# THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ADMINISTERING OFFSHORE PETROLEUM RESOURCES IN GHANA

OSEI BONSU DICKSON[1]

The Ghanaian model for administering the offshore petroleum sector relies on four governmental bodies – a government Ministry, the Ministry of Energy (MoE) which sets energy policy; a national oil company (NOC), the Ghana National Petroleum Corporation (GNPC), which engages in commercial operations for petroleum; the Ghana Maritime Authority (GMA) which provides maritime oversight and regulation and the Environmental Protection Agency (EPA), the country's environmental regulator.[2]

The principal institution established for environmental protection in Ghana is the EPA; created under the EPA Act of 1994, (Act 490). The EPA's policy direction is articulated by the Environmental Assessment Regulations of 1999 (LI 1652). Marful-Sau (2009) rightly contends that these two legislations empower the EPA to manage, control and monitor compliance of environmental regulations by specific industries. EPA regulations require all companies whose operations affect the environment to register with the Agency for clearance and approval of their projects.[3]

In the petroleum sector, the GNPC, has both commercial and regulatory responsibilities, and is mandated to enter into private joint ventures for purposes of developing Ghana's hydrocarbon resources. Section 2 (1) (e) of the Ghana National

[1] **OSEI BONSU DICKSON LL.B, LL.M (GH), ECNIS (Harvard)** is a Research Fellow in National Security and Oil Policy at the African Security Management Think-tank ICASS, Institute of Risk Management.

[2] M. Thurber, D. Hults and Patrick Heller in their unpublished article "The Limits of Institutional Design in Oil Sector Governance: Exporting the Norwegian Model", presented at the ISA Annual Convention in 2010, characterized the Norwegian Model for governing petroleum resources as comprising three distinct bureaucratic institutions. Their approach to model description allows for very clear thinking on the subject matter and this research adopts that approach.

[3] S. Marful-Sau (2009) "Is Ghana Prepared To Manage the Potential Environmental Challenges of An Oil And Gas Industry?" CEPMLP Publication

Petroleum Corporation Law, 1983 (PNDC Law 64), requires the GNPC to ensure that petroleum operations are conducted in a manner that prevents adverse environmental impacts. This mandate is reinforced with a material international dimension by section 3 of the Petroleum (Exploration and Production) Law 1984 (PNDC Law 84), requiring petroleum operations in Ghana to conform to international practices in comparable circumstances.[4]

Even though Marful-Sau (2009) argues that in Ghana,[5] the Petroleum (Exploration and Production) Law 1984, (PNDCL 84), the Environmental Protection Agency Act, Act 490 of 1994, the Environmental Assessment Regulation, LI 1652, and Ghana National Petroleum Corporation Law comprise the legal framework for the management and control of the adverse environmental impact, in the petroleum industry, it is the view of this writer that, that contention is only partially correct. This is because, although admittedly, petroleum environmental management in Ghana is conducted under these domestic frameworks, petroleum operations in Ghana, particularly in the offshore petroleum sector, are largely subject to international and regional regulatory instruments. Key international conventions which currently impinge on offshore petroleum operations in Ghana, includes the International Maritime Organization (IMO)'s *International Convention for the Prevention of Pollution from Ships* (MARPOL 73/78), *United Nations Conventions on the Law of the Sea* (UNCLOS) the *International Convention of Oil Preparedness, Response and Co-operation* (OPRC) adopted in 1990[6], etc. The IMO is the marine affairs organization of the United Nations which develops and maintains conventions that provide safety regulations for ships. Ghana is a signatory to a number of IMO

[4] Ibid
[5] Ibid
[6] Others include the 1992United Nations Conference on Environment and Development (Agenda 21) and the 1992 Convention on Biological Diversity

Conventions of relevance to the oil and gas industry, these include the *1992 Climate Change Convention; The International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW), 1978; The Convention on the International Regulation for Preventing Collisions at Sea (COLREGs), 1972 and The International Convention For The Safety Of Life At Sea, (SOLAS) of 1974.*

Offshore activities in Ghana's petroleum sector are also affected by at least two African regional instruments. For present purposes, these instruments include the African Charter, which is the region's primary human rights treaty (*discussed supra*) and the Abidjan Convention[7] which Ghana has also signed and ratified[8]. The Abidjan Convention enjoins contracting States to take all measures to prevent, reduce, combat and control the pollution of the Convention area and to ensure sound environmental management of natural resources. The Convention and its protocols are thus enforceable against Ghana and/or Oil Companies (OCs), within its territory operating in violation of it.

A discussion of the legal framework governing offshore petroleum exploration and production in Ghana, as elsewhere, is both extensive and complicated.[9] This is because the law and regulation of offshore petroleum activities subsumes aspects of domestic legislation, international environmental and maritime law, petroleum

---

[7] United Nations Environment Programme, supra note 158; Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, opened for signature Mar. 23, 1981, 20 I.L.M. 746 [hereinafter Abidjan Convention]. Available at http://www.unep.org/AbidjanConvention/The_Convention/Protocols/Convention_Text.asp

[8] Ghana signed this convention on 23 March 1981, and ratified same on 20 July 1989. Retrieved on November 17 2009, available at http://www.unep.org/AbidjanConvention/The_Convention/Contracting_Parties/index.asp.

[9] See Ayesha Dias, (1998) "The Oil and Gas Industry in the Tangled Web of Environmental Regulation: Spider or Fly?" pp.59 - 62 in Zhiguo Gao (ed), Environmental Regulation of Oil and Gas, (London, Kluwer Law International).This writer shares completely Dias' view that the petroleum industry is particularly plagued with a maze of regulatory provisions (national, regional and international ) As Dias correctly points out growing concerns over oil pollution has precipitated increased levels of regulations or more aptly overregulation regulation at all three levels.

industry standards, corporate environmental, health and safety regulations, and in contemporary times, even performance standards set by major international financial institutions.

Sections 1 and 2 of PNDCL 84 require petroleum exploratory or production undertakings to be governed by a Petroleum Agreement. Section 10 of the law also require OCs, to submit to the Minister for Energy and the National Energy Board, a petroleum field development plan, which accords with the terms of the Petroleum Agreement. It is important to indicate, as Marful-Sau brilliantly does, that the Petroleum Agreement requires strict adherence to best international environmental practices. The Development Plan also requires the OC to clearly spell out how it intends to develop a given oil field from exploratory and production phases to its decommissioning phase; so as to minimize its adverse environmental impact. The Petroleum Agreement further mandates the GNPC and the EPA to conduct Environmental, Health and Safety Audits of the operations of the OC's. The OC's are in addition required to submit for review and approval comprehensive health, safety and environmental manual, detailing out how the company intends to handle health, safety and environmental issues, policies and procedures before any operations are commenced.[10]

One of the most agonizing aspects of the current legal and institutional landscape is that, the GNPC is placed in a position of inherent conflict with itself.[11] Under the Petroleum Agreement, the GNPC plays the role of a commercial entity involved in hydrocarbon operations, but at the same time, is an oversight agent for good environmental management of the petroleum industry. Its corporate/commercial

[10] Ibid
[11] Ibid

interest to minimize cost and maximize profits conflicts with its public-interest role as a sound environmental enforcer. It may be more prudent to allow the EPA to perform its statutory environmental functions while the GNPC concentrates on optimizing its petroleum operations functions. This fusion of roles should therefore yield to diffusion. Thurber, Hults and Heller (2010) point out that, the Norwegian Model, the *"canonical model",* separates policy, regulatory and commercial functions. This writer supports the latter institutional design, on the basis that it is a route to better institutional performance and transparency (Al-Kasim 2006b; Nore 2009).

The *Maritime Zones (Delimitation) Law of 1986 (PNDCL 159) and the Fisheries Act of 2002 (Act 625)* are both germane to offshore petroleum activities as they specify Ghana's international maritime boundaries. *PNDCL 159* defines the limits of Ghana's territorial sea as well as Exclusive Economic Zone (EEZ). On the basis of *PNDCL 159* and the *United Nations Convention on the Law of the Sea (UNCLOS)*, the Government of Ghana (GoG) in 2010 re-opened high level (but inconclusive) negotiations on delimitation of Ghana's common maritime boundaries with Cote D'Ivoire.[12] *Act 625* on the other hand, repealed the *Fisheries Commission Act of 1993 (Act 457)*, but amended and consolidated the law on fisheries. One shortcoming of *Act 625* relates to the prescribed penalties for polluting fishing waters. Section 92 (a) of the Act prescribes a minimum fine of not less than $50,000 and a maximum of not more than $2 million where a local industrial or semi-industrial vessel or foreign fishing vessel directly or indirectly introduces deleterious substances into Ghana's fishing waters. At first glance, the penalty regime appears deterrent enough, however

[12] Ghana New Agency report on 27 April, 2010 *"Ghana, Cote d'Ivoire begin negotiations on Maritime Boundary Demarcation"* available at http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=180907 .March 23, 2011

it is not. In the view of this writer, the penalty regime in Section 92 requires review given that the country's fishing waters faces a much higher risk exposure from vessel activities. The country's main maritime regulator is the Ghana Maritime Authority (GMA)[13] however; the Fisheries Commission also interfaces as a key player, because the Commission is the primary regulator of fishery resources in Ghana.

In Ghana, pollution control law exists as part of environmental and water resources legislation. Marine pollution is dealt with by the *Oil in Navigable Waters Act* (ONWA) of 1964 (Act 235), which was enacted to give effect to the *International Convention for the Prevention of Pollution of the Sea by Oil of 1954.* Subject to some exceptions, the ONWA prohibits discharges of oils into prohibited sea areas. [14] The *Radiation Protection Instrument 1993 (LI 1559)* is also worth noting, since offshore exploratory operations involves the use of radioactive material and/or instrumentation, which can have adverse implications for public health, occupational health and the safety of rig workers. The LI establishes a Radiation Protection Board to license importers and users of all radioactive material and instrumentation in Ghana.

Environmental Health and Safety (EHS) standards imposed by international financial institutions have also become a vital part of the regulatory landscape. For instance, to access project finance from the International Finance Corporation (IFC), the World Bank's private sector arm, companies must sign a loan agreement, which requires adherence to IFC policies and procedures as well as local, domestic, and international legal obligations. The loan financing agreement requires adherence to a

[13] Source: Ghanaian Times Newspaper of 28 June, 2010. From the Times' interview with the Director-General of the GMA, Mr. I.P Azuma

[14] The Minister of Environment may however make exceptions from operation of Section 1 of Act 235 absolutely or subject to any prescribed conditions in general or in respect of particular classes of ships, or in relation to particular description of oil or mixtures containing oil or mixtures in prescribed circumstances or sea areas.

series of eight Performance Standards (PS). In points of fact, several of the current joint venture partners sought funding from the IFC and can be held accountable for violating the PS.

## CONCLUSION

Do the Ghanaian regulatory bodies have sufficient institutional capacity to discharge their roles? They do not and it appears Marful-Sau, was right in pointing out that, while the GNPC has the resources to execute it responsibilities, the same cannot be said of Ghana's EPA, which tends to lack basic tools for effective operations, leading to loss of institutional confidence. The GMA is an equally deprived institution. It is therefore in the same canoe as the EPA and therefore potentially paralytic. The outlook in terms of Ghana's institutional capacity to deal with significant future environmental challenges is at the present time depressing, even if that for the legal framework is less so.