

Public Participation in the Making of Ghana's Petroleum Revenue Management Law

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"In most natural resource-rich countries the absence of effective political-economic incentives for prudent fiscal management are the primary causes for poor revenue management. How to influence the political-economic incentives of governments in such countries is a critical challenge."

Asfaha, Samuel
"National Revenue Funds: Their Efficacy for Fiscal Stability and Intergenerational Equity"
International Institute for Sustainable Development
August 2007

INTRODUCTION

1. Ghana's Petroleum Revenue Management Act, 2011 (Act 815) lays down the key parameters for the accounting, collecting, reporting and utilization of petroleum revenues due the Government of Ghana. For a given benchmark revenue, the law establishes the upper limit of the amount of petroleum revenue that may be directed into the national budget. The law provides for the operation and management of the savings, and that the savings shall be prudently managed. And it responds to the public preferences for transparency and adequate oversight in a manner unprecedented in public policy-making in Ghana. The public participation in the making of the law is the subject of this short presentation.
2. Immediately following public announcements of the oil find in July 2007, government initiated steps to ensure that Ghana avoids the pitfalls that other petroleum-rich nations had unfortunately fallen into: how to avoid the oil curse and to deliver the best possible future for citizens. Using oil revenues wisely was every politician's slogan leading into the 2008 elections in part because of the public's expectations of the perceived importance and benefits from oil wealth, and in part because of the strong sense of avoiding the mistakes of Nigeria, their giant neighbor.
3. Public consultations begun with the oil forum held in Accra in February 2008 to solicit from the international community advice on best practices in institutional design in petroleum sector governance, contracting approaches, regulation, and revenue management experiences. A flood of advice followed with two key conclusions: (a) there is the fundamental need to develop a holistic petroleum policy framework that will guide the development of the sector; and (b) the need for further consultations on various regulatory frameworks, institutional structures, managing revenue flows and expectations, human capacity building and development, expanding local content and infrastructure development.²

² The government of Ghana received advice from outside academics, NGOs and official agencies, particularly IMF, World Bank, Commonwealth Secretariat, Government of Norway, Oxfam, revenue Watch, International Growth Centre of London School of Economics, and Earth Institute to name a few, along the entire spectrum of exploration licensing, development, production and revenue management. There was no broad consultations on the Petroleum Policy document and it is unclear to what extent it was discussed at the Cabinet or Parliamentary level.

The advice culminated in the draft Petroleum Policy produced in July 2008. Unfortunately the government of the New Patriotic Party (NPP) did not complete the task and the policy draft document was not endorsed nor put into operation by the succeeding government of the National Democratic Congress (NDC) in 2009. The oil and gas Master Plan never saw the light of day under the new government.

4. With the realization that the development of oil and gas activities can generate substantial revenues and potentially create a new fiscal environment for the country, the decision was made in early 2008 to separate the revenue management issues from the other but equally pertinent legal and contractual issues. The Ministry of Finance and Economic Planning was tasked then to develop the fiscal regime as well as the framework documents that would eventually lead to the preparation of a law that will guide petroleum revenue management. The new NDC government continued with this policy direction.
5. Parenthetically, public consultation as a source of inputs to policy-making is not new in Ghana. There is precedent in the preparation of the Ghana Poverty Reduction Strategy (GPRS) in 2001-2002. While some may argue that it is hard to tell the impact of the consultations on the content and the direction of the GPRS, it is just as hard to draw the conclusion that the consultation did not help the process one way or the other.³ By all accounts, the consultation was extensive and drew upon a cross-section of stakeholders. It increased stakeholders understanding and knowledge of the policy directions of government in the use of debt relief funds. In a small way, a social contract between citizens and government emerged. The monitoring, evaluation and reporting of poverty reduction expenditures in the budget was unprecedented. It is not surprising that since windfall oil revenues were expected to make long-term contribution to growth and ultimately poverty alleviation, that there will be considerable efforts to open up the revenue management decision-making to public consultation. This has not been the case in many oil-producing developing economies, especially in sub-Saharan Africa.
6. The process begun with the review of international practices from Alaska, Alberta, Azerbaijan, Botswana, Chile, East Timor, Nigeria, Norway, Sao Tome and Principe, Trinidad and Tobago. Consultative meetings were held with various government, civil society, and private sector institutions, but mostly in the capital, Accra, after which the outline of the building blocks of the revenue management framework was developed.
7. The technical team drawn from the Ministry of Finance and Economic Planning (MoFEP), the Ministry of Energy (MoE), Ghana National Petroleum Company (GNPC), and the Bank of Ghana (BoG), under the leadership of the Ministry of Finance and Economic Planning, took its public consultations on the road around the country between mid-February and mid-April, 2010. The composition of the team reflected the desire to address and to respond to a wide range of issues regarding petroleum activities. While issues of taxation, fiscal regime, and revenue management remained the focus of the public fo-

³ Amoako-Tuffour (2008). Public Consultations, the Role of Civil Servants and Development Partners in Ghana's Poverty Reduction Strategy. In Amoako-Tuffour, J & Armah, B. (Eds.), *Poverty Reduction Strategies in Action: Lessons and Perspectives from Ghana*. Lexington Books: Rowman and Littlefield, U.S.A.

rum, officials from MoE and GNPC presented the facts of Ghana's petroleum exploration efforts, the local content policy and the avenues for capacity building. The Bank of Ghana staff shed light on the macroeconomic implications of windfall oil revenues and the challenges to exchange rate management.

8. The goals of the consultation were (a) to ensure that the eventual rules and guidelines of the petroleum revenue management meet the aspirations of the people and, to the extent possible, (b) ensure that there is broad consensus on the most fundamental elements of what would eventually become the law. These issues were captured by the following questions:

Assessment, Collection and Accounting

- a) Who should assess and collect the revenues due government?
- b) Should petroleum revenues be counted as part of general revenues or as special revenues?

Spending-Saving Challenge

- c) How much of revenues should be spent in the national budget and how much to save for the benefit of future spending and for future generations?

Budget Allocation Challenge

- d) For what is to be spent, what should be the priority allocation in the budget and should there be restricted budget uses?

Savings Challenge

- e) Should we establish savings fund(s)?
- f) Who should manage the fund(s), and how?
- g) Who may authorize withdrawals from the fund(s)? how, by how much, and how often?

Accountability, Transparency Challenge

- h) How do we ensure transparency and accountability?
- i) What measures are needed to ensure public oversight?
- j) What other safeguards may be needed if any to protect the revenues from abuses?

9. The questions highlight a range of critical elements that must inform how a country may manage its windfall revenues. These elements are implied in the Generally Accepted Principles and Practices (Santiago Principles) adopted by the International Working Group of Sovereign Wealth Funds in October 2008. The questions address the administrative and operational challenges in assessing revenue due the state, the inter-generational resource benefits sharing problem as well as the social contract of accountability and transparency.

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10. Providing answers to these questions formed the core of the public consultations. The broad consultations were also an opportunity to educate the public on the many facets of the petroleum resource development, the production horizon, and the approximate revenues under different scenarios. This education was the first step to managing public expectations, and, equally important, to minimize misinformation and misrepresentation of the magnitudes of expected revenues. Indeed, only a well-informed public can truly provide inputs that will guide the decision-making process and knowing that their inputs can shape critical elements of the law can only enhance the public sense of ownership.
 11. Policy borrowing, learning, and diffusion of best practices are common in developing policy, legal, fiscal and contractual framework in extractive resource developments. There is no shortage of answers to the above questions and therefore no shortage of models that literally can be copied from one country and pasted to another. But Asfaha (2007) offers helpful counsel that in fashioning out a framework for managing resource funds each country should undertake its own assessment and come up with the model that best reflects public preferences and fits its political economic reality.⁴ Just as countries' institutional, administrative and fiscal management capacity vary so too are the cultural forces that shape public policy.
 12. Side-by-side with the open town-hall discussions, the team conducted on regional basis a formal survey of the public's perspectives on oil and gas revenue management. The survey-questionnaire focused on the above ten questions, answers to which would form the building blocks of the eventual law. The time-table of the regional consultations was published in the national dailies and was also advertised on local radio stations.
 13. The questionnaire was distributed to participants on self-selection basis; that is, to those who expressed a preference to participate by show of hands during the town-hall meeting. The survey was also made available online via Ministry of Finance's website. Number of participants in each of the regional town-hall consultations ranged between 300-500 and represented a cross-section of the population, including school children. The number of questionnaires administered in each of the 10 regions was 120. Total completed questionnaires received were 1147 (out of the possible 1200) plus 95 online respondents. There were also a number of written submissions (unsolicited and solicited) either directly to the Minister, Parliament, or to the technical team from a cross section of Ghanaians.
 14. The regional consultations were followed by another round of institutional consultations. In April 2010 Cape Coast University hosted an oil and gas colloquium of all universities to discuss a wide range of issues along the entire spectrum of exploration, development, production, revenue management and national participation. Additional consultative meeting were organized by the World Bank Development Dialogue Series (November 2009), Civil Society Platform (July 2010), Christian Council of Churches

⁴ Samuel Asfaha (2007). National Revenue Funds: Their Efficacy for Fiscal Stability and Intergenerational Equity. *International Institute for Sustainable Development*.

(Sept 2010), Institute of Economic Affairs (October 2010), and the United Nations International Development Organization (April 2010). The latter brought together school children drawn from across the country to share their perspective on oil and gas activities. The President's Economic Advisory Council and the Council of State provided guidance on a number of challenging issues, including whether or not there should be cash distribution to all citizens and regional considerations in the distribution of oil revenues.

15. While there was a general understanding that some coastal communities are likely to see socio-economic changes as a result of petroleum resource development, the political preference was that since Ghana's petroleum activities in the Jubilee Field is for now largely offshore, there are no local communities directly affected by the day-to-day oil and gas activities. Consequently, there was no need to earmark revenues to regions, including the central region with a coastline nearest to the oilfields. However, the law made provision for compensation in the event of any adverse impact on livelihoods. The issue of environmental impacts would be left to be addressed in other legislative or administrative instruments.

SUMMARY OF NATIONAL SURVEY

I. Revenue Collection and Allocation

Ghanaians seem certain of greater transparency and accountability if petroleum revenues are assessed, collected and accounted for by a team, rather than by a single institution. While agreeing that the ultimate responsibility for the collection and accounting for the revenue should reside in the Ghana Revenue Authority, the general support was that a technical taskforce or body made up of representatives from the Ghana Revenue Authority, Ministry of Energy, Bank of Ghana and the national oil company, Ghana National Petroleum Company should play some role in the measurement and verification of the quantity of petroleum and the setting of price that will form the basis of fiscal assessment. Support for assigning the task singularly to the national oil company as stated in section 10(3) of the Model Petroleum Agreement was very thin.

Second, three-quarters of respondents wanted petroleum revenues accounted for through a separate central bank account with its own management rules and guidelines. Similarly, nearly three-quarters of respondents wanted all petroleum revenues and spending integrated into the national annual budget. About 84 percent wanted government to set aside some of the petroleum revenues for specific expenditure items in the annual budget.

Third, direct cash distribution of oil revenues to citizens is a potentially powerful instrument to protect economic gains and a way to strengthen the country's social contract (Moss and Young, 2000). A remarkable 90 percent of respondents rejected the idea of direct distribution of revenues in cash to citizens, perhaps not so much because of the logistics of implementing such a scheme, but perhaps because of the strong collectiveness in using resource revenues- cocoa and gold as precedents- for development through national programs.

II. How Much to Spend and How Much to Save

The centrepiece of the public consultation was reconciling pressing development infrastructure needs on one hand and the desire to save part of the revenues for future generation on the other. The tension between current spending demands and saving for the future was evident. And no less evident was the general mistrust of politicians for unrestrained public spending of petroleum revenues. The majority of respondents preferred:

- i. A stable annual level of budgetary expenditures from petroleum revenues.
- ii. Flexibility in the use of petroleum revenues but not arbitrary discretion.
- iii. Limiting spending of petroleum revenue as a way to minimize wasteful public expenditures.
- iv. That the law specifies the share of revenues to be allocated to annual government spending for the purposes of achieving development goals. This is equivalent to recommending that savings should not be a residual after deciding on the non-oil budget deficit.

About 56 percent of respondents favoured spending between 50 and 70 percent of current petroleum revenues. Slightly more than half of this group favoured spending 60-70 percent. Nineteen (19) percent favoured spending higher between 70-79 percent. Only 5 percent favoured spending more than 80 percent of the current revenues, signalling a strong desire to save.⁵

On regional basis, a not too insignificant fraction of respondents from 5 out of the 10 administrative regions would allocate not more than 50 percent of current revenues for immediate government spending. Remarkably, except the Greater Accra region, the three other regions - Central, Eastern, Upper East and Northern – according to the Ghana Living Standards Survey (GLSS 3 and 4) had the highest incidence of poverty. The cultural force to save was most evident.

Fifty-five (55) percent of respondents wanted government to set up 2 separate funds (Heritage and Stabilization Funds) now. Together, 40 percent also favoured setting up a single fund for stabilization and savings for future generations. About a third of this latter group believed that although having two funds is a good idea, it may be too early for Ghana and therefore favoured a single fund for now to be split later. This has been the approach in Botswana and Trinidad and Tobago.⁶ A single fund has the merit of administrative simplicity.

III. Managing What is Allocated for Current Spending

Also emerging from the public consultation was the understanding that the sharing of the derived wealth from petroleum resource development should not only be in the form of saving. Just as important, current spending should be used to develop durable infrastructure and human capital that benefit and advance society for generations to come. Thus, between public non-debt consumption

⁵ The Institute of Economic Affairs (IEA) on December 11-13, 2009, held a 3-day workshop for leaders of Political Parties and invited members of the Energy and Mines Committee of Parliament. The communique issued at the end of the workshop recommend that 70-80% of the revenues be used to address social and physical infrastructure, 10-15% set aside s savings for the future generations, and 5-20% in a stabilization fund. Van der Ploeg (2010) reports that based on a cross-section of 135 countries for the period 1975-2007, the response to a resource windfall was to save about 30%.

⁶ Trinidad and Tobago established the Interim Revenue Stabilization Fund in 1990 and subsequently split it into the Heritage and Stabilization funds. Botswana operated a single fund from the beginning in 1966 and split it into Liquidity Portfolio and the Pula Fund in 1989.

spending and public investment, about 67 percent of respondents favoured allocating a greater percentage (50 - 80 percent) of the budget towards public investment spending – social physical infrastructure. Of this group slightly more than one-third would favour allocating 60-69 percent towards physical infrastructure spending. Moreover, about 88 percent of those surveyed want government to set a rule on the minimum amount of petroleum revenues in the annual budget spending that should go to support public investment.

For broad public consumption spending, the survey results suggest preferences for additional support for the following:

- i. the maintenance of law and order and public safety,
- ii. social protection,
- iii. public sector wages,
- iv. transfers to households in the form of pensions.
- v. Last on the list of spending priorities is general administration of government, government machinery and the executive and finally parliamentary functions in that order.

For immediate additional spending for public investments, the results suggest the following order of preferences:

- i. elementary and secondary education,
- ii. water and sanitation,
- iii. health facilities and access,
- iv. road infrastructure,
- v. university education and general research support,
- vi. polytechnic and nursing training,
- vii. human resource and capacity building in health,
- viii. energy,
- ix. investments in rail transport and
- x. governance and accountability.

The top ten priority areas for purposes of medium to long-term national development planning were identified as follows:

- i. education and quality of manpower development,
- ii. agriculture, food security and resource management,
- iii. growth and employment creation,
- iv. water and sanitation,
- v. closing the infrastructure gaps in electricity, transport and telecommunication,
- vi. improving the investment climate,
- vii. environment and protection of water bodies
- viii. decentralization,
- ix. public financial management and accountability, and
- x. strengthening of governance institutions in that order.

IV. Managing the Fund

Between 70 and 80 percent of respondents preferred governments refrain from borrowing against future oil revenue streams or the stock of accumulated savings. Between 20 and 30 percent favoured borrowing against future oil revenue streams, of which about 69 percent favoured some form of restrictions on how far government can borrow against savings from windfall revenues.

Nearly half of the respondents wanted the Ministry of Finance and Economic Planning to have direct oversight responsibilities of the savings, with Bank of Ghana handling the day-to-day management of the fund. About 28 percent, however, wanted the Bank of Ghana to have direct oversight responsibilities of such savings using other fund managers.

V. Transparency and accountability

A remarkable 97 percent of those surveyed and the weight of evidence in the town-hall consultation indicate a strong preference for all the activities about the petroleum revenues to be fully transparent and captured in the annual budget. About 83 percent saw the need for some separate public oversight mechanism, independent of parliament, with full access to all information regarding the use and management of oil revenues in Ghana.

Finally a greater majority of respondents would want

- (i) government to
 - publish annually in the national dailies all oil and gas revenues collected,
 - provide clear reporting on the size and performance of savings funds and all such information made public on the Ministry of Finance website; and
- (ii) Parliament to hold yearly public hearings on the use and management of petroleum revenues and the performance of the savings funds.

An equally greater percentage would want transparency mechanisms entrenched in the government institutions with some responsibility on the use and management of oil and gas revenues.

In the end what emerged from the broad consultations, the survey results, and the final legislation (Act 815) had all the characteristics of a political equilibrium under majority rule. The law not only captured and endorsed public preferences in many of the critical elements, but it went further to secure the parameters of spending ceiling, the spending on public investments, and the saving allocations. The law stipulated that the key parameters may be reviewed every three years, and that any proposed changes shall be approved by parliament by votes of not less than two-thirds majority. While there were some objections to some parameter choices, for example, the 70 percent spending ceiling, proponents countered that there was no better alternative mechanism in resolving the consumption-saving inter-temporal choice problem. In the absence of a comprehensive computable general equilibrium model of the economy, the survey results provided a clear tally of pref-

erences; strong in simplicity and transparency, and were not the outcome of the work of skilful politicians.

Finally, the law responded to the demands of public expectations of the broad collective vigilance of citizens. While a freedom of information legislation has been meandering through the legislative process for years, the law in one broad stroke revolutionized public accountability with provisions of information to the public. The Act requires the publication of receipts and payments in the national media and mandates public oversight on the use and management of petroleum revenues by setting up an independent Public Interest Accountability Committee. The Act also mandates public access to information with narrow exception to confidentiality given to the Minister responsible for Finance. Even then the burden to demonstrate the proprietary nature of the information to Parliament rests with the Minister.