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LICENSING COMPLIANCE IN GHANA'S UPSTREAM PETROLEUM SECTOR

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INTRODUCTION

Ghana has a long history of oil and gas exploration dating to pre-independent era but commercial production of oil only begun in 2007 with the massive jubilee field estimated to hold a recoverable reserve of 1.8 billion barrels of crude oil. A total of 86.929 million barrels of Jubilee crude oil was exported from the Jubilee Field by the end of 2013.

The discovery in the Jubilee Fields and commencement of oil production opened a new chapter of accelerated exploration, which incentivized the signing of several new Petroleum Agreements. Between 2013 and 2014, 10 new Petroleum Agreements were signed between the Government of Ghana and oil companies (See Table 1).

Table 1: Recent Petroleum Agreements awarded in Ghana

No.	Company	Block (Contract Area)	Date of Parliamentary Ratification
1.	AGM Petroleum	South Deep water Tano Block	Dec 2013
2.	Med Songhai		March 2014
3.	Medea Development Ltd	East Cape Three Points Block	Dec 2013
4.	AMNI International	Central Tano offshore	March 2014
5.	CAMAC Energy	Expanded Shallow Water Tano	March 2014
6.	Heritage Oil Plc	Ultra Deep-water East Keta Block	July 2014
7.	Sahara Energy Fields	Shallow Water Cape Three Points	July 2014
8.	UB Resources Ltd.	Offshore Cape Three Points South Block	July 2014
9.	Brittania-U	South West Saltpond Block	July 2014
10.	Eco Atlantic Oil & Gas Ltd	South-West Cape three points block	17 July 2014

Source: ACEP Research

These companies include both experienced and inexperienced ones, which brought the process for awarding oil blocks in Ghana into public scrutiny. Ghana does not apply open and competitive bidding process in the award of oil blocks. Ghana's open door policy, also described as "first-come-first-served" policy ensures that the process remains administrative and heavily influenced by Ministerial discretion.

Although Parliament is required by law to ratify all Petroleum Agreements, the process of ratification is weak and usually without any serious scrutiny. In most cases, Parliament is concerned about the fiscal terms in the Petroleum Agreements. However, the most important components of the licensing regime – independent due diligence by Parliament on the experience of the companies to deliver on the work programme, financing sources for operations and beneficial ownership – are often not given serious considerations beyond the explanations provided by the

Minister of Petroleum in his accompanying memorandum to Parliament. This reduces the spirit behind parliamentary ratification to mere "window dressing", undermining the democratic rights of the citizens who are the primary owners of the resources.

Ghana is unlikely to benefit from her oil wealth if the process used in the award of oil blocks is not transparent, predictable and robust. A Petroleum Agreement may not necessarily lead to discovery of oil or gas; and this requires an award process that selects competent and financially sound companies, which are determined to book oil and gas reserves.

This report examines Ghana's licensing process for oil blocks and the extent to which the process has been complied with in the award of recent blocks. It also highlights the need for licensing reforms as the Government considers developing a new Petroleum Bill. The report would hopefully provide some proposals for adoption by Government and also provide information for Parliament and Civil Society to increase their understanding of compliance issues in the licensing process.

Section 1

PETROLEUM LICENSING PROCESS IN GHANA

Ghana's petroleum licensing process is based on first-come-first-served principle. This is also known as open-door policy. The Ghanaian law mandates the Minister for Petroleum to represent the Republic of Ghana in negotiations for and entry into petroleum agreements. In this case, any person who intends to enter into negotiation for a Petroleum Agreement for the purpose of exploration, development or production of petroleum is expected to submit an application to the Minister responsible for Petroleum.

This is supported by Section 2(2) of PNDC Law 84, which states:-

"Without prejudice to section 1 of this Law, any person who intends to negotiate for a petroleum agreement for the exploration, development or production of petroleum shall submit an application to the Secretary in accordance with such Regulations and such competitive bidding procedure as may be prescribed".

Section 2(3) also states:

"Copies of such an application shall be forwarded by the applicant to the National Energy Board, the Lands Commission, the Forestry Commission in cases where forest resources are to be affected by the petroleum operations envisaged, the Public Agreements Board and the Minerals Commission".

Section 2(3) however does not apply any longer following the establishment of the Petroleum Commission, the industry regulator.

The application process also follows a number of steps. The application form to be completed by a prospective contractor (applicant) requires the applicant to demonstrate clearly its technical competence and financial capability.

Applicants must also provide the following information in the application.

i. Detailed information on past oil industry experience, including locations and dates of significant exploration and production activities etc.
ii. Description of proposed work programme and accompanying budget for the proposed area of interest with detailed minimum exploration programme and budget for each phase of the exploration period.
iii. Proposed sources of funds for the petroleum operations.
iv. Organizational chart showing departments and appointments proposed for its activities and the type of expertise and how they are to be obtained.
v. Sources from where applicant expects to obtain geophysical equipment, processing equipment and interpretation services etc.
vi. Details of applicants' financial status (audited financial statements of the applicant and /or its parent company) for the last three (3) years.

The information submitted by the applicant in the application form and all the supporting documents evaluated by the Block Evaluation Committee, which is composed of the Ministry of Petroleum, the Petroleum Commission and the Ghana National Petroleum Corporation. The evaluation of applications focuses on technical competence and financial capacity. These are the fundamental principles in evaluating the qualification of an applicant for the award of an agreement.

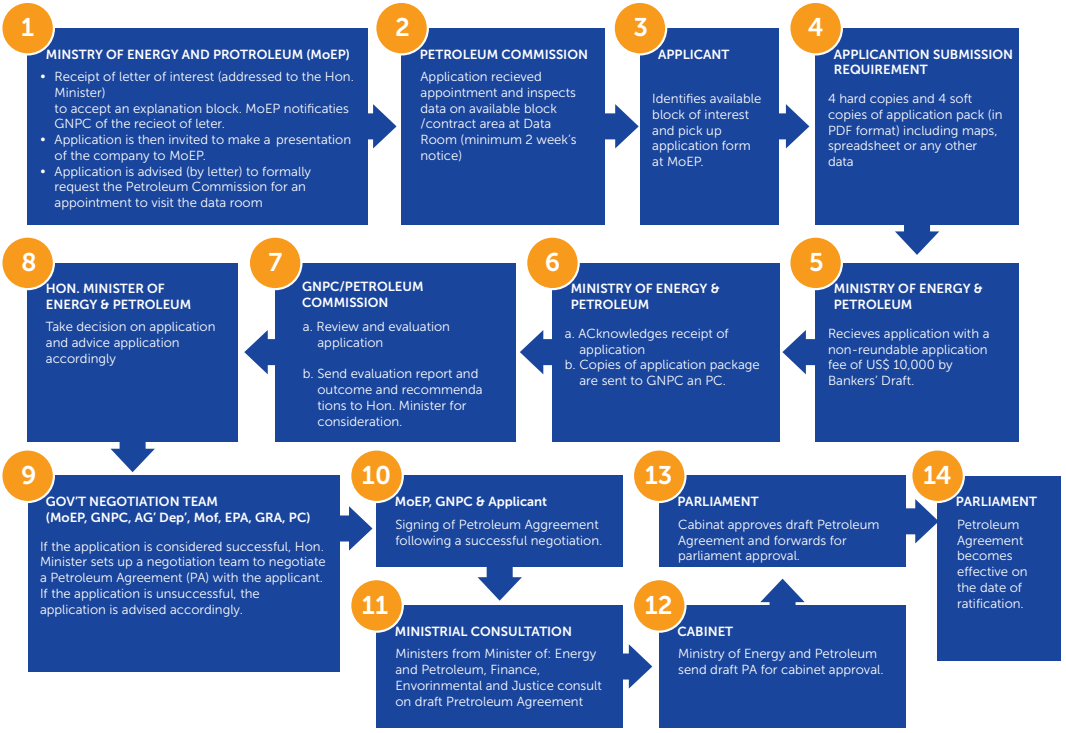
An Evaluation Report on the application, which also makes recommendations, is submitted to the Minister of Petroleum for approval; and consideration for negotiating an agreement.

The Minister sets up a Negotiation Team with

representatives from the Ministry of Petroleum, Ministry of Justice and Attorney General's Department, Ministry of Finance through the Ghana Revenue Authority and Ghana National Petroleum Corporation (GNPC). The Negotiation team negotiates a Petroleum Agreement with the applicant.

The negotiated Petroleum Agreement is submitted back to the Minister who presents it to Cabinet for approval. Finally, the 1992 Constitution of Ghana requires parliamentary ratification of all international transactions. Given that Petroleum Agreements fall within the category of international transactions, a negotiated Petroleum Agreement following Cabinet approval is submitted to Parliament for ratification. A Petroleum Agreement becomes effective once parliament ratifies it.

The following typology presents a complete process for petroleum licensing in Ghana.



Source: Ghana Petroleum Commission

Section 2

COMPLIANCE ISSUES IN GHANA'S PETROLEUM LICENSING

In the last three years, the Government of Ghana negotiated and signed ten (10) new Petroleum Agreements following the success in the Jubilee Field project. However, the circumstances surrounding the process for awarding some of the Petroleum Agreements have raised issues of compliance with the legal and administrative licensing regime in Ghana. In this section, some of the compliance issues have been explored as follows.

1. Lack of competitive bidding in Licensing

Ghana's law requires the application of competitive processes in licensing and indeed requires the Minister responsible for petroleum to develop regulations for the application of competitive processes. Section 2(2) of PNDC Law 84 provides, "Without prejudice to section 1 of this Law, any person who intends to negotiate for a petroleum agreement for the exploration, development or production of petroleum shall submit an application to the Secretary in accordance with such Regulations

and such competitive bidding procedure as may be prescribed". It further states in Section 32(2m):

"Without prejudice to the generality of subsection (1) of this section, the Secretary may prescribe regulations for or with respect to competitive bidding procedures for petroleum agreements"

However, as elaborated in the licensing process, the Government has never applied competitive bidding processes. Rather, it has applied "a first come first serve" principles.

2. Awarding contracts to inexperienced companies

Many of the companies awarded oil contracts over the last two years have relatively low levels of technical and financial capacity. One close example is CAMAC Energy which itself reported publicly its technical and financial challenges a year before it was awarded the Expanded Shallow Water Tano block in Ghana. CAMAC reported that *"We had no previous operating history in the Africa area prior to 2010". On financial capacity, it also reported - "Failure by the Company to generate sufficient cash flow from operations could eventually result in the cessation of the Company's operations and require the Company to seek outside financing or discontinue operations"*[1].

There are other companies awarded oil blocks that have experience in operating marginal fields such as Amni International, EcoAtlantic, Britannia-U, A-Z Petroleum and Sahara Energy.

3. National Sovereignty versus Technical Competence

One of the key considerations for grating an oil contract is technical competence of the company. However, in the case of the Deep-water block awarded to AGM, technical competence was relegated in favour of national sovereignty. Statoil, the Norwegian National Oil Company with considerably more experience and financial strength than AGM Petroleum Ghana, applied for the block but was not considered because it was not ready to undertake exploration in the western part of the block because of its proximity to the Ivorian boundary. This is purely a prudent investment decision as it could pose serious credit risk considering that the block falls

[1] CAMAC, 2013 Annual Report before the US Securities and Exchange Commission, p.10, http://www.camacenergy.com/documents/annualreports/2013- annual-report.pdf.

within the disputed area currently under consideration at International Tribunal on the Law of the Seas (ITLOS).

Certainly, government did not apply its own criteria of awarding the contract to a company best evaluated on technical and financial capability. Rather it relied on sovereignty issues, which is now the subject of a dispute at the ITLOS with Ivory Coast. The Africa Centre for Energy Policy (ACEP) had warned that the AGM contract was risky in view of Ghana's disregard for technical and financial competence[2] . Today, with Ghana requested by ITOLS as part of provisional measures to stop new drilling, AGM and other companies are not only unable to benefit from lower drilling costs resulting from the oil price crush, but are even more exposed to financing risks to carry out its exploration campaign.

4. GNPC performing licensing role

Whilst the GNPC has been perceived as the regulator of the industry, the corporation has always insisted its role has been that of an advisor. The GNPC's role in licensing has therefore been purely technical and advisory through the evaluation of the financial and technical viability of license applications upon request by the Minister of Energy. This is consistent with Section 2(3a) of the GNPC Law. However, it is really difficult to separate technical evaluation of applications for oil contracts from the licensing process. For this reason, the passing of the Petroleum Commission Act 821, in attempting to take the advisory role from GNPC, conferred thus power on the Commission. Section 24(2) of the petroleum commission act provides six months after the law coming into force, the GNPC shall cease to perform any advisory function in relation to petroleum regulations and management of petroleum resources and the coordination of petroleum policy.

In spite of this, GNPC continues to serve on the Block Evaluation Committee, made up of representatives from the Ministry of Petroleum, the Petroleum Commission (regulator) and the Ghana National Petroleum Corporation. This gives GNPC regulatory responsibilities.

5. Parliamentary waiver of standing orders

Parliamentary ratification is an important component in the licensing regime. Its relevance is embedded in the principle that natural resources belong to the people. The constitutional imperative stems from the provision

[2] Africa Centre for Energy Policy – "Advisory Notes to Parliament on the Petroleum Agreements between the Republic of Ghana, AGM Petroleum and Cola Natural Resources

in the 1992 Constitution of Ghana, which requires international transactions to be approved by Parliament (Article 268).

Parliament accordingly has its own standing orders to regulate its proceedings. Often described as "masters of its own rules" Parliament can however waived any of its standing orders when necessary. Therefore in the matter concerning the approval of two oil contracts (international transactions) involving two oil contracts, Parliament waived its standing orders 80(1)[3] , which requires it to move a motion on a matter under consideration after 48 hours from the notice of the motion[4] . The first of these contracts is over the Expanded Shallow Water Tano Block between the Government of Ghana, GNPC, CAMAC Energy Ghana Limited and Base Energy Ghana Limited. The second contract over the Central Tano Block Offshore is between the Government of Ghana, GNPC and AMNI International Petroleum Development Company (Ghana) Limited. These contracts were laid before the House on 27th February 2014 and approved less than 6 hours after the notice of the motion.

The issue of contention here is that the said oil contracts were signed for a period of 30 years. Why Parliament decided to rush the contracts through the approval process including waiving its standing orders for this purpose defies not only the constitutional logic behind the due diligence regime but also has huge implications for Ghana's oil wealth.

6. Dispute over the CAMAC Expanded Shallow Water Tano Block

The Petroleum Agreement between Ghana and CAMAC has come under more scrutiny following a case initiated by Pan Andean in Ghanaian High court over breach of contract. The case relates to infringement on part of a block, Tana 2A, initially awarded in 2008 to Pan Andean, a venture 60% owned by Dublin-based Clantorf Energy, 30% by Petrel Resources and 10% by local partner, Abbey Oil and Gas. A revised Petroleum Agreement covering the same area was signed between the Government of Ghana and Pan Andean in 2010.

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[3] Standing Order 80(1) - "Except as provided in paragraph (2) of this Order, no motion shall be debated until at least forty -eight hours have elapsed (this period not including days on which the House does not sit) after notice as prescribed in Order 76 (Notice of Motions) has been given. (2) A motion of which notice is required proposed by a Member or a motion to amend a motion of which notice is required or an amendment to a Bill may be debated twenty—four hours after notice has been given. Provided that— (a) when a motion is debated twenty-four hours after notice has been given, amendments may be proposed to it without notice; and (b) in the case of an amendment to a Bill of which notice has not been given as prescribed under this Order Mr. Speaker may, at his discretion, allow the amendment to be debated."

[4]Parliament of Ghana - Parliamentary Debates, Official Report, 4th Series, Vol. 48. No 31. Friday, 21st March, 2014.

Indeed the company secured an Accra High Court injunction on 7th April 2014 against GNPC, to stay any further action on the license area, but the Government ignored it and instead submitted a new Petroleum Agreement with CAMAC Energy Ghana, over the Expanded Shallow Water Tano Block which overlapped 529 sq km of the Tano 2A Block; and which was subsequently ratified by Parliament on 21st March 2014 . Pan Andean Resources contends that it signed a Petroleum Agreement with the Ghana Government for 1,532km2 onshore/shallow offshore on the Tano 2A block. The Government on the other hand argued that the Petroleum Agreement with Pan Andean was not valid because it lacked parliamentary ratification, an important step in the licensing process.

However, Government decisions and actions sought to contradict its own arguments. The GNPC invoiced Pan Andean since 2010 for purchasing of seismic and other data from GNPC as well as worked up leads and prospects on the Block, at a total cost of $2 million[6] . Also, the Government of Ghana had in a letter dated March 4, 2014 and dispatched by the Ministry of Energy and Petroleum to Pan Andean Resources Limited on March 27, 2014 confirmed the validity of the Agreement.

The Minister of Petroleum has substantial powers over the demarcation of oil blocks:

i. Section 4(l) of PNDC Law 84 gives the Minister power to prepare a reference map showing areas of potential petroleum fields within the jurisdiction of Ghana, divided into numbered areas of which shall be described as a "block".
ii. Section 4(2) gives the Minister power to issue in respect of the maximum number of blocks or portions of a block or of different blocks that may be held under a petroleum agreement under this Law, a petroleum agreement may be entered into or authority obtained, in respect of such number of blocks or portion of a block or of different blocks as may be specified in such agreement or other authority.
iii. Section 4(3) gives the Minister power to decide to close certain blocks other than those covered by petroleum agreements or other authority provided for under this Law, redefine the boundaries of open blocks, or give notice in the Gazette, or in such other manner as the Minister deems fit, of the opening of new blocks.

It is also important to state that the law in many respects limits the Minister's powers. For instance, Section

[6] Clantorf Energy Plc – 2013 Reports and Consolidated Statements

4(2) requires the Minister to issue blocks subject to guidelines. These guidelines do not exist. Also, Section 4(6) provides that in the case of closure or redefinition of a block as the Minister did in respect of the Tano 2A and the Expanded Shallow Water Tano Blocks, the Minister shall ensure that this exercise does not "reduce the area which, at the time of such closure or redefinition, is subject to a petroleum agreement". Thus the decision to cut a portion of the Tano 2A Block for award to CAMAC in spite of a confirmation in a letter to Pan Andean of the validity of a signed Petroleum Agreement amounted to violation of the Ghanaian Law.

It is equally important to state that since Ghana's Constitution requires parliamentary ratification of Petroleum Agreements before they become effective, the transactions between GNPC and Pan Andean relating to the "purchasing of seismic and other data from GNPC as well as worked up leads and prospects on the Block" was without any contradictions, an action in futility. In this case, the Government of Ghana could be described as having acted in bad faith, and sidestepping the supreme law of the country.

7. Compliance with local content regulations in petroleum licensing

Ghana's local content regulations, Petroleum (Local Content and Local Participation Regulations - LI2204), provides for a minimum equity of 5% for indigenous Ghanaian firms in every Petroleum Agreement. An analysis of two of the recent Petroleum Agreements approved by Parliament did not meet this requirement. For example, in the Brittania-U's PA, Hills Oil Marketing Company, the local indigenous Ghanaian firm, holds 5% in Brittania-U translating into 4% in the concession; whilst in UB Resources' PA, the indigenous firm, Royal Gate, has 5% in UB Resources which translates into 4.35% in the concession. This practice does not comply with the licensing regulations bordering on local content obligations.

Section 3

GHANA'S PETROLEUM LICENSING AND INTERNATIONAL BEST PRACTICES

Bad practices such as corruption in the oil and gas industry can occur from the kind of framework conditions put in place by state actors for the governance and management of oil and gas resources. Both state actors and non-state actors can therefore influence the development of weak frameworks as well as defining weak mandates for state institutions, which provide the haven for the achievement of their selfish interests at the expense of the state.

Ghana has a relatively young oil and gas industry with only one producing well, and another well now under development and expected to come on stream by the end of 2016. However, some of the laws and regulations that have been developed so far provide significant risks for corruption and therefore have the tendency of undermining the country's resolve to escape from oil curse, a phenomenon that has afflicted many oil rich countries in which vested interests have overtaken national interests. Some of the framework conditions that promote corruption in Ghana's oil and gas industry include:

i. Lack of application of open and competitive public

tender process in the award of petroleum licenses. Petroleum licenses are awarded through an administrative process, which opens up to potential corruption. The deliberate failure to develop regulations for the application of competitive bidding as provided for in Section 32(m) of the Petroleum (Exploration and Production) Law 1984 (PNDC Law 84), has demonstrated the lack of political will by all Ghanaian governments since 1984 to open the process for petroleum licensing and thereby increasing the risks of corruption. About 30 years now since the Petroleum Law provided for the development of regulations for competitive bidding, the regulations have not been developed.

ii. Lack of provision for the mandatory disclosure of oil contracts. The citizens of Ghana are the primary owners of the country's oil and gas resources, which have been entrusted to the President to manage on their behalf. The trustee relationship between the President (Government) and the citizens therefore requires that citizens be informed regularly about developments in the management of the resources. The failure to apply mandatory requirements for the disclosure of oil contracts has therefore provided convenient room to hide badly negotiated oil contracts from citizens' scrutiny. The Government has published 7 oil contracts out of 23 active oil contracts. However, the discretion to publish some contracts and leave others does not give good account of comprehensive disclosure regime. This is largely due to the fact that there is no framework that makes disclosure mandatory.

iii. Lack of a framework for the disclosure of beneficial ownership information of beneficial directors of companies holding oil contracts. The extent of vested interest sometimes lead individuals with political connections to submit companies for the award of oil contracts without disclosing the identity of the owners of the companies. Local directors often represent the companies whilst the true owners are at large, often hidden in the books of secret jurisdictions such as Gibraltar or British Virgin Islands where the parent companies or their subsidiaries are incorporated. This increases vested interest, which has the potential to create an elite class dominating benefits from the oil and gas industry at the expense of the citizens, who are the primary owners of the resources.

iv. Ghana's new Petroleum (Exploration and Production) Bill 2014 does not provide for the disclosure of beneficial ownership information, which therefore provides serious governance risks with implications for increasing corruption. The oil industry in Ghana is at risks because most of the companies granted oil contracts are not publicly listed companies and are therefore not regulated. For example, of all the companies involved in new Petroleum Agreements signed between 2013 and 2014, only

four are publicly listed, six are incorporated in secret jurisdictions and 5 are incorporated in Nigeria (See Table 2 below). Therefore, apart from those publicly listed, the beneficial ownership information of the rest is not publicly available.

Table 2: Information on Parent Companies awarded Oil Blocks in Ghana for the period (2013/2014)

No.	Company	Block (Contract Area)	Date of Parliamentary Ratification	Country of Incorporation	Stock Exchange Listing
1.	AGM Petroleum	South Deep water Tano Block	Dec 2013	Gibraltar	Nil
2.	AGR Norway	South Deep water Tano Block	March 2014	Norway	Oslo Stock Exchange
3.	Minexco OGG	South Deep water Tano Block	March 2014	Gibraltar	Nil
4.	Med Songhai	South Deep water Tano Block	March 2014	Gibraltar	Nil
5.	Medea Development Ltd	East Cape Three Points Block	Dec 2013	British Virgin Islands, & Luxembourg	Nil
6.	Cola Natural Resources Ghana Limited	East Cape Three Points Block	Dec 2013	Ghana	Nil
7.	AMNI International	Central Tano offshore	March 2014	Nigeria	Nil
8.	WCW International Company Limited	Central Tano offshore	March 2014	Ghana	Nil

No.	Company	Block (Contract Area)	Date of Parliamentary Ratification	Country of Incorporation	Stock Exchange Listing
9.	CAMAC Energy	Expanded Shallow Water Tano	March 2014	Headquarters in Houston, U.S.	New York Stock Exchange & Johannes-burg Stock Exchange.
10.	Base Energy	Expanded Shallow Water Tano	March 2014	Ghana	Nil
11.	Heritage Oil Plc	Ultra Deepwater East Keta Block	July 2014	Jersey; Channel Islands.	London Stock Exchange
12.	Blue Star	Ultra Deepwater East Keta Block	July 2014	Ghana	Nil
13.	Sahara Energy Fields	Shallow Water Cape Three Points	July 2014	British Virgin Islands	Nil
14.	UB Resources Ltd.	Offshore Cape Three Points South Block	July 2014	Nigeria	Nil
15.	Royal Gate Ghana limited	Offshore Cape Three Points South Block	July 2014	Ghana	Nil
16.	Brittania-U	South West Saltpond Block	July 2014	Nigeria	Nil
17.	Eco Atlantic Oil & Gas Ltd	South-West Cape three points block	17 July 2014	Nigeria	TSX (Canada)
18.	A-Z Petroleum Products	South-West Cape three points block	17 July 2014	Nigeria	Nil

Source: ACEP Research

v. Local content regulations provide the environment for rent seeking behavior as beneficiaries of local content requirements from equity participation, jobs and the provision of services are often influenced by one's relationship with an oil company, a public official or a politician. The recent regulations passed in Ghana, the Petroleum (Local Content and Local Participation) Regulations (LI2204) empowered the Minister responsible for Petroleum to abuse the qualifications for local content beneficiation. In regulation 4, the LI provides for a minimum of 5% equity for indigenous local persons or firms in a Petroleum License and 10% in a service company. However, sub-regulation 4 further provides the Minister responsible for Petroleum the power to decide on persons who qualify to hold the minimum equity. Without clear regulations on the criteria for determining qualifications, the LI has subjected the process to potential abuse, which may have implications for corruption in the oil and gas industry.

The Petroleum (Exploration and Production) Bill 2014, which has been laid before Parliament has wide discretionary powers conferred on the Minister of Petroleum in the following clauses.

a. In clause 10(4) of the Bill, the Minister can ignore the outcome of an open and competitive tender process and to use direct negotiations. In this case, the Minister is not obliged to give reasons to the public why the process is set aside. The danger of this process is that the Minister may use his power to shield companies that do not want to go through the competitive process, and turn back to negotiate directly with those companies. Also, the process may be used to expose the terms offered by the companies that go through the competitive process to give competitive advantage to those that eventually go through direct negotiation. The Ministry of Energy has explained that this flexibility is necessary because the Minister may not find any of the competing companies satisfactory, which thereby warrants him to go into direct negotiation with a company that may have the technical and financial capacity to undertake petroleum exploration in the area. However, one wonders why the Minister may not encourage a company with the requisite capacity to enter into the competitive process if by its capacity, the company is most likely to win the bid.

b. In clause 10(6), the Minister may decide to enter into direct negotiation without public tender if in consultation with the Petroleum Commission, direct negotiations offers the most "efficient manner" to achieve optimal exploration, development and production of petroleum. The Bill falls short of providing conditions supporting the "efficiency"

criteria particularly because "efficiency" has not been defined in this Bill. Also, the need for a company that can efficiently undertake petroleum activity should not negate a competitive process, since there could be more than one company that can qualify under this condition.

c. In clause 20, the Bill gives the Minister power to review the terms of a Petroleum Agreement but fails to specify the conditions under which a review can be done. A review of a Petroleum Agreement does not also require Parliamentary Approval.

If the Bill is passed in its current form, it will provide significant incentives for corruption and rent-seeking behavior as is evident in some oil producing countries including Venezuela, Nigeria, Angola and Equatorial Guinea. The Bill therefore falls short of best international practices.

One of the drawbacks of the Bill is the extensive discretionary powers of the Minister. The exercise of these discretions are however inconsistent with the provisions of the 1992 Constitution which attempts to control potential abuse of office in the exercise of discretionary authority. In Article 296, the Constitution provides as follows:

"Where in this constitution or in any other law discretionary power is vested in any person or authority – a. That discretionary power shall be deemed to imply a duty to be fair and candid; b. The exercise of the discretionary power shall not be arbitrary, capricious or biased wither by resentment, prejudice or personal dislike and shall be in accordance with due process of law, and; c. Where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this constitution or that other law to govern the exercise of the discretionary power".

In spite of these clear provisions, there has not been any publication of a Constitutional Instrument to guide the exercise of discretion powers provided in the petroleum legal frameworks. The oil and gas industry is a high value, high expenditure industry and associated with high level of secrecy. As the oil and gas industry grows and revenues likely to increase, unregulated discretion has the tendency of increasing abuse of office by public officials and thereby open the industry to big corruption.

This fear is compounded by the fact that corruption in Ghana has often been influenced by *"political culture, where societal expectations of largesse and patronage from holders of public office combine with a culture of official impunity, low remuneration, and opacity and*

unregulated discretion in the use of public authority to produce a system that is hospitable to corruption…" [7]

[7] Global Integrity/The Center For Public Integrity (2004): An Investigative Report Tracking Corruption, Openness and Accountability In 25 Countries, p.7

Section 4

RECOMMENDATIONS

From the analyses and based on international best practices, three broad recommendations are being proposed:

i. The Government of Ghana should adopt an open and competitive bidding process in the award of oil blocks.

- *The process must be transparent, predictable and robust;*
- *The process must provide a leveled playing field for all companies interested in oil concessions in Ghana. Evaluation reports on competing bids must be published;*
- *To limit Ministerial discretion, the process must provide clear conditions under which the Minister may decide not to enter into a Petroleum Agreement after a public tender process;*
- *Furthermore, the Minister must give reasons in a public notice when he decides to exercise this option;*
- *Where the Minister exercises this option, the justifications for granting a license to any other company should be published.*

ii. Parliament must enhance its capacity to conduct independent due diligence on all Petroleum Agreements prior to ratification.

- Parliament should scrutinize the technical competence and financial capacity of companies before approving Petroleum Agreements
- Parliament must establish the identity of beneficial owners in a Petroleum Agreement and satisfy itself that there is no conflict of interest

iii. The Government of Ghana should subject review process for Petroleum Agreements to parliamentary approval.

- *The circumstances that could cause a review in a Petroleum Agreement should be set out in all Petroleum Agreements to avoid arbitrariness on either side to the Agreement. E.g. If the economic rate of return falls below the project rate of return. This avoids arbitrariness in the review of Petroleum Agreements.*
- *Also, there should be a requirement that subjects such changes to parliamentary approval.*

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