



**GHANA
UPSTREAM
PETROLEUM
CHAMBER**



POSITION PAPER

SITUATIONAL ANALYSIS: THE REGULATOR AND THE INTERNATIONAL OIL COMPANIES

IDENTIFYING AND ADDRESSING AREAS OF CONCERN

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INTRODUCTION

This report provides an analysis of the relationship between the Petroleum Commission (PC), the Regulator of Ghana's upstream petroleum industry and the international oil companies (IOCs) and service providers who operate within it.

The report represents findings from interviews conducted with a cross-section of the Ghana Upstream Petroleum Chambers' key stakeholders: The Petroleum Commission, international oil and gas companies and service providers. Analysis was gathered largely from qualitative information based on in-depth questions, queries and detailed discussions. Responses and concerns have been captured from individuals who have provided feedback. Some views have further been supported by the use of quantitative data.

While many of the challenges discussed here are long-standing systemic issues—often rooted in the legislative set-up of the Petroleum Commission, others appear to be related to administrative and operational processes of the Commission. The purpose of the report therefore is not to attempt to resolve these concerns but rather, highlight, for the first time the common challenges faced by the Petroleum Commission, the IOCs and service providers. The report seeks to capture the first-hand experiences and concerns of these stakeholders, to itemise the points of contestation between the entities; and to further guide the Chamber in the development of an advocacy framework and implementation roadmap to address these matters while providing a platform for collective discussion within and among these groups. The expectation is that this document will provide the basis for the Chamber to mediate and eventually facilitate an enhanced and more efficient working relationship between the industry Regulator and the IOCs.

This report represents the consensus view and is divided into the following parts: introduction; background; findings from the Regulator's perspective; findings from the international oil company's perspective; observations; conclusions and the way forward.



BACKGROUND

The Petroleum Commission is a relatively young Regulator operating within an equally developing yet nascent oil and gas industry. It has had a precipitous learning curve—contending with extensive and new legislation which it has had to master and subsequently interpret for industry stakeholders within a relatively short period of time. The industry itself has been met with exceedingly high expectations from commercial and political stakeholders as well as from the general Ghanaian populace. Managing this delicate equilibrium continues to be a challenge.

Over the past several years the operating environment within Ghana's upstream oil and gas sector has changed considerably. The establishment of the Petroleum Commission in 2011, a few years after parliamentary ratification of two of the major petroleum agreements (Deep Water Tano - 2004 and West Cape Three Points - 2006), has caused the regulatory environment to become significantly more complex.

The Petroleum Commission as the sector Regulator has not only introduced additional bureaucracy; it has also created some conflict with the Ministry of Energy—the former Regulator and GNPC, which advised the Ministry on all Regulatory matters (a function that the GNPC in practice still performs in addition to the PC). The result is a great deal of confusion among operators—many of who signed their Petroleum Agreements before the Petroleum Commission and the broader petroleum regulatory, legal and institutional framework came into being. Several of the ensuing policies, legislative provisions and institutional and administrative practices do not always align with contractual privileges and obligations contained within their PAs.

The multiple functions of the Commission in particular—acting as manager, Regulator and promoter of the industry, while also handling management issues, has impacted on its ability to effectively coordinate industry activities. This has created some misinterpretation, gaps in understanding and at times tension for the international oil companies (IOCs) who rely heavily on the Petroleum Commission's guidance for their day-to-day operations; all of which does not lend itself to easy collaboration.

The mandate of the Petroleum Commission is not only to manage and regulate upstream petroleum operations but to also ensure value-addition and job-creation through the promotion of local content and localisation of the supply chain. Some oil and gas companies have been unsuccessful in reaching the performance targets they set out for themselves in their submitted plans of development. In particular, the IOCs commitment



to local content and localisation has been a concern for the Petroleum Commission. The IOCs adherence to the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204) has been mixed at best and is further complicated by the fact that the Regulator perceives some IOCs to be non-compliant despite the fact that their PAs contain stabilisation clauses—exempting them from adhering to subsequent legislation.

The above provides some context into the need to examine further the dynamics and nuances that have contributed to complicating the relationship between the Regulator and the international oil companies and service providers. While it is apparent that some challenges were borne out of the legislative and institutional setup of the Petroleum Commission and thus are systemic in nature, others appear to be borne out of long-standing entrenched positions on the part of both the Regulator and the IOCs, with little room for agility and compromise.

It is expected that the following document will further explore these dynamics and provide the basis for further advocacy and engagement of key stakeholders by the Ghana Upstream Petroleum Chamber.



FINDINGS

The following findings have been developed as a result of in-depth discussions and responses received from queries and surveys held with the Petroleum Commission, international oil companies and service providers. The challenges have been categorised into two broad areas—the findings from the Regulator and findings from the IOCs. The concerns of the stakeholders have been detailed as follows:

THE REGULATOR PERSPECTIVE

The fundamental challenge with the International Oil Companies (IOCs) relates to IOCs interpretation of “stability” provisions in the Petroleum Agreements. There are seven primary challenges emanating from this from the perspective of the Regulator:

- a) Non-Compliance with the Relevant Laws & Regulations;
- b) Failure to Register with the Commission and Obtain an Operating Permit;
- c) Failure to Obtain a Production Permit;
- d) Non-Submission of Work Programmes and Budgets for Review;
- e) Non-Submission of Periodic Petroleum Cost Reports;
- f) Weak Commitment to Local Content Development;
- g) Non-Observance of Due Process.

1. Non-Compliance with the Relevant Laws & Regulations

There is an ongoing disagreement emanating from the IOCs refusal and reluctance to comply with laws enacted after the ratification of their respective Petroleum Agreements (PAs). These IOCs argue that the stabilisation clauses negotiated under their PAs grants them an absolute guarantee of the terms and conditions of the PAs as well as their fiscal and contractual framework and as such, legislation introduced post the execution of their PAs, cannot apply to them retrospectively. One of such legislation is the Petroleum (Exploration and Production) Act, 2016 (Act 919) which repealed the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L 84).

A recurring provision within the PAs stipulates that the PAs are subject to the laws of Ghana as well as applicable international laws. The Commission has adopted the view that the existence of stabilisation clauses contained within their PAs cannot restrain the



state to legislate on any matter at any time as it relates to the sector. Accordingly, the Commission considers the Ghanaian state as sovereign, with the inherent and inalienable right to change laws within its territory. In its view, refusal of an IOC to adhere to duly enacted legislation undermines the state's sovereignty and creates difficulties for the Commission in the execution of its mandate as Regulator of the sector. Despite this, the Commission insists that it has, to date ensured that at all times the IOCs are given an audience and provided with the requisite assistance.

2. Failure to Register with the Commission and Obtain an Operating Permit

Provisions of The Petroleum Commission (Fees and Charges) Regulations, 2015 (L.I. 2221) provides another source of tension between the PC and some IOCs. The Regulations require all contractors, subcontractors, licensees and other allied entities to register with the Commission and obtain the necessary permit prior to engaging in petroleum activities or providing a service within the upstream petroleum sector. This notwithstanding, some IOCs do not recognise the licensing authority of the Commission and have therefore, refused to register with it, citing their PAs in which the state grants them an absolute guarantee of the terms and conditions of the PAs as well as their fiscal and contractual framework; they contend that applying the Fees and Charges Regulations to them would breach their PAs. The Commission, on the other hand, considers any engagement in petroleum activities or the provision of services in the sector without a permit issued by the Commission as contravening the law.

Under Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204) non-indigenous Ghanaian (i.e. foreign) companies are precluded from directly providing goods or services within the upstream petroleum sector. A non-indigenous Ghanaian company intending to provide goods and services in the sector is required to incorporate a joint venture company with an indigenous Ghanaian company and afford that indigenous Ghanaian company an equity participation of at least ten percent. The Joint Venture Guidelines also outline certain guiding principles for operating a joint venture company in the sector. The Commission believes that some IOCs have failed to register with the Commission in order to circumvent the requirement to form a joint venture company with an indigenous Ghanaian company as it is seen as an additional burden that breaches the terms in their PAs. Some of these companies are further deterred by certain rigid requirements under the Joint Venture Guidelines and L.I. 2204 such as the transfer of technology to indigenous Ghanaian companies and the promotion of local content in the sector which serve as disincentives to IOCs to cooperate with the PC.



3. Failure to Secure a Production Permit

The Commission is mandated by the Petroleum Commission Act, 2011 (Act 821) to promote and plan well-executed, sustainable and cost-efficient petroleum activities to achieve optimal levels of resource exploitation for the overall benefit and welfare of citizens. It is necessary therefore to regulate the production stage in order to ensure the optimum exploitation of Ghana's resources. The Commission may do so by directing the contractor to increase or decrease the rate of production to a rate that will enhance optimum petroleum recovery from the field. The Commission, as Regulator, is also required to stipulate in the production permit, the quantity of petroleum to be produced or injected based on the long-term production schedule in the PoD unless new information on the reservoir or other relevant circumstances warrants otherwise. As the institution tasked to manage the upstream petroleum resources, it is important to monitor the production fields to ensure that the resources are not being depleted and the reservoirs are not being mismanaged to the detriment of existing production fields.

Petroleum (Exploration and Production) Act, 2016, Act 919 requires contractors to obtain an annual production permit from the Commission prior to the production or injection of petroleum. According to the Commission, the IOCs operating in the two producing fields (Jubilee and TEN) have failed to comply with this requirement and are relying on the stabilisation clauses in their respective PAs to justify their non-compliance. Consequently, this impedes the ability of the Commission to properly monitor production.

4. Non-Submission of Work Programmes and Budgets for Review

The approval of work programmes and budgets is an important component of the Regulatory mandate of the Commission. This affords the Commission the opportunity to fulfil its mandate enshrined in Section 3(a) of Act 821, to *“promote planned, well executed, sustainable and cost-efficient petroleum activities to achieve optimal levels of resource exploitation for the overall benefit and welfare of citizens.”*

The Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I.2359) specifically, Regulation 25 (7) requires that *“the Contractor shall submit the work programme and budget under the joint operating agreement to the Commission for approval.”* Some IOCs do not submit their annual work programme and budget to them, while others who comply submit it beyond the Commission's approved cut-off date and insist the data provided is for information purposes only. This situation stifles the Commission's ability to control cost as well as to ensure the efficient conduct of



petroleum operations. Approval and implementation of work programmes and budgets, which eventually become petroleum costs, are therefore left to the joint venture partners without recourse to the state who owns the resources and who is eventually responsible for reimbursing the IOCs.

5. Non-Submission of Periodic Petroleum Cost Reports

In order to monitor cost recoverable petroleum expenditure, the various petroleum agreements require the IOCs to submit to the Commission periodic reports on expenditure in a prescribed format. This ensures that approved work programmes are executed within the acceptable budget. In contravention of this requirement the IOCs fail to submit their cost reports. This makes it difficult for the Commission to monitor costs on a quarterly basis and to exercise effective oversight.

6. Weak Commitment to Local Content Development

The Petroleum (Exploration and Production) Act 2016, (Act 919) and the Petroleum (Local Content and Local participation) Regulations, 2013 (L.I. 2204) requires IOCs to ensure that local content is mainstreamed throughout petroleum activities. These commitments are stipulated in their PAs and PoD, as well as in their annual local content plans.

The IOCs PAs generally have broad local content commitments to employ Ghanaians, use locally produced goods and services and transfer skills and knowledge to Ghanaians. The PoDs have largely focused on developing local capacity through enterprise development and contract execution; employment and training of Ghanaians both in and out of the country; investments and local sourcing, among others. With the passage of L.I. 2204, all IOCs are expected to comply with its requirements as well as their obligations under their respective PAs and PoDs. The Commission has data which supports the fact that some IOCs have not even met their obligations contained within the PoDs that they committed to. The Commission has in the past not cracked the “whip” on the grounds that the industry was nascent and required shepherding into maturity. Hitherto, the Commission has faced some opposition to local content development some of which includes the following:

- i. Some IOCs continue to battle the Commission on the applicability of laws to their operations such as the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204). They assert that their PAs were signed prior to the



passage of such laws and regulations and as such do not apply to their operations. This impedes local content development particularly with respect to the indigenous Ghanaian companies' participation in upstream petroleum activities;

ii. Some IOCs are noncompliant with provisions outlined in L.I. 2204 relating to the Commission's ability to approve the IOCs contract awards to their subcontractors. The Regulations make provisions for IOCs to inform the Commission and obtain approval for contracts or purchase orders above \$100,000. The obligation also applies to the subcontractors and allied entities of IOCs. The non-compliance of these IOCs and subcontractors denies the Commission the opportunity to ensure contracts are not packaged together and awarded to just a few companies, while ensuring that local companies are given the opportunity to participate in such contracts;

iii. Extensive recruitment of locals in essential roles such as cleaning, driving and catering is often used to mask a genuine lack of commitment among IOCs to train nationals in senior management or technical positions; allowing them to gain first-hand exposure in specialised areas such as: sub-surface and sub-sea engineering, drilling and exploration, production management, technical operations, finance and supply chain management. In the three main operating fields, Jubilee, TEN and Sankofa no Ghanaian has ever led any major project or sub-project worthy of such consideration. This is further illustrated by the fact that IOCs often transfer key positions to their head office denying Ghanaians the opportunity to acquire the necessary skills and technical know-how. From the Commission's perspective, although almost all of the targets set out for the IOCs in L.I. 2204 and respective PoDs have not been met, the Commission over the years has developed a collaborative approach in attempting to ensure compliance and a smooth implementation of laws, regulations, guidelines, and processes governing the industry. Through these collaborations, the industry has achieved commendable successes in the development of local content and local participation. These include:

iv. ***Increased in-country fabrication works*** – IOCs through collaboration with the Commission, undertook certain scopes of the FPSO and subsea systems in-country in order to build local capacities and capabilities. Today, indigenous Ghanaian companies (IGCs) can fabricate module stools, suction piles, riser protection frameworks, sleepers, jumpers, mud-mats and mini-manifold. Tullow in the execution of the TEN project fabricated 2,000mt of steel in-country while the OCTP project fabricated 2,300mt of steel.



v. **Investments** - major investments were carried out to support the projects: waste management and thermal absorption plants, cementing plants, coating plant, fabrication, hydraulic and engineering facilities, aviation hangars, etc. A significant activity which was carried out under the OCTP project was the coating of the sea-lines. Although there were challenges in obtaining a suitable yard with enough space and equipment to carry out the activity, the 22” and 26” pipelines were coated in-country by an indigenous Ghanaian company. The activity led to the investment of a new coating plant established in Takoradi with over 90% of the coating undertaken by Ghanaians.

The local content commitment under the Jubilee and TEN projects included the establishment of an enterprise development centre. The Jubilee Technical Institute, a \$5m funded project by the Jubilee partners, was established in 2013. A similar facility was established in RMU under the TEN project.

vi. **Local sourcing** – as part of the IOCs commitments to build local capacities, as a result of contract strategy sessions with the Commission, over 25 goods and services have been reserved for IGCs. The list of reserved goods and services continues to increase as IGCs build their capacities.

Where IGCs do not have the capacity to execute contracts, contracts are awarded to foreign entities with a minimum of 10% local participation. Again, through contract strategy sessions, contracts are unpackaged to ensure contracts are not awarded to just a few companies. Between 2014 and 2019, the total value of services was over \$1.2billion. Eni between 2014 and 2018 awarded contracts worth \$815m to IGCs and \$3.9b to JV of which IGCs have a minimum of 10% local participation.

vii. **Employment and training** - IOCs have employed Ghanaians in various positions and instituted succession plans for the localisation of expatriate roles. Between 2015 and 2018, over 1,900 Ghanaians were employed by IOCs and major service companies. Tullow in 2007 had 9 staff increasing to 336 in 2010, and 395 in 2012. Between 2015 and 2020, the head of Tullow was a Ghanaian, in line with commitments made during the Jubilee development. During the construction of the offshore receiving facility, as part of the local content commitments for the project, 140 Ghanaians in the community were employed. Additionally, essential services (i.e. low-skilled, non-technical goods/services) were reserved for local businesses in the community. IOCs annually undertake training for staff, interns and service personnel, including scholarships for Ghanaians. Eni for instance spends over



\$2.2m on training annually. As part of the Upstream Sector Internship Programme (GUSIP) instituted by the Commission to equip graduates with the requisite skill and knowledge, IOCs and subcontractors trained and subsequently employed graduates who were selected for the programme. During the pilot project Tullow took 10 of such graduates and assigned them to the TEN project. The ten (10) graduates have been employed in the industry by Tullow, the Commission and some subcontractors of Tullow.

viii. Collaboration with education institutions – The requirements under L.I. 2204 for companies to carry out R&D has resulted in most IOCs and its subcontractors partnering with universities and other governmental institutions to carry out R&D and technology transfer programmes. Major institutions such as Regional Maritime University, KNUST and Ashesi have benefited from various initiatives carried out by IOCs and service companies. Technip for instance partnered with graduates from KNUST to develop a gooseneck handler for carrying goosenecks which was used in the Jubilee Field. Various simulators have also been installed in these institutions for further studies and capacity building.

7. Non-Observance of Due Process

Ghana like other countries has established protocols for conducting business and the Commission as sector Regulator believes it should be the first point of contact for IOCs and other industry players. The practice where the IOCs by-pass the Commission and seek approvals and redress of concerns from other Government authorities is unacceptable.

THE IOC PERSPECTIVE

The concerns of the IOCs fall into the following six broad categories.

- a) Petroleum Agreements
- b) Local Content and Localisation
- c) Response Time
- d) Tendering
- e) Meetings



1. Petroleum Agreements

There are two distinct types of Petroleum Agreements (PAs) operating in parallel but independently of each other. There are the old PAs, signed prior to the establishment of the Petroleum Commission and the new PAs signed subsequent to the establishment of the Petroleum Commission. These two distinct agreements have different Regulatory set ups and obligations.

- i. According to some IOCs there remains a fundamental refusal on behalf of the Petroleum Commission to admit that two distinct PAs exist and insisting on enforcing its new rules of engagement based on the new PAs comes across as acting in bad faith. The IOCs that signed the old PAs are conscious of the fact that they are protected by stability clauses within their Petroleum Agreements and are not necessarily obligated to adhere to these new administrative burdens and the new Fees and Permits (Minor Fees) for example.
- ii. While the IOCs acknowledge the new rules of engagement that include provisions for the Regulator to exercise oversight and approval over contract awards in the exercise of its mandate of promoting local content, they maintain that it is not part of the Commission's mandate to dictate to the IOCs how contracts are awarded. IOCs are of the opinion that the Commission has no legitimate jurisdiction over the procurement process and IOCs note that often times, the contract awards do not appear to be in the best interest of the industry and the country.

2. Local Content and Localisation

A number of IOCs are aware that the Petroleum Commission views them as non-compliant and uncooperative, particularly in the areas of local content and localisation. They however, are of the view that many of their challenges originate from requests made by the Petroleum Commission for them to comply with provisions contained within new legislation such as the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204) passed subsequent to many of their Petroleum Agreements, and in contravention of the fiscal and stabilisation provisions contained within them. Insisting on these new rules of engagement therefore, comes across as though the Regulator and other industry stakeholders do not fulfil their contractual obligations.



3. Response Time

Almost all IOCs and service providers raised the concern of the Petroleum Commission not responding timely to written correspondence. The concern is that the delays in communication often lead to delays in project timelines which does not lend itself to the promotion of an efficient, effective and responsive industry.

4. Delays in Approvals (Permits and Requests)

There is widespread concern among IOCs and service providers that the Petroleum Commission has generally been slow to respond to approvals. A number of companies have been tracking the approval times and while the legislative framework dictates that the Petroleum Commission should secure approvals within 14 days or less, many are routinely secured within a 31-60 day period or longer. Instances have been recorded where companies have written to the Petroleum Commission seeking clarification on the approval timeframes to which a formal response is yet to be received.

5. Tendering

i. **Tendering process** - there is widespread belief that the Petroleum Commission's tendering process requires reform. According to some IOCs, a formal in-person meeting is usually requested prior to the approval of Request for Proposals (RFP) and contracts. The belief is that these meetings consume valuable time and resources and appear to be unwarranted, particularly when the majority of RFP's have been approved without further changes.

ii. **Tender lists** - IOCs have suggested that the Petroleum Commission's approved bidders list requires reform. According to IOCs there are too many services captured under one category (too broad a definition). For example, a Mobile Offshore Drilling Unit (MODU) would be captured under category A6 (Drilling & Production Services). At the time of tendering there were 54 companies listed with a valid permit under this category. Of these, only 4 companies were actually capable of providing a MODU. A further 10 deep water drilling contractors capable of providing a MODU were not registered with the PC. Therefore, the tender list is ill-defined as it does not adequately reflect the list of companies who can provide those services, therefore, a more detailed categorisation is necessary to provide a more accurate tender list.



6. Unplanned Meetings

A prevailing concern among IOCs is with respect to meetings between themselves and the Petroleum Commission. Many IOCs believe that meetings could be better coordinated and planned to ensure optimum usage of time and resources. This is even more critical for those companies who may not have the technical personnel based in-country. Meetings held at short notice do not allow for the right personnel to be assembled. In many cases this has often necessitated the rescheduling of meetings to permit technical personnel to take part.

In aggregate, this is what the findings have exposed. However in reality, although some IOCs and service providers share many of these challenges, not all of them have had identical experiences with the Regulator. Few have attributed this to personal relationships which exist between senior staff within the IOC and senior staff within the Petroleum Commission which allows for business to be conducted relatively expeditiously as a result of these personal affiliations. Such a scenario denotes a multi-layered challenge concerning the strength of the Petroleum Commission as a state institution and whether its systems are robust enough to work efficiently irrespective of personal networks.

The overarching sentiment among IOCs is that the entrenched position of the Regulator on numerous matters, runs contrary to the favourable operating environment the industry is trying to promote. The result is that the country's image as a promising and advantageous investment destination is tarnished.

Fundamentally both the Petroleum Commission and the IOCs recognise that a more favourable operating environment is essential to successfully developing the industry. A more conciliatory approach to conducting day-to-day business operations is required and common ground on many of the contentious matters must be sought henceforth.



OBSERVATIONS

1. The fundamental challenge is that Ghana's upstream petroleum industry is operating under two distinct Petroleum Agreements with different contractual terms and obligations and a mutual recognition of this is necessary to progress.
2. The Petroleum Commission was established after the various PAs were agreed and signed and several of the subsequent policies, legislative provisions and institutional and administrative practices do not always align with contractual privileges and obligations contained within the PAs and PoDs.
3. A recognition of the considerably changed operating and regulatory environment since first oil is necessary.
4. The parties should be more receptive to finding common ground.
- 5.. The PC should enhance its administrative and operational procedures.



CONCLUSIONS AND THE WAY FORWARD

This research paper has highlighted the serious concerns of industry stakeholders that border on the legal interpretation, administrative and operational challenges. It has provided an initial assessment, and by all accounts, clarity into the operationalisation of the legal framework may prove to be one of the most challenging aspects of this process going forward.

The report has outlined some of the leading challenges faced between the Regulator and the companies that operate within Ghana's upstream petroleum sector. The expectation is that by cataloging these insights for the first time, it will provide renewed impetus for the Ghana Upstream Petroleum Chamber to further advocate and engage the relevant stakeholders to address the prevailing challenges.

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