Danger looms in Ghana's Oil and Gas Resources?

By **Seibik Bugri** - Dec 20, 2014

The Africa Centre For Energy Policy (ACEP) has expressed grave concern and worry about recent unethical behaviours and underhand dealings in Ghana's Oil and Gas industry as "not far from falling into the curse that has afflicted many oil producing countries". "Rent seeking behavior, corruption and mismanagement in the oil and gas sector has the tendency of undermining our resolve to transform our oil wealth into lasting development outcomes for our people", they warned.

Dr. Mohammed Amin, Executive Director, Africa Center for Energy Policy (ACEP)

In a press Conference to draw the nation's attention to serious Governance issues, the Executive Director of the Centre, Dr Mohammed Amin Adam explained that there are best practices which could save Ghana from going down the path of vested interest and oil misery and for which reason ACEP draws the attention of all stakeholders, particularly "Parliament that as it considers the Petroleum Exploration and Production Bill placed before it, there is greater opportunity to adopt standards that safeguard Ghana's oil and gas resources against corruption".

Corruption?

In a six-page document, Dr Adam noted that if care is not taken, the current framework

conditions put in place by state actors for governance and management of the oil and gas resources are ripe in promoting corruption. "Ghana has a relatively young oil and gas industry with only one producing well, and another well now under development and expected to come on stream by the end of 2016. However, some of the laws and regulations that have been developed so far provide significant risks for corruption and therefore have the tendency of undermining the country's resolve to escape from oil curse, a phenomenon that has afflicted many oil rich countries in which vested interests have overtaken national interests, he pointed out

Promoting Corruption in Ghana's oil and gas industry?

Throwing more light on the dangers, he listed some as Lack of application of open and competitive public tender process in the award of petroleum licenses. Petroleum licenses are awarded through an administrative process, which opens up to potential corruption. The deliberate failure to develop regulations for the application of competitive bidding as provided for in Section 32(m) of the Petroleum Law, has demonstrated the lack of political will by all Ghanaian governments since 1984 to open the process for petroleum licensing and thereby increasing the risks of corruption. Close to 30 years now since the Petroleum Law came into forces, no competitive bidding of oil blocks even though the rules requires it.

No Disclosure

The citizens of Ghana are the primary owners of the country's oil and gas resources, which have been entrusted in the President to manage on their behalf. The trustee President or Government of Ghana should inform the citizens regularly about developments in the management of the resources. Failure to apply mandatory requirements for the disclosure of oil contracts has therefore provided convenient room to hide badly negotiated oil contracts from citizens' scrutiny. "The Government has published 7 out of 23 active oil contracts. However, the discretion to publish some contracts and leave others does not give good account of comprehensive disclosure regime and this is largely due to the fact that there is no framework ". Also the lack of a framework for the disclosure of beneficial ownership information of directors of companies holding oil contracts is not helping matters. "The extent of vested interest sometimes leads individuals with political connections to submit companies for the award of oil contracts

without disclosing the identity of the owners of the companies".

Vested interest

"Local directors often represent the companies whilst the true owners are at large, often hidden in the books of secret jurisdictions such as Gibraltar or British Virgin Islands where the parent companies or their subsidiaries are incorporated. This increases vested interest, which has the potential to create an elite class dominating benefits from the oil and gas industry at the expense of the citizens, who are the primary owners of the resources," the statement added.

Sadly, Ghana's new Petroleum (Exploration and Production) Bill 2014 does not provide for the disclosure of beneficial ownership information, which therefore provides serious governance risks with implications for increasing corruption. Another risky behaviour is that most of the companies granted oil contracts are not publicly listed companies and are therefore not regulated. For example, of all the companies involved in new Petroleum Agreements signed between 2013 and 2014, only four are publicly listed, six are incorporated in secret jurisdictions and 5 are incorporated in Nigeria. Therefore, apart from those publicly listed, the beneficial ownership information of the rest is not publicly available.

Local Content and Local Participation

Another bad and risky behavior is that the local content regulations provide the environment for rent seeking behavior as beneficiaries of local content requirements from equity participation, jobs and the provision of services are often influenced by ones relationship with an oil company, a public official or a politician. The recent regulations passed in Ghana, the Petroleum (Local Content and Local Participation) Regulations (LI2204) empowered the Minister responsible for Petroleum to abuse the qualifications for local content beneficiation. In regulation 4, the LI provides for a minimum of 5% equity for indigenous local persons or firms in a Petroleum License and 10% in a service company. **However, sub-regulation 4 further provides the Minister responsible for Petroleum the power to decide on persons who qualify to hold the minimum equity**. Without clear regulations on the criteria for determining qualifications, the LI has subjected the process to potential abuse, which may have implications for corruption in

the oil and gas industry.

The operations of the National Oil company, Ghana National Petroleum Corporation (GNPC) and the mode of financing its operations as provided for in Section (15(2)) of GNPC Law which requires the "Corporation to borrow money only on the recommendation of the Secretary and with the approval of the Secretary responsible for Finance as to the amount, source of the loan and the term and conditions under which the loan may be effected", only provides a convenient route to seek loans without parliamentary scrutiny. Danger is that the ties between the GNPC and the Government are seldom transparent and could provide space for the government to turn the corporation to a cash cow or turn its accounts to a slush fund, approving loans for the corporations which are spent outside the budgetary processes.

EO Group

Citing a number of cases to buttress their arguments, ACEP say Developments on the oil and gas sector so far show that coming events cast their shadows. Some of the instances that have cast their shadows are: – **Government commenced investigations into EO Group's alleged involvement in "causing financial loss to the state, money laundering and making false declarations to public agencies".** The Attorney General of Ghana reportedly said at the time, "The signs are pointing to the fact that we have gathered enough evidence we believe in order to give us serious concern about the activities of the company offending against the laws of this country," However, whilst the US authorities announced the conclusions of its investigations, including the fact that the EO Group did not violate US laws particularly under the US Foreign Corrupt Practices Act; we are not sure whether these conclusions held for Ghana's investigations into violation of Ghanaian Laws. Unfortunately, till date, the Government of Ghana is yet to announce the conclusions of its investigations into the matter. There have been suggestions that this might be due to alleged compromise of some public officials. We are also at a loss why Government, which raised such serious charges against EO GROUP eventually, approved the sale of EO's shares to Tullow Oil at over US$300 million.

Abrogation of Petroleum Agreement

Another instance of shady deal is the Abrogation of Petroleum Agreement by

the Minister of Energy between the Republic of Ghana, GNPC, Aker ASA and Chemu Power Ghana Ltd over the South Deep Water Tano Contract Area, without a parliamentary assent, the Minister of Energy unilaterally abrogated the license, claiming that a Ghanaian registered company, and not Aker ASA as was the case, should have been the signatory to the Petroleum agreement. The Petroleum Agreement (PA) under reference was unanimously ratified by Ghana's Parliament; it had had the appropriate approvals of the Ministry of Energy, Cabinet and the GNPC Management and Board as required by the laws.

The Minister in abrogating the Contract contended that there were some 'legal defects' with the Agreement because Section 23(15) of the Exploration and Production law 1984 (PNDC Law 184) clearly required that a Ghanaian registered company ought to have been the signatory to the Petroleum Agreement, and not AKER ASA". This was in spite of the advice granted the Minister by GNPC in a letter which stated that the solution to that 'legal defect' laid in AKER ASA transferring and/or assigning the Agreement to AKER GHANA LIMITED, the entity that would be operating the Agreement. GNPC further stated, "This assignment is permitted under the provisions of article 25 of the Agreement". It added that "Indeed Aker Ghana Limited has commenced work and currently has a seismic vessel on location in its contract area to acquire approximately 2,600 square kilometers of 3D seismic data which exceeds the 1,500 square kilometers negotiated in the Petroleum Agreement",

Interestingly, the Majority Leader in Parliament, Hon. Cletus Avoka reportedly said "Procedurally, if Parliament takes a decision on a matter, particularly ratifying an agreement, and later on there are lapses in that agreement, the Minister cannot arbitrarily arrogate to himself the authority to abrogate the agreement." However, Parliament did not do anything about this. Whilst we do not fault government for ensuring that Ghana's laws are protected however minor the legal defects may be, we equally think that the national interest and not self-interest should guide all such decisions. There are suggestions that this action was taken because another company felt it deserved the block but was denied. Therefore, was this decision to abrogate the Agreement without Parliament's involvement induced by self-interest or the national interest?

AGM Petroleum Ghana Limited

Continuing, Dr Adam noted that what is worrying is the complex ownership structure of AGM. AGM Petroleum Ghana is 100% owned by AGM Gibraltar registered in a tax haven. AGR Energy, Minexco OGG and MED Songhai Developers own AGM Gibraltar. Minexco OGG is also registered in Gibraltar and is owned by Minexco Petroleum and WA Natural resources also registered in Gibraltar. Minexco Petroleum is also owned by Minexco Group. On the other hand, AGR Energy is a subsidiary of AGR Group, which is also a subsidiary of Altor. Very confusing ownership structure in deed.

Also curious is the fact that the area was granted to AGM under fiscal terms not different from the previously abrogated contract under Aker ASA in spite of the 3D Seismic work carried out on the area and for which the work obligations on the area were greatly enhanced. The fiscal terms include oil royalty of 10%, gas royalty of 5%, initial participating interest of 10%, and additional participating interest of 15%; and corporate tax of 35%. These terms are not different from the previous contract with AKER ASA on the same block in spite of the significant reduction in the risk profile on the block. The abrogation of the contract with Aker ASA and the subsequent award of same area to AGM without favorable variations in the fiscal terms raise more questions that demand answers.

Is it $15 million or $ 23 million to GNPC?

Another area of concern is the Government announcement that Kosmos had paid $15 million as fine for data disputes and the spilling of 706 barrels of toxic mud. However, it turned out that kosmos paid more than announced, stating in its 2011 Annual Report that "as part of such agreement and with respect to one particular issue, we (Kosmos) agreed to pay GNPC $8 million upon signing the settlement agreement and $15 million upon the first to occur of certain liquidity events, including the successful completion of our IPO". Thus, the company paid a total of $23 million.

Kosmos also showed that contrary to government's announcement that the $15 million was for both the data and spill disputes; the payment was indeed for one of the disputes. There were five disputes between kosmos and government including "disagreements over sharing information with prospective purchasers of our interests, pledging our interests to finance our development activities, the failure to approve the proposed sale of our Ghanaian assets and assertions that could be read to give rise to taxes payable under the

Ghanaian Tax Law in connection with this offering". It is worth noting that a Committee set up by the Ministry of Environment had earlier imposed a fine of $25 million on kosmos as penalty for the spill of mud. All these leaves Ghanaians with many questions than answers. "**We demand answers from Government and GNPC on the exact amount of fines paid by Kosmos; and whether the fine was in respect of the data and spillage as announced by Government or covering only one dispute as reported by Kosmos?**

Source: Seibik Bugri