

**IN THE FOURTH SESSION OF THE
SIXTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**

**REPORT OF THE SELECT COMMITTEE
ON MINES AND ENERGY**

ON THE

**PETROLEUM (EXPLORATION AND
PRODUCTION) BILL, 2016**

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1.0 INTRODUCTION

- 1.1 The Petroleum (Exploration and Production) Bill, 2016 was laid in Parliament on Friday, 3rd June, 2016 by the Hon. Minister for Petroleum, Mr. Emmanuel Armah-Kofi Buah in accordance with Article 106 of the 1992 Constitution.
- 1.2 The Bill was subsequently referred to the Select Committee on Mines and Energy by the Rt. Hon. Speaker for consideration and report pursuant to Order 188 of the Standing Orders of Parliament.

2.0 DELIBERATIONS

- 2.1 The Committee met with the Hon. Minister for Petroleum, Mr. Emmanuel Armah-Kofi Buah and Officials of the Ministry to consider the Bill. In attendance were Officials of the Petroleum Commission and Ghana National Petroleum Corporation (GNPC) to assist the Committee in its deliberations.
- 2.2 The Committee is grateful to the Hon. Minister and the Officials for their attendance and for providing valuable inputs to enrich its deliberations.

3.0 REFERENCE DOCUMENTS

The Committee referred to the under-listed documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;
- iii. The Petroleum Commission Act, 2011 (Act 821);
- iv. The Petroleum Revenue Management Act, 2011 (Act 815);
- v. The Ghana Maritime Security Act, 2004 (Act 675);
- vi. The Ghana Shipping Act, 2003 (Act 645);
- vii. The Environmental Protection Agency Act, 1994 (Act 490);
- viii. The Ghana National Petroleum Corporation Act, 1983 (PNDCL 64);

- ix. The Petroleum (Exploration and Production) Act, 1984 (PNDCL 84);
- x. The Petroleum Income Tax Act, 1987 (PNDCL 188);
- xi. The Petroleum (Local Content and Local Participation) Regulations, 2012 (L.I 2204);
- xii. The Environmental Impact Assessment Regulations, 1999 (L.I. 1652);
and
- xiii. The Petroleum (Exploration and Production) Bill, 2014.

4.0 BACKGROUND INFORMATION

- 4.1 Prior to the 1960s, Ghana's petroleum industry has been mainly based on the importation and trading in refined petroleum products through contractual agreements with multi-national companies such as the Shell plc and the Total plc. The Tema Oil Refinery (TOR) was later established in 1960 to process crude oil. The character of the industry however changed between 1970 and 1980 when commercial quantities of oil reserves were discovered offshore Ghana.
- 4.2 Subsequently, successive Governments continued to adopt measures to promote exploration of petroleum across the country's Sedimentary Basins. Part of these measures related to the establishment of the Ghana National Petroleum Corporation (GNPC) through the passage of the Ghana National Petroleum Corporation Act, 1983 (PNDCL 64) to undertake the petroleum activities on behalf of the State. The Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) was thereafter passed to provide the regulatory framework to govern the industry.
- 4.3 The continued efforts of the State culminated in the discovery of petroleum in larger commercial quantities in 2007 offshore Ghana (Jubilee Field). The country has been producing crude oil since 2010. The actual production of petroleum and the attendant opening up of the industry to experienced oil companies and the current challenges made it evident that the existing laws governing the sector were not robust enough to meet the challenges in the industry.
- 4.4 To address the above challenges, Government embarked on a legislative programme in 2011 to strengthen the existing legal and regulatory framework to respond to the new development. The first step that the

Government took in this direction was to establish the Petroleum Commission as a regulator of the industry, through the passage of the Petroleum Commission Act, 2011 (Act 821). It therefore became necessary to update the exploration and production law which has been in existence for over thirty (30) years to cope with the challenges identified.

- 4.5 Accordingly, the Petroleum (Exploration and Production) Bill, 2014 was laid in Parliament on Tuesday, 11th November, 2014.
- 4.6 After due consideration of the Petroleum (Exploration and Production) Bill, 2014, the Committee proposed several amendments to strengthen the provisions in the Bill. This prompted meetings between the Ministry of Petroleum, the Leadership of the House and the Committee to withdraw the Bill to incorporate the amendments proposed to facilitate the passage of the Bill. The Bill was accordingly withdrawn by the Hon. Minister for Petroleum on Friday, 3rd June, 2016 and replaced with a new Bill, Petroleum (Exploration and Production) Bill, 2016 for its consideration and passage.
- 4.7 The Bill when passed into law will repeal the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84).

5.0 OBJECT OF THE BILL

The object of the Bill is to provide for and ensure safe, secure, sustainable and efficient petroleum activities in order to achieve optimal long-term petroleum resource exploitation and utilization for the benefit and welfare of the people of Ghana.

6.0 ARRANGEMENT AND SUMMARY OF PROVISIONS

- 6.1 The Bill contains ninety-seven (97) Clauses and has been arranged in line with the various stages of petroleum activity.
- 6.2 Clauses 1 to 5 provide general principles for the conduct of exploration, development and production of petroleum. This is followed by provisions regarding area management, reconnaissance licences and petroleum agreements (Clauses 6 to 20).

- 6.3 Clauses 21 to 37 provide specific provisions for the exploration, development and production of petroleum whilst matters relating the transportation, treatment and storage of petroleum are covered by Clauses 38 to 42.
- 6.5 Clauses 43 to 49 deal with decommissioning, decommissioning plans, the establishment of decommissioning fund and related matters.
- 6.6 General requirements for the conduct of petroleum activities including acquisition and access to data, keeping of information relating petroleum activities and liabilities for contractor parties (Clauses 50 to 59).
- 6.7 Local content requirements are provided for under Clauses 60 to 72 whilst Clauses 73 to 84 provide for health, safety and environment and liability for pollution damage. Clauses 85 to 89 cover fiscal arrangement for the petroleum sector.
- 6.8 Miscellaneous provisions have been provided for under Clauses 90 to 97 to address petroleum-related matters such as the right of individuals to undertake exploration and production of natural resources other than petroleum resources, offences and penalties and the empower to make Regulations.

7.0 OBSERVATIONS

The Committee made the following observations during its deliberations:

7.1 Consideration of the Bill

Following the laying in Parliament of the Petroleum (Exploration and Production) Bill, 2014, the Committee since November, 2014 has been holding meetings with key stakeholders and experts in the petroleum sector to consider the Bill. As part of its procedures, the Committee received memoranda from Civil Society groups and also held several meetings with them regarding concerns on some provisions of the Bill. The Civil Society groups engaged by the Committee included:

- i. The Ghana Institute of Governance and Security (GIGS);
- ii. The African Centre for Energy Policy (ACEP);
- iii. The Ghana Oil and Gas Service Providers Association (GOGSPA);
- iv. The Ghana E&P Forum (Ghepf);

- v. The Ghana Arbitration Centre;
- vi. The Natural Resource Governance Institute (NRGI); and
- vii. The Ghana Oil and Gas for Inclusive Growth (GOGIG).

The Committee after engaging the Civil Society groups evaluated their concerns and adopted some of them as part of its amendments which have been incorporated into the new Bill.

7.2 Provisions regarding Fiscal Regime

The Committee noted that the passage of the Bill would significantly assist the country in maximizing benefits from its petroleum resources. This is because the Bill introduces new fiscal elements in addition to those specified under sections 19 and 20 of PNDCL 84. Clauses 85 to 89 of the Bill provide for the new fiscal regime which includes bonus payments. The Bill further seeks to increase the minimum carried interest of the State in every petroleum agreement from the current ten percent (10%) to fifteen percent (15%).

On the issue of whether the country should adopt the production sharing or the hybrid fiscal systems for its petroleum industry, the Committee consulted extensively with both local and international experts on the subject. The Committee again met a number of times with public sector institutions and Civil Society Organisations (CSO) to solicit their views on the matter.

From its evaluation of the views espoused by experts and CSOs, the Committee came to the conclusion that the quest by a State to maximize benefits from its petroleum resources does not depend on the adoption of a particular fiscal system but what matters is the fiscal elements comprised in the fiscal system. The Committee was duly satisfied with the fiscal system contained in the Bill because it combines the best fiscal elements in both the production sharing and the concession systems, thus the hybrid system.

7.3 Grant of Petroleum Rights

The Committee also noted that unlike the current dispensation where petroleum rights are granted to E&P companies through direct negotiations, the Bill provides for a competitive public tendering processes in the award of petroleum blocks (clause 10 (3)). The Bill however allows the Minister for

Petroleum to undertake direct negotiations under two circumstances. The first is where an area offered for a public tender does not become subject to a petroleum agreement. The second is where the Minister, in consultation with Petroleum Commission, determines that direct negotiations would ensure the most efficient and optimal exploitation of petroleum in a particular area. To regulate the exercise of the discretion, the Bill requires the Minister in such circumstances to publish the invitation to tender or the invitation for direct negotiations in the Gazette and in at least two (2) state-owned newspapers and other media for the attention of the general public. Again, where the Minister receives more than one expression of interests after the publication, a public competitive tendering process would have to be followed. These provisions mark significant improvements over the current regime provided for under section (2) of PNDCL 84 and also promote good governance in the sector.

7.4 Introduction of Reconnaissance Licence

It was again noted that the Bill introduces Reconnaissance Licence into the country's licensing regime. Clause 9 of the Bill empowers the Minister for Petroleum in consultation with the Petroleum Commission to grant a reconnaissance licence for the purposes of data collection. These include seismic surveying, shallow drilling, processing and interpretation of petroleum data. Reconnaissance Licence holders would be required to comply with all other applicable laws including the provisions of the Environmental Protection Agency Act, 1994 (Act 490). It is believed that the grant of reconnaissance licences would contribute significantly to promote investments in data acquisition which is critical for the continued exploitation of petroleum resources.

7.5 Acquisition and Access to Data by GNPC

The Committee noted that Clause 52 (2) of the Bill would restrict the Corporation's continuous access to petroleum data for its activities and impede value addition to the data. An amendment has therefore been proposed to the clause to relieve the Corporation from such restrictions.

7.6 Provisions relating to Cross-border Cooperation in the conduct of petroleum activities

The Committee observed that the Bill makes provision for the management of petroleum resources which are discovered between Ghana and the territories of its neighbouring countries. This takes account of possible discovery of accumulation of petroleum which straddles between the country's territory and that of any other country. Clause 35 of the Bill seeks to empower the State to reach an agreement with the other country for the most efficient coordination of petroleum activities and for the sharing of the petroleum. This would ensure efficient exploitation of such petroleum resources for mutual benefits.

7.7 Local Content Provisions

The Committee noted that the passage of the Bill would boost the development of local content in the petroleum industry. The Bill makes provision for the transfer of knowledge and skills to Ghanaians and to create jobs for Ghanaians in the petroleum industry. Under the Bill, an obligation is placed on all operators in the industry to employ Ghanaian citizens, with the requisite qualifications and expertise in the conduct of petroleum operations. The Bill also enjoins them to procure Ghanaian goods and services so long as they are comparable to international standards. To ensure the realisation of this aspiration, the Bill provides for the establishment of a Local Content Fund to support small and medium scale Ghanaian entities engaged in petroleum activities. Sources of money for the Fund would include one percent (1%) of the total consideration payable by the contractor or licensee (Clause 66). It is hoped that the provision would facilitate the implementation of the country's local content policy.

7.8 Provisions relating to Health and Safety in the Petroleum Sector

The Committee observed that the Bill provides comprehensive requirements to strengthen the current health and safety regime in the petroleum industry. For instance, Contractors would be required to conduct petroleum operations in a manner which ensures high level of safety in accordance with technological developments, best international practices and existing legislations. Contractors would also be required to maintain efficient emergency preparedness and implement preventive security measures. They will further be required to submit plans for the implementation of

safety measures prior to commencement of petroleum operations, adhere to established boundaries of safety zones and suspend petroleum operations in case of emergencies.

7.9 Provisions regarding Environmental Pollution

The Committee further noted that the Bill has sufficient provisions to safeguard the environment and hold contractors accountable for any environmental damages arising out of petroleum operations. The Bill mandates contractors to conduct petroleum activities in accordance with the environmental principles contained in the Environmental Protection Agency Act, 1994 (Act 490) and its Regulations and other applicable laws. In this respect, it provides guidance on cessation and decommissioning of petroleum facilities. It also requires a contractor or licensee to establish a Decommissioning Fund as well as restore affected land and remove cause of damage or danger to the environment after the termination of petroleum activities. Under the Bill, contractors or licensees will also be held strictly liable for pollution and losses incurred in connection with decommissioning of petroleum facilities. These environmental provisions are also applicable to GNPC when it undertakes petroleum activities on its own under the Act.

7.10 Provisions for the Making of Regulations

The Committee finally noted that the passage of the Bill would pave the way for the making of a number of subsidiary legislations to ensure the full implementation of the provisions of the Bill. The Minister for Petroleum would be empowered to make Regulations to provide detailed procedures for the grant of Petroleum Agreements, conditions for the competitive tendering process and direct negotiations, safety and security issues. Regarding the commitment of the Ministry of Petroleum for the development of these Regulations, Officials of the Ministry of petroleum informed the Committee that the Ministry had already commenced processes to ensure the timely preparation of some of these Regulations.

8.0 PROPOSED AMENDMENTS

- i. **Clause 25 - Amendment Proposed** - Sub-clause (2), paragraph (a), line 3, *delete* “and the Minister shall inform the Commission within forty eight hours”
(Chairman of the Committee)

- ii. **Clause 27 - Amendment Proposed** - Sub-clause (9), Paragraph (b), line 1, realign “until the plan of development and operation has been approved by the Minister” to apply to both paragraph (a) and (b).
(Chairman of the Committee)
- iii. **Clause 32 - Amendment Proposed** - *Add* new Sub-clause:
“(2) This section applies to the Corporation where it undertakes petroleum activities under Section 11 (1)”.
(Chairman of the Committee)
- iv. **Clause 42 - Amendment Proposed** - Sub-clause (9), line 1, *delete* “may” after Commission and *insert* “may” after “Minister”.
(Chairman of the Committee)
- v. **Clause 42 - Amendment Proposed**: Sub-clause (10), line 2, *delete* “may” after Commission and *insert* “may” after Minister.
(Chairman of the Committee)
- vi. **Clause 42 - Amendment Proposed** - Sub-clause (11), line 2, *delete* “may” after Commission and *insert* “may” after Minister.
(Chairman of the Committee)
- vii. **Clause 52 - Amendment Proposed** - Sub-clause (2), line 1, *insert* “or” between “contractor” and “sub-contractor” and in line 2 *delete* “or the Corporation”.
(Chairman of the Committee)
- viii. **Clause 66 - Amendment Proposed** - Sub-clause (2), line 3, *delete* “Minister responsible for Finance” and *insert* “Controller and Accountant-General”
(Chairman of the Committee)
- ix. **Clause 67 - Amendment Proposed** - Sub-clause (4), line 1, *delete* “Local Content Committee” and *insert* “Commission”
(Chairman of the Committee)
- x. **Clause 69 - Amendment Proposed** - Sub-clause (1), line 1, *delete* “Committee” and *insert* “Commission”
(Chairman of the Committee)

xi. **Clause 83 - Amendment Proposed** - Sub-clause (2), line 1, *delete* “contractors parties” *insert* “contractor parties”.
(Chairman of the Committee)

xii. **Clause 95 - Amendment Proposed** - Interpretation of “Indigenous Ghanaian Company” *delete* and *insert* the following:

“Indigenous Ghanaian Company” means a company incorporated under the Companies Act. 1963, (Act 179) which

(a) has at least fifty-one percent of its equity owned by a citizen of Ghana ; and

(b) has Ghanaian citizens holding at least eighty percent of executive and senior management positions and one hundred percent of non-managerial and other positions.

(Chairman of the Committee)

xiii. **Clause 95 - Amendment Proposed** - Interpretation of “Small and Medium Enterprises” *delete* and *insert* the following:

“small and medium enterprises” means an industry, project, undertaking or economic activity that employs not more than one hundred persons with an asset base that is not more than the Ghana Cedi equivalent of Two Million United States Dollars excluding land or buildings.

(Chairman of the Committee)

xiv. **Clause 96 - Amendment Proposed** - Transitional Provisions, line 2, *Add* the following:


“A licensee, contractor, sub-contractor, the Corporation and any other person engaged in a petroleum activity shall comply with the relevant provisions of this Act”

(Chairman of the Committee)

9.0 CONCLUSION

- 9.1 The Committee has scrutinized the Bill after extensive consultation with stakeholders and experts in the upstream petroleum industry on the Petroleum (Exploration and Production) Bill, 2014 which culminated into the new Bill.
- 9.2 The Bill under consideration represents significant improvement over what pertains under the PNDCL 84. It provides enhanced transparency provisions including the requirement for competitive public tendering process and maintenance of petroleum register. It also introduces additional fiscal elements to reflect the country's status as an oil producing country. Ample provisions have further been made in the Bill towards the realisation of the local content aspirations of the country and environmental protection and sustainable exploitation of petroleum resources.
- 9.3 The Committee therefore recommends to the House to adopt its Report and to pass the Petroleum (Exploration and Production) Bill, 2016 in accordance with Article 106 of the Constitution.

Respectfully submitted.


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HON. ALHAJI AMADU B. SOROGHO
CHAIRMAN, COMMITTEE ON
MINES AND ENERGY


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PEACE FIAWOYIFE (MS.)
CLERK TO THE COMMITTEE

JULY, 2016