



February 15, 2017

## **COMMUNIQUE OBJECTING TO THE MORTGAGING OF OIL REVENUES, AND DEMANDING THAT DECISIONS TO INVEST OIL MONEY BE OPEN AND TRANSPARENT**

### **Introduction & Background**

On February 13, 2017, 30 representatives from ten national and grassroots civil society organisations met at Africa Institute for Energy Governance's (AFIEGO) office in Kampala and discussed reports that government was mooting staking Uganda's oil to the Exim Bank of China to acquire funding to the tune of Shs 7.5 trillion for the Standard Gauge Railway (SGR).

The participants of the meeting expressed shock that government was mortgaging Uganda's oil despite this being explicitly prohibited under Section 74 of the Public Finance Management Act (PFMA) of 2015. They called for reprimanding of the Attorney General for encouraging this illegality to go on. Participants also raised concerns about government's consistent failure to sign up to the Extractive Industries Transparency Initiative (EITI) and involve Ugandans in decisions regarding the oil sector. They pointed out that this was responsible for illegal decisions such as the one above.

Participants at the meeting included representatives from AFIEGO, Global Rights Alert (GRA), Centre for Constitutional Governance (CCG), the Guild Presidents Forum on Oil Governance (GPF OG) and Africa Challenge Foundation (ACF) of Uganda Christian University Mukono.

Others included the Kigezi Coffee Development Academy, the Oil Refinery Residents Association (ORRA), GRAFENI BUTIMBA Hoima, Kwatanisa-Buseruka and Kakindo Orphans-Buliisa. The meeting was held at AFIEGO's head office in Kampala. Below is the discussion the participants had and the recommendations they made.

### **Discussion and observations**

- (a.) The civil society organisations commenced their meeting by observing that since the discovery of Uganda's oil in 2006, government has continued to manage and control the oil sector in secrecy. They highlighted a number of oil transactions which have been done

behind the backs of citizens leading to negative consequences. These include secretive licenses and Production Sharing Agreements (PSA) with unfair confidentiality, stabilisation and exemption clauses resulting into long and costly legal battles in both national and international courts, lack of openness regarding money from signature bonuses and Capital Gains Tax (CGT) from the Energy Africa sale to Tullow Oil, Hardman Resources sale to Tullow Oil, Heritage Oil sale to Tullow at \$1.4B, Tullow Oil sale to China National Offshore Oil Corporation (CNOOC) and Total E&P Uganda at \$2.9B and \$900M respectively. Other oil transactions such as the refinery land acquisition and resettlement of the refinery-affected people, the feasibility study report that guided the option of building a refinery as opposed to a pipeline, negotiations with and selection of the RT Global Resources to build the refinery and others were also pointed out as having been marred by secrecy. Because the above decisions were taken by government without effective participation of citizens, their results have remained negative to date, participants noted.

- (b.) It was also noted that in 2011 when Parliament was recalled from recess and it made a number of recommendations including the need to halt oil transactions until new oil laws were put in place, the need to renegotiate all existing PSAs to align them with the new oil laws, the need for suspected ministers to step aside and be investigated for corruption and many others, the recommendations were ignored. Had they been implemented, the recommendations would have cleaned the oil sector and built public support. Unfortunately, the government that is responsible for implementation of parliament decisions chose to ignore them. As a result, today, we are paying a high price and the sector remains in a mess with no accountability and penalties for those who default on the rules, participants said.
- (c.) They also reminded themselves of past secretive and illegitimate transactions where oil revenues were used including the alleged use of oil money to purchase fighter jets in 2011, the recent disclosure by the President in Masindi that oil revenues are being used in the building of Karuma Dam and use of the same to make Shs 6B bonus payments to 42 civil servants. Participants were alarmed that government seems to have learnt nothing and was willing to perpetuate another illegitimate decision in staking Uganda's oil to construct the SGR. It was noted that while the SGR may be a good development project that can create more wealth, it is necessary that Ugandans participate in deciding priority areas where oil revenues should be invested. Participants affirmed that any decision made contrary to the laws and established international best practices and without public participation irrespective of whether it is good or not, remains illegitimate and should be avoided at all costs.
- (d.) Participants recalled that Section 74 of the Public Finance Management Act (PFMA) of 2015 prohibits government from using the present and future assets of the Petroleum Fund –which should hold all revenue from oil- as guarantees and collateral for debts. Mr. Samuel Okulony, the Research and Project Co-ordinator of AFIEGO, read out Section 74, sub-sections (1) and (2) as follows:

*(1) The financial assets of the Petroleum Fund including present or future financial assets shall not be earmarked, pledged, committed, loaned out, or otherwise encumbered by any person or entity.*

*(2) Government shall not— (a) borrow money from the Petroleum Fund; or (b) hold a financial instrument that places or may place a liability or a contingent liability on the Petroleum Fund.”*

Following the above readings, participants expressed shock that the Attorney General (AG) had given no objection to government staking Ugandans’ oil yet doing so contravenes the provisions of the above Public Finance Management Act of 2015 that was put in place to, among other things, ensure transparent use of oil revenues for the common good. Participants demanded that government stops any plans of staking Uganda’s oil in exchange for a loan for the SGR or any other spending that is contrary to the law and good practice. Doing so is a big risk and will sooner than later land the country into problems of the Dutch Disease and oil curse, problems that have failed all oil producing countries in Africa to date, participants said.

(e.) This call was made even more urgent considering that sections of parliament and the public had already raised queries about the proposed \$12.8B cost of the Standard Gauge Railway. Pitting it against the cost per km of similar Standard Gauge Railways in Ethiopia and Kenya, some sections of the public had shown that the cost of Uganda’s SGR was exorbitantly high, costing more by \$3.42M and \$2.19M per km, for the section between Malaba and Kampala, as compared to Ethiopia’s and Kenya’s SGR respectively.

(f.) Recognising that the co-ordinator of the SGR project had noted that the total \$12.8B cost for the SGR project was a proposed figure and as such, the cost could go up or down, participants affirmed that going by past experiences, Ugandans oil money could be wasted on a project that does not offer value for money. They noted that corruption in big projects had seen dams, roads and other infrastructure being constructed at prices higher than elsewhere thus undermining our competitiveness as a country. Participants noted that high construction costs of public projects bore no benefits yet Uganda continued to pursue them. They gave the example of countries such as Ethiopia which are constructing their mega Ethiopian Grand Renaissance Dam of 6,000mw at a cost of \$4.8B while Uganda’s relatively small dams such as Karuma with a capacity of 600mw and Isimba with capacity of 180mw are costing \$1.7 billion and \$570 million respectively.

Little wonder then that despite completion of construction of the Bujagali Dam that cost billions, majority of citizens and businesses cannot afford power due to the high tariffs arising from construction of the expensive Bujagali Dam, participants said. This experience could be repeated if the SGR cost was made too expensive by corruption, participants said.

(g.) Participants were gravely concerned about the fact that Ugandans’ views on how oil revenue should be used is being ignored by the government. Indeed, it is sad that in the on-going plans to illegally mortgage Uganda’s oil, the Ministry of Finance only consulted the Ministry of Energy and the Attorney General, participants noted.

(h.) Recalling that Section 62 of the Public Finance Management Act provides for (i.) establishment of the Petroleum Fund, (ii.) from which the Petroleum Revenue Investment Reserve would be replenished by warrant of the Auditor General, (iii) and that the amount of money withdrawn from the Petroleum Fund to the Petroleum Revenue Investment Reserve in a financial year will not exceed the amount authorised by parliament, participants demanded that Ugandans be involved in the decision-making processes of finances from the oil sector. They also noted that through bypassing parliament in the illegality of mortgaging Uganda's oil for the SGR, government was flouting the law.

(i.) Further, the groups noted that the government has continuously ignored the need to sign to the Extractive Industries Transparency Initiative (EITI) in order to avoid any public scrutiny. Signing to EITI would encourage or compel government to disclose information to the public regarding collection and use of oil revenues and therefore enable citizens to demand for accountability. Unfortunately, government does not want public accountability and that's why they have rejected and ignored the calls to join EITI even when it's part of our 2008 Oil and Gas policy, participants said.

(j.) Finally, they cautioned that if Uganda is not careful, we could go in the way of Ghana. On discovery of commercial oil in 2007, Ghana went on a spending spree. Towards starting production, the country increased borrowing with hopes that her oil revenues would help clear the debt. With the dramatic drop of global oil prices that has left the country deep in debts, Ghana is reeling. Nigeria too, which is the biggest producer of oil in Africa is reeling and is borrowing to meet its budgetary needs. Participants noted that recently, the President of Nigeria admitted to the public that the country's economy was in trouble and appealed to Parliament to allow the government to borrow \$30 billion to meet her budgetary needs. Participants said that Uganda has to be careful so as not to go in the way of Ghana and other African oil-producing countries that, for decades, have failed to use oil to transform the standard of living of their citizens. As a country, we must control the appetite for unwise spending to avoid being added on the list of African oil-producing countries deep in debt. Oil is a finite resource and therefore we must use it wisely, participants said.

## **Recommendations**

In view of the above, they recommended the following:

- (i.) That the Attorney General is reprimanded for perpetuating an illegality by raising no objection to mortgaging Uganda's oil as a guarantee for a loan for the Standard Gauge Railway, contrary to the provisions of the Public Finance Management Act 2015. As earlier noted, Section 74 of the Act forbids use of Uganda's petroleum resources as guarantees or collateral for loans.
- (ii.) That the Ministry of Finance, Ministry of Energy and the Attorney General immediately stop perpetuating the illegality of mortgaging Uganda's oil. They must respect the aforementioned Section 74 of the PFMA and best international practices.
- (iii.) That Ugandans views on how oil revenues are used be sought through at least seeking views of their representatives in parliament. The Ministry of Finance, Ministry of

Energy and the Attorney General must respect the fact that Section 62 of the Public Finance Management Act gives Ugandans the platform to decide on how their oil revenue is invested through regulating that decisions on how much money is withdrawn from the Petroleum Fund to the Petroleum Revenue Investment Reserve are made with parliament's authorisation and a warranty of the Auditor General.

- (iv.) That the Ministry of Finance urgently reports to parliament on the functioning of the Petroleum Fund and Petroleum Revenue Investment Reserve as required by the PFMA 2015. How much oil revenues have been collected and received by the Uganda Revenue Authority (URA), transferred to the Petroleum Fund, transferred to the consolidated fund and the Petroleum Revenue Investment Reserve. What are the mechanisms for safeguarding the Funds in line with the law?
- (v.) That government officially signs to the EITI as a sign of her commitments to promote contract transparency and to use oil and other revenues for the common good.
- (vi.) That the public holds the Ministry of Works and Transport in addition to the persons in charge of the SGR accountable. The public should demand that the above show that Uganda's SGR is not more expensive than Kenya's or Ethiopia's because of corruption and that Ugandans, including the youth and oil host communities, will get value for money from the Standard Gauge Railway.
- (vii.) Finally, that the President strengthens his political will to fight corruption. Without this, the SGR and other projects built using oil money will not benefit any Ugandan.

We thank you.



Dickens Kamugisha,  
CEO, AFIEGO

On behalf of the signatories to this communique who include:

- AFIEGO;
- GRA;
- CCG;
- GPFOG;
- ACF;
- ORRA;
- The Kigezi Coffee Development Academy;
- GRAFENI BUTIMBA Hoima;
- Kwatanisa-Buseruka and;
- Kakindo Orphans-Buliisa