

January 21, 2025

REBUTTAL: The Endless Struggles of Ghanaian Businesses (Part 1)

ACEP has noted the publication of an article by one Dr. Paul Herzuah, widely published online on January 20, 2025, titled “The Endless Struggles of Ghanaian Businesses (Part 1).” In the article, the author attempts to argue that Ghanaian businesses fail to receive adequate local support due to deliberate efforts by their fellow citizens to undermine them. To support this claim, he references the operations of Springfield E&P, alleging what he describes as *“strategic targeting by ACEP Ghana in recent years over the ENI case.”*

It is important to state that ACEP is not above criticism and remains open to receiving constructive feedback on its work. However, we believe the criticism presented in this article blatantly displays the author’s ignorance of how the industry works and appears to be engineered primarily to discredit the organization and cast unwarranted aspersions on ACEP, a job many professors and private individuals declined on the subject matter.

Regarding the Springfield E&P and Eni unitization case, the author argues that Eni refused to comply with a 2020 directive from the Ministry of Energy (MoE) to unitize their OCTP field with Springfield’s Afina-1x field, citing no connection between the two fields and questioning the commercial viability of Afina-1x. The author further states that the Ghanaian courts dismissed Eni’s arguments, compelling the company to comply with the directive.

It is important to highlight that these statements betray the author’s lack of understanding of how the case have evolved in the Ghanaian courts. Bizarre as some of the preliminary rulings were, the courts never finalized the substantive case of unitization. The preliminary rulings were to preserve the rights of Springfield, pending the outcome of the substantive case.

What the author also neglects to inform readers is that the case eventually escalated to the International Court of Arbitration, where the arbitral tribunal ruled in July 2024 in favour of Eni. The tribunal determined that the Republic of Ghana breached the Petroleum Agreement by issuing the unitization directives under the circumstances in which they were issued, thereby affirming the validity of Eni’s opposition to the Ministry’s directive.

In arriving at their judgement, the arbitral tribunal concluded on the following that:

1. **The statutory trigger for commencing unitization was not established.** This conclusion is based on the expert presentations and the evidence brought before it by the government of Ghana and the OCTP partners. In fact, the tribunal stated that:
“On the basis of the evidence, the Tribunal concludes that the MoE did not determine the existence of a single accumulation within the meaning of Section 34(1) of the Petroleum Act prior to commencing the process of unitisation. Hence, it finds that the MoE’s decision to require Eni and Springfield to “furnish the Ministry with a draft unitisation and unit operating agreement” was made prematurely, at a time when the MoE’s discretion under Section 34 of the Petroleum Agreement had not been triggered.”
2. **The imposition of the unitisation terms was wrongful.** The tribunal was of the view that imposing a unitization directive without requiring appraisal of Springfield’s to determine commerciality shifts the burden and risk of the appraisal obligation to the OCTP partners and *“defies the commercial logic of the distribution of risks under the Petroleum Agreement and finds no support in the applicable regulations.”*
3. **The determination of the initial tract participation was arbitrary.** The tribunal contends that given the Sankofa field was already commercial and producing, it was disadvantageous to the OCTP partners to impose an initial tract participation of 54.545% for Springfield and 45.455% for the OCTP partners when commercially recoverable volumes in Springfield’s field was uncertain at the time of determining the tract participation.

The conclusions drawn by the arbitral tribunal and the eventual judgment remain consistent with and vindicated ACEP’s well-known position on the case, which advocated for the *“application of the principles, laws, and science of unitisation”* and called for an independent investigation into the straddling claims of Springfield and the appraisal of its field to determine commerciality before any discussions of unitization.

It is, therefore, bizarre to see ACEP’s insistence for following due process for an activity (unitization) that is not new to the oil industry globally, or even in Ghana, to be construed as an attack on local businesses. Promoting local businesses should not come at the expense of globally accepted standards, especially when Ghana aspires to the reputation as a preferred destination for investment, either foreign or local.

Following the protracted legal dispute lasting four years, which deprived Ghana of potential revenues from the oil discovery, Springfield finally submitted a re-entry exercise as an appraisal programme in September 2024 at the direction of the Petroleum Commission. The re-entry exercise, which by all industry standards and practice could not pass for an appraisal programme,

was conducted in October 2024. The full report of the exercise is yet to be submitted to the Petroleum Commission, months after its completion, despite the Commission formally requesting the report from Springfield on December 3, 2024, with a 15-day timeline. These are the palpable challenges ACEP has with institutional inefficiency in the sector, where GNPC and the Petroleum Commission, who are expected to defend the national interest cannot fairly demand compliance with the rules of engagement in the industry.

During the period of Springfield's re-entry exercise, the Executive Director of ACEP granted an interview to Norvan Reports on the side-lines of the IMF/World Bank Annual Meetings in October 2024, where he highlighted the governance challenges in the oil and gas sector. Among the issues raised was the purported Springfield's Afina "appraisal programme", with specific concerns about data inconsistencies and the high costs associated with the program. However, Norvan Reports inadvertently referred to the "*appraisal program*" as the "*appraisal report*" in their publication, implying that the appraisal process had been completed.

Although the error was acknowledged and promptly corrected by Norvan Reports, Springfield chose to focus on the error rather than addressing the substantive concerns about data and costs. The company subsequently issued a letter to ACEP, threatening legal action unless the organization issued an apology for the publication. Despite the public nature of the exchange, ACEP has not, till this rebuttal, publicly disclosed these legal threats, maintaining its focus on advocating for transparency, accountability, and professional business conduct in the industry.

ACEP's statement on October 24, 2024, unequivocally emphasized that "*ACEP's positions on these issues are not intended to harm Springfield but reflect its commitment to the national interest, which has been undermined by recent governance failures.*" This stance has been consistently reiterated in ACEP's commentary on the matter. It is, therefore, deeply disingenuous for anyone familiar with the evolution of this case or the broader governance issues within the oil and gas sector to suggest that ACEP has strategically targeted Springfield in connection with the Eni case.

The author's accusation of ACEP's alleged "*pro-foreign business attitude on wild display*" reflects a lack of awareness or understanding of the realities in Ghana's oil and gas industry. Over the years, there have been numerous efforts to promote local content and participation in the upstream sector, many of which have been criticized by ACEP for serving hidden interests rather than genuinely promoting the participation of local businesses. Contrary to the author's claim, ACEP has consistently championed strategies to enhance local participation, publishing considerably on the subject and organizing numerous fora on addressing the challenges faced by local businesses in the industry. A good researcher can never miss these efforts by a simple internet search.

The fact remains that the oil and gas industry, particularly exploration, development, and production, is highly capital-intensive and risky. Achieving significant local participation requires more than rhetoric. It demands a pragmatic approach to addressing the structural and financial constraints faced by local businesses. Capital cannot simply be wished upon local entities and the realities of the risks in the industry do not exempt local businesses. Any participant of the industry needs to understand these facts.

We are aware of ongoing efforts to recruit conscious voices, including journalists, academics, and opinion leaders, to stage media campaigns against organizations that do not fully subscribe to the narrative of bypassing due process in the name of supporting local businesses. ACEP has been subjected to such targeted attacks in the past, particularly by businesses who do not want to follow the rules. Notice is hereby served that ACEP will respond to deliberate disinformation that targets the credibility of the organization on such a scale.

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