REVIEW OF ENERGY POLICY, PETROLEUM (EXPLORATION AND PRODUCTION) BILL , PETROLEUM REVENUE MANAGEMENT BILL, AND LOCAL CONTENT AND LOCAL PARTICIPATION IN PETROLEUM CTIVITIES POLICY FRAMEWORK FOR THEIR GENDA IMPLICATIONS

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For

The Network for Women's Rights in Ghana (NETRIGHT)

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1.0 INTRODUCTION

The recent discovery of significant oil and gas accumulation in the territorial waters of Ghana, offshore Western Region by Kosmos Energy Ghana and Tullow Ghana Limited (Tullow), in the Tano-Cape Three Points Basin, has generated a lot of international and local public interest and discussions. Discussions have been centred on the adequacy of the current Policy, Legislative and Regulatory Frameworks, to ensure environmentally sound exploitation of the resources for optimal national benefits and meeting the expectations of all social groups in the country. Othes have touched on the mandate of the State Oil Company (GNPC) with the recent oil discoveries and the likely structure and content of Petroleum agreements, Contracts and negotiations on sharing of the resources.

1.1 Assignment & Terms of Reference

As part of efforts to ensure informed civil society contribution towards the development of oil and gas policy for the country, the Network on Women's Rights Ghana has commissioned a review of proposed policy statement and Bills and to analyse the gender dimensions of these policies and Bills to enable NETRIGHT develop the necessary advocacy to ensure that the frameworks promote women's participation in the petroleum sector and ensure that women are not discriminated against in the implementation of these policies and laws. Thus study will review:

- Petroleum (Exploration and Production) Bill
- The Petroleum Revenue Management Bill;
- The Energy Policy
- The final Draft Local Content and Local Participation in Petroleum Activities Policy Framework and

The review will result in recommendations on optimal practises to be adopted that will enhance efforts aimed at guaranteeing that the new resource to play a pivotal role in the country's national development including ensuring inter-generational equity. The report will particularly flag areas of gender concerns and how such clauses could be strengthened or suggest possible additions and deletions that should be made to increase their gender balance.

The recommendations from this exercise will serve as NETRIGHT and partners' main input into the ongoing exercise towards the final enactment of final national oil and gas policies and laws for Ghana.

1.2 Methodology & Structure of the Report

To provide historical coherence between the new frameworks and existing legislation in the oil sector, an overview of existing legislation is undertaken and followed by a review of two bills before Parliament, the draft energy policy and the Local content and local participation in petroleum activities policy framework. The bills before

Parliament are the Petroleum (exploration and Production) and Petroleum Revenue Management Bills. While the key existing petroleum legislations that an overview has been provided include:

- Ghana National Petroleum Corporation Law, 1983, PNDC Law 64;
- The Petroleum (E & P) Law 1984, PNDC Law 1984;
- Petroleum Income Tax Law 1987;
- Model Petroleum Agreement, 2000 and the Equatorial Guinea Petroleum law, No 8/2006

In the specific of case The Petroleum (E & P) Law 1984, PNDC Law 1984 which is the subject for repeal when the new Petroleum (Exploration and Production) Act is passed, the review seeks also examine whether or not relevant portions of this law that are effective management of the petroleum sector have been inadvertently expunged.

Structure of the Report

The report is divided into four sections covering an introduction of the assignment, a review of the existing petroleum legislation, review of Bills and policies with comments of relevant clauses that need strengthening, where necessary. These comments are pulled out together as recommendations for possible considerations by Parliament in their discussion of these Bills. An overview of gender concerns and how they or have not been addressed in these frameworks have also be presented. A list of the bills and policy drafts are annexed as Appendix 1.

2. OVERVIEW OF EXISTING LEGAL FRAMEWORK

Currently the upstream petroleum industry in the country is governed by legislations that span a period of nearly three decades. These laws include the Ghana National Petroleum Corporation Act, 1983 (P.N.D.C.L 64), the Petroleum Exploration and Production Act, 1984 (P.N.D.C.L, 84), the Petroleum Income Tax Act, 1987 (P.N.D.C.L 188), the Internal Revenue Act 2000, the Ghana National Petroleum Corporation Petroleum Model Agreement, the Ghana Shipping Act, 2003 and the Maritime Security Act, 2004 (Act 675).

The GNPC Law comprises of 29 sections. The law establishes the GNPC as a corporate body with perpetual succession that has the authority to hold and dispose of property and also enter into contracts or transactions. It can also sue and be sued and where there is any hindrance to the acquisition by the Corporation of any property, the said property could be acquired under the State Property and Contracts Act. The objects of GNPC are presented as to undertake the exploration, development, production and disposal of petroleum and the Corporation is therefore mandated to:

(a) promote the exploration and orderly and planned development of the petroleum resources of Ghana;

(b) ensure that Ghana obtains the greatest possible benefits from the development of its petroleum resources;
(c) obtain the effective transfer to Ghana of appropriate technology relating to petroleum operations;
(d) ensure the training of citizens of Ghana and the development of national capabilities in all aspects of petroleum; and
(e) ensure that petroleum operations are conducted in such manner as to prevent adverse effects on the environment, resources and people of Ghana".

Section 3(b) permits the GNPC to enter into contracts and agreements with individual firms within and internationally to purchase or own shares. Other forms of acquiring assets are spelt out in sub-section(c) where the company can purchase, lease establish, complete, expand, repair and manage such facilities, plants installation linked to exploration, development production and disposal of petroleum. Furthermore, subsection (e) and (f) defines the property and intellectual rights of the corporation and its access to information concerning inventions, designs and processes related to the petroleum industry.

The Corporation shall conduct its affairs on sound Commercial lines and make sure that on an annual basis it generates revenues that are sufficient to produce fair value for its assets; for reasonable rate of returns.

Petroleum Income Tax Law, 1987 (PNDCL 188, regulates the imposition of tax and ascertainment of chargeable income. The Commissioner for IRS is responsible for the assessment and collection of the tax chargeable under the provisions of the Law. Payment of such tax is to be paid into the account of the Internal Revenue Service designated for such purposes.

3. REVIEW OF THE BILLS PRESENTED TO PARLIAMENT

Two bills, the Petroleum (Exploration and Production) Bill and the Petroleum Revenue management Bill have been presented to parliament for consideration. A third draft bill, the Petroleum Regulatory Authority Bill is yet to be submitted to Parliament.

3.1 PETROLEUM (EXPLORATION AND PRODUCTION) BILL, 2010

The purpose of this bill is to revise the Petroleum (Exploration and Production) Act, 1984, PNDCL. 84 to tighten up the existing legal framework taking into account lessons learnt over the years and modern trends to provide a robust framework for the sector for the exploration, development and production of petroleum. The Bill is also to create the enabling environment for increased private sector participation and investment in the petroleum sector to strengthen the regulatory framework for healthy and quality assurance.

The Petroleum Exploration and Production Bill, 2010 is made up of seven sections, namely: Petroleum rights (clauses 1-3), Regulation of petroleum operations (clauses 4-17), Corporation petroleum operations (clause 18), Contract petroleum operations

(clause 19-28), Rights and obligations of contractors and subcontractors (clauses 29-39), Fiscal provision (clauses 40- 44) and Miscellaneous provisions (clauses 45-51).

SECTION 1: PETROLEUM RIGHTS

The Bill opens with the recognition that all petroleum existing in its natural state within the jurisdiction of Ghana is the property of the Republic of Ghana and vested in the President on behave of and in trust for the people. Clause 2 is on *Exploration Development and Production.* It makes reference to the sole authority of the Ghana National Petroleum Corporation established by the Ghana National Petroleum Law, 1983 (PNDC L64) to engage in the exploration, development production on behalf of the state; or enter into an agreement with other corporate bodies for same activities. Others persons who intend to explore, develop or produce petroleum must do so under the terms of a petroleum agreement entered into between the person, the Republic and the GNPC and in accordance with the regulations. While clause 3 emphasis the ownership of petroleum data and information obtained by contractors or subcontractors as a result of petroleum operations. These shall be the property of the state.

SECTION 2: REGULATION OF PETROLEUM
This section vests responsibility for regulation of petroleum operations in the authority of the Minister responsible for Petroleum.
Comment 1*: *In order to minimise excesses of an individual's discretion, the regulation of the sector should be vested in an Authority rather than the Minister.
Clause 5 Asserts the authority of the Minister responsible for Petroleum or the **Authority** or any person authorised by them to inspect petroleum operations to ensure that they are carried out in accordance with the provisions of this Act to be and in accordance with the terms and conditions of any applicable petroleum agreement or petroleum subcontract. Clause 5 subsections 2 a-to e define the activities that any person authorised to conduct inspections can undertake. Subsection 3 provides that the contractor or subcontractor or the Corporation shall provide the authorised person the needed assistance to perform such functions. Clauses 6 to 17 are dealing with request for information by the Minister and the Authority from contractors and subcontractors, environmental principles, Management of blocks, unitisation, joint development zones, interference with lawful activities and compensation, notification of petroleum discovery and appraisal, development and decommissioning plans, annual and long term production programmes, restoration of affected lands and decommissioning, and Decommissioning Fund.

Clause 6 has three subsections. Subsections 1-2 state that (1) "Any operations under a petroleum agreement or other authority granted under this Act shall be carried out in accordance with the regulations and the best international practices in the exploration and production of petroleum
(2) The practices shall include reasonable steps to:

a) Prevent waste of petroleum in order to optimise the ultimate recovery of petroleum in order to optimise the ultimate recovery of petroleum from a petroleum field;

b) Secure the health, safety and welfare of persons engaged in these operations; and

c) Secure the health, safety and welfare of communities and the environment in the operational area.

Comment 2: Clause 6 needed to make provisions for the defence of labour rights. This is particularly important in the light of already worrying reports of abuse of workers' rights on the oil platform. It is suggested that an addition subsection, subsection d) be added and should read: The licensee shall ensure that the circumstances permit organized labour activity to take place among its employees and the personnel of contractors and sub-contractors in accordance with the Labour Act, 2003 (Act 651).

Clause 9 on environmental principles requires that an entity undertaking petroleum activities should take into account and give effect to the environmental principles as prescribed in the Environmental Protection Agency Act, 1994 (Act 490), the subsidiary legislation under that Act and other relevant legislation.

Comment 3: While clause 6 is adequate, f**or point of emphasis it might be important to specify some of the most relevant legislation – Water Resources, Forestry, Fisheries, Maritime Security, etc**)

Comment 4: It is suggested that for further emphasis, a specific subsection should introduced under clause 9 provided for as follows: a petroleum exploration and production license shall not be granted to an applicant unless an environmental permit is obtained from the Environmental Protection Agency.

Comment 5: Clause 9-15 is appropriate and sufficient; however, there is need to examine the Authority responsible for regulation. Should the authority be the Minister for Petroleum or the Petroleum Regulatory Authority? I think the Authority should have the lead mandate here.

Clause 11 addresses joint development zone in connection with the apportionment of petroleum accumulation where a petroleum field extends onto the land or the continental shelf of another country.

Comment 6: Clause 11 does not adequately deal with cross border petrol accumulations and therefore this needs more clarity and boldness to deal with such cases. As an addendum, the section should consider fields across territorial borders and how to deal with such situations. For example, Nigeria and Principe Sao Thome have joint field development agreements and this could be possible between Ghana and its neighbours. The issue of unitization agreement is well captured in the Hydrocarbon Law of Equatorial Guinea No 8/2000 and reference could be made to that for deepening section clause 11. Clarity and adequacy of this clause is particularly important to in the light of recent perceptions from Cote D'Ivoire that the petroleum system hosting the Jubilee transcends Ghana's territory.

Clause 17 states inter alia "(1) The Corporation or Contractor shall establish a Decommissioning Fund on the date and in the form that may be specified in the development plan but in any event not later than ninety days after the approval of a development plan by the Minister.

(2) The decommissioning fund shall be in an amount sufficient to cover the full cost of decommissioning and the Corporation or Contractor shall make the annual payments prescribed or as provided in the petroleum agreement.
(3) Money shall not be disbursed from the decommissioning fund except in the amount paid in respect of expenditure incurred in relation to decommissioning in accordance with an approved decommissioning plan and to cost of the administration of the fund.

Comment 7: The provision for the establishment of a Decommissioning Fund is very commendable. Just like the provisions for reclamation bonds in the Environmental Regulations, LI 1652, and the fund should not be managed by the company. It should be set aside in an escrow account beyond the reach of both the State and the Company. The company can only claim it to the extent that the responsible authority is satisfied with decommissioning work. Non compliance means the company will forfeit the amount and that amount should be used to further the proper decommissioning of the area.

Comment 8: There is also the need for an Oil Spillage Response Fund to be managed by the Authority to be established. Licensees should be required to make contributions into this fund, which would be used to clean up oil spills resulting from their operations. I know new guidelines for environmental management of offshore petroleum put forward by the EPA has a proposal for such a fund, however, due to its importance and recent lessons from the Gulf of Mexico, it is instructive to include this provision in this fundamental law that should guide exploration and production of petroleum in the country.

SECTION3: CORPORATION PETROLEUM OPERATIONS

This addresses the Right of the Corporation over blocks in clause 18 (subsections 1-5). The section explains the rights of the Corporation when it conducts exploration on a standalone basis and also in association with a contractor under the terms of a petroleum agreement.

SECTION 4: CONTRACT PETROLEUM OPERATIONS

This section deals with validity of petroleum agreement in clause 19 (1-7); Contract area, clause 20, Terms of Petroleum agreement, clause 21(1-7), relinquishment of contract area, clause 22 (1-4), minimum work and expenditure obligations, clause 23 (1-2), production of natural gas, clause 24 (1-3), Participating interest, 25(a and b), Rights of first refusal clause 26, transfer of assets to the Corporation 27 (1-5), and Review of terms of conditions in clause 28.

Comment 9: From clause 19 (2) and beyond, the procedure for entry into a block is through direct entry via an application and if deemed to meet all the requirements desired by the Minister the applicant is allocated an Exploration and Production License. This provision while justified in time past, this approach is no longer tenable with the recent string of discoveries which has de-risked the country's deep sea oil and gas potential, particularly in the Western Basin. Also there is a mad rush by many oil and gas companies to take up blocks

in the open areas and farm-out deals for already occupied acreages. This certainly calls for more internationally competitive bidding to be introduced as against the previous direct entry method. It is believed that the bidding system would improve competition, minimise potential for favouritism, corruption, and introduce transparency in the award of contracts. Furthermore, the amount of competition from bidding would improve government's take in the form of enhanced signature bonuses, royalty and "additional oil entitlements".

Comment 10: Clause 21 (1- 4) on terms of petroleum agreement should provide for information disclosure. There should be specific additional subsection to address the issue of contract transparency

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Clause 28 on review of terms of conditions provides for a review of its terms at any time that a significant change occurs in the circumstances prevailing at the time of the entry into the agreement or the last review of the agreement.

Comment 11: The term "significant changes" use in clause 28 appears ambiguous and needs further clarification within the confines of industry practise. Significant changes should be defined to include dramatic price changes upwards or downwards, prolific discoveries, exotic fields and frontier issues.

SECTION 5: RIGHTS AND OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS.

This section is addressed by 11 clauses covering contractors and subcontractors in clause 29 (1-3), duty to exercise due diligence 30(1-2), data and information 31(1-5), guarantees, securities and indemnities 32 (1-4), employment and local content 33(1-4), technology transfer 34, incorporation of local company 35, non assignment of petroleum agreements 36, change of ownership 37, Health, safety and environment 38 (1-2), and domestic supply requirement 39 (1-3).

SECTION 6: FISCAL PROVISIONS

This section covers payment of royalties 40 (1-4), annual fees in respect of acreage 41 (1-2), tax including petroleum income tax and capital gain tax 42 (1-6), bonus payment 43, and additional oil entitlements 44.

Comment 12: There is the need to fix and retain royalty in the legislation with different rates for frontier, shallow and deep-water, so as to yield a minimum assured state take whilst also considering current reduced geological risk profile of the West Cape Three Point deep waters and also to promote exploration in frontier environments such as the inland Voltaian Basin..

Alternatively if the Module Petroleum Agreement is intended to be used to set the minimum fiscal rules then specific reference should be made to it. It is important to revisit the content of the Module Agreement to set acceptable minimum thresholds for taxes and tax incentives and then provide that under no circumstances should the fiscal terms of a petroleum agreement fall without thresholds set by the Module Petroleum Agreement.

SECTION 7: MISCELLANEOUS PROVISIONS
These include transactions between contractor and affiliates 45, auditing 46, offences and penalties 47 (1-2), interim role of the Ministry of Energy until the establishment of the Petroleum Regulatory Authority 48, Regulations 49, interpretation 50 and repeal and savings 51.

Comment 13: The Petroleum Regulatory Authority is very critical for good governance in the oil and gas sector and should be given strong and immediate priority.

3.2 PETROLEUM REVENUE AUTHORITY BILL

This Bill is to provide a framework to guide the efficient collection, allocation, and management of petroleum revenue for the benefit of current and future generations of Ghanaian and also to ensure that the overall management of petroleum revenue is based on sound fiscal policies that transcend political regimes. It is also to provide clear assignment of responsibilities from collection to final utilisation of petroleum within a transparent and accountable framework.

The Bill provides for regular revenue management audits, regular publication of receipts and disbursements, clear oversight mechanisms, auditing, transparency and reporting obligations to safeguard prudent management of petroleum revenue. It also establishes Petroleum Funds made up of the Heritage Fund and the Stabilisation Fund. The Heritage Fund is an 'endowment' intended to safeguard the long-term interest of Ghanaians and to sustain a reasonable level of development even after all the oil and gas resources have been exhausted. The Stabilisation Fund, or a rainy-day-fund, is intended to ensure a stable level of budgetary support from the petroleum revenue and in so doing, help to manage the potential short-term adverse effects on the economy of fluctuations in oil prices. It further provides guidelines for the investment of these funds. It also establishes an Investment Advisory Committee to advise the Minister of Finance and Economic Planning and to monitor the performance and management of the Ghana Petroleum Funds on Behave of the Minister.

The Bill envisages that the petroleum revenue must be integrated into the budget within a long-term fiscal and monetary policy framework that ensures that government spending of petroleum revenue takes into account the economy's absorptive capacity, the investment needs of the non-oil sector of the economy, as well as the need to sustain macroeconomic stability. For the purpose of tracking and transparency, the Bill establishes a Petroleum Account, which is a transitory account managed by the Bank of Ghana. The Bill makes great efforts to respond to the strong need for accountability and transparency. It sets out quantitative rules to guide the transparent movement of petroleum receipts from the Petroleum Account to the national budget, the Heritage and Stabilisation Funds. It makes provisions for withdrawals to support budget supplementation in the event of shortfalls but puts a ceiling on the amount that can be withdrawn. It defines the scope of confidentiality and establishes the Public Interest Accountability Committee and defines its functions.

The Bill is clustered into 9 sections with a total of 64 clauses. Section one deals with preliminary matters and consist of clause 1 to 6 while section two covering clause 7 to 9 provides for other petroleum receipts. Allocations and disbursements are provided for in

section 3 clause 10 to 25. Clause 26 to 30 deals with the management and investment of Ghana Petroleum Funds. The provisions for the Investment Advisory Committee are in clause 31 to 42. Clause 43 deals with encumbrances, auditing and reporting, clause 44 to 50 cover the audit of the petroleum reserves accounts clause 51 to 60 provides for accountability, transparency and public oversight while clause 61 to 64 deals with miscellaneous matters

SECTION 1: PRELIMINARY MATTERS

Under preliminary matters, issues relating to Application or purpose of the bill (clause 1), Establishment of Petroleum Account (clause 2), Payment into the Petroleum Account (clause 3), Payment with Petroleum in place of cash (clause 4), Prohibited use of Petroleum Account (clause 5) and Petroleum Account Receipts (clause 6) are addressed.

Clause 1 (1) reiterates the purpose of the Bill while 1(2) makes clear that where there is any conflict between the provisions of the Petroleum Revenue Management Bill and a)any other Act or Regulations or b) the terms of petroleum authorisation, on the collection, use and management of petroleum revenues, the provisions of this Bill shall prevail. Clause 2 (1) establishes a designated Petroleum Account at the Bank of Ghana to receive and disburse petroleum revenues received from upstream and midstream activities. Petroleum receipts will first have to be deposited in the Petroleum Account before being transferred to the budget and the Ghana Petroleum Funds. Clause 3 (1) mandates the Ghana Petroleum Revenue Authority to collect and account for petroleum revenue due the Republic from whatever source. Clause 3(2) stipulates that petroleum revenue assessed as due in each month shall be [aid by direct transfer into the Petroleum Account by fifteenth day of the ensuing month by the entities liable to make the payment. 3(3) prescribes penalty for entities defaulting in payment within the stipulated time. Clause 3(4) emphasises that the Petroleum Account shall not be considered part of the normal tax revenue pool and the Ghana Revenue Authority Act, 2009, (Act 791) will not apply it. Where a payment is made with petroleum instead of cash, clause 4(1-4) stipulates that US Dollar equivalent of the crude petroleum on the day it is received shall be reported and recognised as the payment for the crude oil by Ghana Petroleum Authority and the proceeds credited to the Petroleum Account within sixty days after the receipt of the crude petroleum. Allowable marketing cost shall however be reimbursed to the National Oil Company as approved by the Minister and charged to the Petroleum Account. Clause 5 prohibits the use of the Petroleum Account a) to provide credit to the government, public enterprise, private sector entities or any other person or entity, and b)as collateral for debts, guarantees, commitments or other liabilities of any other entity, while clause 6 (1a-e) define the streams of payments that constitute Petroleum Account Receipts as

a) Royalties from oil and gas, additional oil entitlements, surface rentals, initial carried interest, other receipts from a petroleum operations and from the sale or export of petroleum;
b) any amount received from direct or indirect participation of the government in petroleum operations;
c) corporate income taxes in cash from upstream and midstream petroleum companies;
d) any amount payable by the National Oil Company as corporate income tax, royalty, dividends, or any other amount due in accordance with the laws of Ghana; and

e) any amount received by government directly or indirectly from petroleum resources not covered by paragraphs *(a)* to (d) including where applicable, capital gains tax derived from the sale of ownership of exploration, development and production rights.

Comment 1: Mention has been made of and some duties ascribed to the Ghana Petroleum Revenue Authority. However this Bill does not establish that authority, its functions, membership and their composition. The Bill should establish the Ghana Petroleum Revenue Authority, functions and membership just as has been done for the Investment Advisory Committee (page 15-18) and the Public Interest Accountability Committees (page 23-26).

Comment 2: Although the provisions of clause 6 are adequate to address the absence of signature bonuses, given the possible relative size of signature bonuses. It is important to categorically, for point of emphasis list as among payments in 6 (1a). Indeed the listed payments should capture all payment streams specified in clause 40-44 of the Petroleum (Exploration and Production) Bill

SECTION 2: OTHER RECEIPTS

This section cover the State's participating interest (clause 7) Transparency and accountability of petroleum receipts (clause 8), and Management of the Petroleum Reserve Accounts Expenses (clause 9). Clause 7 (1) stipulates that revenue from the Republic's equity interest shall fully be paid into the Petroleum Account while 7(2) emphasises that the National Oil Company may make its claim for capitalisation, operation and other direct expenditures through normal national budgetary processes. Clause 8 requires that all records of petroleum receipts to be simultaneously published by the Minister in the *Gazette* and in at least two national daily newspapers, no more than thirty working days after the end of the applicable quarter for the purposes of transparency and accountability. Clause 8(2) states that information required to be made public shall also be published online on the website of the Ministry and on the website of Parliament effective the Publication Date. Clause 9 is on Management of o the petroleum Reserve Account expenses and requires the deduction reasonable management expenses from the petroleum receipts of the Petroleum Reserve Account by direct debt and that such deductions must be in accordance with the best international practices and as provided for in the Operations Management Agreement between the Minister of Finance and the Bank of Ghana.

Comment 3: The phrasing of 8(2) in its current form has the potential to subvert the quest for transparency and accountability in 8(1). This subsection should state information that would likely not be disclosed as required in 8(1).

SECTION 3: ALLOCATIONS AND DISBURSEMENTS

This section addresses the establishment of the Ghana Stabilisation Fund (clause 10), the Ghana Heritage Fund (clause 11) the Ghana Stabilisation Fund and the Ghana Heritage Fund inflows (clause 12), withdrawals from the Stabilisation and Heritage Funds (clauses 13 and 14), Finality of payments into the Petroleum Reserve Account (clause 15), Adjustment and reconciliation to the Petroleum Reserve Account (clause 16), Disbursement from the Petroleum Account (17), Benchmark Revenue (18),

Annual Budget Funding Amount (19), Transfers to the Consolidated Fund (20), Transfers to the Consolidated Fund when petroleum production ceases (21), Use of the Annual Budget Funding Amount (22), Statutory earmarking prohibited (23), Transfers to the Heritage and Stabilization Funds (24), and Transfers for exceptional purposes (25).

Clause 10 establishes the Ghana Stabilisation Fund the purpose of which is to cushion the impact on or sustained public expenditure capacity during periods of unanticipated revenue falls either caused by fall in petroleum prices or adverse production changes. Clause 11 Establishes the Ghana Heritage Fund to provide an endowment to support the welfare of future generations after the underground petroleum has been depleted. According to clause 12, the Ghana Stabilisation Fund and the Ghana Heritage Fund are collectively referred to as the Ghana Petroleum Fund and shall both receive excess petroleum revenue from the Petroleum Account as savings for the objects intended by the provisions of this Bill. Clause 13 addresses issues relating to withdrawals from the Stabilisation Fund. 13 (1) states that where petroleum revenues collected in each quarter falls below one-quarter of the Annual Budget Funding Amount for that financial year, whichever is the lesser amount: a) either seventy percent of the estimated amount of the shortfall of petroleum revenue for that quarter, or b) twenty-five percent of the balance standing to the credit of the Stabilisation Fund at the beginning of the fiscal year. 3 (2) provides additional conditions guiding withdrawals and require that in the event of successive petroleum revenue shortfalls in the second and third quarters in any given financial year, the amount to be withdrawn at the end of the third quarter shall be double the amount of the third quarter shortfall up to a maximum of forty percent of the balance standing to the credit of the Ghana Stabilisation Fund at the beginning of the fiscal year. 13 (3) emphasises that transfer out of the Stabilisation Fund shall only be done for the purpose of alleviating shortfalls in petroleum revenue and in accordance with subsection (1) and (2).

Comment 4: The twenty five percent threshold of the balance standing to the credit of the Ghana Stabilisation Fund at the beginning of the fiscal year as provided in 13(1b) suggests that for a sustained conservative fall of petroleum revenue throughout the year the total amount of withdrawals could reach ninety percent of the of balance standing to the credit of the Stabilisation Fund. This certainly threatens the sustainability of the Fund. It is suggested that the percentage provided in 13(1b) should be reduced to fifteen percent while 13(2-3) remain.

According to clause14, withdrawals from the Ghana Heritage Fund shall be according to the withdrawals rule in section 13.

Comment 5: I am finding it difficult to understand the logic of clause 14 since the object of the two Funds are very different. As a Heritage Fund it might be prudent to initially limit spending to a percentage of total revenue emanating from Investment returns only. Thus, it might be logical to base withdrawal formular on clause 13 but limited to the balance standing to the credit of the Heritage Fund from Investment returns at the beginning of the fiscal year.

Clause 24 outlines modalities for transfers to the Ghana Heritage Fund and Ghana Stabilisation Fund. Clause 24(1) state that Commencing in the year 2011 until the year when petroleum production ceases, the following rules shall apply:
(a) where petroleum revenue collected in each quarter of any financial year exceeds one-quarter of the Annual Budget Funding Amount of the financial year, as determined in section 14, the United States Dollar equivalent of the excess revenue collected shall be transferred from the Petroleum Account into the Ghana Petroleum Funds, and
(b) a minimum of thirty percent of the excess revenue determined in subsection (1)(a) shall be transferred into the Ghana Heritage Fund and the balance shall be transferred into the Ghana Stabilisation Fund each year.

(2) The split in subsection (l)(b) of the excess revenue shall be reviewed every three years, exclusive of the year of revision, with the first revision to occur in 2014.

(3) The accumulated resources of the Ghana Stabilisation Fund shall not exceed a predetermined amount as recommended by the Minister and approved by Parliament and the amount shall be reviewed from time to time as necessitated by macroeconomic conditions.
(4) Once the predetermined amount is attained, subsequent transfers into the Ghana Stabilisation Fund shall be earmarked as additional transfers into the Ghana Heritage Fund or for debt repayment.
(5) The transfer and any subsequent transfers shall be made not later than the end of the month following the quarter in respect of which the excess revenue was calculated.

Comment 7: 24(1b) states a minimum of thirty percent of the excess revenue determined in subsection 1(a) of the excess revenue shall be transferred into the Ghana Heritage Account. While there is nothing absolutely wrong when clause 24 is taking in its entirety, for double assurance on transparency and accountability, for the purposes of independent public tracking, the percentage should be stated in absolute terms, notwithstanding the provisions in of 24(4). Thus 24(1b) should state as follows: Thirty percent of the excess revenue determined in subsection 1(b) shall be transferred into the Ghana Heritage Fund while Seventy percent shall be transferred into the Ghana Stabilisation Fund.

Clause 26 (a-d) and clause 27(1 -2) are dealing with obligations of the Minister of Finance and the Bank of Ghana relating to the management of Ghana Petroleum Funds.

Comment 8: **Would it not be more prudent and more assuring to the Ghanaian public if these obligations are conferred on the Petroleum Revenue Management Authority rather than the Minister of Finance and the Bank?**

Clause 28 (1(a-c) -2) outlines investment rules for Petroleum Funds.

Comment 9: The listing of derivative instrument as qualifying instruments 29 (1c) should be re-examined. Given the performance of the derivative market in recent times globally, would derivatives be considered safe instruments? If not, and I believe they are not, 29(1c) should be removed.

SECTION 4: INVESTMENT ADVISORY COMMITTEE.

This is covered by 12 clauses , from 31- 42, addressing establishment of an Investment Advisory (31), Functions of the Committee (32), Appointments of members of the Committee (33) Tenure of office of members (34), Meetings of the Committee (35) Discloser of Interest (36), Publication of membership of the Committee (37), Allowances (380, Secretariat of the Committee (39), Absence of advice from the Advisory Committee (40), Release of advice from the Committee (41), and Oversight of and reporting on the Ghana Petroleum Funds (42).

Comment 10: Clause 33 (1) stipulates that the Advisory Committee shall comprise seven members, at least one of whom is a woman, who shall be persons of proven competence in finance, investment, economics, business management or law, including a senior officer not below the rank of Deputy Director or its equivalent from a) the Bank of Ghana and b) the Ministry responsible for Finance. This clause should be rephrased and the "alt one of whom is a woman" replaced with "no one gender should constitute more than two-thirds the membership of this Committee".

Comment 11: Clause 40(2) which states that despite section 32(1)(c), the Minister shall not be prevented from taking an urgent investment decision in consultation with the Governor where there is insufficient time to seek the advice of the Advisory Committee in relation to a particular decision. This clause has the potential to undermine transparency and accountability and also subject to abuse. There should be a provision for an emergency meeting of the Committee in instead.

Comment 12: If the idea of Petroleum Revenue Management Authority is feasible will there be the need for the establishment of an Advisory Authority? The composition of the Authority should be such that no gender should constitute more than two thirds of the membership.

SECTION 5: ENCUMBRANCES
This is addressed in clause 43 (1-2).

Comment 12: This section captioned 'Encumbrances, Auditing and Reporting" should be changed to Encumbrances since it does not address auditing and report which are the subject of the subsequent section.

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SECTION 6: AUDIT OF THE PETROLEUM RESERVE ACCOUNT
This section is made up of 7 clauses covering addressing Public Funds (44), Books of the Petroleum Reserve Account (45), Internal Audit (46), External Audit (47), Annual Audit (48), Special Audit (49), Annual report on the Petroleum Account and the Ghana Petroleum Funds (50).

This section reiterates the point that the petroleum account, the Ghana Heritage Fund and the Stabilisation Funds are public Funds as such under no circumstances should these funds be encumbered whether by way of guarantee, security, mortgage or any other form of encumbrance (clause 43-44). Clause 45 enjoins the Bank of Ghana to keep proper books of accounts and records of the Petroleum Account and Ghana Petroleum Fund. These accounts shall be audited by the Banks internal audit department and quarterly report submitted by the Governor to the Minister of Finance,

the Auditor-General and any other person required by law to received them. The Auditor General is however responsible for the external audit of these accounts each year. In addition, the Auditor General may carry out special audits reviews of the Petroleum Funds in the public interest and shall submit to parliament reports on the audits or reviews undertaken (49). Clause 50 requires that the Minister of Finance to submit an annual report on the Petroleum Account and the Ghana Petroleum Funds as part of annual presentation of the budget statement and economic policies to Parliament. The report to Parliament shall include:

i) the receipts and transfers to and from the Petroleum Account
ii) deposits and withdrawals from the Heritage and Stabilisation Funds and
iii) a balance sheet, including a note listing the qualifying instruments of the Petroleum Funds.

In addition the income derived from the investment of Heritage and Stabilisation Funds during the physical year compared with the income of the two physical years. The report should also include the liabilities of government borrowings so as to give a true representation of the past, expected future development of the net financial assets of government and the rate of savings. List of names of persons holding positions relevant for the operations and performance of the Heritage and Stabilisation Funds should be included in the report.

SECTION 7: ACCOUNTABILITY, TRANSPARENCY AND PUBLIC OVERSIGHT

This section comprise 9 clause covering: transparency as a fundamental principle (51), non-compliance with an obligation to publicise information (52), Public Interest and Accountability Committee (53), objects of the Accountability Committee (54), functions of the Accountability Committee (55), Membership of the Public Interest Accountability Committee (56), tenure of members of the Accountability Committee and eligibility for appointment (57), reporting (58) and allowances of the committee members (59).

Clause 51 (1) provides that the management of petroleum revenue and savings shall be conducted with the highest international standards of transparency and good governance. Clause 5(2) states that the duties concerned with ancillary matters of petroleum revenues and savings shall be discharged with the highest internationally standards of transparency and good governance, while clause 51(3 -6) is dealing with confidentiality of information and data

Comment 13: **There is need for additional statement that good governance, particularly in accordance with the principles of Extractive Industry Transparency Initiative (EITI).**

Clause 51(3) states that information or data, the disclosure of which could in particular prejudice significantly the performance of the Ghana Petroleum Fund, may be declared by the Minister as confidential, subject to the approval of Parliament. However, the declaration of confidentiality shall provide a clear explanation of the reasons for treating the information or data as classified, taking into account the principles of transparency and the right of the public as regards access to information 51(41). In addition, the declaration of confidentiality shall not limit access to information by Parliament and the Public Interest Accountability Committee 51(5) and that any information that is classified at the time when it could have been

published as well as the reason for it being treated as classified shall be made available to the public upon request three years after the date on which it could have been published unless the reasons for it being classified are still valid. Clause 52 requires that any person with any obligation to publish information provided for here, or causes another person to fail to comply with, or in any manner hinders or causes another person to hinder the compliance with these obligations, commits an offence and is liable on summary conviction or to a fine not exceeding two hundred and fifty penalty units. Clause 53 establishes a Public Interest and Accountability Committee, 54 and 55 define the objectives and functions of this Committee, respectively.

Comment 14: Clause 55(1b) which requires that the Accountability Committee shall determine the rules and procedures under which it will operate is problematic and does not enhance the transparency and accountability spirit so professed in this section. There is therefore need to spell out the most salient functions of this Committee in this Bill.

Clause 56 provides that the Committee shall consist of 11 members drawn from listed identifiable bodies.

Comment 15: The only guaranteed female participation is from the association of Queen Mother. It is important to state that no one gender should constitute more than two-thirds of this Committee

Clause 57 on tenure of membership of the committee provides that the tenure of office of a member of the committee shall be for 2 or 3 years and any person appointed for 2 years is eligible for re-appointment for additional 2 years but not for more than two conservative terms while a member appointed for 3 year- term is not eligible for re-appointment

Comment 16: I have difficulty understanding the range of period of tenure of 2-3 years instead of fixed period of say 2 years.

SECTION 8: MISCELLANEOUS MATTERS

Miscellaneous matterd are provided for in 5 clauses covering transparency and accountability for petroleum receipts (60), penalties (61), transitional and final provisions (62), regulations (63) and interpretation (64).

CONCLUSION AND RECOMMENDATIONS

The two bills in their current are of high standards and incorporate international best practices. The Revenue Management Bill in particular, incorporated a lot of the suggestions from civil society following the publication of the first draft of the Bill and this is high recommendable. Nevertheless, there is always room for improvement and these suggestions are presented in that spirit. The suggestions highlighted wihin the various sections of the Bill have been pulled together as recommendations to improve reading.

The Petroleum (Exploration and Production Bill

1. Comment 1: In order to minimise excesses of an individual's discretion, the regulation of the sector should be vested in an Authority rather than the Minister**.**

2. Clause 6 needed to make provisions for the defence of labour rights. This is particularly important in the light of already worrying reports of abuse of workers' rights on the oil platform. It is suggested that an addition subsection, subsection d) be added and should read: The licensee shall ensure that the circumstances permit organized labour activity to take place among its employees and the personnel of contractors and sub-contractors in accordance with the Labour Act, 2003 (Act 651).

3. While clause 6 is adequate, for point of emphasis it might be important to specify some of the most relevant legislation – Water Resources, Forestry, Fisheries, Maritime Security, etc)

4. It is suggested that for further emphasis, a specific subsection should introduced under clause 9 provided for as follows: a petroleum exploration and production license shall not be granted to an applicant unless an environmental permit is obtained from the Environmental Protection Agency.

5. Clauses 9-15are appropriate and sufficient; however, there is need to examine the Authority responsible for regulation. Should the authority be the Minister for Petroleum or the Petroleum Regulatory Authority? I think the Authority should have the lead mandate here.

6. Clause 11 does not adequately deal with cross border petrol accumulations and therefore this needs more clarity and boldness to deal with such cases. As an addendum, the section should consider fields across territorial borders and how to deal with such situations. For example, Nigeria and Principe Sao Thome have joint field development agreements and this could be possible between Ghana and its neighbours. The issue of unitization agreement is well captured in the Hydrocarbon Law of Equatorial Guinea No 8/2000 and reference could be made to that for deepening section clause 11. Clarity and adequacy of this clause is particularly important to in the light of recent perceptions from Cote D'Ivoire that the petroleum system hosting the Jubilee transcends Ghana's territory.

7. The provision for the establishment of a Decommissioning Fund is very commendable. Just like the provisions for reclamation bonds in the Environmental Regulations, LI 1652, and the fund should not be managed by the company. It should be set aside in an escrow account beyond the reach of both the State and the Company. The company can only claim it to the extent that the responsible authority is satisfied with decommissioning work. Non compliance means the company will forfeit the amount and that amount should be used to further the proper decommissioning of the area.

8. There is also the need for an Oil Spillage Response Fund to be managed by the Authority to be established. Licensees should be required to make contributions into this fund, which would be used to clean up oil spills resulting from their operations. I know new guidelines for environmental management of offshore petroleum put forward by the EPA has a proposal for such a fund, however, due to its importance and recent lessons from the Gulf of Mexico, it is instructive to

include this provision in this fundamental law that should guide exploration and production of petroleum in the country.

9. From clause 19 (2) and beyond, the procedure for entry into a block is through direct entry via an application and if deemed to meet all the requirements desired by the Minister the applicant is allocated an Exploration and Production License. This provision while justified in time past, this approach is no longer tenable with the recent string of discoveries which has de-risked the country's deep sea oil and gas potential, particularly in the Western Basin. Also there is a mad rush by many oil and gas companies to take up blocks in the open areas and farm-out deals for already occupied acreages. This certainly calls for more internationally competitive bidding to be introduced as against the previous direct entry method. It is believed that the bidding system would improve competition, minimise potential for favouritism, corruption, and introduce transparency in the award of contracts. Furthermore, the amount of competition from bidding would improve government's take in the form of enhanced signature bonuses, royalty and "additional oil entitlements".

10. Clause 21 (1- 4) on terms of petroleum agreement should provide for information disclosure. There should be specific additional subsection to address the issue of contract transparency

11. The term "significant changes" use in clause 28 appears ambiguous and needs further clarification within the confines of industry practise. Significant changes should be defined to include dramatic price changes upwards or downwards, prolific discoveries, exotic fields and frontier issues.

12. There is the need to fix and retain royalty in the legislation with different rates for frontier, shallow and deep-water, so as to yield a minimum assured state take whilst also considering current reduced geological risk profile of the West Cape Three Point deep waters and also to promote exploration in frontier environments such as the inland Voltaian Basin. Alternatively if the Module Petroleum Agreement is intended to be used to set the minimum fiscal rules then specific reference should be made to it. It is important to revisit the content of the Module Agreement to set acceptable minimum thresholds for taxes and tax incentives and then provide that under no circumstances should the fiscal terms of a petroleum agreement fall without thresholds set by the Module Petroleum Agreement.

13. The Petroleum Regulatory Authority is very critical for good governance in the oil and gas sector and should be given strong and immediate priority.

Petroleum Revenue Management Authority

1. Mention has been made of and some duties ascribed to the Ghana Petroleum Revenue Authority. However this Bill does not establish that authority, its functions, membership and their composition. The Bill should establish the Ghana Petroleum Revenue Authority, functions and membership just as has been done for the Investment Advisory Committee (page 15-18) and the Public Interest Accountability Committees (page 23-26).

2. Although the provisions of clause 6 are adequate to address the absence of signature bonuses, given the possible relative size of signature bonuses. It is important to categorically, for point of emphasis list as among payments in 6 (1a). Indeed the listed payments should capture all payment streams specified in clause 40-44 of the Petroleum (Exploration and Production) Bill.

3. The phrasing of 8(2) in its current form has the potential to subvert the quest for transparency and accountability in 8(1). This subsection should state information that would likely not be disclosed as required in 8(1).

4. The twenty five percent threshold of the balance standing to the credit of the Ghana Stabilisation Fund at the beginning of the fiscal year as provided in 13(1b) suggests that for a sustained conservative fall of petroleum revenue throughout the year the total amount of withdrawals could reach ninety percent of the of balance standing to the credit of the Stabilisation Fund. This certainly threatens the sustainability of the Fund. It is suggested that the percentage provided in 13(1b) should be reduced to fifteen percent while 13(2-3) remain.

5. I am finding it difficult to understand the logic of clause 14 since the object of the two Funds are very different. As a Heritage Fund it might be prudent to initially limit spending to a percentage of total revenue emanating from Investment returns only. Thus, it might be logical to base withdrawal formular on clause 13 but limited to the balance standing to the credit of the Heritage Fund from Investment returns at the beginning of the fiscal year.

6. Clause 24(1b) states a minimum of thirty percent of the excess revenue determined in subsection 1(a) of the excess revenue shall be transferred into the Ghana Heritage Account. While there is nothing absolutely wrong when clause 24 is taking in its entirety, for double assurance on transparency and accountability, for the purposes of independent public tracking, the percentage should be stated in absolute terms, notwithstanding the provisions in of 24(4). Thus 24(1b) should state as follows: Thirty percent of the excess revenue determined in subsection 1(b) shall be transferred into the Ghana Heritage Fund while Seventy percent shall be transferred into the Ghana Stabilisation Fund.

7. Would it not be more prudent and more assuring to the Ghanaian public if these obligations are conferred on the Petroleum Revenue Management Authority rather than the Minister of Finance and the Bank?

8. The listing of derivative instrument as qualifying instruments 29 (1c) should be re-examined. Given the performance of the derivative market in recent times globally, would derivatives be considered safe instruments? If not, and I believe they are not, 29(1c) should be removed.

9. Clause 33 (1) stipulates that the Advisory Committee shall comprise seven members, at least one of whom is a woman, who shall be persons of proven competence in finance, investment, economics, business management or law, including a senior officer not below the rank of Deputy Director or its equivalent from a) the Bank of Ghana and b) the Ministry responsible for Finance. This clause should be rephrased and the “alt one of whom is a woman” replaced with

"no one gender should constitute more than two-thirds the membership of this Committee".

10. Clause 40(2) which states that despite section 32(1)(c), the Minister shall not be prevented from taking an urgent investment decision in consultation with the Governor where there is insufficient time to seek the advice of the Advisory Committee in relation to a particular decision. This clause has the potential to undermine transparency and accountability and also subject to abuse. There should be a provision for an emergency meeting of the Committee in instead.

11. If the idea of Petroleum Revenue Management Authority is feasible will there be the need for the establishment of an Advisory Authority? The composition of the Authority should be such that no gender should constitute more than two thirds of the membership.

12. This section captioned 'Encumbrances, Auditing and Reporting" should be changed to Encumbrances since it does not address auditing and report which are the subject of the subsequent section.

13. There is need for additional statement that good governance, particularly in accordance with the principles of Extractive Industry Transparency Initiative (EITI).

14. Clause 55(1b) which requires that the Accountability Committee shall determine the rules and procedures under which it will operate is problematic and does not enhance the transparency and accountability spirit so professed in this section. There is therefore need to spell out the most salient functions of this Committee in this Bill.

15. The only guaranteed female participation is from the association of Queen Mother. It is important to state that no one gender should constitute more than two-thirds of this Committee

16. I have difficulty understanding the range of period of tenure of 2-3 years instead of fixed period of say 2 years.