People's National Convention (PNC)

Policy Positions on Oil and Gas

February 2016

I. Introduction

The People's National Convention (PNC) is a socialist political party that believes in the ideals of Osaagyefo, Dr Kwame Nkrumah, the first president of the Republic of Ghana. The PNC was formed by Dr Hilla Limman, the country's elected president from 24th September 1979 to 31st December 1981.

It is the PNC's political vision to deliver inclusive and sustainable development; thereby bridging the class gap and ensuring equity, social justice and self-determination for Ghanaians. In the absence of PNC, Ghanaian society will lose a pragmatic and firm voice for the poor and marginalized, quality national policy proposals, equity and inclusiveness founded on our core values of honesty, integrity, social justice and accountability

As a socialist and Nkrumahist party, we believe that all citizens should have equal opportunities to work security, employment, self-fulfillment and human dignity. This we hope to achieve by ensuring that all Ghanaians enjoy a fair share of benefits derived from natural resources. It is in line with these beliefs that we hold a unique policy position on how Ghana's oil and gas resources should be managed.

Though Ghana is among the top 10 global leading producers of gold and among the top 50 oil producing countries, the benefits of the extractive sector do not reach much of its citizenry. Despite the great loss of revenue from this sector due to illicit financial flows and mismanagement by successive governments, in 2013 the extractive sector alone accounted for 9.8 percent of Ghana's GDP and accounted for 65.6 percent of total exports, with gold and oil exports accounting for 98 percent of sector exports. However, revenue from the sector has not been properly managed to ensure that Ghanaians benefit from these natural resources. As such, with this policy the PNC seeks to ensure that Ghana's fast-developing oil and gas sector becomes a blessing rather than a curse.

In a 2013 report on value-for-money of projects funded with oil revenues, ACEP found that Ghana could have earned more from oil than it has done; this shortfall is due to factors such as non-collection of capital gains tax on acquisitions in the Jubilee field projects; non-collection of corporate taxes; and non-reporting of surface rental fees. The report also states that the Ghana National Petroleum Corporation (GNPC) has weak spending capacity and that the company's use of some portion of revenues is unclear.

In order to formulate the party's clear position on institutional, transparency, fiscal and revenue management concerns in the oil and gas sector, leadership engaged in a robust intraparty dialogue process to develop clear and well-thought out policy positions with inputs from all relevant stakeholders. This policy document presents the PNC's political vision for Ghana's oil and gas sector. The document was developed through workshops involving key party functionaries hosted and facilitated by sector experts with the support of the Natural Resource Governance Institute (NRGI) and the International Institute for Democracy and Electoral Assistance (International IDEA). This was followed by a consensus-building process involving voters and the national executives of the party, resulting in the final policy document.

II. Institutional arrangements for the management of oil and gas

Key reforms

Once in office, PNC candidates:

- Will further strengthen PIAC to facilitate the process of capacity building, public awareness and transparency.
- Will create an additional exclusive and transparent agency charged with contracting and procurement within the oil and gas sector. Membership of the governing board of this new agency shall involve relevant transparency-related stakeholders such as the PIAC.
- Will strengthen governing boards of SOEs, and insulate them from government vested interests, so that they can be more effective in their oversight roles.
- Will outsource recruitment by SOEs to reputable and independent recruitment agencies in order to curtail political cronyism.
- Will separate the Attorney General's Department from the Ministry of Justice so that corruption in the procurement and contracting process in the oil and gas sector can be prosecuted independently and efficiently.

Policy position

The PNC will strengthen the PIAC by independently selecting PIAC members through the public services commission, which should also be independent. Once the PIAC members are independent, they will be able to better facilitate capacity building, public awareness and transparency.

Under the current system the Ministry of Energy has the power to allocate the oil blocks. This is unacceptable to the PNC as it leads to clientelism and patronage (rent seeking). Therefore the PNC will create an additional exclusive and transparent agency in charge of contracting and procurement within the oil and gas sector. The new agency would be subject to oversight by parliament and the Auditor General's Office, and would also operate according to the Public Procurement Act (which, along with other legal provisions, shall be reviewed by a commission established by the PNC president to ensure more stringent requirements for sole sourcing) to ensure that it performs effectively.

Currently most of the appointments within the SOEs are political and result from government interests rather than merits and competence. A PNC government will utilize a merit-based approach in appointing officials to head SOEs. This will be done via reputable human resource firms. The party will however ensure that those recruited for leading positions share the party's convictions and ideology and are simultaneously qualified to occupy the offices. All other recruitments shall be done according to standard human resource practices. This will ensure that the best qualified talent is attracted to administer the oil and gas sector in Ghana.

The new, independent Attorney General shall have the protection of Article 71 in relation to office holders according to the 1992 Constitution of Ghana. Currently, the Attorney General can be appointed or dismissed at the behest of the executive arm of government (of which he/she is a part). This does not allow independent and fair prosecutions. An Article 71 protection will insulate the Attorney General from arbitrary dismissal or instruction irrespective of the government in office. This arrangement will give the Attorney General the power to investigate and prosecute any perceived malfeasance in the oil and gas sector.

Parliament's Public Account Committee (PAC), which exists largely to merely expose and not prosecute corruption, undermines the work of the Auditor General. This is so because the PAC only invites implicated officials and interrogates them without necessarily handing down any punitive action or prosecutions. As such, it should be dissolved. Instead there should be direct prosecution based on reports from the Auditor General. The extractive sector generates high amounts of revenue and therefore temptation from public officials to pilfer these resources is high.

III. Transparency and accountability

Key reforms

Once in office, the PNC would mandate that:

- All high public office holders and politically exposed persons (PEPs) must fully declare and publish their assets; in particular, this would apply to all the directors, ministers and members of mines and energy committee.
- Information and public documents, including those related to contracting processes from the oil and gas sector, shall be made accessible while others, like bidding documents and geologic data, will require a minimal fee to access.
- Oil and gas contracts shall be subjected to the Public Procurement Act (PPA). Currently, the final decision on the award of oil block contracts is left to the Minister of Petroleum. To ensure transparency, the PNC will change this arrangement.
- All funds to and from SOEs must go through the Consolidated Fund to ensure scrutiny by parliament.
- To ensure effective transparency and oversight, directors and officers of SOEs will be made individually liable for criminal prosecution in the event of suspected malfeasance.
- The internal control systems of SOEs are effective and efficient. This would be ensured by taking the responsibility of appointing board members from the executive arm of government and giving it to the Public Services Commission. The Public Services Commission itself would be insulated from political interference by making it an autonomous institution. These controls and audits in SOEs must be subject to the Auditor General's review and defaulting officers shall be duly prosecuted.

Policy position

Currently the final decision on the award of oil blocks is left to the Minister of Petroleum which encourages rent seeking in the award of such contracts. The PNC will ensure that all contracts in the sector go through the PPA process to ensure that the best bids are eventually selected.

The PNC will ensure that political office holders and PEPs declare all their assets—information that will then be published. The current practice of asset declaration without publishing does not engender transparency. Also, currently, PEPs are not made to declare assets. This may result in public office holders awarding oil and gas contracts to PEPs or hoarding assets in their names. To avert this, the PNC will ensure that the declared and published assets of office holders and PEPs are evaluated before and after they leave office. Also, public office holders and PEPs cannot bid for contracts in the institutions where they have worked in the previous four years. These measures will be limited to executive positions.

Knowing the terms and contracting process documents of the oil and gas sector is key for preventing corruption, which is why this type of information should be accessible. Presently these documents are only available to government authorities and contractors. Information and public documents, including those related to contracting processes from the oil and gas sector, should be made accessible. The following measures will be taken to ensure accessibility of various forms of information and documents:

a. **Contracts/procurements**
   State contracting processes would be made public through unique online portals, which provide information on bidding, selection process and other contract issues. Natural resource-related contracts shall be subjected to the Public Procurement Act (PPA).

b. **Availability of policies and legislation**
   The National Commission for Civic Education (NCCE) Assemblies, and Information Services Department shall be engaged to disseminate such information to all localities.

c. **Availability of data**
   Some public documents shall be free to access online while others such as bid documents shall require minimal fee to access. This is to avoid excessive subscription for documents such as bids by entities that do not have the capacity to go through with the entire process.

d. **Beneficial ownership**
   Companies that intend to hold shares or bid for public contracts must fully disclose their owners. There should also be a criminalization of disclosure of false information on beneficial ownership.

e. **Information management**
   The Public Records and Archives administration Department (PRAAD) shall be strengthened to support the National Information Technology Agency (NITA), ministries, agencies and departments in information management.

Apart from the GNPC, the PNC government shall ensure that all institutions that are due revenues from the Petroleum Holding Fund shall receive their funds between 3 to 5 working days after they hit the Consolidated Fund. This would prevent the situation in which institutions and agencies suffer the plight of other agencies like the National Health Insurance Authority (NHIA), which does not receive funds due by the statutory dates, even though these monies are deposited in the Consolidated Fund.

In approving the SOEs' annual programme of activities—especially GNPC's— parliament must seek evidence of efficient spending of previous allocations of petroleum revenues as a condition for approving new budgetary allocation.

Government must include reporting on annual stocks and spill-over barrels to enable citizens and accountability institutions to track revenues from the sale of crude oil. This also helps accountability institutions to reconcile government data with that from other independent sources.

IV. Fiscal sustainability

Key reforms

Once in office, PNC candidates will:

- Draft a Fiscal Responsibility Act that establishes, among others provisions, budget and expenditure coherence; a debt ceiling (capping national borrowing) to prevent credit excesses that will lower Ghana's credit ratings, which in turn forces the use of savings (from, e.g. the Stabilization Fund); and a revision of the tax regime of the oil and gas industry favoring local companies vis-à-vis international corporations.

- Enhance capacity of the Ghana Revenue Authority to periodically audit international oil and gas corporations to verify if the profit from extraction that is declared is accurate.

- Establish a specific oil and gas revenue tax in addition to the existing corporate revenue tax. This would prevent evasion of taxes and capital flight through oil and gas corporations.

Policy position

APNC government would put a Fiscal Responsibility Act in place to ensure budget and expenditure controls and also revise existing fiscal policies that give huge tax breaks to international corporations. This will ensure that more revenue flows to the state and that multinational corporations do not continue to out-compete local companies in the oil and gas sector.

The PNC diagnoses the current poor fiscal situation of Ghana from the perspective of inadequate legal and policy control measures as well as the weak of enforcement of existing ones, coupled with the absence of a human-centered approach to policy implementation. The following problems are causes of the poor fiscal health of the national economy:

- Poor prioritization of challenges facing the country

- Lack of discipline with respect to expenditures and fiscal balance

- Massive corruption and an established culture of impunity

- Lack of innovation with regarding resource mobilization and its spending

- A very narrow tax base, without innovative tax mobilization approaches.

- Current tax exemption policy for foreign firms (major disincentive for local firms and indigenous entrepreneurship)

To address issues of taxation inefficiency in the oil and gas sector, the PNC government shall ensure that:

a. It applies both the Petroleum Income Tax Law, 1987 (PNDC Law 188) and the Internal Revenue Act, 2000 (Act 592) to the oil industry. Currently, only PNDC Law 188 is applied to petroleum companies. The PNC shall apply all relevant tax laws to ensure Ghana maximizes revenues from the oil industry.

b. The cap on corporate tax rate shall be revised upwards by the PNC to avoid shortfalls in revenue projections such as those currently recorded. Underpants Law 188, the corporate tax rate could go as high as 50 percent on profit oil. However, the government has negotiated a rate of 35percentin all petroleum agreements.

c. The PNC shall strengthen the GRA to ensure a robust and incentive based tax collection regime to ensure that projected revenue targets are met. According to ACEP, causes of revenue projection shortfalls from the oil and gas sector include on-collection of capital gains tax on acquisitions in the Jubilee field projects, non-collection of corporate taxes, non-reporting on surface rental fees, and non-realization of expected gas receipts.

Another cause of fiscal destabilization in Ghana economy is illicit financial flows. It is reported that the cumulative gross illicit flows in Ghana from trade misinvoicing amounted to US$14.39 billion over the ten-year period 2002–2011—about US$1.44 billion per year on average. Oil exports currently play a major role in Ghana's trade dealings and are also a locus for these outflows. These result in the loss of a huge chunk of the proportion of scarce resources from the domestic economy and other productive activities. The flows result from purposeful inflation by companies of costs then deducted from taxable revenues, and the smuggling of resources.

In addition to the consolidation of the revenue agencies that is already underway, the PNC shall further block avenues of illicit financial flows that may occur through the illegal trading of oil by:

a. Facilitating tax information exchange between the government of Ghana and its key trade partners.

b. Empowering anti-corruption agencies such as the Economic and Organized Crime Office (EOCO) to investigate and bring to book such illicit acts.

c. Ensuring proper and better remuneration of public servants and employees of oil and gas as well as revenue-related agencies.

d. Ensuring that up-to-date information on average world market prices for oil and gas is used by customs officials to determine the tax due and whether the values stated on company invoices are consistent with international market prices. The access and use of such reliable information increases the chances of detecting illicit flows.

e. Empowering customs officials to use information on the beneficial owner(s) of oil and gas trading companies and information from cross-border tax information sharing agreements in order to question suspect transactions.

f. Establishing strong sanctions against illicit financial flows in the oil and gas sector. These shall include large fines, withdrawal of oil and gas sector licenses, and suspension of operations or imprisonment.

g. Sector ministers and government agencies will not be allowed to provide import tax exemptions in the oil and gas sector. This is to reduce the incidence of tax evasion as well as clientelism that affects the fiscal health of the economy

Currently, there are discrepancies between government reports on petroleum receipts and those of the accountability institutions such as PIAC and GHEITI. The PNC shall strengthen the PIAC and other such institutions to develop reporting mechanisms that allow them to validate government data through independent research. Consistency in revenue and other related reporting will ensure proper monitoring of the fiscal situation.

V. Revenue management

Key reforms

Once in office, the PNC will:

- Invest a significantly determined percentage of resource revenue from the oil and gas sector in agriculture, as this sector provides the largest share of employment opportunities. Since oil and gas resources are finite, diversifying the economy will ensure revenues when oil and gas resources are depleted.

- Amend the Petroleum Revenue Management Act to establish a specific percentage that can be taken from the Stabilization Fund for emergency situations. There is a need to define emergency situations so as to avoid indiscriminate, discretionary tapping of the Stabilization Fund.

- Invest a larger proportion of revenue earmarked for capacity building on technical capacity in the oil and gas sector instead of administrative capacity building. In particular the party will invest in training more welders and technical personnel instead of sponsoring university degrees for administration of the sector. Administrative capacity building has, to date, been over-emphasized.

- Direct 80 percent of the petroleum revenues that go to the Annual Budget Funding Amount (ABFA) to capital expenditure and the rest for consumption expenditure. The latter expenses should be covered in full by other sectors from the economy like cocoa and gold. From the capital expenditure the PNC will invest in agriculture, agribusiness and climate-smart agriculture but also prioritize education, health, water and sanitation.

- Establish a special environmental sustainability fund financed by oil and gas corporations for ensuring the protection of the environment.

Policy position

Prior to the discovery of oil, the Ghanaian economy was growing at a better rate than it is at present. The over-reliance on oil revenue is gradually creating a situation whereby government is losing focus on other revenue streams. Currently, government revenue from PAYE alone is four times more than what the country derives from petroleum revenues. As such, it is the PNC's policy to dedicate petroleum revenues to specific infrastructure projects instead of using them in debt payments and other consumptive expenditure.

The PNC shall dedicate 60 percent of the 80percentof petroleum revenue earmarked for capital expenditure to the development of agricultural infrastructure. The PNC shall ensure that each agriculture-centered district shall have a determined quantum of funds to develop the relevant infrastructure. The quantum of this district-level funding shall be determined by the magnitude and potential of agricultural practices in the area. The key infrastructure to be developed shall include: storage facilities (e.g., silos, cold stores), irrigation facilities, greenhouses, warehouses, and access roads. The remaining 40 percent shall be used for infrastructure development in the other priority areas of health and education as well as water and sanitation.

The current government has exploited weaknesses in the Petroleum Revenue Management Act (PRMA), 2011 (Act 815) to increase its spending of petroleum revenues meant for savings in the Stabilization Fund. MOFEP has arbitrarily exercised the provision that allows the capping of the Stabilization Fund in order to use excess revenue for debt repayment. The cap of US$250 million was instituted without any financially prudent basis. The PNC's is against the use of petroleum revenues in the payment of debts and excessive consumptive expenditure. As such a PNC government shall only allow the Stabilization Fund to be touched in the event of major national disasters or when projected revenue shortfalls exceed 50 percent.

Petroleum revenues are being used inefficiently. Limited revenues have been thinly distributed over projects. This has led to time and cost overruns. This has undermined value-for-money in projects funded with petroleum revenues. The PNC shall ensure that no project shall be funded with petroleum revenues without a feasibility study. All projects to be funded with petroleum revenues shall also not be subject to counterpart funding. This is to ensure that funds are dedicated fully to see projects to completion. This will reduce the phenomenon of incomplete projects that has characterized the deployment of petroleum revenue expenditure.

Petroleum revenue dedicated to capacity building shall be directed solely at resourcing technical training. A system of compulsory internships shall be established for relevant engineering and other technical disciplines with the oil and gas companies. An annual quota of Ghanaian interns shall be allotted to each oil and gas firm.

To ensure the general wellbeing of the environment, oil and gas companies shall be expected to contribute to a national fund towards environmental sustainability. (Currently, there are only the Environmental Protection Agency bonds of environmental compliance and the "polluter pays principle.") These measures are reactive and can only be applied after damage to the environment. The PNC proposes a proactive approach of ensuring that the integrity of the environment is continuously maintained through the environmental fund.

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