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05th/September/2019

CSO STATEMENT ON SUSPENSION OF EACOP ACTIVITIES: GOVERNMENT SHOULD NOT BOW TO PRESSURE FROM OIL COMPANIES

Introduction

Following the announcement that Total E&P had suspended all operations on the East African Crude Oil Pipeline (EACOP) project, Africa Institute for Energy Governance (AFIEGO) organised a meeting on Thursday September 5, 2019 at AFIEGO's office in Kampala.

During the meeting, over 13 civil society organisations (CSOs) working to promote good governance in the oil and gas sector deliberated on the implications of the Tullow's failure to sell 21.5% of its stake in the Lake Albert oil licenses and the consequent suspension of the EACOP project activities by Total E&P.

The following observations were made by the CSOs during the meeting.

Observations

a). Companies must pay tax: While the CSOs noted that the failure to complete the Tullow Oil farm down and the suspension of EACOP activities by the companies is not good for the country as it may result into Ugandans losing jobs, businesses collapsing and may force government to increase borrowing, the CSOs present at the meeting expressed their support to government and called upon it to ensure that the responsible companies are made to pay all the assessed taxes.

b). Tricks by companies: The CSOs noted that suspension of the EACOP activities by Total may be a trick by the oil companies to pressure government so that it does not collect the assessed tax including the Capital Gains Tax (CGT) of $167 million that Tullow Oil is supposed to pay. The CSOs questioned why Total would suspend her activities on the EACOP. They noted that Total should have continued with the activities as Tullow and government restart the negotiations on the farm down.

c). Pressuring desperate government: The CSOs observed that it is possible that Tullow and Total may have decided to work together behind the doors to punish the country and put government on pressure. The CSOs noted that oil companies are aware that based on the many oil production deadlines that government has been setting and failing to achieve and based on the increasing national debt, government is in a desperate rush to commence oil production to earn some money. The companies therefore think that suspending the EACOP activities and laying off of workers will increase government's desperation leading to the abandonment of plans to collect the assessed CGT to please companies to resume operations. The CSOs called on government not to allow such tricks and bow to pressure being exerted by oil companies. The companies must pay taxes without fail if they want to stay in Uganda, the CSOs said.

d). Be transparent in all transactions including PSAs: While they support government to collect tax, the CSOs observed that Uganda's oil sector is facing many challenges because government has failed to be transparent. Government opted to keep the Production Sharing Agreements (PSAs) it signed with oil companies away from citizens. Government used excuses such as the fact that confidentiality clauses in the PSAs do not allow them to share information. This was in complete disregard of Article 41 of the 1995 Uganda Constitution which gives every Ugandan the right to access information in the hands of government. The absence of transparency in the oil sector creates suspicion among the citizens against their leaders. This leaves government and the country at the mercy of oil companies whose main objective is to make abnormal profits at the expense of the people and environment. The CSOs at the meeting observed that once oil companies get to know that the government does not have the support of its citizens due to mistrust and suspicion created by lack of transparency, the companies start operating with impunity including refusing to pay taxes, suspending oil activities and others without fear of any consequences.

e). Invest taxes in developments that benefit the citizens: The CSOs further observed that government will either win or lose the war against oil companies depending on how they will convince Ugandans that the taxes being collected will not be misused but rather invested in key sectors to provide services such as affordable electricity, quality education, good health services, job opportunities for all and others that improve the lives of citizens. The CSOs noted that government must stop withdrawing oil money from the Petroleum Fund in violation of the Public Finance Management Act of 2015. Doing so creates public mistrust and denies government social capital. It also emboldens companies not to respect government, Uganda's laws and institutions. As a country, we must build a culture that respects laws and institutions such as the judiciary, parliament, civil society and others because the good culture will attract good companies willing to abide by the rules including paying of taxes, the CSOs noted.

f). Explain why Uganda has endless oil tax disputes: The CSOs also asked the government to explain why every time the companies make profits and they are asked to pay taxes, they insist on not paying. Where is the problem? Is it because bad PSAs were signed or are our laws unclear? Is it mere impunity on the part of the companies or is there connivance between oil companies and corrupt government leaders to create disputes and when those disputes are resolved, they get rewards for arguing the cases? The CSOs recalled the 2010 dispute between Heritage Oil and government over the $434 million CGT that Heritage Oil was supposed to pay. This dispute was only resolved through a costly case in London. Even when Uganda won the case, the long court battles depreciated the value of the money that was won.

Later, when Tullow Oil sold two thirds of its assets at $2.9 billion to Total and CNOOC in 2012, another tax dispute ensued. Tullow did not want to pay the $407 million CGT it was supposed to. The company ended up committing to pay less tax and out of pressure, government accepted only $250 million. As a result, the country lost $199 million to companies. Today, we see another battle between Tullow and government over CGT. Before we know it, we shall lose more money to

companies especially now that Total has suspended the EACOP activities. Government may forego the entire tax or reduce it in order to please the companies to commence operations.
The CSOs noted that Ugandans need answers as to why Uganda is always engaged in CGT disputes. They noted that it is not normal for companies to sign agreements based on the national laws that provide for certain specific rights and obligations but the companies turn around and refuse to fulfil legal obligations.

g). Government sets bad precedents by violating environment laws: The CSOs noted that such battles over taxes could extend to the fight to protect the environment from oil threats. The CSOs observed that the current disagreements between the government and oil companies clearly indicate that both the companies and government will not effectively work together to invest and ensure that oil activities will not destroy the biodiversity and livelihoods in Uganda. The CSOs noted that this is perhaps the reason why Total submitted the Tilenga Environmental and Social Impact Assessment (ESIA) report to NEMA without complete mitigation plans to avoid or mitigate the dangers of oil activities. Inspite of this, NEMA shamelessly went ahead to issue a certificate of approval for the project and allowed it to proceed. Moreover, the certificate was issued in disregard of the views of over 2,000 stakeholders who told NEMA at the public hearings on the Tilenga ESIA in November 2018 in Buliisa and Nwoya districts not to approve the project.
In a way, government set a precedent that companies can get their way without fulfilling the necessary legal requirements. The CSOs called upon government including NEMA, Uganda Wildlife Authority (UWA), Uganda Revenue Authority (URA) and others to avoid lowering standards because they want to please the companies to commence oil exploitation. Uganda can continue to develop without oil if we manage sectors such as tourism, agriculture and others well, the CSOs said.

Recommendations

In view of the above observations and concerns, the CSOs made the following recommendations for government to take action:

(i) **Companies must pay taxes as assessed:** Uganda is a sovereign country and any company, domestic or foreign, operating here must pay all the assessed taxes in accordance with the laws of Uganda. Government's demand for taxes should not be compromised even if it takes 100 years to start talking about oil exploitation. We are lucky that Uganda can get revenues from better sources such as agriculture, tourism and others.

(ii) **Urgently review all the PSAs and tax laws to create maximum certainty on tax assessment and collection:** Government should work with parliament and consult citizens to openly discuss all the existing PSAs and tax laws and institutions to find out why every attempt to collect taxes from oil companies ends up in disputes. The review should help government to renegotiate the PSAs and reform the tax laws as well as strengthen relevant institutions to avoid similar or related tax disputes going forward.

(iii) **Restore citizens' trust in government by using the collected taxes to provide services for the common good:** It is clear that because of endless corruption and misuse of public resources by government, citizens are reluctant to pressure oil companies to pay taxes. They think that whether or not the taxes are paid, they will not get the right services. Instead, the taxes will be stolen by those in power. The memory of the president awarding 42 government officials a whopping Shs 6 billion of oil money in 2016 is fresh in citizens' mind. This money is yet to be recovered despite parliament ordering government to recover it. For government to succeed against the huge multinational oil companies, it needs the backing of the citizens to among other things appreciate and accept the delays that happen as the government insists on the companies to pay what is due to our country. Citizens' trust and confidence is key in the governance of the oil sector especially in Africa where legal systems and institutions are weak and are sometimes despised by multinationals.

(iv) **Urgently, finalize the EITI joining process and implement it:** The country is lucky that government finally accepted to join the Extractive Industries Transparency Initiative (EITI) which can strengthen efforts for transparency in the oil sector. However, for EITI to be useful to Uganda, government must be ready to implement and comply with its principles. Unfortunately, as we wait to join EITI, we see government withdrawing oil revenue from the Petroleum Fund in disregard of the Public Finance Management Act 2015. These actions serve to create suspicion that the government is not ready to make use of EITI, especially considering that EITI remains a voluntary process. If the leaders can violate binding laws, what will happen with voluntary principles? It is therefore necessary that as part of building trust and creating conditions for assessing, collecting and utilising oil revenues, government should show real commitment to EITI by ensuring that the process of EITI is urgently completed and complied with. We must avoid joining EITI for formality's sake.

(v) **Enact a law that requires every company to give government notice before suspension of activities:** The action by Total of suspending activities without giving government notice requires urgent redress. This should not be allowed to continue as it will undermine planning and government targets.

(vi) **Government and companies should respect environmental laws:** It is unfortunate that NEMA issued the Tilenga certificate of approval for an ESIA that Total had failed to do well. The ESIA review process itself was done in violation of the laws of Uganda. The Tilenga EIA certificate should be cancelled by NEMA. If the Tilenga certificate of approval is allowed to stand, it will only serve to create a precedent of impunity that a country can commence oil exploitation based on illegal decisions. In the end, companies may use such precedents against the country.

(vii) **Finally, government should prioritise investment in clean energy as opposed to oil**. The only possible way government may void pressure from oil companies is to urgently invest in affordable renewable clean energy such as offgrid solar and others in order to avoid over dependence on fossil fuels. The exploitation of fossil fuels such as oil is always dictated by multinationals and their footprints on environment and livelihoods remain a pain in Africa and beyond. Once companies know that a country has alternative sources of energy, they will respect that country and stop the impunity of not paying taxes or suspending operations without notifying a sovereign state.

Signed by:

No	Name of organization	Logo
1.	Africa Institute for Energy Governance (AFIEGO)	AFIEGO
2.	National Association of Professional Environmentalists (NAPE)	NATIONAL ASSOCIATION OF NAPE PROFESSIONAL ENVIRONMENTALISTS
3.	Citizens Concern Africa (CICOA)	cicoa Citizens Concern Africa
4.	Action Coalition on Climate Change (ACCC)	ACTION COALITION ON CLIMATE CHANGE A C C C A WELL - MANAGED ENVIRONMEN FOR SUSTAINABLE LIVELIHOODS
5.	South Western Institute for Policy and Advocacy (SOWIPA)	SOUTH WESTERN INSTITUTE FOR POLICY & ADVOCACY SOWIPA
6.	World Voices Uganda	WVU
7.	Guild Presidents' Forum on Governance	GPFOG

8.	Oil Refinery Residents Association (ORRA)	
9.	Graffen, Butimba	
10.	Kakindo Women and Orphans	
11.	Kwataniza Women's Group	
12.	Kasese Citizens' Coalition to Safeguard Biodiversity against Oil and other threats	
13.	Katwe Sanitation and Clean Energy Women's Club	