



REPUBLIC OF THE GAMBIA



National Assembly, New Assembly Building, Reg . Pye Lane
Banjul, The Gambia

**REPORT OF THE JOINT COMMITTEE
OF
THE STANDING COMMITTEE ON PUBLIC
ENTERPRISES
AND
THE SELECT COMMITTEE ON ENVIRONMENT
SUSTAINABLE DEVELOPMENT AND NGO AFFAIRS
OF THE NATIONAL ASSEMBLY
ON THE PETROLEUM COMMISSION BILL, 2020**

DECEMBER, 2020

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MINUTES OF THE JOINT COMMITTEE -PUBLIC ENTERISES AND ENVIRONMENT SUSTAINABLE DEVELOPMENT AND NGO AFFAIRS

II -MEMBERS

Hon. Halifa Sallah	- Co-Chairperson
Hon. Sainey Touray	- Co-Chairperson
Hon. Alagie Jawara	- Vice Chairperson/PEC
Hon. Yaya Gassama	- Member
Hon. Saikou Marong	-Member
Hon. Suwaibou Touray	- 1 st Rapporteur
Hon. Momodou Camara	-Member
Hon. Omar Ceesay	-Member
Hon. Salifu Jawo	-Member
Hon. Bakary Njie	-2 nd Rapporteur
Hon. Amadou Camara	- Member
Hon. Madi M. K. Ceesay	-Member
Hon. Alhagie S. Darboe	-Member
Hon. Muhamed Magassy	-Member
Hon. Ousman Touray	- Member
Hon. Kajali Fofana	-Member
Hon. Kebba K. Barrow	-Member
Hon. Muhammed Ndow	-Member
Hon. Momodou Camara	-Member

Hon. Birom JS. Sowe -Member

SUBJECT MATTER SPECIALISTS

Dr. David Tommy

Justice Amienata L. R. Ngum

Foday Bojang

SUPPORT STAFF

Fatoumata Keita

Committee Clerk

Lamin Bamba

Research Officer

Modika Bah

Research Officer

III ACKNOWLEDGEMENT

We the Members of the Joint Committee wish to register our appreciation to the Clerk for providing support staff that gave their best, as necessity would dictate to enable the Joint Committee to attain its goal. The Subject Matter Specialists have had their inputs where and when necessary. The Minister of Petroleum and energy and his team displayed tremendous commitment, consistency, humility and professionalism in defending what is defensible and acknowledging all gaps marched by options to redress them. They were able to address all the concerns of the Committee members and showed remarkable diligence in incorporating any recommendation that was fit for purpose.

The Joint Committee is indebted to the witnesses who took the time to scrutinise the Bill, clause-by-clause and satisfactorily demonstrated their competence, enthusiasm, professionalism, forthrightness and objectivity in giving valuable evidence which enriched the report and content of the Bill.

1.0 INTRODUCTION

The Fifth Assembly of the Second Republic, sitting on Thursday, 02nd July, 2020 during the Third Ordinary Session of the 2020 legislative year witnessed the introduction of a Bill entitled " Petroleum Commission Bill, 2020. "

On the second reading of the Bill dated 17th July, 2020 the Members debated on the merits and principles of the Bill. At the conclusion of the debate the Minister of Petroleum and

Energy gave his reply. The question was then put for the Bill to be read a second time and the motion was carried. The Bill was read for the second time and was referred to The Assembly Business Committee for Committal to the relevant Committee/Committees as dictated by Standing Order 68. The Assembly Business Committee remitted the Bill to a Joint Committee comprising the Public Enterprises Committee and the Select Committee on Environment, Sustainable Development and NGO Affairs, of the National Assembly.

The Joint Committee, convened its inaugural meeting on 05th October, 2020 to strategise and identify the way forward to fulfill its mandate as prescribed by Standing Orders 69, 107, 108, and 109 which provides the procedural guidelines to perform its task.

According to Standing Order 107 the Joint Committee had the option to allow one of the Committees to dispose of the Bill in accordance with Standing Order 108, or agree to sit concurrently in accordance with Standing Order 109 or propose the establishment of a Joint Select Committee to carry out the task as provided for under Standing Order 110.

The question was put and the members chose to sit concurrently. The Chairpersons of the two Committee consulted and agreed to the principle of rotational occupancy of the seat of Chairperson and Vice Chairperson throughout the performance of their duties as provided for under Standing Order 109 Paragraph 3 b)

The meetings were Co- Chaired by Hon. Halifa Sallah, the Chairperson of the Public Enterprises Committee and Hon. Sainey Touray, the Chairperson of the Select Committee on

Environment, Sustainable Development and NGO Affairs, on a rotational basis.

The Joint Committee, considered it prudent to call the mover of the Bill and his team as the first witnesses to provide evidence on the Bill. It also charged the researchers with the task to gather more information regarding the Acts governing the Petroleum sectors in other jurisdictions for comparative analysis. The Joint Committee drew a list of relevant stakeholders deserving appearance before it to give evidence on the subject matter.

On Tuesday, 6th October, 2020 the Joint Committee held its first meeting with the mover to spell out the ground rules of the review exercise of the Petroleum Commission Bill, 2020 by the Joint Committee.

It was conveyed to them that the Joint Committee, has the duty as prescribed by Standing Order 69 to examine the details of the Bill, clause by clause, take evidence and gather proposals for amendments from relevant stakeholders which will be shared with the mover for consensus building on an amended version of the Bill, which would be included in its report to the National Assembly for consideration.

An understanding was reached that as the Joint Committee proceeds with the review process proposed amendments would be conveyed to the mover for consideration. It was intimated to the mover that he has the duty to incorporate the amendments agreeable to him in the original Bill. This would be followed by the preparation of a consolidated version of the Bill by incorporating the proposed amendments for final review during a rationalisation, harmonisation and validation meeting

aimed at finalizing the adopted version of the Bill and its proposed amendment that would be conveyed to the Assembly for consideration.

After the inaugural meeting with the mover, the Joint Committee invited witnesses, gathered evidence, teased out the proposal for amendment and facilitated the preparation of a final text of the Bill incorporating all the proposed amendments.

This report indicates the mandate of the Joint Committee, provides a summary of the evidence gathered from the witnesses, projects all the proposals for amendments and attaches a text of the Bill incorporating all the proposed amendments for easy reference by members in scrutinising the Bill clause by clause for approval or otherwise, at the Consideration Stage.

2.0 Mandate

In accordance with Standing Order 69 the mandate of the committee is as follows:

- a) Identify witnesses, hold proceedings and gather evidence on the clauses and schedule of the Bill**
- b) Record the opinion of the Committee on each clause and schedule of the Bill focusing on any proposed amendment;**
- c) Present amendments in the order in which they stand in the Bill**
- d) Present a report comprising a summary of the evidence gathered from the witnesses, the opinion of the**

committee on the clauses of the Bill and the amendments proposed as incorporated in a final text with its attachments of minutes and related documentary evidence.

3.0 Methodology

The Joint Committee adopted the following methodology to gather evidence.

- a) Called witnesses to testify
- b) Called for submission of documentary evidence
- c) Convened meeting to rationalise and harmonise proposal for amendments
- d) Convened meeting to validate the Bill with proposed amendments

4.0 Proceedings

The Joint Committee engaged the following witnesses to gather evidence:

WITNESSES

Hon. Fafa Sanyang	- Hon. Minister of Petroleum and Energy
Lamin Camara	- Permanent Secretary (MoPE)
Jerreh Barrow	- Commissioner (MoPE)
Kissima Bittaye	- State Counsel (MoJ)
Momodou B. Sarr	- Adviser to the Minister (MoPE)
Kanni Touray	- Deputy Commissioner (MoPE)
Lamin Fatty	- PPP (MoFEA)
Kissima Bittaye	- Sate Council (MoJ)
Famara Darboe	- Director (MoFWR)
Omar SM. Gibba	- Deputy Permanent Secretary (MoFWR)
Momodou Mbye Jabang	- Permanent Secretary (MECCNAR)
Musu kebba Sonko	- Executive Director (MoLs)
Yaya F. Barrow	- Managing Director (GNPC)
Yero Jallow	- Deputy Managing Director (GNPC)
Cany Jobe Taal	- Director of Exploration and Production (GNPC)
Aja Mariama Bah	- Senior Legal Officer (GNPC)
Lamin Manneh	- Geo Science Manager (GNPC)

Malick Bah - Director of Technical Service (NEA)
Lamin B. J. Samateh -PO EPL (NEA)
Nyallow Barrow -Commissioner (Department of Labour)
Sidat B. Sanneh -Deputy Commissioner (Department of Labour)
Alieu Jawo - Assistant Director (Geological Department)
Mansour Jobe -Director of Legal and Investigation (NAHRC)
Sara Conateh - Director, Program &Operations (GCCCI)
Bubacarr Saho - Project Manager (GCCCI)

The Joint Committee relied on the scrutiny of the testimonies of witnesses to review the details of the Petroleum Commission Bill, clause by clause and take due notice of evidence of any input aimed at adding value to the content of the Bill. Cross references were made to ensure that the content of the Bill was brought into conformity with The Constitution of the Republic, 1997 The Public Enterprise Act 1993 and The Public Finance Act 2014.

5.0 Summary of Evidence

The Petroleum Commission Bill has five Parts, 27 Clauses and 1 Schedule.

The Object of the Bill is to provide a regulatory framework for the management and development of petroleum activities in the Upstream and Midstream sectors in order to ensure optimum exploitation and utilization of petroleum resources to facilitate

the optimum socioeconomic development of The Gambia and the enhancement of the general welfare of the people.

The evidence gathered indicated the vacuum left in the interpretation of what constitute the Upstream and Midstream sectors of the Petroleum exploration, development and exploitation process and directly or indirectly, related matters that are the main concerns of the Bill. The Joint Committee got sufficient evidence to enrich the content of clause 1.

The factors which necessitate the proposed establishment of a Petroleum Commission have been fully explored and revealed as incorporated in clause 2. The regulatory, management, policy implications and desired outcome are clearly reflected in Clause two and three which defines the strategic objectives and functions. The evidence gathered had added value in improving content.

The witnesses pondered on the management architecture and emphasised the necessity for the Board and management to manifest competence and professionalism in all their undertakings in the service of the Commission. The witnesses expressed concerns on how to prevent political interference and evidence was adduced on the probable ways of shielding the Commission members from undue political interference in the performance of their duties as reflected in the content and proposed amendments covering clause 6 to clause 16.

A key issue that was buttressed by witnesses is the inclusion of local content in the Bill in terms of interpretation and operational focus in order to ensure optimum participation of Gambians and Gambian companies in sustainable petroleum activities for sustainable socio-economic development aimed at

deriving optimum benefits for the country and her people from Upstream and Midstream sectors.

In that regard, witnesses considered the indispensability of building a viable and adequately resourced National Petroleum Company, through financial endowments and requisite training, to promote and safeguard national interest in the Upstream and Midstream sectors as well as provide a support base for the participation of private Gambian companies.

In the same vein, witnesses concurred that the Commission should not be deprived of public financial support if necessary but should be anchored on credible self-financing means and schemes resting on pillars of transparency and accountability in financial management. Clauses 17 to 21 and the proposed amendments aim to provide the desired financial architecture.

Finally, the witnesses envisaged that the Commission would be a regulatory body overseeing the proper development of the Upstream and Midstream sectors and must make binding decisions that may be subject to appeal but should be free from any political interference. The laws governing its decisions, the regulations guiding compliance with the rules of engagement in the sector and the schedule mapping out the method of public disclosure of operational activities are proposed in clauses 22 to 27 and the First Schedule of the Bill.

6.0 SRCUTINY, CONSIDERATION, FINDINGS, OPINION, AND RECOMMENDATIONS

Opinion of the Committee on Clause 1

Clause 1 under Part 1 Preliminary

SHORT TITLE

Evidence:

The Committee observes that the intention is to have the Bill enacted in 2020. This is why the short title of the Bill reads:

“This Act may be cited as the Petroleum Commission Act, 2020.”

Consideration:

Since the Bill is to be enacted in 2021 if passed in 2021 it is considered necessary to amend clause 1 of the Bill the “Short Title by removing the year 2020 in the Bill and inserting the year 2021.

Advice:

It is proposed that Clause 1 as amended and incorporated in Annex 1 stand as part of the Bill.

Opinion of the Committee on Clause 2

INTERPRATION

Evidence:

The Joint Committee received evidence that key operational concepts or terminologies concerning activities in the petroleum

sector are either absent or inadequately captured in the clause on Interpretation.

Consideration:

The Joint Committee marked the absence of the following key concepts connected to petroleum activities under the Interpretation clause in the Bill:

Licensee

Midstream

Petroleum Act

Upstream

The mover of the Bill concurred and undertook to include the interpretation of the above-mentioned terms in the Bill incorporating the proposed amendments as recommendation for adoption by the Assembly.

Furthermore, the Joint Committee observed that the following terms are not adequately defined in the Bill:

Financial Year

Government

Local content

Petroleum Activities

Petroleum data

Petroleum resources

Petroleum reserves

Reconnaissance Exploration

The mover of the Bill concurred and undertook to provide the definitions as proposed in the version of the Bill incorporating the proposed amendments.

Advice:

It is proposed that clause 2 with amendment , as presented in the version of the Bill incorporating all the amendments be adopted to stand as part of the Bill.

Opinion of the Committee on Clause 3

Clause 3 Establishment of the Petroleum Commission

Evidence: The evidence adduced confirmed the importance of establishing such a Commission before the activities develop to a grand scale without enacting a law on petroleum governance as has happened in other jurisdictions, to their detriment.

Consideration: The Joint Committee considered the consensual opinion as valid and did not register any proposal for amendment that could be considered to be line with current or better practice.

Advice: It is proposed that clause 3 without amendment stands as part of the Bill.

Clause 4 - Objectives of the Commission

Evidence: Witnesses observed that it was not the role the Commission to implement policies in general for the sustainable development of the petroleum sector but to regulate

the sector and ensure compliance with the Act, regulations, Licences, permits and related policies.

Considered: The Committee considered that objectives and observed that the Commission should focus on its key function of regulating petroleum activities in the Upstream and Midstream sectors aimed at enhancing sustainable socio-economic development of the country and safeguarding local content by ensuring compliance with the Act, regulations, Licenses, permits and related policies.

Advice: It is proposed that Clause 4 with amendments stands part of the Bill as incorporated in Annex 1`.

Clause 5 Functions of the Commission

Evidence: In safeguarding local content the witnesses would wish more equitable sharing of responsibility to promote market petroleum data and subsequent earnings to promote sustainability of local content initiatives.

Consideration: They gave consideration to all the concerns but the evidence did not factor any proposed amendments.

Advice: It is proposed that Clause 5 without amendments stands as part of the Bill as incorporated in Annex 1.

Clause 6 Establishment of the Board of the Commission

Evidence: It is evident that contrary to Section 175 of the Constitution the Bill seeks to grant the President the power to appoint the members of the Board in consultation with the Minister and the Public Service Commission. The Constitution limits the consultation to the PSC. The witnesses gave the reasons why the composition should include a social and

environmental specialist. Some with the aim to protect fish stocks against threats in developing the upstream and midstream sectors, would want the Geo -scientist to be replaced by a marine biologist.

One other person should be in the list of members was also a matter in evidence? | The GCCI, had a strong position that, as the representative body of the private sector in The Gambia since 1967. The GCCI is the champion for local content advocacy and engages government on a daily basis to inform policy, legislation, and regulation. It is fitting and proper to have the GCCI as a member of the board of the petroleum commission.

Consideration: The Committee considered Clause 6. Eventually, consensus was built to retain the services of a Geo scientists while adding the service of a Social and environmental specialists. The Consultation in effecting appointment is also to be in line with the Constitution. The President may take note of the proposal of the GCCI when appointing the one other person, especially balancing the gender divide.

Advice: It is proposed that Clause 6 with amendments stands as part of the Bill as incorporated in Annex 1.

Clause 7 - Functions of the Board

Evidence: The witnesses indicated that the Commission is a regulatory authority and not a policy making authority and

wherever the function of policy making is expressed or implied it should be qualified.

Consideration: The Committee made the observations in its consideration of the clauses and proposed the qualifications that gave rise to policies being limited to operational directives of the Commission rather than general policies of the sector, which is the responsibility of the Ministry.

Advice: It is proposed that Clause 7 with amendments stands as part of the Bill as incorporated in Annex 1.

Clause 8 - Tenure of office of members

Evidence: The witnesses did raise concern regarding the tenure of Non ex -officer and ex -officio members.

Consideration: The Committee considered the content of the clause but had no input.

Advice: It is proposed that Clause 8 without amendments stand as part of the Bill as incorporated in Annex 1.

Clause 9 -Vacation of office

Evidence: The witnesses did not raise concerns

Consideration: The Committee observed that it is the Director General and not the Minister who informs the President of any vacancy in the Board and such notification and subsequent appointment are not time bound.

The mover and team concurred and the proposed amendments advanced seek to give seven days to the Director General to inform the Minister of any vacancy, 14 days to the Minister to convey the information to the President and 45 days to the President to fill the vacancy.

Advice: It is proposed that Clause 9 with amendments stands as part of the Bill as incorporated in Annex 1.

Clause 10 - Meetings of the Board

Evidence: It was revealed that the Public Enterprise Act provides for a quorum of five members instead of a simple majority as stated in the Bill.

Consideration: The Committee observed the need for the Bill to be brought into conformity with the Constitution and the Public Enterprise Act. The mover concurred.

Advice: It is proposed that Clause 10 with amendments stands as part of the Bill as incorporated in Annex 1

Clause 11 - Disclosure of interest

Evidence: The witnesses did not raise any adverse concerns

Consideration: The Committee considered the clause dealing with disclosure of interest before participation in Board deliberations and the implication of not doing so but made no input in content.

Advice: It is proposed that Clause 11 without amendments stands as part of the Bill as incorporated in Annex1.

Clause 12 - Establishment of committees

Evidence: The witnesses did buttress the impotence of local content and the need for a participatory approach in promoting it.

Consideration: The Committee considered the clause and concurred with the concerns of the witnesses

Advice: It is proposed that Clause 12 without amendments stand as part of the Bill as incorporated in Annex 1.

Clause 13 - Remuneration and expenses of members of the Board

Evidence: The witnesses raised no concerns

Consideration: The Committee considered the content but had no input.

Advice: It is proposed that Clause 13 without amendment to stand as part of the Bill as incorporated under Annex 1.

PART III - THE DIRECTOR GENERAL AND STAFF OF THE COMMISSION

Clause 14 - Appointment of the Director General

Evidence: Evidence was led whether the Management of the Commission should be led by a Commissioner or Director

General and whether the Director General is a head of the Commission

Consideration: The Committee observed that the clause indicating that the Commission is headed by a Director General could be misleading. It proposed terms that defined role. It also noted the qualification and experience required for appointment of Director General were not stipulated. The proposed amendment calls for no less than five years working experience in matters dealing with the functions and advanced degree in the sector.

Advice: It is proposed that Clause 14 with amendment as incorporated in Annex 1 stands as part of the Bill.

15 - Functions of the Director General

Evidence: The witnesses did raise concerns of competence and professionalism.

Consideration: It was observed that the functions could be enlarged to merit consideration in appointment. The importance of adding the responsibility of exercising direction in the implementation of the Act and regulations and facilitating appropriate guidelines and regulations for the operationalization of the permits and Licences was highlighted.

Advice: It is proposed that clause 15 with amendment as incorporated in Annex 1 stands as part of the Bill.

Clause 16 - Staff of the Commission

Evidence: The witnesses did not raise any concerns.

Consideration: The Committee did not gathered any evidence meriting input in content after consideration.

Advice: It is proposed that clause 16 without amendments, as incorporated in Annex 1, stands as part of the Bill.

PART IV - FINANCIAL PROVISIONS

Clause 17 - Funds of the Commission

Evidence: It was revealed that a trend is developing as a matter of state policy for Public Enterprises to generate their own revenue from their own sources of funding instead of relying on monies appropriated by an Act of the National Assembly.

Consideration: The Committee saw the need to amend clause 17 to make the provision aimed at deriving funds from the consolidated fund discretionary instead of being mandatory, as originally put in the Bill. The management of training funds by the Ministry was also questioned and the mover and team agreed to transfer the management to the Commission while the Minister provides regulations to ensure proper management.

Advice: It is proposed that clause 17 with amendments, as incorporated in Annex 1, stands as part of the Bill.

Clause 18 - Expenses of the Commission

Evidence: The witnesses had no comments to advance

Consideration: The Committee had no input in its consideration of the clause.

Advice: It is proposed that Clause 18 without amendment, as incorporated in Annex 1, stands as part of the Bill.

Clause 19 - Annual estimates

Evidence: The witnesses did not make any observation on this clause.

Consideration: The Committee had no additional input.

Advice: It is proposed that clause 19 without amendment, as incorporated in Annex 1, stands as part of the Bill.

Clause 20 - Accounts and Audit

Evidence: It was evident that it was not tenable for statement of accounts to be submitted to the Auditor General, three months before the end of a financial year as stated in the Bill.

Consideration: The Committee observed the need for amendment of the clause to bring it into compliance with the Public Enterprise Act so that statement of Accounts would be submitted three months after the end of each financial year.

Advice: It is proposed that Clause 20 with amendments, as incorporate in Annex 1, stands as part of the Bill.

Clause 21. Annual report

Evidence: The Bill seeks to mandate the Commission to submit annual reports to the National Assembly without any timeframe which was proven to be at variance with Section 175 of the Constitution.

Consideration: The Committee observed the divergence of clause 21 from the provisions of Section 175 of the Constitution and sought for compliance with The Constitution and The Public Enterprise Act in framing the clauses. The mover and team concurred with the view and undertook to put the necessary amendments in place to ensure that activity reports and financial statement of the Commission are submitted to the National Assembly within three months of the end of its financial year

Advice: It is proposed that Clause 2 with amendments, as incorporated in Annex 1, stands as part of the Bill.

PART V - MISCELLANEOUS

Clause 22 - Protection of members and staff of the Commission

Evidence: The witnesses did indicate that the aim to protect Commission members and staff from suits and prosecutions seems to insulate members of the board from individual responsibility and dilutes accountability.

Consideration: It was observed that giving immunity to members and staff of the Commission in the exercise of their lawful duty is susceptible to scrutiny by the courts when the lawfulness of any action is in question. The clause needs further scrutiny to provide protection without the possibility of abuse.

Advice: It is proposed that Clause 22 without amendment stands as part of the Bill as incorporated in Annex 1

Clause 23 - Compliance with decisions of the Commission

Evidence: The witnesses raise no objections.

Consideration: It is observed that the licensees and subcontractors have the duty to abide by the lawful decisions of the Commission since they have the right to appeal if they are aggrieved by any questionable decision in terms of lawfulness.

Advice: It is proposed that Clause 23 without amendment, as presented in Annex 1, stands as part of the Bill.

Clause 24 - Review of decision

Evidence: It is observed that powers of the Minister to review complaints from persons aggrieved by a decision of the Commission and even set aside the decision of the Commission could lead to undue political interference.

Consideration: The setting up of a special Committee of independent eminent persons to review complaints of a person aggrieved by a decision of the Commission was proposed to be a better option. The mover of the motion concurred.

Advice: It is proposed that Clause 24 with amendment, as incorporated in Annex 1, stands part of the Bill.

Clause 25. Relationship with other entities

Evidence: The witnesses raised no concern

Consideration: The provision is considered to reflect the inevitability of building genuine relationships in the performance of the functions of the Commission.

Advice: It is proposed that Clause 26 stands part of the Bill without amendment, as provided for in Annex 1.

Clause 26 - Regulations

Evidence: The witnesses had no objection to the power of the Minister to make regulation.

Consideration: The Committee is of the opinion that all regulations are classified as subsidiary legislation which are subjected to review by the relevant Committee of the National Assembly under Standing Order 80.

Advice: It is proposed that clause 26 stands as part of the Bill without amendment, as provided for in Annex 1

Clause 27 Inconsistency with other laws

Evidence: It was received in evidence that the provision as framed could lead to many interpretations and the automatic ousting of all law relating to licensing in the upstream and midstream sectors without proper impact assessment of the implications to relevant sectors

Consideration: It was observed and the mover of the Bill concurred that the Bill is not centered on licensing in particular but on regulation of the upstream and midstream sectors. Hence Clause 27 was reviewed accordingly.

Advice: It is proposed that Clause 27 with amendment , as incorporated in Annex 1, stands as part of the Bill.

ANNEX 1

First Schedule

ANNEX 1

THE BILL INCORPORATING ALL THE AMENDMENTS (PETROLEUM COMMISSION BILL, 2020)

A BILL ENTITLED

AN ACT to provide for the establishment of the Petroleum Commission, for the regulation and management of midstream and upstream petroleum activities, the utilisation of petroleum resources, and for connected matters.

[]

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1Short title

This Act may be cited as the Petroleum Commission Act, 2020.

2. Interpretation

In this Act, unless the context otherwise requires -

“appraisal programme” means a programme carried out, following a discovery of petroleum for the purpose of delineating the accumulation of petroleum to which the discovery relates in terms of thickness and lateral extent and estimating the quantity of recoverable petroleum therein;

“Board” means the Petroleum Commission Board established under section 6;

“Chairperson” means the Chairperson of the Board appointed under section 6;

“Commission” means the Petroleum Commission established under section 3;

“Director General” means the Director General of the Petroleum Commission appointed under section 14;

“data acquisition” includes the process of acquiring geological, geophysical, engineering and economic data for petroleum activities;

“financial year” means a twelve months period, starting on the first day of January and ending on the 31st December for which a Government Budget is approved, executed, reported and audited;

“fiscal metering” means the planning, design, installation, calibration, commissioning, monitoring and inspection of any devices or equipment for the measurement of quantity of petroleum produced;

“functions” includes powers and duties;

“Government” means the executive Government of The Gambia;

“High Court” means the High Court of The Republic of The Gambia;

“Licence” means an agreement relating to the exploration, development or production of petroleum entered into between a person and the Minister under the Petroleum (Exploration Development and Production) Act 2004;

“Licensee” means a person who has entered into a licence with the Minister under Petroleum (Exploration Development and Production Act 2004;

(Cap 65.02)

“Local Content” means the promotion of indigenization of petroleum activities, use of Gambian human and material resources, services and businesses for the systematic development of national capacity and capabilities for the benefit of the Gambian people and enhancement of the Gambian economy;

“Minister” means the Minister responsible for Petroleum matters and; “Ministry” shall be construed accordingly;

“Midstream Sector” means the segment of the petroleum value chain comprising the processing, storing, transporting and marketing of petroleum;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for Petroleum matters;

“Petroleum” means crude oil or natural gas or a combination of both;

“Petroleum Act” means Petroleum (Exploration, Development and Production) Act, 2004, Cap 65.02, Volume 10 of the Laws of The Gambia, as amended or repealed and/or superseded by another legislative Act from time to time;

“Petroleum Activities” means any activity, engaged in within and outside The Gambia relating to the exploration, development and production of petroleum, including the-

Acquisition of data and drilling of wells;

Treatment, storage, pipeline transportation of petroleum resources;

planning, design, construction, installation, operation of petroleum facilities; and operation, use and the decommissioning of petroleum facilities;

“Petroleum Data” includes geological, geophysical, engineering, environmental and economic data for petroleum exploration, development and production;

“Petroleum Fields” means the geographic area under which one or more petroleum deposits or reservoirs lie and which is or has been operated pursuant to applicable laws, regulations and agreements;

“Petroleum Infrastructure” means any facility, installation, equipment or device, built or acquired for the conduct of petroleum activities including any well, plant, storage tank, intra-field and export pipeline and cable but excluding a supply and support vessel that transports petroleum in bulk;

“Petroleum Resources” include all estimated quantities of petroleum either discovered or undiscovered, contained in the sub-surface, as well as those quantities under production and already produced;

“Petroleum Reserves” means the petroleum that can be economically extracted from petroleum resources and which is anticipated to be commercially recoverable by the application of a development project to known discoveries from a future date;

“Permit Holder” means a person who has entered into a permit with the Minister under the Petroleum (Exploration Development and Production) Act 2004;

“President” means the President of the Republic Of The Gambia;

“Reconnaissance Exploration” means the search for hydrocarbons by geophysical geochemical or photo geology surveys or other remote sensing techniques and surface geology in connection with it including the collection of environmental, and all necessary data relating to the resource;

“Relevant Institution” means a public entity under whose area of competence petroleum activities are conducted;

“Sub-Contractor” means any person with whom a licensee or permit holder has entered into a subcontract; and

“Upstream Sector” means the segment of the petroleum value chain involving exploration, development and production.

PART II - ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BOARD

3. Establishment of the Petroleum Commission

(1) There is established by this Act, the Petroleum Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal and may -

-sue and be sued in its corporate name;

-enter into contracts and acquire, hold and dispose of property;

-do such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The application of the common seal of the Commission shall be authenticated by the signature of the Director General or such other person as may be authorised by the Director General.

(4) A document bearing the imprint of the common seal of the Commission is deemed to be properly sealed, unless the contrary is proved.

4. Objectives of the Commission

The objectives of the Commission are to-

Regulate petroleum activities;

Manage the petroleum resources;

Ensure compliance with policies and laws for the petroleum sector and

Promote local content for sustainable development.

5. Functions of the Commission

The Commission shall -

-Promote planned, well executed, sustainable and cost efficient petroleum activities to achieve optimal levels of resource exploitation for the overall benefit and welfare of citizens;

-Recommend to the Minister national policies related to petroleum activities;

-Monitor and ensure compliance with national policies, laws, regulations and agreements related to petroleum activities;

-Prepare or cause to be prepared any relevant documentation including drafts of any acquired legislation, necessary to give the Commission the power to regulate Upstream and Midstream sectors in accordance with this Act.

-Conduct and coordinate activities related to the licensing process;

Ensure;-

-Compliance with health, safety and environmental standards in petroleum activities in accordance with applicable laws, regulations and agreements;

-The implementation of the petroleum Act;

-Optimum exploitation of petroleum resources,

-Optimum utilization of existing and planned petroleum infrastructure, that licensees, subcontractors and other persons involved in petroleum activities comply with applicable laws and regulations and monitor petroleum activities and carry out the necessary inspection and audit related to the activities;

-Promote local content and local participation in petroleum activities according to applicable laws and regulations to strengthen national development;

-Administer monies paid to the Local Content Fund;

-Receive and store petroleum data, manage a national petroleum repository and at the request of the Minister, undertake reconnaissance exploration including data acquisition;

-Receive application and issue authorizations for specific petroleum activities as required under petroleum laws and regulations;

-Support and facilitate acquisition of authorizations from relevant institutions;

- Assess and approve appraisal programmes;**
- Advice the Minister on matters related to petroleum activities including:-**
- Field development.**
- Plans for the development of petroleum transportation, processing and treatment facilities and**
- Decommissioning plans for petroleum fields and petroleum infrastructure;**
- Issue an annual report on petroleum resources and activities in the Gambia in accordance with the schedule to this Act and publish the report in the Gazette;**
- Receive information from licensees as provided for under applicable laws, regulations and agreements;**
- Analyze petroleum economic information and submit economic forecasts on petroleum to the Minister;**
- Facilitate and administer the execution of geophysical service agreements;**
- Promote and market petroleum data; and**
- Perform any other functions related to the objects of the Commission or assigned to it under any Act.**

6. Establishment of the Board of the Commission

(1) There is established by this Act, the governing Board of the Commission which shall comprise of-

a Chairperson;

the Director General;
a Social and Environmental specialist
a Geo-scientist;
a legal practitioner
Permanent Secretary; and
One other person

(2) the members of the Board shall be appointed by the President after consultation with the Public Service Commission.

(3) In appointing members of the Board, the president shall have regard to gender parity, integrity, knowledge expertise and experience in matters relevant to the function of the Commission.

7. Functions of the Board

The Board shall-

- Ensure the proper and effective performance of the functions of the Commission;**
- Formulate operational policies and strategies to achieve effective, regulated and optimal development of the upstream and midstream petroleum sector for the benefit of all Gambians;**
- Supervise and monitor the performance of the Director General and the management team of the Commission;**

Build a highly technical human resources base that will ensure compliance with applicable laws and standards in the upstream and midstream sector; and

Review and approve business and operating plans, budgets, reports and financial statements of the commission.

8. Tenure of office of members

The non-ex-officio members of the Board shall hold office for three years and may be re-appointed only once.

9. Vacation of office

(1) A non ex-officio member of the Board shall vacate office if he or she-resigns in writing by a letter addressed to the President through the Minister;

is absent from three consecutive meetings of the Board without sufficient cause and without the permission of the chairperson;

is convicted of an offence involving fraud, dishonesty or moral turpitude;

is unable, by reason of mental or physical infirmity, to discharge his or her functions as a member of the Board;

is adjudged bankrupt; or dies.

(2) Where there is a vacancy on the Board, the Director General shall within seven days notify the Minister who shall within fourteen days inform the President of such vacancy.

(3) The President shall, within forty-five days of receipt of the notification under sub-section (2), appoint a replacement.

10. Meetings of the Board

The Board shall meet at least once every three months as such time and place determined by the Chairperson.

The Chairperson shall, as request in writing of not less than one-third of the membership of the Board, convene an extraordinary meeting of the Board within seven days of receipt of the request at such time and place as determined by the Chairperson.

The quorum at a meeting of the Board shall be five members or such number as may be determined by the Board in respect of an important matter.

The Chairperson shall preside meetings of the Board in the absence of the Chairperson at a scheduled meeting of the Board the members of the Board shall elect a member present from among their number to preside over the meeting

The Board may co-opt a person to attend a Board meeting but the person shall not vote on a matter for decision at the meeting.

11. Disclosure of interest

(1) A member of the Board who has an interest in a matter for consideration by the Board shall-

(a) disclose the nature of that interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) recuse himself or herself from the deliberations of the Board in respect of the matter.

(2) A member of the Board who-

(a) fails to disclose his or her interest; or

(b) participates in the deliberations of the Board in respect of that matter of interest, may be removed from office.

12. Establishment of committees

(1) The Board may establish committees consisting of members of the Board or of members and non-members of the Board to perform a function.

(2) Without limiting sub-section (1), the Commission shall establish a Local Content Committee to deal with the local content and local participation programme.

(3) A committee of the Board shall be chaired by a member of the Board.

(4) The provisions dealing with disclosure of interest under section 11 shall apply to members of a committee of the Board.

13. Remuneration and expenses of members of the Board

The members of the Board shall be paid such remuneration and allowances as may be determined by the Minister.

(2) Members of the Board shall be reimbursed by the Commission, for reasonable expenses incurred in connection with the discharge of their functions.

PART III - THE DIRECTOR GENERAL AND STAFF OF THE COMMISSION

14. Appointment of the Director General

(1) The Chief Executive Officer of the Commission shall be the Director General, who shall be appointed by the President after consultation with the Board and the Public Service Commission.

The Director General shall-

hold office on the terms and conditions as specified in his or her appointment letter; and hold advanced qualifications and has at least 5years experience in matters relevant to the principal functions of the Commission.

15. Functions of the Director General

(1) The Director General shall-

-be responsible for the day to day administrative affairs of the Commission, implementation of this Act, the regulations, licences and permits;

-be answerable to the Board in the performance of his or her functions under this Act;

-be responsible for the implementation of the decisions of the Board;

-spearhead the Commission's cooperation with other agencies and organisations involved in petroleum activities; and

-perform such other duties as the Board may, from time to time, assign.

(2) The Director General may delegate any of his or her functions to an officer of the Commission but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

16. Staff of the Commission

(1) The Board shall, appoint such other officers and staff as are necessary for the proper discharge of the functions of the Commission, on such terms and conditions of service as the Board may determine.

(2) The Board may delegate the appointment of such category of staff to the Director General as it may determine, in accordance with the service rules of the commission.

The Board may request or accept the secondment or transfer of a Public Officer to the Commission in accordance with the Public Service Regulations.

PART IV - FINANCIAL PROVISIONS

17. Funds of the Commission

(1) The funds of the Commission may consist of monies appropriated to it by the National Assembly.

(2) The funds of the Commission shall consist of-

(a) monies paid to the Commission from -

(i) signature bonuses from Licences;

(ii) surface rentals from Licences; and

(iii) monies accrued from the sale and licensing of data;

(b) monies that accrue to the Commission in the performance of its functions;

(c) training and resources funds, which shall be administered and managed by the Commission in accordance with regulations made under this Act; and

(d) grants, donations or gifts received from any lawful source.

(3) The monies for the Commission shall be paid into a bank account, approved by the Board.

18. Expenses of the Commission

The expenses of the Commission shall be paid from monies provided for the Commission under section 17.

19. Annual estimates

(1) The Director General shall submit to the Board the estimates of the income and expenditure of the Commission for the following financial year.

(2) An expenditure shall not be made out of the funds of the Commission unless the expenditure has been approved by the Board in the budget.

20. Accounts and Audit

(1) The Commission shall keep proper books of accounts of all its income and expenditure and proper records in relation to the accounts in respect of each financial year.

(2) The Commission shall, three months after the end of each financial year, prepare and submit to the Auditor General, a statement of accounts for audit.

(3) The audited accounts of the Commission and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

21. Annual report

The Commission shall, within three months of the end of each financial year submit an annual report to the National Assembly on its business and operations during the preceding year.

PART V - MISCELLANEOUS

22. Protection of members and staff of the Commission

An action, a suit, prosecution or other proceedings shall not be brought or instituted against a member of the Board or staff of the Commission personally in respect of anything done in pursuance, execution or intended execution of any of the provisions of this Act.

23. Compliance with decisions of the Commission

Subject to section 24, a licensee, subcontractor or any other person involved in petroleum activities shall comply with decisions or instructions of the Commission made in writing pursuant to its functions under this Act and any applicable laws and regulations.

24. Review of decision

(1) A person aggrieved by a decision of the Commission under this Act may lodge a complaint with the Minister within thirty days after receipt of the decision.

(2) The Minister shall-

(a) set up a special committee to review the decision of the Commission and make recommendations to the Minister within thirty days after the receipt of the complaint; and

(b) within forty-five days after receipt of the complaint take a decision on it.

(3) In the event that-

the Minister fails to make a decision within the prescribed period; or

a person is dissatisfied with the decision of the Minister,

the aggrieved person may apply to the High Court for redress.

25. Relationship with other entities

In the performance of its functions under this Act, the Commission may collaborate with relevant entities as and when it is required.

26. Regulations

(1) The Minister may, on the recommendation of the Commission, make Regulations for the effective implementation of the provisions of this Act.

(2) without prejudice to sub-section (1), the Regulations may be made-

for the exploration, appraisal and development of petroleum and related operations; and

for the production of petroleum and related operations.

27. Inconsistency with other laws

Where a provision of this Act is inconsistent with the provisions of any other law relating to the regulation of the upstream and midstream sectors, the provision of this Act shall prevail, and that other provision shall, to the extent of the inconsistency, be void.

SCHEDULE

(Section 5(0))

Annual Public Report on Petroleum Resources and Activities

The report shall contain information including the following:

open areas for petroleum exploration and production;

reconnaissance licences issued and petroleum agreement entered into;

petroleum activities conducted, including but not limited to data acquisition and the drilling of wells, exploration, appraisal, development and production (volume of oil and gas produced) phases of the petroleum value chain;

production permit issued by the Commission, relinquished production permit and active production permits;

sales or transfer of interest;

development and production in individual fields;

transportation system including new pipe lines constructed and the fields to which they are related to;

research and development projects;

royalties and all other related revenues paid by licensees;

health, safety, security and environment;

decommissioning activities;

resource status in relation to the-

(i) total volume of petroleum sold and delivered,

(ii) shutdown fields,

(iii) producing fields,

(iv) reserves in producing fields,

(v) discovered resources for which the plan of development is yet to be approved,

(vi) resources in discovered fields which are currently considered not commercial; and

volume of original hydrocarbon in place, recoverable reserves and remaining recoverable reserves (net of production) of existing fields.

OBJECTS AND REASONS

This Bill seeks to provide for the optimal management of petroleum resources through the creation of a robust and clear institutional and legal framework consistent with other state institutions and legislations. The proposed commission seeks to separate petroleum policy making, regulation and operations in-line with ECOWAS hydrocarbon development policy. The creation of the Petroleum Commission as clear separation of roles and mandates will enhance policy and regulatory enforcement, smooth engagement and thus enhance efficiency.

An independent and competent commission will help to-

- (a) facilitate attainment of the broad national fiscal, operational and local content objectives**
- (b) manage the social and environmental practices related to oil and gas development; and**
- (c) foster efficiency in process management and coordination desirable for a high-stake industry with numerous state actors of overlapping mandates.**

.....

HON. FAFA SANYANG

MINISTER OF PETROLEUM AND ENERGY

ANNEX 2

ANNEX 2

MINUTES

The Petroleum Commission was conceived in the 1986 Act but no Commission was appointed until 1992. Eventually, the Act was impelled in 2004 and also recognized that the Commission be established but under a Ministry. Hon. Fafa Sanyang, the Minister of Petroleum and Energy as the mover of the Bill was invited and other relevant Stakeholders for consultation on the Bill. The mover of the Bill, agreed to some of the recommendations and observations by stakeholders to be incorporated in the Bill.

For the conduct of business on the review of the Bill, the Joint Committee resolved to consider it part-by-part with discussion and recommendations on each area.

Introductory remarks (By: Hon. Minister, Fafa Sangyang)

Hon. Minister of Petroleum and Energy thanked the Joint Committee for this noble assignment to scrutinizing the Bill in detail, and felt delighted for his office to provide an overview and technical advice and opinion on the proposed Bill for the understanding of the Joint Committee. He explained that, the Petroleum Commission being conceived in the 1986 Act but no Commission was appointed until 1992. Eventually, the Act was impelled in 2004 after which he became a Minister and recognized that the Commission needs to be established under the Ministry of Petroleum.

Hon. Sanyang, concluded that institutional strengthening is needed for effective and efficient management of the Petroleum sector.

RECOMMENDATIONS/OBSERVATIONS/ CLARIFICATIONS

MINISTRY OF PETROLEUM AND ENERGY/ MINISTRY OF FINANCE

The floor was given to Mr. Lamin Fatty, Director of (PPP) Ministry of Finance and Economic Affairs to make his presentation. On his part, he expressed his appreciation to be part of the meeting to give his opinion and recommendation on the Bill despite a short notice given to his office to attend this important session.

He informed the Joint Committee that prior to this meeting, his office had a discussion on the status of the SOE Bill is together with their international partners such as the World Bank, which expressed the need to establish a e Commission. Establishing State owned Enterprise Commission is definitely to regulate and perform oversight over all PEs.

Essentially, the Ministry of Finance and Economic Affairs is to advocate for value for money and strong public finance

management in the public service. The key requisite for the Commission is to have a Public Finance Act.

Accordingly Mr. Fatty, the Bank promised to provide a Personal Assistant to work with the Ministry especially the Director of PPP. The draft SoEs is on process at Cabinet level. The Ministry of Justice is involved to provide any further legal review and advice on the Bill.

Mr. Fatty, also stated that they are trying to match the new draft SoE Constitution which was rejected and it has a direct bearing on the approval of the Bill. The alternative was either to redo and align the Bill with the 1997 Constitution which is not the objective, or to go in tandem with the draft Constitution. The process could not be proceeded because of the rejection of the draft Constitution by the National Assembly.

;was subjected to review with Members requesting for elucidation on the interpretation of many terms. The Minister and team did concede that the following terms need further interpretation.

-PART I -“INTERPRETATION”

“Upstream and Mainstream”

-Response: ‘Upstream Sector’ means the segment of the petroleum value chain involving exploration, development and production.

“Licensee” means a person who has entered into a license with a Minister under the Petroleum (Exploration, Development and Production) Act..... the year was not captured.

-Response: the “Act’ was established in “2004”

“Permit holder”

-Response: it has the same meaning given to it in Petroleum exploration, development and production Act, 2004.

“Petroleum Act”

-Response: it means Petroleum (Exploration, Development and Production) Act, 2004 captured in 65.02, volume 10 of the laws of the Gambia.

“Petroleum Data” if the definition could be enriched?

-Response: it means geological, geophysical, engineering and environmental and economic data for petroleum exploration, development and production.

“Petroleum Resources”

- a) existing petroleum,
- b) discovered petroleum reserves,
- c) undiscovered petroleum reserves
- d) petroleum produced and
- e) petroleum under production;

-Response: “petroleum resources include all estimated quantities of petroleum either discovered or undiscovered, contained in the sub-surface as well as those quantities under production and already produced.

-PART II, ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BOARD

Clause (4) Objectives of the Commission

- Response: a) regulate petroleum activities**
- b) manage the petroleum resources
 - c) implement policies for the petroleum sector for sustainable development.

Clause (5K) Functions of the Commission

-Response: receive application and issue authorizations for specific petroleum activities as required under petroleum laws and regulations. The word "authorization" is used to replace the word "permit to avoid conflict.

Clause 5(L)

-Response: support and facilitate acquisition of authorizations from relevant institutions.

Clause 6(2)

-Response: The members of the Board shall be appointed by the President, after consultation with the Public Service Commission. The word "consultation" with the Minister is deleted to be in line with the 1997 Constitution.

Clause 9(2)

-Response: The time frame for appointment is within forty-five days

Clause 13(1)

-Response: The members of the Board shall be paid such remuneration and allowances as may be determined by the Minister.

-PART III-THE DIRECTOR GENERAL AND STAFF OF THE COMMISSION

Q. Can the wording of the Clause 14(1) be redrafted particularly the word “headed”.

-Response: The Chief Executive Officer of the Commission shall be the Director General.

Q. There are no specific qualifications for the Director General. Can you specify these qualifications?

-Response: Clause 14(2b) does indicate that the Director General should hold qualifications and be experienced in matters relevant to the principal functions of the Commission. However, they agreed to endeavour and redraft the provision and qualify what qualifications and how much experience is required.

Q. The Board should provide guidelines for the appointment of staff of the Commission in line with the Public Service Commission’s terms and conditions of service. Noted that the Public Service Commission has been requested to provide such rules and guidelines and a follow up will be done to ensure that this was done.

-Response: They agreed to include this in the Bill, however we are currently not aware of such Guidelines from the Public Service Commission.

-PART IV FINANCIAL PROVISIONS

Q. Clause (17a) Monies should not be appropriated to the Commission by the National Assembly to ensure its independence from Government.

-Response: the Commission is still a Government entity as it is a Public enterprise. The monies appropriated to it by the National Assembly are not its sole source of funds. All other Public Enterprises have this provision in their various legislations. In practice, the Commission may not need to be given the money but it would be good to leave the provision as it is so that when the Commission eventually needs the money, there is already a provision that validates the issuances for such monies.

Q. Interests from bank deposits should be part of the funds of the Commission.

-Response: It is not the main source of revenue. It is operational revenue and does not constitute the actual revenue of the Commission.

Q. Clause 17 (1) (b) (i) should specify where signature bonuses are coming from.

-Response: The signature bonuses come from the Licensees as stipulated in the provision and Licensee is defined on the interpretation section.

Q. What are monies that accrue to the Commission in the performance of its functions?

-Response: The Commission enters into Geophysical Service Agreements wherein monies accrue to the Commission.

Furthermore, the Commission issues permits wherein monies are accrued to the Commission.

Q. There are institutions that believe that the Training and Resources should be left in their control to develop local content.

-Response: The Ministry takes a broad approach to Local content. It is not only limited to capacity building and it cuts across both public and private sectors. The GNPC is an operator in the Licence thus they are contributing to the funds. It is not best practice for the Operator to also be a regulator. The Commission is best placed, as the regulator, to administer the Training and Resources Funds.

Q. Training and Resources should not include management by the Ministry. Once the funds get into the Commission's bank accounts, the Ministry should not manage such funds.

-Response: The provision will be reviewed.

Q. Define grants, donations or gifts.

-Response: Whatever is given to staff of the Commission either locally or internationally should be for the Commission. Recently, BP gave a grant to Ministry to support the COVID 19 response team. The Ministry then sent it to the Ministry of Health. There should be a provision that legalizes the receipt of such grants, gift and donations for the Commission.

Q. Review the numbering of the provisions?

-Response: It will be reviewed and amended accordingly.

Q. Who is opening the bank account? The account should be opened in consultation with the Accountant General?

A. The provision does not deal with the opening of bank accounts. The Public Finance Act deals with such. What the provision is dealing with is the information given to our partners when they have to make payment into our accounts.

Q. 19 (2) This will be cumbersome because whenever expenses are to be made it has to be brought to the National Assembly for consideration in the budget?

-Response: The budget referred is the Commission's budget, which is approved by the Board. It is not referring to the Ministry of Finance's budget.

Q. Is clause 20 and 21 Align in the provisions with the Public Enterprises Act?

-Response: Clause 20 is in line with the Constitution. Clause 21 (2) will be reviewed and amended.

-PART V MISCELLANEOUS

Q. Why do we have Clause 22, which deals with a protection of members of staff of the Commission under Miscellaneous provisions?

-Response: This has to do with the drafting style. If a provision does not fall under or does not relate to any of the substantial parts of the Act, we put it under Miscellaneous.

Q. Clause 24, why does the aggrieved person go straight to the Minister and not the Board?

-Response: The Board is part of the Commission. The decision of the Commission cannot be divorced from the Board. Since

the Board cannot be both a Judge and a Jury, the appropriate channel of appeal is the Minister's office. If the person is still not satisfied, he or she can go to the high court for redress. We agreed that there should be a Committee to assist the Minister to reach a decision but how this is done can be put in subsidiary legislations.

Q. Clause 26 include the word "exploitation" in sub-section 2(a).

-Response: Sub-section (2) covers this as it makes reference to the production of petroleum, which includes exploitation.

Q. Clause 27 Other institutions feel that this provision will be used to usurp their power.

-Response: They want to replace the phrase "licensing in the upstream and midstream" with the phrase "regulation of the upstream and midstream".

**GAMBIA NATIONAL PETROLEUM
CORPORATION, DEPARTMENT OF
GEOLOGY, NATIONAL HUMAN RIGHTS
COMMISSION, NATIONAL
ENVIRONMENT AGENCY AND
DEPARTMENT OF LABOUR.**

□ GNPC

Madam Canny Jobe, Exploration and Production Director on behalf of her team was given the floor to make their observations and views on the Petroleum Commission Bill, 2020.

On their part, she gave a brief synopsis on the creation of the Corporation which falls under the GNPC Act 2014.

She further stated that as a National Oil Corporation (NOC) of the Gambia, GNPC is the business and technical arm of government in oil and gas exploration and production. National Oil Corporations in principle are expected to invest in developing local human capital and oil and gas infrastructure and to transfer more revenue to the national treasury than a foreign oil company in case of commercial successes in exploration. As a minority equity stakeholder in the country's licences, GNPC's interests converges with those of the Commission. Both institutions wish to see the operators

actively explore during the exploration stage while controlling costs and safeguarding high standards of operation.

-INTERPRETATION

“LOCAL CONTENT”

The creation of mechanisms to capture as much revenue as possible from their gas and oil industries and creating the conditions to expand the benefits to other economic sectors. This requires creation of capacity that is skill based, education based, technological, environmental, and institutional. It comes in two significant ways: National Company Expertise and Local Enterprise Capacity.

1. Development of national expertise via national oil companies that must develop a high degree of technical sophistication which is only available abroad. In exploration and development phases, only a few services can be covered by local suppliers. License rights holders and operators are all very professional and knowledgeable about operational details, once discoveries are declared commercial, pressure on government and public sector petroleum specialist will increase. This will leave a country vulnerable to professional intimidation and the government accepting sub optimum solutions simply because it does not have the capacity to argue for better approaches.

2. Employment opportunities from other sectors and local enterprise development in the operational phase where many of the feeder supply industries and the running and maintenance of operations should and can be performed by local personnel. Trickle-down economics, pedestrians on the streets, from welders and tailors to market sellers and fishermen.

Commissions legislate and regulate local content by introducing requirements for local content in legal frameworks. NOCs promote local content and implement it alongside IOCs. The regulations aim to create jobs, promote enterprise development and accelerate the transfer of skills and technologies.

However, the Commission by virtue of being a regulatory body does not implement the regulations. It is the oil companies on the ground that are obliged to do so. This is where the NOC becomes the chief contributor to implement the Commission's regulations through their operations and /or participation in operations. A nation's ability to meet modern industrial requirements requires a sort of technology leap that NOCs should be well positioned to facilitate.

NOCs develop the skills of both their employees and other industry participants to meet the required quality and delivery times (even sponsor and pay for the required training and certifications needed by SMEs) and facilitate opportunities for these participants to win the contracts or sub-contracts that they are a part of handing out. These include everything from hiring and buying goods and services locally. This approach has a

direct impact on the national economy, creates jobs, and builds on and enhances local capacity and capabilities. (Cite wining the fabrication and supply of pipelines for example as an NOC- the welding/pipe technicians' example).

As operators, NOCs are at the forefront of developing the win-win relationship between operators, international service companies and local industry. Development costs for all oil and gas operations and heavy. Payments made to local entrepreneurs secure jobs in the local market and generate profit for local companies. It also increases tax revenues for the government. Without local content, all costs will be paid to suppliers in foreign countries in hard currency and it is these countries that will be the beneficiaries in terms of jobs, profits and taxes.

For this to happen, the objective of developing sustainable national and local enterprise must be clearly stated in the (host) country's legislation. Supportive local content legislation is particularly relevant for petroleum and mining industries. It is key to supporting long term economic growth.

“Local content is a development strategy aimed at increasing the benefits from the oil and gas sector, and translating these to other sectors of the economy. This strategy has been widely adopted in Africa and Latin America” with varying levels of success. “We looked at the experiences of seven Latin American and seven African countries. Using a comparative strategy

makes it possible to identify conditions that are present across cases that are very different from one another in many respects, but which have led to success in the implementation of local content frameworks”

“Local content strategies have the potential to be more successful if they backed by sector-specific legal frameworks guaranteeing their measurement, implementation and monitoring. 9 National Oil Companies should play a prominent role when defining and implementing local content. Their involvement in this process can lead to positive local content outcomes in spite of other structural challenges such as limited independence from the government. “Training is a key component of ‘local content strategy’ (especially cite GNPC Ghana’s training mandates)

-PART II -ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BOARD

Clause (4) “Objectives of the Commission”

(c) Implement the policies for the sustainable development of the petroleum sector.

GNPC notes that in other Petroleum Commission Acts, the objective is to ‘coordinate’ and ‘recommend’ policies rather than ‘implement’ policies. Public enterprises are generally the ‘implementing’ agencies of government policies and GNPC is concerned that tasking the Petroleum Commission with the implementation of ‘policies’ without specificity as to which policy would steer it away from a regulatory and monitoring role.

For comparison, GNPC could not find a similar mandate extended to the Petroleum Regulatory Directorate of Sierra Leone (Petroleum Act 2011, Part III Clause 5 (Functions of the Petroleum Directorate)), Liberia (New Petroleum Law 2014 (approved 2016), Part III Institutional Arrangements Clause(8) and Tanzania (Petroleum Act 2015, Part II, Sub Part II, Clause12 (Functions and Responsibilities of PURA)). These cited Acts do not have a specific section for Objects/Objectives of the Commission and described the Commission's principal role(s) in the sections cited.

GNPC would like to draw particular attention to Section 2 of Ghana's Petroleum Commission Act 821 after which the proposed Petroleum Commission Bill 2020 is closely modelled. Section 2, Ghana Petroleum Commission Act 821 reads:

2) The object of the Commission is to regulate and manage the utilisation of petroleum resources and to co-ordinate the policies in relation to them

Closer to home, the Republic of the Gambia PURA Act 2001 which regulates utilities, communications and the petroleum downstream sector similarly does not have a mandate to 'implement' the government policies in these sectors.

-PART II -ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BORAD

Clause (3) "Establishment of the Petroleum Commission

Clause (5) “Functions of the Commission”

- (h) promote local content add local participation in petroleum activities and according to applicable laws and regulations to strengthen national development;**
- (i) administer monies paid to the Local Content Fund**
- (s) Promote and market petroleum data**

Under this Clause 5(h), GNPC proposes that the Petroleum Commission must have a deliberate policy to enable the National Oil Corporation as a principal driver of local content and similar public entities in its local content promotion strategy and suggests that in promoting local content, explicit mention is made of national enterprises in the Petroleum Commission Bill 2020.

As an example, the Tanzania Petroleum Act 2015 Section 12, 2e, (Functions and Responsibilities) reads:

- e) promoting local content including supporting national enterprises and Tanzanians to participate in the petroleum upstream industry.**

Clause 5(i), GNPC notes that monies paid to the Local Content Fund shall be a major source of funding for the Petroleum Commission

Clause 5(s), GNPC notes that as the national oil company that would represent government’s participating interest in licenses, it has a shared responsibility to promote and market petroleum

data which is the basis for investment by license holders as GNPC partners.

-PART II -ESTABLISHMENT OF GOVERNING BOARD

Clause (6) "Establishment of the Board of the Commission"

6(1) Since the composition of the Board makes it possible for private persons to form part of the Board, GNPC recommends that employees of private and/or international licence holders and contracting companies, shareholders of private/international entities operating in or providing services to the petroleum sector be disqualified from holding Board appointments to avoid conflicts of interest.

GNPC further recommends the following in regards to Part II, Clause 6

- a) The environmental specialist be an ex-officio high ranking representative of the National Environmental Agency to promulgate national environmental concerns at Board level.**
- b) a technical expert knowledgeable in the field of petroleum exploration and development rather than restrictively mention a Geo-scientist.**

This is because in principle, the expertise of geo-scientists is restricted to the upstream exploration stage. See below:

-PART IV-FINANCIAL PROVISIONS

Clause (17) Funds of the Commission

The main concern as a national entity relates to the Part IV, Financial Provisions of the Petroleum Commission Bill, 2020.

GNPC notes that the funds of the Commission are the same as the funds that Corporation expects to derive its capital from in order to build national capacity during exploration and commercialise state participation in exploration and production.

It is a trend that national oil corporations around the world in pre-production phase before discovery and commercialisation derive monies from the government and that these monies generally come from Part IV, Section 17, clause 1(b) of the Petroleum Commission Bill 2020 which reads

(b) monies paid to the Commission from -

(i) signature bonuses from Licensees,

(ii) surface rentals from Licensees, and

(iii) monies accrued from the sale and licensing of data; where it is that stated monies paid to the Gambia Government come from signature bonus, training and resources funds etc.

The 'monies paid to the Commission' in the above Clause means the Petroleum Commission shall have sole and exclusionary receipt and ownership of the funds. Due to the capital-intensive nature of oil and gas exploration and production. it is the industry norm that pre-production NOCs

rely on government funding for everything from initial start-up capital to emergency lending. The sources of government funding for African NOCs range from allocation of signature bonuses, surfaces rentals, training and resource funds to the imposition of national levies on the sale of petroleum products and/or fuel import monopolies.

NOCs are also mandated and empowered to engage in income generation activities incidental to attaining the objectives of the corporation. GNPC in fulfilment of this mandate engages in the downstream retail businesses. However, these are cyclical and produce low product margins insufficient to fund upstream functions.

Exploration activities are expensive business functions. On average the cost of drilling an offshore exploration well is about \$40 million.

Without an adequate revenue stream in the exploration and pre-production phase, any NOC and GNPC in particular will struggle to develop the strategies and the roles required to attain national aspirations and National Development (NDP) goals.

Similarly, the Corporation is concerned that clause 17 (d) of the Petroleum Commission Bill, 2020 dealing with training and resources funds is removed from subsection (b). Clause 17 (d) states

“(d) training and resources funds, which shall be administered by the Commission and managed by the Ministry. GNPC interprets the separation of this from Clause 17(b) to mean that all training and resources funds shall automatically accrue to the Commission and it shall not be able to lay a claim from the training and resources funds.

The Corporation also notes that this fund shall be managed by the Ministry and administered by the Petroleum Commission in the proposed bill. Standard practice dictates that national oil corporations are mandated to capacitate the nation in order to nationalize oil and gas resources. Skills shortages are a key factor that holds back the growth strategy of African NOCs and consequently capacity building is a high priority for any NOC.

The funding and capacity needs of a NOC are far greater than that of a regulatory function due to the size and business mandate of the NOC. For illustrative purposes, the NOC of Liberia NOCAL’s manpower training budget for 2013-14 was \$8 million, for a staff of 146 in the exploration stage. The NOC of Tanzania TPDC spent \$2.49 million on training for a staff of approximately 110. The NOC of Ghana GNPC planned to spend \$34 million per year to develop its capacity (starting from 252 employees, with plans to grow). These organisations got their funds pre discovery from training and resources and license payments.

GNPC is also concerned where it is stated that the training and resources funds shall be managed by the ministry, which seems to be an anomaly. GNPC has been unable to find similar

incidences of ministries being custodians of external capacity development funds arising from major projects in other technical parastatals such as NAWEC, GAMTEL, GCAA, GPA and even the Department of Geology. Elsewhere in the oil and gas industry, this is usually a purview of a national oil corporation or at best, a revenue sharing mechanism where the Commission and National Oil Corporation both share the funds.

It is hereby suggested that the Act stipulate that there shall be some sort of revenue sharing mechanism developed by the appropriate authority to guide the allocation of such funds between the GNPC and the Commission. As an example in Ghana, the National Assembly decides on appropriation of all such funds under the Ghana Petroleum Revenue Management Act 815, 2011.

GNPC notes that Part II Section 5 i) is a source of funding for the Petroleum Commission not explicitly stated under the suggested Funding Provision of the Petroleum Commission Bill 2020

-PART V- MISCELLANEOUS

Clause (27) Inconsistency with other laws

This clause reads:

Whereas a provision of this act is inconsistent with the provision of any other laws relating to licensing in the upstream and midstream sectors, the provision of this Act shall

prevail, and that other provision shall to the extent of the inconsistency, be void.

Since the Petroleum Commission interfaces with the Acts of other public institutions such as PURA, NEA, GNPC and GIEPA the above clause could have adverse implications.

In conclusion, GNPC wishes to re-iterate that the institutions of the Petroleum Commission and the National Oil Corporation share a common goal of advancing the national agenda. Commissions do it through regulations and NOCs do it through executing government's participating interest in every license throughout the exploration and production lifecycle.

It is imperative that there is in place an effective, conducive and enabling legislative framework to guide the nationalization of the Gambia's natural resources both from the GNPC and Petroleum Commission functions.

□ DEPARTMENT OF GEOLOGY

PART II ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BOARD

Clause (5) Function of the Commission

The Commission shall-

I initially recommend to add a point to read as follows;

(!) the planning, promotion, and administration of exploration activities.

However, there was an oversight from me as the “exploration “aspect has already been captured under “petroleum activities” in (page 4) in the interpretation section. As a result, my suggestion to have an additional point on exploration matters is withdraw.

Clause (6) ESTABLISHMENT OF THE BOARD OF THE COMMISSION

(1) There is established by this Act, the governing Board of the Commission which shall comprise-

(d) a Geoscientist; A geoscientist is someone with an academic knowledge of any of the earth sciences namely: geology,

geophysics, geochemistry, petroleum geology etc. A geoscientist studies the earth's composition, structure, and other physical aspects of the earth. Geoscience skills and knowledge is key in the search for natural resources like solid minerals, groundwater, metals, and petroleum. Someone working in this field may also be called a geologist or geophysicist.

A geoscience knowledge in the petroleum industry is important in the management and administration of the exploration and exploitation of petroleum resources. Hence, it is important to maintain “a Geoscientist” as opposed to the suggestion of a Technician.

□ NHRC

RECOMMENDATION

Mr. Mansour Jobe, Director of Legal and Investigations, on behalf of his agency stated that Clause 5(h) of the Petroleum Bill 2020 has provided for the promotion of local content and local participation in petroleum activities according to applicable laws and regulations to strengthen national development. In order to give effect to this provision, therefore it is recommended that an additional paragraph be included in Clause 26(2) as follows in order to adequately cater for local participation;

(c) “for local content and local participation”

NEA

Mr. Malick Bah, Director of Technical Service Network, gave recommendations on the following parts of the Petroleum Commission Bill, 2020.

RECOMMENDATIONS

PART I

2. “INTERPRETATION”

“Midstream and Downstream” to be added.

Clause (3) Functions of the Commission

f(1) Environmental and social impact assessment should be conducted prior to commencement of exploitation.

- The importance of the environment and social impact assessment should be adequately highlighted to ensure international Oil Companies (OICs) comply with our national environmental laws.**
- Occupational health & safety and environmental standards are complied with as in f(1)**

Clause (4) Establishment of the Board of the Commission

Clause 6 (1) (c)- should read as a social and environment safeguards specialist. Experts in both social and environment safeguard instruments of the country and those of the funding institutions are relevant.

DEPARTMENT OF LABOUR

RECOMMENDATIONS

The Service Rules referred under Clause 16 (2) Staff of the Commission must also be approved by the Board of Directors to avert abuse or arbitrary application by Management. The Board may delegate the appointment of such category of staff to the Director General as it may determine, in accordance with the service rules of the Commission approved by the Board.

They added “approved by the Board” to make the Board to have ownership of the service rules which they could always refer to in the event of any disputes between management and the staff that was put before them by any party and to avoid any argument by the staff that the service rules were imposed on them by management.

□ MINISTRY OF MoJ, FISHERIES AND WATER RESOURCES, LANDS AND ENVIRONMENT.

□ MoJ

-Kissima Bittaye, State Counsel agreed to the following recommendations and observations to be incorporated in Bill.

□ FISHERIES AND WATER RESOURCES OBSERVATIONS

PART I -INTERPRETATION

“Export pipeline and Cable BUT; why the exclusion of supply and support vessel that transports petroleum in bulk?

The term contractor (“licensee”) should be clearly defined and used uniformly.

-PART II- ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BOARD

Clause (6) Establishment of the Board of the Commission

Omar SM. Gibba, Deputy Permanent Secretary of Fisheries recommended that their Ministry should be represented in the 'Commission Board' as they have a big stake. Petroleum mining or explorations could have devastated effect on fisheries especially if both fishing and petroleum activities occur in the same area, there could be collision, accidents and spillage and critical fisheries habitat such as Spawning areas, nursery areas could be destroyed.

Also, destruction of the Benthic, demersal, Semi Pelagic and Pelagic ecosystems through dredging should be well monitored.

A marine biologist included in the commission can advise on the safety and sustainable methods to avoid destruction of the aquatic biodiversity, habitat and Water quality

-PART IV -FINANCIAL PROVISION

Clause 17(b) iii: How can the Ministry and its line department or government entities can have access to the geological data (information sharing should be encourage)

Page 16: it is stated in this document that, this act will prevail other national laws in case of conflicts with other laws (Conflict

resolutions mechanism should be in place to take care of conflicts).

ADDITIONAL CONCERNS

Exploration sites are not captured in the document which could comprise important fisheries sites (fishing ground, spawning sites). Therefore, the definition of the geographical coverage of the Bill, should be included such as land exploration of petroleum from the territorial waters including the continental shelf.

The document only mentions petroleum as crude oil and natural gas and is silent about its by-products. Therefore, we recommended that all states in the form of solid, liquid and gas forms of petroleum should be covered.

The Petroleum Bill, should accommodate the oil depot at Mandinary, to better prepare for leakage of petroleum into the marine ecosystem. The Bill should cater for storage of oil, design standards for tanks and containers, where to locate and how to protect them, and capacity of bunds and drip trays.

LANDS

RECOMMENDATIONS

-Clause 6(1g) one other person with commendable experience in petroleum work/relevant field.

-Clause 8 Tenure of office of members

1. If an additional provision can be created (Secretary to the Board)

2. The board shall appoint an officer from among the staff of the Commission to be the secretary to the Board as it is not captured in Act.

3. The secretary shall:

(a) Arrange the meetings of the Board

(b) Keep a record of the proceedings of the Board and

(c) Perform such other duties as the Board or the Director General may direct page

Clause 16 to read Other staff of the Commission.

MINISTRY OF ENVIRONMENT

RECOMMENDATIONS

1. The position of MECCNAR with respect to the Bill, is that membership of the Board should include an Environmental and Social Safeguards Specialist rather than just someone with an environmental qualification.

2. With respect to amalgamating the petroleum and renewal energy in to one commission as enquired by the Joint Committee and they are of the opinion that Petroleum should be a 'Stand Alone body' whilst working on the 'Renewable Energy' sector which is gaining importance in the country.

□ GCCI

RECOMMENDATIONS

INTERPRETATION

AN ACT to provide for the establishment of the petroleum commission, for the regulation and management of petroleum activities, the utilization of petroleum resources, and for connected matters.

- The phrase “and for connected matters” is too vague and subject to numerous interpretations. This should be defined further to remove any future ambiguity.

“Licensee” means a person who has entered into a license with a Minister under the petroleum (Exploration, Development, and Production) Act;

Comment:

- Why the “The Minister” and not the Ministry? The bill should institutionalize the issue of licenses and not bestow all that power on a Minister. Given that the Minister is the head on the ministry, the minister will naturally lead the process.

Leaving the matter of license to a minister could subject the process to abuse.

(2) Without limiting sub-section (1), the commission shall establish a local content committee to deal with the local content and local participation programme.

Comment:

•Local Content Committee is already existed under the Ministry of Petroleum. Is this a new local content committee or is it referring to the same committee?

PART II- ESTABLISHMENT OF THE PETROLEUM COMMISSION AND ITS GOVERNING BOARD

(3) ESTABLISHMENT OF THE PETROLEUM COMMISSION

(3)The application of the common seal of the commission shall be authenticated by the signature of the Director General or such other person as may be authorized by the Director General.

Comment:

- The levels of authority should be well defined for reference, transparency, accountability and clarity. The phrase “as may be authorized by the Director General” is vague. The

delegation of authority should be informed by the Petroleum Commission's organogram.

- Page 7

(Fi) compliance with health, safety, security and environmental standards in petroleum activities in accordance with applicable laws, regulations and agreements, and relevant institution

Comment:

- the part highlighted in red should be added to qualify the statement. Note that other institutions are primarily relevant in setting health, safety, security and environmental standards in petroleum activities

Clause 5 - Functions of the Commission

F (i) administer monies paid to the Local Content Fund;

Comments:

- This should be explained for the necessary details. What is it? What is the objective? How will the fund be raised? Managed by who? etc

Clause 6-ESTABLISHMENT OF THE BORAD OF THE COMMISSION

(1) There is established by this Act, the governing Board of the Commission which shall comprise -

(a) a Chairperson; Who would be the Chairperson and from which institution?

(b) the Director General;

(c) an Environmental specialist;

(d) a Geo-scientist;

(e) a Legal Practitioner; This should be the Solicitor General, he/she is the legal adviser of government

(f) Permanent Secretary;

(g) one other person. Who is this “one other person”? The GCCI, as the representative body of the private sector in The Gambia since 1967. The GCCI is the champion for local content advocacy and engages government on a daily basis to inform policy, legislation, and regulation. It is fitting and proper to have the GCCI as a member of the board of the petroleum commission.

Clause 8-Tennure of office members

The non-ex-officio members of the Board shall hold office for three years and may be re-appointed only once.

Comment:

- Who are the ex-officio members of the board? This is not clear!

Clause 10- Meetings of the Board

(3) The quorum at a meeting of the Board is a simple majority of the members or such number as may be determined by the Board in respect of an important matter.

Comment:

- How many board members constitute a quorum? This should be specifically and categorically stated

(5) In the absence of the Chairperson at a scheduled meeting of the Board, the members of the Board shall elect a member present from among their number to preside over the meeting.

Comment:

- A Co-Chairperson should be identified from inception. The identification of a Co-Chairperson should not be left to random or needs based selection. It should be categorically clear as to who should Chair in the absence of the Chairperson.

PART V- MISCELLANEOUS

Clause 22- Protection of members and staff of the Commission

An action, a suit, prosecution or other proceedings shall not be brought or instituted against a member of the Board or staff of the Commission personally in respect of anything done in pursuance, execution or intended execution of any of the provisions of this Act.

Comment:

- **Is this necessary? It seems to insulate members of the board from individual responsibility. It dilutes accountability.**

Clause 24 - Review of decision

(1) A person aggrieved by a decision of the Commission under this Act may lodge a complaint with the Minister within thirty days after receipt of the decision.

Comments:

- **There should be a complaints panel to deal with complaints. Leaving it with the minister could make it a subject of political or other forms of undue influence.**

Meeting Adjourned till further notice.