

ATTACHMENT 5

Do Not Pass The Petroleum Exploration And Production Bill...

By Dr. Raymond Akongburo Atuguba

The Petroleum Bill currently being rushed through Parliament is one of the worst things that could happen to Ghana at this point in time. Unless Parliament takes very drastic steps now to stall the passage of the Bill, Ghana would lose a historic opportunity to end the predatory and practically terroristic attacks on our Policy Space; stop the pillage of our natural resources; stabilise our macro-economy once and for all; and realize the benefits of real, genuine and productive livelihoods, good healthcare, happy and secure families, and boundless opportunities for all.

Since the discovery of oil in commercial quantities, Ghana has adopted the Royalty-Tax System (re-shaped into what is called the "Ghana Hybrid System") as the mechanism for benefitting from her oil resources. This system is skewed towards the collection of taxes from oil companies. All progressive "Third World" Developing Countries with Oil and Gas reserves are moving away from this predatory system, not least because empirical evidence and experience have established that it is near impossible for countries that cannot collect taxes from petty traders living in-country, to collect the requisite taxes from multinational oil companies with complicated and tax evading and tax avoiding structures and systems. Yet it is this discredited system that is contained in the Petroleum Bill currently before our Parliament.

Currently before Parliament are other very critical Bills. These deal with managing the governmental transition after the 2016 elections; the right to information; property rights of spouses; and many others crying for attention, some for up to 10 years. Yet, Parliament has prioritised over these the Petroleum Bill that was re-laid in Parliament last month. Already, Parliament has done for this Bill the first reading; referred it to the Committee on Mines and Energy; had the Committee on Mines and Energy meet severally over the Bill; met stakeholders over the Bill; completed a report on the Bill; laid the report before the entire Parliament; had Parliament accept the report; undertaken the second reading; held winnowing sessions on the Bill in order to streamline the many amendments proposed; and started the Consideration Stage for the Bill leading up to the Third and final Reading and Passage of the Bill into law! Actually, but for a hitch or two, the Bill could have been passed into law last week! How efficient of Parliament.

The Principal reason why Parliament is in a mad rush to pass the Petroleum Bill, actively urged on by mostly foreign interests, and supported by their local agents, is because they do not want to risk having to do an in-depth consideration of three (3) sets of public challenges that are coming up whilst the Bill is festering in Parliament.

First, there is a real sense that individual members of Parliament, deep down their hearts, are opposed to the Bill. MPs have previously proposed amendments to literally every substantive provision in the Bill, a very unusual scenario in Parliament. When the Bill was first laid, over 100 amendments were proposed, affecting all substantive clauses. Even after it was withdrawn, reworked and re-laid recently, 45 new amendments were proposed by MPs. When amendments are this many it is indicative of a tacit rejection of the Bill by Parliament. No wonder the Bill had to be withdrawn some two times after many years on the burner and finally re-laid in Parliament with some cosmetic changes, which changes in most cases greatly exacerbated the bad conditions of the Bills that were withdrawn in the first place.

The reason why the Bill still faces about 50 proposed amendments is simple: the reworking of the Bill in its 2016 re-incarnation did not address the policy change that is mandated by the full effect of the array of amendments proposed by MPs themselves and the requirements of existing laws, not to mention those of Think Tanks and CSOs.

The second reason why the Petroleum Bill is being rushed through Parliament is that the Executive and Parliament do not want to be confronted with the set of critical principles in the report of the Constitution Review Commission and the Government White Paper that are meant to ensure that Ghana's natural resources actually benefit Ghanaians and that, going forward, those resources are treated in a manner that aids our developmental march forward.

After many years of research, country-wide consultations, diaspora consultations, consultations with Parliament itself, and international comparative analyses, the Commission teased out these cardinal principles which were accepted by government in a White Paper. It is, therefore, policy incongruity for the Executive and Parliament to completely ignore those principles in its consideration of the Petroleum Bill.

Third and finally, Parliament is rushing the Bill because she does not seem to want to do what it must do for Ghana, for us, for our children, and for our children's children, to the third and fourth generations and forever, that is, adopt for Ghana the Production Sharing formula for the distribution of Oil revenues and benefits. Simply, the Production Sharing formula operates along the lines of share cropping in agriculture, where the owner of the land grants a farmer the right to grow crops on his or her land, and shares in the proceeds with the farmer according to agreed proportions after the harvest. As the name implies, Production Sharing focuses on the sharing of the output of Oil and Gas produced in agreed proportions between the oil companies and Ghana.

If Ghana had adopted this formula for the recent oil find, she would have earned over US \$9 billion from her Oil resources between 2010-2015, representing 60% of total production revenue of over US \$15 billion. Compare this to the paltry US \$3 billion earned over the same period, representing 19.4% of total production revenue. This is the point GIGS, joined by the FTOS-PSA Ghana Campaign, have been making to the Committee for several years. Sadly, Parliament has been fed, and is in turn feeding the public with other figures and arguments to the effect that the cash receipts under the so-called "Ghana Hybrid System" and under Production Sharing are the same. This is absolutely not true.

In this regard, we need to pose a few questions to Parliament:

1. Are they talking of mere cash receipts or the monetary value of all incomes and benefits that accrue to oil companies and their mother countries on the one hand, and to Ghana on the other?
2. Do the cost of production figures they have been fed take adequate account of inflated prices and especially sophisticated transfer pricing mechanisms used by the oil companies?
3. Have the figures been discounted for political, economic and social costs of drilling oil in commercial quantities in Ghana?

From the analyses above, if we had adopted the Production Sharing mechanism, the current government would not have needed to contract so many loans to finance development projects. In fact, all the financing for all the development projects Ghana has undertaken in the last few years would have come from oil resources, even with the recent slump in oil prices, effectively weaning Ghana of development aid and marauding financiers.

The above fact is what is so scary to many who want the current Bill passed into law. They cannot imagine and cannot live with a Ghana which is truly independent of loans, the IMF, the World Bank, Development Partners and the predatory and terroristic attacks on Ghana's policy space that comes with them.

The policy of Production Sharing is the thing now! All serious and progressive countries, and even some not-too-serious and progressive ones have opted or are opting for Production Sharing. Togo, Sierra-Leone, Liberia, Cote d'Ivoire, Senegal, Republic of Benin, Niger, Mauritania, Uganda, Kenya, Tanzania, Madagascar, Eritrea, Somaliland and South Sudan - have all opted for Production Sharing, following in the footsteps of the older oil producing countries: Nigeria, Angola, Libya, Egypt, Gabon, Chad and others.

We hear that the Consideration Stage of the Bill is now scheduled for October this year. Before that date, we will work to produce a detailed brief for distribution to all MPs as to why they must use this opportunity to save Ghana by writing the Production Sharing mechanism into the Petroleum Bill or in the alternative, not pass the current Bill.

Our Dear MPs...

Listen to your hearts...

Do not listen to your heads, chests, stomachs, hands, feet...

And do the right thing for yourselves, for your children and for Ghana....

Otherwise we will be constrained to vote you out...

We need every Ghanaian to commit today that any MP who votes in favour of the current monstrous and unprogressive Petroleum Bill in Parliament will not be returned to Parliament come 7th November or 7th December, and definitely come 7th January.

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ATTACHMENT 6

The modern conspiracy against Ghanaians

By Solomon Kwawukume

PETROLEUM EXPLORATION AND PRODUCTION LAW (2016) ACT 919

The Modern Conspiracy Against Ghanaians: The Need For Review And Intervention By The Supreme Court

"Imagine what Africa will look like when it has fully tapped into its potential', he said citing opportunities in agriculture, manufacturing and intra-African trade.

"But Africa and its partners will miss the opportunity to transform the lives of future as well as present generations if they carry on with business as usual....Tax avoidance and opaque business practices block Africa's extractives sector too", said Mr. Kofi Annan. He was upbeat about prospects for Africa's resource-rich countries, adding, "Africa's natural resources wealth rights belongs to the continent's citizens, but these citizens are being robbed of its benefits by revenue diversion, corruption, jobless growth and rising inequality'," (Kofi Annan , Geneva, September, 2013).

Dr. Peter Eigen, the founder of Transparency International observed that the World Bank and Western Governments do not see anything wrong with the multinational companies engaged in extractive industries paying tens of millions of dollars into private accounts overseas to secure bad agreements, contracts and laws in their favor, (DW TV Journal Interview, 31st December, 2013).

In a Paper titled from "Concession to Service Contract" by Ernest E. Smith in Tulsa, Law Review Vol. 27, Issue 4, International Energy Law Symposium 1993, Modern Concession (Hybrid System) Contracts are characterized and subject to undue influences and corruption. That is exactly what is happening in Ghana as stated categorically by Dr. Adam Amin, Executive Director of ACEP, in a presentation to the US Congress Sub-Committee on Africa, Global Health, Global Human Rights and International Organization, on 18th July, 2013. Reported Dr. Amin:

"...I have already mentioned the issue of bad deals in the oil and mining industries. Some of these bad deals have already been producing resources and the United States like other importing countries is consuming oil from some of these bad contracts. This places an important responsibility on the United States to lead by example in ensuring that oil and minerals from countries that promote questionable contracts tinted with corruption are not patronized..."

It is surprising, painful, sad and shameful the Parliament of Ghana, the Star of Africa, has passed an exploitative, predatory and obnoxious law, Act 919, to legalize corruption and perpetuate the robbery of Ghanaians of their sovereign wealth rights in the name of attracting investment, the very thing Mr.

Kofi Annan had complained about.

Without mincing words, we know that the World Bank, Oxfam America and others were actively behind the passage of the Petroleum Exploration and Production Law (ACT 919) to rob Ghanaians of our oil wealth in the name of attracting investment in favour of Western vested interests and their local patrons.

We are not against investments nor do we think Ghanaians expect favours from any oil company. We believe that Ghanaians expect and stand for ethical investments governed by fairness and equity in sharing revenue from sovereign Ghana natural resources. That should be the basis of our national development and transformation that Kofi Annan highlights above.

OIL DISCOVERY

As is well known, before the discovery of oil and gas in Ghana, the nation had been blessed with a number of other extractive natural resources in the form of gold, diamond, bauxite, manganese and others. In respect of gold for example, it has been mined and have left the shores of Ghana for over 500 years. However, in terms of visible, concrete returns to the nation's development as well as its socio-economic benefits, no one can dispute the fact that not much has been achieved. The evidence is visible for all to see. Take a trip to Obuasi and see whether Obuasi looks anything like Johannesburg, or whether Akwatia looks anything like Kimberley, South Africa.

Through providence, the discovery of oil and gas in commercial quantity has come at an opportune time when Ghana most needs injection and, indeed, a booster, into the nation's general welfare and socio-economic development. The announcement of the discovery in 2007 sent expectations by Ghanaians high through the roofs all over the land. However, after 6 years, the general consensus of public opinion on the operations of the oil and gas industry in Ghana has so far been negative. The euphoria and expectation of the whole nation which greeted the announcement of the discovery has flattened to the grounds because of the current economic hardships and difficulties Ghanaians are facing.

After 6 years, Oil and Gas production in Ghana has not been a development, economic and social mobility multiplier for Ghanaians.

Upon careful study and coordination with several interested parties, we have taken issue with the oil contract regimes, the conditionality under which the oil companies are operating, and the fact that the expected oil revenue inflows to Ghanaians are not forthcoming as Ghanaians were made to believe and expect.

For example, before production begun, regional workshops were held in the 10 regional capitals soliciting views from Ghanaians as to how the first US\$5 billion for the first 5 years would be spent.

Six years down the line, Ghana is not yet close to earning US\$4 billion but total silence surrounds this fiasco.

In fact, as at 30th September, 2016, Ghana had earned approximately US\$3.320 billion, representing 19.76% of total oil revenue of US\$16,803,359,555, far below the 42% "minimum government take" recommended by the US Government Accountability Office (GAO). 42% is the least expected to accrue to the host country from total production revenue for allowing sovereign oil and gas resources to be exploited in partnership with foreign oil companies. Ghana earned US\$9,302,806 from gas within the same period making a total of US\$3,329,041,243.

How did Ghana reach this sorry state of affairs?

ROYALTY TAX/HYBRID SYSTEM

We have determined that the prevailing hybrid system under which the oil companies are operating in Ghana is the cause of this short-fall in oil revenues to Ghana and consequent abysmal situation from the perspective of Ghanaians.

GIGS and the Fair-Trade Oil Share-GH PSA/Campaign and their supporters long ago observed that the Royalty System was not in the best interest of the people of Ghana, for Jubilee Oil Field, if only for lack of use by wisely managed countries. Now, the Royalty System has been transformed into the so-called Hybrid System by Act 919, still not in the best interest of the people of Ghana. The Hybrid System is skewed towards collection of taxes due from the Foreign Oil Companies, a great impossibility, as noted by the Auditor-General.

PRODUCTION SHARING AGREEMENT

The framework for managing the Upstream Petroleum Industry in Ghana before the discovery of oil in commercial quantities was established and given legal backing by two main statutes, PNDC Law 64 which established GNPC and the Petroleum Exploration and Production Law, PNDC Law 84.

The basis of these two laws being Production Sharing Agreement (PSA), the laws were crafted and modeled to represent the most progressive, equitable and fair fiscal regime for sharing petroleum revenue in this 21st century between host government and the foreign oil company (contractor).

Records available at Oxford Institute of Energy Studies and Barrow Company Inc. indicated earlier agreements entered into by Ghana in the 1990's based on these Laws were Production Sharing Agreements.

However, contrary to existing statutes, all agreements and contracts entered into by our Governments and approved by Parliament - our Law makers – from the 2000s have been modeled after the Royalty

Tax/Hybrid System Laws which, needless to point out, were not in our statute books at the time those agreements and contracts were signed.

As such, the signed Royalty Tax/Hybrid System agreements and contracts therefore do not conform with the tenets of the two PNDC Laws. In our informed opinion, these agreements and contracts are illegal and ultra vires because they are at variance with the existing PNDC Laws, which were still on the books. The fact that Royalty Tax/Hybrid System contracts have been approved by Parliamentarians does not make them legal.

The Executive and Parliament have erred in law.

The passage of Act 919 is to give retrospective legal backing to these illegal agreements and contracts tainted with corruption as stated emphatically by Dr. Adam Amin in his message to the Sub-Committee of the US Congress on 18th July, 2013.

The practice of law and jurisprudence frown upon, abhor, and resist this illegal practice and conduct that puts Ghanaian citizens at enormous developmental disadvantage merely for the benefit of foreign oil companies and their political patrons in Ghana.

BENEFITS OF PRODUCTION SHARING AGREEMENT.

If Ghana had adopted the Production Sharing Agreement without participating which the PSA allows, Ghanaians, sovereign owners of the oil resources, would have earned US\$9.608 billion as at 31st December, 2015, instead of the US\$3.112 billion earned under the Hybrid System.

As at 30th September, 2016, Ghanaians should have earned US\$10.103 billion representing 61% of total revenue accrued instead of the US\$3.320 billion under the Hybrid system.

LOSSES FOR NOT ADOPTING PSA

As at 30th September, 2016, Ghanaians suffered a loss of US\$6.784 billion in oil revenue alone under the Ghana Hybrid System, now consolidated by Act 919. Data on gas was not available in the public domain to enable any meaningful assessment. Ghanaians would be losing more revenue in the region of about US\$7 billion plus more within the next five years under the Ghana Hybrid System. This would bring the total losses to over US\$13 billion in 10 years, per our estimates, considering other projects are coming on stream (TEN, Sankofa, etc.).

REMEDIAL ACTIONS TAKEN

Having realized these shortcomings in the Hybrid System, the illegalities and the robbery of our natural resources in the name of attracting investments and long before the Jubilee Fields started

production and before the passage of Act 919 on 4th August, 2016, GIGS and the Fair-Trade Oil Share PSA/Campaign supporters have drawn the attention of the Presidency and Parliament and the general public to these abysmal situations through several letters and petitions but no positive response. They went ahead and adopted the obnoxious Hybrid System which, in our estimation, is even worse than the best of the old Royalty or Concession System

We had drawn the attention of the Speaker of Parliament, Committee Leadership and all members of the House through periodic publications and petitions made available to them over the years but no positive response.

We have equally brought these to the notice and attention of the following: The Minister of Finance, officials of the Ministry of Petroleum, Petroleum Commission, the Council of State, The National House of Chiefs, the Steering Committee and the Governing Council of the Trades Union Congress, the Christian Council of Ghana, the Muslim Council of Ghana, the Catholic Bishops' Conference, the Ghana Journalist Association, Asantehene, Ex-Presidents Rawlings and Kufuor and other State Institutions through publications, letters, organized workshops and lectures requesting all the above mentioned bodies and individuals for their interventions to no avail.

Lastly, GIGS and PSA Campaigners on three different occasions, 6th July, 2015, 15th July, 2015 in Parliament House and 20th February, 2016 at Aqua Safari at Ada made an in-depth presentation to the Select Committee on Mines and Energy, Petroleum Commission and Ministry of Petroleum to make them understand and appreciate the fact that the Hybrid System can never be superior to the PSA as they claimed and that the system would not be in the best interest of Ghanaians. We were told in the face that, notwithstanding our position and presentation the Select Committee would go ahead and recommend to Parliament the passage of the Ghana Hybrid System Law to our amazement. Just because some are getting 3-5% free shares in those contracts?

SUPREME COURT INTERVENTION AND SUPPORT

This very important national issue bordering on the economic survival, security and stability of our country Ghana, and having sought the intervention of all the above mentioned bodies and entities over the years to no avail, GIGS and the Fair-Trade Oil Share Campaigners have decided to seek review, adjudication, and intervention by the Supreme Court of Ghana.

We are therefore appealing through the medium of this article to all Ghanaians wherever they might be on this Planet Earth, who mean well and care about the economic prosperity, stability and security of their beloved country Ghana to stand up, join and support us to pursue this very important national issue on behalf of the present as well as future generation of Ghanaians yet unborn to save them from economic bondage and servitude our Governments and political leaders have plunged us into.

We are equally appealing and calling upon Nana Akufo-Addo, the President-elect, not to enter into

any new Petroleum Agreements after assuming office on 7th January, 2017 under this exploitative and obnoxious Act 919 until a National Consensus is reached as to what Fiscal Regime or Arrangement Ghana should adopt to regulate the exploitation and production of our sovereign Ghana natural resources, the oil and gas.

The whole Upstream Oil Industry in Ghana needs a proper re-engineering and restructuring for the maximum benefit of Ghanaians. The present arrangement does not.

CONCLUSION

We conclude first with the following three quotations which vindicate and support our position.

First, we quote from Mr. Kwame Pianim's exchanges with a supporter of the PSA Campaign, a Ghanaian who resides in the USA, which has reached our hands.

"Let us be clear, what my position is. I am for the introduction of PSA. The fact that the Ghana System has been under adjustment from the royalty based system to some hybrid system should be evidence enough that it is inferior to a properly structured and implemented PSA". (Mr. Kwame Pianim is a member of the Petroleum Commission).

"Ghana's petroleum fiscal regime should be reformed to ensure maximum long-term revenue generation, even if the state is not fiscally dependent on oil revenue. The regime can also achieve greater take by increasing the state's share in production share agreements." (Sara Zedingle Ghebremusse, Faculty of Law Thesis, University of Toronto Canada, 2014).

"Unlike the concessionary system, where a sovereign nation often transfers its ownership of the resource to the licensee and mostly gets less than 25 percent of total revenue accrued, the PSA's mostly vest ownership on the state and could give a country over 50 percent of the accrued money", (Mr. Ben Dagadu, Deputy Minister of Petroleum, Graphic Business of Tuesday March 8th-March 14, 2016).

BOTTOMLINE: Adopting PSA with additional revenue accruing to Ghana, Government would have a lot more additional resources to undertake the massive infrastructural development the country and its people need. Provision of portable water to every community, construction of all-weather motorable roads, provision of class rooms and educational facilities, affordable housing accommodations, extensions of health facilities, and all other things that would positively impact on the social wellbeing of the Ghanaian, reducing pressure on Government and administration themselves.

The time for our economic liberation is here and we MUST grasp it, instead of pawning present and future generations yet unborn in the name of attracting investment under questionable and clearly wrong notions.

We live in the midst of plenty as a Nation, but we have become a beggar Nation with a bowl in hand.....

Act 919 is a conspiracy hatched against the masses of Ghanaians from the corridors of Western Powers in collaboration with few Ghanaian elite technocrats and politicians. It is a 419 Royalty scheme to rob Ghanaians of their sovereign oil and gas wealth in the name of investment, that, like gold, diamonds and other minerals, will never materialize unless Ghanaians receive a Fair Share to begin with.

Senior Researcher Officer (GIGS)

National Coordinator (FTOS-GH)

LIST OF COUNTRIES PRODUCING OIL AND GAS UNDER OR SIGNED UNTO
PRODUCTION SHARING AGREEMENT IN THE WORLD.

● AFRICA

1. Algeria
2. Angola
3. Republic of Benin
4. Cameroon
5. Chad
6. Cote D'Ivoire
7. Democratic Republic of Congo
8. Egypt
9. Equatorial Guinea
10. Eritrea
11. Ethiopia
12. Gabon
13. Guinea
14. Kenya
15. Liberia
16. Libya
17. Madagascar
18. Mali
19. Mauritania
20. Mozambique
21. Morocco
22. Niger
23. Nigeria
24. Senegal
25. Sudan
26. South Sudan
27. Somaliland
28. Sierra Leone
29. Namibia
30. Tanzania
31. Togo
32. Uganda
33. Zaire
34. Zambia

● ASIA & AUSTRALASIA

1. Bangladesh
2. China
3. Indonesia
4. Laos
5. Malaysia
6. Mongolia
7. Myanmar
8. Nepal
9. Philippines
10. Sri Lanka
11. Timor Cap
12. Vietnam

● CENTRAL AMERICA &
CARIBBEAN

1. Antigua
2. Belize
3. Cuba
4. Guatemala
5. Haiti
6. Honduras
7. Netherlands Antilles
8. Trinidad & Tobago

● SOUTH AMERICA

1. Argentina
2. Bolivia
3. Brazil
4. Chile
5. Ecuador
6. Peru
7. Uruguay

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• **EASTERN EUROPE**

1. Albania
2. Azerbaijan
3. Bulgaria
4. Croatia
5. Georgia
6. Kazakhstan
7. Kyrgyzstan
8. Romania
9. Russia
10. Serbia
11. Turkmenistan
12. Ukraine

• **EUROPE**

1. Malta

MIDDLE EAST

1. Bahrain
2. Iraq
3. Jordan
4. Oman
5. Qatar
6. Syria
7. Yemen

Total number of countries: 81


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Executive Director

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Fair-Trade Oil Share – Gh
Revenues Lost Vs. Opportunities

\$6,000,000,000+
Socio-Economic Opportunities

GIGS EUI PROCE LONDON UNA-Ghana ACOJPR GHANAZERO.COM Your's Page 11

QUESTION?

- Which of these two Contract types do you think Ghana should adopt to derive the maximum benefits from our Oil and Gas resources?
- Thank you for your attention
- God Bless Our Home Land Ghana.

Presented By: SOLOMON KWAWUKUME on behalf of Ghana Institute of Governance and Security (GIGS) and Fair-Trade Oil Share –GH PSA Campaign

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