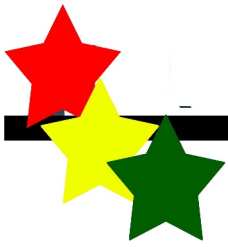


# **FAIR - TRADE OIL SHARE - GHANA**

## **(FTOS - GH) PSA CAMPAIGN**



**GHANA INSTITUTE OF GOVERNANCE AND  
SECURITY (GIGS)  
GHANAHERO.COM**

**OPEN PETITION TO THE PRESIDENT OF  
THE REPUBLIC OF GHANA.**

**THE UPSTREAM OIL INDUSTRY FISCAL  
REGIME DEBATE.**

# **GHANA INSTITUTE OF GOVERNANCE AND SECURITY (GIGS)**

14<sup>th</sup> February, 2017

His Excellency President Nana Akufo-Addo  
Office of the President  
Jubilee House  
Accra

Dear President Nana Akufo Addo,

## **PETITION ON THE UPSTREAM OIL INDUSTRY IN GHANA** **FAIR TRADE OIL SHARE GHANA PSA (FTOS-Gh/PSA) CAMPAIGN**

On behalf of Ghana Institute of Governance and Security (GIGS) and the Umbrella Group Fair-Trade Oil Share-Ghana PSA (FTOS-Gh/PSA) Campaign, may we congratulate you for having been elected to occupy the highest public service office, the President of Ghana.

May the Almighty Allah, God the Most Merciful, bestow his blessings and wisdom upon you, Vice President Mahamudu Bawumia, and all your ministers and appointees, and allow them to govern and lead Ghana into bountiful prosperity.

Leading us into prosperity, needs adequate amount of financial resources to be able to carry out all your promises which will impact on the social wellbeing of the masses of Ghanaians who massively voted for a change; a change that would manifest in increased standard of living and happiness.

**Raising adequate amount of financial resources is not squeezing to pay more taxes and levies on almost everything, nor borrowing heavily from outside at very high interest rates. It means exploiting and harnessing our natural resources that Providence has blessed us to wisely develop to generate the necessary funds to form the basis of our national development and economic transformation.**

We have lost as a nation on gold, diamond and many more resources.

We cannot afford to lose this time around on oil and gas. However, the indicators are already showing we are because the contract type and fiscal regime backing the exploitation of Ghana's oil and gas is similar to the fiscal regime under which gold, diamond, and other minerals have been mined over the decades.

Compared to Johannesburg and Kimberly, in South Africa, a visit to Obuasi and Akwatia, Ghana, provides dramatic and deeply sorrowful evidence of the waste that has accrued to Ghana even as so much resource have been mined and sent overseas to develop other countries for generations.

We are the National Leaders of the FTOS-Gh/PSA Campaign in Ghana. The FTOS-Gh/PSA Campaign is a worldwide Campaign launched and supported by many Ghanaians and Ghana Supporters, both living overseas in the Diaspora, and in Ghana, and having become acutely alarmed about what is happening to Ghana's Oil revenues to the extent Ghana continues to receive so little.

We have always argued that the world standard Production Sharing Agreement (PSA) which formed the basis of PNDC Laws 64 and 84, the current norm worldwide, will accrue more revenue to Ghana as sovereign owner of the oil and gas resources.

Therefore, before production began in the Jubilee Fields in December 2010, we used the Jubilee Fields fiscal data published in the Daily Graphic of 10<sup>th</sup> July 2008 by GNPC to simulate what the positions of Ghana would be in 15 years, that GNPC assumed the field would be exhausted under the PSA which the two PNDC laws support and the Royalty Tax/Hybrid System which law was not on the statute books at the time contracts were being signed.

1. **Under the Royalty Tax/Hybrid System, Ghana would lift 348,375,000 barrels of oil worth US\$20.914 billion representing 38.20% of total production. The foreign oil companies would lift 563.395,000 barrels worth US\$33.835 billion representing 61.80% total production. On the other hand, The World Bank and IMF have projected US\$19.390 billion and US\$20.269 billion respectively that would accrue to Ghana under the system for 19 years from 2011-2029, using long term base price of US\$75.00 per barrel. We used long term base price of US\$60.00 per barrel for our simulations.**

***Note: Under the Royalty Tax/Hybrid System Ghana would have to pay the lead operator Tullow, close to US\$2 billion within the 15 years as development and daily operating costs.***

2. **Under the various scenarios adopting PSA, Ghana not participating with no financial obligations would be earning the following:**

- a. **Ghana's Position under PSA without Royalty 2010-2025**

**Ghana would lift Profit Oil of 435,262,050 barrels worth US\$26.115 billion representing 47.70% of total production.**

**Foreign Oil Companies would lift 477,237,500 barrels worth US\$28.634 billion representing 52.30% of total production.**

- b. **Ghana's Position under the PSA with Royalty 2010-2025**

**Ghana would lift 453,512,500 barrels worth US\$27.210 billion representing 49.70% of total production.**

**Foreign oil companies would lift 458,987,500 barrels worth US\$27.539 billion representing 50.30% of total production.**

- c. **Ghana's Position under PSA with Corporate Tax 2010-2025 in accordance with PNDC Law 84.**

**Ghana would lift 548,686,250 barrels worth of US\$32.921 billion representing 60.10% of total production.**

**Foreign oil companies would lift 363,813,750 barrels worth US\$21.829 billion representing 39.90% of total production.**

**The simulation results immediately tell you PSA is a better option to adopt.**

For that matter, we have on numerous occasions over the last 4-plus years, before Act 919 was hurriedly passed, with our own private resources, organized workshops and conferences; made a multitude of presentations to the Ex-Presidents, the Speaker of Parliament Mr. Doe Adjaho, Parliamentary Leadership, Select Committee on Mines and Energy, Government officials, and State Institutions, the National House of Chiefs, Council of State, Faith Based Organizations, etc. about the predatory and dysfunctional nature of the Royalty Tax System. That system was transformed into the so-called Ghana Hybrid System, the basis of Ghana's current Oil contracts. It still is inimical to our interest as citizens.

So, Parliament went ahead and passed this exploitative and obnoxious Ghana Hybrid System Law which progressive leaders who care and mean well for their countries in this 21<sup>st</sup> century would not pass to regulate oil industry in their countries. In fact, South Sudan, the newest country in the world, reportedly has a superior law governing their upstream oil industry than Ghana. Angola, despite their shortcomings in their oil industry governance, is touted to have the best law in Africa by experts at the Oxford Institute of Energy Studies.

Please, Mr. President, since you are a serious and action man, we suggest you call up all the top officials in the Ministry of Mines and Energy, Petroleum Commission, GNPC, Energy Commission and their collaborators ACEP, NRGI, PIAC, IEA, IMANI Ghana, ISODEC and CSO Platform on Oil and Gas, etc., before you and in our presence ask them to name any single country on the continent of Africa that has adopted the Royalty Tax/Hybrid System and is doing better than the PSA countries.

We agree that Ghana is a Sovereign Nation and therefore can adopt any system politically expedient to her needs. However, that argument suddenly becomes a non-starter and a porous defense of an unacceptable situation created by previous officials with less than honorable interests, in our opinion.

Since you have charged us not to be mere spectators but also citizens who would actually help build our country, we are putting up this challenge and bringing this very important national issue which borders on Ghana's economic prosperity and survival, stability, and security, to your immediate attention for action.

Since August, 2014, we have issued an Open Challenge through the media to the above state institutions and their collaborators to identify African countries that have adopted the modern concession in recent times to which they have not responded to (see **Attachment 1- Open Challenge**).

We want to reiterate and state without any reservation that the Ministry of Mines and Energy, Petroleum Commission, GNPC, ACEP, NRGI, PIAC, CSO Platform on oil and gas, Think Tanks and groups headed by professors, doctors, and lawyers have used falsehood, deceit, and misinformation to brainwash many sectors of the Ghanaian public into believing that what Ghana now has is right, proper, and modern, that it protects Ghana's interests. However, most Ghanaians do not know that most of these "experts" have been hugely paid and rewarded to throw dust into their eyes.

**Attachment 2** illustrates graphically the superiority of the PSA which PNDC Laws 64 and 84 supports over the Royalty Tax/Hybrid System, clearly and vividly presented by Prof Lungu, the Executive Coordinator of the FTOS-Gh/PSA Campaign Worldwide, using the Jubilee Field fiscal terms and operational results during the first five years.

The graph shows Ghana earned a total of US\$3,111,613,783 representing 19.40% of total production revenue, while the foreign oil companies earned US\$12,868,622,163 representing 80.60% of total production revenue under Royalty Tax/Hybrid System.

If PSA was adopted Ghana would have earned US\$9,608,909,293 representing 60.10% of total revenue while the foreign oil companies would earn US\$6,371,326,655 representing 39.90%.

Available information indicates the Commonwealth Secretariat was responsible for reversing the Tsikata-Era PSA System to the revenue-losing Royalty Tax/Hybrid System, to the disadvantage and detriment of Ghana.

**Attachment 3** is an article published by the Executive Coordinator of the FTOS-Gh/PSA Campaign 16<sup>th</sup> December, 2016, with a picture depicting what is truly happening behind the scene, not in the public domain.

#### **Attachment 4. Debate on the Petroleum Exploration and Production Bill.**

Attachment 4 is a thorough analysis of Act 919 by the National Coordinator of the FTOS-Gh/PSA Campaign. It details the ill-effects of the law against Ghanaians contrary to what government officials and their "professional advocates" and collaborators may continue to tell Ghanaians, that the current law is robust, that it better protects their interests. With respect to these professional advocates, records available to us show that ACEP, NRGI, PIAC, Petroleum Commission, Ministry of Mines and Energy, etc., are also heavily funded by Western interests. Obviously, that would be



reasons enough for many of them to suppress the truth about the gains and losses, for them to be at the defence of the foreign oil companies, instead of their country.

At the minimum, these entities and professional advocates are ethically-challenged. They cannot be objective or non-partial, nor should they ever sit in judgment to decide the merit of the case in any forum, public, or private.

#### **Attachment 5. Do not pass the Petroleum Exploration and Production Bill.**

This article was published by the former Executive Secretary to Ex-President Mahama, a supporter of the PSA, in July, 2016. The paper by Dr. Atuguba agitated Parliament to such an extent Parliament passed Act 919 under a certificate of emergency, 4<sup>th</sup> August, 2016, practically the midnight before the 2016 elections.

As such, Parliament, without any doubt, has been a party to the conspiracy against Ghanaians and their country. Parliament has actually sacrificed the economic destiny and emancipation of Ghana by approving that obnoxious and exploitative Bill under what can only be described as fraudulent, deceitful, and a huge loss to Ghana.

#### **Attachment 6. The Modern Conspiracy against Ghanaians: A Prime Case for Review and Adjudication by the Supreme Court of Ghana.**

This article by the National Coordinator, FTOS-Gh/PSA Campaign, December, 2016, details our efforts to have the correct and right fiscal regime adopted by Ghana in order to allow Ghana to reap maximum benefits from the oil resources. We believe strongly that should the executive and the legislative branches in concert refuse to do right by Ghana to arrest the huge loss of revenues by Ghana, it would be appropriate to have the Supreme Court be the final arbiter of this matter.

**Attachment 7** is the list of countries in the world that have adopted PSA, by continents, earning them better than 51% for their countries, for the most part. Per our latest count, there are 34 countries in Africa that have adopted the PSA. Countries in the sub-region of West Africa include Senegal, Sierra Leone, Liberia, Togo, Republic of Benin, Cote D'ivoire, Guinea, and Mauritania. In East Africa, Kenya, Uganda, Eretria, Ethiopia, and Tanzania are among the newly-emerging oil countries that have also adopted the PSA for their infant petroleum economies straight from the start. In fact, many of these countries had PSA laws on the books long before they entered into contracts with the oil companies. For example, our neighbour, Cote D'ivoire, had PSA laws on their books as far back as 1975.

Therefore, the argument by government officials, the professional advocates, and their collaborators that a country has to de-risk first by using the Royalty Tax/Hybrid System before migrating to PSA is problematic, false, and deceitful. If they all were honest with themselves and Ghana, they would in fact agree that Ghana has already de-risked the Jubilee oil fields.

And so, Mr. President, it ought to interest you to know that KOSMOS and Tullow, the major operators in Ghana, are in fact operating under PSA in Kenya, Uganda, Cote D'ivoire, Mauritania, Senegal, Equatorial Guinea, Congo Brazzaville, etc.

Why not in Ghana too, sir?

**Attachment 8** is a picture illustration by Executive Coordinator, FTOS-Gh/PSA Campaign, which speaks for itself. Ghana lost over US\$6 billion plus in oil revenue over the first five years which could have been used in solving problems depicted in the picture, lost opportunities.

Mr. President, something has seriously gone wrong.

We believe the previous governments and officials in charge of handling the upstream oil industry, including members of Parliament, were not really seeking the national interest and economic

security, but rather, their own personal agendas and interests. Unfortunately, the detrimental effects of their actions, inactions, and omissions have fallen brutally on their Nation, even as many of them have retired under mightily generous public subventions and retirement package, in addition to whatever back-handed bonuses they received from the oil companies while they stood behind their irrational decision not to adopt the PSA for Ghana.

This is a great scandal and havoc the leadership and authority of Ghana have wrecked on Ghanaians. It must be investigated. It must be stopped.

Our call for investigation is buttressed by the fact that the Executive Director ACEP the most consulted on Oil and Gas matters in the country has gone before the US Congress Sub-Committee on 18<sup>th</sup> July 2013 to emphatically testify that Oil contracts in Ghana are tinted with corruption. Corruption is the bane of Ghana which you promised to fight.

In the light of the above, we suggest and advise that no more oil contracts be signed under the obnoxious and exploitative Act 919 by your government until either (1) Parliament annuls Act 919 and enacts a strong Petroleum Exploration and Production bill with the PSA as the framework that seeks to allow Ghana to accrue 50% or better of all oil revenues, or (2) the Supreme Court of Ghana adjudicates and makes a pronouncement on the legality of all of the oil contracts.

Once again, since you have charged us not to be spectators, but instead, active citizens, we are bringing to you this dreadful situation about Ghana's oil revenue losses, over \$6.25 billion the last 5 years, according to our calculations, being losses suffered by Ghana under your predecessors.

Please do not allow this problem to remain a problem for Ghana.


Yours in the service of Ghana,




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Advocate of FTOS-Ghana PSA Campaign  
Tema Metropolitan Industrial Chaplain  
Tel: 0279565574

CC: The Vice President  
The Speaker of Parliament  
The Minister of Mines & Energy  
The Minister of Finance  
The President, National House of Chiefs  
Executive Coordinator, FTOS-Gh/PSA Campaign, World-Wide

## **ATTACHMENT 1**

# **GHANA INSTITUTE OF GOVERNANCE AND SECURITY (GIGS)**

### **OPEN CHALLENGE**

As a follow up to our Press Statement on the Petroleum Exploration and Production Bill 2013, released on 28th July, 2014, the Ghana Institute of Governance and Security (GIGS) is challenging the following under-listed organizations and their executives to come out and tell Ghanaians how much revenue would eventually accrue to them from the Jubilee Fields which is considered to hold 2 billion barrels of oil and 5000 billion cubic feet of gas worth estimated conservative value of US\$175 billion, that is, (2 billion x US\$75) + (5000 billion x US\$5.00 per 1000 cubic feet), under the hybrid system -THE MODERN CONCESSION - they are championing and collaborating with the World Bank, IMF, Oxfam America, Revenue Watch Institute, Star Ghana, to force down the throats of Ghanaians.

The World Bank and IMF have estimated theirs to be US\$19.390 billion and US\$20.269 billion respectively, using a long term base price of US\$75 per barrel when the field becomes exhausted. We at GIGS have also estimated ours using the same base price of US\$75 per barrel and US\$ 5 per 1000 cubic feet for gas as indicated above to be between US\$83.475 billion, representing profit oil only (47.70% of total estimated revenue), and US\$ 86.94 billion, representing Royalties and Profit oil (49.68% of total estimated revenue) as the "Minimum Government Take," excluding Profit Taxes, under the simplest Production Sharing Agreement. Note: Under this simplest Production Sharing Agreement, Ghana is not contributing a cent towards exploration, development and daily operating costs.

These conservative estimated revenue figures accruing to Ghana under the PSA fall within the 42%-60% "Minimum Government Take" range set by the US Government Accountability Office (GAO), that should accrue to any host government from total production revenue by allowing its oil and gas resources to be exploited under any fiscal arrangement or contract [(DCMNR 2006) Department of Communication, Marine and Natural Resources, Dublin, Ireland].

If the Modern Concession formula was not being manipulated by the Foreign Oil Companies, as the case is now to their advantage, Ghana should at least earn US\$66.8675 billion including taxes, representing 38.21% of the total estimated revenue of US\$175 billion, though this falls short of the base Minimum Government Take of 42%.

The price of light crude oil since production began in 2010, has been fluctuating between US\$100 and US\$120 and is currently around US\$105 per barrel.

The World Bank and the IMF estimates are 11.08% and 11.58% of the total estimated production revenue of the US\$175 billion respectively as the 'Minimum Government Take', under the current prevailing system – the Modern Concession which makes Ghana to also contribute toward development and daily operating cost. Ghana currently is required to be paying US\$150 million or more yearly to the lead operator Tullow as her share of daily operating and technical costs for participation in the project contrary to international practice. The total operating cost plus capital cost that Ghana is expected to pay over the next ten years average roughly US\$180 million per year.

This is a clear and absolute example of robberies in the name of investment Mr. Kofi Annan complained against, but our elite technocrats and political leaders do not seem to realize it. The passage of the current Petroleum Exploration and Production Bill which is in the pipe-line would amount to complete perpetuation of these robberies and a death sentence on Ghana's economic emancipation and

independence, reducing us to modern day slavery status. We say a BIG NO to selling Ghanaians down the river all over again.

The organizations being challenged are:

1. Africa Centre for Energy Policy (ACEP).
2. Ghana's Oil and Gas Technical Committee.
3. Institute of Economic Affairs
4. Centre for Economic Policy Analysis
5. Oxfam America
6. The 135 CSO Platform on Oil and Gas
7. Oil Watch Ghana
8. Ghana National Petroleum Corporation (GNPC)
9. Energy Commission
10. Petroleum Commission
11. IMANI Ghana
12. ISODEC
13. Friends of the Earth
14. Friedrich Ebert Foundation
15. Select Committee on Energy and Petroleum
16. Select Committee on Finance
17. Ministry of Finance
18. Ministry of Energy and Petroleum

We challenge them, in addition, to publish the list of countries in Africa producing oil in recent times under the Modern Concession.

Ghanaians are waiting for your answers. Please DO NOT take forever to respond.

Solomon Kwawukume  
Senior Research Officer  
Oil & Gas, GIGS

Note: This article takes precedence over our earlier publication due to the revision and evaluation of the Gas deposits.

26th August, 2014.

# Fair-Trade Oil Share – Ghana (FTOS-Gh)



The Petroleum Exploration and Production Bill

Ghana Hybrid System

Why Ghana the Star of Africa?

## GHANA HYBRID SYSTEM

Ghana vs. Foreign Oil Company (Barrels)

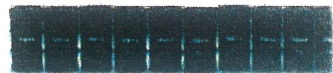
Jubilee Oil Fields\*

GHANA  
(Barrels)



28,117,764

Foreign Oil  
Company  
(Barrels)



144,417,622

Production Year:  
(2010-2015)

0 50,000,000 100,000,000 150,000,000

Ghana vs. Foreign Oil Company (USD)\*

Jubilee Oil Fields

US\$ 3,111,613,783

(TRUTH)



US\$ 12,868,622,165

\*Production Years  
2010-2015

## PRODUCTION SHARING AGREEMENT (PSA)

Jubilee Oil Fields

(If PSA Had Been Adopted 2010-2015)

101,941,628

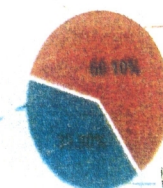
GHANA  
(PSA Barrels)



Foreign Oil  
Company  
(PSA Barrels)



67,593,758



US\$ 9,606,909,250

US\$ 6,371,326,655

0 20,000,000 40,000,000 60,000,000 80,000,000 100,000,000 120,000,000

Let us Adopt Production Sharing Agreement now!!!





# Fallen John Mahama: How the NDC Plundered \$6B in Ghana Oil Cash

By: Prof Lungu



"...To repeat, in nearly 6 years of oil production at the Jubilee Oil Fields under Mahama and his NDC party, Ghana received just \$3.3 billion out of nearly \$17 billion dollars in oil revenues...representing just 19.76% of total oil revenue...Mr. Mahama called their predatory and plundering scheme the "Ghana Hybrid System", now...consolidated into a law they enacted about 3 months ago they call Act 919...It is all a Ghana version of a 419-Royalty-Scheme to rob Ghanaians of their sovereign oil and gas wealth...The important question now is, what is Akufo-Addo going to do about Ghana's oil contracts to ensure Ghana gets better than 50% of all oil revenues produced in Ghana? Ghana, it is your chance now: Ask Akufo-Addo what he is going to do...", (Prof Lungu, 14 Dec 16).

Dear reader, as at 30th September, 2016, just 2 month before the 2016 elections, Ghana had earned a meager US\$3.320 billion, representing just 19.76% of total oil revenue of US\$16,803,359,555. This is even far below the 42% "minimum government take" recommended by the US Government Accountability Office (GAO). 42% is the least expected to accrue to the host country from total production revenue for allowing sovereign oil and gas resources to be exploited in partnership with private oil corporations in any country. In fact, receipt by countries of better than 50% of total oil revenues is actually the norm in other African countries, Asia, Europe, and the Americas.

They will be remembered as cartoon characters, thieves, and hucksters!

It surely was a scandal to discerning Ghanaians and Ghana supporters when Mr. John Mahama, with the support of his NDC party, allowed the oil companies to trample upon the world standard Production Sharing Agreement and failed to collect Fair Trade Oil revenue for sovereign Ghana.

They permitted the foreign oil companies to collect more than \$6 billion in extra cash, in addition to their Fair Share oil company profits.

To repeat, in nearly 6 years of oil production at the Jubilee Oil Fields under Mahama and his NDC party, Ghana received just \$3.3 billion out of nearly \$17 billion dollars in oil revenues.

The NDC called their predatory and plundering scheme the "Ghana Hybrid System", now transformed and consolidated into a law they enacted about 3 months ago they call Act 919.

It was a Trojan Horse of epic proportions, and still is, until Akufo-Addo and his NPP stop all that theft of Ghana oil money.

In the Mahama-NDC-bait and switch, the United Kingdom and American private interests used just \$29 million to secure that extra \$6 billion from Ghana while Ghanaians were hoodwinked on 'Oil Revenue Management'...It was an epic swindle, a sad and mischievous contract on Ghana, when Ghana ought to have received more than \$9 billion.

The problem for Akufo-Addo is, a concession scheme, or any oil contract scheme other than Fair-Trade Oil Share PSA contract for Ghana's oil and gas that secure less than 50% of revenues will in fact be a betrayal and a sell-out of Kwame Nkrumah's Ghana, one more painful time.

And Akufo-Addo must inform Mr. Kobina Takir "Hybrid" Hammond that he is not going to ride the GOGIG Revenue Management Trojan horse with "Hybrid" Hammond or anyone, nor will he play the Mahama-NDC plunder games while the people of Ghana suffer for lack of income and development.

Ghanaians live in the midst of plenty but have now become a beggar Nation with a Mount Afadjato-sized bowl in hand.

Mahama and his NDC's Act 919, with its Ghana Hybrid System foundation, is a conspiracy hatched against the masses of Ghanaians for the benefit of the oil companies, some Ghanaian elite technocrats and politicians like John Mahama, Benjamin Daguda, Kobina Takir "Hybrid" Hammond, etc., and the countries where they send the plundered funds.

It is all a Ghana version of a 419 Royalty scheme to rob Ghanaians of their sovereign oil and gas wealth in the name of investment, that, like gold, diamonds and other minerals, will never materialize until Ghanaians receive a Fair Share of their own oil revenues that is better than 50%, to begin with.

The important question now is, what is Akufo-Addo going to do about Ghana's oil contracts to ensure Ghana gets better than 50% of all oil revenues produced in Ghana?

Ghana, it is your chance now: Ask Akufo-Addo what he is going to do.

Mr. Nana Akufo-Addo Dankwa, what are you going to do about the Ghana oil contracts to ensure Ghana gets better than 50% of its own oil income in Kwame Nkrumah's Ghana?

*Subj: Fallen John Mahama -- How the NDC Plundered \$6B in Ghana Oil Cash.  
Support Fair-Trade Oil Share Ghana (FTOS-Gh/PSA) Campaign/Petition:  
<https://www.change.org/p/ghana-fair-trade-oil-share-psa-campaign-ftos-gh-psa/>  
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[www.GhanaHero.Com](http://www.GhanaHero.Com)).*



## **ATTACHMENT 4**

### **Debate on the petroleum exploration and production bill**

Does it guarantee Ghana a fair share of oil revenue and protect the interest of Ghana?

On Friday 19th August, 2016, the Ghana Institute of Governance and Security locked horns with the Africa Centre for Energy Policy represented by Dr. Adam Amin, Natural Resource Governance Institute represented by Mr. Samuel Bekoe and the Select Committee on Mines and Energy represented by Mr. Mutawakilu, Deputy Chairman, on the programme Ghana Connect on Joy TV and Joy FM Radio to debate whether the new Petroleum Exploration and Production Bill guarantees Ghana a fair share of the oil revenue and protects the interest of Ghana.

Due to time constraint, GIGS was unable to articulate our observations and comments on the Bill fully but only dealt partially with the Fiscal Regime which mostly is our focus.

GIGS and its partners in this campaign to adopt PSA now represent our full observations on the Petroleum Exploration and Production Bill in two parts.

#### **Part 1: General observations and implications**

The law in the making is in all respect the Royalty Tax System under the concessionary system - a system progressive and forward looking leaders would not adopt to regulate Oil and Gas discoveries in this 21st Century - cunningly and subtly clothed in some provisions of Production Sharing Agreement (PSA) to conform and fall in line with the exploitative agreements so far entered into by both NPP and NDC governments and approved by our Parliament; now metamorphosed into Modern Concession, the Ghana Hybrid System.

It is an attempt now, therefore, to give legal backing to these bad and illegal agreements and contracts tinted with corruption, as stated categorically by Dr. Adam Amin in a presentation made to the House Sub-Committee on Africa, Global Health, Global Human Rights and International Organisations on 18th July, 2013. I quote:

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

The question one may ask is, if Dr. Adam Amin knew about these things, why is he supporting an obnoxious and exploitative law to legitimise these contracts tinted with corruption that would go a long way to impoverish his country? What are his motives and incentives? And that of others charged with

overseeing our oil boon?

GIGS and its partners and supporters are opposed to the Modern Concession because it is equally exploitative as the Traditional Concession despite its modification to include Carried and Participation Interests and Additional Oil Entitlement (AOE).

We were and still are irrevocably and unabashedly in support of consolidating the PSA which the previous PNDC Laws 64 and 84 support, which even Tullow on one of its website links acknowledged but dishonestly and mischievously claimed Ghana had adopted to regulate its Upstream Oil Industry in order to derive optimum benefit, a claim since then edited out from that link.

*<http://www.tulloil.com/sustainability/sharedprosperity/transparency/ghana-psa>*

The passed Bill enables the foreign oil companies to swindle Ghana through taking advantage of certain incentives that go with adoption of PSA, such as waiver of import and export duties.

The Bill takes away all the sole rights and controls granted the National Oil Company, GNPC, under the PNDC Laws 64 and 84, thus placing ownership and control of the oil and gas resources of Ghana into private hands contrary to Article 257 Section 6 of the Constitution of the Republic of Ghana.

The semantic interpretation given by Mr. Mutawakilu, Deputy Chairman, during the debate was very absurd to me and Dr. Adam Amin remarked if I wasn't satisfied I could go to the Supreme Court for proper interpretation. According to Mr. Mutawakilu, natural resources only belong to Ghana underground. They become the property and asset of any investor who gets access to it and brings them out to the surface.

The Bill also reduces GNPC to an independent commercial operator and therefore has to compete with the foreign oil companies for oil blocks declared open by the Minister of Petroleum even if it has the resources to do so, otherwise the Minister would have to exercise the numerous discretionary powers conferred on him to allocate a block to it.

The Bill also contravenes the following:

- a. UN Resolution on Permanent Sovereignty over Natural Resources GAR 1803 of 1963 reprinted in GAR 3171 of 1963..
- b. The Charter of Economic Rights and Duties of State GAR 3181 of 1974.

Ghana surprisingly is a signatory to all these UN Conventions and Resolutions. Ghanaians would eventually lose ownership rights and permanent sovereignty over their oil and gas riches to foreigners as happened to gold and other minerals.

The above observations and implications are not written in black and white in the Bill for one to see, but are inherent in it. One needs to understand the principles underlying the various fiscal arrangement or regime to be able to understand and decipher these effects.

Unfortunately, the Petroleum Minister and other panel members do not seem to realise these ills inherent in the Bill that do not protect the interest of the people of Ghana. They are rather focused on how the foreigners' interests are well protected.

#### Part Two: Fiscal regime and specific comments

The fiscal Regime or Arrangement determines the type of contract the government enters into with the foreign oil companies (FOC) on behalf of the citizens to exploit their oil and gas resources.

The fiscal provisions therefore become the heart of any Petroleum Exploration and Production Law because they determine the type of contract signed and how the oil revenue is shared between the resource owners, that is, the citizen and the FOC.

In this Part we shall refer to specific clauses in the Bill and how they directly impact on Ghana, whether fairly and adequately.

#### Clauses 3-4

These clauses are awkward. Ghana, a novice in the Upstream Oil Industry, is inventing a new wheel by vesting management and control of oil and gas resources in the State, i.e., the Minister of Petroleum, contrary to established global standard and practice.

Oil and Gas resources being strategic national assets, management and control are vested in the National Oil Companies (NOC) of host countries. In PNDC Laws 64 and 84, GNPC was fully vested with the management and control. The Bill now seeks to take away these powers and vest them in the Minister of Petroleum.

#### Clause 5

No progressive country in the 21st Century in the developing world is conducting petroleum activities under licence with the implication of transferring ownership of petroleum resources to private individuals and foreigners in the name of attracting investments into the sector, contrary to global standards and practice. Ghana, the 35th country into oil and gas in Africa, is moving in the opposite direction – the Black Star of Africa indeed!

#### Clause 10 sub-14 (a)

This sub-clause contravenes the UN Resolution on Permanent sovereignty over Natural Resources. The sub-clause also places a cap to limit our 100% ownership of our property under the Constitution.

#### Clause 10 Sub 14 (b) (i) (ii)

The financial obligations that these sub-clauses would place on Ghana are so huge that the burden on the limited resources available to meet our infrastructural deficits cannot be under-estimated if we have to adopt this Hybrid System. Due to limited resources available to the State, the State cannot take up large shares in the projects which will result into loss of huge oil revenues to the foreign oil companies.

Ghana under the Jubilee Agreement would have to pay the lead operator Tullow over US\$2 Billion for participating in the project within the next 10 years. Understandably, PETRONAS, the Malaysian Oil Company in 1974 shied away from this system and chose PSA.

#### Clause 20

This clause waters down clause 13 of PNDC law 84 and is contrary to current international practice which makes review in Petroleum Agreements mandatory every five or seven years. The wording of the clause does not make review mandatory.

#### Clauses 85-89

The fiscal provisions in essence are skewed towards collection of taxes which in practice are difficult to collect from multinationals. The foreign oil companies earned US\$13.329 Billion gross revenue in five years of operations at the Jubilee Fields which should attract US\$3.553 billion in taxes but ended up paying under US\$500 million for both taxes and surface rentals.

They did not pay any tax over the last 2 years because they claimed they were making losses. As pointed out in the Auditor General's Report, the required oversights had so not even been activated. A PSA avoids much of those hassles.

To say the Ghana Hybrid System can achieve the same or better results than the time tested PSA which the existing Laws support is a deceit and preposterous.

To back our position that the PSA is by far rather superior to the Ghana Hybrid System, GIGS used the meticulous analysis of the official Quarterly Petroleum Receipts and Distribution Reports released by the Ministry of Finance from 2011-2015, under the so-called Ghana Hybrid System which is without any legal framework backing it, Ghana the Sovereign owner of the oil resources received 28,117,764 barrels valued at US\$2,650,352,317, representing 16.59% of total production revenue.

With taxes and surface rentals paid by the FOC added, Ghana earned a total of US\$3,111,613,783 representing 19.40% of total production revenue of US\$15,980,235,948 as "Government Take".

During the same period, the FOC received 144,417,622 barrels, worth gross value of US\$13,329,883,363 representing 83.41% of total production revenue.

After payment of taxes and surface rentals, they had a net gross of US\$12,868,622,165 representing 80.60% of total production revenue.

If Ghana had adopted the world standard PSA which existing Laws PNDC 64 & PNDC 84 support, adopted by even South Sudan, the newest country in the world, Niger, Chad, Gabon, Equatorial Guinea, Libya, Nigeria, Angola, Malaysia, Cameroun, Indonesia and more than 80 other countries, Ghanaians as sovereign owners of the oil should have received 101,941,628 barrels valued US\$9,608,909,293 representing 60.10% of total production revenue as "Government Take".

Even if Ghana had adopted PSA and opted for "Profit Oil" only, without Royalties, Surface Rentals and Corporate Taxes and Participating Interests, Ghana would have lifted 81,207,449 barrels valued US\$7.662 billion in the first five years representing 47.70% of total production revenue as "Government Take".

The argument by Mr. Mutawakilu that we did not know the cost of exploration, development and production of Jubilee Fields is laughable. What Ghanaians did not know but we know from Day (1), when the Jubilee partners entered the field, to the last day in 30 years when the field is supposed to be exhausted, about US\$10 billion will be spent on the entire project.

Approximately about US\$6 billion for exploration and development of Phase-1 and Phase-2 and about US\$4 billion as operating and technical costs would have been spent.

However, from our analysis and computation a net gross of US\$12.868 billion was earned representing 80.60% of total production revenue in 5 years while Ghanaians, sovereign owners of the oil, earned US\$3,111,613,783, i.e., 19.40%, as Government Take representing Royalties, Carried and Participating Interests, Corporate Taxes and Surface rentals.

The unsupported claim by Dr. Amin that Ghana is currently earning 54% as Government Take from the Jubilee Fields and the new agreements signed under NDC would generate 75% as Government Take under the Ghana Hybrid System is a public intellectual deceit to the highest order. Our analyses do not support his claim; both Jubilee and TEN are likely to yield between 20%-30% as Total Production Revenue each as Government Take.

This is the system the Ministry of Petroleum, Petroleum Commission, Energy Commission, GNPC and

our Representatives in Parliament say is good for Ghana even though they are aware the Ghana Hybrid System would make Ghana earn less than 25% of Total production Revenue as Government Take.

And this is supported strongly by ACEP, NRGI, CSO PLATFORM on Oil and Gas, IEA, IMANI, PIAC and others who are heavily funded by the World Bank, Oxfam America, Star Ghana, DFID and the Oil Companies through their so-called Corporate Social Responsibility Fund to deceive and brainwash all sectors of the Ghanaian public, including the seat of Government and Parliament, to believe that what Ghana is doing is the best and modern system. From the analysis above, the two (2) systems cannot produce same results.

In conclusion, the Ghana Institute of Governance and Security (GIGS) joined by the Fair-Trade Oil Share-GH PSA Campaign Team are opposed to the fiscal provisions and other related provisions contained in the Bill/Law which we have considered very inimical to the interest of the people of Ghana, both the present generation and future ones yet unborn.

The statement and claim by the Minister of Petroleum that the Bill or the Law will be robust to protect the interest of Ghana is false and a public deceit to the highest order. The whole Petroleum Ministry and others who were in charge of handling this issue from the NPP administration to the current NDC administration should be charged with the offence of causing financial loss to the State, representing Ghanaians.

*Solomon Kwawukume is a Senior Research Officer (Oil & Gas) GIGS National Coordinator - FTOS-GH PSA Campaign*

## **ATTACHMENT 5**

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

By Dr. Raymond Akongburo Atuguba

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

Our Dear MPs...

Listen to your hearts...

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

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

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

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

Dr. Raymond Akongburo Atuguba

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## **ATTACHMENT 6**

# **The modern conspiracy against Ghanaians**

**By Solomon Kwawukume**

PETROLEUM EXPLORATION AND PRODUCTION LAW (2016) ACT 919

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

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

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

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

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

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

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

Kofi Annan had complained about.

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

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

## OIL DISCOVERY

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

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

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

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

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

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

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

How did Ghana reach this sorry state of affairs?

### ROYALTY TAX/HYBRID SYSTEM

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

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

### PRODUCTION SHARING AGREEMENT

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

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

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

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

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

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

The Executive and Parliament have erred in law.

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

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

#### BENEFITS OF PRODUCTION SHARING AGREEMENT.

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

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

#### LOSSES FOR NOT ADOPTING PSA

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

#### REMEDIAL ACTIONS TAKEN

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

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

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

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

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

#### SUPREME COURT INTERVENTION AND SUPPORT

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

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

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

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

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

## CONCLUSION

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

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

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

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

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

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

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

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

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

Senior Researcher Officer (GIGS)

National Coordinator (FTOS-GH)



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

● **AFRICA**

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

● **ASIA & AUSTRALASIA**

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

● **CENTRAL AMERICA &  
CARIBBEAN**

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

● **SOUTH AMERICA**

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

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- **EASTERN EUROPE**

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


- **EUROPE**


1. Malta

**MIDDLE EAST**

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

**Total number of countries: 81**

  
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David Agbee  
Executive Director

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# Fair-Trade Oil Share – Gh

## Revenues Lost Vs. Opportunities



### QUESTION?

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

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

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