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AN ANALYSIS OF GHANA'S PETROLEUM REGISTER

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SUPPORTED BY:



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EXECUTIVE SUMMARY

The establishment of Ghana's petroleum register is an important step to improving transparency in the upstream petroleum sector of Ghana. The establishment of the petroleum register fulfils Section 56 of the Petroleum (Exploration and Production) Law, Act 919 which mandates the Petroleum Commission (the Commission) to establish and maintain a petroleum register of petroleum agreements, licenses and authorizations in the petroleum sector, and to make the petroleum register publicly available. Contract disclosure continues to arouse the interest of citizens, civil society organizations and global actors. In view of that, it becomes important to assess Ghana's petroleum register even at its early life to strengthen any existing gaps before it costs

the country. In view of this, the Africa Centre for Energy Policy (ACEP) has assessed the petroleum register firstly against its legal requirements using the provisions of Section 56 of the Petroleum (Exploration and Production) Law, Act 919 and Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations 2018. Secondly, the petroleum register was analyzed against some international best practices. The following findings were made:

1. Assessment against legal requirements
 - a. The petroleum register satisfies the requirements of Section 56 of the Petroleum (Exploration and Production) Law Act 919 by firstly:

containing the petroleum agreements, licenses and authorizations of upstream petroleum operations; and secondly by being publicly available.

b. The petroleum register does not satisfy the following legal requirements under Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations, 2018:

Regulation 20 (b) - the authorizations granted to the Corporation in accordance with section 11 of the Act;

ii. Regulation 20 (c) - service contracts entered into by the Corporation pursuant to an authorization under section 11 of the Act;

iii. Regulation 20 (l) - unitization agreements;

iv. Regulation 20 (m) - area coordination agreements;

v. Regulation 20 (n) - long term sale of natural gas agreements; and

vi. Regulation 20 (p) - beneficial ownership details of contractors and

It is worth mentioning that there exists a natural gas sale agreement between the government of Ghana and Eni which should be disclosed on the petroleum register. In addition to this, there is no provision for the disclosure of unitization agreements although there is supposed to be one that exists between Tullow Oil and Kosmos Energy as highlighted in Table 2. The register neither provides for the requirements listed above, nor has the Petroleum Commission provided any reason(s) why those requirements are not in the petroleum register.

c. There are features on the petroleum register which are not provided for in the legal requirements. There are no provisions for “assignments” and “registration permits”

in the Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) even though the petroleum register has these two features.

d. There is incomplete capturing of headings in the petroleum register. Some of the headings under the register are not captured fully as it appears in the regulations. This makes it quite confusing to detect the information the register contains under those headings at first glance. This is seen with Regulations 20 (h), (j), (k), (o) and (q) as shown in Table 2.

e. The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) does not require the petroleum register to provide for “fees and charges” of permits. Having such a provision would help potential investors understand the costs involved in acquiring permits in the sector beforehand.

2. Assessment against best practices

When the register was assessed against best practices, the following findings were made:

a. The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) meets some best practices by requiring the disclosure of beneficial ownership information and authorizations for flaring or venting of natural gas. However, the register only fulfills the requirement for the authorization for flaring but does not fulfill that of beneficial ownership disclosure.

b. The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) does not require the disclosure of local content plans of the oil companies operating in the contract areas, although it is a legal requirement and it is also recognized as best practice to do so.

Section 27 (4) (aa) of the Petroleum (Exploration and Production) Law, Act 919 requires a contractor to provide detailed information on its local content plan. Although, there are documents of local content opportunities of the companies uploaded under “Procurement” on the register, there are no documents of the detailed local content plans of the oil companies.

c. The petroleum register is available on only one platform; a separate website from that of the Petroleum Commission. The Petroleum does well to have a portal on its website that gives access to the petroleum register. However, a lot more work remains to ensure that the host website for the petroleum register is efficiently managed and well maintained. Otherwise, in the event that that host website breaks down, all the information on the register will be lost.

d. The documents published on the petroleum register is not machine readable. This makes it tedious to search information on the website and use for analysis.

3. Recommendations

In view of these issues raised, the following are recommended:

1. Meeting the legal requirements of the Petroleum (Exploration and Production) (General) Regulations, 2018

a. The petroleum register should satisfy outstanding legal requirements:

The petroleum register should make provisions to satisfy the following legal requirements or the Petroleum Commission must provide reasons why they have not been fulfilled as required:

Regulation 20 (b) - the authorizations granted to the Corporation in accordance with section 11 of the Act;

Regulation 20 (c) - service contracts entered into by the Corporation pursuant to an authorization under section 11 of the Act;

iii. Regulation 20 (l) - unitization agreements;

iv. Regulation 20 (m) - area coordination agreements;

v. Regulation 20 (n) - long term sale of natural gas agreements; and

vi. Regulation 20 (p) - beneficial ownership details of contractors and licensees.

b. Features of the petroleum register must align with legal requirements:

Since the provision of “Assignments” and “registration permits” on the register is a good step, the Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) must be expanded to make provision for them. This will set the needed legal basis for disclosure and avoid the incidence of having disclosure done in an ad-hoc manner.

c. Complete headings on register:

To avoid any ambiguity, the Petroleum Register should complete the headings on the register to be the same as what is provided for in Regulation 20.

d. Include requirement for “fees and charges” on the petroleum register:

The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) should be expanded to make provision for “fees and charges” on the petroleum register. It will be good to have this provision on the register to enable potential investors understand the costs involved in acquiring permits in the sector beforehand.

2. Adopting best practices

a. Include requirements for the disclosure of detailed local content plans in the petroleum register:

The content of the petroleum register under regulation 20(1) must be expanded

to include approved plan of development, work programmes/work obligations, updates on companies' implementation of work programmes/work obligations, local content plans, and local content implementation progress.

b. Ensure efficient management and maintenance of the petroleum register host website:

Broken websites can be a challenge to the process of transparency and accountability. To avoid interruption in the disclosure of petroleum contracts and other relevant documents, Petroleum Commission must at all times, ensure that the host website for the petroleum register is well functioning and periodically maintained.

c. Create portals to the petroleum register on the websites of all sector relevant agencies:

In addition to the portal on the Petroleum

Commission's website, the Ministry of Energy and all other relevant agencies including the Ghana EITI, must have portals to the register made available on their websites. This will allow easy and multiple access to the register by different stakeholders.

d. Publish the documents on the petroleum register in a machine-readable format:

Making information on the register machine-readable will enable ease of search and analysis of the contents of the register by citizens, civil society organizations and all relevant stakeholders.

Part One

Introduction

Background

Consistent with improvement in contract transparency in the extractive sector globally, the Ministry of Energy launched the Ghana Petroleum Register in February 2018 to make available to the public copies of petroleum agreements, permits, and authorizations in the petroleum sector in accordance with Section 56 of the Petroleum (Exploration and Production) Law, Act 919. Act 919 mandates the Petroleum Commission (the Commission) to establish and maintain the petroleum register. Hitherto, it was not common for citizens to access petroleum contracts and licenses for key negotiated terms. Meanwhile, these deals were transacted by government on citizens' behalf.

The petroleum register therefore came as a step to improve transparency in Ghana's petroleum operations. Transparency has always been an important concern for the extractives sector, particularly because of the sector's susceptibility to money laundering and rent seeking behavior, among other forms of corruption.

Contract transparency is important for several reasons. For example, it serves as a tool for citizens to hold their governments and company representatives accountable for the agreements they make on their behalf. When such agreements are made public, they allow citizens to scrutinize them. This helps to reduce high-level political interference and ensure that

negotiators are prudent in drafting agreements. As calls for contract transparency increases, more and more countries begin to embrace it. By 2017, more than 40 countries have officially published contracts and 29 out of 51 Extractive Industries Transparency Initiative (EITI) countries, have at least disclosed some of their contracts.¹ Although countries may mandate contract disclosure by constitution (e.g., Niger, the Philippines, Central African Republic, Guinea), legislation (e.g., Republic of Congo, Liberia, Tanzania), or by decree (e.g., DRC), legal backing is not always necessary. Contract disclosure can still be achieved through a simple agreement amongst the contracting parties once confidentiality agreements do not prevent contract disclosure.²

Petroleum contract disclosure becomes meaningful when it is full text rather than a list of petroleum agreements. This is because full text allows for thorough assessment of the contract details, which is of utmost public interest, whereas a list of contracts does not. Prior to the establishment of the petroleum register, Ghana through the Ministry of Energy used to publish petroleum contracts on its website from time to time. Whereas this was considered some form of contract disclosure, it was not guided by any legal mandate and also did not align with international best practice. When Act 919 was first passed with provision for contract disclosure, it was not clear whether it was for full text.

¹ Natural Resource Governance Institute (2018). Ghana's New Petroleum Register Features Full-Text Contracts. Available at <https://resourcegovernance.org/blog/ghana-new-petroleum-register-features-full-text-contracts> Accessed 2nd August, 2018.

² OGP Openness in Natural Resources Working Group (2016). Disclosing contracts in the natural resource Sector. Available at http://www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20K%20Disc_0.pdf Accessed 7th August 2018.

However, the establishment of the online petroleum register itself assuaged this concern. There have been several calls to include requirements in the Petroleum (Exploration and Production) (General) Regulations 2018 to set a legal basis for the features of the register.³

After six months of having the online petroleum register in practical use, the Africa Centre for Energy Policy (ACEP) recognizes the need to assess the platform in alignment with its mandated petroleum laws and international best practices. This is part of ACEP's commitment to improve contract transparency in the petroleum sector to help ensure that Ghana gets the best possible outcome from contract negotiations.

1.1 Objective

The objective of this paper is to assess the features of Ghana's petroleum register against its minimum requirements as specified in the Petroleum (Exploration and Production) Law, Act 919 and the Petroleum (Exploration and Production) (General) Regulations, and international best practices. The assessment identifies the possible gaps of the register that may require reinforcing and recommend ways to improve the register. Again, by this assessment, stakeholders will become aware of what the petroleum register entails and understand its relevance for the petroleum sector and Ghana as a whole.

³ Natural Resource Governance Institute (2018). Ghana's New Petroleum Register Features Full-Text Contracts. Available at <https://resourcegovernance.org/blog/ghana-new-petroleum-register-features-full-text-contracts> Accessed 2nd August, 2018.

1.2 Methodology

The methodology for this paper was qualitative because the nature of analysis requires the review of petroleum legal frameworks and other existing literature on the subject matter. It identifies the possible gaps in the petroleum register by using Ghana's petroleum laws and international best practices as benchmarks.

1.2.1 Data sources

The primary sources of data for this paper was Ghana's petroleum register portal, the Petroleum (Exploration and Production) Law Act 919 and the Petroleum (Exploration and Production) (General) Regulations, 2018. Secondary data was obtained from existing literature on international best practices and other related information on the subject matter. The petroleum register portal will be accessed at <https://www.ghanapetroleumregister.com/>.

1.2.2 Data variables for analysis

The data variables for analysis were the requirements of the petroleum register as specified by Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) and Section 56 of the Petroleum (Exploration and Production) Law Act 919. They are presented in the table below.

Table 1: Data Variables for Analysis

Requirements
<p>Section 56 of the Petroleum (Exploration and Production) Law Act 919</p> <ol style="list-style-type: none">1. The Commission shall establish and maintain a register of petroleum agreements, licenses, permits and authorizations as prescribed.2. The register shall be open to the public.
<p>Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations, 2018</p> <ol style="list-style-type: none">1. The petroleum register established under section 56 of the Act shall include a record of the following:<ol style="list-style-type: none">a) the petroleum agreements;b) the authorizations granted to the Corporation in accordance with section 11 of the Act;c) service contracts entered into by the Corporation pursuant to an authorization under section 11 of the Act;d) licences to undertake reconnaissance activities;e) drilling permits;f) licenses to install and operate facilities for transport, treatment and storage of petroleum;g) permits to commence installation and operation of a facility for transport, treatment and storage of petroleum;h) production or injection permits for petroleum or water;i) flaring or venting authorizations for natural gas;j) exploration and development permits for drilling;k) approvals of third party access for production facilities and pipelines;l) unitization agreements;

- m) area coordination agreements;
- n) long term sale of natural gas agreements;
- o) permitted mortgages of participating interests in petroleum agreements or licenses to install and operate facilities for transport, treatment and storage of petroleum;
- p) beneficial ownership details of contractors and licensees; and
- q) any other permit, authorization, approval, certificate or consent relevant to the petroleum operations under a petroleum agreement.

Source: Author

1.2.3 Analytical method

The analysis for the paper is in twofold. Firstly, the paper analyzed whether or not the petroleum register meets the requirements of the Petroleum (Exploration and Production) Law, Act 919 and the Petroleum (Exploration and Production) (General) Regulations, 2018. To do so, it benchmarked the features of the petroleum register against the requirements of the above-mentioned legal frameworks. Secondly, the paper assessed briefly if the legal frameworks and the features of the register meet best practices and identify any gaps. Based on the findings of the paper, recommendations have been made to help bridge the gaps identified.

The limitation to this analysis was that it could not thoroughly assess all the contents of the documents disclosed on the register. Its analysis therefore focused more on the features of the register in line with its legal requirements and best practices.

1.3 Structure of Paper

The rest of the paper is structured in two main parts. The first part is also in two sections. The first section describes the features of the petroleum register and assesses them against the specific provisions of the above-mentioned petroleum law and regulations in Table 1. This is followed by the next section which assesses the provisions of the legal frameworks under review and the features of the petroleum register against best practices. Finally, the last part details the findings and conclusion of the assessment and draws useful recommendations to improve the register.

Part Two

Analysis Of Petroleum Register

This part analyzes the features of the petroleum register and assesses them against the provisions of section 56 of Act 919 and Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations, 2018. It does so under two sections. The first section describes the features of the petroleum register while the second section provides an assesses the register against its legal requirements and international best practices.

2.1 Features of Ghana's petroleum register

Ghana's petroleum register is an online repository of full text petroleum agreements, permits, authorizations and other relevant data on petroleum operations

in Ghana. It is hosted on an independent website accessible at <https://www.ghanapetroleumregister.com/>. It has seven (7) tabs under which different levels of information exist. These tabs allow for easy navigation to access the various information contained on the register. The tabs and their respective contents are described below:

Tab 1 – Home:

This is the first tab on the website that displays the home page. The home page displays a map of Ghana's offshore activities. It gives a snapshot of Section 56 of Act 919 and indicates that data is entered in the register on an ongoing basis. At the bottom of the home page is a disclaimer about the

purpose and source of the information on the website, and other liability issues.

Tab 2 - Exploration History:

This tab displays information about the history of Ghana’s petroleum industry and how it has developed over time. Displayed on the left side of this webpage, are hyperlinks to the six (6) phases of Ghana’s petroleum upstream activities since 1896 to 2007. These hyperlinks, when opened, provide information of the various activities that were undertaken during the respective phases.

Tab 3 – Contract Area:

The third tab displays a webpage that provides the names of seventeen (17) contract areas that have been given out for the undertaking of petroleum activities. Each contract area is in hyperlink which, when opened, displays additional hyperlinks on the left and metadata of fiscal terms, size

of contract area, current phase of operations, operator and other contracting parties, etc. on the right. Each of the additional hyperlinks contains specific information on the specific contract area under review, including information on exploration and development permits, production permits, reconnaissance licenses, etc.

Tab 4 – Licensing Rounds:

Under this tab, information pertaining to the conducting of licensing rounds including date and venue of licensing rounds, general procedure requirement for tender, pre-qualification requirement, etc. are provided as and when they are available.

Tab 5 – Procurement:

This webpage provides information on how the various companies operating in Ghana’s upstream petroleum sector are making procurements in line with promoting local

content and local participation in the upstream petroleum industry. A list of these companies is provided in hyperlinks on the left side of this webpage. When opened, the various companies provide information on the local content opportunities available.

Tab 6 – Legislations:

This page provides access to all existing upstream petroleum legislations in Ghana. A list of the legislations is provided on the page in hyperlinks which when opened, provide the legislation documents.

Tab 7 – More:

On this webpage, there is an interface that allows users of the website to submit their feedback to Petroleum Commission.

At the bottom of each webpage, there is a display of Petroleum Commission’s contact information. This includes their email, physical address, postal address, and

telephone numbers.

2.2 Assessment of Ghana’s petroleum register against legal requirements

Table 2 provides the assessment of the features of Ghana’s petroleum register against its legal requirements.

Table 2: Assessment of Ghana's petroleum register against legal requirements

Legal requirements	Do features of petroleum register meet legal requirement (Yes/No)	Comments ⁴
Section 56 of the Petroleum (Exploration and Production) Law Act 919		
1. The Commission shall establish and maintain a register of petroleum agreements, licenses, permits and authorizations as prescribed.	Yes	The petroleum register was launched on February 5th 2018.
2. The register shall be open to the public.	Yes	The register is available online at https://www.ghanapetroleumregister.com/
Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359)		
1. The petroleum register established under section 56 of the Act shall include a record of the following:		
a) the petroleum agreements;	Yes	Full text petroleum agreements are available on the register for all existing contract areas. In all, there were seventeen (17) petroleum agreements available on the petroleum register as of 23rd August, 2018.

⁴ The assessment of the register is reflective of the last date of assessment on 23rd August, 2018.

b) the authorizations granted to the Corporation in accordance with section 11 of the Act;	No	There is no feature that satisfies this requirement in the petroleum register.
c) service contracts entered into by the Corporation pursuant to an authorization under section 11 of the Act;	No	There is no feature that satisfies this requirement in the petroleum register.
d) licenses to undertake reconnaissance activities;	Yes	For each of the contract areas, the register displays “no permit has been issued in this regard”, suggesting that there has been no permit issued for reconnaissance activities for any of the existing contract areas. This is because Ghana had been practicing the one-tier system of petroleum licensing, where a petroleum agreement included license to do reconnaissance. New agreements are yet to be signed under Act 919 to reflect the two-tier system of reconnaissance licensing on the one hand, and a petroleum agreement on the other hand.
e) drilling permits;	Yes	For each of the contract areas, the register displays “no permit has been issued in this regard”.

f) licenses to install and operate facilities for transport, treatment and storage of petroleum;	Yes	For each of the contract areas, the register displays “no permit has been issued in this regard”.
g) permits to commence installation and operation of a facility for transport, treatment and storage of petroleum;	Yes	Offshore Cape Three Points and Cape Three Points Block 4 have permits uploaded on the register under this category. For the remaining fifteen (15) contract areas, the register displays “no permit has been issued in this regard”.
h) production or injection permits for petroleum or water;	Yes	From the register, two (2) out of seventeen (17) contract areas have been issued with production permits. These are the Deepwater Tano and West Cape Three Points contract areas. For the remaining fifteen (15) contract areas, the register displays “no permit has been issued in this regard”. It is worth noting that the name of this requirement on the register is “production permits” and not “production or injection permits for petroleum or water” as indicated in Regulation 20(h).
i) flaring or venting authorizations for natural gas;	Yes	The register indicates that “no permit has been issued in this regard.”

<p>j) exploration and development permits for drilling;</p>	<p>Yes</p>	<p>For four (4) out of seventeen (17) contract areas: Central Tano Block, Onshore/Offshore Keta Delta Block, South West Saltpond and Shallow Water Cape Three Points, the register displays “no permit has been issued in this regard”. For the remaining thirteen (13) contract areas, the register publishes their exploration and development permits. Again, it is worth noting that the name of this feature on the register is “Exploration and Development Permits” and not “exploration and development permits for drilling” as captured in Regulation 20(j). The requirement under Regulation 20(j) appears to be for permits of drilling activities only during the exploration and development stages of petroleum operations rather than permits for all activities during the exploration and development stages of any petroleum operation. Yet, the permits published on the register - in fulfilment of this requirement - for the thirteen (13) contract areas are for exploration and development activities without making any specific reference to drilling. Notwithstanding, it can be concluded that the “exploration and development permits” have catered for drilling activities by the definition for development under Section 95 of Act 919 which includes activities “...carried out in connection with a development plan in the nature of the building and installation of facilities for production, drilling of development wells...”.</p>
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k) approvals of third party access for production facilities and pipelines;	Yes	Under this feature, the register displays “no permit has been issued in this regard” for each of the seventeen (17) contract areas. This is captured on the register as “Approval of third party access” and not fully as it is in Regulation 20(k).
l) unitization agreements;	No	There is no feature for unitization agreements on the register. However, there is supposed to be a unitization agreement between Tullow Oil and Kosmos Energy for the oil discovery straddled between the Deepwater Tano and the West Cape Three Points. It is not clear why the petroleum register has not made provision for this disclosure.
m) area coordination agreements;	No	There is no such feature.
n) long term sale of natural gas agreements;	No	There is no such feature. However, there exists a natural gas sale agreement between the government of Ghana and Eni which needs to be published on the register.
o) permitted mortgages of participating interests in petroleum agreements or licenses to install and operate facilities for transport, treatment and storage of petroleum;	Yes	For this feature, the register displays “no permit has been issued in this regard” for all seventeen (17) contract areas. The name on the register is captured as “permitted mortgages” and not fully as it appears in Regulation 20(o).

p) beneficial ownership details of contractors and licensees; and	No	There is no feature for the publishing of beneficial ownership details of contractors and licensees on the petroleum register.
q) any other permit, authorization, approval, certificate or consent relevant to the petroleum operations under a petroleum agreement	Yes	<p>These are mainly for extension for exploration periods. Eleven (11) out of seventeen (17) contract areas have permits published under this requirement. Four (4) out of the remaining six (6): Deepwater Tano / Cape Three Points, Cape Three Points Block 4, Onshore/Offshore Keta Delta block and Offshore Cape Three Points South contract areas do not have on the register, any permit under this category. For Deepwater Cape Three Points West Offshore and East Cape Three Points contract areas, there is an error with the links as their webpages display “Not found” when clicked on.⁵</p> <p>Also, this heading is not captured fully on the register. It is captured as “any other permit, authorization, approval, certificate or consent”.</p>

Source: ACEP, 2018

⁵ This was the case as of the last date of assessment on 23rd August 2018.

2.2.1 Key observations

It is observed that the register does not seem to be up to date as is expected. For example, exploration and development permits that should have been renewed subsequently do not have their renewed permits available on the register. Again, the production permits available on the register are valid up to 2017. Although they should have been renewed for 2018, the register does not have the renewed permits available. Yet, section 31(1) of Act 919 states that “a contractor shall not produce or inject petroleum if the contractor does not have an annual permit granted for that purpose by the Commission.”

Again, there is no provision for “fees and charges” on the petroleum register. It will be good to have this provision on the register to enable potential investors have an understanding of the costs involved in acquiring permits in the sector beforehand.

Another observation is that, the petroleum register has the Petroleum Income Tax Act, 1987 (PNDCL 188) under “Legislations” tab where it provides access to the relevant legislations in the petroleum sector. However, this law has been repealed by Income Tax Act, 2015 (Act 896) and there is no more sector specific income tax law. PNDCL 188 may continue to be relevant for existing contracts prior to the passage of Act 896. It is therefore important that in addition to PNDCL 188, the petroleum register also contain the new Income Tax Act, 2015 (Act 896).

2.2.2 Other emerging issues

There is no information on local content plans and achievements of the companies operating the contract areas. The information provided on the procurement webpage are for the local content opportunities and outlook for the year 2018.

Meanwhile, section 27 (4) (aa) of the Petroleum (Exploration and Production) Law, Act 919 requires a contractor to provide detailed information on its local content plan. It is important that these plans are made available on the register. However, it is important to note that there's no provision for the disclosure of local content plans in the legal requirements of the register.

Another observation is that the petroleum register makes provision for "Assignments" although there is no such provision in Act 919 nor the Petroleum (Exploration and Production) (General) Regulations, 2018. Assignments basically refers to the complete transfer of title in a property from one person (assignor) to another (assignee). The register also has a feature that publishes registration permits of the companies operating in the upstream sector. Again, this is not a requirement under the Petroleum (Exploration and Production) (General)

Regulations, 2018 (L.I. 2359) nor Act 919.

2.3 International best practices for contract disclosure

As contract disclosure in the petroleum sector is becoming a global norm, it becomes important that contract repositories or petroleum registers meet international best practices within the industry and exhibit certain features that are considered internationally acceptable.

The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) which provides legal requirements to guide the operationalization of Ghana's petroleum register has satisfied some best practices. These are the provisions to address environmental concerns like authorizations for flaring or venting of natural gas and for the disclosure of beneficial ownership information.

This sets a good standard for the register if it implements the provisions. However, although the register has fulfilled the requirement for the environmental aspect, it does not do so for the disclosure of beneficial ownership.

In as much as the legal requirements that guide the register must meet best practices, the features of the register must as well meet best practices. It is considered best practice when petroleum registers are/have the following features:

1. Online - this allows for easy access. Where internet access is a challenge, the register can be made available in non-electronic formats.
2. Full text - it is important for contract disclosure to be full text rather than just a summary of the contract terms. This allows for thorough assessment and monitoring of petroleum deals by citizens.

3. Available on more than one platform - this is important so that should the primary website hosting the petroleum register break down, the contracts can still be accessed on other platforms. EITI countries can make use their EITI websites as a secondary repository for their petroleum registers. However, this could be a challenge in countries where one server hosts all of government's websites. In such cases, efficient management and maintenance of the host website is paramount.

4. Machine readable - petroleum registers must publish contracts in electronic formats that are searchable or allow text to be copied from the contract and pasted into another document. Machine readable formats make the process of using contracts much easier especially for analysis.

5. Metadata - petroleum registers should have additional information about disclosures, known as metadata. This helps improve the sorting through of the contracts or licenses, their accessibility and organization. ⁶

Table 3 assesses Ghana’s petroleum register against these best practices.

Table 3: Assessment of petroleum register against best practices

Best Practice	Do features of petroleum register meet legal requirement (Yes/No)	Comments
Online	Yes	The register is available online at https://www.ghanapetroleumregister.com/ L.I. 2359 requires that a copy of the petroleum register is kept at the office of the Petroleum Commission. This allows for the register to be accessed in places where internet access is a challenge.
Full text	Yes	The register publishes full text petroleum agreements

⁶ These points were extracted from insight shared by Hubert and Pitman (2017). Past the Tipping Point? Contract Disclosure within EITI. Natural Resource Governance Institute. Available at <https://resourcegovernance.org/sites/default/files/documents/past-the-tipping-point-contract-disclosure-within-eiti-web.pdf> Accessed 7th August, 2018.

Available on more than one platform	No	However, there is a portal on the website of the Petroleum Commission that provides access to the petroleum register.
Machine readable	No	The documents (petroleum contracts, licenses, permits, etc.) are in PDF format. Although this allows users to see the content of the documents, they are not searchable nor allow for text to be copied. This requires having to read through the entire documents to find specific terms making it difficult and tedious to use.
Have metadata	Yes	The register displays a descriptive metadata on the interface of each contract area. These metadata provides information on fiscal terms, size of contract area, status of operations of the contract areas, etc.

Source: ACEP, 2018

Part Three

Findings, Recommendations And Conclusion

The focus of this analysis was to assess Ghana's petroleum register. It did so in two parts. Firstly, the analysis sought to find out if the register fulfills its legal requirements as mandated by the Petroleum (Exploration and Production) Law, Act 919 and the Petroleum (Exploration and Production) (General) Regulations, 2018. Secondly, it was assessed if the legal frameworks and the features of the register meet international best practices. The following findings were made:

3.1 Findings

1. Assessment against legal requirements

a. The petroleum register satisfies the requirements of Section 56 of the Petroleum (Exploration and Production) Law Act 919 by

firstly: containing the petroleum agreements, licenses and authorizations of upstream petroleum operations; and secondly by being publicly available.

b. The petroleum register does not satisfy the following legal requirements under Regulation 20 of the Petroleum (Exploration and Production) (General) Regulations, 2018:

- i. Regulation 20 (b) - the authorizations granted to the Corporation in accordance with section 11 of the Act;
- ii. Regulation 20 (c) - service contracts entered into by the Corporation pursuant to an authorization under section 11 of the Act;

- iii. Regulation 20 (l) - unitization agreements;
- iv. Regulation 20 (m) - area coordination agreements;
- v. Regulation 20 (n) - long term sale of natural gas agreements; and
- vi. Regulation 20 (p) - beneficial ownership details of contractors and licensees.

It is worth mentioning again that there exists a natural gas sale agreement between the government of Ghana and Eni which should be disclosed on the petroleum register. In addition to this, there is no provision for the disclosure of unitization agreements although there is supposed to be one that exists between Tullow Oil and Kosmos Energy as highlighted in Table 2. The register neither provides for the requirements listed above, nor has the Petroleum Commission provided any reason(s) why those requirements are not provided for in the petroleum register.

c. There are features on the petroleum register which are not provided for in the legal requirements. There are no provisions for “assignments” and “registration permits” in the Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) even though the petroleum register has these two features.

d. There is incomplete capturing of headings in the petroleum register. Some of the headings under the register are not captured fully as it appears in the regulations. This makes it quite confusing to detect the information the register contains under those headings at first glance. This is seen with Regulations 20 (h), (j), (k), (o) and (q) as shown in Table 2.

e. The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) does not require the petroleum register to provide for “fees and charges” of permits.

Having such a provision would help potential investors understand the costs involved in acquiring permits in the sector beforehand.

2. Assessment against best practices

When the register was assessed against best practices, the following findings were made:

a. The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) meets some best practices by requiring the disclosure of beneficial ownership information and authorizations for flaring or venting of natural gas. However, the register only fulfills the requirement for the authorization for flaring but does not fulfill that of beneficial ownership disclosure.

b. The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) does not require the disclosure of local content plans of the oil companies operating in the contract areas, although it is a legal requirement and it is also recognized

as best practice to do so. Section 27 (4) (aa) of the Petroleum (Exploration and Production) Law, Act 919 requires a contractor to provide detailed information on its local content plan. Although, there are documents of local content opportunities of the companies uploaded under “Procurement” on the register, there are no documents of the detailed local content plans of the oil companies.

c. The petroleum register is available on only one platform; a separate website from that of the Petroleum Commission. The Petroleum does well to have a portal on its website that gives access to the petroleum register. However, a lot more work remains to ensure that the host website for the petroleum register is efficiently managed and well maintained. Otherwise, in the event that that host website breaks down, all the information on the register will be lost.

d. The documents published on the petroleum register is not machine readable. This makes it tedious to search information on the website and use for analysis.

In view of the issues raised, the following are recommended:

3.2 Recommendations

1. Meeting the legal requirements of the Petroleum (Exploration and Production) (General) Regulations, 2018

a. The petroleum register should satisfy outstanding legal requirements:

The petroleum register should make provisions to satisfy the following legal requirements or the Petroleum Commission must provide reasons why they have not been fulfilled as required:

Regulation 20 (b) - the authorizations granted to the Corporation in accordance with section 11 of the Act;

ii. Regulation 20 (c) - service contracts entered into by the Corporation pursuant to an authorization under section 11 of the Act;

iii. Regulation 20 (l) - unitization agreements;

iv. Regulation 20 (m) - area coordination agreements;

v. Regulation 20 (n) - long term sale of natural gas agreements; and

vi. Regulation 20 (p) - beneficial ownership details of contractors and licensees.

b. Features of the petroleum register must align with legal requirements:

Since the provision of “Assignments” and “registration permits” on the register is a good step, the Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) must be expanded to make provision for them.

This will set the needed legal basis for disclosure and avoid the incidence of having disclosure done in an ad-hoc manner.

c. Complete headings on register:

To avoid any ambiguity, the Petroleum Register should complete the headings on the register to be the same as what is provided for in Regulation 20.

d. Include requirement for “fees and charges” on the petroleum register:

The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) should be expanded to make provision for “fees and charges” on the petroleum register. It will be good to have this provision on the register to enable potential investors understand the costs involved in acquiring permits in the sector beforehand.

2. Adopting best practices

a. Include requirements for the disclosure of detailed local content plans in the petroleum register:

The content of the petroleum register under regulation 20(1) must be expanded to include approved plan of development, work programmes/work obligations, updates on companies’ implementation of work programmes/work obligations, local content plans, and local content implementation progress.

b. Ensure efficient management and maintenance of the petroleum register host website:

Broken websites can be a challenge to the process of transparency and accountability. To avoid interruption in the disclosure of petroleum contracts and other relevant documents, Petroleum Commission must at all times, ensure that the host website for the petroleum register is well functioning and periodically maintained.

c. Create portals to the petroleum register on the websites of all sector relevant agencies:

In addition to the portal on the Petroleum Commission's website, the Ministry of Energy and all other relevant agencies including the Ghana EITI, must have portals to the register made available on their websites. This will allow easy and multiple access to the register by different stakeholders.

d. Publish the documents on the petroleum register in a machine-readable format:

Making information on the register machine-readable will enable ease of search and analysis of the contents of the register by citizens, civil society organizations and all relevant stakeholders.

3.3 Conclusion

From the assessment, it was found that the petroleum register satisfies the requirements of Section 56 of the Petroleum (Exploration and Production) Law Act 919 by firstly:

containing the petroleum agreements, licenses and authorizations of upstream petroleum operations; and secondly by being publicly available. However, the register does not satisfy all the legal requirements under Regulations 20 (b), (c), (l), (m), (n) and (p) of the Petroleum (Exploration and Production) (General) Regulations, 2018. The register does not have any features that fulfill these requirements nor does the Petroleum Commission provide any reason(s) as to why these requirements have not been met. Again, there are some headings on the register that do not capture the full requirements under Regulations 20.

When assessed against best practices, it was found out that the register is hosted online which makes it easy to access the petroleum agreements, permits and authorizations for the various petroleum operations.

Most importantly, the register discloses full text petroleum agreements, which is a good step towards achieving transparency in the petroleum sector. However, more work remains in improving the register to make room for more disclosure especially information pertaining to beneficial ownership and local content plans of oil companies operating in the contract areas. The register also needs to be improved to allow the documents it contains to be machine readable for easy accessibility of their contents to enable citizens, civil society organizations, the international community and other stakeholders use for analysis in the future.

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