Civil Society’s Concerns on Uganda’s Oil Industry

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Introduction

• Uganda has discovered oil in a highly ecologically sensitive area, the Albertine Graben;
• Other discoveries of oil are occurring in the East African region that have implications on the viability and success of the industry in Uganda.
• As a result of the oil discoveries in East Africa, the region is now described by many as the new frontier for oil & gas discoveries;
• Uganda’s discoveries and development of the industry is happening under a backdrop of inadequate policy, legal and institutional framework to govern the industry;
Civil Society Concerns: General

While appreciating the positive side of the industry, we take note that the Oil & Gas industry is:

- Shrouded in secrecy
- Bedeviled by very costly legal cases e.g. the arbitration cases between Uganda and Heritage oil & gas in the UK
- Developing in a protected and highly ecologically sensitive Albertine Area with no clear, adequate and effective safeguards
- Has the potential for significant social, economic, environmental and political distortions. There is no clear strategy to avoid these distortions
Civil Society Concerns: Policy Framework

• There is a National Oil Gas Policy 2008 in place that has been described by others as good;

• This notwithstanding is still riddled with gaps that were expected to be solved at the legal framework level. However, this is not happening in the proposed petroleum bills that we have seen. For example:
Civil Society Concerns: Policy Framework

• For example; the policy’s recommends:
  • Having a separate Oil Revenue Management Law, now we have a Public Finance bill 2012 that attempts to integrate oil issues;
  • Uganda registering at the EITI
  • Transparency and accountability. This is made impossible by the 2005 Access to Information Act that gives with one hand and takes with the other. This is worsened in the draft bills
  • Integration of Parliamentary oversight in the laws
  • Laws adhering to the institutional framework proposed by the policy and clearing stating the respective institutional roles and responsibilities.
Civil Society Concerns: Legal Framework

• The 1985 Petroleum Act was sufficient for exploration, but adequate to take the industry into the development and production phase

• For this reason, two resource bills and one revenue bill have been proposed
  – Petroleum (exploration, development and Production) bill 2012
  – Petroleum (Refining, gas processing & conversion, transportation and storage) bill 2012
  – Public Finance bill 2012

• While they are an improvement from the 2010 drafts, the bills, they are still riddled with gaps and implementation challenges;
Civil Society Concerns: Legal Framework

Sector Governance and oversight

• The Minister wields too much power, having leeway to do just about anything
• The petroleum authority’s independence is compromised by a requirement to adhere to any directions given by the Minister
• The Board of Directors of the Authority is appointed by the Minister with Cabinet approval.
• There is no provision for active parliamentary role at any crucial stage of the industry’s development processes.
Civil Society Concerns: Legal Framework

Environmental Protection

• The right to approve the “Field Development Plans” provides the basic opportunity to ensure against needless environmental loss. This is undermined in the bills.

• In addition, the technical and technological capacity of Ugandan institutions needs to be up-scaled. There have been press reports that NEMA has no capacity to manage oil wastes. This weakness could apply to other institutions of government.
Civil Society Concerns: Legal Framework

Environmental Protection

• In the event of a disaster it is not clear which government MDA is the first line of reporting. Is it the disaster preparedness and management ministry or department?

• It is also not clear how the disaster would be managed i.e. response time and management
Civil Society Concerns: Legal Framework

Flaring and Decommissioning

• The bills prohibit flaring and venting, except in emergencies circumstances. However, they do explain the emergence circumstances. In addition, there are no clear guidelines when to or not flare or vent;

• The Decommissioning Fund proposed in the bills suggests that decommissioning is cater for adequately. However, the fact that it begins to accrue revenues "when production has reached 50% of aggregate estimated recoverable reserves or 5 years before expiry of a license" is the problem. It will be difficult to ascertain this 50% level of production and Five years before expiration of a license is too late to compel a company to make decommissioning plans.

• There are no clear provisions for waste management, despite the level of toxicity the industry’s waste could have.

• There is no clear disaster response and management plan in place.

• NEMA is under funded has no sufficient number of inspector/ monitors in place
Civil Society Concerns: Legal Framework

Social Protection

• The bills provide for Health protection for the employees of the industry against harm or damage by the industry while on duty, but does not cover the non-employee or member of the community that could be affected by oil activities.

• The bills offer compensation and resettlement to people directly affected by the industry, but is based on decisions made by government officials and not a negotiated settlement with the affected person(s) and also not aimed at maintaining or improving the welfare of the affected person(s) i.e. loss of livelihoods.
Civil Society Concerns: Legal Framework

Social Protection

• Protect affected people are prone to losing their land if they “unreasonably withhold their consent” for their land to be taken over by the industry. The bills accord the minister powers to compulsorily take the land with compensation determined by government. This only happens in the event of infrastructure built in public interest such as road, hospitals and public schools. **Oil investments do not fall under this category of public interest investments**
Civil Society Concerns: Legal Framework

Social Protection

• Furthermore, there is no clear framework on how a person can seek compensation for damage attributed to oil activities or the taking of land.
• What is a landowner chooses to lease his/her land would this be catered for. Why focus on compensation and resettlement.
• The bills assume that all affected individuals have the capacity to seek redress of courts.
• The bills are gender blind.
Civil Society Concerns: Institutional Framework

• The following institutions have been proposed.
  – The Petroleum Ministry
  – Petroleum Authority (PA)
  – National Oil Company (NOC)

• While this is positive development, the roles and responsibilities of these institutions and how they relate and interact with other MDAs is not very clear, albeit the interaction through the different pillars Environment, Resource and Finance
Civil Society Concerns: Institutional Framework

• The powers and independence of the petroleum authority is undermined through the minister’s directives that the authority must comply with.
Civil Society Concerns: Institutional Framework

• Although the NOC is proposed, the bill does not detail its mandate or organizational structure
• The bill proposes that the NOC be governed under the Uganda Companies’ Act, but a number of questions arise:
  – What is the strategy underpinning the establishment of a National Oil company?
  – What sort of company is it?
  – How will the Government ensure adequate staffing and financial resources to maintain a NOC alongside other regulatory institutions such as the Authority, the Commissioners and the Ministry?
  – What checks and balances and reporting requirements will the NOC be subjected to?
Civil Society Concerns: Financial Management

• The public finance bill proposes:
• Petroleum Revenue holding Account from which money will be distributed in the *consolidated fund, investment fund and future generations fund*.
• While this is alright, there are issues. For example:
• It proposes that if money is not used at the consolidated and investment level, it should be returned to the holding Account. *This is odd*.
• It is not clear whether we shall use a single or double account system.
Recommendations

• The gaps and ambiguities in the draft bills need to be expunged
• Citizens should be allowed to debate the draft laws and make input
• Allow the laws developed to act retroactively on previously signed contracts
• Support government institutes build capacity, especially in monitoring and evaluation
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