



April 27, 2020

CSO COMMUNIQUE CALLING ON THE MINISTER OF ENERGY TO REJECT THE TULLOW-TOTAL SALE IN LAKE ALBERT OIL PROJECT

1. Introduction

On April 24, 2020, Africa Institute for Energy Governance (AFIEGO) organised an online meeting during which over 23 civil society organisations (CSOs) working to prevent oil threats and abuses in Uganda discussed the planned sale of Tullow's 33.33% stake in the Lake Albert oil project to Total. The CSOs also discussed government's plan to approve the said sale.

The meeting came a day after Total announced that the company had completed negotiations to acquire Tullow's above-mentioned stake at a price of \$575 million. Of this, \$500 million is expected to be paid immediately after the sale is acquiesced to by Uganda's government, Tullow's shareholders and other parties.

The remaining \$75 million will be paid after the Final Investment Decision (FID) has been made, Total announced. Tullow is also expected to earn "conditional payments linked to production and oil price, which will be triggered when crude oil prices are above \$62/bbl," a statement that was released by Total says.

Following the announcement by Total, the Ministry of Energy and Mineral Development (MEMD) released a press statement through which the ministry welcomed the sale. The ministry's Permanent Secretary, Mr. Robert Kasande, said in that press statement dated April 23, 2020 that "government [had] received the Sale and Purchase Agreement from the oil companies which is being reviewed to facilitate grant of the necessary approvals and conclusion of the transaction."

It is noteworthy that Uganda is expected to earn \$14.6 million in tax from the sale. This is \$152.4 million less than the capital gains tax (CGT) of \$167 million that Uganda Revenue Authority (URA) had assessed on the sale of 21.57% of Tullow's stake to Total and CNOOC in 2019.

In effect, the Ministry of Energy is willing to work with companies to finalise a sale for a project that not only has grave national and cross-border livelihood and environmental consequences but one that will also lead to Ugandans losing much-needed revenues at a time when the country's economy has been affected by the Coronavirus pandemic.

The CSOs at the meeting, which deliberated on the above facts, noted with grave concern that events such as government failure to penalise companies like Total that suspended operations on the East African Crude Oil Pipeline (EACOP) without notice to government have encouraged companies to succeed in creating conditions that have forced government into desperation, leading to the current unfair and reckless decisions.

Other mishaps include failure to punish a minister who signed an unfair agreement in 2012 that resulted into a loss of over \$157 million to government during the sale of Tullow Oil's 66% shares to Total and CNOOC at \$2.9 billion. Yet other mishaps that have weakened government include approving Environmental and Social Impact Assessment (ESIA) reports for oil projects without mitigation plans, denying citizens access to information such as the Production Sharing Agreements (PSAs) and others.

The CSOs affirmed that it was unacceptable for the Ugandan government to welcome and support a sale that grossly fails to favour Ugandans and they are calling on government to reject the sale.

Below are more of the CSOs' observations.

2. Observations

- a) **Using the cover provided by Coronavirus to conclude bad deals:** First, the CSOs at the meeting observed that it is unfortunate that both Total and Tullow used the cover provided by Coronavirus, a disease that has forced the entire the country into lockdown, desperacy and fear, to conclude unfair deals. Because of the COVID-19 challenges, no citizen has the space to question and where necessary reject such deals as citizens are not allowed to congregate.
- b) **Wrong time to conclude oil deals:** The CSOs also noted that it is difficult to understand why a serious government can allow to conclude oil deals at a time when crude oil prices are at their lowest. The CSOs noted that no country can get a good oil deal from oil companies at a time when crude oil prices are low. Unfortunately, companies shamelessly use the desperation of poor and corrupt countries such as Uganda to their advantage at the expense of citizens, the CSOs at the meeting observed. They called on Ugandans to stand up and reject these bad deals.
- c) **Endless revenue losses to companies:** The CSOs were aghast at the fact that Uganda is set to lose revenue in the planned sale. They noted that in all the previous sales by oil companies, government has continued to lose revenues to companies. For example, in September 2019, Total suspended all the activities on the EACOP project. This followed a tax dispute in which the Ugandan government demanded that Tullow pays \$167 million on its planned \$900 million sale of 21.57% of its assets to Total and CNOOC. Tullow refused to pay that tax and insisted on paying only \$85 million. That sale collapsed and government failed to collect revenues. In the current transaction, Tullow is selling 33.33%, more than the original 21.57% shares, and government is accepting a tax of only \$14.6 million. This decline in revenues and government's willingness to accept lower revenues is unfortunate, the CSOs said. They reminded themselves that government previously lost \$157m in taxes when Tullow sold 66% of its shares to Total and CNOOC. Instead of paying \$407 million in capital gains tax as was ruled by the Tax Appeals Tribunal, Tullow ended up paying only \$250 million.
Ugandans must stand up and stop government from accepting these losses especially because government is set to welcome yet a new one, the CSOs at the meeting said.

- d) **Setting bad precedent:** The CSOs at the meeting observed that through government welcoming and approving bad transactions, government is earning itself a reputation of being a weak negotiator that takes whatever terms and conditions are thrown its way. Once companies understand the weaknesses and desperation of a country, the fate of that country is sealed. This partly explains why all African oil producers have failed to transform citizens' lives through oil exploitation, the CSOs at the meeting observed.
- e) **Disrespect of court processes:** They also noted that both government and oil companies such as Total very well know that there are two cases in court, one in Uganda's High Court and another in French courts, challenging the oil abuses in Uganda. These cases may stop oil exploitation in Uganda and yet government and companies are behaving as if the cases do not exist to the extent that the Tullow-Total sale is hinged on future oil production. This is wrong and disrespectful of the rule of law, the CSOs noted.
- f) **Total's ESIA studies questionable:** Furthermore, the CSOs noted that since 2018, Total has submitted questionable and incomplete Environmental and Social Impact Assessment (ESIA) reports for the Tilenga and EACOP projects. The CSOs observed that the ESIA studies submitted by Total to government lack complete mitigation plans that would be used to mitigate and/or avoid oil threats. The CSOs noted that the purchase of Tullow's shares by Total would make Total the biggest oil company in Uganda. How does government expect a company that has failed to conduct effective ESIA processes to protect the environment and human rights of Ugandans, the CSOs asked?
- g) **Ugandans are the losers:** The CSOs noted that when government allows companies that have demonstrated an inability to protect the environment and land rights and when government fails to collect the right taxes and approves bad deals, ordinary Ugandans who depend on government's ability to make decisions in their best interests are the biggest losers.

3. Recommendations

In light of the above observations, the CSOs made the following recommendations:

- (i) Government must reject the unfair sale of Tullow's entire assets in the Lake Albert oil project to Total; government should also ensure that all further planned oil sector transactions are open for public scrutiny.
- (ii) Furthermore, parliament must use its oversight powers to compel the Ministry of Energy and all the relevant officials who are party to the Tullow-Total sale to stop the sale and all other energy transactions that aren't urgent until the COVID-19 lockdown ends so that citizens can demand for accountability from government. The sale should also be stopped until the existing court cases against government and Total regarding oil projects are concluded.
- (iii) In addition, parliament should use its oversight powers to stop government from approving sales between companies until oil prices reach at least \$80 per barrel of oil as available evidence indicates that for Uganda's oil to be profitable, it has to be sold at up to \$75 per barrel.

- (iv) Further, government must immediately disclose to the public the Sale and Purchase Agreement that was submitted by Tullow and Total to the Ministry of Energy.
- (v) If government insists on approving the current sale between Tullow and Total, parliament should censor the Minister of Energy.
- (vi) In addition, if government fails to stop the current sale, CSOs should take the matter to court to stop the loss of public revenues and disrespect of court processes.
- (vii) Finally, if government fails to obey legal processes and parliament, Ugandans should use their powers under Article 1 of the Constitution to demonstrate to stop the connivance between oil companies and government against the country.

Thank you.

Signatories:

1. Africa Institute for Energy Governance
2. Oil Refinery Residents Association
3. World Voices Uganda
4. Centre for Energy Governance
5. Center for Citizens Conserving
6. Karambi Action for Life Improvement
7. Guild Presidents' Forum on Energy Governance
8. Kwataniza Women's Group
9. Centre for Constitutional Governance
10. Graffen Organisation –Butimba
11. Citizens Concern Africa
12. Action Coalition on Climate Change
13. South Western Institute for Policy and Advocacy
14. African Initiative on Food security and Environment
15. Twimukye Womens Organisation
16. Environmental Governance Institute
17. Association of oil-affected youth
18. Kasese Citizens Coalition to Safeguard Biodiversity
19. Katwe Sanitation and Clean Energy Women's Club
20. Friends of Nature
21. Umbrella for journalists in Kasese
22. Kasese Women for Development
23. Kasese District Development Network