An Analysis of the Proposed Amendments to the Petroleum (Exploration and Production) Act No. 2 of 1991

1. Institutional Reform: Rationale for the Upstream Petroleum Unit in the President's Office

A central pillar of the proposed amendments is the establishment of a new Upstream Petroleum Unit in the Office of the President, and the concomitant reassignment of certain regulatory functions from the Ministry of Industries, Mines and Energy, specifically from the Petroleum Commissioner's office to this Unit. This structural change is driven by the rational to create a streamlined, empowered and semi-autonomous upstream regulator that can respond efficiently to industry needs, while situating strategic oversight at the highest level of government for better policy coordination. The following explains the governance reasoning behind this move:

1.1 Separation of Policy and Regulation

Under the current Petroleum Act, the Minister of Industries, Mines and Energy holds extensive powers. Namely, the issuing exploration and production licenses, approving development and production programs, and generally supervising petroleum operations through the Petroleum Commissioner. While this model was workable during decades of modest exploration activity, it has limitations in a scenario of multiple large-scale projects. Ministerial decision-making can be slower due to bureaucratic layers and competing portfolio demands, and it is more exposed to political pressures. By contrast, many successful oil jurisdictions have established dedicated regulatory agencies or units that manage the technical and commercial regulation of upstream activities, leaving the Minister free to focus on policy and political oversight. The Petroleum Amendment Bill follows this approach by transferring most operational powers from the Minister to the new Director-General of the Upstream Petroleum Unit. The Minister, who remains responsible for mines and energy policy overall, thus relinquishes day-to-day licensing authority, which removes any perception that political considerations might override technical merit in decision-making. The Director-General, as head of the Upstream Petroleum Unit, will be a specialized technocrat appointed for expertise and integrity, tasked with implementing the petroleum laws and policies objectively.

1.2 Elevation of Strategic Oversight

Oil and gas development intersects with many national interests such as finance (revenue, sovereign wealth funds), economic planning, industrialization (local content, petrochemicals), environmental management, and even foreign affairs. By housing the Upstream Unit in the Presidency, it ensures that the regulator's actions are aligned with broader national strategies and that any high-level constraints can be resolved swiftly through presidential intervention. Importantly, the President's Office can convene multiple ministries to resolve overlapping issues, for example, expedited environmental permitting or marine zone approvals, that a line ministry might find challenging independently. In effect, this model mirrors what other countries have done at critical junctures. Senegal, for instance, created a Strategic Oil and Gas Orientation Committee (COS-PETROGAS) under the President to co-ordinate its nascent oil and gas sector, with responsibility to provide strategic guidance and to ensure compliance with good governance in hydrocarbon development. Namibia's Upstream Petroleum Unit similarly will benefit from presidential convening power, ensuring quicker decision-making.

1.3 Enhanced Regulatory Capacity and Focus

The new Upstream Petroleum Unit will be a specialized body dedicated solely to upstream petroleum regulation, comprising the Director-General, Deputy Director-General, and supporting technical staff. This will allow the recruitment or secondment of experts in geology, engineering, economics, and law who focus full-time on oil and gas oversight. A focused Unit can develop deeper expertise, faster processes, and a more service-oriented culture. The Amendment Bill explicitly states the objects of the Upstream Petroleum Unit, which include regulating, managing and coordinating petroleum affairs, granting and issuing licenses, promoting sustainable petroleum activities, enhancing local content, and monitoring compliance with health, safety and environmental standards. These comprehensive functions make the Upstream Petroleum Unit effectively an industry regulator in practice.

1.4 From Petroleum Commissioner to Deputy Director General

The Amendment Bill specifically transfers all statutory references and duties of the Commissioner for Petroleum Affairs to the Deputy Director General of the Upstream Petroleum Unit. This means the existing Petroleum Commissioner position will effectively be replaced by the Deputy Director General role in the Upstream Petroleum Unit. The Deputy Director General is expected to be a technical but with greater authority and resources, and a clear reporting line to the Director General and the President.

1.5 Institutional Positioning and Perception

Placing the Upstream Petroleum Unit in the Presidency also sends a strong signal to investors and the public. It demonstrates that the State considers petroleum a strategic sector

warranting direct attention at the highest level. For investors, this can be reassuring as decisions will not languish in middle bureaucracy but can be elevated for quick resolution if need be. It can also streamline inter-ministerial issues, as mentioned, which investors often find challenging. Situating the Upstream Petroleum Unit in the President's Office or as independent regulators is not a new adaptation. Namibia is effectively mirroring aspects of models seen in countries like United Arab Emirates, Sierra Leone, Ghana and Nigeria. In the United Arab Emirates, the oil and gas sector operate under the oversight of the Supreme Council for Financial and Economic Affairs (the Supreme Council), chaired by the Ruler of Abu Dhabi and President of UAE, His Highness Sheikh Mohamed bin Zayed Al Nahyan, who effectively acts as the executive authority under the UAE President. The Supreme Council directs the Abu Dhabi National Oil Company (ADNOC), the UAE's primary oil entity, without a standalone federal petroleum ministry. ADNOC, led by a CEO manages exploration, production and exports, reporting to the Supreme Council. The Supreme Council, staffed with technical and economic experts, sets policies on production targets and international partnerships. In Sierra Leone, the oil and gas sector is managed by the Petroleum Directorate, a specialized agency housed within the Office of the Presidency. Established under the Petroleum (Exploration and Production) Act of 2011, the Directorate is led by a Director General who reports directly to the President. Its mandate includes issuing petroleum licenses, negotiating contracts, monitoring compliance with environmental and safety standards and promoting local content. Although in some countries like Ghana and Nigeria, the regulators are separate commissions or state owned enterprises, they still often report to the Energy Minister or President. For example, Ghana's Petroleum Commission is a stand-alone regulator established in 2011 after Ghana's first oil, specifically to manage upstream resources with an emphasis on efficiency and citizen benefit. Ghana recognized that prudent management and a strong regulator was imperative once oil was found. Likewise, Nigeria's 2021 Petroleum Industry Act created the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) as an independent agency to take over from the ministry's department, explicitly to improve regulatory governance and transparency. The underlying concept is the same in Namibia's case, to empower a dedicated regulator to drive performance, while keeping it within government to maintain accountability and alignment with policy.

The move to an Upstream Petroleum Unit under the President is driven by the need for a more agile, expert, and accountable regulatory framework to handle the coming oil boom. It relocates operational oversight to a focused Unit, thereby improving efficiency and capacity, while elevating strategic decision-making to the highest office. The President will hold strategic oversight and ultimate authority on key matters like royalties and license awards, but will not engage in routine regulatory operations, which are entrusted to the Director-General and

Deputy Director General of the Upstream Petroleum Unit. This structure balances the concentration of with internal checks and external transparency.

2. Strategic Imperative: Transparent and Accountable Monetization of Oil Resources

The administration's foremost priority in developing these oil discoveries is to ensure that they are monetized in a transparent, accountable, and prudent manner, in line with Namibia's national economic policy priorities and for the maximum benefit of its citizens. Large petroleum endowments, while potentially transformative, also carry risks that include the mismanagement of revenues, corruption, inequality, and the renowned "resource curse" that has afflicted some oil-rich countries. Namibia is determined to avoid these pitfalls by putting in place robust governance structures and clear rules for petroleum revenue management *before* significant oil production commences. The proposed amendments to the Petroleum Act are therefore crafted not only to speed up development but also to embed transparency and accountability at the core of the petroleum sector's expansion.

First, transparent revenue management is critical. Oil production will generate income streams to the state through royalties, taxes, and dividends. These must be collected and reported in a manner that the public can trust. Currently, the Petroleum Act stipulates that royalties and petroleum taxes go into the State Revenue Fund. The government has signaled its intent to go further, likely by channeling a portion of oil revenues into a sovereign wealth fund for long-term national benefit. In 2022 Namibia launched the "Welwitschia Fund" for this purpose. The proposed amendments reinforce high-level oversight of revenue collection, notably by assigning authority over royalties to the Head of State instead of a line minister. This change is intended to bolster accountability for how these revenues are handled. The President, as head of state, is politically accountable to both Parliament and the nation for strategic resource decisions and will thus exercise oversight to ensure petroleum royalties are levied and used according to law and policy. It must be emphasised that vesting appointment powers in the President is not to personalize control, but to elevate the oversight to the highest office as a safeguard for the public interest. The President's role in this regard will be akin to a trustee of the nation's petroleum wealth, ensuring that all due revenues are collected and transparently transferred to the national Treasury or sovereign funds. In practice, day-to-day revenue administration may be carried out by the technical officials (e.g., within the Ministry of Finance or the new Upstream Petroleum Unit), but the policy decisions on royalty rates, and any exemptions will have Presidential sanction.

Second, the government seems to be aligning the petroleum sector with broader national development plans, such as the National Development Plan 6 (NDP 6) and the Harambee

Prosperity Plan II, which emphasize economic diversification, job creation, and infrastructure development. Oil extraction must contribute to these goals. This means emphasizing local content, as well as investing oil revenues in sustainable projects (education, green energy, etc.) that outlast the oil itself. The submission of the Amendment Bill is complimented by a draft National Upstream Petroleum Local Content Policy, underscoring that local citizens should see tangible benefits in terms of employment and business opportunities. The new Upstream Petroleum Unit will specifically have a mandate to promote local content and participation in compliance with national laws. By writing this objective into the law, the government ensures that local capacity building is not an afterthought but a core function of the regulator. Additionally, the Upstream Petroleum Unit must publish an annual public report on upstream petroleum activities. This reporting requirement aligns with international transparency norms, such as the Extractive Industries Transparency Initiative, *EITI*).

Accountability will also be strengthened through clear delineation of roles and reporting obligations in the new structure. The proposed amendments require, for instance, that the newly appointed Director General and Deputy Director General of the Upstream Petroleum Unit submit detailed declarations of their assets and financial interests to the President upon appointment and periodically thereafter. This measure, is designed to prevent conflicts of interest at the top of the regulatory body and ensure that those entrusted with licensing decisions have no hidden stakes in industry players. Furthermore, the Amendment Bill reinforces that the President may remove the Director General or Deputy Director General from office if they fail to uphold integrity, providing an avenue for accountability at the highest level.

Another aspect of accountable monetization is efficient, corruption-free regulatory processes. Lengthy or opaque processes for items such as license approvals or field development plan consents can create opportunities for rent-seeking. By transferring many of these powers from the political office of the Minister to a professional Director General within an empowered Unit, the amendments seek to insulate technical decisions from political interference. The Director General is mandated to *"ensure that all functions of the Unit are performed in line with the objectives of the Unit"* and to meet agreed targets and service standards, reporting on them to the President. In other words, the Director General's performance will depend on maintaining a high standard of regulatory oversight. The new framework will shorten approval timelines and clarify procedures, reducing the discretionary constraints that often invite corrupt practices.

3. Key Provisions of the Petroleum Amendment Bill

The proposed Amendment Bill contains several critical provisions that gives legal effect to the reforms discussed above. This section highlights key clauses of the Amendment Bill and how they support the intended regulatory and governance changes:

3.1 Establishment of the Upstream Petroleum Unit

Clause 4 of the Amendment Bill inserts new sections 3A, 3B, 3C, and 3D into the principal Act, formally creating the "Upstream Petroleum Unit in the Office of the President." Specifically, Section 3A(1) establishes the Upstream Petroleum Unit in the Presidency, and 3A(2) defines its composition as consisting of a Director-General, a Deputy Director-General, and staff members. The objects of the Unit are enumerated in Section 3A(3), which include *"to regulate, manage, and coordinate petroleum affairs, including to grant and issue licences as provided for in this Act"*, to advise the President on petroleum activities, to promote sustainable and efficient petroleum operations, to promote local content, and to monitor compliance with laws and standards. By articulating these objects in law, the Amendment Bill ensures the Unit's mandate is comprehensive, covering all aspects from licensing to compliance, and aligned with national interests.

3.2 Transfer of Certain Powers from Minister to President

The Amendment Bill's preamble and Clause 1 amendments clearly state that certain powers vested in the Minister by the current Petroleum Act will now vest in the President. In particular, Clause 1(a) substitutes "President" for "Minister" in sections 63(1), 64, 65, 76A, and 77 of the principal Petroleum Act. These sections of the original Act relate to critical areas such as the authority to enter petroleum agreements, make regulations, and manage royalty and fiscal matters. For example, Section 65 of the principal Act deals with the payment of royalties and the right to remit or defer them; transferring this to the President ensures those decisions are taken at Head of State level. Please NOTE THAT the regulation, management, coordination petroleum affairs, including the granting and issuing of licenses, promotion of sustainable and efficient petroleum operations, promotion and implementation of local content, and monitoring compliance with laws and standards will be the in the hands of the Director-General and Deputy Director General of the Upstream petroleum unit and not the President.

3.3 Transfer of Licensing and Operational Powers from Minister to Director General

The bulk of Ministerial powers under the Act, particularly related to licensing and operational approvals, are reassigned to the Director General of the Upstream Petroleum Unit. Clause 1(b) of the Amendment Bill is a sweeping provision that replaces "Minister" with "Director

General" in numerous sections of the Act covering almost all upstream activities. This includes sections on the granting, renewal and revocation of exploration and production licences, approval of work programs and budgets, unitization of fields, and oversight of operations. For instance, Section 9(1)(b), which involves granting production licences, and Section 11, which relates to conditions of licences, will now be under the Director General's authority. The intent is clearly to make the Director General the primary decision-maker for all technical and commercial regulatory matters. This extensive list in the Amendment Bill ensures nothing is left ambiguous. Wherever the Act previously read "Minister shall approve…", it will now read "Director-General shall approve…", with the exception of those few instances reserved for the President.

3.4 Transfer of Powers from Petroleum Commissioner to Deputy Director-General

Recognizing that the Petroleum Commissioner's role is being subsumed, **Clause 1(c)** of the Amendment Bill substitutes "Commissioner" for "Deputy Director General" throughout the Act. This includes sections dealing with day-to-day administration. Similarly, any references to the Commissioner's powers to give directions or consents under the licence terms shift to the Deputy Director General. This legal change ensures continuity. All existing duties that companies were accustomed to fulfilling via the will continue via the Deputy Director General, but within the new Unit's structure. In effect, the Deputy Director-General will carry out the technical oversight and enforcement functions that were once the remit of the Commissioner, under the supervision of the Director General.

3.5 *Appointment and Status of the Director-General and Deputy Director-General*

The Amendment Bill introduces Section 3B, which provides that the President shall appoint the Director General and Deputy Director General in terms of Article 32(6) of the Constitution. This constitutional reference is to the President's power to appoint public office bearers. The appointees must be persons of integrity with suitable qualifications and experience relevant to the Unit's functions. Section 3B further requires the Director General and Deputy Director General to furnish declarations of assets and business interests to the President and notes the President's power to remove them from office in terms of Article 32(6) of the Constitution. These provisions underscore the high level of accountability and the expectation of ethical conduct for the Unit's leadership. The Director General is explicitly characterized as the head of the Unit responsible for direction and control of the Unit, subject to the President's general supervision, while the Deputy Director General's functions are under the Director General's oversight.

3.6 Powers and Functions of DG and Deputy DG

The proposed s**ection 3C** spells out the duties and powers of the Director-General and Deputy. Crucially, section 3C(2)(c) states the Director General *"shall be responsible for the granting of licences provided for in this Act"*, which legally empowers the Director General as the licensing authority. Section 3C(2)(a) and (b) make the Director General responsible for ensuring the Unit's functions are carried out per its objectives and for implementing policies and programs and reporting to the President. Meanwhile, section 3C(4)-(5) details the Deputy Director General's functions to manage Unit staff, give technical advice, develop operational plans, coordinate with other agencies, and issuing licences granted by the Director-General in the manner directed by the Director General. The Deputy Director General is also allowed to delegate tasks to staff but remains responsible for them. These provisions support the reform by codifying the internal workflow. It further legally enables the Director General to delegate to Deputy Director General, and to staff, which is vital for efficiency. At the same time, section 3C(7)-(8) affirms that delegating does not absolve the Director General or Deputy Director General of accountability for those functions, ensuring oversight is maintained.

3.7 Empowering Regulations and Incidental Matters

When it comes to making of regulations, proposed section 76A, will make provisions for the President after consultation with the Minister responsible for fisheries and the one responsible for environment to make regulations relating to various aspects of the petroleum industry.

In summary, the Amendment Bill is comprehensive in effecting the reforms. Its provisions thus align the letter of the law with the new governance model. These are the legal tools that will allow Namibia to implement the strategic vision of a high-performing, transparent and investor-friendly petroleum sector regulator.

4. Risk of Inaction: Why Prompt Amendment is Critical

It is important to candidly address the risks and potential consequences if Namibia fails to enact these amendments promptly or if implementation is significantly delayed. In the current global context, investors highly value regulatory certainty, clarity, and efficiency. With multiple high-value petroleum developments on the line, any ambiguity or inertia in Namibia's institutional framework could deter foreign investors, erode confidence, and ultimately jeopardize the country's ability to capitalize on its oil discoveries. The following points outline why swift amendment and execution are essential, and what is at stake if we do not move forward eminently and swiftly:

4.1 Investor Confidence and Capital Allocation

The international oil companies (IOCs) operating in Namibia, such as TotalEnergies, Shell, and others, have global portfolios. They will invest in countries where they see stable, supportive conditions. While Namibia has so far been viewed positively, continuing with an outdated 1991 framework can introduce uncertainty. Investors may query whether the current Ministry capacity can handle the upcoming development approvals on time, or whether political interference could come into play in the absence of a clear new structure. This uncertainty can make companies hesitant to commit to expensive next steps. In contrast, passing the amendments signals that Namibia is "open for business" with a modern system. If it is delayed, companies might re-prioritize their budgets on jurisdictions where frameworks are already set and reliable. A recent article in *The Extractor Magazine* noted that legal uncertainty clouds Namibia's oil future and emphasized that the Petroleum Act gives the Minister broad powers which, if not streamlined, could slow negotiations and FIDs. Such perceptions must be allayed by demonstrating we have updated our laws.

4.2 Licensing Momentum

Another risk of not amending the current legal framework is the stagnation in new exploration investment. As noted in an economic report, Namibia has not issued new exploration licenses since 2022, and there have been pending applications awaiting clarity. Prospective investors may be in wait until the new Amendment Bill is passed, because they want to know who they will be dealing with and what the rules will be. The Energy Council working group explicitly urged that Namibia resume regular licensing to sustain investor interest. Further, launching a new bid round or signing new licenses in the absence of the amended Petroleum Act might be less effective. Companies could be hesitant to engage if they are uncertain of the operational structure. Conversely, once the Upstream Petroleum Unit is established and functional, Namibia can market itself as having a reliable regulatory regime, attracting new entrants. If the amendments stall, Namibia risks a gap where no fresh investments come in, and even existing operators might reduce exploration

4.3 Delayed Revenues and Economic Benefits

Every month and year of delay in getting first oil is a direct opportunity cost to Namibia. More importantly, the transformative economic benefits of job creation and diverse streams of revenue, are disadvantageously deferred. The Namibian people have high expectations given the discoveries. Undue delay can cause public frustration and political risk. If the legal framework is perceived as the barrier to economic development, it could additionally undermine the social license to operate, where communities might wonder if politics is holding up progress that could bring them jobs or improvements. Thus, prompt reform is actually a form of risk mitigation to ensure smooth progress.

Conclusion

In conclusion, the proposed amendments to the Petroleum (Exploration and Production) Act No. 2 of 1991 are not only timely but indispensable. They will establish a governance framework capable of managing Namibia's transition from an exploration frontier to a significant petroleum-producing nation, ensuring that this transition yields sustainable benefits for the country and its people. This submission has outlined the historical context of Namibia's petroleum legislation and the catalyst presented by the major oil and gas discoveries of 2022–2024. It has articulated the government's strategic intent to monetize these resources quickly yet responsibly, by enhancing transparency and aligning with national development goals. The creation of an Upstream Petroleum Unit under the Office of the President, with a clearly defined Director General and Deputy Director General, stands at the core of these reforms, a structural innovation designed to expedite decisions, strengthen oversight, and coordinate the petroleum sector at the highest level of government without politicizing technical operations.

The National Assembly is therefore urged to consider the Petroleum (Exploration and Production) Amendment Bill without delay.

With multiple multi-billion-dollar projects on the horizon, Namibia cannot afford the costs of delay or indecision. By passing these amendments, Parliament will send a powerful signal of unity and foresight, that Namibia is fully prepared to govern its petroleum resources wisely and proactively for the prosperity of current and future generations. A delay in passing this proposed amendment is likely to delay the Final Investment Decision (FID) on the Venus discovery by Total Energies and its partners since oil companies are hesitant to take decisions while there is pending amendments to the laws which apply to them.

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