

# Ghana's Oil Boom

## *A Readiness Report Card*



Issued by the

*Civil Society Platform on Oil and Gas - Ghana*

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## PERFORMANCE TABLE

**KEY:**

**Grade = Score = Explanation**

**A = 1 = Excellent**

**B = 0.9 - 0.6 = Good**

**C = 0.5 = Fair**

**D = 0.4 - 0.1 = Poor**

**E = 0 = Fail**

STAKEHOLDER	SCORE	GRADE
<b>Government of Ghana</b>	<b>0.5</b>	<b>C</b>
<b>1. Transparency</b>	<b>0.7</b>	<b>B</b>
<b>2. Independent Regulation of the Sector / Role of GNPC</b>	<b>0.4</b>	<b>D</b>
<b>3. Licensing and Contracts</b>	<b>0.3</b>	<b>D</b>
<b>4. Citizen Participation / Public Oversight</b>	<b>0.7</b>	<b>B</b>
<b>5. Petroleum Revenue Collection</b>	<b>0.5</b>	<b>C</b>
<b>6. Oil Revenue Management / Oil Funds</b>	<b>0.7</b>	<b>B</b>
<b>7. Linking Oil Revenue Spending to Development Planning</b>	<b>0.5</b>	<b>C</b>
<b>8. Budget Openness and Public Financial Management</b>	<b>0.5</b>	<b>C</b>
<b>9. Social and Environmental Issues</b>	<b>0.4</b>	<b>D</b>
<b>10. Local Content</b>	<b>0.3</b>	<b>D</b>
<b>Parliament of Ghana</b>	<b>0.5</b>	<b>C</b>
<b>Ghana's Donor Partners</b>	<b>0.5</b>	<b>C</b>
<b>Oil and Gas Companies</b>	<b>0.5</b>	<b>C</b>
<b>Civil Society</b>	<b>0.5</b>	<b>C</b>

## EXECUTIVE SUMMARY

Ghana discovered oil in commercial quantities in June 2007, and became Africa's newest oil producer with the pouring of first oil in December. While government officials remain confident that the country will be able to avoid some of the problems related to the sudden onset of oil wealth, such as increased corruption, increased debt, "Dutch Disease" effects, and competition and conflict over resource revenues, many local and international observers remain concerned that Ghana's enviable track record of economic, social and democratic development over the last 20 years may be eroded by the challenges posed by the oil boom. For instance, oil production started in December without a national policy on oil and gas development or the long awaited petroleum revenue management law in place. The International Monetary Fund expects Ghana's economy to grow by 13 percent in 2011, fuelled by the new oil economy. The government will receive billions of dollars in new revenues over the next decade, and how these new revenues are managed will be vital to whether Ghana continues on the right path.

This "Readiness Report Card", issued by the Ghana Civil Society Platform on Oil and Gas, aims to evaluate the performance of government in managing the challenges the emerging oil sector presents and to draw urgent attention to issues that need immediate action by the government and its partners. These challenges include among others, addressing the large gaps in the legal framework in order that the country can make the most out of the billions the government will receive from revenue in the sector.

With the start of oil production, and general elections in 2012 on the horizon, all eyes are on Ghana to get it right. After more than a decade of sustained international focus on addressing the "resource curse" and after the failed experiment in Chad designed to turn oil revenues into poverty reduction, many have pinned their hopes on Ghana. In addition, countries to the west of Ghana, such as Sierra Leone and Liberia, are now actively pursuing oil development and Ghana may have positive as well as negative lessons to share with its neighbors.

### **Commercial Developments**

The start of oil production was preceded by three and a half years of intense work by the consortium partners with an investment of over \$3.5 billion. The commercial partners on the Jubilee field are Tullow Oil plc (34.70%), Anadarko Petroleum Corp (23.49%), Kosmos Energy (23.49%), the Ghana National Petroleum Corporation - GNPC (13.75%), Sabre Oil and Gas (2.81%) and the E.O. Group (1.75%). At the time of the inauguration of the project, Mohammed Amin Adam, convener of Ghana's Civil Society Platform on Oil and Gas, said that "Oil wealth threatens the growing democratic accountability that has been built in Ghana's recent history. This industry presents very real risks to Ghana's fragile economy, including incurring too much debt through oil-backed loans. We as Ghanaians need to see December 15th as a day to wake up to these challenges and hold our government accountable for the management of this enormous opportunity for the country."

The Jubilee Field started producing 70,000 barrels per day beginning December, 2010 and estimates are that by June, 2011, Ghana will be producing approximately 120,000 barrels of oil per day. Production technology relies on the use of undersea wells to gather oil to a Floating

Production Storage and Offloading vessel (FPSO) 60 km offshore and it is then off-loaded into shuttle vessels for export to the international market. The Jubilee field has 600 million barrels of proven reserves and a potential for over 1.5 billion barrels of oil. The production rate is expected to provide more than \$400 million to the government's 2011 budget and around \$1 billion per year to the country in the early years. Promising indications from adjacent exploration oil wells could mean even higher levels of production and revenues in the next few years. Teak, Mahogany East, Tweneboa and Enyenra (Owo) discoveries have all been announced by Anadarko, Tullow and Kosmos in the past year in the West Cape Three Points (operated by Kosmos) and Deepwater Tano (operated by Tullow) license areas.

Tullow said in March that the Tweneboa and Enyenra fields may hold around 400 million barrels of oil and that initial plans call for a second FPSO in Ghanaian waters designed to handle 75,000 to 125,000 barrels per day from the fields. An independent analyst from Bank of America, Merrill Lynch, said in March that, "We believe this successful appraisal confirms the Enyenra/Tweneboa as a world-class field and pushes it closer to commercial stage."<sup>1</sup> According to an international news report, "A development plan is due to be submitted in early 2012, with first production possible in 2014. A declaration of commerciality for Enyenra-Tweneboa will be submitted to the government this year after results from new delineation wells have been evaluated."<sup>2</sup> The Mahogany East/Teak cluster has the potential for another 400 million barrels of reserves, or 50,000 to 60,000 barrels per day. Tullow again said in March that it could be producing 250,000 barrels per day by 2014.<sup>3</sup> The Jubilee field production may just be the start of Ghana's oil future.

Beyond the work of bringing the Jubilee field on line, and the additional exploration activity, Ghana's oil and gas potential has attracted significant investor attention. A large oil and gas investor summit was held in March 2010 and another planned for April 2011. In spite of these developments, some investors have expressed concerns about the lack of a clear and comprehensive legal and regulatory framework as well as the implications of the government's efforts to halt the sale of Kosmos Energy's share in the Jubilee field to Exxon in 2009 and 2010. Kosmos attempted to sell its assets at \$4 billion but the government and GNPC accused the company of violating contractual agreements and disclosing information on its holdings without following the proper procedures. The deal was eventually called off by Kosmos in August 2010. A follow up offer from GNPC, the Chinese company CNOOC and BP was not accepted by Kosmos, according to press reports.<sup>4</sup> In December 2010, Kosmos announced that it had "signed an agreement to amicably resolve several issues...regarding data" and other issues, without revealing details. In January 2011, Kosmos signaled its intent to stay in Ghana by preparing a \$500 million initial public offering (IPO) of shares to raise capital in US capital markets. In March, 2011, GNPC board chair Ato Ahwoi said that the company had given up efforts to buy the Jubilee stake held by Kosmos.

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<sup>1</sup> "Tullow confirms major light oil field offshore Ghana", Ghana News Agency, 3 March 2011.

<sup>2</sup> "Floater on menu at Enyenra-Tweneboa - Tullow Oil eyes a large FPSO to develop discoveries off Ghana", Upstream, 11 March 2011.

<sup>3</sup> "Ghana fields could produce 250,000 b/d by '14", Wall Street Journal, March 9, 2011.

<sup>4</sup> "GNPC quits Jubilee efforts", Upstream, 10 March 2011.

The long-running dispute in 2009 and 2010 threatened to eclipse efforts to promote Ghana's investment potential more generally and overshadowed work on the legislative framework for the sector.

Financing and political risk insurance for the \$827 million FPSO "Kwame Nkrumah" in the Jubilee field has also come under scrutiny. The Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group, indicated in January that it was extending a suspension from August 2010 of a \$225 million risk guarantee for the FPSO because of corruption investigations of a service contract signed between Modec, the Japanese company supplying the vessel, and Strategic Oil & Gas (StratOil). In its IPO filing with the U.S. Securities and Exchange Commission (SEC), Kosmos said it was assisting the World Bank's International Finance Corporation to examine "potential violations by [Modec] under the US Foreign Corrupt Practices Act".<sup>5</sup> The IFC, along with a syndicate of international banks, had planned to provide Modec financing for the FPSO in 2010, but as of mid-March the deal had not been signed pending due diligence investigations. Kosmos and its partners had lent Modec money to start construction and now, according to the Wall Street Journal and the SEC filing, stand the risks of not being able to recoup their investments.<sup>6</sup>

## Legal and Political Developments

While the commercial development of the Jubilee has been fast-tracked and brought into production in three-and-a-half years, the development of the legal and regulatory framework has lagged far behind, hampered by delays, political wrangling and a change in government at the beginning of 2009. Much of the work done in terms of policy development by the previous New Patriotic Party government of President Kufuor was put aside by the government of National Democratic Congress led by President Mills in 2009. A bill designed to create a "Ghana Petroleum Regulatory Authority" was not passed by parliament before presidential and parliamentary elections in December 2008.

Ghana embarked on oil production without a revenue management law in place. There was also no enabling legislation to establish an independent regulator for the oil and gas sector. While a policy on local content has been discussed, no legislation designed to ensure minimum levels of Ghanaian participation in the sector has been introduced. However, a **Petroleum Revenue Management Bill** was introduced into parliament in June 2010, while a **Petroleum Exploration and Production Bill** was introduced shortly thereafter. The latter received much criticism from many quarters and was eventually withdrawn for 're-packaging'. Government however introduced the Petroleum Commission Bill in January 2011 to establish an independent regulator for upstream and midstream petroleum activities. There are also plans to introduce a Local Content and Local Participation Bill and to re-introduce the Petroleum Exploration and Production Bill.

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<sup>5</sup>"Kosmos and Anadarko may need more funding for FPSO", Upstream, 18 February 2011.

<sup>6</sup>"Kosmos Filing Sheds Light on Corruption Probe of Ghana Oil". Wall Street Journal, 11 January 2011.

## Methodology

The report evaluates government performance in 10 thematic areas:

- i. Transparency
- ii. Independent Regulation of the Sector / Role of GNPC
- iii. Licensing and Contracts
- iv. Citizen Participation / Public Oversight
- v. Petroleum Revenue Collection
- vi. Oil Revenue Management / Oil Funds
- vii. Linking Oil Revenue Spending to Development Planning
- viii. Budget Openness and Public Financial Management
- ix. Social and Environmental Issues
- x. Local Content

The report also evaluates cumulative performance of Ghana’s parliament, donors, oil companies and civil society itself. Performance is set against recommendations made in the February 2009 report, *Ghana’s Big Test: Oil’s Challenge to Democratic Development*, issued by the Integrated Social Development Centre (ISODEC) and Oxfam America. As the 2009 report noted, “The needed institutions, regulations, and transparency measures should be in place early on to avoid the corrosive and corrupting effects of oil booms seen elsewhere in Africa. Because the Jubilee field is in development, the government does need to move at deliberative speed to be able to manage this large project. At the same time, Ghana needs to be careful to *control the pace* of the development of the petroleum sector so as not to let commercial developments outstrip the capacity of the government and society as a whole to meet the myriad challenges.”<sup>7</sup>

Performance is also measured against urgent recommendations made by a broad range of civil society groups and concerned citizens in a communiqué issued after the “Citizens Summit on Oil and Gas” held at the Accra International Conference Centre in June 2010. As the communiqué noted, “We endorse these recommendations and observations, convinced that, it is only through effective coordination of our efforts, national consensus around the critical decision areas, continuous vigilance by Ghanaians on the sustainable management of petroleum resources, revenues and the environment, in pursuant of our rights as citizens to participate in the governance processes of our country, as enshrined in the constitution of Ghana, that the petroleum resources of Ghana can be used for sustainable national development and thereby avoid the temptations of following the path of ‘resource management curse’.”<sup>8</sup>

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<sup>7</sup> Ghana’s Big Test: Oil’s Challenge to Democratic Development. February 2009. ISODEC and Oxfam America.

<sup>8</sup> . Communiqué issued by the Citizens’ Summit on Oil and Gas, 24<sup>th</sup> June 2010.



The stakeholders were assessed under the following indicators:

No	Indicators	Scores
1	Coverage of recommendations from benchmark documents	0.6 (60%)
2	Good innovations introduced (not in benchmark documents)	0.3 (30%)
3	Demonstrable commitment to implement recommendations	0.1 (10%)

The grading for all stakeholders follows the delineated pattern:

No	Score Range	Grade	Interpretation
1	1.0	A	Excellent
2	0.9 – 0.6	B	Good
3	0.5	C	Fair
4	0.4 – 0.1	D	Poor
5	0.0	E	Fail

The limitation of the methodology is borne by the fact that the assessment benchmarks were set by the Civil Society Platform on Oil and Gas. Therefore, to limit the level of subjectivity in the assessment, the scores assigned to the institutions were subjected to a comprehensive validation by all the institutions examined in this report (except Parliament which was not represented at the validation workshop).<sup>9</sup>

Data for the analyses were collated through interviews with all the stakeholders, press reports, official documents, and websites of the institutions.

## Major Findings and Observations

On the part of the Government of Ghana, we found that significant efforts have been made to entrench transparency with regards to petroleum revenue management. This is further reinforced by the extension of the **Extractive Industries Transparency Initiative (EITI)** to the oil and gas sector. The passing into law of the **Petroleum Revenue Management Bill** and the **Petroleum Commission Bill** are aimed to introduce a strong and clear legal framework for managing petroleum revenues and independent regulation of the petroleum industry respectively. In addition, government is developing the **Petroleum (Exploration and Production) Bill** and the **Local Content Bill** to be laid before Parliament. In developing the legal framework, government allowed citizens participation through public forums and consultations.

However, important concerns such as contract disclosures, open and competitive bidding for oil blocks for which the GNPC has good data, the environmental preparedness and problems

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<sup>9</sup> See Appendix 9 for list of validating institutions. The validation workshop was held on the 29<sup>th</sup> March, 2011.

associated with conducting Environmental Impact Assessment and Strategic Environmental Impact Assessment, are of major concern and have not been addressed. There are also concerns regarding the spending of expected petroleum revenues including for instance the dangers of collateralization of oil revenues, budget openness, adherence to budget decisions and fiscal irresponsibility, among others, which may undermine the efforts at ensuring sustainable management of petroleum resources.

Parliament has laid a strong foundation for good management of the country's petroleum resources through the debate and passage of the **Petroleum Revenue Management Bill**. The **Petroleum Commission Bill** is still being debated in Parliament. However, even though these bills were put before Parliament in July, 2010, it was not until after first oil in December that the Revenue Management Bill was passed. Parliament also lacks the technical capacity to scrutinize petroleum contracts and the strength to check abuses in the management of petroleum revenues since parliamentary enforcement of its resolutions is very weak.

Ghana's donor partners provided significant support to the country including technical, financial and development interventions to establish a more responsive oil and gas sector aimed at improving the living conditions of the citizens. In spite of this, there continues to be a lack of coordination of support and policy among donors. Some donor agencies do not extend support to civil society although they acknowledge the role civil society plays in the exercise of oversight in the management of the petroleum sector.

Petroleum Companies especially the Jubilee Partners under a fast-track approach ensured the delivery of oil in a record time. Some of the Jubilee partners have also shown modest social and environmental responsiveness. However, with the exception of Tullow, the others have neither demonstrated transparency in the disclosure of payments to the government so far nor expressed willingness to disclose petroleum contracts. There continues to be greater suspicion in communities bordering the Jubilee area on the 'good' intentions of the companies in matters such as social investment, response to livelihoods losses and shared use of the sea.

Civil society has contributed immensely to the development of the policies and legislation for the petroleum sector. Their inputs have led to very important provisions in the legislation such as the Public Interest and Accountability Committee; a citizen based oversight body to monitor petroleum revenue inflows and outflows. The need for continuous capacity building of civil society actors to hold public officers accountable as well as monitor the operations of petroleum companies cannot be overemphasized.

## Grading

Based on the methodology above and the analyses of stakeholder performance, we graded the institutions as follows:

1. Government of Ghana	-	Overall Grade = C
xi. Transparency		Grade = B
xii. Independent Regulation of the Sector / Role of GNPC		Grade = D
xiii. Licensing and Contracts		Grade = D
xiv. Citizen Participation / Public Oversight		Grade = B

xv.	Petroleum Revenue Collection	Grade = C
xvi.	Oil Revenue Management / Oil Funds	Grade = B
xvii.	Linking Oil Revenue Spending to Development Planning	Grade = C
xviii.	Budget Openness and Public Financial Management	Grade = C
xix.	Social and Environmental Issues	Grade = D
xx.	Local Content	Grade = D
2.	Parliament of Ghana	Overall Grade = C
3.	Ghana's Donor Partners	Overall Grade = C
4.	Oil and Gas Companies	Overall Grade = C
5.	Civil Society	Overall Grade = C

## PERFORMANCE ASSESSMENT

### Introduction

Performance of various stakeholders were based on international best practices, the recommendations made in the February 2009 report, *Ghana's Big Test: Oil's Challenge to Democratic Development*,<sup>1</sup> issued by the Integrated Social Development Centre (ISODEC) and Oxfam America; and the urgent recommendations made by a broad range of civil society groups and concerned citizens in a communiqué issued after the "Citizens Summit on Oil and Gas" held at the Accra International Conference Centre in June 2010.<sup>2</sup> Specifically, the assessments were based on the following indicators:

1. Government of Ghana
  - i. Transparency
  - ii. Independent Regulation of the Sector / Role of GNPC
  - iii. Licensing and Contracts
  - iv. Citizen Participation / Public Oversight
  - v. Petroleum Revenue Collection
  - vi. Oil Revenue Management / Oil Funds
  - vii. Linking Oil Revenue Spending to Development Planning
  - viii. Budget Openness and Public Financial Management
  - ix. Social and Environmental Issues
  - x. Local Content
2. Parliament of Ghana
3. Ghana's Donor Partners
4. Oil and Gas Companies
5. Civil Society

The following sections contain detailed analyses of the performance of stakeholders.

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<sup>1</sup>. Ghana's Big Test: Oil's Challenge to Democratic Development. February 2009. ISODEC and Oxfam America.

<sup>2</sup>. Communiqué issued by the Citizens' Summit on Oil and Gas, 24<sup>th</sup> June 2010.

In many oil producing countries, secrecy regarding basic information about oil production, oil contracts and revenues are the norm rather than the exception. Comprehensive transparency is the essential foundation for good governance in the extractive industries. Since the discovery of oil in 2007, the administrations of both President Kufuor and President Mills have placed emphasis on the importance of transparency and accountability in the management of the oil sector and accompanying revenues. While there have been some important steps taken, major transparency gaps remain. Ghana is set to receive its first oil revenues from the Jubilee field in April 2011.

**Strong Transparency Provisions in Petroleum Revenue Management Law**

On the positive side, Ghana’s parliament passed the long-delayed and debated petroleum revenue management bill at the beginning of March 2011. The bill is now awaiting presidential approval. While some issues were hotly debated, there was consensus from both the majority and the minority members of parliament on all the transparency provisions.

Should the bill approved by parliament become law, there will be a number of important transparency provisions. Some specific elements worthy of note include:

- Clause 8 requires the publication of records of petroleum receipts in the newspapers and online.
- Clause 16 requires the Minister of Finance to reconcile quarterly petroleum receipts and expenditures and submit reports to Parliament as well as publish the reports in the newspapers.

**RECOMMENDATIONS**

**Ghana’s Big Test – February 2009**

- Provide for regular publication of all material oil and gas payments received by the government or GNPC.
- Disclose the unitization agreement and field development plan for the Jubilee field.
- Disclose plans for taking *paid interest* in the Jubilee and other fields and how government interest will be financed.
- Disclose all petroleum agreements and licenses.
- Reject confidentiality clauses in new petroleum agreements and the revised model petroleum agreement, except in cases of proprietary technological information.
- Extend the Ghana EITI process to include oil and gas.
- Transform Ghana’s voluntary EITI commitments into binding laws requiring disclosure
- Disclose audits of the GNPC, the future GPRA and any future oil funds.
- Pass a strong Freedom of Information Act

**Citizens Summit Communiqué – June 2010**

- Publish all information on production amounts, production costs, revenue inflows and outflows, disaggregated expenditures, and contracts must be published without any restriction. There must be reasonable timelines for eventual publication of any information deemed “commercially sensitive” (not more than three years.)

- Clauses 46 to 48 provide for four different types of audits of the petroleum accounts—internal audits, external audits, annual audits and special audits.
- Clause 50 requires the Minister of Finance to submit an annual report on the Petroleum Account and the Ghana Petroleum Funds as part of the annual presentation of the budget statement and economic policies to Parliament. The report shall also be made ‘readily adaptable for dissemination to the public’ and shall contain:
  - (a) Audited and certified financial statements comprising;
    - (i) the receipts and transfers to and from the Petroleum Account,
    - (ii) the deposits and withdrawals to and from the Ghana Heritage Fund and the Ghana Stabilization Fund, and (iii) a balance sheet, including a note listing the qualifying instruments of the Ghana Petroleum Funds;
  - (b) A report signed by the Minister describing the activities of the Ghana Petroleum Funds in the fiscal year of the report, including the advice provided by the Investment Committee, any reports prepared by the Auditor-General drawing attention to particular issues or matters that may be of concern or interest to Parliament;
  - (c) The income derived from the investment of the Ghana Heritage Fund and the Ghana Stabilization Fund during the fiscal year compared with the income of the previous two fiscal years;
  - (d) A comparison of the income in paragraph (c) with;
    - (i) the benchmark performance indices provided to the Minister, and
    - (ii) the income of the previous two fiscal years after adjusting for inflation;
  - (e) The liabilities of government borrowings shall be reflected in the presentation of the annual report so as to give a true representation of the past and expected future development of the net financial assets of government and the rate of savings; and
  - (f) A list of names of persons holding positions relevant for the operation and performance of the Ghana Heritage Fund and the Ghana Stabilization Fund, including;
    - (i) the Minister, (ii) the chairperson and members of the Advisory Committee, (iii) the Governor of the Bank of Ghana, and (iv) the investment manager, if any.
- Clause 51 provides that information or data, the disclosure of which could in particular prejudice significantly the performance of the Ghana Petroleum Fund, may be declared by the Minister as confidential, subject to the approval of Parliament. It further requires detailed explanations on why the information should be held confidential and that confidentiality shall not limit access to information by Parliament and the Public Interest Accountability Committee.
- Clause 52 criminalizes the failure by a person to comply with the obligation to publish information under the bill.

## **EITI extends to Oil and Gas**

In addition, Ghana has moved to expand its current implementation of the international Extractive Industries Transparency Initiative (EITI) in the mining sector to the oil and gas sector. The National Steering Committee has been expanded to take on board stakeholders in the oil and gas sector while membership of Civil Society has also been increased from one to three. A new framework has been approved by Ghana's cabinet in 2010. A template for reporting of oil and gas payments however needs to be developed.

## **International Rules Require Payment Disclosure**

Ghana's current international oil company partners in the Jubilee field are also required to disclose payment information to the government in tandem with international rules and laws. Tullow and Kosmos are required to disclose payments on an annual basis because of the financing they received from the World Bank Group in 2009. Anadarko will be required to disclose payments as a result of a new law in the United States requiring payment disclosure to host governments by all oil, gas and mining companies reporting to the U.S. Securities and Exchange Commission.

## **Major Transparency Gaps Remain**

Despite the progress outlined above, major transparency gaps remain.

- **The petroleum contracts between the government and oil companies have not been publicly disclosed**, despite the directive by President Mills to the Minister of Energy to do so in 2009. The Vice President Mahama re-iterated the President's directive when he made another announcement that all petroleum contracts would be disclosed. These presidential directives are yet to be complied with. Tullow has said they are willing to disclose if the government agrees.<sup>3</sup> Parliament has the authority under the constitution to approve natural resource agreements, but post-approval disclosure has not been forthcoming. (Some Members of Parliament have said they receive only summaries of the contract and not the full document.) Contract disclosure is standard practice in several oil countries, including Sao Tome and Principe and Peru, where contracts are easily downloaded from a Web site. In addition, Clause 150 of the 2010 constitution of Niger requires extractive industry contracts to be disclosed.<sup>4</sup> While the Model Petroleum Agreement is available on the GNPC website and some terms have been disclosed for the Jubilee field contracts by GNPC, this does not in any way substitute for full contract disclosure. There is little information on new agreements and it is unclear if confidentiality clauses continue to be inserted into new agreements that are being signed by the GNPC and the government.

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<sup>3</sup> See Tullow 2009 page 43. "Why are your petroleum agreements in Ghana and Uganda confidential? These agreements remain confidential at the request of host governments for commercial reasons. However, their terms are in line with agreements signed around the world. The main beneficiaries in both Ghana and Uganda will be the people of those two countries. Should either government, that is party to the agreement on behalf of its people, choose to make it public, we would fully support this."

<sup>4</sup> See <http://www.revenuewatch.org/news/news-article/niger/new-niger-constitution-includes-landmark-transparency-measures>

- **The unitization agreement and field development plan for the Jubilee field have not been disclosed.** Because the Jubilee field straddles two license blocks, a unitization agreement was developed to harmonize fiscal terms and other issues. This agreement has not yet been disclosed. In addition, the field development plan (or “program of development”) contains important information on the investment costs for the field, which will have an impact on revenues for companies and the government. This plan should also be disclosed.
- **Government of Ghana and Kosmos Impasse over Mud Spill** – The problem between Kosmos Energy and the Government of Ghana over Kosmos’ refusal to pay a fine slapped on it by a government Committee following reports of mud spillages was said to have been settled amicably according to the government. The information about the amicable settlement was announced by the government during first oil celebration in Takoradi. However, Ghanaians who are the primary owners of the petroleum resources are yet to know the terms of the settlement. As a matter of principle, and in the interest of transparency, the Government of Ghana must inform the public about the terms of the settlement.
- **Audits of GNPC** – There was no provision for regular, independent audits of GNPC in the recently passed petroleum revenue management bill and there have been no recent disclosures of audits of GNPC.
- **The Freedom of Information Bill has not been Passed** - A strong and comprehensive Freedom of Information law is an important cornerstone of good governance more broadly and would reinforce transparency safeguards in the oil and gas sector. Although the current and previous governments promised to pass a strong Freedom of Information law to help the free flow of information, they have reneged on their promise, at least for now.
- **Production data, production costs and sales prices for oil produced needs to be published** –More information is needed on production from the Jubilee field; sales prices for lifted oil; investment and production costs. This information is necessary to monitor revenue collection by the state. Recently, the GNPC gave out some information on Ghana’s lifted crude oil, the sales price and names of the companies who marketed and sold the oil. But this did not include production costs and investments.





**Figure 1: President Mills, center, participates in the December 15 celebrations marking the start of oil production in the Jubilee field.**

Contract transparency is very important for so many reasons. It ensures value for money for contracts, allows citizens to monitor contract executions and prevents corruption among others. Ghana must therefore follow the examples of Liberia, Peru and Ecuador who disclose their contracts regularly on government websites.

Ghana's Petroleum (Exploration and Production) law (PNDC Law 84) put the power to regulate petroleum operations in the Minister responsible for Petroleum. The Minister has however relied on the technical expertise of the Ghana National Petroleum Corporation (GNPC) to perform this function. This has caused some misunderstanding regarding the role of the GNPC and thereby raised issues of conflict of interest in the GNPC's functions. The GNPC has never hesitated to explain that it does not perform regulatory functions though.

There are both governance and commercial risks associated with ministerial regulation of the oil and gas industry because of the high possibility of politicization of the industry, corruption and rent seeking behavior and regulatory capture, among others.

Although all models of the petroleum sector regulations have their associated problems, Ghanaians, and to a large extent government, have recognized the importance of independent regulations, hence the Petroleum Commission Bill, which is now before Parliament and whose ultimate objective is to create an independent regulator for the industry.

There are issues of 'conflict of interest' in the role of GNPC who advise the Minister and at the same time participating in petroleum operations for commercial reasons. Parliament has responded expeditiously by rejecting the provision in the Petroleum Commission Bill that allowed the GNPC to serve on the Governing Board of the Independent Commission as was provided for in Clause 3 of the Bill. The Commission is also required to issue Annual Public Reports on all petroleum activities.

Both the Constitution and the Petroleum Commission Bill provides further remedies for checking 'conflict of interest' which therefore establishes a framework for anticorruption and public accounts agencies such as Parliament, the Judiciary, the Auditor General's Department, the Commission for Human Rights and Administrative Justice, the Economic and Organized Crimes Office, and civil society to monitor and check abuses.

## RECOMMENDATIONS

### Ghana's Big Test – February 2009

- Ensure a separation of regulatory and commercial functions.
- Avoid conflicts of interest in the GPRA board.
- Reduce GNPC and presidential influence in the running of GPRA.
- Ensure an independent source of funding for the GPRA.
- Require that the GPRA share information with other parts of government.
- Explicitly establish a role for Parliament regarding the GPRA, including approving presidential appointments and auditing and monitoring GPRA performance
- Establish a civil society position on the GPRA board.
- Allow GPRA meetings to be open to the public, and disclose board meeting notes and other information.
- Develop clear roles and responsibilities for the GPRA that do not overlap with the GNPC, the National Petroleum Authority, the Energy Commission, or other government bodies.
- Strengthen the governance and accountability of the GNPC to bolster its roles as custodian of the state's participating interest; as marketer of the state's share of petroleum, where it is taken in kind; and as operator/investor for its own account.

In spite of the proposal for creating a Petroleum Commission, independent regulation will continue to be problematic because of technical capacity problems usually faced by new oil producers, lack of appropriate logistics and equipment, financial dependence on the government and possible political party patronage through presidential appointments to the governing board of the Petroleum Commission (Four members of the Commission are appointed by the President).

A transparent and competitive licensing and contracting processing in the oil and gas sector is vital. Unfortunately, little progress has been made in this area in the last three years.

- **Demands for a moratorium on new exploration licenses ignored** – Demands from civil society groups and parliamentarians in 2009 for the government to enact a moratorium on new exploration licenses to allow Ghana’s legal and regulatory framework development process to catch up were ignored. In late 2009, a cross-party group of Members of Parliament issued a communiqué calling on the government to enact such a moratorium. The communiqué argued that “less than one year before the drilling of the country’s oil in commercial quantities, there was not a single law before Parliament on how the country would manage the oil fields and the expected revenue as well as how to ensure that the environment was not damaged by the companies.”<sup>5</sup> They intimated that to continue to engage companies for new licenses when the legal framework and any new regulatory agency are not yet in place carries great risks for the country.
- **Closed door negotiations continue** - Since the Jubilee discovery in 2007, Ghana has received strong interest from international oil and gas companies. As of late 2009, it was reported that 41 companies had expressed interest in Ghana’s oil blocks. Ghana has yet to move from a secret process of negotiated deals – more characteristic of a country yet to

## RECOMMENDATIONS

### Ghana’s Big Test – February 2009

- Enact a moratorium on new exploration licenses to allow Ghana’s legal and regulatory framework development process to catch up.
- Prepare for an open and competitive bidding round, and cease closed door negotiated deals for offshore areas. Any new licenses subsequently issued should be done on a competitive and transparent basis.
- Reject stabilization clauses in petroleum agreements, except for fiscal terms.
- Ensure that Parliament maintains a meaningful role in approving all petroleum agreements.
- Narrow the discretionary space on the fiscal terms to help prevent corruption in the negotiation process.
- Include the Ministry of Finance and Economic Planning, the Attorney General, and other relevant agencies in petroleum agreement negotiations

### Citizens Summit Communiqué – June 2010

- Enact a moratorium on petroleum licensing and production until the regulatory law is passed by parliament and the Petroleum Regulatory Authority becomes fully functional.
- The model agreement framework should be reviewed to be consistent with other laws of the country.

<sup>5</sup>“Government Urged to Freeze Oil”, Daily Graphic, 15 December 2009. “The political parties, represented by Mr S. P. Adamu of the National Democratic Congress (NDC), Mr. O.B. Amoah of the New Patriotic Party (NPP), Alhaji Ahmed Ramadan of the People’s National Convention (PNC), Mr. Ladi Nylander of the Convention People’s Party (CPP), and the Parliamentary Subcommittee on Mines and Energy, represented by Mr. Ernest Yakah, based their call on the grounds that the country was ill-prepared to derive maximum benefit from the oil find.”

discover oil – to an open and competitive bidding round. Such a process of auctioning rights to new oil blocks would likely bring increased revenue to the country. As the Bank of Ghana has said, the government should consider “an auction of resource extraction rights before contracts are signed” to increase government returns from the sector.<sup>6</sup>

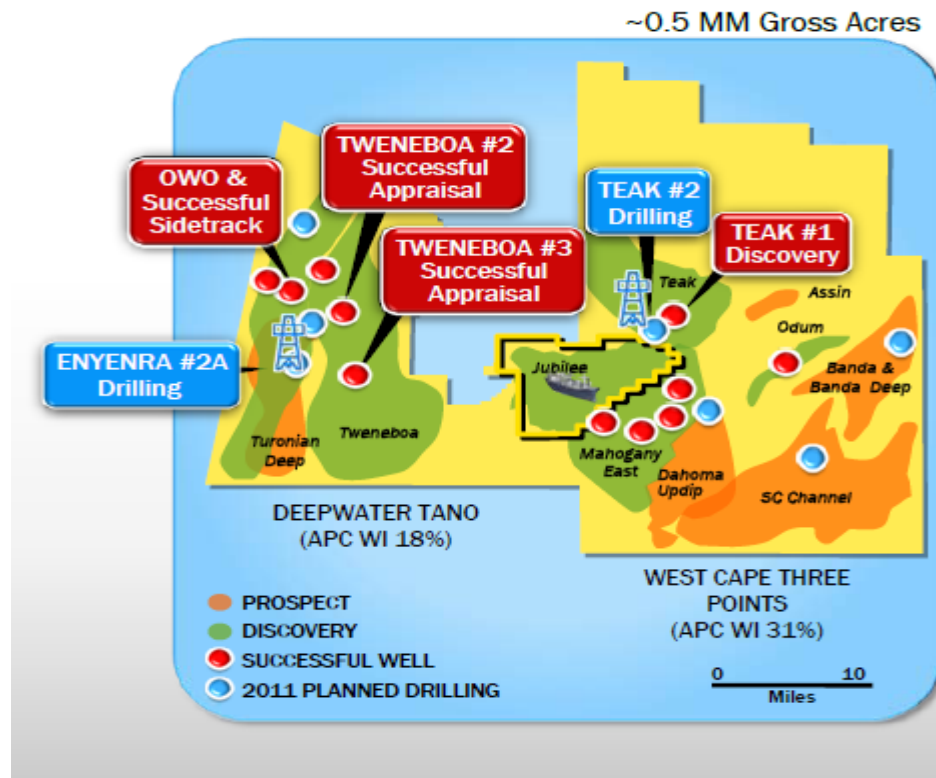


Figure 2: Map Showing Oil blocks off-shore Ghana: Sourced from Anadarko - <http://media.corporate->

- **No evidence that stabilization clauses have been abandoned** –There is no evidence that Ghana has abandoned the adoption of unbridled stabilization clauses in contracts with oil and gas firms. These clauses can lock in the legal and regulatory framework at the time of signing the contracts. Ghanaians should not be penalized in the future because the petroleum legal frameworks were underdeveloped when contracts were signed.
- **Conflicting evidence of parliamentary engagement in approval of oil agreements** – Parliament has the right under the Constitution of Ghana to review and approve natural resource agreements. In practice, Members of Parliament in both the majority and minority have complained that votes have taken place without all members having access to the full agreement. Instead what they receive is a short summary of the agreements. But some government officials have said that the full agreement is provided and that Members of Parliament should demand the full agreement before going into debate to ratify these agreements.

<sup>6</sup> “A framework for the management of oil resources in Ghana”, Bank of Ghana, Policy Brief, Dec. 12, 2007.

- **Wide latitude for government negotiators** – With closed door negotiations and wide latitude for government negotiators, there is a risk of corruption in the licensing and contract negotiation process. Previous contracts have also included minority shares for companies, such as Sabre Energy and the E.O. Group, whose beneficial ownership structures were, and are still not well known to the public.

There is no doubt that expectations among Ghanaians have remained high since the announcement of commercial oil discovery in the country. Citizens therefore had expected greater participation in deliberations on the industry. Public interest has however focused on the management of petroleum revenues particularly how it could be used for job creation and poverty reduction.

The government of Ghana, through the Ministry of Finance and Economic Planning, provided the opportunity for citizens' participation through nationwide forums on the proposals for managing petroleum revenues. The Ministry of Energy also published the draft local content policy as well as held public forums in parts of the country to solicit public views on how Ghanaians could benefit from the industry. Parliament further held three public forums in Sunyani, Accra and Takoradi on the petroleum bills.

These forums did not only provide platforms for citizens to contribute to the policy and legislative development for the petroleum sector but also to manage public expectations. Radio and television discussions of issues relating to the petroleum revenue management law especially in areas such as collateralization of future oil revenues, the heritage fund, the demand for 10% of oil revenues by Chiefs in the Western Region and the proposed Public Interest and Accountability Committee; also highlighted citizens preferences as well as their hopes and fears about the country's oil wealth.

It is important to state however that most of these discussions and the contributions by citizens were largely uninformed and sometimes largely speculative without the proper understanding of what the country's oil could offer in terms of development opportunities, jobs and incomes.

#### **RECOMMENDATIONS**

##### **Ghana's Big Test – February 2009**

- Develop the policy principles, master plan, and regulations in sequence and as a package.
- Develop the policy framework for oil and gas with robust public, civil society, and parliamentary participation.
- Widely distribute drafts of key documents prior to their adoption, and engage civil society groups through formal mechanisms of inclusion.

##### **Citizens Summit Communiqué – June 2010**

- That the government as a matter of urgency must release the amendments being proposed for petroleum regulations for public debate and that the delay in passing those amendments before the flow of first oil is dangerous.
- That there should be timelines for presenting the various legislations being developed by government to Parliament.
- That the role of the Public Oversight Committee should be strengthened by ensuring its funding by law, committing it to public hearing, broadening its role beyond making recommendations and providing it with the power to refer cases of abuse to the judiciary
- That membership of the Public Oversight Committee should be increased and must be broad-based and the proposal for political party representations should be discarded to make it independent. That Parliament should enforce its oversight through the Public Accounts Committee and not through membership of the Public Oversight Committee



Although there is knowledge and information among organized interest groups, the larger civil society has very limited understanding partly because Ghana has not had a history of commercial production of oil. Also, the difficulty of appreciating technical information prevented a more qualitative citizens' engagement.

Nevertheless, throughout the engagement processes, three important demands by citizens stood out – the demand for transparency in the management of the oil revenues, spending oil money in productive sectors such as education and job creation; and preventing environmental disasters. The role of citizens in monitoring to ensure that these demands are met is however limited to the availability and understanding of relevant information on the petroleum sector, which may be hampered by the delay in the passage of the Right to Information law, confidentiality clauses and non-disclosures of contracts and field development plans. Much is therefore expected from the government, parliament and civil society who would be required to update other citizens on developments in the sector to facilitate public accountability.

The Public Interest and Accountability Committee, a citizens' based committee responsible for independent oversight of the management of petroleum revenues as well as consulting the public on priority setting for spending petroleum revenues has a crucial role to play but needs to be resourced financially and with technical support to perform its role effectively.



**Figures 3 and 4: Left: Students of the University of Ghana discussing the Petroleum Revenue Management Bill. Right: Members of the Civil Society Platform on Oil and Gas at a Roundtable discussion on the Petroleum (Exploration and Production) Bill.**



The administration of a petroleum revenue collection system is a challenge for governments around the world – both developed and developing. (The U.S. has had its own scandals regarding corruption in agencies tasked with collecting payments from oil companies operating in the US, with the loss of millions of dollars to the US Treasury.)

Ghana is facing the challenge of creating a petroleum revenue collection system from scratch. At the same time, it is doing so within the context of a broader effort to reform and strengthen tax collection more generally. In 2010, the Ghana Revenue Authority (GRA) was created, merging the functions of the Internal Revenue Service; the VAT Service; and the Customs, Excise and Preventive Service. While an organizational structure and project plan have been approved and a Commissioner General appointed, the difficulties encountered with the establishment of new institutions may slow down the work of a highly functioning and efficient petroleum tax unit within the GRA, an important requirement in the Petroleum Revenue Management Bill.

The IMF has noted that “Ghana’s tax revenues, at less than 14 percent of GDP in 2010, fall well below the average of 20 percent of GDP for lower middle-income countries.” In many oil-producing countries, non-oil tax collection declined after the start of oil production, as government efforts slackened with an onslaught of “easy money”. Lack of investment in both oil and non-oil tax collection by the government of Ghana may lead to ineptitude and loss of revenue to the state.

Ghana’s Ministry of Finance has projected that it will receive 584 million cedis in tax and non-tax oil revenue in 2011 (\$383 million). This is out of a total for projected government revenue from tax and non-tax sources of 9 billion cedis (\$5.87 billion). (The IMF has said that this figure may be higher – the average price of crude may be \$95 per barrel in 2011, rather than the government assumption of \$73-\$75 per barrel.<sup>7</sup>) According to the government’s 2011 budget statement, 262.2 million cedis have been earmarked “to be transferred to the Ghana National Petroleum Company for its investments.”

#### RECOMMENDATIONS

##### Ghana’s Big Test – February 2009

- Establish a Petroleum Tax Unit within the IRS, with sufficient capacity to monitor and enforce the fiscal regime, including monitoring of production and other payment determinants.
- Invest capacity-building resources so that the IRS can play its role in the sector and so that non-oil tax revenue does not decline.

##### Citizens Summit Communiqué – June 2010

- That the Ministry of Finance, through the Ghana Revenue Authority, have a dedicated and capable unit tasked with monitoring petroleum agreements and collecting all revenue due to the government of Ghana.
- That the operational capacity of the Petroleum Quantity Assessment Body should be clearly stated and that the body should be empowered and resourced to conduct both announced and unannounced on site checks at drilling and production sites

<sup>7</sup>“Ghana Oil Bill May Improve Credit Rating, Spur Loans, IMF Says”, Business Week, March 9, 2011.

The first year of oil production will not be a full year at 120,000 barrels per day as production is ramping up to that level in July. Revenues in 2012 are likely to be much higher, perhaps over \$1 billion. Mohammed Amin Adam, convener of the CSO Platform on Oil and Gas, intimates that the Jubilee field phase 1 would produce oil valued at \$37.5 billion over the next 20 years, assuming a constant oil prices at \$75 per barrel and field costs of \$4 billion. This would result in revenues of \$19.4 billion to the government.<sup>8</sup>

**Establishing a Petroleum Tax Unit** – A Petroleum Tax Unit has been established within the Ghana Revenue Authority. Some staff members in the IRS have received training in petroleum tax issues and the first steps have been taking to build capacity to monitor contracts and collect taxes. Given that oil production has already started, much more needs to be invested – by donors and through the government’s own resources – to build a fully capable petroleum tax unit. In the 2011 budget statement, the government recognized that more work needed to be done to achieve the medium-term fiscal policy objectives. “Government would therefore pursue the modernization programme of the revenue agencies; ensure transparent, efficient and effective oil and gas revenue management; ensure expeditious utilization of all aid inflows; adopt a comprehensive Ghana Integrated Financial Management Information System (GIFMIS) for effective budget management...” The government also needs to ensure that information on petroleum agreements – including the agreements themselves – are shared with all relevant agencies involved in petroleum tax collection.

**Auditing Payments by Oil Companies** –The government also needs to increase the capacity of the Audit Service to undertake audits of oil company payments, including audits of company costs to the project. Audit rights under the petroleum agreements for the upfront costs already invested may expire soon and it is important that the government verify costs charged to the Jubilee project. These audits are complex and technical and the government will need to decide the best strategy – building government staff expertise; contracting external auditors; or a mix. The Audit Service recognized this need in the 2011 budget statement and projected that, “the Service will focus on operational gaps and risk areas in audit planning and execution. In addition to the public accounts, emphasis will also be on procurement audit and contract administration. The Service will also embark on computerized and electronic systems audit, payroll audit and performance audit of physical infrastructure as well as organize training on oil and gas revenue audit.”

However it is important to state that the GRA is currently undertaking pre-production costs of the Jubilee project. Nonetheless, granted that the Petroleum Tax Unit is new and without any experience in similar undertakings, there is no guarantee that the quality and depth of the audits may be questionable. Fortunately, the GRA agreed that it is yet to understand the cost structure well and would need more capacity building to effectively implement its mandate.

### **Assessing the Government of Ghana Take**

The GRA has installed electronic seals in the oil pipelines and unless they are removed, there cannot be export of crude oil. The GRA also posts personnel to the FPSO to monitor as well as measure oil quantity and quality (in this case, for pricing purposes).

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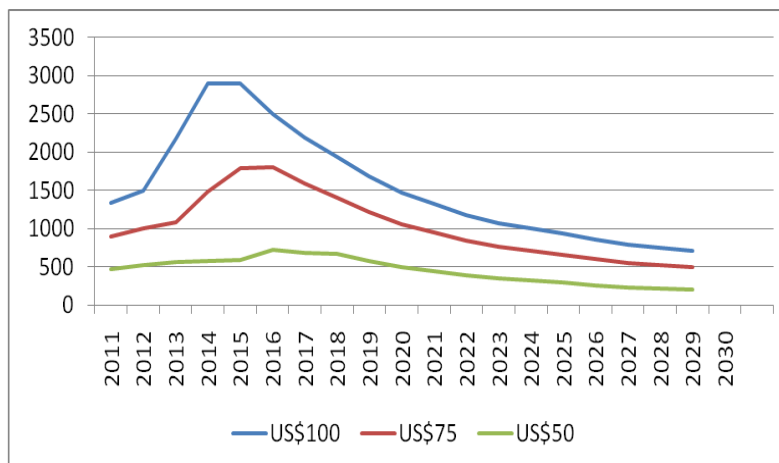
<sup>8</sup> “Jubilee Field Rakes \$37.5bn Revenue”, Business Guide, 10 March 2011.

The GNPC made a significant demonstration of its commitment to open up the assessment process for sharing. At a press conference recently on the 10<sup>th</sup> March 2011, the national oil company announced the lifting of Ghana’s first oil entitlement. The company stated that the quantity of Ghana Government share from the first lifting was 995,259 barrels of crude oil. Ghana’s cargo was sold to Sun International, a subsidiary of US refiner Sunoco operating two refineries in Philadelphia and Marcus Hook. The government share reflected the fiscal regime governing the Jubilee licenses. The other Jubilee partners had earlier lifted their consignments; Tullow Ghana Limited and EO Group jointly lifted 649,064 barrels on the 5<sup>th</sup> January, 2011; Kosmos Energy Ghana CH lifted 989,360 barrels on 20<sup>th</sup> January 2011; and Anadarko WCTP Company and Sabre Oil and Gas Holding Limited jointly lifted 996,708 barrels jointly lifted on the 9<sup>th</sup> February, 2011.

Ghana’s share which is benchmarked to ‘Brent Crude’ was marketed by Vitol S A and Cirrus Oil Services at over US\$110 per barrel of crude oil (higher than the US\$105 per barrel of oil at which Tullow sold its share), and for which payment was to be made to the GNPC’s account at the Ghana International Bank in London in the second week of April 2011.

The GNPC further announced the signing of a Crude Oil Lifting Agreement (COLA) among the Jubilee partners who also agreed to a Petroleum Allocation System (PAS).

This no doubt demonstrated high level of transparency on the part of the GNPC, a significant development that will hopefully guide the future management of Ghana’s oil and gas concessions.



**Figure 5: Revenue Projections based on Phase 1 of Jubilee Production: World Bank Report No. 47321-GH, Economy-Wide Impact of Oil Discovery in Ghana November 30, 2009. PREM 4 Africa Region**

There are however important questions that need to be addressed to deepen transparency in the operations of the GNPC. Some of these questions are:

1. What is the rate of recovery of field development costs of the Jubilee project and cost in per barrel oil?

2. Since government petroleum tax revenues are profit-based taxes, what relationship guided costs and prices in the transactions on the Jubilee oil?
3. Whiles this demystifies contract non-disclosures, is the GNPC also committed to disclosing detailed petroleum agreements to allow for public scrutiny of government entitlement?
4. The selection of Vitol and Cirrus was supposedly done through competitive process but was it by selective or open tendering processes and what are the names of the other companies that were evaluated?

Ghana has made significant efforts at meeting best international practices in the management of petroleum revenues. This was demonstrated in the passage by Parliament of a Petroleum Revenue Management Bill, which defines the frameworks for petroleum revenue inflows and outflows.

When the bill is finally signed by the President and implemented faithfully, Ghana would meet many of the best practice standards in this area. A remaining concern would be the removal of the prohibition against oil-backed loans in the original bill.

The law would channel all oil revenues into a single fund – the Petroleum Holding Fund - and adopt clear rules for moving money out of the fund. (Clear rules for withdrawals are important. Equatorial Guinea has a “worst practice” experience with overseas banks holding oil funds that can be withdrawn with only the president’s signature. Sao Tome has adopted a system of maximum annual withdrawals, and these withdrawals require four government signatures from different parts of the government.)

In addition, spending of revenues would be integrated into the national budget and not through a separate system. Audited statements of money flowing into and out of the Petroleum Holding Fund, the Ghana Heritage Fund and the Ghana Stabilization Fund would be published each year.

## RECOMMENDATIONS

### Ghana’s Big Test – February 2009

- Any future funds used to save oil and gas revenues should follow some common-sense principles to avoid the mistakes that other countries have made. These include the following:
  - Channel all oil revenues into a single fund.
  - Adopt clear rules for moving money into and out of the fund.
  - Integrate funds into the national budget.
  - Have the fund independently audited on a regular basis.
  - Make the fund transparent. The fund operations should be fully transparent, with disclosure of money going in and out, the investment strategy and management system, and audits of the fund.
  - Establish formalized civil society oversight.
  - Avoid conflicts of interest.
  - Prohibit oil-backed loans. Loans that use money in the oil fund as collateral, or loans that mortgage future production, should be prohibited by law.
  - Insulate the fund and its management arrangements from executive influence by placing them under parliamentary oversight.

### Citizens Summit Communiqué – June 2010

- That the proposed Stabilization Fund and the Heritage Fund are appropriate but the percentage allocation of revenues to the Heritage Fund should be reduced from the proposed 70% to ensure that more current investments are made in sectors that have long-term impact
- That the Investment Management Committee should be independent whose advice must not be interfered with except by parliamentary approval.
- That the audit of the petroleum reserves accounts by the Auditor General cannot be considered an external audit and that there should be independent third party annual audits

It should however be noted that audits by the Auditor General cannot be considered an external audit – independent third party annual audits are needed. Civil Society oversight would be formalized through the Public Interest and Accountability Committee which will be responsible for independent assessment of the management of petroleum revenues, holding public hearings to collate public inputs on priority setting for spending petroleum revenues and complement parliamentary oversight through issuing of public reports.

Parliament can and should exercise its oversight role on the funds, including holding hearings based on the annual reports on the Petroleum Holding Fund and other Petroleum Funds that are to be submitted to Parliament each year (Clause 50).

**Risk of increased debt**– The removal of the original clause 5 in the Petroleum Revenue Management Bill, which was meant to prohibit the use of oil revenues as collateral for loans – “oil backed loans” – is particularly worrying and carries a risk for Ghana. Increased “creditworthiness” has led other oil producers, such as Nigeria and Angola, to go on big borrowing sprees. The implication is that, when oil prices drop, countries are left with large debts which they lack the means to service. Oil-backed loans, often with steep interest rates and short repayment terms, are often taken out in secret with little or no parliamentary or public scrutiny. Recent press reports have noted that the GNPC is working with the Deutsche Bank and other private banks to secure a \$500 million loan. The terms and purpose of the loan are not clear. Ghana already has significant debts which continue to put pressure on its fiscal targets. The \$750 million Eurobond debt for instance will be due for servicing in 2017. The government of Ghana has also signed a housing deal with the Korean STX Company to build 200,000 housing units at a cost of about US\$10 billion. The first 30,000 units will be delivered at US\$1.5 billion to be used by the security services. It is believed that the collateralization of Ghana’s future petroleum revenues provided for in clause 5 of the Petroleum Revenue Management law was meant to provide security for the housing deal.

The following statement by Mohammed Amin Adam – Coordinator of the Civil Society Platform on Oil and Gas, captures the fears of potential high indebtedness of Ghana through oil collateralization<sup>9</sup>:

*“At HIPC completion point, Ghana’s debt levels were around 45% of GDP which was considered sustainable. However, by the end of 2010 Ghana’s debt profile will constitute about 66% of GDP after reaching 62% in 2009, which brings the country to its pre-HIPC status as a highly-indebted country. If the Parliament allows the collateralization of future oil revenues, the result is to increase the country’s appetite for loans which has been our bane but which have undermined the country’s economic independence. It is even worrying when government is not cautious of fiscal sustainability. The danger is that future oil revenues are not permanent but are also volatile due to uncertain crude oil prices. Therefore, while revenues will eventually decline during the depletion stage of our oil fields, debts are also accumulated to the extent that oil revenues will become insufficient and unreliable source of servicing the debts. In this case, future development is sacrificed in favour of debt service as financial resources meant for development will be used for repaying debts and thereby undermining sustainable development.”*

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<sup>9</sup> Ghanaweb Article: ‘Collateralization of Ghana’s future oil revenues, a convenient step towards the curse of Oil’ 17<sup>th</sup> November, 2010.

Since independence, Ghana has seen different national development plans. However, these plans are usually associated with the governing parties and are always abandoned when there are changes in government. In the country's recent history, there have been two medium term development plans – the Ghana Poverty Reduction Programme under the **New Patriotic Party Government** and the Ghana Shared Growth and Development Agenda (GSGDA) under the current **National Democratic Congress Government**.

Following the commercial discovery of oil, it has become necessary to consider the development of a long-term national development plan. This has been necessitated by the Petroleum Revenue Management law, which requires spending to be aligned to a long-term national development plan. The main problem however, is how spending from oil revenues which have been allocated to the budget for 2011 has been determined in the absence of a long-term national development plan. The provision to spend 70% of annual benchmark revenues through the budget is also oblivious of the relevance of a long-term national development plan.

The fear is that, in the absence of a long-term national development plan, spending of oil revenues are likely to be speculative and could therefore lead to some macroeconomic difficulties such as exchange rate appreciation and the subsequent weakening of the local economy (Dutch disease), and persistent inflation as well as fiscal sustainability problems arising from budget illusion. The provision to collateralize future oil revenues in the Petroleum Revenue Management Bill could further jeopardize the economy through excessive borrowing, uncontrolled spending and abuse of the public financial management system especially without a long-term development plan.

A long-term national development plan will ensure that spending of oil revenues is targeted for effect. It will guide allocations of revenues to various sectors of the economy both in terms of spending options and quantitative monetary allocations. A long-term national development plan would ensure continuity in the development process after change of governments especially given the level of politicization of the debate on the Petroleum Revenue Management Bill. It will further unite the country behind one broad development framework and thereby ensure an all-inclusive development process which could bring about sustainable development and accelerated poverty reduction.

#### RECOMMENDATIONS

##### Citizens Summit Communiqué – June 2010

- That the Petroleum Revenue Management bill must provide for a development-focused public investment through budgetary appropriations, consistent with a long-term development strategy of the country and that appropriation should be project specific.
- That the government as a matter of urgency should develop medium and long-term development plans for the country through public consultations and that no spending from petroleum revenues should be effected without the plans.
- That any investments of petroleum funds should be directed to human capital development, agriculture and infrastructure. Otherwise, we should consider limiting spending of revenues to capital spending but to adopt a broad definition of this, including the need to improve human and social infrastructure



The following are portions of the 2011 Budget and Economic Policy Statement of the Government of Ghana presented to Parliament by the Minister of Finance on the 18<sup>th</sup> November 2010.

86. **Madam Speaker**, the draft Medium Term National Development Policy (MTNDP), the “**Ghana Shared Growth and Development Agenda**” (GSGDA) which will be presented to this House before end of the year, contains comprehensive policies and strategies to address the growth and development challenges facing the country in the medium- to long-term. Under the GSDA, economic growth and investment in the medium term will focus on accelerated agricultural modernization; enhancing the competitiveness of the private sector; developing critical infrastructure, energy and human settlements; developing oil and gas industry; sustaining natural resource management; increasing human resource development, productivity and employment; and fostering transparent and accountable governance.

87. **Madam Speaker**, the GSGDA expects that the implementation of these policy interventions will support the economy to grow at a rate of 12.3 percent in 2011, 9.3 percent in 2012, and 8.3 percent in 2013, taking into account the higher growth potential of the oil and gas sector. The agricultural sector is expected to grow at an annual average rate of 6.1 percent in the medium term and the services sector, by 8.7 percent. The industrial sector is projected to grow at 25.4 percent in 2011 on account of the oil and gas-related infrastructure and increased activities in construction, mining and energy sectors. Growth in the industrial sector will slow down to 14.1 percent in 2012 and 12 percent in 2013.

88. **Madam Speaker**, over the medium term, fiscal policy will be guided by the objective of scaling back the fiscal deficit to 7.5 percent in 2011, 4.7 percent in 2012 and 3.0 percent in 2013. To achieve these fiscal targets, the government will intensify the ongoing reforms in public financial management, improve tax collection, review the import duty exemptions regime, rationalize recurrent expenditures, contain expenditure through public sector pay reform, and address the threat of high debt burden.

201. **Madam Speaker**, Government recognizes the immense contribution of the non-oil sector towards the growth and development of this country. Measures will be put in place to ensure the continuous sustenance of the non-oil sector in order that it does not play second fiddle to the oil sector as has happened in some oil producing countries.

202. **Madam Speaker**, the 2011 budget would seek to address this by specific interventions in the agriculture and the manufacturing sectors to revamp their lead in the growth agenda. The private sector would be supported in diverse ways in the effort of increasing industrial production and output that would create jobs.”

[http://www.mofep.gov.gh/documents/2011\\_budget\\_final\\_print.pdf](http://www.mofep.gov.gh/documents/2011_budget_final_print.pdf)



Ghana has made scant progress on budget openness since the Jubilee field was discovered. The Open Budget Index (OBI), a project of the International Budget Partnership in Washington, DC, measures budget openness in 94 countries across six indicators. This includes timely production and disclosure of a pre-budget statement; the executive’s budget proposal; a citizen’s guide to the budget; in-year reports; a midyear review; a year-end report; and the auditor’s report.

**Ghana has failed to make significant progress in the Open Budget Index indicators.** Ghana has made minimal progress since first being ranked in 2006 at 42%. In 2008, Ghana scored 49% and in 2010 54%. According to the Index, “Ghana’s score increased from 42 to 54 from 2006 to 2010 largely because the government now publishes a Mid-Year Review, a Year-End Report, and an Audit Report. Ghana’s score, however, shows that the government still provides the public with only some information on the central government’s budget and financial activities during the course of the budget year. **This makes it challenging for citizens to hold the government accountable for its management of the public’s money.**”<sup>10</sup>

The study notes that across the world, the executive branch’s budget proposal is the “most important policy instrument” as it “presents the ways the government plans to raise revenues and where these funds are allocated, thus transforming policy goals into action.” This document becomes even more important with the arrival of billions of dollars in oil revenues over the next few years.

#### RECOMMENDATIONS

##### Ghana’s Big Test – February 2009

- Meet all six indicators of the Open Budget Index to provide public access to budget information and increase opportunities for budget monitoring.
- Publish an explanation for the oil benchmark price used in future budgets with oil revenue.
- Pass a Fiscal Responsibility Law that would open the MTEF to public scrutiny; provide important fiscal information from various government levels, decentralized government agencies, and state-owned enterprises to the public; increase financial reporting and oversight arrangements; and develop stronger mechanisms for dealing with misuse or misappropriation of public funds.

##### Citizens Summit Communiqué – June 2010

- That the proposed sweeping discretionary powers of the Minister of Finance and Economic Planning in taking investment decisions, deciding on the beneficiaries and use of the block grants for socioeconomic and environmental mitigation interventions, and the declaration of confidential information, should be limited. In particular, there should be clear rules on the conditions under which the Minister of Finance can take emergency investment decisions and not merely due to delay in releasing the advice of the Investment Management Committee as proposed by the bill
- We further observed that to ensure prudent and transparent management of petroleum revenues through budget processes, it is important to improve on budget transparency and increase public financial management capacity. Therefore, we recommend a delay in spending petroleum revenues until our institutions charged with public financial management are stronger.

<sup>10</sup>Open Budget Index 2010 – Ghana - <http://internationalbudget.org/files/OBI2010-Ghana.pdf>

In Ghana the Executive's Budget Proposal "is fairly comprehensive, but major gaps in information in the budget proposal are found in the following areas:

- It lacks a proper sensitivity analysis, and it is not very clear how new policies, as distinct from existing ones, affect revenues.
- It lacks information on certain fiscal activities that can have a major impact on the government's ability to meet its fiscal and policy goals, including information on financial and other assets held by the government and information on tax expenditures. In addition, the budget has insufficient information on transfers to public corporations, expenditure arrears, and contingent and future liabilities and quasi fiscal activities."

A **Citizens Budget** is another very important document for improving citizen oversight of government spending. The Citizens Budget is "a nontechnical presentation of a government's budget that is intended to enable the public — including those who are not familiar with public finance — to understand a government's plans. Although Ghana published its Citizens Budget in 2008, in 2009 this document was produced but was not made public." Ghana should publish a Citizens Budget for 2011 and subsequent years.

**In-Year Reports** are vitally important to see how expenditures and their effects are proceeding during the budget year and they allow comparisons between budgeted and actual spending. According to the Open Budget Survey study, "during the period covered by the Open Budget Survey, Ghana produced In-Year Reports only sporadically, which did not comply with the good practice of releasing such reports on a monthly or quarterly basis. However, according to the OBI researcher, a new In-Year Review process commenced in July 2010, and since then, a multi-stakeholder review of the Medium Term Macroeconomic Framework revealed significant discrepancies in fiscal management, including overspending. For instance, some sectors exhibited overspending by more than 300 %. This has compelled the government to curb further expenditures." According to the Ghana Aid Effectiveness Forum, "CSOs frequently complain about the inability to access information on actual expenditures during and after the budget year, and some institutions, like the National Health Insurance Authority, are particularly opaque."<sup>11</sup>

**Insufficient budget oversight by Ghana's Parliament** - The Open Budget Survey report also says that budget oversight by Parliament is inadequate because it "does not:

- have sufficient time to discuss and amend the budget proposal presented to it at the start of the year before the budget is enacted (the legislature receives the budget less than six weeks before the start of the budget year)
- hold public hearings to discuss the macroeconomic and fiscal framework. (It does hold open budget discussions on the individual budgets of central government administrative units, but reports on such hearings are not released.)

There have also not been opportunities for public testimony on the individual budgets for MDAs.

**Lack of adherence to the budget** – The Ghana Aid Effectiveness Forum has also said that the government does not stick to budget decisions and that the budgeting process loses its meaning if decisions are not kept. "Government of Ghana has struggled to adhere to the enacted budget over the past several years, which has led to certain ministries spending more than they have been

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<sup>11</sup>*Spending Wisely: A Budget Reform Action Plan for Ghana*, Ghana Aid Effectiveness Forum, December 2010.

allocated. The result has been the growth of expenditure arrears, which is essentially a form of debt that is being contracted without public approval. Lack of adherence to the budget therefore leads to lack of transparency and accountability in public spending.”<sup>12</sup>

The IMF also warned of these problems at the end of a mission to Ghana in February 2011. In a statement, the IMF said it was discussing with the government ways to “strengthen expenditure control and developing a comprehensive strategy for managing arrears and related obligations.”<sup>13</sup>

**Disclose of benchmark oil revenue price** –The government has not published information on the assumptions it used to establish a benchmark oil price to use for oil revenue projections. If the benchmark is set too low, a large surplus of oil revenues could develop during the budget year. If it is too high, the government would experience a shortfall in oil revenues. According to the IMF, “Annual budget documents should transparently show the baseline price assumption and how it was determined. Moreover, sensitivity analyses should be carried out to address forecasting risks, especially for the oil price assumption, and their results should be disclosed to the general public and external experts for scrutiny.”<sup>14</sup> This was not done in the case of Ghana’s 2011 budget.

**No fiscal responsibility law in place** – In 2010, the communiqué from the Citizens Summit on Oil and Gas urged parliament to pass “a Fiscal Responsibility Law that would open the MTEF to public scrutiny; provide important fiscal information from various government levels, decentralized government agencies, and state-owned enterprises to the public; increase financial reporting and oversight arrangements; and develop stronger mechanisms for dealing with misuse or misappropriation of public funds. To date, there is no fiscal responsibility law in place. The Bank of Ghana has said that “Evidence gathered from international experiences with fiscal rules suggests that fiscal rules are enabling instruments for a country to stay on a transparent, prudent and sustainable fiscal path. However, they are not sufficient in themselves but need to be supported by good institutions as well as prudent expenditure and financial management measures that limit government spending and improve revenue generation. The key lesson for Ghana is that fiscal rules work best when government is fully committed to the process of fiscal prudence and ensures that long-term development prospects are not sacrificed by short-term gains.”<sup>15</sup>

**Spending oil money while government institutions and processes struggle to improve** – The 2010 recommendation from the Citizens Summit on Oil and Gas was to “delay spending petroleum revenues until institutions charged with public financial management are stronger.” Serious weaknesses remain but the government plans on spending 584 million Cedis (\$381 million) in 2011.

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<sup>12</sup>*Spending Wisely: A Budget Reform Action Plan for Ghana*, Ghana Aid Effectiveness Forum, December 2010.

<sup>13</sup> Statement at the Conclusion of an IMF Mission to Ghana, Press Release No.11/59, March 1, 2011

<sup>14</sup>Guide on Resource Revenue Transparency, IMF, 2007.

<sup>15</sup>“Fiscal Rules and Fiscal Discipline – What Can Ghana Learn From Country Experiences?” Policy Brief, January 2008, Bank of Ghana.

<http://www.bog.gov.gh/privatecontent/File/Research/PolicyBrief/pbrief-fiscal%20rules.pdf>

Although petroleum resources sustain the economies of most resource endowed countries, industrial activities in the sector have been known to be associated with substantial environmental degradation and social crises, posing a potential threat to sustainable development in most communities, where the bulk of the petroleum resources are found.

Most of the negative environmental consequences of oil industry activities are localized and more intense in the areas of primary activities, but each round of environment-degrading activity tends to increase the incidence of poverty among vulnerable groups such as fishermen and their dependants. They also involve intensified exploitation of existing natural resources. For example, pollution of major fishing waters leads to massive exploitation of marginal fishing waters.

This way, a vicious circle relationship between environmental degradation and poverty incidence is created, particularly in the face of inappropriate compensation programmes of oil companies, which do not provide for alternative sources of livelihood for most fishermen.

Though these developments highly underscore the need for sustainable partnerships between host-communities, oil companies and governments, this is usually not the case. A critical examination of the

## RECOMMENDATIONS

### Ghana's Big Test – February 2009

- The government should quickly establish an inclusive process to manage the conflicting uses of the sea—fishing, petroleum exploration and development, etc.—and contain incipient conflict. This negotiated process would lead to the clarification of no-go areas around petroleum installations and a specific compensation plan for fishing communities facing a loss of fishing rights.
- Respect free, prior, and informed consent of communities before any licenses for onshore exploration are given.
- Develop clear compensation regulations with the participation of communities and civil society groups.
- The government should require that ESIA's be completed before the commercial development of oil and gas fields begins, not after.
- All ESIA's should be made public and a strategic ESIA developed for Ghana's offshore oil acreage. ESIA's should be disclosed in languages and formats that are accessible by affected or potentially affected populations.
- Require oil and gas companies to produce adequate ESIA's prior to decisions to move forward with projects.
- For both onshore and offshore development, Ghana should ensure protection of critical environmental areas by establishing zones that are off limits to oil and gas development, including forest and wildlife reserves.

### Citizens Summit Communiqué – June 2010

- That all applications for licensing must provide disaster mitigation plans which must be approved by the Petroleum Regulatory Authority before any licenses are issued.
- That the regulatory institutions such as the Environmental Protection Agency, the Fisheries Commission, etc should be strengthened and provided with the financial and technical capacity to ensure effective monitoring of petroleum activities
- That local people such as fishermen and chiefs should be involved in community response initiatives to prevent the occurrence of disaster and livelihoods disruptions

programmes, plans, environmental strategies, and various legislation however reveals one flaw, namely that no explicit provision is made to incorporate communities in the process of implementing environmental protection and management strategies, licensing for onshore exploration, response initiatives to disasters and livelihood disruptions – except Environmental Impact Assessments in the sector.

Even with this, experience has shown that most companies have not generally complied with this statutory requirement. Community engagements have been limited to only public hearings. In addition though ESIA are required to be completed and easily understood before the commencement of commercial development of oil and gas fields, they are still disclosed in formats and languages that make it difficult for potentially affected populations to understand.

Furthermore, the call on government to establish an inclusive process to manage the conflicting use of the sea and the development of clear regulations on compensations has received very little attention. Given the history of land and compensation disputes related to gold mining in Ghana, more robust protection for communities need to be built into the laws. Largely, government's efforts have placed much emphasis on the promotion of the industry compared to those intended to regulate the industry.

It is worthy to note that there were serious problems with the environmental assessment on the Jubilee project. The EIA developed by Tullow and Kosmos for instance were flawed on the basis that they ignored the incidence of supply boats interfering with fishing activities. They also used historical data instead of trend data to measure the impact on marine life. These EIAs which were submitted to the International Finance Corporation was largely inadequate from the point of view of international best practices. A study commissioned by Oxfam America in 2009 on the environmental material for the first phase of the Jubilee project<sup>16</sup> summarized the weaknesses in the assessment as:

- Wrong Classification of the Jubilee project as Category B
- No Complete ESIA
- Pre-Conceived Conclusions
- Second-Hand, Single Hulled Tanker
- No Assessment of Oil Spills
- Inadequate Assessment of Impacts on Endangered Species, Critical Habitats
- Inadequate Assessment of Noise Impacts on Marine Mammals
- Dumping of Drilling Wastes into the Sea
- Lack of Demonstration of Compliance with International Standards

Also, even though Strategic Environmental Assessments are required before oil blocks are licensed, the process begun behind schedule and is still not completed.

Government effort has entailed the injection of financial and technical assistance in support of institutional and policy reforms. The institutional reforms have focused on establishing institutions where they do not exist and where they do, restructuring and resourcing them to

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<sup>16</sup> Pacific Environment - Review of Environmental Material for Phase 1 of the Jubilee Oil Project Offshore Ghana February 10, 2009.

ensure swift response to investor demands. The Environmental Protection Agency is reviewing the Guidelines for the conduct of Environmental Impact Assessments. To do this, it has also produced an Environmental Scoping Report which is guiding the review.

The institutional weakness in the environmental protection institutions was demonstrated during the investigation into mud spillage by Kosmos Energy. The Committee which investigated the spill and which was chaired by the Deputy Minister of Environment, Science and Technology, Dr. Omane Boamah, reported that it could not fine Kosmos for pollution because the Committee was unable to establish the extent of pollution. Moreover, the country's laws are not adequate to address sea pollution issues. The need for a Sea Pollution Law therefore, as pertains in the United States of America, cannot be overemphasized since the country is yet to face real oil spills and other forms of sea pollution as it steps up upstream activities.

Given the extent of knowledge about the nature of the environmental and social consequences of oil industry activities in communities, and the role, which the local populations can play in environmental protection and safe-guarding oil facilities, it could be useful, if communities are recognized as partners in development by petroleum operators and government. If this happens, then there might be fewer cases of social and environmental incidents.

Whilst we acknowledge that the effort of government at institutional and policy reforms in the sector has been positive in many respects, clearly missing is the effort to comprehensively address the real challenges that communities will be confronted with. Though, interventions of any form no matter how comprehensive they are, do not necessarily promote optimality. The inadequacies inherent within the sector, particularly the non existence of explicit provisions at addressing most of these concerns may breed inefficiency and exploitation.

### ***Addressing Oil Spillage: taken from the Budget and Economic Policy Statement of the Government of Ghana - 2011***

*340." In line with its mandate to ensure a sustainable environmental management in the extractive industry, the Ministry constituted a committee to investigate oil spillage by Kosmos Energy to improve and mainstream safety, environmental protection and capacity enhancement towards ensuring incident free offshore drilling of oil and gas in Ghanaian waters. An audio-visual system is being put in place at the Headquarters of the Environmental Protection Agency to enable Government monitor reportable environmental incidence in real-time.*

*The Ministry through the EPA will finalize 2 regulations to the EPA Act, Act 490. These regulations will strengthen not only the governance of the oil and gas sector, but also the various forms of e-waste. Monitoring of mining activities will also be accentuated to ensure sustainable development.*

*An enclave for Gas Processing Plant, VRA's Power Plant, as well as fertilizer has been identified and 90 percent of the land demarcation survey has been completed.*

*In line with the policy of expanding Ghana's power generation capacity, the design and construction of 400MW hydro power plant project at Bui is 32 percent complete. Also works for the construction of the 132 MW combined-cycle power plant at Aboadze has commenced. A joint implementation team comprising GNPC, VRA, and GRIDCo has been constituted to supervise the establishment of 200MW power plant at Bonyere to utilize the gas from the Jubilee fields."*

The Petroleum (Exploration and production) Law (PNDCL 84) defines Ghana's broad local content policy to cover four areas - training and employment; local goods and services; technology transfer to GNPC and GNPC's rights over acreages.

Unfortunately, since the enactment of the law, no conscious effort was made to implement this policy. The discovery of oil in commercial quantities and the accompanying expectations for potential benefits, as well as the desire to ensure Ghanaian control in the industry have however compelled the government to design a local content and participation policy. Government also introduced a new Petroleum (Exploration and Production) bill which was to repeal PNDCL84; and which would have provided the legal backing to the local content policy, but it was withdrawn from Parliament. With the withdrawal of the bill, PNDC Law 84 continues to provide legal backing to the local content policy.

To ensure a national ownership of the local content policy, government held consultative forums around the country. The draft policy was also advertised in major newspapers. The information collected and collated from Ghanaians led to the development of the final draft policy.

The Ministry of Energy set up a technical committee to review the draft policy and develop an implementation framework. The final report of the committee was submitted to the Minister in January 2011.

The draft policy is good in several ways:

- i. It sets a target for at least 90 percent local content on a per project basis,

## RECOMMENDATIONS

### Civil Society Communiqué – June 2010

- That there must be mandatory local content programme for petroleum operations across the petroleum value chain which should consider the interest of Ghanaians and consistent with the long-term national development strategy.
- That the government target of achieving 90% local participation by 2020 is laudable and very ambitious and a such reasonable time lines and implementation strategy must be provided for achieving various levels of local content and participation to avoid raising unrealistic expectations.
- That the role of the national oil company, GNPC, should be clearly defined within the context of local content.
- That the development of natural gas and its uses for national development will make local content and participation more meaningful and that government should provide a timetable for the construction of the gas infrastructure and the production of a Gas Sector Strategy/Plan.
- That local content implementation should give attention to local economic development through an appraisal of local economic conditions, development of local development plans, and the involvement of local chiefs and opinion leaders.
- That there should be a strong regulatory agency to enforce local content compliance.
- That Ghanaians must be given preference in the issuance of licenses where they have the financial and technical capacity.
- That there must be structures and penalties to punish Ghanaians inappropriately fronting for foreigners and that the beneficial ownership of all companies awarded local content contracts be disclosed.
- That there must be financial and technical support mechanisms to build the financial and technical capacity of Ghanaian businesses to participate in petroleum operations and that the disbursement of the proposed financial support must be transparent and in line with guidelines approved by Parliament.



- ii. It uses the value chain approach to measure local content, i.e. Local content will be encouraged at all stages of the petroleum value chain,
- iii. It seeks to develop the oil and gas service industry and position Ghana as the service hub in the West African region,
- iv. It encourages Ghanaian pension funds to invest in the petroleum industry to ensure Ghanaian ownership of petroleum operations (however this should be viewed against the implications of investing pensions in an industry that is too risky),
- v. It provides for a local content development fund and the creation of other financial schemes to support Ghanaians to participate in the industry.

The policy is however flawed in some ways –

- i. It does not provide for transparency in the selection of Ghanaians by the local content committee to participate in the industry and in the disbursement of the local content development fund.
- ii. It does not define the role of GNPC which should be the vehicle for realizing local content objectives of the country.
- iii. The petroleum commission which is to monitor the implementation of the policy is yet to be established.



**Figure 6: Is this Local Content? A Vendor selling Petroleum Products on the Road side**

In fact, there has been a limited implementation of local content in the oil and gas sector even though the law provides for it. Some of the limited applications of local content are in the training contributions made by the Jubilee partners to the GNPC and the employment of Ghanaians (number not confirmed) by Tullow.

The contract between Tullow and Citilink, a Ghanaian owned Airline Company was terminated for safety reasons. Subsequent airline contracts however did not involve any partnership with a Ghanaian company.



The GNPC announced that in selecting Vitol and Cirrus Oil Services to market and sell Ghana's first crude oil lifted from the Jubilee fields, local content largely influenced its decision because of Vitol's joint bid with Cirrus.

There are concerns that if the government does not develop a dedicated law to implement the local content policy, it may be abused and disregarded by oil companies. But there is no clarity within the government if such a law will be passed. Some have argued that the local content policy could be implemented through legislative instruments since there is a substantive clause on local content in PNDC Law 84, and hence there would be no need for another law. But given the ambitious targets contained in the local content policy and the focus of the country to make Ghana a service hub in the sub-region, the scanty provision for local content in PNDC Law 84 may be not be adequate to enforce the policy.

The following is an extract from the Budget and Economic Policy Statement of the Government of Ghana: 2011.

*“The recent discoveries of oil and gas fields offshore Ghana, have created remarkable avenues for stimulating national development. The potential for oil and gas to positively drive the economy to improve the living standards of Ghanaians will depend on the integration of the industry into the local economy.*

*220. The Ministries under the sectors to drive this agenda of Government include; Ministries of Food and Agriculture, Energy, Lands and Natural Resources, Communication, Trade and Industry, Environment Science and Technology, Roads and Highways, Transport, Water Resources, Works and Housing and Tourism.”*

The intense debate in Parliament on the Petroleum Revenue Management Bill delayed its passage into law before first oil on 15<sup>th</sup> December 2010. Two bills were laid before the House in July 2010 – the Petroleum Revenue Management Bill and the Petroleum (Exploration and Production) Bill. Whilst the Petroleum (Exploration and Production) Bill was withdrawn subsequently, that of the Petroleum Revenue Management Bill was finally passed by Parliament in early March 2011 and is now awaiting presidential ascent.

A significant observation in the processes leading to the passage of the Petroleum Revenue Management Bill was the serious politicking that overshadowed the substance of the debate over sustainable management of petroleum resources.

It is important to note that Ghanaians expected more consensus building around oil and gas issues due to the potential for oil to raise tensions and bring about violent civil conflicts. Thus, any good petroleum law should take into account the political reality of the time. With a hung parliament, it was expected that Parliament would debate issues about oil with the national interest and national consciousness as their guiding principles. However, parliament failed to build such consensus around issues such as the budget funding amount and collateralization of oil. Parliament also demonstrated its weakness by allowing the Executive to whip its majority in parliament to follow a partisan line. The opposition also took partisan lines by opposing those proposals apparently to win political points. This was seen as the first test of the ‘curse’ of oil in Ghana raising the fears of a country almost divided over the management of its oil.

Much as effective parliamentary debate and oversight is important for ensuring Ghana maximizes the value of its petroleum resources, the nation should be minded to mix effective debate with responsibility.

It must however be stated that parliament overcame its division, particularly, on issues bordering on transparency. The consensus vote on the transparency provisions and the proposed establishment of the Public Interest and Accountability Committee provided for in clause 53 of the Petroleum Revenue Management law witnessed a renewed hope for a strong parliamentary responsibility.

This was however not without public outcry against the threat of deleting the said clause 53 of

## RECOMMENDATIONS

### Ghana’s Big Test – February 2009

- Play an active role in the petroleum sector, providing a check to executive power.
- Develop expertise and advisory staff in the appropriate committees to play an active role. The Parliamentary Select Committee on Mines and Energy should have experts available to help analyze petroleum agreements and other technical aspects of the industry.
- Strengthen and maintain the authority to approve petroleum agreements.
- Include an active oversight role in the GPRA bill, including the power to approve or reject presidential appointments to the GPRA board.
- Reintroduce and pass a strong Freedom of Information Act.

the law. Civil society mobilized strong public opinion through press conferences, public forums and e-petitions, to back the proposal with the view to deepening public accountability of the managers of the country's petroleum resources.



**Figure 7: Inside Ghana's Parliament House**

Parliament raised the bar about its commitment to pass good petroleum laws through public consultations and expert advice as was demonstrated in the public hearings organized by the house in Sunyani, Accra and Takoradi; as well as discussions with important stakeholders. The Civil Society Platform on Oil and Gas has, as a consequence, been cited on the reports of the Committees on Finance and Energy and Mines in recognition of the consultations that took place between the Platform and Parliament.

Parliament is nevertheless confronted with a few challenges. It lacks the technical capacity to scrutinize petroleum contracts and the strength to check abuses in the management of petroleum revenues since parliamentary enforcement of its resolutions is very weak due to the overbearing nature of the Executive and the excessive powers of the President. Parliament requires significant technical support to play its oversight role effectively.

Also, the danger of high turnover of members of parliament with significant parliamentary experience and the poor research portfolio of the house will no doubt continue to undermine the relevance of parliament in meeting these challenges. The most important contributions parliament can make to the development of the oil and gas sector is to debate and pass the Freedom of Information Bill to open up the secrecy associated with the oil industry. Parliament will equally invest in monitoring the petroleum funds, the budget and ratifying petroleum contracts that seek the national interest. These are necessary ingredients for holding the managers of public resources accountable to the citizens. Government is planning to lay before parliament the Petroleum (Exploration and Production) Bill and the Local Content and Participation bill. These bills will protect the interest of Ghanaians by regulating the rate of oil and gas extraction to sustainable levels.

The discovery of oil in Ghana in 2007 presented new challenges to the government, but also to its development partners, such as the World Bank, IMF, the EU, and important bilateral donors such as the UK, US, the Netherlands, Norway and other countries. Ghana's relationship with its official donors will evolve as donors see Ghana receiving oil wealth and attaining middle-income nation status. The government's budget statement for 2011 acknowledges this: "The Ghana Aid Policy and Strategy takes cognizance of the fact that the discovery of oil and its commercial exploitation will influence our Development Partners' decisions about the nature and volume of development assistance to be delivered to Ghana."

The track record has shown that Ghana's development partners provided some useful support and interventions, but also that these agencies were slow to adjust programs or develop new programs of support. Development programs planned in multi-year timeframes were difficult to adapt to an important new country context. Because the challenges faced by a new oil-producing country are both deep and wide, cutting across a number of areas, the needed support did not fit neatly into existing issue areas – such as governance – or funding programs.

In addition, some development partners were hampered when commercial interests of home country companies became political issues with the government. (This was especially the case with the U.S., where development of support programs for the government was put on hold pending the resolution of tensions between Kosmos Energy and the Government of Ghana, but may have also been issues for the UK and Norway, whose oil companies have interests in the country.) The particular case of the US was seen as an attempt to impose a US interest on the sovereign people of Ghana and to intimidate the Government of Ghana to give up to Kosmos especially when the Chairman of the GNPC, Mr. Ato Ahwoi, was denied an entry Visa to the US. The US Embassy denied any relationship between the Kosmos deal and the Visa controversy.

Some donors found that government desire and political will to accept external support in the sector was lacking and that it was difficult to find and engage with government counterparts to get buy-in on assistance programs. Finally, the change of government in 2009, and the arrival of new officials and ministers, meant that donors had to re-establish ties at the political level only two years before oil production began.

**RECOMMENDATIONS****Ghana's Big Test – February 2009**

- In exchange for technical assistance, insist on full transparency and participation of citizens and civil society in the decisions regarding the development of the petroleum sector and oversight of natural resource wealth.
- Encourage the Ghanaian government to extend the EITI to the oil and gas sector and to adopt the transparency steps above.
- Coordinate and share information to avoid duplication of effort and increase the impact of development assistance.
- Encourage home-country companies invested in Ghana to be transparent in their activities in Ghana.
- Actively support capacity building beyond government to include Parliament and civil society organizations.
- The World Bank should require full revenue and contract disclosure if it decides to partially finance the Jubilee field.

**Limited policy coherence and limited conditionality on transparency** –Donors were not well coordinated in their messages to government on the urgency and importance of building transparency and accountability safeguards in the oil sector before the start of oil production. Nor were donors consistent on the scale of the challenge Ghana would face. For example, Ishac Diwan, the World Bank’s Country Director for Ghana, told the audience at the Ghana Oil and Gas Summit in March, 2010 that pessimism had clouded the country’s preparations for first oil. “You hear that we don’t see quick movement on new laws, institutional development, that it’s taking a long time. There’s an impression, I’d say the wrong impression, that this has to be done quickly. I think this pessimism is misplaced. The reality is that this is the phase of a lot of oil. There is a challenge of historic proportions to adjust institutions, to avoid the resource curse, but it doesn’t have to be met in a few months. There’s a window of three to five years to meet it... First oil is a wakeup call – it’s learning by doing. Discovering what the difficulties are... helping to shape the longer term response.”<sup>17</sup> Donors needed a strong and consistent public message to the government about the urgency and the challenge facing Ghana.

Regarding donor conditionality on transparency and accountability in the oil and gas sector, the World Bank did include specific benchmarks in budget support loans approved in 2009 – in the middle of the global financial crisis –and in January, 2011. In 2009, these benchmarks included “submission of a Petroleum Revenue Management Bill to the Cabinet based on broad consultations with stakeholders” and “submission to Cabinet for decision a revised Extractive Industries Transparency Initiative (EITI) institutional framework to include the oil and gas sectors.” These benchmarks, and other efforts by the World Bank, are likely to have contributed to the political space available for citizens and CSOs to participate in the formulation of the Petroleum Revenue Management Bill. The benchmarks were vague, though, and could have specifically identified transparency measures – such as disclosure of contracts – that should be included in the legal framework. The benchmarks also did not focus on the development of an independent regulatory authority for the sector until the 2011 budget support credit.<sup>18</sup>

Generally, civil society in Ghana are against donor conditionality because it constraints the policy making space; but conditionality that compels the government to adhere to principles that hold it accountable to its people and to fulfill its social contract is being encouraged.

**Extending EITI to oil and gas** – Donors such as the World Bank, GIZ (formerly GTZ) and others were part of a successful effort to encourage the government to extend EITI to the oil and gas sector and to provide funding and technical support for the process.

**The Dodd Frank Wall Street Reforms Act** – Some of the oil companies in Ghana are required by the Dodd Frank Reforms Act to disclose payments they make to the Government of Ghana. For example Anadarko is already covered under the Act, while Kosmos will be covered if its public listing on the Securities and Exchange Commission is approved. The Civil Society Platform on Oil and Gas commends the efforts of the coalition of civil society organizations in

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<sup>17</sup>Presentation by Ishac Diwan to the Ghana Summit – Oil, Gas & the Frontier Province, 23 March 2010, La Palm Royal Beach Hotel.

<sup>18</sup>“World Bank Approves US\$215 Million Budget Support for Ghana”, Press Release No:2011/302/AFR, World Bank, January 20, 2011 “Action #8: The Government, through the Ministry of Energy, submits to Cabinet for decision a policy proposal establishing a petroleum regulatory authority.”

the US and around the World who campaigned for the Reforms passed by the US Congress. It is also important for civil society organizations in Canada, Europe, Australia and Asia to push for similar reforms on their capital markets. In fact, the Hong Kong Exchange has a limited disclosure only at the point of listing, but this could be expanded.

**Capacity building efforts of government, parliament and civil society** – In general, official donor support to the government, parliament and civil society has been slow to get off the ground. The Government of Norway, though, moved more quickly, signing a memorandum of understanding with the government in February 2008 to provide \$5 million in technical support. According to the Oil for Development program, the capacity building project formally started in July 2010 with a budget of \$2.6 million.<sup>19</sup>(Norway has been criticized by some for not coordinating well with other donors, not being transparent in its advice to the government and for not reaching out to engage non-state actors as part of its program.) In addition, Norway's role in advising the government while its oil companies has interest in Ghana's oil prospects raises 'conflict of interests'. The Oil for Development programme has not supported Ghanaian civil society so far in building their capacity to monitor operations in the oil industry. Norway has no Embassy in Ghana, hence the ability of civil society to access its support is severely limited.

The World Bank worked for at least two years to develop an assistance program with the government. An Oil and Gas Capacity Building Project valued at \$38 million was approved by the board of the World Bank on December 20, 2010, five days after Ghana's inauguration of oil production. "The objective of the Gas and Oil Capacity Building Project is to improve the public management and regulatory capacity while enhancing transparency; and strengthen local technical skills in Ghana's emerging oil and gas sector." The program focuses on support to the government MDAs and the GNPC but does envision support to non-state actors.

The World Bank did provide small but important funding at key moments, including funds for the Citizens Summit on Oil and Gas in 2010, organized by the Civil Society Platform on Oil and Gas. The Bank also used its influence and convening power to promote dialogue between the government and non-state actors.

Other important development partners and international foundations who continue to support civil society and Parliament technically and advocacy support are; Oxfam America, the Revenue Watch Institute, the Friedrich Ebert Stiftung and the USAID.

GIZ has also played a useful role in supporting EITI as well as the capacity of the Ghana Revenue Authority to build its expertise in collecting taxes in the petroleum sector. GIZ has also supported civil society engagement on oil and gas issues. The UK's DFID has provided some funding for civil society programs related to oil in 2010 and plans to scale up work in the area in 2011 through its Star-Ghana program (Strengthening Transparency Accountability and Responsiveness in Ghana).

A number of donors provided support for workshops for parliamentarians on various aspects of the oil and gas industry in an effort to build capacity to understand issues and executive branch legislative proposals.

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<sup>19</sup><http://www.norad.no/en/Thematic+areas/Energy/Oil+for+Development/Where+we+are/Ghana>

**Weaknesses in coordination and information sharing** –Efforts at donor coordination and information sharing were hampered by the fact that the oil and gas governance issues cut across existing lines of work and “fell through the cracks”. Donor coordination improved in 2010 with an ad-hoc coordination group on oil and gas governance.

**World Bank’s International Finance Corporation support to the Jubilee field** –The World Bank’s private sector lending arm, the International Finance Corporation (IFC), approved \$215 million in financing to Tullow and Kosmos in February 2009 as a contribution to their investments in the Jubilee field.<sup>20</sup> A number of concerns were raised by local and international civil society concerning the timing of the approval and the application of IFC’s policies. Some CSO’s believed that the IFC’s approval of these investments gave a social and environmental “green light” to the Jubilee project, pre-empting local environmental approval processes led by the Environmental Protection Agency.<sup>21</sup> In addition, the IFC did not implement its policy on contract disclosure and require the companies to disclose their petroleum agreements with the government as condition for financing. The IFC did, though, enforce its policy on transparency of payments from oil, gas and mining companies to host governments. Payments before the start of oil production were relatively small – Tullow has disclosed these payments while Kosmos has not.

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<sup>20</sup> IFC invested \$115 million in Tullow on June 12, 2009 (approved by board Feb. 19, 2009) and \$100 million in Kosmos on November 5, 2009 (approved by board February 19, 2009).

<sup>21</sup>The EPA issued an environmental permit allowing the installation of equipment and commissioning of the Jubilee Field Phase 1 Development project on December 31, 2009.



**Payment Disclosure**

As best practice, and according to EITI principles, companies should disclose all payments to host governments. In Ghana, only Tullow has disclosed early payments to the Ghanaian government. (In 2009, prior to production, these payments were relatively small. A total of US\$ 209,534 in payments was disclosed encompassing payments to the national government for license fees and GNPC training contributions. See box for payments disclosed in 2010.) While this information was disclosed through the Tullow 2009 Corporate Responsibility Report, it is unclear information on these payments has reached beyond a small circle to include citizens in the front-line districts, local government officials and others. As the amount of payments increases, it will be crucial to expand public information campaigns on payments made. Kosmos, Anadarko and other companies involved in Ghana have not made payment disclosures.

**Social Investment Disclosure**

Regarding, disclosure of payments for corporate social responsibility projects, there has been some limited disclosure by Tullow and Kosmos in their corporate social responsibility reports or websites. (For example, Tullow disclosed that it spent \$2.1 million on “voluntary social enterprise investments” in 100 projects in 11 countries during 2009. While Tullow’s Corporate Responsibility Report for 2009 is extensive, it does not contain detail on social investments in Ghana. Tullow’s website contains “case studies” on a number of social ) Civil society engagement with the residents of the six oil host districts shows that most of the people are not aware of the in kind contributions (CSR projects) by the Jubilee Partners. The few who got some TV sets, chairs, bore holes, etc believe that the oil companies could do more.

No company involved in the Jubilee Field has made a global endorsement of EITI or agreed to be an EITI “supporting company” at the global level. With the formal extension of EITI in Ghana to include the oil and gas sector, Tullow is now part of the expanded EITI National Steering Committee. Participation in the EITI process at national level is significant whereas in the regions, districts and communities, many Ghanaians are ignorant, first, about the EITI and second, its benefits to the citizenry. Companies in the Ghana EITI process, working with other stakeholders, can work to address this knowledge gap during 2011.

**RECOMMENDATIONS**

**Ghana’s Big Test – February 2009**

- Disclose all payments—in cash or in kind—to the Ghanaian government, as well as all petroleum agreements/licenses.
- Publicly endorse the EITI on a global level and participate in the Ghana EITI process.
- Conduct participatory and inclusive ESIA processes.
- Disclose information concerning environmental and social impacts, including any completed ESIA’s.
- Establish an inclusive dialogue process with coastal communities in the Western Region regarding shared use of the sea, compensation for any lost livelihoods, and community development concerns.
- Conduct regular information sessions for civil society groups, journalists, parliamentarians, and others.



## Contract Disclosure

No company has disclosed their contracts or petroleum agreements with the government. Tullow has, though, stated that “These [petroleum] agreements [in Ghana and Uganda] remain confidential at the request of host governments for commercial reasons. However, their terms are in line with agreements signed around the world. The main beneficiaries in both Ghana and Uganda will be the people of those two countries. Should either government, that is party to the agreement on behalf of its people, choose to make it public, we would fully support this.”<sup>22</sup>

### Payments to authorities of Ghana in 2009

As part of Tullow’s ongoing commitment to transparency, and in line with International Finance Corporation (IFC) requirements, this table sets out payments made by Tullow to the Ghanaian authorities (local and national) in 2009 in connection with the Jubilee project. As no oil has yet been produced, no royalties, profits, income tax or dividends were due in 2009.

Type of payment	Net Tullow costs (US Dollars)		
	National Government	Local Government	Total
Royalties	-	-	-
Value of State/State Oil Company production	-	-	-
Profits/income tax	-	-	-
Licence payments, fees or rental (other than routine, nominal administrative fees)	44,204	-	44,204
Profits/dividends paid to government	-	-	-
Training contributions	165,330	-	165,330
Other fiscal benefits to government	-	-	-
<b>Total</b>	<b>209,534</b>	<b>-</b>	<b>209,534</b>

**Table 1: Payments to the Government of Ghana. Source: Tullow Oil 2009 Corporate Responsibility**

## Conduct of Participatory and Inclusive ESIA Processes

According to Tullow, 34 public consultations were held during the impact assessment process and 26 public consultation meetings “with national and local groups were held between November 2008 and June 2009 as part of the ESIA.”<sup>23</sup> The ESIA process conducted so far with respect to the oil and gas industry can be described as less participatory. This is so because the public hearings on the ESIA were mainly held in the regional and districts capitals thus denying a large majority of the people opportunity to participate in the ESIA discussions. Again, the forums were conducted in a rush such that many people who participated did not get the chance to air their views. Worst of all, the ESIA document was not sent back to the people for validation to ensure that their inputs and concerns were captured on the final ESIA.

The draft ESIA was submitted to Ghana’s EPA in August 2009, which then launched a 21 day review and comment period followed by public hearings between September and November

<sup>22</sup> Tullow Oil, 2009 Corporate Responsibility Report.

<sup>23</sup> Tullow Oil, 2009 Corporate Responsibility Report, Jubilee ESIA special feature.

2009. The final public hearing, a first-of-its-kind national public hearing in Accra in November 2009, was not well publicized and included less than 10 interested citizens or CSO representatives.



**Figure 8: A Drilling Rig in the Jubilee Area.**

Disclosure of environmental information by petroleum companies on their operations, particularly, on the prohibition of fishing within 500 metres radius off the rigs has been very inadequate. It is however important to note that Tullow Ghana Limited and the Ghana Navy have been conducting a number of education and sensitisation activities. These need to be improved.

### **Sustained Dialogue with Coastal Communities**

The 2009 report, *Ghana's Big Test*, recommended that companies should establish “an inclusive dialogue process

with coastal communities in the Western Region regarding shared use of the sea, compensation for any lost livelihoods, and community development concerns.”

In July and October, 2010, the University of Leeds and London School of Economics – UK, Business –Community Synergies – US, Uganda Wildlife Society and Water governance Institute, Oil and Gas for Development-Ghana and Friends of Nation, a local Non-Governmental Organization based in the oil city of Takoradi, conducted a study to assess the relationship and interactions between the oil companies and the oil host communities as well as the six oil districts assemblies. The study shows that there have not been regular interactions and engagements between the communities and oil companies.

The findings further indicate that the oil companies have had information gathering meetings with the six oil host districts on a number of issues – spatial planning, corporate social responsibility, the construction of bore-holes – but this information does not trickle down to the beneficiaries.

Companies need to establish an inclusive dialogue process with coastal communities in the Western Region regarding shared use of the sea, compensation for any lost livelihoods, and community development concerns. A formal process for consultations and feedback are important requirements for harmony and understanding among stakeholders. This will not only avoid mistrust but could also forge partnerships build on mutual trust.

There are important social and community rights issues that need to be addressed if oil companies, the government and the communities are to provide an enabling environment for the

companies to operate freely.

1. Sustained dialogue on shared use of the sea. The declaration of ‘no exploration zones in both off-shore and on-shore exploration and development are critical for sustaining community livelihoods.
2. Compensation payment for lost livelihoods rather than ignoring communities on the back of off-shore exploitation.
3. The issue of heritage claimed by fishers is undermining efforts at diversifying them away into alternative livelihoods.
4. Community development concerns, for example, the demand for 10% of oil revenues by the traditional rulers in the Western Region, the oil region, was in response to ‘historical neglect’ in spite of the abundance of significant natural resources in the region committed to national development.

### **Regular Information Sessions**

While it is ultimately the responsibility of government to regulate the sector and share information with its citizens, oil and gas companies have an important role to play. In cases where such provision of information by the government is lacking, it is in the self-interest of companies to proactively disseminate objective information about the industry and its development in the country to civil society groups, journalists, parliamentarians and others. In the early period of the development of the Jubilee field, companies were focused on the commercial developments and building their staffing capacities in non-commercial areas such as public relations and community outreach. It is precisely at this early stage that communication is so important. At the Accra launch of *Ghana’s Big Test* in February 2009, many citizens and journalists were unaware that a Floating Production Storage and Offloading vessel was planned for the Jubilee field and that the onshore footprint – and employment opportunities – would not be large. This was an indication that companies had not done enough work to explain the basic elements of the project to local populations and journalists. Proactive communication and information sharing has since improved but more can be done.

In the Jubilee partners EIA, chapter 10 *titled; SUMMARY AND CONCLUSIONS* summarises the impacts and the mitigation measure in table 10 as follow:

**Table 2: Summary of Impacts and Mitigation from the Jubilee Field EIA**

Issue	Impact Summary	Magnitude (L/M/H)	Value/Sensitivity (L/M/H)	Potential Impacts	Key Mitigation Measures	Residual Impacts
Fishing Activities	Potential impacts on fisheries can arise from loss of access to fishing grounds, attraction of fish to the FPSO and disturbance and damage to fishing gear from project support vessels.	Low – relatively small area unavailable for fishing. Limited vessel traffic between Jubilee field and Takoradi port.	Medium – the Jubilee field is not an important or exclusive fishing ground, however, significant tuna fishing occurs in the project area and coastal fishermen are likely to visit the field attracted by fish around the structures.	Minor	Fisheries Liaison Officer (FLO) to liaise between fishermen and the project. Vessel transit route will be agreed with the Ghana Maritime Authority and communicated to fishermen and other marine users.  Notific	Minor

					ation of mariner s of the presenc e of the FPSO and other marine operati ons.	
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Civil society commenced well by facilitating a multi-stakeholder forum in early 2008, three months after the announcement of commercial discovery, to review important policy and legal concerns for the effective exploitation of oil and gas. However, they lost the momentum thereafter and surrendered the policy space to the government.

The Mankessim Forum, as it came to be known, brought some notable achievements – the extension of the Extractive Industries Transparency Initiative to the oil and gas sector in 2010 and the formation of the Civil Society Platform on Oil and Gas. It also provided a framework for development partners to design support programmes for government, state institutions and civil society to play their roles effectively in the oil and gas sector.

Also, in 2009, some civil society organizations such as Publish What You Pay Ghana and ISODEC raised questions about the Environmental Impact Assessment that followed the approval for a facility of US\$115 million and US\$100 million by the International Finance Corporation for Tullow Ghana Limited and Kosmos Energy respectively, to finance parts of the development of the Jubilee fields project.

Realizing the dangers of non-engagement, a number of civil society organizations came together to form the Civil Society Platform on Oil and Gas in March, 2010, three years after the discovery of oil to launch a coordinated effort at deepening civil society participation in the development of policies and legal frameworks for the oil and gas industry.

The formation of the Oil and Gas Platform which now has over 115 members introduced some urgency and effectiveness in the engagement process and led to significant changes in the policy and legal frameworks being developed by the Government of Ghana.

Particularly, civil society pressure led to the publication of the proposals for Petroleum Revenue Management. Civil society consultations around the country culminated into a larger Citizens' Summit on Oil and Gas, a multi-stakeholder process which produced a comprehensive communiqué that influenced the current state of the Petroleum Revenue Management Law, the local content and participation policy and the Petroleum Commission Bill. A memorandum on the Petroleum (Exploration and Production) Bill and intense advocacy by civil society generally led to the withdrawal of the Bill for re-packaging especially in the areas of regulations and transparency. The Petroleum Commission Bill is a response to the call to reduce the sweeping powers of the Minister responsible for Petroleum and the establishment of an independent petroleum regulator. Other major achievements included greater transparency in the Petroleum Revenue Management law and the endorsement by parliamentary consensus of the Public Interest and Accountability Committee.

**RECOMMENDATIONS****Ghana's Big Test – February 2009**

- Actively monitor government activities in the sector and build capacity to understand the petroleum sector.
- Develop sensitization programs for the broader public on petroleum issues to develop a constituency for oversight and reform.

The media as part of the broader civil society has also played a major role – providing news on oil and gas issues and opportunity for dialogue on both radio and TV stations. As a new industry however, the oil and gas industry remain a very technical area for comprehensive reporting. Access to relevant information from the oil and gas sector has also limited the effectiveness of the media in this respect.

Generally, civil society remains weak in technical capacity and skills necessary for monitoring most activities in the oil and gas industry. Only a few organizations have some modest experience in revenue and expenditure tracking, environmental monitoring and contract monitoring. As Ghana moves beyond the development of legal frameworks for the industry, there will be an important shift in the engagement process towards a stronger monitoring regime, a phase in which civil society is not adequately prepared to participate.

Civil society work will also be inadequate if there is no flow of reliable official information on the management of the industry, a situation which is more compounded by the delay in passing the Right to Information legislation, the confidentiality clauses in the petroleum law and lack of a definite framework for contract disclosures.





## NOTES ON METHODOLOGY AND FINDINGS

### Introduction

The report evaluates government performance in 10 thematic areas:

- xi. Transparency
- xii. Independent Regulation of the Sector / Role of GNPC
- xiii. Licensing and Contracts
- xiv. Citizen Participation / Public Oversight
- xv. Petroleum Revenue Collection
- xvi. Oil Revenue Management / Oil Funds
- xvii. Linking Oil Revenue Spending to Development Planning
- xviii. Budget Openness and Public Financial Management
- xix. Social and Environmental Issues
- xx. Local Content

The report also evaluates cumulative performance of Ghana's parliament, donors, oil companies and civil society itself. Performance is set against recommendations made in the February 2009 report, *Ghana's Big Test: Oil's Challenge to Democratic Development*, issued by the Integrated Social Development Centre (ISODEC) and Oxfam America. As the 2009 report noted, "The needed institutions, regulations, and transparency measures should be in place early on to avoid the corrosive and corrupting effects of oil booms seen elsewhere in Africa. Because the Jubilee field is in development, the government does need to move at deliberative speed to be able to manage this large project. At the same time, Ghana needs to be careful to *control the pace* of the development of the petroleum sector so as not to let commercial developments outstrip the capacity of the government and society as a whole to meet the myriad challenges."<sup>24</sup>

Performance is also measured against urgent recommendations made by a broad range of civil society groups and concerned citizens in a communiqué issued after the "Citizens Summit on Oil and Gas" held at the Accra International Conference Centre in June 2010. As the communiqué noted, "We endorse these recommendations and observations, convinced that, it is only through effective coordination of our efforts, national consensus around the critical decision areas, continuous vigilance by Ghanaians on the sustainable management of petroleum resources, revenues and the environment, in pursuant of our rights as citizens to participate in the governance processes of our country, as enshrined in the constitution of Ghana, that the petroleum resources of Ghana can be used for sustainable national development and thereby avoid the temptations of following the path of 'resource management curse'."<sup>25</sup>

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<sup>24</sup> Ghana's Big Test: Oil's Challenge to Democratic Development. February 2009. ISODEC and Oxfam America.

<sup>25</sup> . Communiqué issued by the Citizens' Summit on Oil and Gas, 24<sup>th</sup> June 2010.

## Assessment Indicators

The stakeholders were assessed under the following indicators:

No	Indicators	Scores
1	Coverage of recommendations from benchmark documents	0.6 (60%)
2	Good innovations introduced (not in benchmark documents)	0.3 (30%)
3	Demonstrable commitment to implement recommendations	0.1 (10%)

The grading for all stakeholders follows the delineated pattern:

No	Score Range	Grade	Interpretation
1	1.0	A	Excellent
2	0.9 – 0.6	B	Good
3	0.5	C	Fair
4	0.4 – 0.1	D	Poor
5	0.0	E	Fail

## Limitation

The limitation of the methodology is borne by the fact that the assessment benchmarks were set by the Civil Society Platform on Oil and Gas. Therefore, to limit the level of subjectivity in the assessment, the scores assigned to the institutions were subjected to a comprehensive validation by all the institutions examined in this report (except Parliament which was not represented at the validation workshop).<sup>26</sup>

## Data Collection

Data for the analyses were collated through interviews with all the stakeholders, press reports, official documents, and websites of the institutions.

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<sup>26</sup> See Appendix 9 for list of validating institutions. The validation workshop was held on the 29<sup>th</sup> March, 2011.

## Summary of Assessment

STAKEHOLDER	PROGRESS	CONCERNS	SCORE
<b>GOVERNMENT OF GHANA</b>			0.5
Transparency	<ul style="list-style-type: none"> <li>Strong transparency provisions in PRMB</li> <li>Extension of EITI to Oil and Gas</li> <li>Petroleum Commission to issue annual public reports on petroleum activities</li> <li>Subjected petroleum bills to public consultations</li> <li>GNPC press conference to disclose Ghana's entitlement, sale price and marketing agents</li> </ul>	<ul style="list-style-type: none"> <li>Non-disclosure of petroleum contracts</li> <li>Non-disclosure of unitization agreement and field development Plans</li> <li>Freedom of Information Bill delayed</li> <li>Non-disclosure of fields costs, production costs in per barrel terms</li> </ul>	0.7
Independent Regulations/Role of GNPC	<ul style="list-style-type: none"> <li>Petroleum Commission Bill passed by Parliament               <ul style="list-style-type: none"> <li>GNPC not on the Commission</li> <li>Commission to issue Annual Public Reports on petroleum activities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The Commission has not been established and institutional problems are eminent</li> <li>Oil production started without Petroleum Commission (Ministerial control)</li> <li>Petroleum Commission may have to rely on GNPC for technical expertise</li> <li>Funding of Commission</li> <li>Political patronage</li> <li>Weak institutions – EPA, Fisheries Commission, Ghana Maritime Authority are not resourced well technically and financially</li> </ul>	0.4
Contracts and licensing	<ul style="list-style-type: none"> <li>Contracts are by negotiations, cabinet approval and parliamentary ratification</li> </ul>	<p>CONCERNS</p> <ul style="list-style-type: none"> <li>Non-disclosure of signed contracts</li> <li>No open bidding for oil blocks (even with good data)</li> <li>The call for a moratorium on licensing in 2009 by civil society was not heeded – Vanco contract was signed.</li> <li>Closed door negotiations</li> <li>Stabilization clauses</li> </ul>	0.3
Citizen participation	<ul style="list-style-type: none"> <li>MOFEP held public consultations on PRMB</li> <li>Petroleum Revenue management proposals later published</li> <li>Ministry of Energy published draft Local Content Policy and held public discussions</li> <li>Parliament Committee on Energy held three regional forums on Bills(Sunyani, Accra, Takoradi)</li> <li>PIAC proposed by government into the PRMB</li> </ul>	<ul style="list-style-type: none"> <li>Quality of consultations on revenue management discredited (citizens did not have the benefit of studying documents)</li> <li>Public opposition to collateralization of oil revenues introduced by the Executive was ignored (betrayal of public trust)</li> </ul>	0.7
Petroleum revenue collection	<ul style="list-style-type: none"> <li>Petroleum tax unit established within the GRA</li> <li>GNPC published the first lifting of oil by government (995,259 barrels of crude oil) and the sales</li> </ul>	<ul style="list-style-type: none"> <li>GRA petroleum tax unit is faced with capacity constraints</li> <li>Auditor General's Department not trained to audit payments by oil companies</li> </ul>	0.5

	<ul style="list-style-type: none"> <li>price (\$110)</li> <li>Seals installed in oil pipelines</li> <li>Posting of personnel to FPSO to measure oil produced and lifted</li> <li>Currently conducting pre-production costs audit</li> </ul>	<ul style="list-style-type: none"> <li>Information not provided on field Costs and production cost (difficult to assess government take)</li> <li>Assumptions for price bench mark to project revenues are not known</li> <li>The metering system used on the FPSP has not been reviewed by Parliament</li> </ul>	
Revenue management/Oil funds	<ul style="list-style-type: none"> <li>A PRMB has been passed and is awaiting Presidential assent</li> <li>Defines clear rules for revenue inflows to and withdrawals from the Petroleum Holding Fund, Stabilization Fund and Heritage Fund</li> <li>Provides for public scrutiny through PIAC</li> <li>All allocations to pass through budget deepening expenditure transparency</li> <li>Contains extensive transparency provisions</li> </ul>	<ul style="list-style-type: none"> <li>Provision for collateralization of future oil revenues <ul style="list-style-type: none"> <li>Weak institutions</li> <li>Risks of heavy indebtedness</li> <li>Fiscal sustainability problem</li> </ul> </li> <li>Structures of the Petroleum Funds not put in place</li> </ul>	0.7
Linking spending to planning	<ul style="list-style-type: none"> <li>PRMB requires spending in line with long-term development plan to be done through Spending the budget, hence ease of tracking</li> <li>Define 11 priority areas for spending</li> </ul>	<ul style="list-style-type: none"> <li>Ghana has relied on medium term development plans</li> <li>Spending allocations may be too speculative in the absence of long-term development plan</li> <li>Ghana going 'big-push' and close to 'hand-to-mouth' and in addition to collateralization may create 'dutch disease' due to low absorptive capacity</li> </ul>	0.5
Budget openness	<ul style="list-style-type: none"> <li>Open Budget Index improvement: 2006 at 42%; 2008 at 49% and in 2010 at 54%.</li> <li>Government holds limited pre-budget public hearing</li> <li>Publishes a Mid-Year Budget Review</li> <li>Year-End Report</li> <li>Annual Audit Report</li> </ul>	<ul style="list-style-type: none"> <li>Ghana published a Citizens Budget in 2008. Printed but not published in 2009. Not produced in 2010</li> <li>Insufficient budget oversight by Parliament (No time to hold public hearings on budget, discuss and make amendments)</li> <li>Lack of adherence to the budget decisions</li> <li>No fiscal responsibility</li> </ul>	0.5
Social and environmental	<ul style="list-style-type: none"> <li>EIA's were conducted based on consultations with communities and stakeholders</li> <li>EPA reviewing guidelines for conducting EIA</li> <li>EPA produced an environmental Scoping Report</li> <li>EPA started work on Strategic Environmental Assessment</li> </ul>	<ul style="list-style-type: none"> <li>EIA presented to IFC for financial facility was flawed on: <ul style="list-style-type: none"> <li>No Assessment of Oil Spills (Lack of adequate readiness for spills)</li> <li>Inadequate Assessment of Impacts on Endangered Species, Critical Habitats</li> <li>Inadequate Assessment of Noise Impacts on Marine Mammals</li> <li>Dumping of Drilling Wastes into the Sea</li> </ul> </li> <li>Ministry of Environment Investigations of Kosmos mud spill</li> </ul>	0.4

		<p>showed Ghana's inability to establish extent of sea pollution</p> <ul style="list-style-type: none"> <li>• The policy of zero gas flaring is not backed by law</li> <li>• No policy on shared use of the sea and implications for fishing</li> </ul>	
Local content	<ul style="list-style-type: none"> <li>• Legal backing in PNDCL 84 and covers <ul style="list-style-type: none"> <li>- Employment, goods and services, technology transfer.</li> </ul> </li> <li>• Local content policy draft developed and awaiting cabinet approval</li> <li>• Draft policy published and public consultations</li> <li>• Targets, promote indigenization, and Ghana to be a service hub in the sub-region</li> <li>• Local content development fund to support indigenous participation</li> </ul>	<ul style="list-style-type: none"> <li>• No transparency in access to dev fund</li> <li>• The role of GNPC not defined</li> <li>• Commission not yet established implement</li> <li>• Confusion whether to make a dedicated law for local content or use LIs</li> </ul>	0.3
<b>PARLIAMENT</b>	<ul style="list-style-type: none"> <li>• Passed the PRMB</li> <li>• Held public consultations on the bills in three regions</li> <li>• Consensus on transparency &amp; PIAC</li> </ul>	<ul style="list-style-type: none"> <li>• PRMB was passed in early March 2011 after first oil having been laid in July 2010</li> <li>• Yet to pass Petroleum Commission Bill</li> <li>• Politicization of debates along party whips rather than consensus (collateralization; budget funding amount)</li> <li>• Lacks technical capacity to scrutinize contracts and monitor oil and gas industry</li> <li>• Weak in enforcing its resolutions especially against the Executive (Government Assurances Committee)</li> </ul>	0.5
<b>DONOR AGENCIES</b>	<ul style="list-style-type: none"> <li>• Support to government - World Bank; Norway, USAID, DFID; GIZ</li> <li>• Support to Civil Society &amp; Parliament – WB; OXFAM America; IBIS; RWI; Star Ghana, FES, USAID</li> <li>• Areas supported – core funding, EITI, public dialogue and information sharing on petroleum bills, capacity building.</li> </ul>	<ul style="list-style-type: none"> <li>• Some of the donors have interest in the oil through their companies</li> <li>• Kosmos/GOG impasse led to suspension of US support to Ghana based on US policy of 'non-interference'</li> <li>• Norway has not supported civil society work, has no embassy in Ghana</li> <li>• Donor support uncoordinated</li> <li>• The IFC violated its rules on environmental disclosure (regarding approval of facility for Tullow and Kosmos in 2009 - \$215 m)</li> <li>• EITI, Dodd Frank Wall Street Reforms Act – are delivering transparency (What about Europe, other major capital markets?)</li> </ul>	0.5
<b>PETROLEUM COMPANIES</b>	<ul style="list-style-type: none"> <li>• Developed the Jubilee Phase 1 under a fast-track approach &amp; Delivered first oil in record time</li> </ul>	<ul style="list-style-type: none"> <li>• Anadarko, Kosmos, other partners have not disclosed payments yet</li> <li>• None of the IOCs made global</li> </ul>	0.5

	<ul style="list-style-type: none"> <li>• Tullow disclosed initial payments to Government for license fees and GNPC training</li> <li>• Tullow made some social investments in front line communities, held consultations (34), and published CSR plan and ESIA.</li> </ul>	<p>endorsement of EITI, nor elected to be 'supporting company'</p> <ul style="list-style-type: none"> <li>• No IOC has disclosed contracts</li> <li>• CSRs are not consistent with community development plans and costs are recoverable</li> </ul>	
<b>CIVIL SOCIETY</b>	<ul style="list-style-type: none"> <li>• Held the Mankessim forum in Feb, 2008 <ul style="list-style-type: none"> <li>- EITI extension to Oil and Gas</li> <li>- Formation of Civil Society Platform on Oil and Gas</li> </ul> </li> <li>• Wrote the IFC Board opposing the approval of facility for Tullow and Kosmos without conclusive ESIA</li> <li>• Made significant inputs to the PRMB, Commission Bill, E&amp;P Bill, Local content policy</li> </ul>	<ul style="list-style-type: none"> <li>• Remain weak in technical capacity to monitor petroleum operations</li> <li>• Limited technical capacity to track revenues and expenditures</li> <li>• Funding to extend public awareness to local communities</li> </ul>	0.5

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Wall Street Journal (March 9, 2011) “Ghana fields could produce 250,000 b/d by ‘14”.



## APPENDIX 1

***Ghana's Big Test: Oil's Challenge to Democratic Development***, issued by the Integrated Social Development Centre (ISODEC) and Oxfam America

**Link:** [www.oxfamamerica.org/publications/ghanas-big-test](http://www.oxfamamerica.org/publications/ghanas-big-test)

## **APPENDIX 2**

### **COMMUNIQUE**

#### **CITIZENS' SUMMIT ON OIL AND GAS**

#### **ORGANIZED BY THE CIVIL SOCIETY PLATFORM ON OIL AND GAS HELD ON THE 24<sup>TH</sup> JUNE, 2010 AT THE INTERNATIONAL CONFERENCE CENTRE ACCRA**

We, representatives of civil society and community based organizations from all the ten regions of Ghana, traditional and religious leaders, the media and development partners at a Citizens' Summit on Oil and Gas attended by more than 250 participants including some government agencies, and held on 24<sup>th</sup> June, 2010 at the International Conference Centre, Accra, in sequel to a consensus reached from nationwide consultations on the policy and legal frameworks being developed by the Government of Ghana for the management of Ghana's petroleum resources and expected revenues;

Having listened to and discussed the recommendations from the various civil society consultations around the country;

Having had the opportunity to seek clarifications and discuss the implications of the proposals by government for petroleum revenue management and the local content and participation policy;

Having reviewed citizens' expectations for the regulatory framework that should be developed to regulate petroleum operations in Ghana;

Noting that petroleum exploration, development and production offers both opportunities for national development and serious challenges to the economy, the environment, society and democratic development;

That we as citizens will suffer the consequences of petroleum operations if the resources are not managed sustainably, and that several of our generations to come will unfortunately have to live with the negative environmental, social and economic impacts that the sector brings in its wake, for many years;

That the only way to ensure that we are not short-changed in the negotiation of oil and gas contracts, the sharing and utilization of oil and gas revenues, and the management of the environment, is to develop appropriate and adequate policies, laws and institutions through stakeholder participation;

Declare as follows:

#### **Petroleum Revenue Management**

1. That the Ministry of Finance, through the Ghana Revenue Authority, has a dedicated and capable unit tasked with monitoring petroleum agreements and collecting all revenue due to the government of Ghana.

2. That the Petroleum Revenue Management bill must provide for a development-focused public investment through budgetary appropriations, consistent with a long-term development strategy of the country and that appropriation should be project specific.
3. That the government as a matter of urgency should develop medium and long-term development plans for the country through public consultations and that no spending from petroleum revenues should be effected without the plans.
4. That any investments of petroleum funds should be directed to human capital development, agriculture and infrastructure. Otherwise, we should consider limiting spending of revenues to capital spending but to adopt a broad definition of this, including the need to improve human and social infrastructure
5. That the proposed Stabilization Fund and the Heritage Fund are appropriate but the percentage allocation of revenues to the Heritage Fund should be reduced from the proposed 70% to ensure that more current investments are made in sectors that have long-term impact
6. That the bill should resolve the conflict of interest likely to occur in the management of the Heritage Fund by the Investment Management Committee which is proposed as advisor to the Minister of Finance and Economic Planning on investment decisions and at the same time is charged with managing 15% of the Heritage Fund in 'Economically Targeted Investments'.
7. That the Investment Management Committee should be independent whose advice must not be interfered with except by parliamentary approval.
8. That the beneficial ownership of all companies receiving contracts under the Economically Targeted Investments be disclosed.
9. That the proposed sweeping discretionary powers of the Minister of Finance and Economic Planning in taking investment decisions, deciding on the beneficiaries and use of the block grants for socioeconomic and environmental mitigation interventions, and the declaration of confidential information, should be limited. In particular, there should be clear rules on the conditions under which the Minister of Finance can take emergency investment decisions and not merely due to delay in releasing the advice of the Investment Management Committee as proposed by the bill
10. That the role of the Public Oversight Committee should be strengthened by ensuring its funding by law, committing it to public hearing, broadening its role beyond making recommendations and providing it with the power to refer cases of abuse to the judiciary
11. That membership of the Public Oversight Committee should be increased and must be broad-based and the proposal for political party representations should be discarded to make it independent. That Parliament should enforce its oversight through the Public Accounts Committee and not through membership of the Public Oversight Committee
12. That the audit of the petroleum reserves accounts by the Auditor General cannot be considered an external audit and that there should be independent third party annual audits
13. That all information on production amounts, production costs, revenue inflows and outflows, disaggregated expenditures, and contracts must be published without any restriction. There must be reasonable timelines for eventual publication of any information deemed "commercially sensitive" (not more than three years.)

We further observed that to ensure prudent and transparent management of petroleum revenues through budget processes, it is important to improve on budget transparency and increase public financial management capacity. Therefore, we recommend a delay in spending petroleum revenues until our institutions charged with public financial management are stronger.

### **Local Content and Local Participation**

1. That there must be mandatory local content programme for petroleum operations across the petroleum value chain which should consider the interest of Ghanaians and consistent with the long-term national development strategy.
2. That the government target of achieving 90% local participation by 2020 is laudable and very ambitious and a such reasonable time lines and implementation strategy must be provided for achieving various levels of local content and participation to avoid raising unrealistic expectations.
3. That the role of the national oil company, GNPC, should be clearly defined within the context of local content.
4. That the development of natural gas and its uses for national development will make local content and participation more meaningful and that government should provide a timetable for the construction of the gas infrastructure and the production of a Gas Sector Strategy/Plan.
5. That local content implementation should give attention to local economic development through an appraisal of local economic conditions, development of local development plans, and the involvement of local chiefs and opinion leaders.
6. That there should be a strong regulatory agency to enforce local content compliance.
7. That Ghanaians must be given preference in the issuance of licenses where they have the financial and technical capacity.
8. That there must be structures and penalties to punish Ghanaians inappropriately fronting for foreigners and that the beneficial ownership of all companies awarded local content contracts be disclosed.
9. That there must be financial and technical support mechanisms to build the financial and technical capacity of Ghanaian businesses to participate in petroleum operations and that the disbursement of the proposed financial support must be transparent and in line with guidelines approved by Parliament.

### **Petroleum Regulation**

1. That the government as a matter of urgency must release the amendments being proposed for petroleum regulations for public debate and that the delay in passing those amendments before the flow of first oil is dangerous. That there should e timelines for presenting the various legislations being developed by government to Parliament.
2. That the issue of the role of the GNPC must be resolved to avoid any conflicts between its commercial functions and regulatory activities.
3. That there should be a moratorium on petroleum licensing and production until the regulatory law is passed by parliament and the Petroleum Regulatory Authority becomes fully functional.

4. That any new licenses subsequently issued should be done on a competitive and transparent basis.
5. That in line with the previous commitment by President Mills, all petroleum agreements must be published without further delay.
6. That all applications for licensing must provide disaster mitigation plans which must be approved by the Petroleum Regulatory Authority before any licenses are issued.
7. That the regulatory institutions such as the Environmental Protection Agency, the Fisheries Commission, etc should be strengthened and provided with the financial and technical capacity to ensure effective monitoring of petroleum activities
8. That the operational capacity of the Petroleum Quantity Assessment Body should be clearly stated and that the body should be empowered and resourced to conduct both announced and unannounced on site checks at drilling and production sites
9. That local people such as fishermen and chiefs should be involved in community response initiatives to prevent the occurrence of disaster and livelihoods disruptions
10. That the model agreement framework should be reviewed to be consistent with other laws of the country.

We further recognize that the discovery of oil in commercial quantities has raised the expectations of Ghanaians above what is possible to deliver on and this is a recipe for public and community upheavals. Also the integration of the petroleum sector with the rest of the economy will prevent the petroleum sector from being an enclave economy as is the case in mining and thereby facilitate economic diversification. Finally, the absence of a long-term national development strategy with broad consensus on spending priorities may encourage wrong investment decisions, wastefulness and mismanagement of petroleum revenues with serious negative implications for the economy.

We endorse these recommendations and observations, convinced that, it is only through effective coordination of our efforts, national consensus around the critical decision areas, continuous vigilance by Ghanaians on the sustainable management of petroleum resources, revenues and the environment, in pursuant of our rights as citizens to participate in the governance processes of our country, as enshrined in the constitution of Ghana, that the petroleum resources of Ghana can be used for sustainable national development and thereby avoid the temptations of following the path of ‘resource management curse’.

Issued by participants of the Citizens’ Summit on this day, Thursday, the 24<sup>th</sup> June 2010.

## APPENDIX 3

### **MEMORANDUM ON THE PETROLEUM (EXPLORATION AND PRODUCTION) BILL 2010 PRESENTED TO THE PARLIAMENTARY SELECT COMMITTEE ON MINES AND ENERGY BY THE CIVIL SOCIETY PLATFORM ON OIL AND GAS**

#### **EXECUTIVE SUMMARY**

In 2007, Ghana discovered oil and gas in commercial quantities which opened the hopes of the country to joining the league of oil producers in the world. With production expected to commence in the last quarter of 2010, the government and civil society have been concerned about the state of preparedness of the country to ensure transparent, accountable and sustainable management of the petroleum resources.

The government of Ghana initiated the development of appropriate policies and legislations to regulate petroleum operations and petroleum revenues that will accrue to the state as its entitlement. One of the legal frameworks currently before the national Parliament for consideration is the Petroleum (Exploration and Production) Bill 2010.

Even though the Bill has not been subjected to much public scrutiny due to the opacity that surrounded its development, civil society now consider the formal laying of the Bill before Parliament as a window for informed contributions to the debate on petroleum sector governance in Ghana.

This memorandum is therefore the contributions of the Civil Society Platform on Oil and Gas to parliamentary consideration of the Bill which we believe will help enrich the law that will eventually be passed.

We recognize that the Bill is positive in many respects. For instance, it provides for review of the terms of petroleum agreements (removal of stabilization Clauses), the polluter pay principle, open and competitive bidding process for petroleum blocks among others.

On the other hand, the Bill does not address very important issues which are fundamental to the sustainable management of petroleum resources. These include ‘no gas flaring policy’, the allowable flaring limits and penalty for violations; the issue of resource ownership when a contractor exploring for crude oil discovers natural gas instead; safeguards for incorporation of local companies to discourage ‘fronting’ or ‘shadowing’; the status of Ghanaians in the development of marginal fields; remedies for third party financing of petroleum operations in the event of a default by contractor during development phase; the issue of delayed rental fees in the event of a deliberate delay in exploration and development; and the mortgage of the Bill to too much Ministerial discretion, negotiations and bargaining in a country with little experience in the petroleum industry.

In this memorandum, we made some recommendations for Parliament to consider during deliberations on the Bill. We recommend that:

An independent Regulatory Authority be established to regulate petroleum operations and that timelines must be defined for the temporary responsibility of the Minister of Energy in the regulation of the petroleum industry.

Adequate protection should be provided for property owners whose social and economic activities are interfered with by petroleum operations especially when the state exercises the power of compulsory acquisition.

Only ‘commercially sensitive information’ shall be held confidential. Further the determination of ‘commercial sensitivity’ must be done with approval from parliament.

The bill should provide for the publication of contracts signed between the state and contractors in respect of any petroleum operations.

The bill should provide for an open and competitive bidding process for oil blocks.

That notwithstanding the polluter pay principle provided for in the Bill, there should be other national level measures to deal with safety and environmental issues.

The Bill should provide for the establishment of Oil Spill Responsive and Advisory Group (OSRG) and National Oil Spill Detection and Responsive Agency (NOSDRA).

In line with the EITI ++ (Extractive Industries Transparency Initiative), there should be transparency about safety performance of the industry and vigilance of the public authorities.

Payment terms for domestic supply of crude oil by contractors should be clearly stated to build confidence in investors (contractors) and that oil-backed transactions must be avoided in line with the provisions of the Ghana Petroleum Revenue Management) Bill 2010.

Penalties for violating the Act and all other Regulations as provided for in the Bill should constitute minimum penalties and the maximum could reach any levels to prevent rich International Oil Companies from violating the laws of the country with impunity.

## **Introduction**

The Parliamentary Select Committee on Mines and Energy invited the Civil Society Platform on Oil and Gas to submit a memorandum in respect of the Petroleum (Exploration and Production) Bill 2010 currently before the Committee.

This memorandum is in response to the invitation by the Committee and in furtherance of our duties as citizens of Ghana.

The Civil Society Platform on Oil and Gas was formed to create a forum for civil society engagement on oil and gas issues as the country prepares for oil production in the last quarter of 2010.

The development of appropriate policies, legislations and institutional mechanisms for managing the petroleum resources in our opinion are essential for transparent, accountable and sustainable management of Ghana's oil and gas for the benefit of citizens. To this effect, the Platform has interrogated these policies and legislations as its contributions to the process to ensure the country benefits from petroleum resource management.

The Platform however observes that the opacity that covered the development of the Petroleum (Exploration and Production) Bill 2010 until it was formerly laid before Parliament has no doubt affected the quality of debate and the participation of many citizens in the process. This was not the same as the Petroleum Revenue Management Bill which was published and thoroughly debated by Ghanaians including road-shows organized by the Ministry of Finance. The result of the broad participation of Ghanaians in the discussions on the petroleum revenue management has led to significant improvements on the Bill as it currently stands.

Indeed, the fiscal framework for petroleum operations which is an important component of the Exploration and Production Bill defines the petroleum revenues the state is entitled to. There are also issues of transparency and stabilization provisions which undermine responsible and accountable petroleum operations.

The Platform recognizes also that the Petroleum (Exploration and Production) Bill is a significant improvement over the existing law, PNDC Law 84 of 1984. The following provisions in the Bill are quite positive in our view.

### **Some Positive Provisions in the Bill**

#### **Ownership of Data (Clause 3)**

This deals with state ownership of data or information. This will prevent the disclosure of data or information by any party to a petroleum agreement without the consent of the state. The interest of the state in this case is well protected against parties that may disclose data for private gains.

#### **Environmental Principles (Clause 8)**

This clause deals with legal requirement for Environmental and Social Impact Assessment and Environmental and Social Management Plans. These are provided in line with the Environmental Protection Agency Act 1994 (Act 490). This also requires Stakeholder analysis and Strategic Environmental Plan.



### **Disbursement of Decommissioning Fund (Clause 17)**

The provision establishes a Decommissioning Fund which shall not be disbursed for any expenses other than for decommissioning and related cost. This will prevent diversion of money in the Fund for other purposes in order not to endanger the decommissioning programme.

### **The Right of First Refusal (Clause 26)**

This clause addresses the ambiguity in PNDC Law 84 about the transfer of ownership of an interest to a third party. In PNDC Law 84, any party in petroleum agreement who wishes to transfer its interest to a third party requires the written consent of the other parties. What the Law does not resolve is whether the said consent is required before or after a buyer is selected. This ambiguity in our view is what might have led to the Kosmos impasse with the Government of Ghana. The clear provision on the right of pre-emption of the state will therefore protect national interest in the petroleum sector.

It is however important to note that provisions for the right of pre-emption may be a disincentive to investors to invest in expensive deep water off-shore operations and can thereby reduce Direct Foreign Investment inflow to the petroleum sector.

The exhaustibility of the hydrocarbons also imposes for petroleum fiscal regimes that would make continuous exploration sustainable. This could only be attainable, if the entry barriers are minimized for new and innovative players to enter.

In the UK Continental Shelf (UKCS) pre-emption rights are seen as a commercial barrier to activity and development, and they are also described as practices which may discourage exploration and early development of discoveries of hydrocarbon in the UKCS.

But considering the quality of Ghana's oil and the estimates of significant hydrocarbon potential and coupled with the country's democratic stability and good governance, Ghana may continue to be a good destination for investment in the oil sector.

### **Review of Terms of Petroleum Agreement (Clause 28)**

This clause covers removal of stabilization clause. This provision permits petroleum agreements to provide for the review of its terms when there are 'significant changes' in circumstances prevailing at the time of the entry of the agreement.

While there are questions as to what constitute a 'significant change', this is an issue to be addressed in a petroleum agreement. The model agreement framework therefore must provide a good definition of what 'significant change' means.

Also, this clause is a direct copy of PNDC Law 84. In spite of this provision in PNDC Law 84, the agreements signed with Kosmos, Tullow and Vanco have stability clauses. It will therefore be appropriate if a clear statement is made to prohibit stabilization provisions.

### **The Polluter Pay Principle (Clause 38 (1))**

In this clause, the contractor is responsible for establishing on-site structures to deal with fire, spills, accidents and leakages and also responsible for any pollution or damage caused by itself or its subcontractors. This is an improvement over PNDC Law 84 which does not allow the apportioning of blames for any pollution or damage and provides rather for a Spill Mitigation Fund to which all parties shall contribute money against any pollution or damage.

However, following the protest by Kosmos to the fine imposed on it by the Ministry of Environment, Science and Technology for spilling mud, there is need to include other penalties and fines for any pollution and damage caused during petroleum operations.

### **Domestic Supply of Crude Oil by Contractor (Clause 39)**

This provision explains conditions for domestic supply of crude oil by contractor. The clause provides for a 5% mandatory supply of crude to the domestic market by the contractor. The contractor is also enjoined to supply the balance of domestic requirements when the state's share of oil is insufficient to meet domestic requirement. In the event of war or any emergency, the Minister may direct the contractor to supply all or part of its oil entitlement.

The mandatory crude supply, supply in case of shortages and during emergencies, are very appropriate to protect the interest of the state as owner of oil in its natural state as well as the national security.

### **Competitive Bidding Process for Blocks (Clause 49(3) N)**

This clause provides for competitive bidding process. This is an important departure from the current practices in petroleum licensing. Competition in the acquisition of petroleum licenses is a significant recognition of the need for the state to make maximum returns from petroleum operations.

However, the responsibility for determining the process is subject to the regulations of the Minister responsible for Petroleum. This is due to the absence of clear provisions for private sector procurement of state property. The Public Procurement Act may have to be reviewed to address this anomaly. However the process shall include submission of application to the Minister (Clause 19[2]) and forwarding a copy of the application by the Minister to the Petroleum Regulatory Authority and other relevant agencies (Clause 19[3]).

However, the process is not open. It is possible to do competitive bidding without opening as the bill tires to do. It will therefore be important to provide an open and competitive bidding process for oil blocks to avoid the governance risk associated with closed bidding.

## **Other Positive Provisions**

The platform broadly agrees with other sections dealing with Unitization Agreements (Clause 10), Joint Development Zones (Clause 11), compensation in respect of interruptions of social and economic interest or activities by petroleum operations (Clause 12), ring-fencing of costs (Clause 49 (3) u), indemnity of the national oil company against claims brought by third parties in respect of any damages brought about by the contractor or subcontractors (Clause 32(2)), non-discrimination among workers (equal conditions of service) in line with the equal pay for equal work principle provided for in Section 10(b) of the Labour Act 2003 (Clause 33 (2)), strong local content provisions (Clauses 33, 34 and 35) and disbursement of Decommissioning Fund only for expenses related to decommissioning.

## **Concerns of Civil Society on the Bill**

In spite of the positive provisions in the bill in line with international standards, there are equally some provisions which call for concern if Ghana is to ensure transparent and effective regulation of the petroleum industry. Some of these provisions are explained as follows.

### **Ministerial Responsibility versus the Petroleum Regulatory Authority (Clauses 4 and 48)**

The bill gives regulatory powers to the Minister in clause 4 while in clause 48 the Ministry performs the interim role of the Petroleum Authority which does not exist. This is a contradiction of roles. If the Minister is responsible for regulations then what interim role is it performing for the Authority? In other words, what is the role of the Authority?

In addition, there are many areas in the bill where statements such as ‘the Minister or the Authority’ and ‘the Minister and the Authority’ are used to describe the regulatory powers of the Minister and the Authority. This further compounds the contradictions.

We consider the Ministerial power of regulation an anomaly if there is a Petroleum Regulatory Authority and this could increase uncertainty and governance risks in the petroleum industry and thereby adversely affect investments in Ghana’s hydrocarbon industry.

We also note that the Ministry conducts its regulatory functions through the national oil company which has a commercial interest in petroleum operations under this bill. This may give rise to conflict of interest and put governance of the industry under threat.

In our view, an independent regulatory authority should be established to reregulate the Industry.

We therefore recommend that Clause 4 should read ‘The Petroleum Regulatory Authority shall be responsible for regulating petroleum operations’. Clause 48 should stand as it is in the bill but timelines for the establishment of the Authority should be clearly stated to prevent the Ministry from perpetuating itself as regulator.

### **Compensation Payment (Clause 12[2] and [3])**

The bill provides for compensation to be paid to interested parties when petroleum operations interfere with social and economic interest or activities. The provision for compensation does not however cover environmental effects of oil operations. For example, if land is acquired for pipeline operations, compensation is paid only in terms of the loss of economic property but the larger effect on the environment if the pipelines are leaking is not addressed.

Further, the bill is silent on compensation disputes. That is, if any party to compensation negotiation is not satisfied the remedy in such a situation is not provided for in the Bill.

We recommend the provision for arbitration or court settlement of compensation disputes and other conflict resolution mechanisms.

The state is also empowered to compulsorily acquire any property if there is any hindrance and pay appropriate compensations to interested parties. This is consistent with the 1992 constitution, the State Lands Act 1962 and the State Property and Contracts Act 1960.

But compulsory acquisition violates the principle of ‘free, prior and informed consent’ which is a requirement of the United Nations and is consistent with rules of natural justice.

We recommend that the provisions in the new Land Bill for compulsory acquisition which is still in draft should be adopted because it provides protection for property owners during compulsory acquisition by the state.

### **No Exploration Zones**

To protect the livelihoods of fishermen and farmers, it is important that some areas both offshore and onshore are declared as ‘no exploration zones’. In these zones, the government will not allocate blocks to prospectors. Indiscriminate issuance of oil blocks may deprive communities of their livelihoods.

### **Decommissioning Fund (Clause 17(1))**

The bill provides for a Decommissioning Fund to be established by the contractor but it does not state how the Fund will be administered.

We recommend that the Petroleum Regulatory Authority should administer the Fund.

### **Transfer of Assets to the Corporation (Clause 27)**

‘A petroleum agreement shall provide for the transfer to the Corporation of the physical assets purchased, installed, constructed by the contractor for petroleum operations and the cost of which has been included in petroleum expenditures, but the contractor shall have the use of the

assets for purposes of operations under a petroleum agreement and shall remain liable for maintenance, insurance and other costs associated with the use.’

In most regimes the equipment or facilities brought into the country by the contractor becomes the property of the Government. Therefore this practice is not peculiar to Ghana.

We recommend that title to assets brought into the country by contractor should pass to the Government at the time of entry or just after installation rather than after cost recovery.

We further recommend that it should be clearly stated in the bill if the state right does not cover facilities that are owned by services companies.

### **Confidentiality of Data or Information (Clause 31)**

The bill requires parties to a petroleum agreement to keep data or information in respect of petroleum operations confidential. Disclosure of information without the written consent of the Minister responsible for Petroleum shall be criminalized. In clause 47(3) h, the penalty for disclosure is a fine not exceeding fifty thousand penalty units and the licensing cost of the data disclosed.

Confidentiality clauses limit transparency in petroleum operations. What is usually referred to as ‘commercially sensitive information’ need to be separated from other forms of data or information?

We recommend that only ‘commercially sensitive information’ shall be held confidential. Further the determination of ‘commercial sensitivity’ must be done with approval from parliament. The petroleum agreements should therefore define what is ‘commercially sensitive’ before parliament considers and approves the agreement.

### **Contract Transparency**

The bill is silent on contract transparency. There is usually confusion between confidentiality and contract transparency. We noted that contracts only contain the confidentiality statement but do not contain the confidential data. Therefore, a contract can be published without violating any confidentiality provisions.

Since Ghanaians must know what a petroleum contract entails to enable us scrutinize the state’s entitlement and monitor to ensure that the state is not short changed through negotiations, the issue of contract transparency becomes a right.

We recommend that the bill should provide for the publication of contracts signed between the state and contractors in respect of any petroleum operations.

The statement that petroleum contracts are public documents because they are approved by parliament and can be accessed from parliament only exposes parliamentary weaknesses. The

reality is that members of Parliament have complained of not sighting petroleum contracts. What is usually approved in parliament is an abridged version of the contract.

### **Open Bidding Process for Oil Blocks**

While the bill provides for a competitive bidding process and requires the Minister of Energy to prescribe the procedure for bidding, the bill does not open the process. Contractors are required to apply to the Minister if they have interest in any block. Such bidding processes may not provide the public the opportunity to scrutinize the bids and monitor the negotiations between the government and contractors.

We therefore call for an open process of licensing of oil blocks for exploration and production.

### **Health, Safety and Environment (Clause 38)**

The Bill provides that the contractor shall set up onsite infrastructure to deal adequately with oil spills, fire outbreak, blowouts and accidents. We however believe that the provisions in this case are not adequate to address safety and environmental issues in the industry.

We recognize that safety issues involve highly technical and complex evaluations. We also know that technology in the exploration and production of oil in the deeper waters around the world has advanced more than technology and techniques to control and contain spills.

The spills on the Gulf of Mexico have called for new global industry standards as demonstrated in the new institutions and measures adopted by the United States to deal with the British Petroleum oil spills and future potential spills.

We recommend that notwithstanding the polluter pay principle provided for in the Bill, there should be other national level measures to deal with safety and environmental issues.

We therefore recommend that the Bill should provide for the establishment of Oil Spill Responsive and Advisory Group (OSRG) and National Oil Spill Detection and Responsive Agency (NOSDRA).

We also recommend that in line with the EITI ++ (Extractive Industries Transparency Initiative), there should be transparency about safety performance of the industry and vigilance of the public authorities. Citizens must have the right to know and to have access to all information on safety and environmental performance of the industry. In furtherance of this, the Ghana Whistle Blowers Act should cover the workers who raise safety and environmental concerns.

### **Differential Pricing Regime For Domestic Supply Of Crude (Clause 39[1] And [2]).**

The pricing regimes for domestic crude oil supply are different between emergency supply and non-emergency supply. For instance, mandatory supply shall be at a negotiated price while

emergency supply is benchmarked to prevailing market price. The rationale behind the pricing regimes is not clear.

In our view a transaction based on the prevailing market price will ensure Ghana's access to crude oil without compromising the commercial interest of the contractor. Further, emergency supply should not be at the mercy of volatile market prices since the country may be faced with fiscal difficulties during emergency situations. Negotiated pricing may be appropriate in such circumstances.

Another shortcoming is that payment terms in respect of domestic supply is not stated in the bill. We note that the model petroleum agreement provides for payment terms for domestic supply of crude including the power of the contractor to recover default amount with interest from Ghana's future entitlement of oil if the state fails to pay within a prescribed time. Thus the current model agreement framework allows oil-backed transactions which are now prohibited in the Petroleum Revenue Management Bill also before Parliament.

We recommend that payment terms for domestic supply should be clearly stated to build confidence in investors (contractors). In case of default, the state could use proceeds from the Ghana Stabilization Fund (as provided for in the Petroleum Revenue Management Bill when it becomes law) as one of the sources of financing the domestic supply since such default may be a budgetary problem.

#### **Violations of the Act and Regulations (Clause 47 And 49)**

There are different penalties for violating provisions of the Act and regulations that will be made by the Minister.

In Clause 47(1), (2) and (3), violations of the Act are in three forms (i) Personal violation of the Act attracts summary conviction or a fine not exceeding ten thousand penalty units (ii) Personal violation in respect of petroleum operations without a petroleum agreement attracts summary conviction or a fine not exceeding hundred thousand penalty units or five years imprisonment or both and (iii) Corporate violation attract a fine not exceeding fifty thousand penalty units or five years imprisonment or both.

In Clause 49(2), violation of Regulations attracts a penalty which shall be a fine not exceeding five thousand penalty units or not more than three years in imprisonment or both.

According to Clause 49 (1), the regulations to be made by the Minister by legislative instrument shall give effect to the Act. One then wonders why such high disparities in the penalties. Moreover, most of the important issues such as environmental, social, economic and other regulatory issues shall be covered by the regulations and violations should not be trivialized.

We recommend that penalties for violating the Act and all other Regulations as provided for in the Bill should constitute minimum penalties and the maximum could reach any levels to prevent rich International Oil Companies from violating the laws of the country with impunity.

Further, the operational word ‘may’ used in the exercise of the Minister’s power to make regulations should be changed to ‘shall’ to avoid manipulation and potential abuse.

### **Other General Observations**

We observe further that:

The Bill is silent on the government ‘no gas flaring policy’, the allowable flaring limits and penalty for violations.

Whereas natural gas in its natural state belongs to the Republic, the Bill does not address the issue of resource ownership when a contractor exploring for crude oil discovers natural gas instead.

There are also lacks of safeguards for incorporation of local companies which may encourage ‘fronting’ or ‘shadowing’.

The local content provisions do not cover the status of Ghanaians in the development of marginal fields.

The Bill makes provisions for financing of petroleum operations with loans from third parties at a prescribed interest rate. It is however silent on remedies for third parties in the event of a default by contractor during development phase. For example, in some jurisdiction, the third party is given a ‘step-in’ right to complete the projects.

Apart from making reference to ring-fencing, the Bill is generally silent on the treatment of costs. The greatest problem for resource rich countries has been the monitoring and control of costs by the IOCs. Detailed cost parameters and recovery mechanism could be included in the law. Questions such as: What costs are to be recovered? Any cost cap available for cost recovery? Any provision for capital uplift to encourage operations in marginal fields? Which cost items are to be expenses and which one to be capitalized? Need to be addressed.

The Bill also provides for payment of annual acreage fees to the Republic by a contractor but the Minister shall prescribe the amount to be paid, except that where the amounts are not prescribed, the annual acreage fees shall be as provided in accordance with the terms of a petroleum agreement in respect of the area to which the agreement relates during the initial exploration period or other periods that may be agreed. It does not however address the issue of delayed rental fees in the event of a deliberate delay in exploration and development.

The bill is open up to too much negotiation and bargaining. The bill must leave relatively little open to individual negotiations between the government and extractive companies.



## **Conclusion**

The platform recognizes that the issues raised are very fundamental to the management of petroleum resources in Ghana. We are convinced that if our recommendations and observations are taken into consideration by Parliament, Ghana will get the best value for its resources through transparency, accountability and safeguards against potential abuse of terms and regulations. The Platform which has one hundred and twelve member organizations and individuals (see appendix for members of the Platform), wishes to also serve notice of our availability to engage directly with members of the Parliamentary Select Committee on Mines and Energy to clarify our positions outlined above and to provide technical support to the Committee to fully digest the Petroleum (Exploration and Production) Bill and eventually pass a legislation that can stand the test of time in Ghana's hydrocarbon resource management.

To achieve this, we recommend that the Bill should emphasize transparency and accountability along the petroleum value chain, independent regulations by the Petroleum Regulatory Authority, open and competitive bidding process for oil blocks, disclosure of petroleum agreements and appropriate safeguards against environmental, social and economic effects of petroleum operations.

Signed on behalf of the Civil Society Platform on Oil and Gas

DR. AUGUSTINE TAWIAH – CHAIRMAN OF THE STEERING COMMITTEE

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## **APPENDIX 4**

### **MEMORANDUM TO PARLIAMENT OF GHANA ON THE PETROLEUM COMMISSION BILL SUBMITTED BY THE CIVIL SOCIETY PLATFORM ON OIL AND GAS**

#### **Introduction**

The Petroleum Commission Bill clearly responds to the demands by Ghanaians and especially in accordance with article 269 of the constitution, which requires the establishment of the Commission to regulate and manage the utilization of petroleum resources and to coordinate policies in relation to the petroleum resources. This constitutional provision is clearly stated in the memorandum to the bill.

The bill provides a framework for ensuring the efficient and judicious exploitation of Ghana's petroleum resources in an environmentally sustainable manner. This is important in the wake of many reports of oil spills and other environmental disasters, abuse of fiscal provisions, rent-seeking and regulatory capture that have characterized petroleum operations in some countries. While petroleum revenues are important, a poor regulatory regime may undermine Ghana's maximization of the benefits of its petroleum resources through efficient and sustainable extraction, accountability and thereby increase governance risks.

This memorandum is the product of intense discussions by civil society organizations. The final in the series of discussions was facilitated by the Publish What You Pay - Ghana, and with participation by some government and state agencies including the Ministry of Energy, the GNPC, the Environmental Protection Agency, and the Ghana Maritime Authority. The memorandum is being presented to Parliament under the auspices of the Civil Society Platform on Oil and Gas, a coalition of 115 civil society organizations, academic and research institutions and some individuals with interest in oil and gas issues.

#### **Some Proposals for Consideration**

The Civil Society Platform on Oil and Gas endorsed the following proposals for consideration by Parliament during the debate and subsequent passage of the Petroleum Commission Bill.

That the bill does not provide for transparency and accountability in the operations of the Commission, except by the annual reports and auditor's reports to be presented to Parliament. We propose that the bill should state clearly how the public can access information on the operations of the Commission since annual reports do not provide detailed information which may be of public interest. That there should be a clause to compel the Commission to publish its reports and all relevant information on its website and/or on the newspapers in the same manner as provided for in the Petroleum Revenue Management Bill.

That the procedure for granting licenses should be clearly stated in the bill, i.e. open bidding process and the role of the Commission. We acknowledge with satisfaction the dual roles of the Commission of assessing applications and issuing permits for specific petroleum activities; and for supervising the petroleum industry, provided in Clause 1(2) i of the bill. We further observe that ‘permits’ in this bill should cover all licenses for upstream and midstream petroleum activities and that the Minister responsible for Energy should not play any role in licensing for petroleum activities except to serve as the first arbiter when operators are aggrieved, as provided for in Clause 19 of the bill, and to declare vacant acreages.

That funding for the Commission is an important provision that could ensure or undermine its independence. We recommend that the budget of the commission should be presented to the President directly for onward approval by Parliament and not passed through Ministerial ceiling. Also, we recommend the institution of a petroleum regulatory levy for the use of the Commission.

That we are satisfied with clause 9(2), which prohibits the interference by the Minister in the exercise of the powers of the Commission. We note that clause 9(1) which empowers the Minister to give directives on matters of policy recognizes the policy making role of the Minister but that there are also fears the exercise of this power may be abused or be used to undermine the independence of the Commission. Therefore mandatory compliance by the Commission with Ministerial directives is not supported.

That the representation of the GNPC on the governing board of the Commission as provided for in clause 3 of the bill will ensure the injection of GNPC’s technical expertise and operational experience into the work of the Commission. This however will become problematic when the Commission regulates the operations of the GNPC.

That while strongly supporting the provision for institutional representation on the governing board of the Commission, as it is with other Commissions such as the Ghana Maritime Authority and the Public Utilities Regulatory Commission, to limit political patronage in the conduct of appointees of the President, we note the difficulty surrounding the limitation to the President of the Republic the power to appoint public officers as provided for in article 70 of the 1992 constitution. To ensure the independence of presidential appointees, we further recommend that the Constitutional Review Commission considers amendment to the Constitution to provide security of tenure for chairpersons and members of independent regulatory commissions.

We further observed that the debate over the right interpretation of ‘conflict of interest’ as it relates to the role of the GNPC as a commercial and technical wing of Ghana’s upstream petroleum operations; and its role as a member of the governing board of the Petroleum Commission has been ill-informed. We recognize that ‘conflict of interest’ as defined by the constitution of Ghana relates to the conflict of a public officer’s personal/private interest with that of national interest. But since the GNPC’s representation is in respect of national interest and

not private interest, it is not conceivable to describe this as ‘conflict of interest’. The bill further provides checks in clause 6 against the exercise of personal/private interest by compelling members of the governing board to disclose those interests and stay away from their deliberations; or cease to be a member of the Commission. We therefore propose that ‘conflict of interest’ should be interpreted under clause 22 of the bill to provide clarity on the representation of GNPC on the governing board of the Commission.

Notwithstanding this, there are still issues regarding the regulations of GNPC’s operations and therefore, it amounts to conflict of interest in terms of governance for the GNPC’s Chief Executive Officer to be part of a body that regulates the operations of his/her organization.

Signed

All Members of the Civil Society Platform on Oil and Gas (List attached).

## **APPENDIX 5**

### **PRESS STATEMENT – FOR IMMEDIATE RELEASE**

#### **CIVIL SOCIETY PLATFORM BACKS HERITAGE FUND, BUT SAYS NO TO OIL-BACKED LOANS**

Accra, December 06, 2010. The Civil Society Platform on Oil and Gas has observed with keen interest and admiration, the quality of debate that has so far characterized the consideration of the proposals for the management of Ghana's future petroleum revenues, contained in the Petroleum Revenue Management Bill currently before parliament. The press conference organized by the government last week, to explain its intent at collateralizing Ghana's oil, helps to understand the rationale of such intent and to set the debate within its proper context.

As its contribution to enriching the debate, the Civil Society Platform on Oil and Gas finds it expedient to share the perspectives of its members on the particular issues of whether or not to maintain the provision of a Future Heritage Fund, and whether or not oil-backed loans should be entertained in the Petroleum Revenue Management Bill.

#### **Why the Future Heritage Fund Must be Maintained**

The CS Platform believes that, the provision of a heritage fund in the Petroleum Revenue Management Bill arose out of the nation-wide consultations held on the proposals, for which reason, it will amount to a subversion of the peoples' will, should parliament abolish it. The rationale, we believe, is not just to put money away for future generations but more importantly to control spending, and help the country avoid the temptation of going on a spending spree, ending up eventually with poorly executed projects.

It is apparent from the public discourses on the matter that, we do not as a country seem to have a sound Public Financial Management Systems. If we had, there will be confidence in the system such

that in whichever way we decided, we will be sure to get beneficial results for the present generation as well as the future generation.

It is precisely because of our weak public financial management systems that Ghana needs to spend according to its absorptive capacity to ensure that we spend efficiently and deliver quality goods and services to all Ghanaians. Oil funds present us with the opportunity to ensure that we move away from a boom and bust economy and build a long term future of prosperity not just for us but for our children's children.

In the view of the Platform, the fundamental question that should engage our attention is not whether to keep or abolish the provision of a heritage fund but rather, how much we spend today and how much we save. In arriving at the answer, it is important that we are guided by the experience in the mining and other sectors of the national economy.

The tendency, we observe, has been to treat our income from the natural resource sector as consumption income, as a result of which after over 100 years of mining, we have little to show either in terms of infrastructural development or savings. We have lived dangerously, from hand to mouth, while our brothers and sisters in Botswana for instance decided to invest all their income from their diamonds and live on the dividends from these investments.

The time, we believe, has come to change our ways and to learn to invest the revenues from our natural resources, including oil and gas and live on the dividends from the investments.

We agree though that, Ghana has huge infrastructural deficit but that should not be an excuse to abolish the Future Heritage Fund – it is prudent to bequeath future generation not only good infrastructure but also investible capital / funds. To do this will require that we invest heavily in infrastructure and other social needs so that the current generation will be able to make progress on their efforts to build a solid economy for future generation, but certainly, something must be put aside for investment against the future. It is this mix of how much to spend now and how much to save that we believe must engage the attention of our law makers.

### **NDPC – the Missing Link in the Discussions**

Furthermore, we find it a serious oversight that these discussions are going on without input from the National Development Planning Commission. The role of the NDPC in determining what is saved and what is spent is critical. This is because our infrastructural needs will not always be what they are today as we tackle them. This is why the NDPC must tell us what the infrastructural development plan is in the short to medium term and what quantum or resources are required over what period to finance them.

It is also important not to let oil replace our traditional sources of financing development, especially taxation. Taxes in our view, strengthens the social contract and emboldens citizens to demand accountability from the duty bearers.

### **Why We Must Keep off Oil-backed Loans**

A basic principle in life is not to eat your chicken before they are hatched. While we appreciate the desire of the government to begin to affect the lives of Ghanaians with the oil revenue before they begin to flow, we are hesitant to support oil-backed loans because the industry we are in is full of uncertainties. Accidents can happen, prices are subject to fluctuations, production levels can either decline against projections, or surge; and all of these render any oil-backed loans or forward sales a risky enterprise. Again, it is important to point out that while Cocoa-backed loans can be acceptable, oil-backed loans is a dangerous ground to tread. The impression has mistakenly been created by both the government and the opposition that in principle there is nothing wrong with oil-backed loans, just as there can be nothing wrong with cocoa-backed loans. What is overlooked here is the fact that while cocoa is renewable and so we can afford to gamble with it, oil is non-renewable and so must not be gambled with. Our oil, discovered at a

time of increased global demand for the commodity, and when global oil supplies are peaking and many sources declining, is undoubtedly a national strategic asset, which cannot be used as collateral, the same way that will not mortgage Akosombo dam for any loan. We must also remember that, loans always come at a cost, and many a time with conditions that favour the lender rather than the borrower.

The argument in support of collateralizing Ghana's oil, which rests heavily on the country's infrastructural deficit seems to presume that we are able, given the resources, to build railways from Accra to Tamale or construct roads across the length and breadth of the country, linking all villages and hamlets in a year. We note that, at peak production Ghana stands to rake in about a billion dollars a year. Certainly, there is no way we are going to be able to spend 90% of that a year, unless we want to turn Ghana into a huge construction site for decades to come.

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## **APPENDIX 6**

### **PETITION PRESENTED TO PARLIAMENT BY CROSS SECTION OF GHANAIS FOR TRANSPARENCY AND ACCOUNTABILITY IN GHANA'S PETROLEUM LAWS**

**FRIDAY, THE 5<sup>TH</sup> NOVEMBER 2010**

TO THE RT. HONOURABLE SPEAKER AND MEMBERS OF THE PARLIAMENT OF GHANA

We the undersigned, comprising more than 41,000 Ghanaians in Ghana and abroad, as well as friends of Ghana around the World;

Aware of the potential dangers posed by secrecy and opacity that are associated with the management of petroleum resources to the economy, the society, the environment and democratic development;

Reminded by the many examples of 'oil curse' in countries with oil wealth in the developing world;

Following the campaign launched by the Ghana Civil Society Platform on Oil and Gas for transparency and accountability in the management of Ghana's petroleum resources and its revenues;

Do hereby sign this petition calling for strong transparency and accountability provisions in the various legislations that are currently under consideration by Parliament.

Accordingly, we declare;

That Parliament makes provision for Disclosure of Petroleum Agreements in the Petroleum (Exploration and Production) Bill 2010.

That Parliament makes provision for an open and competitive bidding process for acquiring petroleum licenses in the Petroleum (Exploration and Production) Bill 2010.

That Parliament provides timelines for the establishment of an Independent Petroleum Regulatory Authority to regulate petroleum operations rather than the limitless powers given to the Minister of Energy in the current Petroleum (Exploration and Production) Bill 2010.

That Parliament maintains and strengthens the proposed Public Interest and Accountability Committee as provided for in the Petroleum Revenue Management Bill 2010 for purposes of providing public or citizens' oversight in the management of petroleum revenues.



That Parliament must keep the provisions in Clause 60 of the Petroleum Revenue Management Bill 2010 which states:

*“(1)The records of petroleum receipts in whatever form for the purpose of transparency and accountability shall simultaneously be published by the Minister in the Gazette and in at least two national daily newspapers, no more than thirty working days after the end of the applicable quarter.*

*(2) The information required to be made public shall also be published online on the websites of the Ministry of Finance and Parliament effective the publication date”*

6. That transparency and accountability are the democratic rights of Ghanaians and essential elements in ensuring that the citizens of Ghana gain the maximum benefits from our natural resources; and that our representatives in Parliament who are the embodiment of good governance and guardians of the spirit of our democracy and sustainable development will once again demonstrate your continuous resolve to make Ghana a shining example in public financial management and accountability of public officials to all Ghanaians.

Signed

List of Petitioners attached.

## APPENDIX 7

### FIRST OIL PRESS STATEMENT BY OXFAM AMERICA

#### BIG CHALLENGES REMAIN FOR MANAGING GHANA'S OIL FUTURE

Washington, DC – On Wednesday, December 15, Ghana will celebrate the start of oil production at the major offshore “Jubilee” field, kicking off an oil boom expected to bring billions of dollars into the country. As Ghana prepares to “turn on the tap” with an elaborate inauguration ceremony, international humanitarian organization Oxfam America urges the government to quickly address large gaps in the legal framework needed to make the most of the billions in government revenue Ghana will receive from the sector.

“The start of oil production represents an important opportunity for Ghana. However, we are concerned that three-and-a-half years after discovery of the Jubilee field, there is still no oil revenue management law in place and no independent regulator established for the sector. Ghana has an enviable recent track record of progress on fighting poverty and improving democratic accountability, but the sudden onset of oil wealth often comes at the expense of good governance and effective development. Ghana’s challenge as an ‘oil hot spot’ will be to manage this industry with transparent and accountable policies and practices, so the people of Ghana can truly benefit over the long term,” said Ian Gary, Oxfam America’s Senior Policy Manager for Extractive Industries and author of the Oxfam report, *Ghana’s Big Test: Oil’s Challenge to Democratic Accountability*.

The Ghanaian government must establish a legal framework that ensures transparent publication of oil payments received, open and competitive contract bidding and contract disclosure, and active monitoring and participation by civil society. While there have been some positive signs – Ghanaian President John Atta Mills promised disclosure of oil contracts in March 2009 and a petroleum revenue management bill tabled in the Ghanaian Parliament in July contained important transparency and safeguard provisions – with first oil right around the corner, the necessary laws and systems have not been put in place. Despite government commitments, oil contracts remain unavailable to the public.

“The Ghanaian Parliament is currently debating an oil revenue bill, and important provisions – such as a prohibition against using oil revenue as collateral for loans – have already been stripped out of the bill. A Petroleum Exploration and Production Bill, which had numerous weaknesses, have been shelved. Celebrations of first oil are clouded by the fact that the government has yet to establish an independent regulator since the Jubilee discovery was announced in 2007,” said Richard Hato-Kuevor, Oxfam America’s Extractive Industries Advocacy Officer in Accra, Ghana. “These oil laws involve national questions that require national consensus. There is simply too much at stake for Ghana to adopt inadequate laws to manage this massive industry.”

The removal of a ban on using future oil revenues as collateral for loans is particularly worrying. Many oil producers around the world – such as Nigeria, Angola and Congo-Brazzaville – have gone deep into debt due to unsustainable oil-backed borrowing. Such loans, with steep interest rates and short repayment terms, are often taken out in secret with little or no parliamentary or public scrutiny. Recent press reports have noted that the state oil company, the Ghana National Petroleum Corporation, is working with Deutsche Bank and other private banks to secure a \$500 million loan. The terms and purpose of the loan are not clear.

Ghana is one of the most peaceful and relatively prosperous countries in West Africa but remains poor with the majority of Ghanaians living on less than \$2 a day. While poverty needs are pressing, stabilization and savings funds must be established and funded to avoid the price shocks and wasteful spending in the early years of an oil boom, which have bedeviled other countries.

Historically, the exploitation of natural resources in Africa has far too often led to increased poverty and conflict, a phenomenon often referred to as “resource curse.” In 2009, Africa produced 13 percent of the world’s oil with great investment and exploration throughout the continent, but this has yet to translate into tangible benefits for Africa’s poor. In fact, resource-rich countries in Africa have actually experienced lower growth rates than countries with scarce resources.

## APPENDIX 8

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