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Averting the Resource Curse in Ghana: The Need for Accountability

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Since Ghana struck oil in its western waters last year, the government has been busy. In the euphoric days immediately following the discovery, the President declared that Ghana would avoid the “resource curse” and use its new-found oil wealth to transform the country’s economic and social development. In February 2008, to jump-start the revolution, the government hosted the National Forum on Oil and Gas Development, where representatives from government, the private sector and the international community discussed the challenges of oil industry regulation. The government also organized several regional meetings, inviting local government officials, chiefs and some civil society groups to contribute their thoughts on oil policy. The President then brought together select officials to develop the Fundamental Petroleum Policy for Ghana, which broadly sketches the government’s oil policy, essentially committing it to pursuing sound management strategies that guarantee optimal extraction, revenue maximization, sound fiscal management, minimal environmental and social disruption, and local development. It also includes a basic overview of regulatory issues such as licensing and exploration.

The Fundamental Policy is too vague to serve as a meaningful regulatory tool. Therefore, in late spring 2008, the President created five Ministerial task forces to evaluate and revise designated portions of Ghana’s oil laws on the basis of the Fundamental Policy. Together the task forces’ recommendations will form the Master Plan—a proposal for a comprehensive new oil law. The task forces are: Fiscal Regime and Fund Types, in the Ministry of Finance and Economic Planning; Legal, in the Attorney General’s office; Health and Safety, including the environment, at the Environmental Protection Agency (EPA); Security, at the Department of Defense; and Local Content, with the Minister of Trade and Infrastructure. These committees’ missions are mostly self-explanatory—Health and Safety is reviewing health, safety and environmental regulations, while

Legal is evaluating the capacity of legal institutions to deal with the oil industry. The biggest and most important committee, Fiscal Regime and Fund Types, is revising the royalty and tax structure and designing an oil fund to manage revenues. The task forces are supposed to finish their work by October 30, 2008, when the President will submit the Fundamental Policy and the Master Plan to Parliament for review. Originally, the President had hoped that Parliament would approve new oil laws by the end of 2008. However, final ratification will likely be delayed until next year, to give the new administration a chance to review the proposals.

The government’s efforts to rewrite Ghana’s oil laws are welcome; most had been passed in the mid-1980s and are ill suited for managing a modern, active oil industry. The government’s approach to its review, however, raises doubts about whether its rhetorical commitment to fighting the resource curse will translate into practical action. Averting resource extraction disaster requires recognizing that the “resource curse” has its roots in misguided and corrupt government action, as much as in oil company efforts to maximize profits. To check negative influences, the country must develop strong regulatory institutions that constrain industry and government action and channel revenues into appropriate uses. Unfortunately, the government has not indicated that it grasps—or wants to acknowledge—the reality of the resource curse or the structures necessary to address it.

■ **Accountability can help avoid the resource curse**

As others have discussed, the “resource curse” is a multi-faceted phenomenon that poses both political and economic challenges.¹ The large influxes of cash that accompany oil production can cause inflation and the infamous “Dutch Disease,” increase corruption, subvert

democratic development, and foment conflict. These problems arise from the incentives that oil creates for officials and executives to undermine regulations for personal gain.

In Ghana—and most of the developing world—the oil industry has three main stakeholders: the oil companies, who pump and profit from the crude; the government, which regulates the industry and receives and spends national revenues; and the general public, which should benefit from the nation’s resources. Two of these groups—oil companies and the government—have direct access to and control over oil revenues. Unfortunately, control and a desire to avoid the resource curse do not necessarily go hand-in-hand. Oil companies simply want to maximize profits; they do not care whether oil promotes equitable growth. They have, therefore, little independent motivation to pay high royalties or taxes, comply with health or environmental regulations, or invest in local development where the law does not force them to do so. They are also happy to support authoritarian governments if it facilitates production.

The interests of Ghana’s democratically elected government should align with national concerns, including avoiding upheaval and fostering development. Ghana’s democracy is fragile, however—power is consolidated in the executive, checks and balances are weak, corruption is rampant. With few constraints on their actions, it is easy for corrupt officials to channel free-flowing oil money into undisciplined spending, Swiss bank accounts, or efforts to consolidate power, such as extravagant election campaigns. Competition between government actors to capture oil money often results in instability, increased criminality, and violence. Unfortunately, the huge personal gains that oil offers usually override official concerns about effective governance, equitable growth, and conflict. Combined with industry incentives for no-holds-barred profit, skewed government interests are unlikely to result in a concerted effort to avoid resource-fueled crisis.

The public, on the other hand, has a strong interest in guarding against the economic and political upheaval that often accompanies resource extraction. Ordinary Ghanaians get nothing from oil unless revenues are used to promote sound, equitable development. They suffer directly if oil causes unrest. To help avoid the resource curse, therefore, the public’s interests must influence the creation and enforcement of oil policies. This requires that the public be able to hold companies and the government accountable: monitor their actions, demand and receive explanations for decisions made, and impose sanctions if they fail to uphold agreements or promote national priorities. Accountability, in turn, requires creating oil laws and institutions that

champion three, interrelated issues: transparency, oversight, and enforcement.

With transparency, it is necessary to begin at the beginning—the government should develop oil policy and laws through an open legislative process that encourages public involvement and debate; this gives ordinary Ghanaians a voice in national policies and a stake in the success of the oil industry and institutions. Laws must require that all information on oil production be made public: The government must publish contracts and agreements with oil companies; both must report on extraction rates and revenues earned, paid, and received; the government must document and publicize oil revenue spending. Transparency must also infuse the production process—leases should be awarded through open competitive auctions and companies should provide the public with annual production forecasts.²

Transparency facilitates the second aspect of accountability: oversight. Information permits concerned citizens to scrutinize oil activities and determine whether they support national interests. Simply disseminating information to the public at large, however, might not engender sufficient monitoring. Individual citizens may not be motivated to pour through thousands of pages of government reports and civil society groups may not pick up the slack. This is particularly true in Ghana, where civil society is still consolidating and significant capacity constraints exist. Therefore, effective oil governance structures also set up formal oversight mechanisms to review and evaluate government and industry activity. These include annual internal and external audits, and independent committees comprised of government officials, business representatives, and private citizens to oversee the production process or monitor spending.³ Formal and informal monitoring allows the public to demand that the government change course when officials’ private concerns usurp public ones.

Finally, even in the most robust democracies there will be times when public scrutiny and demand will be insufficient to change industry or official conduct. In such situations, strong enforcement mechanisms are necessary to sanction wrongdoing and force action. This requires building the capacity of existing legal institutions to investigate and prosecute oil industry misconduct. Oversight committees should also have investigatory and adjudicatory power in the areas they monitor, to create an independent layer of enforcement. Laws must establish clear channels through which the public can bring problems to the attention of enforcement agencies, so that informal oversight feeds into the legal system. Meaningful sanctions provide an accountability backstop that forces players to respect

national interests, even when the pressures to subvert them are exceptionally strong.

■ **The government’s review process fails to truly address the resource curse**

Overcoming the resource curse is a formidable challenge—but not an insurmountable one. If laws and institutions guarantee transparency, create effective oversight mechanisms, and build enforcement capacity, they can alter official and industry interests to align more directly with those of the Ghanaian public, which has the most to lose if the resource curse takes hold. Making this happen, however, requires a serious political commitment to putting in place the laws and institutions described above. Unfortunately, the Ghanaian government’s actions thus far give little hope that such a commitment exists.

The Fundamental Policy represents the government’s only formal statement of its positions on oil regulation and therefore provides important insight into its intentions, despite its vagueness. At first glance, the Policy seems positive. It states that oil revenues will be managed in a way that benefits current and future generations of Ghanaians,⁴ and that new laws and policies will guarantee that industry interests do not subvert national priorities.⁵ At various points, the document highlights the need for sound revenue management to ensure that oil contributes to development, and for transparency and accountability throughout the industry.

Dig a little deeper, however, and it becomes clear that the Fundamental Policy actually represents a lopsided, incomplete understanding of the regulatory challenges posed by the resource curse. The Policy frames oil regulation as a two-player game. While it mentions the rights and interests of the Ghanaian people, it views the government and oil companies as the only relevant industry stakeholders.⁶ Its focus, therefore, is on how the government will regulate oil production—the Policy provides guidelines on “governmental monitoring of petroleum operations,”⁷ and highlights how laws will give the government a “full overview” of the sector to facilitate regulation.⁸ It fails to recognize that government interests may not align with the public good and that citizens, as separate industry stakeholders, must also have a role in monitoring both oil companies and the government.

The Policy’s references to strong institutions, transparency, and revenue management are similarly disappointing. According to the Policy, good governance is necessary to provide a predictable, stable working environment for oil companies, not to check misconduct.⁹ Fiscal reforms will

ensure that the government can maximize revenue collection, not constrain what happens to those revenues once collected.¹⁰ The document mentions promoting development priorities, but fails to explain what they are or how they will be established; the Policy itself focuses mostly on building local industry capacity, rather than on fostering equitable and sustainable growth. The Policy makes absolutely no mention of any of the types of laws and institutions discussed in this paper.

The government’s approach to creating the Fundamental Policy—and the Master Plan—also raises warning flags. Beginning with the National Forum, the government has conducted a closed, secretive review process that has marginalized ordinary citizens.¹¹ The President’s office has written the Policy and Plan without any significant input from civil society groups, local business representatives, concerned citizens, or even Parliamentary leaders. While Parliament must eventually ratify both proposals, it is unlikely that members will rewrite or significantly modify the near-complete documents. Details on the work of the Ministerial task forces are hard to come by—their meetings are closed to the public—but the little news that leaks out is not encouraging. Development agencies who saw early drafts of the Plan say that it contained almost no meaningful transparency or oversight provisions. The President’s office has indicated that it will probably not include the oil industry in the nation’s Extractive Industry Transparency Initiative program, which is supposed to increase transparency in revenue management. Even government officials sitting on the committees have suggested that accountability is not a priority for most committee members.

Developments in Ghana’s oil industry during the last year are as opaque as the government’s legal review. Since closing contracts with Tullow and Cosmos, the companies that made the initial find, the government has leased approximately seven or eight more exploration blocks to new investors. The leasing process, however, lacks transparency. Companies submit lease applications to the Ministry of Energy, which orders the Ghana National Petroleum Corporation (GNPC) to negotiate a lease contract. The contract goes back to the Ministry of Energy for approval and is then forwarded to Parliament for ratification. This last step should provide some oversight, but the public is not informed when contracts go to Parliament, there is rarely open debate on them, and neither Parliament nor the Ministry of Energy publishes agreements. At this point, most public information on industry developments has come through announcements that GNPC has placed in local newspapers; these have

explained how GNPC functions, detailed existing oil laws, and discussed new leases and future development plans.¹² These educational efforts are certainly commendable, but they do not represent a concerted government effort to increase transparency—they are ad-hoc and discretionary and provide GNPC’s view of events, not unfiltered access to documents. The review process will probably change application procedures, but the fact that the government has allowed the industry to operate in a black box during this crucial early period of development suggests that it does not place much value on transparency—and that its new laws won’t either.

When the government first announced it had struck oil, there was reason to be optimistic that Ghana might avoid the catastrophes that have befallen many of its resource-rich neighbors. A country is a democracy where, at least in theory, national interests constrain government action. In the case of Ghana, the President made early proclamations about avoiding the resource curse and promoting development. A year later, however, it is hard to be optimistic. It is clear that the government cannot or will not grasp the true nature of the resource curse. As a result, its legal reform project is unlikely to result in the types of laws and institutions necessary to create an accountable oil industry capable of fostering meaningful development.

Hope, however, is not entirely lost. The Fundamental Policy and Master Plan have not yet become law. There is still time to engage in a national debate on Ghana’s oil policy, particularly as Parliament begins to examine the President’s proposals. If the government does not want to engage the public, then the public must try to engage the government. Civil society groups can carry out public education campaigns on oil issues; publicize what they know about the government’s activities; criticize and suggest improvements to the new laws, when they become public; and pressure the government to promote national dialogue. Civil society should also seek to make oil governance the central issue of the 2008 election campaign. After all, oil offers the country more opportunity—and presents it with many more dangers—than any other issue on the campaign agenda. Presidential and Parliamentary candidates must explain, in detail, how they intend to regulate the oil industry to ensure that revenues contribute to sustainable, equitable development.

There is no guarantee that civil society advocacy will make a difference—and plenty of evidence from past advocacy campaigns to indicate that it will not. Nonetheless, it is imperative to try. Getting regulation right is an absolute must if oil is to make a positive contribution to Ghana’s development. Unless the government can be convinced to put in place laws and institutions that guarantee transparency

and provide effective oversight and enforcement, then oil will likely benefit only industry executives and a handful of corrupt officials, while the nation is hung out to dry.

Endnotes

¹ See Kramon, Eric (2008), “Reframing the Discourse on Oil in Ghana: A Problem of Politics,” (Ghana Center for Democratic Development Briefing Paper Vol 9. No. 2, 2–3).

² See International Monetary Fund (2005), Guide on Resource Revenue Transparency, for more on transparency best practices in oil revenue governance.

³ For examples, see World Bank (2006), Experience with Oil Funds: Institutional and Financial Aspects.

⁴ Government of Ghana, Fundamental Petroleum Policy for Ghana (Final Draft) (2008), 2 [hereinafter Fundamental Policy].

⁵ Fundamental Policy, 5.

⁶ Fundamental Policy, 6.

⁷ Fundamental Policy, 3 and 6.

⁸ Fundamental Policy, 6.

⁹ Fundamental Policy, 5 and 7.

¹⁰ Fundamental Policy, 8.

¹¹ See Kramon, 2.

¹² For examples, see the News Archives section of the Ghana National Petroleum Company’s website, <http://www.gnpcghana.com/aboutus/news.asp>.

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