

Press Statement

Civil Society Concerns on the Oil Tax Obligations Stalemate between Government and International Oil Companies over the Lake Albert Project and the EACOP

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Civil Society Concerns on the Oil Tax Obligations Stalemate between Government and International Oil Companies over the Lake Albert Project and the EACOP

Civil Society Organizations (CSOs) have noted media reports that work on the East Africa Crude Oil Pipeline (EACOP) has been suspended. This is ostensibly because the expiry of the sale and purchase agreements (SPAs) on the farm down of Tullow's stake in the Lake Albert project. The SPAs expired because of the tax dispute between Tullow and the Uganda Revenue Authority (URA) on capital gains tax (CGT) that would accrue because of the farm-down. Specifically, Tullow announced that it had agreed to farm-down 21.57% of its 33.33% interests in the project to Total E&P Uganda and CNOOC Uganda Ltd for a total consideration of USD900 million (approximately Uganda Shs 3.2 trillion). The farm-down was approved by government and the URA asked Tullow to pay the assessed CGT of USD167 million (approximately Shs 617 billion). Tullow reportedly objected on grounds that given the costs it had incurred in developing the project, the USD167m tax bill was not the right amount and that it intended to re-invest the money in the project. The dispute on CGT which has stretched for over 2 years, notwithstanding repeated attempts to break the impasse, is not the first dispute over tax in Uganda's extractive sector. Tullow and Heritage have similarly previously been embroiled in disputes with the URA over tax. The repeated disputes definitively point to the fact that there is either no clarity on tax policy or there are challenges in administering the law and policy, with respect to CGT in the extractive sector.

As CSOs working for better governance of oil and gas resources hereby present the following issues for scrutiny;

1. Limited public information on the prevailing tax dispute between oil companies and URA causing uncertainty about the oil sector and erodes citizen's trust and confidence.

The URA should be commended for being steadfast in working to ensure that Uganda secures a fair share from its oil resource. However, CSOs commend URA in the absence of details around the tax dispute. Information on the exact nature of the dispute and why it has been difficult to reach an agreement has largely been gleaned from media reports. There is general opacity on the full details of the tax dispute and this does not build citizens trust and confidence. Citizens have no access to the production sharing contracts (PSCs) signed with the companies and it is therefore, difficult to ascertain where there are differing interpretations of provisions of the same. It is, however, trite to note that PSCs should preserve the right to apply domestic tax legislation and not restrict such rights through stabilization clauses.

2. Increasing pressure on Uganda government to waive the CGT in the interest of expediting the oil production

Recently, President Magufuli of United Republic of Tanzania urged Uganda to stop delays EACOP operations following Total's suspension of all the activities, advising Uganda to sacrifice short term gain and for longer term benefits in the form of revenue and jobs. This view has been re-echoed by other stakeholders in various fora. The President also noted that Tanzania had given tax concessions for the EACOP. It should, however, be noted that it is in the interest of both countries to collect all the legal taxes that accrue from the oil resources/activities for national benefit. Rushing the project without complying with stipulated tax laws would compromise benefits for the country and set a bad precedence of given unconsidered concessions.

3. Attempt by IOCs to undermine national tax laws and limit tax obligations

IOCs should not seek to unfairly limit Uganda and or Tanzania's taxing rights. This is particularly important as the global tax justice movement has repeatedly drawn attention to the fact that companies often already minimize their tax obligations through aggressive tax planning and the use of complex company structures with domicile in low tax jurisdictions like the Netherlands posing significant revenue loss risks to Uganda.

4. Unwarranted consequences of the CGT stalemate and suspension of EACOP project activities

The implication of the tax dispute is the reported work-stoppage on the EACOP across both Uganda and Tanzania. It must be noted that this is coming at a time when the companies had progressed with various studies including the geo- surveys and consultations on land acquisition and on the draft environmental and social impact assessment (ESIA) along the pipeline route.

The indefinite work stoppage, therefore, is likely to negatively impact communities' rights. There are independent reports that show that none of the landowners along the pipeline route, know how much they will be compensated for land and crops, when information about compensation would be forthcoming, or why it was not already available to them. Additionally, some have already stopped planting on surveyed land. Additionally, this work stoppage has an implication on project costs as it may result in cost overruns for the development of EACOP and the upstream project, these costs may be recoverable, thereby negatively impacting on the revenue bases for both countries.

It must also be noted that the delays give an opportunity to both countries to address concerns around the project. Independent assessments of the EACOP draft ESIA have already noted that the assessment is woefully weak on mitigation measures, is difficult to read and over-emphasizes the anticipated positive benefits of the pipeline with little mention of the potential negative impacts. It is an opportunity for both governments to demand that companies publicly disclose the Human Rights Impact Assessment (HRIA) on the EACOP and to develop and publish the management plans for all the human rights issues mentioned in the draft EACOP ESIA to ensure that human rights concerns are adequately addressed if the project goes forward.

That the delays are reportedly on the different interpretations on the application of CGT also presents an opportunity for finality and clarity on the tax and its administration at a time when Uganda's oil sector is still emerging. This is, therefore, an opportunity to not only ensure that the government of Uganda maximizes revenue but also secures community rights. CSOs note that there has been no official communication from the companies with respect to the reported work stoppage on EACOP, how long the stoppage will last and the impact thereof. Tullow has noted that it will now seek to initiate a new sales process.

Considering the above, the undersigned CSOs call for the following actions;

1. **Call on the URA to publicly disclose more details of the tax dispute and the conclusion thereof to the public.** The oil resources in question juridically belong to the citizens and they have a right to know how they are being managed. Urge the government of Uganda to disclose the Production Sharing Contracts that were signed with the companies. In the absence of these, there is misinformation and despondency among the citizenry.
2. **We urge dissatisfied companies to use available tax dispute resolution mechanisms such as referring to the Tax Appeals Tribunal.** Tullow, Total and CNOOC should fully comply with national and international best practice. There should be no undue derogation from Uganda's tax laws because of perceived future benefits in the form of jobs and or future revenues
3. **As CSOs we support URA's right to pursue the tax obligations of the companies to finality.** Uganda should remain steady fast in demanding for legal taxes that accrue from oil operations in order not to compromise resource benefits to the citizens and setting a bad precedence in future.
4. **Tullow, Total and CNOOC must disclose information on the reported work-stoppage on the EACOP,** the expected timelines and their plans to mitigate adverse impacts due to prolonged loss of livelihood without compensation.
5. **We urge government and IOCs to remain engaged in discussions over the matter in order** to avert the unwarranted consequences of this stalemate on the oil and gas sector and economy at large.