

## Special Issue

### GHANA'S PETROLEUM INDUSTRY: THE PROSPECTS AND POTENTIAL IMPEDIMENTS TOWARDS GOOD GOVERNANCE STANDARDS

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# THE CRUCIAL ROLES OF GHANA'S MODEL PETROLEUM AGREEMENT: THE PUBLIC POLICY IMPLICATIONS AND REQUIREMENTS

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## ABSTRACT

With the discovery of large commercial deposits of oil in Ghana in 2007 and first oil lifting in December 2010, Ghana joined the league of oil producing countries on the Gulf of Guinea coast. Ghana has since 2007 initiated efforts to review and improve its legislative framework for the petroleum activities and as well as petroleum revenue management. The Exploration and Production Law (PNDC Law 84), the Ghana National Petroleum Corporation (PNDC Law 64) and the Petroleum Income Tax Law (PNDC Law 188) are the main statutes. Ghana's Model Petroleum Agreement which provides the template for petroleum exploration and production licensing between the Ghana Government, the Ghana National Petroleum Corporation and multinational companies to produce oil and gas emanates from these statutes. This paper focuses on the Model Petroleum Agreement (MPA). It addresses two key questions. First how adequate are the essential provisions of the MPA? Second, to what extent is Ghana ready to go through the required "steep learning curve" to optimize benefits from petroleum activities through its contractual agreements with multinational oil companies? The paper concludes with some policy recommendations.

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# 1. INTRODUCTION

Following the discovery of oil in 2007, Ghana on 15 December, 2010, joined the league of oil producing countries in Africa. While most local and international public discourse on Ghana's oil discovery has tended to dwell on the fiscal regime, revenue management, the industry framework as well as the "inevitability" of the resource curse, there has been little or no discussion about the adequacy of its oil and gas agreements and to assess the institutional capacity to manage the terms and conditions of the agreements.

Ghana has sought to manage its petroleum industry through three principal laws. The Petroleum Exploration and Development Law, 1984 (PNDCL 84) provides the framework for the management of oil and gas exploration and development. It provides the basic terms and conditions of petroleum agreement negotiated and executed in Ghana. The Ghana National Petroleum Corporation Law, 1983 (PNDCL 64) establishes the Ghana National Petroleum Corporation and charges the corporation first as a regulator and second as a participating agent in exploration and production. The Petroleum Income Tax Law, 1987 (PNDCL 188) sets out the taxation elements of petroleum operations. These three principal statutes are supplemented by the Model Petroleum Agreement (MPA), Environmental Protection Agency Act, 1994 (Act 490), and the National Petroleum Authority Act, 2005 (Act 691). Recent legislative efforts include the passage of the Petroleum Revenue Management Law by Parliament in February 2010 and the proposed amendments to the Exploration and Production Law to reflect best international practices.

The MPA emanates from the Petroleum Exploration and Production Law to guide the implementation of the legislation. Briefly, it guides the process of negotiating the terms and conditions of a Petroleum Agreement among the parties thereto, namely, GNPC, Government of Ghana and the oil company, embodies the final terms and conditions to regulate the intended petroleum operations, and outlines the specific fiscal terms, cost, accounting and reporting of the contractors. This study assesses Ghana's MPA 2000. The key concerns addressed in this paper are summed up as follows: Do the terms and conditions in the MPA

- a. protect Ghana's overall interests as the sole and legitimate owner of crude oil and gas?
- b. optimize Ghana's benefits? and
- c. expose Ghana to unnecessary financial risks, current and future legal and environmental dangers or problems?

The rest of the paper is organized as follows. Section 2 provides a description of the MPA and the parties to a petroleum agreement. Section 3 outlines the key provisions of the MPA, focusing on seven essential elements. Section 4 examines the pivotal roles of selected Ghanaian institutions, the policy prospects and the challenges, and the corporate social responsibilities. Conclusions follow in section 5. We use the terms petroleum, oil

and gas, oil leases and petroleum agreements or contracts interchangeably in this study. Unless otherwise noted, articles and pages cited refer to articles and pages in Ghana's MPA .

## **2. DESCRIPTION OF GHANA'S MODEL PETROLEUM AGREEMENT**

Petroleum legislation generally aims to regulate petroleum activities from exploration to development and production by defining the rights and obligations of contractors and the resource owner. The legislation is typically premised on the petroleum policy of the country (Tordo, 2007). The nature and form of the rights and obligations of the resource owner and the contractors, however, varies according to contract type. The three basic contract types are: concessions, production sharing agreements, and service contracts.<sup>1</sup> Under a typical concessionary system, the contractor has the right of exploration and production of the concession area and is charged a royalty only. Under a contractual system the arrangement may be Production Sharing Contracts (PSCs) or Service Contracts (SCs). The contractor is paid in kind as under PSCs or in cash or in kind under SCs. Today, most agreements use a hybrid of concessionary and PSCs. There are also Joint Ventures (JVs) by way of partnership-based approach which involves creating a jointly managed project company. Distinct about JVs is that they provide a corporate-based, structural means for technology transfer and shared decision-making. But as Likosky (2009) points out, whether the agreement is concessionary, PSC or JV depends on the specifics of the legal arrangement in order to determine where the locus of control and decision-making of the company lies.<sup>2</sup>

Our examination of the MPA shows that, contrary to the perception in the Ghanaian popular media (for example, Ghanaweb.com), the contractual agreement currently in place in Ghana defies simple categorization within existing typology of agreements. Even though Ghana is entitled to a 12.5% royalty for oil and 5% for gas, the MPA cannot be identified as concessionary. In addition to royalties, the Ghana government through the Ghana National Petroleum Corporation (GNPC), acts as if it were a joint partner with the International Oil Companies (IOCs). Also according to section 2.4 of the MPA, the initial State (via GNPC) interest in petroleum operations is 10% and is carried through exploration and development. The IOC bears the costs and risks of exploration and development. Under this arrangement, the GNPC only pays contractors for its share of production costs. The State has the right to acquire additional interests from contractors again after discovery but in this case the State is only carried through exploration.

Despite State participation interests acquired by GNPC, MPA Article 26.7(p 78) states that this agreement is not a joint partnership. Furthermore, each party's rights and obligations are separate and "not joint." These provisions make it inaccurate to describe Ghana's MPA as a joint venture type because the MPA states in plain and legal language that it is not. "This Agreement shall not be construed as creating a partnership or joint venture, nor

an association or trust ... or as authorizing any party to act as agent, servant or employee for any other Party for any purpose... (MPA, Article 26.7). Moreover, Article 19 and other sections of the MPA stipulate that contractors are solely liable for insurance, indemnities and the safety of workers and equipment. The contractor is even required to indemnify the GNPC for losses and claims against it. In short, the MPA together with our observations of relations between the GNPC, the contractors and the operators (Tullow, Kosmos and Anadarko) on the Jubilee Field Phase 1 show that current Ghanaian petroleum agreements is of a hybrid type.

#### *Parties to the Petroleum Agreement*

The MPA exhibits an unusual feature. The State is named as a party in addition to the government-owned GNPC. Hence the State has two agencies involved in oil leases – the State per se, represented by the Minister of Energy and the GNPC. Additional parties to agreements are contractors who may engage operators and subcontractors, most of which are also IOCs. Contractors are responsible for all operations and can engage the services of an operator with the approval of the GNPC and the Minister of Energy (Article 1.40: p 9).

Led by Ghana's Ministry of Energy and with the assistance of the GNPC, the State leases out for rent, royalties and income taxes blocks of oil on- or off- shore to contractors to explore, appraise, develop and produce for export or domestic use with the participation of the GNPC. Contractors supply the financing, technology, equipment and personnel needed to produce oil. While the legal arrangements and the type of decision-making process may not be a big determinant of government revenues or government take (because the revenue stream can be replicated under different agreements), it is still an important tool for regulation and other important provisions of the petroleum agreement.

### **3. ESSENTIAL PROVISIONS OF THE MODEL PETROLEUM AGREEMENT**

This section evaluates provisions of Ghana's MPA by examining selected key issues which could impact adversely or otherwise on how Ghana fares with respect to the oil and gas sectors of the economy. These are: gas flaring; information management; how oil produced is shared; domestic and export uses of petroleum; local content provisions; training, employment and skill transfer; and dispute settlement.

#### *Gas Flaring*

Gas flaring, the burning and release of the by-products of gas from oil into the atmosphere, should be the subject of public discourse because it poses serious health, safety and ecological hazards. This was especially the case in the early phases of petroleum production in the Niger Delta, Nigeria, where flaring became a source of pollution, social discontent and deadly conflicts.<sup>3</sup> Contrary to pledges made by public officials during my field work in Ghana in 2009, gas flaring is permitted by the MPA. Flaring is allowed if the Minister

of Energy and the GNPC approved contractors' operations that included the burning and release of gas and into the atmosphere (See Article 17.5 of the MPA). As much as gas found in oil wells is expected to be re-injected to maintain pressure in production wells and to power equipment and vessels (such as Floating, Production, Storage and Off-take Kwame Nkrumah MV21 in use at the Jubilee oil field), flaring is permitted during testing and production operations and also as a safety measure. According to Article 17, flaring should be done in accordance with petroleum industry standards.

Flaring and adherence to industry practices raise some public policy concerns. What are these industry standards, who established them, and who enforces them in the absence of an independent regulatory authority? Are the Ministry of Energy and the GNPC able to assess compliance and ensure enforcement? And do they have the means to effect appropriate remedies and sanctions if needed? Performing such highly technical functions requires the GNPC, the Ministry of Energy, and the Environmental Protection Agency (EPA) to have the capacity in terms of resources - - personnel, surveillance and monitoring equipment. Although Ghana has barely produced large quantities of oil, it already faces some compliance and enforcement issues. According to the National Geographic (December 15, 2010:1-5) Kosmos (a contractor for Jubilee Field 1) and the public authorities are grappling with a US\$30 million fine assessed on the former for spilling 706 barrels of toxic materials.

### *Information Management*

Information Management is not only necessary in this information age but also due to the crucial and sensitive roles of data and information in the oil business, it is a key driver of successes or failure and costs. Seismic and other information do influence the bargaining positions of the oil producing country and the contractor. For instance, the nature of the seabed in offshore exploration and production will affect Ghana's capacity to obtain favourable or unfavourable terms. Besides, the key phases of oil production – exploration, appraisal, development and production – require the proper management of financial and technical information and data including the physical morphology of fields, their location, crude oil and gas potential, quality of crude oil and marketing. With respect to marketing, for example, there are two world markets for crude-- the North American/ US Texas Intermediate sold on the New York Commodities Exchange and the Western European Crude Brent. Since prices vary on these markets, it is necessary to factor into oil agreements which markets to sell to and what prices to use in determining royalties and accounting procedures.

There are other information and data management issues that the Ministry of Energy, the EPA, GNPC and the Ministry of Finance have to contend with. The long list and types of information provided in Ghana's MPA (17/8/2000, Article 161: p.59 and Article 16.3 p. 60) underscore the enormous challenges posed by information generation, management and use that various public agencies will have to deal with. In addition, public institutions that receive and transmit information should exercise utmost care to protect these highly

valuable and confidential information and data. An important point to stress is that the value of these kinds of information/data depends on their being kept confidential. As we have noted already, access to relevant information can be used as leverage in negotiating oil leases. It is essential that Ghana creates systems to keep such information both secure and confidential. Disputes between the Ghana government, the GNPC and Kosmos in 2010 over alleged unauthorized disclosure of information confirm the highly sensitive nature of information in the oil industry and the commercial value of data. However, with the proper implementation of Article 16 b ii (p. 81) of Ghana's MPA, a regulator should be able to manage appropriately the highly sensitive information and data it acquires.

The need to secure oil related information and data can also contribute to a public policy dilemma-- the right of Ghanaians' access to petroleum agreements, the right to know how much oil and gas is produced as well as the revenues that flow into public coffers. With the passage of a Freedom Of Information Act by Parliament, the government may soon need to reconcile the public's right to know with the need to maintain confidentiality in the oil business. Doing this successfully requires genuine public discussion which is necessary for achieving consensus and transparency, as exemplified in the consultative process leading to the preparation of the petroleum revenue management legislation.

#### *Sharing of Petroleum*

Article 10 (MPA, Article 10 pps. 37-38) lays out the sequencing of the sharing of oil produced in Ghana. The state is entitled to 12.5% of contractors' allocation from the gross production of oil from each field. This payment may be in cash or in kind as royalty to the state which is the sole owner of the petroleum. Next, the GNPC will receive a share of the oil if it acted as a sole risk taker during exploration, appraisal, development and production. This is followed by the GNPC and the contractor receiving their shares according to their participating interests. In the case of Jubilee Field 1 total State's share amounts to 13.75% of the gross production in cash or in kind. Cash payments are based on weighted average prices for crude deliveries for relevant months. But as pointed out by Amoako-Tuffour and Owusu-Ayim in this volume, the concern here is the lack of standardization in the Rate of Return thresholds and the percentage split of the additional oil entitlements between the State and the Contractor. This means that the contractual variation of the thresholds and the percentage split depends on the negotiating capacity of the parties to the agreement.

#### *Domestic and Export Uses of Petroleum*

Besides fiduciary responsibilities, there are more areas that state agencies, especially the GNPC, should be equipped to handle efficiently. In order to ensure that oil sold on behalf of the State and GNPC is done at arm's length (as stipulated by Article 11.7a p.44 of the MPA), the GNPC should have a thorough grasp of the complex market for oil. It must also have the expertise to verify and to test instrument calibrations, measurements and the lifting and transport schedules and other procedures used by MNOCs. Article 11.2 (p. 43) of the MPA specifies, for example, that the GNPC must be present to observe



measurements, testing devices and appliances, the calibration and procedures employed by contractors to establish the quantities and quality of oil produced. This is an onerous responsibility that calls for due diligence on the part of GNPC employees and the board of directors. To meet their obligations and to ensure maximum benefits to Ghanaians, personnel of relevant State institutions, in this case the Customs, Excise and Preventive arm of the Ghana Revenue Authority needs to be technically competent and up to speed in meeting varied, highly sensitive deadlines for important actions and procedures. Their inattention can cost the nation millions of dollars in lost revenue.

The extent to which the MPA seeks to ensure the domestic use of oil and gas produced in Ghana is unclear. It appears the export of gas and crude oil to the international market take precedence over local consumption as in Article 14.16 (p. 54). Article 15 which deals with the domestic supply of crude oil indicates that local oil needs are to be met to “the extent possible” from the state and GNPC’s allocation. This article seems not to require MNOCs to meet “Ghana’s domestic supply requirement.” However, subsequent sections of the MPA such as Article 15.2 (p. 58), sharply contradict Article 14.6 (p. 54) by stipulating that in case the GNPC and the state’s allotments are not adequate in meeting domestic needs, “Contractors shall be obliged with other third parties which produce oil in Ghana to supply a volume of crude to be used for domestic supply requirements.” The only proviso is that domestic supply requirements from contractors should not exceed contractor’s total allocation.

In order to prevent potentially conflicting requirements in meeting domestic crude oil needs, articles and sections dealing with domestic use of oil and gas produced in Ghana need to be reviewed and made consistent with each other. Such a review will facilitate contractors’ meeting of domestic needs by making their obligations clear while making it feasible for public agencies in Ghana to ensure compliance with terms of contracts pertaining to the local use of oil and gas from Ghana’s fields.

With respect to the distribution of natural gas, the sequence remains the same as that for crude oil, except that the state’s royalty falls to 5%. The rationale stated for the low royalties is that Ghana seeks to attract contractors to the natural gas business which is currently not too attractive to investors (MPA: p 54). It is necessary to conduct further research into the natural gas business and to compare Ghana’s royalty rates to other nations. Low natural gas royalties and income taxes paid by MNOCs raise the issue of the extent to which countries that are about to produce commercial amounts of oil and gas for the first time have room to negotiate better terms in an industry with highly technical, capital intensive and a myriad intricate financial and marketing transactions. The approaches that Ghana adopts, especially, the process and the nature of its oil leases may be most affected by institutional weaknesses, its capacity to negotiate, government effectiveness and the perception of political risks.



### *Local Content*

Even though there are provisions for the use of local content/suppliers and indigenous Ghanaians in the MPA, the articles and conditions for fulfilling them require some important changes. Although Article 20 of the MPA (p 68) explicitly states that contractors "... shall give preference to materials, services and products produced in Ghana..." if local suppliers' prices are competitive or better, it does not specify how such an important provision will be implemented. An even more daunting challenge is how in the last few decades, due to outright or benign neglect, Ghana's meager industrial base has virtually collapsed. In addition, Ghana's business climate and capacity to support a new oil sector is currently inadequate. An undisputed fact about the economy is that most locally owned businesses are under-capitalized and not competitive enough to meet the standards of MNOCs. The absence of competitive businesses that can supply oil contractors may be resolved by creating a carefully planned, public-private process targeted specifically at identifying and assisting locally-owned businesses that have potentials to succeed as local suppliers to MNCOs.

### *Training, Employment and Skills Transfer*

With respect to skills transfer, employment and training, Ghana faces enormous challenges. First, with respect to education, skills and training, there has been considerable lag between Ghana's needs and what educational institutions produced and almost without exception, local institutions are not equipping Ghanaians with the requisite skills for the petroleum and high technology industries.

There is also the problem of vague provisions for the employment of Ghanaian nationals in the MPA. Article 21.2 (p 69) states, "... Contractor shall ensure that in the engagement of personnel, it shall as far as reasonably possible, provide opportunities for the employment..." of qualified Ghanaians. As it is with the use of local content/suppliers, the objective of enhancing the role of indigenous Ghanaians may not be accomplished due to lack of specificity. Contractors may not comply with this provision while the GNPC may face difficulties enforcing it because the language is imprecise. Another objective that may pose challenges is found in Article 21.4: (p 69) that requires contractors to "... assist GNPC personnel in every way to acquire knowledge and skills in all aspects of the petroleum industry." A question that emerges is why would MNOCs transfer essential skills involving trade secrets to Ghanaians and to the GNPC which could be their competitor? It is erroneously assumed that contractors would be motivated on their own accord to pass on skills to Ghanaians.

More Ghanaians will be employed in the oil sector if the nation increases the pool of qualified nationals who also can make it possible to transfer skills. Since the nation sorely needs locally qualified staff, an appropriate measure may be the creation of a local public-private funded tertiary training institute. In this respect, the MPA's requirement that contractors provide \$200,000 per contract for training of Ghanaians may be deemed inadequate (Article 21.1; p 69). This is especially the case if the high cost of training in

such a technology-intensive industry were taken into account. In the event that relevant local training may not be available immediately, trainees may have to go overseas as a short-term solution. Under such conditions, only a handful of Ghanaians could be trained leading to a slow and expensive process for skill transfer.

### *Dispute Settlement*

An area which could pose risks with adverse consequences is dispute resolution. As it is in the case of most legal contracts, the MPA has sections for establishing claims and resolving disputes. Two kinds of dispute adjudication are proposed. According to Article 24 (MPA, pp 74-75) disputes are to be subjected to first, consultations and negotiations between the parties. If those fail, claims may be submitted to the Arbitration Institute of Stockholm, Sweden to which each party shall appoint one of three arbitrators from whom one would become the umpire arbitrator. Decisions by the panel are final and binding. Alternatively, the parties may avoid arbitration at the Institute in Stockholm by using a Sole Expert. Parties may also use local and international courts of law in addition to arbitration.

Arbitration and other dispute settlement provisions in the MPA raise legal concerns with significant public policy implications. Some of these are captured by the following questions: Are state agencies such as the Attorney General's Office, the Ministries of Energy and Finance and the GNPC ready to tackle complex legal affairs with crucial financial consequences? Prerequisites for institutional readiness may include ensuring that Ghana has local or foreign personnel well versed in oil related contract disputes; creating a list of preferred panel of arbitrators and being able to (when disputes emerge) tactically use panels or sole arbitrators to the advantage of Ghanaian parties. This can be done through the proper vetting or screening of panelists Ghana nominates and designates as umpires. This ought to be done before the State and the GNPC handle their first disputes including those that go to arbitration.

It is also recommended that tertiary institutions in Ghana and elsewhere in Africa may be identified and assisted to begin training local legal experts in international arbitration specialising in oil and gas. The University of Ghana Law School, Kwame Nkrumah University of Science and Technology Law School, the Institute for Development Studies at the University of Cape Coast and University of Ghana's Legon Center for International Affairs could be designated as national centers for producing skilled Ghanaians to create and manage effective public policies and legal affairs for the oil sector. This will ensure that Ghana's potential pool of legal and other talents is broad and deep enough to assist the nation to manage especially the legal, technical and financial matters involving IOCs which have access to tremendous financial resources and legal expertise.

## 4. PIVOTAL ROLES OF SELECTED INSTITUTIONS

For Ghana to receive maximum benefits from oil and gas, personnel of key public organisations like the Ministries of Energy and Finance and GNPC should be fully cognizant of oil markets and prices and currency exchange rate fluctuations. Hence the capacities of relevant bodies to bear fully their fiduciary responsibilities should be enhanced. There is therefore the urgent need to conduct a methodological audit of the capacity of key public agencies cited in this study with the goal of enhancing their performance. The ones we have selected to review due to the important roles assigned to them by the MPA are: the Joint Management Committee (JMC); the Ghana National Petroleum Corporation, the Environmental Protection Agency and Parliament.

Others whose roles are still pivotal but not addressed in this study are the National Development Planning Commission, Ministry of Finance and Economic Planning, Ministry of Transport and Communications, Attorney General's Office, Ghana Revenue Authority, Labour Department's Inspectoral Services, Ghana Maritime Authority; the Ghana Meteorological Agency, Ghana Geological Survey and the Security Services.

### *Joint Management Committee (JMC)*

Because of the essential duties assigned to the JMC it deserves much attention. Article 6 of Ghana's MPA mandates that a JMC comprising two representatives of Ghana and two representatives of contractors should be established to oversee all oil and gas operations. The GNPC appoints the Chair of the JMC. The state's representatives to the JMC and the GNPC are literally the "eyes and ears" of the state with respect to documenting oil exploration, appraisal, development, production and even lifting for overseas markets or domestic supplies. The JMC's responsibilities range from supervising contractors' oil operations to ensuring that work schedules and development plans are met. It also verifies contractors' compliance with financial stipulations in accordance with industry standards. It is expected to accomplish its responsibilities by ensuring that the GNPC and contractors cooperate. For example, the contractor is expected to develop work schedules in cooperation with the GNPC through consultations facilitated by the JMC. Thus, Ghana's success in managing its oil and gas depends largely on how the JMC operates and is able to oversee most oil operations.

### *GNPC*

The effectiveness of the GNPC in securing Ghana's interests in the domestic oil business is paramount. By executing its functions effectively, the GNPC could literally guarantee Ghana "a seat at the table" of the oil business. That is, it could guarantee the state and hence the public's active involvement in all phases of the oil sector. It is the lead public agency responsible for protecting Ghanaian interests. Thus the country's claim to be "the sole sovereign owner of oil and gas" discovered within its territories and waters will be meaningless if the GNPC fails to perform as it has been assigned to do by the MPA.

### *Environmental Protection Agency (EPA)*

Due to hazards such as ecological pollution, industrial accidents and injuries in and near oil installations, the role of a well-resourced and hence, effective EPA should be a major national priority. In addition to the GNPC and the JMC, the EPA's role in overseeing the safe production and transport of oil and gas will go a long way to ensure Ghana's relatively safe and environmentally sound production of oil. There is thus the urgent need to provide the EPA with equipment, personnel and operating funds to perform the plethora of duties it has to undertake in the field.

### *Parliament*

We draw attention to the apparently minor and ambiguous role of the Parliament of Ghana in the MPA. In our assessment, the role assigned to the legislature is weak and grossly inadequate. This is one of the weakest dimensions of the MPA and it requires immediate rectification. The current MPA needs to be modified to enhance parliamentary oversight to protect the interests of Ghanaians as the primary owners of all oil and gas found in the country. Even though Article 26.8 p. 79 (of the MPA) states the need for Parliamentary approval of oil contracts, this requirement and its significance are not made explicitly clear. The relevant article on the role of Parliament is not unequivocal and if left without remedy, could cause future legal quagmires, especially when there are changes in government. The point being stressed is that, without assigning the national parliament an unequivocal role in oil contracts, it is likely that any change in government may lead to disputes and controversies concerning the legality of oil leases, as has been the case in Guinea.<sup>4</sup> To assure certainty and to avoid controversies over the important role of Parliament, it is strongly recommended that all oil laws and oil contracts should expressly make parliamentary assent a sine qua non for legality. There is clearly therefore the need to elevate the role of Parliament in Ghana's future oil leases.

### *Corporate Social Responsibility*

Many factors make Corporate Social Responsibility (CSR) relevant to a review of Ghana's MPA and a legitimate topic for public discourse. First, CSR has been a source of deadly conflicts in the oil producing Niger Delta of Nigeria.<sup>5</sup> Second, the Government of Ghana has rebuffed attempts by traditional rulers in the Western Region to obtain special payments from Ghana's oil revenues. The traditional rulers based their claims on the notion that their region abutted Jubilee Field. Third, both the recently approved Petroleum Revenue Management legislation (2011) and the MPA do not permit special monetary allocations to oil producing regions, except in the event of adverse environmental effects. Fourth, the MPA allows contractors to add the cost of CSR projects (approved by the GNPC) to costs of doing business in Ghana.

Due to its wide socio-economic and even political and social conflict implications, CSR cannot be treated as a pure internal corporate matter. Besides, as Ghana's oil fields grow in output and value, it is likely that larger payouts will go toward CSR. This could exacerbate its far-reaching potentially adverse social and public policy consequences. A

case in point is that Tullow Oil Company reportedly has spent in about three years US \$8million on books and science equipment for Nsien Secondary School and medical screening in communities the Western Region.<sup>6</sup>

With current and future large influx of cash, goods and services through CSR, the opportunities for abuse, exploitation and corruption of local leaders and even conflicts may occur if CSR is not managed appropriately. Provisions in the Annex to the MPA can be used to craft policies to optimise CSR through careful planning and oversight. We recommend that the GNPC and other public authorities should use their oversight of CSR expenses to assist oil-bearing communities to implement efficient projects for the welfare of citizens in the oil abutting areas.

### *Public Policy Advantages and Challenges*

This section summarizes key advantages that Ghana has and the major public policy hurdles it has to overcome in using the country's oil to improve living and working conditions. Although Ghana faces tremendous challenges as a new oil producer, it also has a number of advantages it could deploy in drafting oil leases. Politically, although it has not as yet established a long record of multiparty-democracy, it has made adequate progress and ranks high among African and developing nations in political stability.<sup>7</sup> In addition, compared to other African countries, in particular, oil-producing ones, Ghana provides a relatively peaceful environment for business. These two considerations should over the long-term, and with improvements, allow Ghana to become more competitive in receiving bids and attract investments in both upstream and downstream oil businesses.

There are other advantages directly linked to the production, marketing and refining of oil. Ghana's low sulfur content of oil is easy to refine. Ghana's sweet crude can be shipped easily to both of the world's leading oil markets -- the Western European-based Brent Crude Market and the North American /Texas Intermediate Market. The incorporation of GNPC as a public entity with personnel experienced in oil exploration could also be utilised to Ghana's advantage. GNPC has in the past deployed its employees in numerous exploration related activities in Ghana and Angola. It has thus accumulated some oil related technical expertise and data that even if they may be limited, can be combined with effective public agencies led by the Ministry of Energy to boost Ghana's chances for success in the new oil industry. By carefully using these experienced personnel and technical data, Ghana might be in a better position to overcome some of the "teething problems" new oil producing nations have to grapple with.

On the other hand, as a new oil producing nation, Ghana has to identify and manage significant challenges that could undercut the country's leaders' promises to convert crude oil and gas into tangible benefits. For proper oversight, a single public regulatory agency for the oil industry should be created, and the functions of various institutions in the industry clearly and carefully delineated and streamlined to designate responsibilities. This is necessary to avoid "turf wars" or inter-agency conflicts which could severely

undermine the nation's capacity to manage such an important natural resource - oil and gas.

The GNPC's crucial roles in Ghana's new oil sector may epitomize the challenges Ghana faces as it seeks to implement successfully the MPA. One key issue arises from the GNPC being assigned a dual function. The current dual role of GNPC as a regulator and as commercial partner poses an organizational dilemma: Can it perform both functions effectively or it is likely one of these functions may be neglected? The second issue is the limited institutional capacity of the GNPC. For example, does the GNPC have personnel such as geologists, geophysicists, engineers and others well versed in the complex oil industry that can provide the services the MPA has allotted to it? Solving the problems posed by limited institutional capacity and the dilemmas linked to regulatory and commercial operations may be crucial as more oil fields are discovered and brought into production in Ghana.

We have already alluded to what may be the "Achilles' heel" of Ghana that seriously undercuts the country's global economic competitiveness. This is the fact that the country's social infrastructure, especially education and training, coupled with a weak manufacturing sector cannot furnish a strong foundation for a domestic oil sector in the form of a robust local economy and effective public institutions that can act strongly on behalf of the sovereign people who own oil and gas.

## **5. CONCLUDING OBSERVATIONS**

With respect to the enforcement of Article 17 of the MPA, to avoid the potential adverse effects of flaring, measures should be taken to ensure that Ghana's EPA and the GNPC are provided with sufficient equipment, funding and appropriate regulations to ensure that it is done safely and not too frequently. In the area of information and data management, there is the need to strike an appropriate balance between the Ghanaian public's right to know and the need for GNPC, the Ministry of Energy, oil companies, and other parties to keep data and information confidential due to legitimate technical, financial and legal reasons.

As we have sought to demonstrate, Articles 14 and 15 of the MPA that deal with local and foreign uses of Ghana's oil and gas need to be revised to ensure clarity on how the country will be supplied with oil produced domestically. Current provisions are ambiguous and thus could be the source of conflicts between Ghanaian and other parties to the MPA.

Another and equally important condition is that the capacities and effectiveness of GNPC and the EPA should be boosted tremendously. We recommend strongly the adoption of language and provisions in future MPAs that assign realistic and precise roles to Ghanaian public agencies such as the GNPC and the EPA. New policies also need to be created to start training more indigenous people in engineering, petroleum economics, petroleum

accounting, environmental and commercial law, occupational safety and health related to oil and gas production to implement new MPAs to benefit the society as a whole. The implementation of new training programs should be preceded by a thorough assessment of what the real current and future human capital needs are.

## ENDNOTES

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<sup>1</sup>For a classification of petroleum legal arrangements see Tordo (2007), Likosky (2009) and Johnston (1994).

<sup>2</sup>See Johnston (1994) for a taxonomy of Joint Venture/Government Participation spectrum.

<sup>3</sup>C. Ile and C Akukwe (2001), P. Ogon (2009) and Owabukeruye (2000).

<sup>4</sup>See “Guinea: Mining Fight Shows Pressure on Multinationals”, Wall Street Journal, 28 January 2011.

<sup>5</sup>C. Ile and C Akukwe (2001), P. Ogon (2009) and Owabukeruye (2000).

<sup>6</sup>Jeff Smith, “New Oil – and a Huge Challenge for Ghana, National Geographic, 15 December, 2010:5

<sup>7</sup>East Africa Magazine, 27 December 2010-2 January 2011

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