that the lives and livelihood of these people are not jeopardized in any way with the advent of oil exploration in Ghana.<sup>68</sup>

The Act would deal with different issues that would ensure that Ghana has in place various structures that would enable her cope with situations as and when they occur. A country such as Ghana

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<sup>64</sup> Ibid., p. 428.

<sup>65</sup> Ibid.

<sup>66</sup> The Daily Graphic Newspaper in Ghana on 5<sup>th</sup> November 2011 reported an oil spill in Jomoro and Ellembele in the Nzema Area of the Western Region of the Republic of Ghana.

<sup>67</sup> < <http://www.itopf.com/information-services/publications/papers/html> > accessed on 30 October 2011.

<sup>68</sup> [http://www.modernghana.com/news/295746/1/Gulf\\_of\\_Mexico\\_oil\\_spill\\_and\\_its\\_environmental\\_imp.html](http://www.modernghana.com/news/295746/1/Gulf_of_Mexico_oil_spill_and_its_environmental_imp.html) accessed on 1 November 2011.

undoubtedly with its limited resources and equipment cannot control a major oil spill, hence the vital element of co-operation.

## 7. THE NEED FOR AN INDEPENDENT AUTHORITY TO OVERSEE OIL POLLUTION, PREPAREDNESS, RESPONSE AND CO-OPERATION

The EPA has direct responsibility for all aspects of environmental protection including the maritime environment. Its mandate includes formulating environmental policy and making recommendations for the protection of the environment. However, the Agency has numerous challenges including a mandate which is too wide, inadequate staff and resources amongst others. An issue as important as offshore oil pollution therefore needs a dedicated Authority.

In addition, the Ghana Maritime Authority<sup>69</sup> is charged with the responsibility of maritime safety amongst others. The Authority among others is saddled with numerous arduous tasks which include:

1. The implementation of the provisions of the Ghana Shipping Act, 2003, (Act 645);
2. Ensuring the safety of navigation;
3. Regulation of activities on shipping in the inland waterways including safety of navigation in inland waterways;
4. Fulfillment of flag state and port state responsibilities in an effective and efficient manner, having due regard to international maritime conventions, instruments and codes;
5. Assessment of manpower needs of the maritime sector for national planning purposes;
6. Liaison with government agencies and institutions that deal with maritime transport and related transport matters for the purpose of achieving harmony in the maritime industry; and
7. Causing the investigation of maritime casualties and taking the appropriate action.

Therefore, to ensure that the Convention is properly implemented, there is the need to set up an independent agency that will oversee and co-ordinate the implementation and administration of the Act through *inter alia* formulating the requisite plans for avoiding and combating an oil spill in Ghana. The proposed Authority will serve as the competent Oil Spill Preparedness, Response and Co-operation Authority as indicated in the OPRC Convention.<sup>70</sup> It will also ensure that the provisions of the Convention are properly implemented as well as to formulate and implement a National Oil Spill Contingency Plan that will lay down the necessary mechanisms for preparedness, response and co-operation with the relevant agencies as well as regional and international partners in the event of an

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<sup>69</sup>The Ghana Maritime Authority (GMA) was established under ACT 630 of 2002 and charged with the responsibility of monitoring, regulating and coordinating the activities in the maritime industry.

<sup>70</sup> Article 6 of the OPRC Convention.



oil spill incident in Ghana. The Authority will also be responsible for the formulation of a detailed framework for combating and responding to major incidents or threats of marine pollution in Ghana. Ghana is now an oil producing country and substantial oil exploration and exploitation are expected to be carried out in the country. The movement of oil and other related products from one part of the country to other countries could threaten the marine environment of the country in the unfortunate event of any major oil spill. The need to therefore establish a separate Authority in the country to oversee oil spill response is therefore a *sine qua non*.

The institutional weaknesses identified in the existing environmental protection institutions are evident in Ghana. In addition, it would be highly inappropriate to burden them with further responsibility. The country is yet to face real oil spills and other forms of sea pollution as it steps up upstream activities, therefore a dedicated Authority to oversee oil spill preparedness, response and co-operation is needed.

## **8**

### **THE LEGISLATIVE PROCESS IN GHANA**

#### **8.1 Transformation of Treaties and Conventions into the National Laws of Ghana**

The Ghanaian legal system is a dualist system and as such requires the enactment of a domestic legislation in order to incorporate an international convention in the national laws. In default of such a domestic instrument, the international agreement applies only on the international plane and not within the domestic context. With regards to the OPRC Convention, Ghana is already a signatory State and the next step is to ratify the Convention through the enactment of a domestic legislation. The 1992 Constitution of the Republic of Ghana is instructive on the transformation of international treaties and conventions into the national laws of Ghana. A Treaty is defined as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.<sup>71</sup>

The Parliament of Ghana is the body which has the mandate to promulgate laws. The Constitution stipulates that Conventions executed by or under the authority of the President shall be subject to ratification by an Act of Parliament or a resolution of Parliament supported by the votes of more than half of the members of Parliament.<sup>72</sup>

The draft Bill incorporating the provisions of the Convention or Treaty is initially prepared by the Attorney General's Department. It must be submitted together with a cabinet memo and explanatory notes outlining the purpose and objective and of the legislation submitted for approval by Parliament.

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<sup>71</sup> Art 2(a) of the 1969 Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, entry into force 27 January 1980.

<sup>72</sup> Article 75(2) of 1992 Constitution.

The draft Bill and explanatory notes when approved by Cabinet shall be presented to the Chairman of the Transport Committee in Parliament.<sup>73</sup> The Committee's consideration may include public hearings and consideration of memorandum from the relevant stakeholders and members of the general public who may have any input.

Once the enactment process is complete, the legislature receives Presidential assent and would enter into force after one publication in the national Gazette. This could be in the form of an Act to replace an existing one, an amendment or amendments promulgated under an existing legislation. In the present case the legislation would be in the form of an Act to be referred to as the Oil Pollution Preparedness, Response and Co-operation Act.

## **9. EXPLANATION OF THE DRAFT TEXT**

### **9.1 Objective of the Oil Pollution Preparedness, Response and Co-operation Bill**

The draft Bill will set out in detail the various obligations, powers, rights and duties stemming from the OPRC Convention.

The Act would deal with the different issues that would ensure that Ghana has in place various structures that will ensure that in the event of an oil pollution incident, prompt and effective action can be taken. It would provide the legal authority and compel responsible State agencies and private organizations to provide the resources and to put in place the preventive and responsive measures needed to deal with an offshore pollution.

In addition, it would guide users in the implementation and administration of the Act, guide judicial officers in adjudicating over matters arising from the Convention and provide the much needed clarity, stability and intelligibility to those making reference there from as well as to those applying it.

### **9.2 Scheme of the Draft**

Part 1 deals with the preliminaries of the Act. It deals with the short title, and the date of entry into force of the Act. In addition, this part provides for the definitions of the main terms used under the Act and the scope and application of the Act.

Part II establishes the National Oil Spill Preparedness, Response and Co-operation Authority. This Authority would serve as the backbone of the Act as it would set out and supervise the effective and successful implementation of the Act. This part provides for the objects and functions of the

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<sup>73</sup> Article 106(2) of the 1992 Constitution states that no Bill shall be introduced in Parliament unless it is accompanied by an explanatory memorandum setting out in detail the policy, principles of the Bill, defects of existing law, remedies prepared to deal with the defects and the necessity for its introduction.

Authority. In addition, it lays down the governing body of the Authority, tenure of members, allowances of members and meetings of the Board amongst others.

Part III establishes the National Oil Spill Fund. The importance of the Fund cannot be ignored since it would provide some of the requisite funds needed in the event of an oil spill and help in the running of the activities of the Authority.

Part IV is concerned with the administration of the Authority. It makes provision for the appointment of the Executive Director and his functions. In addition, provision is made for the appointment of other staff, expenses allowed, accounts and auditing amongst others.

Part V deals with the oil pollution emergency plans and also provides for the inspection of the emergency plans that need to be kept onboard ships and also that of offshore operators.

Part VI provides for the oil pollution reporting procedures that have been laid down in the International Convention on Oil Pollution Preparedness, Response and Co-operation. These reporting procedures are of vital importance and it is pertinent that they are adopted as they would help forestall a lot of problems in the future.

Part VII provides for the action to be taken on receipt of an oil pollution incident report.

Part VIII is dedicated to the national and regional system for preparedness and response. This would help not only when there is an incident, but would help in effective co-ordination of the activity. Under this part provision is made for the development of the Ghana National Contingency Plan giving the main details of the resources that are available to combat an oil spill as and when it does occur.

Part IX. This part provides for the mechanisms of international co-operation in pollution response. Since Ghana is a developing country with limited resources, the importance of co-operation in the international plane is highly relevant. Ghana stands to benefit from the expertise and the technology of other States as the country can request international aid in the unfortunate event of an oil spill incident.

Part X. This is the part of the Act that deals with research and development. It will allow Ghana to take the necessary steps in order to be abreast with the ongoing developments in this particular field.

Part XI deals with technical co-operation. A well planned operation requires technical assistance. This would be a vital asset to the country since the technical knowhow would be available in the event of an oil spill incident.

Part XII is concerned with the bilateral and multilateral arrangements with other States geared towards enhancing co-operation with other States in the event of an oil spill incident.

Part XIII. This makes it clear that no other Convention ratified by Ghana shall be affected.

Part XIV. This part deals with the enforcement of the Act. It provides for the mechanisms that need to be laid down as well as the penalties applicable in the event of non-compliance with the provisions set out under the Act.

Part XV provides for the jurisdiction for the effective enforcement of the Act. This part also gives powers to the Minister to make regulations for the effective administration of the Act.

Part XVI provides for some miscellaneous acts like the seal of the Authority, prohibition or disclosure of information to unauthorized persons amongst others.

**10.**

### **CONCLUSION**

The critical importance to Ghana of developing its petroleum resources and the catastrophic potential of oil escapes, or discharges or well-blowout, are the competing considerations to be balanced in formulating an Act on oil pollution preparedness, response and co-operation.

The Act is primarily based on the International Convention for Oil Pollution, Preparedness, Response and Co-operation, 1990 (OPRC Convention). It deals with different issues that would ensure that Ghana would have in place different structures that would enable her to deal with situations as and when they arise. It would be impossible for a country with limited resources and equipment such as Ghana to handle major oil spills should they arise and hence the need to put in place other mechanisms that would be followed for requesting for assistance from neighbouring countries. This draft Act is therefore, intended to provide the juridical bases for the implementation of this Convention.

**ACT XXX**  
**OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION ACT, 20XX**  
**ARRANGEMENT OF SECTIONS**

**PART I**  
**PRELIMINARY**

SECTION

1. Short title.
2. Commencement.
3. Interpretation.
4. Scope of application.

**PART II**

**ESTABLISHMENT OF GHANA NATIONAL OIL SPILL AUTHORITY**

5. Establishment of the Authority.
6. Objectives of the Authority.
7. Functions of the Authority.
8. Ministerial directions.
9. Governing body of the Authority.
10. Tenure of office members.
11. Allowances for members.
12. Meetings of the Board.
13. Disclosure of interest.
14. Committees of the Board.
15. Regional and District offices of the Authority.

**PART III**  
**NATIONAL OIL SPILL FUND**

16. Establishment of the Fund.
17. Object of the Fund.
18. Management of the Fund.
19. Functions of the Board in relation to the Fund.

**PART IV  
ADMINISTRATION**

20. Divisions of the Authority.
21. Executive Director.
22. Appointment of other staff.
23. Delegation of powers.
24. Expenses of the Authority.
25. Accounts and audit.
26. Annual and other reports.
27. Request for information.

**PART V  
OIL POLLUTION EMERGENCY PLANS**

28. Emergency plan on board ship.

**PART V  
POLLUTION REPORTING PROCEDURE**

29. Reporting of an incident.

**PART VII  
ACTION ON RECEIPT OF OIL POLLUTION REPORT**

30. Action on receipt of oil pollution report.

**PART VIII  
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31. National preparedness and response.

**PART IX  
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32. Measures of facilitation of responding States to a situation.

**PART X  
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33. Research and development information exchange.

**PART XI**

## **TECHNICAL CO-OPERATION**

34. Request and provision of technical assistance.

## **PART XII**

### **BILATERAL AND MULTI-LATERAL ARRANGEMENTS**

35. Bilateral and multilateral agreements.

## **PART XIII**

### **RELATION TO OTHER CONVENTIONS**

36. Other Conventions.

## **PART XIV**

### **ENFORCEMENT**

37. Enforcement notice.

## **PART XV**

### **JURISDICTION**

38. Jurisdiction in cases of proceedings under this Act.  
39. Power to make regulations.

## **PART XVI**

### **MISCELLANEOUS**

40. Seal of the Authority.  
41. Relief from prosecution.  
42. Prohibition of publication and disclosure of information to unauthorized persons.



**THE .....**  
**ACT**  
**OF THE PARLIAMENT OF THE REPUBLIC**  
**OF GHANA**  
**ENTITLED**

**OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION ACT, 20xx**

AN ACT to give effect to the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, and otherwise to make provision for preventing the pollution of the sea and other navigable waters by oil and to establish the National Oil Spill Preparedness, Response and Co-operation Authority, and to provide for related matters.

**PART I—PRELIMINARY**

**1. Short Title.**

This Act may be cited as the Oil Pollution Preparedness, Response and Co-operation Act.

**2. Commencement.**

This Act shall come into operation on the xx of xxx 20xx.

**3. Interpretation.**

In this Act, unless the context otherwise requires

“Auditor-General” includes an auditor appointed by the Auditor-General;

“Authority” means the National Oil Spill Preparedness, Response and Co-operation Authority;

“Board” means the governing body of the Authority provided for under section 9 of this Act;

“Chairman” means the chairman of the Board;

“Committee” means the Committees provided for under Section 14 of this Act;

“Convention” means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;



“Court” means court of competent jurisdiction;

“functions” includes powers and duties;

“Fund” means the National Oil Spill Fund established under section 16 of this Act.

“inspection” means lawfully authorized checking of the compliance with the provisions of this Act;

“Inspector” means a person carrying out an inspection within the limits of the competence granted by the Authority;

“member” means a member of the Board;

“Minister” means the Minister of Environment;

“National Co-ordinator” means the person responsible for the National Oil Spill Contingency Plan for the country;

“offshore installation” means any man-made structure, plant or vessel or a part of the structure, plant or vessel whether floating or fixed to the seabed and which is placed within Ghana’s Maritime jurisdiction for the purpose of exploration, appraisal or exploitation of liquid and gaseous hydrocarbons;

“oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

“oil pollution emergency plan” means a contingency plan other than the National Oil Spill Contingency Plan which sets out arrangements for responding to incidents which cause or may cause marine pollution by oil, with a view to preventing the pollution or reducing or minimizing its effect;

“oil pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in discharge of oil and which poses a threat to the marine environment, coastline or related interests of one or more States and which requires emergency action or other immediate response;

“operator” means in relation to an oil handling facility, a person responsible for the management of the oil facility in Ghana and in relation to an offshore installation, means a person responsible for the management of the installation;

“Organization” means the International Maritime Organization;

“prescribed” means prescribed by the Regulations;

“regional capital” means the administrative capital of the Region;

“Regulations” mean the Regulations made under this Act;

“sea ports and oil handling facilities” means a facility which presents a risk of an oil pollution incident and comprises among others sea ports, oil terminals, pipelines and other handling facilities; and

“ship” means a vessel of any type operating in the marine environment and comprises among others of any type of hydrofoil boats, air cushion vehicles, submersibles and floating craft of any type.

#### **4. Scope of application.**

(1) Unless expressly provided, this Act shall apply to:-

- (a) Ghanaian ships wherever they may be;
- (b) All other ships while in port or within the territorial waters of Ghana;

- (2) This Act shall not apply to:-
  - (a) a Ghana Government ship on government non-commercial service, and
  - (b) a warship, naval auxiliary or other ship owned or operated by a State and used only on government non-commercial service.
- (3) A ship referred to in subsection (2) (a) shall so far as is reasonable and practicable, act in a manner consistent with this Act.

**PART II**  
**ESTABLISHMENT OF GHANA NATIONAL OIL SPILL PREPAREDNESS,**  
**RESPONSE AND CO-OPERATION AUTHORITY**

**5. Establishment of the Authority.**

- (1) There is hereby established an Authority to be known as the Ghana National Oil Spill Preparedness, Response and Co-operation Authority (in this Act referred to as “the Authority”) with responsibility for detection, preparedness, response and co-operation to all oil pollution incidents in Ghana.
- (2) The Authority is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Authority may, in the performance of its functions, acquire, hold and dispose of movable or immovable property and enter into contracts or any other transaction.
- (4) The Headquarters of the Authority shall be in the capital, Accra and it may establish regional offices in the various regions of the country.

**6. Objectives of the Authority.**

The principal objects of the Authority are to regulate, co-ordinate and oversee affairs on oil spill preparedness, response and co-operation and without prejudice to the generality of the foregoing, the Authority shall have the duty to-

- (a) To develop the National Oil Spill Contingency Plan (in this Act referred to as “the Plan”);
- (b) To establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major oil pollution accidents;
- (c) Identify high risk areas as well as priority areas for protection and clean up;
- (d) To establish appropriate mechanisms to monitor and assist or where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect the environment and clean up to the best practical extent the polluted site;
- (e) Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives in implementing the appropriate oil spill response;
- (f) Provide funding and appropriate and sufficient pre-positioned pollution combating equipment and materials as well as functional communication network systems required for effective response to major oil pollution;
- (g) To co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incidents;

(h) To co-operate with the International Maritime Organization and other national and regional organizations in the promotion and exchange of results of research and development programmes relating to the enhancement of oil pollution preparedness and response;

(i) To establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies in and out of the country for emergency oil spill response activities;

(j) To carry out such other activities as are necessary or expedient for the full discharge of its functions and the execution of the Plan under the Act.

**7. Functions of the Authority.**

The functions of the Authority are,

(a) To advise the Minister on the formulation of policies on oil spill preparedness, response and co-operation and to make recommendations for the protection of the marine environment from oil spills;

(b) To co-ordinate the activities of the bodies concerned with the technical or practical aspects of oil pollution preparedness, response and co-operation and serve as a channel of communication between those bodies and the Ministry;

(c) To be responsible for surveillance and ensure the compliance with all existing environmental legislation and the detection of spills;

(d) To co-ordinate oil spill contingency planning;

(e) To monitor, provide surveillance and co-ordinate oil spill response activities throughout Ghana;

(f) To co-ordinate the activities of the relevant bodies for the purpose of controlling oil spill accidents;

(g) To collaborate or co-ordinate with foreign and international agencies for the purpose of this Act;

(h) To act in liaison with and co-operate with government agencies, District Assemblies and other bodies and institutions to control oil pollution accidents and to effectively respond to them should they arise;

(i) To promote studies, research, surveys and analyses for the improvement and protection of the marine environment;

(j) To conduct seminars and training programmes and gather and publish reports and information relating to oil pollution accidents and response measures.

**8. Ministerial directions.**

The Minister may, in the public interest, give directives of a general nature regarding matters of policy to the Authority in the performance of its functions.

**9. Governing Body of Authority.**

(1) The governing body of the Authority shall be a Board which shall be responsible for the discharge of the functions of the Authority.

(2) The Board shall consist of the following members appointed by the President in consultation with the Council of State —

- (a) a Chairman who shall be a person knowledgeable in environmental matters;
- (b) the Executive Director of the Authority;
- (c) a representative of the Council for Scientific and Industrial Research, not below the rank of Principal Research Officer;
- (d) a representative, not below the rank of Director from the Ministries responsible for—
  - (i) Environment;
  - (ii) Local Government;
  - (iii) Finance;
  - (iv) Health;
  - (v) Education;
  - (vi) Foreign Affairs;
  - (vii) Water Resources and Rural Development;
  - (viii) Defence;
- (e) a representative of the Petroleum Industries;
- (f) a representative from the Institute of Oceanography and Marine Research;
- (g) the Ghana Ports Authority;
- (h) Environmental Protection Agency;
- (i) the Ghana Maritime Authority; and
- (j) three other persons at least one of whom shall be a woman.

(3) The members of the Board shall be appointed by the President in accordance with Article 70 of the Constitution.

(4) The President shall in making the appointments under this section have regard to the knowledge, expertise and experience of the persons in matters relating to the environment.

#### **10. Tenure of Office of Members.**

(1) A member of the Board other than the Executive Director shall hold office for a period not exceeding three years and shall on the expiration of that period be eligible for re-appointment.

(2) A member of the Board other than the Executive Director may at any time by letter addressed to the President resign his office.

(3) A member who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member.

(4) The Chairman or a member of the Board may be removed from office by the President for inability to perform the functions of his office, for stated misconduct or for any other just cause.

(5) The Chairman of the Board shall through the Minister notify the President of vacancies that occur in the membership of the Board within one month of the occurrence of the vacancy.

#### **11. Allowances for Members.**

The Chairman and the other members of the Board shall be paid such allowances as the Minister, in consultation with the Minister responsible for Finance, may determine.

#### **12. Meetings of the Board.**

(1) The Board shall meet for the dispatch of business at such times and in such places as the Chairman may determine but shall meet at least once every three months.

(2) The Chairman shall upon the request of not less than one-third of the membership convene a special meeting of the Board.

(3) The Chairman shall preside at the meetings of the Board, and in the absence of the Chairman the members present shall elect one of their numbers to preside.

(4) The quorum at a meeting of the Board shall consist of seven members and shall include the Executive Director or the person acting in that capacity.

(5) The Chairman shall preside at every meeting of the Board and in his absence by a member of the Board elected by the members present from among their number.

(6) Questions before the Board shall be decided by a majority of the members present and voting.

(7) The Chairman or the person presiding at a meeting of the board shall in the event of equality of votes have a second or casting vote.

(8) The Board may co-opt any person to act as an adviser at its meetings but no co-opted person is entitled to vote at the meeting.

(9) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(10) Except as otherwise expressly provided for under this section, the Board shall determine and regulate the procedure for its meetings.

**13. Disclosure of Interest.**

(1) A member of the Board who is directly or indirectly interested in any matter being considered or dealt with by the Board shall disclose the nature of his interest at a meeting of the Board and shall not take part in any deliberation or decision of the Board with respect to the matter.

(2) A member who fails to disclose his interest under subsection (2) of this section shall be removed from the Board.

**14. Committees of the Board.**

The Board may for the discharge of the functions of the Authority appoint Committees of the Board comprising members of the Board or non-members or both and assign to any such committee such functions of the Authority as the Board may determine.

**15. Regional and District Offices of the Authority.**

(1) There shall be established in each regional capital of Ghana and in such districts as the Board may determine regional and district offices of the Authority.

(2) A regional or district office of the Authority shall be provided with such public officers as the Board in consultation with the Public Services Commission shall determine.

(3) A regional or district office of the Authority shall perform such functions of the Authority in the region or district as the Board shall direct.

**PART III  
NATIONAL OIL SPILL FUND**

**16. Establishment of National Oil Spill Fund.**

(1) There is hereby established by this Act a fund to be known as the National Oil Spill Fund referred to in this Act as the "Fund".

- (2) The sources of money for the Fund shall be—
- (a) levies on petroleum products.
  - (b) levies from industries, whose activities pose risk of oil/chemical spills, such as oil marketing companies, oil exploration and production companies, offshore oil, transfer facilities, shipping companies and oil refineries. The levy shall be applied, on a case- by-case basis, depending on the facility location, type and risk profile.
  - (c) contributions from the following identified State Agencies:
    - (d) Ghana Ports and Harbours Authority
    - (e) Tema Oil Refinery
    - (f) Volta River Authority
    - (g) Ghana National Petroleum Corporation
    - (h) National Petroleum Authority
    - (i) grants from government for the protection or improvement of the environment;
    - (j) levies collected by the Authority in the performance of its functions;
    - (k) donations from the general public, institutions and organizations; and
    - (l) gifts.

**17. Object of Fund.**

Monies of the Fund shall be applied for -

- (a) planning and combating spillage, discharge or dumping of oil;
- (b) responding to oil spills where the spiller cannot be identified
- (c) environmental education of the general public;
- (d) research, studies and investigations relating to the functions of the Authority;
- (e) human resource and development; and
- (f) such other purposes as the Board in consultation with the Minister may determine.

**18. Management of the Fund.**

(1) The Fund shall be managed and administered by the Board which shall for this purpose include the Controller and Accountant-General or his representative.

(2) All monies for the Fund shall be paid into a bank account for the purpose opened by the Board with the approval of the Controller and Accountant-General.

**19. Functions of the Board in Relation to the Fund.**

(1) The Board shall for the purpose of managing the Fund -

- (a) formulate policies to generate money for the Fund;
- (b) determine the allocation to be made towards the objects of the Fund;
- (c) determine annual targets of the Fund.

(2) The Board may invest such part of the Fund as it considers appropriate in government securities or in such manner as may be approved by the Minister or in consultation with the Minister for Finance.

(3) All payments issued from the Fund shall be signed by the chairman of the Board, the Executive Director and one other member of the Board.

**PART IV  
ADMINISTRATION**

**20. Divisions of the Authority.**

The Board may create such departments or divisions in the Authority as the Board may consider necessary for the efficient discharge of the functions of the Authority.

**21. Executive Director and his Functions.**

(1) There shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission an Executive Director of the Authority who shall be the chief executive of the Authority.

(2) The Executive Director shall hold office on such terms and conditions as shall be specified in his letter of appointment.

(3) Subject to such general directives as the Board may give, the Executive Director shall be responsible for the direction of the work of the Authority and for the day to day administration of the Authority and shall ensure the implementation of the decisions of the Board.

(4) The Executive Director may delegate such of his duties as he may determine to any officer of the Authority but the Executive Director shall not be relieved from ultimate responsibility for the discharge of any delegated function.

(5) The Executive Director shall act as secretary to the Fund.

**22. Appointment of Other Staff.**



(1) The Authority shall have such other officers and employees as may be necessary for the proper and effective performance of its functions under this Act.

(2) Other public officers may be transferred or seconded to the Authority.

(3) Appointment of officers of the Authority shall be made by the President in accordance with the advice of the Board given in consultation with the Public Services Commission and upon such terms and conditions as the appointing authority shall determine.

(4) The Authority may engage the services of such experts and consultants as the Board may determine.

**23. Delegation of Power of Appointment.**

The President may in accordance with article 195(2) of the Constitution delegate his power of appointment of public officers under this Part.

**24. Expenses of the Authority.**

Parliament shall annually provide to the Authority such sums of money as may be necessary for the efficient discharge of its functions under this Act.

**25. Accounts and Audit.**

(1) The Board shall keep books of account and proper records in relation to them and the accounts and records of the Authority shall be in a form approved by the Auditor-General.

(2) The accounts of the Authority shall be audited by the Auditor-General within six months after the end of each financial year.

(3) The financial year of the Authority shall be the same as the financial year of the government.

(4) The Executive Director shall prepare budget estimates for each financial year and present the estimates to the Board for its approval not later than two months before the end of the financial year.

**26. Annual Report and Other Reports.**

(1) The Board shall as soon as practicable after the expiration of each financial year but within six months after the end of the year, submit to the Minister an annual report covering the activities and the operations of the Authority for the year to which the report relates.

(2) The annual report submitted under subsection (1) shall include the report of the Auditor-General.

(3) The Minister shall within two months after the receipt of the annual report submit a report to Parliament with such statement as he may consider necessary.

(4) The Board shall also submit to the Minister such other report as the Minister may in writing require.

**27. Request for Information.**

(1) The Executive Director or any officer of the Authority authorized by the Executive Director may request in writing from any person or request any person to attend at a time and place specified to give any information which the Executive Director considers reasonably necessary for the purposes of this Act.

(2) Any person who -

(a) without reasonable excuse fails to provide information requested under subsection (1); or

(b) without reasonable excuse refuses or fails to attend as requested under subsection (1); or

(c) knowingly provides false information or any information which he has no reason to believe to be true; or

(d) obstructs any public officer in the lawful execution of any powers under this Act; commits an offence and is liable on conviction to a fine or to imprisonment for one year or to both.

(3) Where an offence is committed under this Act or regulations made under it by a body of persons-

(a) in the case of body corporate other than a partnership, every director or an officer of the body shall also be deemed to be guilty of the offence; and

(b) in the case of a partnership every partner or officer of that body shall also be deemed to be guilty of that offence.

(4) No person shall be deemed to be guilty of an offence by virtue of subsection (3) of this section if he proves that the offence was committed without his knowledge or connivance and that he exercised all due care and diligence to prevent the commission of the offence having regard to all the circumstances.

**PART V  
OIL POLLUTION EMERGENCY PLAN**

**28.** (1) A ship which is registered in Ghana and any foreign ship in Ghanaian waters shall have on board, a ship board oil pollution emergency plan coordinated with-

(a) the system to be established in accordance with this Act, and

(b) approved in accordance with procedures established by the Authority.

(2) An operator of an offshore installation within the territorial waters or exclusive economic zone of Ghana shall have an oil pollution emergency plan coordinated with

(a) the system to be established in accordance with this Act, and

(b) approved in accordance with procedures established by the Authority.

(3) A person in charge of a sea port or an oil handling facility within the territorial waters or exclusive economic zone of Ghana shall have an oil pollution emergency plan or similar arrangement co-ordinated with-

- (a) the system established in accordance with this Act; and
- (b) approved in accordance with procedures established by the Authority.

(4) A ship owner or master, or an operator of an offshore installation, or a person in charge of a seaport or an oil handling facility who does not have an oil pollution emergency plan commits an offence and is liable on summary conviction to a fine of one thousand penalty units.

## **PART VI POLLUTION REPORTING PROCEDURES**

29. (1) A master or any other person in charge of a ship registered in Ghana, or of an offshore unit within the territorial waters or exclusive economic zone of Ghana shall report without delay to the Authority any event-

- (a) on that master's or person's ship or offshore unit that involves a discharge or probable discharge of oil; and
- (b) at sea which involves a discharge of oil or the presence of oil.

(2) A person in charge of a sea port or an oil handling facility within the territorial waters or exclusive economic zone of Ghana shall report without delay any event that involves a discharge or probable discharge or the presence of oil to the Authority.

(3) An officer of the Authority, Ghana Navy, Air Force, Police Service, Customs, Excise and Preventive Service, Immigration Service and any official authorized by the Minister shall report without delay any event at sea or at a sea port or oil handling facility which involves the discharge of oil or the presence of oil to the Authority.

(4) A report shall be made in accordance with this section of this Act as appropriate.

(5) A person required to report an event at sea, seaport or oil handling facility who fails without reasonable cause to report the event commits an offence and is liable on summary conviction to a fine of five hundred penalty units.

## **PART VII ACTION ON RECEIPT OF OIL POLLUTION REPORT**

30. (1) Where the Authority receives a report under section 29 or pollution information from another source, the Authority shall in collaboration with the National Co-ordinator and any other relevant Authority-

- (a) assess the event to determine whether it is an oil pollution incident;
- (b) if the event is an oil pollution incident assess the nature, extent and possible consequences of the oil pollution incident; and
- (c) without delay inform all States whose interests are affected or likely to be affected by the oil pollution incident and provide-
  - (i) details of its assessments and any action it has taken, or intends to take, to deal with the incident, and
  - (ii) further information as appropriate until the action taken to respond to the incident has been concluded or until joint action has been decided by those States.

(2) In the event of a serious oil pollution incident, the Authority shall provide the Organization directly or through the relevant regional organization with the details and information referred to in subsection (1) (c) and subsection (2).

(3) The Authority shall use as far as is practicable, the oil pollution reporting system developed by the Marine Environmental Protection Committee of the Organization when exchanging information and communicating with other States and the Organization.

**PART VIII**  
**NATIONAL AND REGIONAL SYSTEMS FOR PREPAREDNESS AND RESPONSE**

31. (1) There is established by this Act, a national system for the prompt and effective response to oil pollution incidents.
- (2) There shall be appointed a National Co-ordinator who shall be-
- (a) responsible for marine pollution preparedness and response;
  - (b) the national operational contact point and responsible for the receipt and transmission of oil pollution reports as referred to in section 29; and
  - (c) entitled to act on behalf of the Government and to request assistance or to decide to render the assistance requested.
- (3) The National Co-ordinator shall prepare a national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved whether public or private, taking into account the guidelines contained in the Manual on Oil Pollution, "Section II – Contingency Planning", developed by the Marine Environment Protection Committee of the Organization.
- (4) The National Co-ordinator shall within the Co-ordinator's capabilities either unilaterally or through bilateral, or multilateral co-operation, and as appropriate in co-operation with oil and shipping industries, port authorities and the other relevant entities establish-
- (a) a minimum level of pre-positioned oil spill combating equipment commensurate with the risk involved and programmes for its use;
  - (b) a programme of exercises for oil pollution response organizations and training of relevant personnel;
  - (c) detailed plans and communication capabilities which are continuously available as regards an oil pollution incident; and
  - (d) mechanisms or arrangements to co-ordinate the response to an oil pollution incident with the capabilities to mobilize the necessary resources.
- (5) The National Co-ordinator shall provide the Authority with current information concerning
- (a) the location, telecommunication data and if applicable, areas of responsibility of the Co-ordinator;
  - (b) information concerning pollution response equipment and expertise in disciplines related to oil pollution response and marine salvage, and
  - (c) the national contingency plan.

**PART IX**  
**INTERNATIONAL CO-OPERATION IN POLLUTION RESPONSE**

32. (1) The National Co-ordinator shall co-operate and provide on the request of any State party to the Convention which is affected or likely to be affected by the incident, advisory services, technical support, and equipment to respond to a serious oil pollution incident.
- (2) The financing of the costs for the assistance shall be based on the provisions set out in the Annex to the Convention.
- (3) The Authority may where appropriate seek assistance from the Organization to identify sources of provisional financing of the costs referred to in subsection (2).

- (4) In accordance with applicable international agreements, the National Co-ordinator shall take necessary measures to facilitate-
- (a) the arrival and utilization in, and departure from this country of a ship, aircraft or other mode of transport engaged in responding to
    - (i) an oil pollution incident, or
    - (ii) transporting personnel, cargo, materials and equipment required to deal with the incident; and
  - (b) the expeditious movement into, through and out of this country, of personnel, cargo, materials and equipment.

## **PART X RESEARCH AND DEVELOPMENT**

- 33.** (1) The National Co-ordinator shall co-operate directly, or through relevant regional Organizations or arrangements in the promotion and exchange of results of research and development programmes that relate to the enhancement of the state-of-the-art oil pollution preparedness and response including technologies and techniques for
- a. surveillance;
  - b. containment;
  - c. recovery;
  - d. dispersion;
  - e. clean-up;
  - f. otherwise minimizing or mitigating the effects of oil pollution; and
  - g. restoration.
- (2) The National Co-ordinator shall, where appropriate, establish directly or through relevant regional organizations or arrangements, the necessary links between research institutions within this country and those of other State parties to the Convention.
- (3) The National Co-ordinator shall, where appropriate, co-operate directly or through relevant regional organizations or arrangements with other States Parties to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects which include technological advances in oil pollution techniques and equipment.
- (4) The National Co-ordinator with other States Parties shall, where appropriate co-operate directly or through other competent international organizations for development of standards for compatible oil pollution combating techniques and equipment.
- (5) The activities referred to in this section may be carried out through the Organization and for that purpose the Authority shall liaise with the Organization.

## **PART XI**

## **TECHNICAL CO-OPERATION**

34. (1) The National Coordinator shall in respect of oil pollution preparedness and response, give support where appropriate, directly or through international bodies, to States Parties which request technical assistance to;
- (a) train personnel;
  - (b) ensure the availability of relevant technology, equipment and facilities;
  - (c) facilitate other measures and arrangements for the preparation and response to oil pollution incidents; and
  - (d) initiate joint research and development programmes.
- (2) The National Co-ordinator shall, where appropriate, co-operate with other States Parties in the transfer of technology in respect of oil pollution preparedness and response.
- (3) The support and transfer of technology may be provided through the Organization and for that purpose the Authority shall liaise with the Organization.

## **PART XII BILATERAL AND MULTI-LATERAL ARRANGEMENTS**

35. The National Co-ordinator may enter into a bilateral or multilateral arrangement for oil pollution preparedness and response and where the arrangement is entered into, the National Coordinator shall send to the Organization copies of the relevant instruments or documents relating to the arrangement.

## **PART XIII RELATION TO OTHER CONVENTIONS**

36. Nothing in this Act shall be interpreted as altering the rights or obligations of the Republic of Ghana under any Convention that it is party to, or other international agreement.

## **PART XIV ENFORCEMENT**

37. (1) Where the Inspector is of the opinion that a ship or offshore unit is contravening, or is likely to contravene any provision of this Act; the inspector may cause to be served on the ship or offshore unit an enforcement notice-
- (a) stating that the Inspector is of the said opinion;
  - (b) specifying the matter constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
  - (c) specifying the measure that shall be taken to remedy the contravention or eliminate the likelihood of a contravention as the case may be and
  - (d) specifying the period within which the measures shall be implemented.
- (2) Any ship or offshore unit that fails to comply with an enforcement notice under subsection (1) is guilty of an offence.

## **PART XV JURISDICTION**

38. in (1) Every offence under this Act shall be deemed to have been committed either the place in which the same actually was committed or in any place where the offender may be.
- (2) Any proceedings for an offence under this Act may be instituted in the High Court, or subject to the limitations set out in the Criminal Procedure Code in the Circuit Court and any other proceedings under this Act, unless otherwise provided, shall be instituted in the High Court.
39. (1) The Minister may on advise of the Board make regulations under this Act for all such matters as are to be prescribed under this Act and for any other matter that may be deemed necessary in pursuance of the object of this Act, for the proper activities which may be necessary in the event of an immediate response needed to deal with an oil spill.
- (2) The Minister may make regulations prescribing matters relating to-
- (a) The mobilization of local fishing vessels for the purpose of aiding in the oil spill preparedness and response control;
- (b) The mobilization of additional human resources for the effective performance of this Act;
- (c) The fees payable in respect of services required or permitted to be done under this Act;
- (d) Any allowance that will need to be paid to local fisherman volunteering to participate in any activity under this Act;
- (e) The means by which and the conditions subject to which a ship or class of ships may be exempted from compliance with the Regulations;
- (f) Generally for giving effect to this Act.
- (3) Regulations made under this section may prescribe in relation to a contravention of a provision in it, penalties not exceeding a fine of two hundred and fifty penalty units or a term of imprisonment, and for additional penalties not exceeding ten penalty units for each day in respect of a continuing offence.

**PART XVI  
MISCELLANEOUS**

40. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Secretary to the Authority.
- (2) The affixing of the seal shall be authenticated by the Director-General and the Secretary or some other person authorized in that behalf by a resolution of the Board.
- (3) Any contract or instrument which if entered into the executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Authority by the Secretary or any other person generally or specifically authorized by the Board in that behalf.
- (4) Any document purporting to be a document under seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved.
41. **RELIEF FROM PROSECUTION.**

No action shall lie against the Authority or any of its officers or other persons appointed or authorized to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority, or duty conferred or imposed on him under this Act.

42.

**PROHIBITION OF PUBLICATION OR DISCLOSURE OF INFORMATION TO UNAUTHORISED PERSONS.**

(1) No person shall, without the consent in writing given by or on behalf of the Authority, publish or disclose to any person other than in the course of his duties, or when lawfully required to do so by any court or under any law, the contents of any document, communication, or information whatsoever, which relates to and which has come to his knowledge in the course of his duties under this Act.

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand cedis or to imprisonment for a term not exceeding five years or to both.

(3) Where any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any information to any other person, he shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding five thousand cedis or to imprisonment for a term not exceeding five years or to both.

(4) The consent of the Authority under subsection (1) shall not be unreasonably withheld.



