

PRESS STATEMENT – CSOs REVIEW OF THE EXTRACTIVE SECTOR IN 2022

Good Morning Ladies and Gentlemen of the Press.

We, members of the Alliance of CSOs Working on Extractives, Anti-Corruption, and Good Governance, have reflected on major developments in the extractive sector in 2022 and their implications for the general socio-economic development of the country. After careful deliberations, we have agreed to share our key concerns with members of the media. We would like to highlight four major issues at this press conference:

- The Gold for Oil Programme,
- The Jubilee Oil Holding Limited (JOHL) acquisition by GNPC,
- The Mineral Income Investment Fund (MIIF); and
- Upstream oil and gas investments.

1. The Gold4oil programme

The Government of Ghana in November 2022 announced its decision to use a portion of the country's gold output, which it will purchase in Cedis (GHS) from large and small-scale producers, in a "barter" arrangement to secure reliable and regular sources of affordable petroleum products for the country. The move, according to the government, is to ease the demand pressure for dollars, which has led to a heavy depreciation of the Cedi.

While we recognize the importance of reducing the demand pressure on the US dollar in order to stabilize the value of the local currency, and to make petroleum products cheaper to consumers, we have serious reservations about the ability of the Gold4Oil programme to deliver these policy objectives. Indeed, our analysis reveal serious corruption risks associated with the programme, and which can only be averted through transparency and accountability in the entire transaction chain of the Gold4Oil programme. Some of these risks have been captured in the recently released Ghana Extractive Industries Transparency Initiative (GHEITI) report, covering 2020, but which also devotes some attention to current developments in the mining, oil and gas sectors. The identified risks relate to:

- Absence of a buyer selection criteria, in respect of the off-taker of Ghana's gold
- Absence of supplier selection criteria, in respect of supplying of petroleum products
- Non-disclosure of pricing policy for Ghana's gold
- Non-disclosure of pricing policy for petroleum products purchases
- Lack of clarity on how the transaction costs under the programme would be covered
- Non-disclosure of the means by which government intends to raise money to finance its gold purchases.

On 16th January, government reported that it had received 40,000 metric tonnes of refined petroleum products under the programme. This constitutes approximately 11 percent of Ghana's projected monthly consumption of 350,000 metric tonnes. A number of fundamental questions arise out of this development:

- How much gold was traded for the 40,000 tonnes of refined products?
- At what price was the gold traded?
- How much gold has been purchased up to date under the programme?
- What was the source of financing for the purchase of the gold as it was not provided for in the budget?

We strongly believe that these are legitimate concerns that must be addressed in a comprehensive policy on the programme and if such policy exists, we demand its disclosure to inform public discourse on the matter.

We take this opportunity to also re-echo the demand of the Ghana Extractive Industries Transparency Initiative for broader consultations on the programme, to identify its potential impact on diverse stakeholders, including licensed gold buyers, and domestic jewelry manufacturers.

We call on Parliament to examine the transaction and ensure that aspects that fall within the realms of international transaction between the state and international third parties are brought to Parliament for approval in accordance with article 181 (5) of the 1992 Constitution of Ghana.

2. JOHL and matters arising

The Alliance supports any effort to increase the country's interest in petroleum operations. However, such efforts must exhibit strict compliance with the laws of Ghana and good governance practices. The processes surrounding the acquisition of Jubilee Oil Holdings offend the laws of Ghana, and require immediate remedy to avert unimaginable governance risks around Ghana's petroleum resources.

The acquisition of a 7% interest in the Jubilee and TEN fields has great potential to contribute instant revenue to the state as producing fields. This is even more important given the country's current economic context of high debt, low revenue, and high cost of borrowing. From January to November 2022, three parcels (two from Jubilee and one from TEN) of crude oil worth about US\$300 million dollars have been lifted by JOHL. It is therefore baffling that instead of using the revenues to shore up the State's reserves, the Ministry of Finance has allowed GNPC to hide the asset in the Cayman Islands. Given the risks of energy transition to the sector, such resources can be invested more prudently to ensure the sustainability of the national oil company.

The framers of the Petroleum Revenue Management Act were deliberate in their insistence that all petroleum revenue be centralised for appropriation. It must be emphasised that the law does not exclude any form of petroleum revenue derived directly or indirectly (whether by GNPC or its subsidiaries) from being paid into the Petroleum Holding Fund.

As observed by GHEITI in its 2020 report, checks at the Registrar of Companies reveal that JOHL was registered in Ghana as an external (foreign) company on 15th August, 2022 with presence in the country. This implies that at the time of lifting, JOHL had not been registered to conduct business in Ghana. To hold interest in a petroleum block, the Petroleum (Exploration and Production) Act, 2016 (Act 919) requires the incorporation of a local company. Therefore, the acquisition of a stake and subsequent lifting of crude oil by JOHL ahead of its incorporation in Ghana is in contravention of Section 70(1)(a) of Act 919, which mandates such incorporation in order to carry out petroleum activities in Ghana. Section 70(1)(a)(i) of Act 919 stipulates that the incorporated company must be the legal entity for the purposes of granting of licence and signatory to a Petroleum Agreement.

A year on, GNPC's assurance of transferring JOHL to Explorco has still not materialised. If the current arrangement remains, JOHL will continue to lift and sell crude oil as well as bear the cost of funding its commercial interest in the two fields as a subsidiary of GNPC. As noted earlier, JOHL has already lifted three parcels as at November 2022.

Additionally, the grant of a loan of US\$164 million to GNPC for JOHL acquisition without Parliamentary approval is in contravention of Article 181(1)(2)(3) of the 1992 Constitution, and Section 57(1)(f) of the Public Financial Management Act, 2016 (Act 921)

We would like to restate the recommendations as contained in the ACEP press statement and GHEITI report that:

- a. Government should properly appropriate the loan given to JOHL in the name of GNPC in full compliance with the Constitution and the PRMA.
- b. The entire 7% asset should be managed within Ghanaian laws to provide certainty of ownership and control. Consequently, the JOHL should be discarded, and the interest transferred to GNPC or its local subsidiary immediately. GNPC must provide clear timelines for the transfer of the JOHL interests.
- c. The Ministry of Finance should disclose the actual tax revenue due to the State from the Occidental transaction and account for same in the Petroleum Holding Fund.
- d. Parliament should take up the responsibility of ensuring that the PRMA is insulated from abuse and that no revenue due the PHF is diverted for purposes not prescribed by law.

3. MIIF as vehicle for optimizing value in the minerals sector.

We are also concerned about the Mineral Income Investment Fund, as a vehicle for optimizing our country's value in the minerals sector. We note that, much of what MIIF does is not open for public scrutiny and citizens' input.

Even though Section 36 of the MIIF Act commits to transparency, it fails to emulate the example of the petroleum sector, where a citizens-led public oversight body, the Public Interest and Accountability Committee (PIAC), provides information on half year, and annual basis on the management of petroleum revenues and petroleum funds to citizens. As observed in the 2020 GHEITI report, provisions in the MIIF Act in respect of transparency are largely vague and non-prescriptive. In 2022 alone, MIIF received a total of US\$196,901,998.52 in mineral royalties with a functional cedi value of GHS1,119,528,105.74. How this money has been used and what returns it has generated is unknown to most Ghanaians. What is even more disappointing, is the fact that, even though MIIF is mandated by its statute of establishment to issue periodic reports on its activities, it has so far failed to issue any, and without any consequences for its failure to comply with the requirements of law.

We note that the 2020 GHEITI report on mining has done a good analysis of the MIIF Act and highlighted areas that require some revision. For instance, Section 35 of the MIIF Act, on dividends payment purports to exempt mineral income paid to the Fund or a Special Purpose Vehicle (SPV) from tax. The report contends, however, that there is "no established rationale or basis for tax exemption on dividends from commercial, possibly private activities, of the SPV". This is deemed to constitute tax expenditure, for which a cost / benefit analysis may be required, and any intended benefits juxtaposed against the cost.

Furthermore, Stability Provisions, provided for under Section 40 of the MIIF Act, in respect of the Fund or Special Purpose Vehicle are deemed too broad and have the effect of locking the country into an arrangement, with no opportunity for remedying errors committed either willfully or inadvertently.

We call on Parliament to look at the findings of the analysis, and to take the necessary steps to address the identified weaknesses in the Act.

4. Investments in Ghana's upstream petroleum industry

Investors' appetite for Ghana's petroleum industry has waned significantly since the last petroleum agreement was awarded to ExxonMobil, who eventually exited for undisclosed reasons.

We acknowledge that some efforts have been made to attract investment into the sector. For example, Ghana launched its first licensing round in 2018, which many thought was the beginning of a transparent licensing regime. However, the licensing process showed significant flaws, which have been largely acknowledged by the Ministry.

After initiating the competitive bidding process, the government set a parallel direct negotiation process which discouraged participation in the competitive process. However, three companies stayed with the process, and two blocks were won by Eni and First E&P Limited. Unfortunately, negotiations have remained inconclusive to date. The recent information is that the government has decided to truncate the licensing round and engage companies for direct negotiation.

While the government failed to negotiate and conclude negotiations on the blocks won through competition, it embarked on roadshows to attract investments. Between 2009 and 2023, the Ministry and Petroleum Commission attended 21 conferences and road shows in America, Europe, and Asia for the purpose of attracting investors. However, there doesn't seem to have been any positive results from these conferences and roadshows.

We recommend that government should review its investment attraction strategy as the current strategy is not delivering the desired results. We further recommend that government should share this strategy with stakeholders for their inputs and buy in.

Also, the government need to improve its relationship with the existing investors. The government's inability to manage relationships has resulted in Eni seeking legal redress in court. This situation creates an antagonistic relationship which impedes Ghana's attractiveness to investors. Government should note that investors are sensitive to risky environments and therefore conducts robust political economy analysis before they invest.

Conclusion

As CSOs, we are convinced that good governance and prudent management of the extractive sector has the potential to support Government to navigate the current economic crises. Addressing these and other issues in the sector can free up much needed funds for critical government programmes and spare innocent citizens, the additional burden of paying for the poor decisions of government.

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1. Africa Center for Energy Policy
2. CSO Platform on Oil and Gas
3. IMANI Centre for Policy and Education
4. ISODEC
5. Ghana Anti-Corruption Coalition
6. Tax Justice Coalition
7. Natural Resource Governance Institute
8. ACT Africa
9. iWatch Africa

10. KASA Initiative Ghana
11. Centre for Social Impact Studies
12. Centre for Public Interest Law
13. Institute for Democratic Governance
14. Oil Watch Ghana
15. OXFAM
16. Third World Network
17. AROCHA Ghana
18. SEND Ghana
19. Centre for Democratic Development
20. Centre for Extractives and Development Africa
21. Friends of the Nation
22. WACAM
23. PWYP-Ghana