



Validation of the PSAs to Coastline Exploration

By Marian Harbi

Wednesday, March 9, 2022



1. Are the Petroleum agreements valid ? – NO. The Petroleum agreements are marred with serious irregularities considering the provisions of the Somali Petroleum Law and the Agreement on the Ownership, Management and Sharing of the Income from the Natural Resources. While it is true that the Petroleum Minister has the function to sign PSAs under Article 24 of the

Petroleum Law, the Minister has no power to singlehandedly do so wrongly. First, Article 24 provides that PSA must be signed based on the recommendations of the Somali Petroleum Authority and not just by the single act of the Minister. Second, Article 4 of the Petroleum Law provides that ownership of the petroleum resources is vested in the Federal government and the Federal Member States collectively, while Article 5 provides that the Federal Government is the proprietor of the petroleum resources. By Article 7 of the Petroleum Law, the Petroleum resources are to be jointly managed by the Federal Government and the Federal Member States in line with Articles 2, 19.14 and 24.1 of the Agreement on the Ownership, Management and Sharing of the Income from the Natural Resources. Third, Article 2(35) of the Petroleum Law provides that the head of the executive is the Prime Minister and at a regional level, the head of the executives are the president. The Minister of Petroleum cannot act without a mandate of the Prime Minister and the presidents who are the heads of the governments in whom the ownership of the petroleum resources is vested. The Minister can also not be the only person in the government and where the Minister has acted without the mandate of the Federal Government, as he purported to do, the contracts are invalid and inconsequential. The questions that should be asked are: is there any sense in concluding the contract of a government with only one person who does not have the mandate of the government? Is there a reason contracts that will determine the destiny of the people should be shrouded in secrecy, even away from the heads of the government who have been side-lined? Is there anything to hide, that made it necessary to avoid the scrutiny of the Prime Minister and the president?

2. Can the oil company challenge the government if it opposes the contracts? NO. The company has no basis for challenging the government for doing the right thing. When contracting with the government, the proper thing is to ensure that due processes are followed, and the provisions of the laws are complied with. A company should not be hasty in concluding a contract with a minister without the mandate of those in whom the law has vested the ownership and proprietorship of the resources. The company should not be seen hiding from government scrutiny if they have nothing to hide. The Somali Petroleum Authority has the power to revoke a contract under Article 19(14)(e) of the Petroleum Law. Article 24(2) (a) of the Petroleum Law also provides that a contractor must have the financial capability, *technical knowledge and technical ability* to carry out the petroleum operations. What is suspicious about this matter is the technical knowledge and ability of the company formed in 2018, seeking to have 7 PSAs all

at once. It is doubtful that they have a track record to justify having the 7 contracts. That may explain the need to avoid the proper scrutiny of the government and the need to contract behind the Prime Minister and President.

3. The dispute over the invalid agreement should not hurt the future of Somalia. What would hurt the future of Somalia is allowing invalid contracts concluded in utmost secrecy and without proper government scrutiny to stand. In addition to the risk that the terms of the contracts will compromise the future of the country, it would also set a precedent that a contract can be concluded with one government official without due process. Somalia is interested in promoting investment in the petroleum industry but it has to do so following due process and ensuring that the resources benefit its people.