



**PETROLEUM CONTRACTS MONITOR, 2017;
A PUBLIC INTEREST REPORT**

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LIST OF ABBREVIATIONS

E&P	Exploration and Production
GNPC	Ghana National Petroleum Corporation
ITLOS	International Tribunal of the Law of the Sea
PAs	Petroleum Agreements
PC	Petroleum Commission
PRMA	Petroleum Revenue Management Act
TEN	Tweneboa-Enyera-Ntomme

LIST OF LEGISLATIONS

Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64)
Petroleum (Exploration and Production) Act, 2016 (Act 919)
Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L 84)
Petroleum Commission Act, 2011 (Act 821)
Petroleum Revenue Management Act, 2015 (Act 815)

LIST OF PETROLEUM AGREEMENTS

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation and GNPC Exploration and Production Company Limited (EXPLORCO) and Erin Energy Ghana Limited in respect of Expanded Shallow Water Tano Block; effective January 23, 2015

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Amni International Petroleum Development Company in respect of Central Tano Block; effective March 21, 2015

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Hess Ghana Limited, Lukoil Overseas Ghana Limited and Fuel Trade Limited in respect of Deepwater Tano Cape Three Point Block; effective JULY 18, 2016

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and GNPC Exploration and Production Company Limited (EXPLORCO) and AGM Petroleum Ghana Limited in respect of South Deepwater Tano; effective January 24, 2014

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and GNPC Exploration and Production Company Limited (EXPLORCO), Heritage Exploration and Production Ghana Limited and Blue Star Exploration Ghana Limited in respect of South-West Tano Block; effective February 05, 2015

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Sahara Energy Fields Ghana Limited in respect of Shallow Water Cape Three Points Block; effective July 18, 2014

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Medea Development Limited and Cola Natural Resources Ghana Limited in respect of East Cape Three Point; effective September 24, 2013

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Britannia-U Ghana Limited (BUGL) in respect of South West Saltpond Block; effective July 17, 2014

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Eni Ghana Petroleum and Exploration, Vitol Upstream Ghana Limited. GNPC Exploration and Production Company Limited and Woodfields Upstream Ghana in respect of Cape Three Points Block 4; effective April 14, 2016

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Swiss African Oil Company Limited (SWAOCO) and Pet Volta Investment Limited in respect of Onshore/Offshore Keta Delta Block; effective April 01, 2016

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and UB Resources Limited, Houston Drilling Management Ghana Limited and Royalgate Ghana Limited in respect of Offshore Cape Three Points South Block; effective July 18, 2014

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and GNPC Exploration and Production Company Limited, Eco-Atlantic Oil and Gas Limited, A-Z Petroleum Products Ghana Limited and Petrogulf Ghana Limited in respect of South-West Cape Three Points Block; effective March 22, 2015

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Springfield Exploration and Production Company Limited and GNPC Exploration and Production Company Limited (EXPLORCO) in respect of West Cape Three Points Block 2; effective July 26, 2016

Petroleum Agreement by and among Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Heritage Exploration and Production Ghana Limited, GNPC Exploration and Production Company Limited (EXPLORCO), and Blue Star Exploration Ghana Limited in respect of Ultra-Deepwater East Keta Block; effective July 18, 2014

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1.0 Background

Petroleum Agreements (PAs) are important part of Ghana's success story with the oil industry. After several decades of unsuccessful investment of national resources, both human and monetary, in the exploration business, the engagement of private contractors with the technical and financial capacity led to the discovery of commercially exploitable oil in 2007 in the Tano Basin. Ghana, like many other resource rich countries, is faced with the challenge of lack of adequate financial and technical capacity to exploit her own resource. Investment attraction therefore becomes the necessary tool to ensure that natural resources can be extracted. Investment attraction to Ghana's upstream sector faced significant challenges prior to the early 2000s. Some primary challenges which accounted for low investment include the following:

1. **High risk of the basins** - the petroleum basins of Ghana were largely unknown with many dry wells from previous wildcats. This made the terrain risky and less attractive to investors.
2. **High fiscal take by government** - Ghana's fiscal regime demanded more for the government than the risk of unknown terrain could

compensate for. The corporate tax for example was as high as 55%.

To reform the sector to attract investment, the government reduced Corporate Income Tax from 55% to 35%, royalty fell below 7%, and carried interest was pegged at 10%.

During the period before 2007, when the commercial discovery of oil was made, Ghana operated an open-door policy to drive investment attraction into the oil sector; an administrative measure that gave oil blocks to companies on first come first served basis. However, after discovery, a new discussion emerged to look at the adequacy of industry regulations for the upstream contracting.

The general consensus was that the Petroleum (Exploration and Production) law, PNDC Law 84, was not fit for purpose and Ghana needed a stronger law that addresses its shortfalls. Key among the demands for change in the contracting practice was transparency in the award process to take advantage of the renewed interest in the sector after commercial discovery.

Even though Government recognized the need for change after commercial oil discovery and started the processes to pass a new E&P Act, post discovery contracts were still awarded through the first come first served process. The trend was a scramble for blocks by new entrants and marginal field developers in the oil industry.

This raised concerns about the technical and financial capacity of the companies to deliver on their contractual obligations. ACEP was very active in scrutinizing the contracts signed post oil discovery and consistently hinted at the challenges Ghana could face by engaging inexperienced companies.

1.1 Objective of the report

This report examines the existing nonproducing petroleum agreements to measure the performance of the agreements against work obligations of the companies involved. This report will form the baseline for subsequent monitoring of petroleum agreements in Ghana by ACEP.

1.2 Key findings

The conclusions are that most of the companies have not delivered on the agreements signed with Ghana. Some of the companies had refuge in the preliminary ruling of the International Tribunal for the Law of the Sea (ITLOS) which placed injunction on field operations in the disputed area until the determination of the case between Ghana and Ivory Coast. Those companies outside the disputed area also significantly failed to deliver on their obligations. This failure is a direct function of non-enforcement of the contracts terms by government. At the same time data on the performance of the companies have not been available to aid civil society and interested parties to track performance.

2.0 The role of institutions in Ghana's upstream petroleum sector

The upstream petroleum sector is governed by an array of institutions of state to provide strong governance, largely in the areas of technical management, checks and balances, and maximization of benefits to the country. The primary institutions include the Ministry of Energy, Cabinet, Parliament, Petroleum Commission (PC) and Ghana National Petroleum Corporation (GNPC). There are other relevant institutions who also play important roles in contract negotiation. These include the Ministry of Finance, Ministry of Environment, Science, Technology and Innovation (MESTI), and Ministry of Justice and Attorney General. The focus of this analysis is on the Primary institutions.

2.1 The Ministry of Energy (The Minister)

The Minister has the ultimate responsibility for granting petroleum licenses under the Petroleum (Exploration and Production) Act, (Act 919) and previously, the PNDC Law 84. The decision of the Minister is however subject to Parliamentary approval and administrative clearance from the Cabinet.

Under the PNDC Law 84, the Minister received applications for petroleum blocks and activated the

“first come first serve” negotiation process with technical advice from the GNPC and later the PC after the Commission was set up in 2011 by an Act of Parliament. Therefore, the process of granting contracts was administrative with wide discretion to the Minister to decide who to give petroleum blocks to. There was no competitive process for the award of contract because the regulations on competitive tendering were not developed as prescribed by the PNDC law 84 for more than three decades of implementing the law.

The new E&P Law, passed in 2016, requires open and competitive bidding processes in the award of petroleum agreements by the Minister. The default mechanism for open contracting in section 10(3) is that “a petroleum agreement shall only be entered into after an open, transparent and competitive tender process”. Draft regulations have already been developed by the Ministry of Energy, and it is expected that Ghana will begin the competitive bidding process early 2018.

2.2 Cabinet

Cabinet receives and approves memoranda (Memos) on PAs negotiated by the Minister before they are presented to Parliament for ratification. The Minister in the memo will justify the award of the block to a company. This affords Cabinet the opportunity to scrutinize

the fiscal terms and compliance of the PAs with processes and laws guiding the contracting regime. Cabinet's approval gives contracts executive approval and therefore the decision to award a contract becomes the decision of the government.

2.3 Parliament

Parliament has constitutional power under article 268 of the 1992 Constitution of Ghana to approve all resource contracts. This constitutional requirement has been complied with for all the active PAs. The challenge however is how the powers granted to Parliament is utilized to ensure that the country maximizes its take. The expectation is that after PAs have gone through Executive approval, Parliament will provide independent and thorough review before they are ratified.

However, the evidence rather suggests that Parliament could do better. Records available on 90% of active contracts suggest that they were rushed through Parliament and ratified without extensive debate at the plenary on the report of the Committee on Mines and Energy. Parliament waived its standing orders which requires that the Committee's reports be debated after 48 hours of being laid in the plenary. Also, the Committee spends less time to do due diligence on the PAs to ascertain the technical and financial capacity of the companies with whom the Minister has entered into an agreement. The average time spent by the Committee in scrutinizing PAs is about 5 days.

Other characteristics of Parliament's treatment of contracts are:

1. Absence of public participation

- Parliament does not invite the public to submit memoranda on petroleum agreements. Petroleum Agreements are generally not published before parliamentary ratification to allow for public participation in the contract award process. Public accountability is therefore nonexistent.

2. Poor due diligence

- Parliament does not go beyond information provided by Minister to independently verify the background and capacity of the companies involved. This could be due to limited time to do so.

The weakness in Parliament's assessment of contracts need to be addressed to ensure efficient evaluation of executive decisions.

2.4 GNPC

GNPC has played significant roles in Ghana's contracting regime. Until 2011, when the Petroleum Commission (PC) was established, GNPC was the industry regulator and a commercial player. The establishment of the PC did not however transfer the regulatory powers immediately. GNPC continued to play a leading role in negotiating PAs that were signed between 2011 and 2016.

Government's policy for GNPC has narrowed the Corporation's focus on

commercial operations. The Petroleum Revenue Management Act provides financial resources for the Corporation for fifteen years, beginning 2011. It is anticipated that the GNPC will have the capacity to operate independent of subventions from the government post 2026.

Despite that the GNPC is independent of the PC, it has a tacit regulatory function as State entity with automatic partnership with all contract holders. GNPC holds the State's equity in all PAs. This grants the corporation active involvement in the operational decisions of the companies which is, in itself, an implicit monitoring and regulatory function to advance the interest of the State. GNPC therefore should be interested in how contracts perform, especially given that revenue allocation to support the Corporation under the PRMA is time bound and therefore the earlier the companies move to discovery and further production, the likelier it is for the Corporation to attain the independent status envisioned.

2.5 The Petroleum Commission

The Petroleum Commission (PC) was created to be the independent regulator of the upstream petroleum industry. In the early years of its establishment, the PC was virtually the shadow of the GNPC who had to second staff to set it up. The Corporation also had the custody of the national data which investors visited prior to negotiations.

The PC has been building capacity to host the national data and monitor contracts.

The new E&P Act is expected to usher the PC into delivering its mandate on contracting. Subsequent contracts are required to go through competitive bidding process in compliance with section 10 of the E&P Act, 919. The PC will have to operationalize the contracting provisions in the Act as the technical advisor to the Minister of Energy who has the ultimate responsibility for awarding Petroleum blocks.

The PC has however been monitoring the performance of the existing contracts. The monitoring involves compliance with minimum work obligations, local content compliance and granting approvals and authorizations of operations in the upstream sector. While recognizing the achievement of the PC in monitoring the upstream sector, it is regrettable to note that compliance with minimum work obligation on many of the contract areas is abysmally weak. The PC is responsible for advising the Minister on defaulting contractors to aid the decision of the Minister to either cancel or extend the hold of a contractor to a block. The evidence of inactivity on most of the oil blocks indicate one of two things; either the PC advises the Minister wrongly or the Minister ignores the advice of the PC.

3.0 Existing Petroleum Agreements

There are 14 active PAs beyond the producing fields (Jubilee, TEN and Sankofa) signed between the government of Ghana and independent companies. Twelve (12) of the contracts are concentrated in the Western Basin, which is the most attractive of the country's basins following the commercial discoveries and subsequent production of oil and gas in the area. The remaining 2 are in the Keta Basin.

The active contracts were signed between 2006 and 2016. The contract areas to these active contracts include Central Tano block, Expanded Shallow Water Tano Block, Deepwater Tano block, South Deepwater Tano Block, Cape Three Points Deepwater Block, South West Tano Block, Shallow Water Cape Three Points, and Ultra-Deepwater East Keta Block.

Notwithstanding, the number of active contracts, Ghana's hydrocarbon potential is still significantly underexplored. The busy areas of the Western Basin constitute about 20% of the over 36,000km² of offshore and 103,600km² of onshore acreages. This indicates that, vast amount of the country's Basins requires increased activity and promotions to attract investment.

The regulatory and governance regime therefore needs to carefully balance investment attraction with national fiscal take to attract the needed investment in the upstream sector.

3.1 Monitoring minimum work obligations of existing contracts

The PAs signed by Ghana have an exploration period of between 6 and 7 years. However, to ensure that contractors deliver on the terms of the PAs, the periods are subdivided into three phases with specific milestones and expenditure requirements. The rationale is to prevent companies from holding on to blocks for speculative reasons. So, all contracts have initial, first extension, and second extension phases. For a company to move on from initial phase to first extension period, it is required to have satisfied the minimum requirements under the initial phase, all things being equal. The same applies to the transition to the second extensions.

The specific activities in each phase of the contracts are defined in each contract. If a contractor does not deliver the terms specified, there are sanction to be applied. Similarly, if the contractor delivers more than was expected for a period, the company is credited with the extra delivery in the extended period. Here is excerpt from the Swiss Africa PA:

“Work accomplished in any period in excess of the above obligations may be applied as credit in satisfaction of obligations called for in any other Period. Without prejudice to Article 23.3(e), should Contractor fail to perform its Minimum Work Obligations under Article 4.3(a), (b) or (c) as applicable, Contractor shall pay to GNPC, an amount equal to the unspent amount of the Minimum Expenditure Obligation for the relevant Exploration Phase.”

The indication that contractors have to necessarily spend the total minimum expenditure target or pay sums equal to unspent balance to GNPC is supposed to deter inactivity on the block. Unfortunately, this doesn't appear to be the case with many of the existing contracts.

With the exception of those affected by the moratorium by International Tribunal of the Law of the Sea (ITLOS) on the disputed area in the Tano Basin, the Hess block and those whose initial period has not expired, all the other contracts have failed to deliver on their minimum work obligation. The failure to deliver, require activation of sanctions against those companies. However some of the companies have already gotten extensions without paying stipulated penalties.

3.2 Analysis of compliance with minimum work programme in existing petroleum agreements.

The analysis in table 1 below shows

that among all the contracts whose initial period has expired, only Hess, which is the earliest of all the contracts assessed, has delivered on the minimum work obligation. Hess made discoveries in 2009 but could not move to field development consequent to the ITLOS moratorium on the disputed area between Ghana and Ivory Coast. Erin (formerly Camac), AGM, and Heritage did not deliver on their minimum work obligation for the initial phase. They were granted extensions because the contract areas also fall within the disputed part of the Tano Basin. AMNI and Springfield got extension into the second phase before their initial phase expired. Both companies also had refuge in the ITLOS preliminary ruling.

However the extension for Springfield's contract is intriguing. The company was granted extension about six months into its initial phase which should last 2.5 years from the effective date. There is no evidence of the company spending the required \$30 million minimum expenditure threshold prior to the extension of the first phase which still had 2 years to expire. Table 1 on the next provides detailed analysis of all 14 PAs under considerations and operator compliance with work obligations.

Table 1: Analysis of key deliverables and performance of PAs

NO.	CONTRACT AREA	CONTRACT PARTIES (OPERATOR)	EFFECTIVE DATE/ INITIAL EXPLORATION PERIOD	MINIMUM EXPLORATION PROGRAM (INITIAL PHASE)	MINIMUM EXPENDITURE	OBSERVATIONS
1.	Expanded Shallow Water Tano Block (1,508sqkm)	Erin Energy Ghana Ltd, EXPLOR CP and GNPC	Effective Date: 23/Jan/15 Initial Exploration Period (2 years+2 years): January 23, 2015 – January 22, 2019	(a) R e p r o c e s s existing 2D and acquire 1500sqkm of 3D seismic; (b) Drill one exploration well	\$30,000,000	This Block was affected by the Preliminary ruling of the International Tribunal for the Law of the Sea (ITLOS) which placed a moratorium on drilling new wells in the disputed area. The company got extension to continue working on the block.
2.	Central Tano Block	AMNI Int Petroleum Dev. Company and GNPC	Effective Date: 21/Mar/15 Initial Exploration Period (3 years+2 years extension): March 21,2015 - March 20, 2020	(a) License 3D seismic data over Contract Area (about 277.9sqkm); (b) Drill two (2) Exploration Wells	\$150,000,000	Before its Initial exploration period ends in 2018, the company's exploration period has been extended in 2016 to 2020. The contract area also falls within the area affected by ITLOS case.

3.	Deepwater Tano-CTP Block (3000sqkm)	Hess Ghana Ltd, Lukoil, Fuel Trade and GNPC	Effective Date: 18/Jul/06 Appraisal/Pre-development Period (3 years from Notice of Discovery). Has 6 months after ITLOS ruling to submit POD	(a) 3D 'Broadband' seismic acquisition (b) Drilling of 3 appraisal wells (2 in the Pecan area and 1 at Almond) (c) Reprocessing of legacy 3D seismic (d) Well data integration of all data (e) Reservoir simulation studies (f) Geochemistry study	\$32,000,000	This company made successful discovery but could not progress to field development because of the ITLOS's preliminary injunction. The company can now go ahead to submit Plan of development
4.	South Deepwater Tano (3,482sqkm)	AGM Petroleum Ghana Ltd, EXPLORCO and GNPC	Effective Date: 24/Jan/2014 Initial Exploration Period (3 years+2 years extension): January 24,2014 – January 23, 2019	(a) Acquire, process and interpret 750sqkm of 3D seismic data (b) Drill a minimum of two (2) Exploration Well	\$259,000,000	The company was also affected by ITLOS ruling. It got extension into the second phase in 2016. The company reports it is analyzing seismic data with plans to acquire 3D data in 2017

5.	South-West Tano Block	Heritage E&P, EXPLORCO, Blue Star and GNPC	Effective Date: 05/Feb/15 Initial Exploration Period (2.5 years+2 years extension): February 5, 2015 – August 4, 2019	(a) Reprocess up to 175sqkm of 3D data (b) Drill one (1) Exploration Well	\$80,000,000	The initial Exploration phase has been extended by 2 years due to ITLOS. Geophysical and Geological (G&G) studies are ongoing for prospect evaluation.
6.	Shallow Water Cape Three Points Block (1500sqkm)	Sahara and GNPC	Effective Date: 18/Jul/14 Initial Exploration Period (3 years): July 18, 2014 – July 17, 2017	(a) Conduct geological and geophysical studies (b) Drill one (1) Exploration Well	\$32,000,000	The Company has defaulted in its work and financial obligations. The initial period ended in July 2017. It is not clear whether they will be given extension after failing to deliver on the block.
7.	East Cape Three Point (1,565sqkm)	Medea Development Ltd, Cola Natural Resources and GNPC	Effective Date: 24/Sep/13 Initial Exploration Period (3 years+ 1 year extension): September 24, 2013 – September 23, 2017	(a) Acquire 1200sqkm of 3D seismic data (b) Drill one (1) Exploration Well c) Conduct geological and geophysical studies	\$25,000,000	The company is looking for further extension to initiate drilling its first exploratory well after 4 years of holding on to the block.

8.	South West Saltpond Block	Brittania-U Ghana Ltd (BUGL) and GNPC	Effective Date: 17/Jul/14 (after 27 months extension) Initial Exploration Period (3 years): October 17, 2016 – October 16, 2019	(a) R e p r o c e s s 800km of existing 2D seismic data (b) Acquire and process 1500sqkm of new 3D seismic data (c) Drill one (1) exploration well	\$40,000,000	After first extension the company is still doing Seismic data interpretation. It is not clear how they go the extension without spending the minimum expenditure requirement.
9.	Cape Three Points Block 4 (1,127sqkm)	Eni Ghana, Vitol Upstream, EXPLORCO, WoodFields Upstream Ghana and GNPC	Effective Date: 14/Apr/16 Initial Exploration Period (3 years): April 14, 2016 – April 13, 2019	(a) Acquire, process and interpret 1000sqkm of 3D seismic (b) Drill one (1) Exploration Well in the Contract Area	\$45,000,000	This contract is still in the initial phase. Seismic data acquisition was planned for 2017.
10.	Onshore/Offshore Keta Delta Block (3000sqkm)	Swiss African Oil Company Limited (SWAOCO) & PET Volta Investment Ltd.	Effective Date: 01/Apr/16 Initial Exploration Period (3 years): April 1, 2016 – March 31, 2019	(a) Acquire, process and interpret 1100sqkm of 2D seismic (b) Drill one (1) Exploration Well	\$40,000,000	Activities ongoing are seismic survey design & tendering, legacy data reprocessing and environmental impact assessment design & tendering.

11.	Offshore Cape Three Points South Block	UB Resources, Houston Drilling Management, Royalgate Ghana Limited and GNPC	Effective Date: 18/Jul/14 Initial Exploration (3 years): July 18, 2014 – July 17, 2017	a) License and reprocess existing 600sqkm of 3D seismic data relating to the Contract Area (b) Acquire and reprocess new seismic data (if deemed necessary) (c) Drill one (1) Exploration Well	\$80,000,000	The company has defaulted in its work and financial obligation. They still claim they are doing data interpretation
12.	South-West Cape Three Points Block	Eco-Atlantic Oil, A-Z Petroleum, EXPLORCO, PetroGulf and GNPC	Effective Date: 22/Mar/15 Initial Exploration Period (2.5 years): March 22, 2015 – September 21, 2017	(a) License and reprocess existing 850sqkm of 3D seismic data relating to the Contract Area (b) Reprocess 850sqkm 3D seismic data (c) Drill one (1) Exploration Well	\$65,000,000	The company has defaulted in its work and financial obligation. They still claim they are doing data interpretation.

13.	West Cape Three Points Block 2 (673sqkm)	Springfield E&P, EXPLORCO and GNPC	Effective Date: 26/Jul/16 Initial Exploration Period (2.5 years + 2 years extension): July 26, 2016 – January 25, 2021	(a) Drill one (1) Exploration Well (b) Conduct geological and geophysical studies	\$30,000,000	Initial exploration period was supposed to end in July 2018 but has been extended to 2021. This extension came barely six months into the award of the PA. Seismic data processing is ongoing.
14.	Ultra-Deepwater East Keta Block (2,239sqkm)	Heritage E&P, GNPC, EXPLORCO, and Blue Star	Effective Date: 18/Jul/14 Initial Exploration Period (2.5 years + 2 years): July 18, 2014 – January 17, 2019	(a) Reprocess existing 2D and acquire 1500sqkm of 3D seismic	\$15,000,000	Appraised some discoveries but couldn't declare commerciality under its fiscal terms. Requested government to provide fiscal incentives to boost economics. Initial exploration period has been extended by 2 more years.

Source: ACEP's (2017) compilation based on information from industry intelligence

Companies such as UB Resources, Sahara and Eco-Atlantic are yet to receive extensions. They have not delivered on the minimum work obligation and it remains to be seen whether they will also get extensions. UB Resources has however indicated its commitment to pay the unspent balance of its minimum expenditure requirement for the initial phase. Eni and Swiss Africa are a year and half into their initial period after getting their block in April 2016. Both companies proposed to acquire seismic data in 2017. Eni was awarded contract for geophysical studies in January, 2017.

3.2.1 The cost of inactivity

The investment requirement for all 14 active PAs for the initial period sums up to a total of \$923 million. For those whose initial period has expired, they should have invested about \$750 million in exploration. The evidence of limited activity points to less than 2% of the required minimum expenditure over the period. The ITLOS preliminary ruling has been used by affected companies as the reason for not investing in their blocks. However the evidence of inactivity on the other blocks that were not affected by the ITLOS ruling shows that the story may not have been different without ITLOS injunction.

The exact cost to Ghana from the inactivity of the companies may not be easy to determine. But the opportunity cost of possible early discovery on those blocks defers potential revenues to the country and consequently

developmental outcomes from the revenues. The country also defers other attendant benefits such as employment, linkages with the rest of the economy and benefits to the national oil company who participate in all contracts free from exploration cost but mandated to learn through the process to become a viable entity capable of venturing into exploration on its own balance sheet.

The GNPC should be able to assess this cost to it and the country to demand performance from the companies while it enjoys subversion under the Petroleum Revenue Management Act (PRMA), 815, for its operations and investments. In fifteen years from the establishment of the PRMA, the subvention will cease to flow. This is the reality that ought to tickle the GNPC into effective monitoring of the investors. Unfortunately, the Corporation has equally fallen guilty of defective demand for compliance with minimum work obligation. As a result, these companies do not pay defaulted investment to GNPC as required by the contracts. UB resources, Sahara and Eco-Atlantic who did not get the "ITLOS safe-haven" could be indebted to the GNPC in excess of \$150 million for noncompliance with their minimum work obligation.

3.2.2 Surface rental by defaulting companies

At the minimum companies operating in Ghana are supposed to pay surface rental for the acreages they hold under the PA. The amounts due is regulated by the PRMA as part of the petroleum receipts for any fiscal year. Therefore, defaulting to pay the surface rentals attracts sanctions in accordance the PRMA. Section 3(4) of the Act states:

“Where the liability of an entity to make a payment is not discharged on or before the due date, the entity shall pay as a penalty, an additional five percent of the original amount for each day of default or the default rate established under any other law, whichever is higher”.

In spite of this punitive provision, some of the companies defaulted in paying the surface rentals.

Table 2: Outstanding Surface Rental Fees as at 31 December 2016

Name of entity	Amount per assessment	Outstanding Amount
AGM Petroleum Ghana Ltd	348,200	348,200
Britannia-U Ghana Ltd.	251,898	251,898
GOSCO/Heritage Exploration & Production Ghana Ltd.	221,915	221,915
Sahara Energy Fields Ghana Ltd.	221,815	221,815
Swiss African Oil Company Ltd	137,671	137,671
ENI Ghana Exploration and Production Limited	121,018	121,018
UB Resources Limited	92,772	92,772
CAMAC Energy Ghana Limited	75,400	75,400
Eco-Atlantic/A-Z petroleum Products Ghana Ltd	47,200	47,200
Springfield Exploration & Producton Ltd	30,884	30,884
Saltpond Offshore Producing Co. Ltd.	605	605
AMNI International Petroleum Dev. Company Limited	13,900	-74
Tullow Ghana Limited	135,592	-106
Total	1,698,870	1,549,198

Source: Auditor General, 2017

The Auditor General estimates that US\$1.5 million surface rental payments to government was outstanding as at the end of 2016 (Table 2). Aside Tullow Ghana Limited and Amni International Petroleum Dev. Company Limited who overpaid surface rental due the government, all other listed companies failed to do so. ACEP estimates that the penalties for non-payment of surface rentals escalates the amount due the Petroleum Holding Fund to about \$40 million as of end of year 2016. Yet companies continue to hold on to blocks in blatant disregard for the PRMA.

3.2.3 The reasons companies have failed to deliver on the contract terms

The fundamental pointer in the noncompliance situation is the lack of capacity on the part of companies to invest the required amounts of money in developing the blocks. ACEP anticipated this based on the awarding process for these blocks. It became obvious after the discovery of oil in commercial quantities that the administrative process of awarding PAs was not fit for purpose and will lead to speculation. The immediate thing needed to be done was for government to institutionalize a transparent system that takes advantage of the surge in investment attraction in the upstream sector, especially in the Western Basin, to sift through interested investors to ensure that the right and capable ones were awarded the blocks. But, the administrative process was used for nine years after discovery with the following characteristics:

1. **No room for competition for blocks** - even in cases where two companies were interested in a block, the discretion of the Minister determined who got the block with a first come first served policy.

2. **Weak Parliamentary oversight** - Parliament had little time to evaluate the details of PAs. The practice was that multiple PAs were presented to Parliament with limited time to evaluate and ratified. The Committee on Mines and Energy used, on the average, three to five days to complete their work and submit a report to the plenary. In all instances, the Committee's reports were approved the very day they were laid. Also the Standing Order, Order 80(1), of Parliament which requires that *"no motion shall be debated until at least, forty-eight hours have elapsed after notice of the motion is given"* was suspended in all the PAs to allow speedy parliamentary approval. For example, 10 PAs which were approved by Parliament between 2013 and 2016 did not enjoy activation of Order 80(1). This practice denies the rest of parliamentarians who were not on the Committee to examine the Committee's reports.

Meanwhile most of the oil companies who acquired oil blocks under the suspension of order 80(1) have not even moved to site...¹

3. Track record of the companies - most of the companies did not have experience in offshore operations. They did not also show solid financial capacity that can guarantee that they could procure the needed technical competencies to comply with the terms of the PAs.

4. Political patronage of inefficiency - the decision of politicians to extend contracts periods without the companies meeting minimum obligation provides incentive for the companies not to comply with contract terms.

¹ Boakye, B. (2017). Whose interest is served with the suspension of Standing Order 80(1)? Published on 31st January, 2017. Available at <http://www.myjoyonline.com/opinion/2017/january-31st/whose-interest-is-served-with-suspension-of-standing-order-801.php>

4.0 Conclusion, summary of key findings, and recommendations

Contracts will continue to be signed between Ghana and investors to allow for production of the oil resource locked in the ground. The constraints of local technology and lack of financial capacity dictates continual investment attraction in the oil industry. However, it is not the mere signing of contracts that sustain the industry as depicted by many of the existing contracts. There is the need for transparent processes that guarantee growth in reserves, local capacity development and revenue generation.

4.1 Summary of key findings

The evidence from the existing contracts do not paint a sustainable picture for the industry. Most of the companies have not delivered on the agreements signed with Ghana. Some of the companies had refuge in the preliminary ruling of the International Tribunal for the Law of the Sea (ITLOS) which placed injunction on field operations in the disputed area until the determination of the case between Ghana and Ivory Coast. Those companies outside the disputed area also significantly failed to deliver on their obligations. This failure is a direct function of non-enforcement of the contracts terms by government.

The approach used for awarding the existing contracts and subsequent monitoring glorify inefficiency and deprive the country the opportunity to produce more oil to meet national objectives of oil production such as raising the needed capital for development financing, local content development, among others. This therefore requires immediate action by governments to change the trend.

4.2 Recommendations

This paper proposes the following recommendations for managing upstream contracting to the benefit of Ghana:

1. Government should immediately review existing PAs and their deliverables to ensure that those who are not complying with their minimum work obligations are sanctioned. This should be done in an open and transparent manner to provide assurance to prospective investors that sanctions are being applied to genuinely defaulting companies.
2. Future PAs should detail out the specific activities for each phase with timelines to ensure that contractors progress along a defined activity chart which will feed into the assessment for extensions. This will reduce the tendency for companies to wait until the end of a particular phase before they rush to site to work.

3. GNPC should be firm and demand compliance with minimum work obligations. If contractors fail to deliver on their work programme at any particular phase, GNPC should demand the payment of the unspent balance of the minimum expenditure requirements.

4. The Petroleum Commission should institute a transparent monitoring process through the publication of deliverable of the companies to allow independent monitoring by civil actors.

5. The E&P Act, 919 should be implemented without delay. The effort by the Ministry to develop regulations is commendable. But the regulations should be passed quickly to ensure that all subsequent contracting processes comply with the competitive systems. This will increase the confidence of genuine investors and promote fair access to petroleum blocks.

5.0 References

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