



August 12, 2019

Hon. Matia Kasaija,
Minister of Finance, Planning and Economic Development,
Kampala (U).

Dear Sir,

CSO OPEN LETTER TO THE MINISTER OF FINANCE: UGANDAN GOVERNMENT NOT READY TO COMPLY WITH EITI

Minister of Finance must implement Public Finance Management Act as a sign of commitment to EITI

The above refers,

On behalf of the undersigned civil society organisations (CSOs) and on my own behalf, I take this opportunity to thank you and your team for the work you are doing to ensure transparency in the management of Uganda's oil revenues.

Such work includes ongoing efforts to enable Uganda become a member of the Extractive Industries Transparency Initiative (EITI). EITI is a global standard that promotes the transparent and accountable management of oil, gas and mineral revenues.

We also appreciate that since 2008, government has collected over USD 1 billion in Capital Gains Tax (CGT) and signature bonuses. It should also be noted that companies have also invested over USD 3.5 billion in oil exploration and may invest up to USD 20 billion before oil production.

It is therefore commendable that in January 2019, cabinet approved the decision on Uganda joining EITI. Today, government has set October 2019 as the month in which the country will formally apply to join EITI.

The undersigned CSOs mobilised by Africa Institute for Energy Governance (AFIEGO) are dedicated to supporting government efforts to ensure that energy policies and interventions benefit the poor and vulnerable including women, youth, elderly, children and others.

Since 2008, AFIEGO and our partners have engaged government to enable Uganda join EITI as part of our efforts to promote transparency and accountability in the oil sector for the common good.

For example, in 2008, AFIEGO and our partners established the Publish What You Pay (PWYP)-Uganda Chapter. PWYP is a global campaign aimed at promoting transparency in the management and use of extractive resources such as oil revenues.

However, while we appreciate government's efforts to join EITI, we note with grave concern that events taking place in the country today show that government is not ready to join and make use of EITI.

There are many cases that show lack of commitment to transparency on part of government including failure to implement relevant laws such as the 2015 Public Finance Management Act (PFMA).

Since the enactment of the PFMA in 2015, government has continued to violate provisions of the law on transparency and accountability with impunity. The PFMA provides for the collection, management and utilisation of Uganda's oil revenues in a transparent and accountable manner.

In the presence of such abuses, it is clear that unless fundamental reforms in government are undertaken as part of the EITI process, there is little hope, if any, that joining EITI will help address the problems of lack of transparency and accountability for Uganda's oil revenues.

When has government contravened the PFMA and abused oil revenues?

Cases of abuse of oil revenues

(a). Withdrawal of UGX 200 billion oil revenues without parliamentary approval: Contrary to Section 58 of the PFMA, the executive withdrew UGX 200 billion from the Petroleum Fund in March 2019 before parliamentary approval. The money was used to finance deficits of the 2018/2019 budget. This was a violation of Section 59(3) of the PFMA which provides that oil revenue will only be used for infrastructural and other development purposes only. This non-compliance with a binding law creates suspicion that government will not respect and comply with the EITI principles which are voluntary.

(b). The UGX 6 billion presidential handshake: Further, in violation of oil revenue laws, the president ordered for the payment of UGX 6 billion oil revenues to 42 government officials in August 2016. It was alleged that the officials received the payments as a reward for winning a Capital Gains Tax (CGT) case against Tullow Oil in London. This payment violated Section 59 of the PFMA that does not allow oil revenues to be spent on consumption. The illegal payment came to be known as the presidential handshake and this payment clearly shows that the current government has no respect for established laws irrespective of the sanctions. Such a government cannot be trusted to comply with EITI principles which are voluntary.

(c). Failure to implement parliamentary recommendations: Moreover, on January 22, 2017, the speaker of parliament, Hon. Rebecca Kadaga, directed parliament's Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) to carry out investigations on the UGX 6 billion presidential handshake. Following the investigations, in June 2017, COSASE and parliament recommended that the executive recovers the UGX 6 billion from the government officials who received it as it was irregularly paid out. Over two years later, the executive is yet to recover the oil revenues. An executive that refuses to be held accountable and disrespects parliamentary decisions is unlikely to comply with EITI principles.

(d). Raiding the treasury to buy fighter jets: In addition, in 2011, the Governor of Bank of Uganda (BOU), Mr Emmanuel Mutebile, informed the public that the President had asked him to use national reserves amounting to \$740 million to buy fighter jets and then refund that money with oil revenues. Since then, government has continued to abuse oil revenues as the above examples show.

(e). Failure to account for over \$ 1 billion signature bonuses: Further, since 2008, government has earned over \$1 billion from signature bonuses, CGT and other oil revenue sources but government cannot account for most of this money. Will the same government magically become accountable to Ugandans after becoming a member of EITI? The answer is it will not.

(f). Oil agreements remain secret: In addition, Production Sharing Agreements (PSAs) that government signed with oil companies operating in Uganda remain secret in violation of Article 41 of the Constitution. Government hides behind the excuse that confidentiality clauses in the PSAs stop it from sharing the agreements with the public yet this is against the Constitution. Can a government that is keen on hiding behind confidentiality clauses signed in the PSAs against the Constitution comply with EITI principles? It cannot.

(g). Environment laws that promote secrecy: In addition, government implements laws such as the 1998 Environmental Impact Assessment (EIA) Regulations that bar citizens from accessing information such as presiding officers' reports, which are written after public hearings, until decisions on EIA reports are made. How does a government that promotes secrecy plan to comply with EITI?

(h). Disrespect of the constitution: One of the single biggest failures of President Museveni's government is failure to build a constitutional culture in the country. Amending the constitution to create a life presidency as it happened in 2005 when the majority NRM MPs removed term limits and in 2017 when they removed age limits among others has bred lack of a constitutional culture. Lack of a constitutional culture remains the single biggest obstacle to development in Uganda and Africa as a whole. It allows leaders to become the law, institution and everything in the country thus ruling with impunity. EITI cannot succeed and deliver benefits for citizens in such an environment.

Recommendations

In view of the above and other cases not mentioned here, the undersigned CSOs make the following recommendations as a contribution to making EITI meaningful to citizens.

i). Urgently carry out a national audit of conditions necessary for successful implementation of EITI. Government should urgently undertake an audit to enable government appreciate the existing accountability and transparency challenges and public attitude that may affect the success of EITI in Uganda. This will help the leaders to plan well before joining EITI.

This kind of audit was done in Zambia and the government of Zambia used that audit to determine and shape the EITI process in its country. Government should finance the audit process as a sign of commitment to implementing and complying with EITI. Without such an audit, commitment on part of government and effective public awareness to demand for action, EITI in Uganda may end up like the many laws that parliament enacts but government ignores or abuses them with impunity.

ii) Enact law to make EITI principles binding for compliance: Government should ensure that after joining EITI, an EITI bill is tabled before parliament to enact an EITI law in Uganda. To enable compliance to the EITI law, the law should provide for formation of a multi-stakeholder committee with representatives from government, CSOs, cultural leaders, religious leaders, academics and the private sector. The committee should among other things be the overall overseer of the Petroleum Fund, the Petroleum Investment Fund and should be responsible for the selection of development projects to be funded with oil revenues. The law should provide that the decisions of the committee are binding on government.

iii) Amend the PFMA to create individual liability: The PFMA should be urgently amended to provide that any government official who violates laws and as a result causes financial loss and or misallocation of public revenues should personally suffer the consequences. This will instill discipline among government officers who act with impunity and later hide behind government offices.

iv) Complete and put in place ESIA regulations: NEMA should urgently complete and put in place the Environmental and Social Impact Assessment (ESIA) regulations and guidelines. Currently, NEMA is implementing the 1998 EIA regulations which do not promote transparency. The new regulations and guidelines should make hiding of information such as the presiding officer's report a punishable offence.

v). Punish government officials who violate oil revenue laws: As a sign that shows that government is ready to walk the talk of transparency and use oil revenues in line with the laws of the country, the government officials who withdrew the UGX 200 billion before parliamentary approval and those who received the UGX 6 billion as a presidential handshake should be punished. They should refund the money they got and or be imprisoned.

Thank you,

Dickens Kamugisha



CEO, AFIEGO

SIGNATORIES:

| No | Name of organization | Logo |
|-----|---|--|
| 1. | Africa Institute for Energy Governance (AFIEGO) |  |
| 2. | National Association of Professional Environmentalists (NAPE) |  |
| 3. | Citizens Concern Africa (CICOA) |  |
| 4. | Action Coalition on Climate Change (ACCC) |  |
| 5. | South Western Institute for Policy and Advocacy (SOWIPA) |  |
| 6. | World Voices Uganda |  |
| 7. | Guild Presidents' Forum on Governance |  |
| 10. | Oil Refinery Residents Association (ORRA) | |

| | | |
|-----|---|--|
| 11. | Graffen, Butimba | |
| 12. | Kakindo Women and Orphans | |
| 13. | Kwataniza Women's Group | |
| 14. | Kasese Citizens Coalition to Safeguard Biodiversity against Oil and other threats | |
| 15. | Katwe Sanitation and Clean Energy Women's Club (Kasese) | |

CC:

- The President of the republic of Uganda
- The Speaker of parliament
- The Minister of Energy and Mineral Development
- The Chairperson, Natural Resources Committee of Parliament
- The Chairperson, COSASE
- The Chairperson, Public Accounts Committee of Parliament
- The Inspector General of Government
- The Auditor General
- The Executive Director, NEMA