



EQUITABLE SHARING OF THE TREASURES OF OIL AND GAS IN A TRANSPARENT AND ENVIRONMENTALLY SUSTAINABLE MANNER

*A Synthesis Report of the Proceedings of the Parliamentary
Symposium on Oil and Gas Development in Uganda*



Organized by ACODE, US Embassy in Uganda, Parliamentary Network on the World Bank, Water Governance Institute and AFIEGO at the Imperial Resort Beach Hotel, Entebbe, 17 - 19 June 2010

**Onesmus Mugenyi
Blythe Austin
Bashir Twesigye**

ACODE Policy Dialogue Series, No. 15, 2010

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List of acronyms

ACODE	Advocates Coalition for Development and Environment
AFIEGO	Africa Institute for Energy Governance
BoU	Bank of Uganda
EIA	Environmental Impact Assessment
NGOs	Non Governmental Organisations
NOC	National Oil Company
PNoWB	Parliamentary Network on World Bank
PSAs	Production Sharing Agreements
WGI	Water Governance Institute

Acknowledgments

The organization of this Parliamentary Symposium involved a number of stakeholders. ACODE management team would, therefore, wish to extend its gratitude to the Parliamentary Network on the World Bank, Water Governance Institute, Africa Institute for Energy Governance and the American Embassy in Uganda who contributed significantly to the success of the symposium.

The tremendous success of this symposium is attributed to the high-level participation of senior officials from Government and, in particular, the Ministry of Energy and Mineral Development and the Bank of Uganda; Hon. Members of Parliament who were the key participants; political party and civil society representatives; the excellent facilitation by Dr. Kent Moors - an accomplished Consultant on Oil Governance; Prof. John Ntambirweki, Vice Chancellor Pentecostal University, Fort Portal and a distinguished Consultant; and Dr. Louis Kasekende, Deputy Governor Bank of Uganda. We are grateful to each of our participants for putting aside time to participate in this critical Symposium on Oil and Gas Governance in Uganda.

This symposium was organized under the Environmental Democracy Programme of ACODE, and we would wish to extend our gratitude to the Mac Arthur Foundation, Open Society Institute of East Africa and Care International in Uganda that largely support the programme. Finally, we are particularly grateful to Open Society Institute of East Africa which supported this particular event.

1.0 Introduction

On 18th June, 2010, over forty Members of Parliament, civil society representatives, political party leaders and financial, political and petroleum experts converged at the Entebbe Botanical Beach Hotel to discuss government's management of Uganda's new petroleum industry. The workshop whose theme was, "Parliamentary Symposium on Oil and Gas Development in Uganda", intended to enhance the capacity of Members of Parliament and others about best practices and challenges of oil industry management. Participants at the symposium shared their views on how Uganda can best manage the oil industry in a manner that is transparent, environmentally sustainable and equitable in the sharing of benefits of oil and gas among all Ugandans.

The symposium was organized by the Advocates Coalition for Development and Environment (ACODE), Water Governance Institute (WGI) and African Institute for Energy Governance (AFIEGO) – all Non Governmental Organizations – in partnership with the Parliamentary Network on the World Bank (PNoWB) and the United States Embassy in Uganda.

The discussions centred on two important ideas: First, Parliament must actively engage in the legislative process and pass laws that are strong, detailed and responsive to the many risks that oil production creates. Second, Parliament must use its authority to actively oversee oil exploration and production. It must make sure that international oil companies follow the established procedures and laws of Uganda. Without Parliament's active oversight, Ugandans could suffer, rather than benefit, from oil production.

1.1 Background

In 2006, Uganda discovered substantial oil reserves in the Albertine Grabben in Western Uganda. Presently, four companies are operating in the exploitation areas, namely, Heritage Oil, Tullow Oil, Dominion Petroleum and Neptune Petroleum. So far, 39 wells have been drilled, with most encountering oil and/or gas. Only three wells have been reported to be dry. Initial tests reveal over 2 billion barrels reserve capacity and flow rate potentials of up to 350,000 barrels per day over a 25-year period. It is projected that Tullow will be ready to begin oil production within the next two years.

Oil has the potential to transform Uganda's economy from the poorest to the richest economies in the world, but it also creates new risks and challenges for the country. No country in Sub-Saharan Africa has achieved sustainable growth and stable development from oil. The example of countries such as Chad, Sudan and Nigeria, show that oil production has the potential to plunge Uganda into abject poverty, environmental

degradation, political instability and misery. To prevent this, Uganda needs effective, transparent and accountable state structures and institutions to ensure that oil production translates into economic development and prosperity for all the citizens.

To create stable structures and institutions, the government has begun to draft and enact legislations on oil industry development, regulation, taxation and oversight. In January 2008, the Cabinet approved the National Oil and Gas Policy. Further, the Ministry of Energy and Mineral Development has produced a draft Petroleum Resources Bill, 2010 that is intended to address exploration, development, production and value addition. The Ministry of Finance, Planning and Economic Development is expected to produce the Financial Resources and Benefit Sharing Bill soon. The draft Petroleum (Exploration, Development, Production and Value Addition) Bill, 2010 was the main topic of discussion at the symposium.

2.0 Opening Session

Implementing the Oil and Gas Policy

The opening session was kicked off by introductory remarks delivered by Hon. Henry Banyenzaki, Chairman of the Parliamentary Network on the World Bank and MP for Rubanda West. Banyenzaki emphasised the importance of collaboration between different stakeholders in order to enhance transparency in the management of the oil and gas sub-sector. He appealed to the Ministry of Energy and Mineral Development to involve all the stakeholders in the development and management of the oil resources to avoid mistrust and associated conflicts. The Minister of Energy and Mineral Development, Hon. Hilary Onek, who officially opened the symposium, acknowledged the roles that civil society and Parliament are playing including creating awareness and conducting analytical research that inform government decisions. The Minister also articulated the progress of the implementation of the Oil and Gas Policy, 2008 by government.



Hon. Banyenzaki (right) giving introductory remarks.



The Minister of Energy and Mineral Development Hon. Hilary Onek, delivers remarks at the Symposium.

2.1 Implementing the 2008 Oil and Gas Policy

First, Onek pointed out that, the Ministry had introduced training programmes in petroleum-related fields to build national skills and expertise. These programmes would help the country to build a team of trained scientists to manage and monitor production. In 2009, Makerere University started to offer a Bachelor of Science in Petroleum Geosciences degree; and in March 2010, the Uganda Petroleum Institute at Kigumba began offering diploma and certificate courses. He also said that Uganda had also sent students abroad for degrees in petroleum-related fields.

Second, the Ministry is pursuing the establishment of an oil refinery within Uganda to maximise the benefits of the oil sector. He said that feasibility studies were going on and the results were expected soon. For example, Onek pointed out that a domestic refinery would create jobs and revenue. This would allow Uganda to go above and beyond oil production as a means to maximise on the benefits.

Third, the Minister enumerated the following key actions which were being undertaken to meet the objectives of the policy:

- i) The licensing process had been halted and all subsequent licensing would be

undertaken through competitive bidding in order to promote transparency;

- ii) The Ministry of Finance, Planning and Economic Development in collaboration with the Bank of Uganda and other relevant government institutions were working on the revenue sharing and management legislation which would provide for efficient management of revenues from oil;
- iii) A study to identify opportunities for citizen participation in the oil sector was ongoing and would identify opportunities for Ugandan entrepreneurs in the sector;
- iv) The Ministry had drafted the Petroleum Resources Bill 2010. This would ensure effective legislation and structures to manage the oil industry;
- v) Relevant institutions were undertaking capacity building, and a multi-institutional monitoring team had been established to monitor the impact of oil activities on the environment and community livelihoods.

Fourth, Hon. Onek conceded that the Energy Ministry has not had effective communication with Parliament and the public in the past. He said the ministry wanted to change this, and went on to outline three steps they would take to make it more accessible and transparent to Parliament and the public in the future.

The Ministry's first step would be to make the development of oil resources more transparent. In this regard, the petroleum legislative process would be consultative. He promised to brief Parliament when invited. He also pointed out that the Ministry would continue to participate in any forums organized by civil society organizations. The Minister criticized a few NGOs for spreading misinformation, he commended civil society organizations in general for arranging forums regularly to share and discuss information on petroleum and other important issues.

Secondly, the Minister promised to provide transport facilitation to a group of parliamentarians who may have interest to tour the oil sites to assess what was going on. He also promised to arrange with the oil companies to ensure that all relevant areas of operation and information were accessed.

Thirdly, Hon. Onek acknowledged that the Production Sharing Agreements (PSAs) ought to be shared with Parliament. He committed his Ministry to tabling the PSAs before Parliament by 22 June 2010.

3.0 Session II

Best Practices in Developing Oil and Gas Legislation, Revenue Management, Corporate Governance and Environmental Management

Dr. Kent Moors¹ spoke about Uganda's challenges in shaping its oil policy and legal framework relating to revenue and environmental management, and corporate governance. He talked about some of the practices he had seen and confronted in other oil-producing nations. He noted that one challenging experience was the practice of countries that started production before enacting the relevant policy and legislation. This was the approach taken in Nigeria, albeit with disastrous results. He commended Uganda for making strides to put in place regulations and institutions before production began.



Dr. Kent Moors delivering his presentation on best practices in developing oil and gas legislation.

3.1 Strong Legislation and PSAs

Dr. Moors indicated that there were different models of resource ownership and state participation. Since Uganda had adopted the PSAs, what was required were good agreements that could facilitate the government in obtaining maximum benefits from petroleum for its people and the oil companies to gain from their investments. This required skilled negotiators, good policy and strong and effective legal frameworks and institutions. Dr. Moors emphasized that government had to take a number of steps in order to develop good policy and institutions.

First, Parliament has to enact an “omnibus” petroleum law, like the one that was being drafted. This law ought to be comprehensive ; it should set the overall framework for oil legislation. It should also explain the processes for licensing and forming PSAs, as well as define the division of responsibilities for industry oversight. The law also has to emphasize certain principles, such as transparency, parliamentary oversight, fiscal

¹ Dr. Moors is an American academic and experienced oil consultant. Over the past 35 years he has worked on oil policy and related issues in 44 countries.

accountability and resource management. These principles would be the foundation of subsequent government actions. With time, the government might modify its regulatory procedures to better address new circumstances, but it has to stand by the principles that are laid out in the law.

He also pointed out that Parliament has to enact detailed regulations that lays out specifically what the oil companies have to do and not do. he noted that it should be remembered that an oil company’s overriding aim is always to maximize its own profits. Consequently, Uganda has to affirmatively order the company to do other things beyond profit maximization. This requires specific legislation that goes beyond vague language, such as requiring “best industry practices” – which means different things to the company and a government that seeks the best for its people and economy.

Accordingly, the law and regulations should set the parameters for the Production Sharing Agreements(PSAs) that are signed between the government and oil companies. He advised that PSAs should never take precedence over the law; rather, oil companies have to comply with both the Ugandan laws and the terms of the PSAs.

Uganda could use the PSA to require that the oil companies do certain things for the people. The local content has to be built into the PSAs. For instance, Dr. Moors pointed out that Kazakhstan’s initial PSA required that 20% of oil production managers should be Kazak citizens for the period of five years. For the oil company to meet this obligation, it needed to fund the education and training of the Kazak workers. This would never have happened had the PSA not created this specific obligation.

Dr. Moors also noted that during the negotiation of PSAs, the oil companies took hard positions and compelled governments to allow provisions that undermined the would-be benefits. Such provisions ranged from tax avoidance, offsetting costs of unprofitable projects against profits of revenue generating project and incentives that undermined revenue generation.

To make companies comply with their legal and contractual obligations, enormous sanctions for breach by the oil company or its sub-contractors have to be imposed. This would give the oil company a financial incentive to follow the law.



Members of Parliament listen to presentations at the symposium.

3.2 Corporate Governance and Industry Oversight

Dr. Moors observed that oil companies have one aim: to maximize their own profits. To achieve this goal, the companies do whatever they can to cut costs and decrease their tax burden. The Ugandan government has to counter this impulse with detailed regulations, PSAs and strong oversight. As he put it: “Companies are never willing to do things that cost them money unless you tell them to, and then you need to look over their shoulder and ask, ‘is that what we agreed to do?’”

One example of oil companies valuing profit more than the good of Uganda is the practice of attempting to get out of paying taxes by discounting profits at one oil field and indicate that they were needed to pay for costs at another field. To prevent this, Parliament has to pass legislation that requires ring-fencing - that is, the oil company has to separate audit reports for each individual oil field.

To regulate the oil industry, Uganda has to carry out extensive audits and both announced and unannounced inspections of oil facilities. Dr. Moors recommended triple bottom-line accounting, which accounts for ecological and social impact as well as financial performance.

Most importantly, all relevant government ministries and representatives have to agree to oil industry regulations. Oil companies commonly play different government offices against one another in order to prevent effective oversight. The government ought not to allow this to happen - it should have a harmonized industry oversight function.

Dr. Moors also underpinned the importance of industry oversight by Parliament. All the regulations would mean nothing unless the government actually worked to hold oil companies accountable. This is Parliament’s responsibility. It has to insist on receiving specific information about oil companies’ activities, and ensure that all oil companies face regular audits and both announced and unannounced inspections. It has to hold meetings with all the relevant ministries. Above all, parliament has to make sure that no one allows an oil company to violate any law or the PSA. It is Parliament’s fundamental job to make sure that laws are correctly applied; therefore its members do not need anyone’s permission to take up this power and oversee oil exploration and production.

This oversight role requires understanding the production processes and legal requirements and procedures. It is important to understand the petroleum industry’s fiscal regime, local content needs and implications on the environment and community livelihoods.

3.3 Environmental Protection

Dr. Moors noted that the oil industry particularly threatens Uganda’s environment, climate and natural resources. Oil extraction is inherently invasive, and to make as much profit as possible, oil companies could wreak havoc on a local environment.

Environmental damage would permanently harm Uganda, where 80% of the people depend on agriculture.

To this end, the Ugandan government has to be prepared to create and enforce strong, specific environmental regulations for the oil industry. For instance, oil production created a lot of by-products, such as natural gas, chemicals and toxic water. Regulations have to spell out how the oil company should dispose of these by-products.

For the natural gas by-product, Uganda could insist that it be captured and used for everyday domestic purposes. Otherwise the oil company would dispose of natural gas through venting (releasing the gas straight into the air) and flaring (burning the gas onsite). Both practices are extremely harmful to the environment. Dr. Moors recommended outright banning of venting. Some flaring might be allowed, but only in emergency situations, and the regulations have to keep the practice to a minimum.

He further noted that oil companies add chemicals to “drilling mud”, which is used as a lubricant for oil extraction equipment. The government has to create regulations and enforcement mechanisms so that it knows exactly what chemicals the oil companies use. The government also has to ensure that the oil companies properly dispose off the drilling mud.

He explained that water is made toxic when it is pumped into an oil well. Oil companies will pump water into a well in order to increase the oil pressure, which makes oil extraction easier. When the water enters the well, it absorbs toxins. This toxic water is then pumped from the well along with the oil. Toxic water would destroy soil and drinking water, as well as kill any fish that would come into contact with it. To prevent this, the Ugandan government has to ensure that the oil company transports 100% of the toxic water away from the oil site. The oil company then has to process and properly dispose off the water. Otherwise, toxic water has the potential to severely damage the ecology (and thus the economy) of Lake Albert and its surrounding communities.



Participants listen at the Parliamentary Symposium on Oil and Gas. More than forty Members of Parliament participated in the symposium, along with civil society and political party representatives.

Above all, Uganda has to be prepared for oil spills and other associated disasters. As the BP oil spill off the coast of the United States showed, oil companies may not prepare for these accidents unless compelled by a government. The Government of Uganda has to insist that oil companies prepare for accidents. For instance, the companies have to create detailed ecological maps before they begin oil production. These maps would show what has to be done to protect the environment and minimize damage in case an oil disaster occurred.

3.4 Oil Revenue Management and Sharing

Beyond regulating the oil industry, Parliament has to ensure that adequate institutions are set up to handle oil revenues. Oil revenue would create challenges for Uganda, just as it had for other oil nations. Uganda has to have the ability to efficiently manage the influx of huge amounts of money.

First, it was noted that it is essential that Uganda creates a National Oil Company (NOC). The NOC's purpose would not be to actually drill oil. Indeed, the company might just exist on paper. The initial role of the NOC would be to provide a way for Uganda to legally hold and transfer oil-related assets outside of the government structure.

Second, Uganda ought to establish a Petroleum Authority to manage oil revenue. The Petroleum Draft Bill provides for this Authority, but Parliament has to enact a more detailed legislation on the Authority's power and oversight.

The Petroleum Authority is vital for managing oil revenue, because unless the revenue is introduced into the Ugandan economy in a strategic way, it will have a huge inflationary impact. If the government were just to distribute money to citizens, they would spend it on food, clothing and housing. The prices for these goods would rise, creating more poverty. Other countries' experiences tell us that oil-induced-inflation hits the agricultural sector hard, which in Uganda provides 80% of the jobs. Similarly, using the money immediately to build hospitals, roads or schools would have the same inflationary effect. The government must be prepared to manage the inflation related impacts.

Dr. Moors recommended that the Authority would invest the money abroad in low-risk investments, and then selectively introduce the revenue from these investments into the Ugandan economy for specific projects. This would limit inflation and ensure that the money is used efficiently. If the government opts to use oil revenues in ways that would induce high inflation, it has to make plans to handle the impact of inflation.

It is important to share revenue with the local governments in the oil producing region. Even with strong regulations and oversight, Uganda's oil industry would create new costs and burdens on Uganda's society. These burdens would fall disproportionately on the areas surrounding the oil fields, where new oil equipment and workers are likely to strain infrastructure and cause localized inflation.

Because of this, local governments would need to spend additional money to serve their populations. Oil legislation has to take account of this. The current petroleum bill draft allocates 15% of oil revenue to local governments. Regardless of the exact percentage, the money allocated to local governments ought to be correlated to the actual costs that local governments would face. They could use this revenue to maintain local infrastructure and help their populations to adapt to the new, local oil industry.

4.0 Uganda's Fiscal Regime for Oil and Gas

The presentation on Uganda's fiscal regime was made by Dr. Louis Kasekende, the Deputy Governor of the Bank of Uganda. Dr. Kasekende noted that oil was a finite resource that Uganda has to utilize to generate as much revenue as possible through taxation, and then use the revenue to create sustainable assets for the country.

4.1 Taxation

To create revenue, Uganda has to tax the oil companies. The oil companies would need to recoup pre-production investment and receive some reasonable return, but beyond this, they should not make an excessive profit off Uganda's oil.

Oil taxation requires specific legislation. Unlike many goods, the price of oil fluctuates dramatically, consequently Uganda has to create an oil tax regime that is different from tax laws for other industries. If oil prices surged, Uganda, more than the oil companies, should get the extra revenue.

At the same time, government has to make sure that the oil industry is not exempt from any of Uganda's other taxes. Oil companies have to pay Ugandan income tax. The employees of an oil company and its subcontractors also have to pay tax on the income that they make in Uganda.



Members of Parliament respond to presentations at the Parliamentary Symposium on Oil and Gas in Uganda.

4.2 Oil Revenue as an Economic Curse

Bad management of oil revenue would create a number of economic challenges for Uganda. The President and Parliament have to resist the temptation to “have a party” and spend oil revenue immediately, because this would damage Uganda’s wider economy. Dr Kasekende outlined some of the problems that immediate use of oil revenue would create as follows:

First, large amounts of money generally create the temptation to abuse the resource, and it is unlikely that the revenue would be used efficiently or for the benefit of Ugandans.

Second, a sudden influx of currency into Uganda would change the currency exchange rate. The shilling would strengthen in value, and some of Uganda’s exports would no longer be viable on the international market.

Third, it would create unpredictable influxes in government spending. Because the oil price fluctuate dramatically, the

amount of oil revenue Uganda would receive in any given month or year would be unpredictable. If the government tried to spend oil revenue as it comes in, it would expose Ugandans to the many booms and busts of international oil pricing. In short, this form of spending would not help to sustainably strengthen the Ugandan economy.

Fourth, and most importantly, spending oil revenue immediately would create a situation commonly referred to as “Dutch Disease”. This essentially connotes the negative consequences arising from over-dependence on oil. Prices would rise, including the cost of labour. Many companies and industries outside the oil sector would not have the profit margins to pay their workers more, so they would go out of business. Such a process would threaten Uganda’s agricultural sector in particular. In Nigeria, the agricultural sector was wiped out because of the “Dutch Disease”. Uganda has to learn from Nigeria’s experience. Government would need to resist the temptation to spend oil revenue in large quantities immediately.

Lastly, Dr. Kasekende noted that, Members of Parliament have a duty to manage their constituents’ expectations, so that Ugandans can understand that oil production will not immediately solve all of their problems.



Dr. Louis Kasekende, the Deputy Governor of the Bank of Uganda, listens to questions at the Parliamentary Symposium.

4.3 Good Revenue Management

The Ugandan government has to make sure that oil revenue is properly managed and used. Oil revenue has to be utilized in a way that is transparent, accountable and in accordance with the wishes of Parliament.

Dr. Kasekende advocated for the creation of a Petroleum Fund. Accordingly, the government would invest oil revenue abroad and then selectively introduce money into Uganda for specific projects.

The Fund set-up was considered ideal because it would allow for transparency and easy oversight. This way, Parliament can request information about the Fund and how the money is being managed. If the Fund abused or mismanaged the oil revenue, Parliament would be able to hold it responsible.

According to Dr. Kasekende, the fund was best placed in the Central Bank. The Bank would not directly spend the Fund's revenue; rather, it would manage the Fund on behalf of Ugandans. This set-up was considered ideal since the Central Bank has the potential to ensure that the Fund is insulated from the daily politics of government. Most noteworthy, the Bank would still be accountable to Parliament for the effective management of the revenue. Parliament could, and should, ask questions and regularly audit the Fund. This would create transparency and ensure that the Fund works for the benefit of all Ugandans. The example of the National Oil Company managing the fund had not worked for the benefit of the people in Angola.

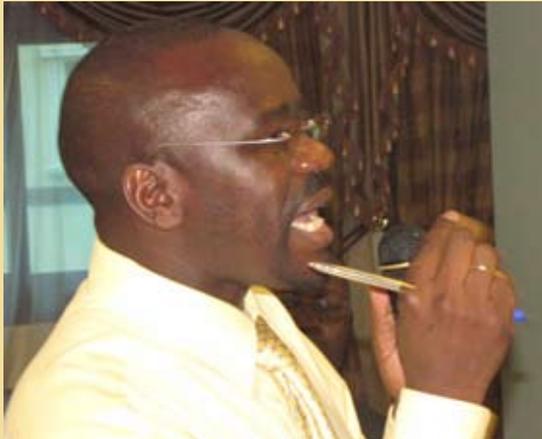
Ideally, only investment interest would be introduced into the Ugandan economy. This would allow future generations to benefit from oil revenue long after Uganda's oil reserves are exhausted. Botswana has applied this system to its diamond revenue. All diamond sales revenue remained invested abroad and only interest from investments went into the Botswana government budget. Even if the Ugandan government choose not to follow Botswana's ideal model, it should commit to spending as little of the oil revenue principal as possible.

5.0 Session III

Petro-Politics, Governance and Overcoming the Oil Curse

The third session was started off by Mr. Godber Tumushabe, the Executive Director of ACODE, who made a presentation on 'Petro-politics, Governance and Overcoming the Oil Curse'. His presentation focused on governance structures, government transparency and clear responsibility of government institutions.

5.1 Strong Governance



Godber Tumushabe, Executive Director of ACODE, delivers his presentation on oil governance at the Parliamentary Symposium.

Tumushabe pointed out that fixing Uganda's governance structures was vital, because without effective overall governance, Uganda would never be able to effectively implement its plans for oil governance. The government has to focus on implementing policies and laws that benefit all Ugandans. The government has to ensure that these laws are uniformly enforced, without arbitrary exceptions. This would give Ugandans and investors the security of knowing that they are protected by the rule of law.

5.2 Government Transparency

To promote strong governance, the government has to be transparent. The people need to have access to the law-making process and be informed about how government revenue is being generated and spent. Only then will the people feel reassured that they are supported by an honest government.

He said transparency was particularly important in oil governance. On the basis of government's current practice, most people have argued that the government was not transparent in the implementation of oil and gas policy and interactions with oil companies. When the government is not transparent about an issue, the media normally steps in and create its own narrative. Parliament has to work to ensure that this does not happen with the oil sector.

5.3 Unclear Governance Responsibilities under the Draft Petroleum Bill

The Petroleum Resources Bill, 2010 create governance systems that are unclear. Parliament has the responsibility to question the proposed governance structures, and demand that they be made more transparent and realistic.

Specifically, the Draft gives the Minister of Energy a great deal of power and governing responsibility. This was considered unwise, given the importance and complexities of oil regulation. For instance, the Minister should not have the power to appoint trustees to the Petroleum Authority. This power should belong to Parliament. In addition, the Draft Bill does not create any role for local governments. Parliament has to use oil legislation as a means to re-strengthen local governments. Local Governments have to receive some revenue to use as they see it fit.

Lastly, Tumushabe expressed concern about the Draft Bill. he pointed out the blurred structures of government that fail to clearly show who has the responsibility to regulate particular areas. This would create problems: the executive branch cannot regulate its own actions. Parliament has to insist that the respective roles of Parliament and the Executive be spelled out more clearly in the final Petroleum Bill.

6.0 Assessment of the Petroleum Draft Bill, 2010

The last presenter was Prof. John Ntambirweki. He discussed his major concerns on the draft Petroleum Resources Bill, 2010 and pointed out the following issues:

6.1 Bad Licensing Through PSAs



Professor John Ntambirweki delivering comments on the draft Petroleum Resources Bill, 2010.

He said the Draft Bill was vague about the types of agreements that the Ugandan government would enter into with oil companies. However, a close reading of Section 10(2)(g) (which discusses “cost oil”) showed the Energy Ministry’s intention to only enter into PSAs. An oil industry based around PSAs, he pointed out, might not be profitable or effective for Uganda.

He said PSAs were an outmoded means of licensing because they limited a country’s tax revenue and required the government to become involved in the business affairs of oil production. Government participation in oil production was incompatible with

Uganda’s policies of privatization and encouragement of foreign investment.

Prof. Ntambirweki pointed out that after recognizing the shortcomings of the PSA model, other developing countries have moved away from using PSAs in their oil industry management. Instead, they used modern concessionary structures. These structures allow governments to have more input in oil production and create more tax enforcement mechanisms. At the same time, governments do not participate in the actual production of oil. Given this international reality, the Ugandan government should deliberate on whether it is in Uganda’s best interest to rely exclusively on PSAs.

6.2 Institutional Arrangement

Prof. Ntambirweki observed that the Draft Bill creates an institutional structure for oil management that is far too simplistic. This structure lacks checks and balances or coordination between government offices. As it stands, the Draft structure will not allow effective oil industry management.

Specifically, the Draft Bill vested a great deal of power and authority in the Ministry of Energy. This was compounded by clause 195, which said that the Petroleum Bill would be supreme over all other laws. This meant that if Parliament passed the Bill in its current form, all laws on fisheries, environmental protection, etc., would not apply to the oil company. Prof. Ntambirweki said that this would be disastrous for Uganda. He posed the questions: “What is the Energy Ministry trying to do? Are they trying to control an empire or to destroy a country?” Oil production will impact sectors that lie far outside of the Energy Ministry’s jurisdiction or expertise. The Ministry could not effectively use so much power. He advised that for the Bill to be effective, it has to create linkages between different ministries.

It was also noted that, the Draft Bill does not include any roles for local governments, cultural institutions or civil society. This is considered unrealistic. If oil is discovered beneath a community or cultural point of interest, the people affected would want to respond. Thus, the Draft has to specify roles for local governments, cultural institutions and civil society, so that they have known set structures through which they might express their views.

6.3 Environmental Impact

The Draft Bill leaves out any mention of environmental damage, save some mention of “pollution” - defined as damage from oil spills - in clause 10. This is a major omission. The experience of Nigeria demonstrates that oil production often destroys the natural environment in ways that go beyond mere oil spill pollution. The Bill has to set up systems to handle and minimize this potential for environmental degradation.

First, the definition of “pollution” has to be widened to incorporate other types of environmental damage. The Bill has to make it clear that oil companies would be held accountable and strictly liable whenever they cause environmental damage. The clause to the effect that “liability of a licensee for pollution can only be claimed in accordance with this Act” was considered unfortunate, to say the least.

Second, the Bill ought to include a requirement that oil companies submit unbiased Environmental Impact Assessments, Environmental Management Plans and Accident Contingent Plans. These documents would allow the oil companies and Uganda to prepare for and minimize environmental damage, including in accident situations.

6.4 Government as a Business Player?

Prof. Ntambirweki further observed that the Draft represent a move by the government to get more involved in oil production business. The Draft does not create any tax regime, which should be one of government's key roles in oil legislation. On the other hand, the Draft does propose a National Oil Company, but makes no mention of possible shareholders, how it will operate or its institutional independence.



Members of Parliament and civil society and political party representatives discuss petroleum management and regulation.

From the language of the Draft Bill, it looks as though government is trying to get involved in the business aspect of oil. This is a bad idea: for between corruption and inefficiency, the government is an ineffective business entity. Instead, the government should focus on raising revenue and applying strong regulations to the oil companies, so that oil production can benefit all Ugandans.

7.0. Conclusions

The following conclusions were drawn from the discussions:

- i) Strong and effective legal frameworks are essential for the development and management of the oil and gas resources. It is essential for Members of Parliament, civil society and all stakeholders to learn about the challenges and risks of oil production. This issue is far too important for Parliament and other stakeholders to simply accept the Energy Ministry's proposed legislation. Instead, MPs and other stakeholders have to be educated about oil production, its benefits and risks, including the potential for environmental degradation and high inflation, and ensure that these risks are addressed through strong legislation and parliamentary oversight.
- ii) Oil resource development and management in Uganda are non-partisan issues. Ultimately, the Members of Parliament have to rise above political pressures and divisions to ensure that oil legislation and oversight effectively promote the interests of Ugandans. It is through proper legislation and implementation that Uganda's oil will prove to be a blessing for all Ugandans.
- iii) Many countries in Sub-Saharan Africa that are rich in minerals and oil have not been able to apply generated revenues for the development of their people. In many cases the revenue has been mismanaged. This has led to conflicts, social, economic and political instability. Consequently, there is need for an efficient and effective fiscal regime with an elaborate institutional framework. The fiscal regime should be based on realistic expectations and take into consideration tax avoidance schemes and oil companies' other profit incentives. For policy and legal frameworks to deliver revenue, enforcement and monitoring is essential. Fiscal policies must take into account administrative capacities and outside realities.
- iv) Transparency, accountability and oversight are critical factors in oil resource development and revenue management. Transparency is critical at all stages of the extraction process and value chain. Citizens could only be confident about the integrity of the resource extraction process if they knew about it. Transparency would minimize conflict, lower the cost of capital and reduce revenue loss. Accountability and oversight are equally important. Consequently, the legal, regulatory and contractual frameworks and policies should be clear and involve public participation. Institutional mandates and responsibilities should be clear and the oversight role of Parliament should not be compromised by any legislation.
- v) Experience has shown that oil exploitation has an immense impact on the environment

and community livelihoods. Oil and gas policy and legislation ought to have strong provisions on environment management. Stringent penalties should be imposed for any damage to the environment.

7.1. Moving Forward

The participants made several proposals for the future.

(a) Formation of Parliamentary Pressure Group on Oil

First, Parliamentarians decided to form a Parliamentary Pressure Group. This Group would take responsibility for mobilizing and educating all Members of Parliament about the issues discussed at the symposium on the management of petroleum resources and the associated revenue for the benefit of all Ugandans. Parliamentarians requested that the organizers should arrange a similar training for the entire House.

Second, Parliamentarians expressed the desire for civil society and Parliament to continue sharing information and discussing policy. To this end, they proposed convening a Civil Society-Parliamentary Forum that would regularly hold discussions about petroleum-related issues.

(b) Inclusion of Parliament on the Oil Activities Monitoring Committee

Parliamentarians resolved to demand for representation on the multi-institutional monitoring committee responsible for monitoring oil activities.

(c) Following up on the Ministers promise to lay before Parliament the Production Sharing Agreements

Members of Parliament present agreed to jointly and severally follow up on the Minister's promise to lay the PSAs before Parliament.

(d) Consolidate the comments on the Draft Bill and share them with Members of Parliament, civil society and other stakeholders.

The participants commended the effort of civil society organizations for making comments on the resource Bill and providing the comments to the Ministry, but emphasized that there were new issues that had arisen out of the workshop. All these should be incorporated and the consolidated comments shared with the Ministry, Members of Parliament and other stakeholders.

(e) Monitoring and evaluation framework for the National Oil and Gas policy.

A clear monitoring and evaluation framework was essential for measuring progress in policy implementation. The participants agreed to advocate and lobby for a framework that put forward concrete targets and milestones.

(f) Presentation of all Oil-related legislation as a package.

The participants underscored the need to discuss all the laws relating to oil resource regulation, revenue management and sharing, and fiscal regime as a package.

Participants agreed to push for the enactment of these laws and ensure that they are presented to Parliament as a package.

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