RISK MANAGEMENT IN TULLOW OIL COMPANY IN UGANDA: A LEGAL AND POLICY PERSPECTIVE

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ABSTRACT

The major purpose of the Article was examining the Legal and Policy perspective of risk management in the Oil and gas companies facing a myriad of risks in today's global marketplace especially in Uganda using Tullow oil as a case. The risks range from volatile commodity prices, which are less linked to basic supply and demand but more to global socio-economic factors, to increased health, safety and environmental pressures. These are just few examples of the serious risks and threats that can impact oil and gas companies. Standard policy and regulatory framework can help mitigate these risks. Despite the negative impacts that can arise from new-found oil wealth in developing countries like Uganda, the resource curse is by no means inevitable. A number of countries – including Botswana and Norway– have managed to avoid the problem. Combating the resource curse and minimizing conflict risks associated with oil is an important part of international development agendas and there are numerous institutions and resources for governments to turn to for advice on how to do just this. Efforts have also been made to promote higher levels of oil company performance in understanding and mitigating the impacts of their own operations and investments on conflict dynamics.

INTRODUCTION

Oil has been discovered in Uganda, but no commercial oil is flowing yet and no substantial oil revenues are expected soon, though incomes related to taxes have been trickling in, no commercial production yet, but an extensive Extended Well Testing (EWT) Programme is being undertaken as part of the appraisal process. The Government has received applications for production licenses over Kingfisher, Nzizi and Mputa fields and these are being reviewed to ensure optimum recovery.

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These oil discoveries have led the government of Uganda into signing contracts with international companies to exploit the oil. French oil-and-gas major Total SA TOT-2.09% confirmed the finalization of its farm-in with Tullow Oil PLC for an interest of 33.33%, covering EA-1 and EA-2 licenses, the new Kanywabata license and the Kingfisher production license in Uganda's Lake Albert region. Tullow will operate EA-2 and CNOOC Ltd. CEO-2.68%will operate the Kanywataba license and the Kingfisher production licenses, from the former EA-3A block.[1]

Risk Management is vital to the economic consequences of the huge investment the international oil and gas industry. Today, most of the oil producing countries in the world are associated with a number of uncertainties and problems that are peculiar to that area such as middle east (Iraq-terrorism);far East (East Timor-boundary disputes);latin America(Venezuela–nationalization);US (Gulf of Mexico environmental ,hurricanes); and the UK (North sea residual liability from mature fields and harsh operating conditions.[2]

This scenario necessitates adoption of a formal type of risk management strategy by the oil and gas companies operating in these areas, with legal responses to the above. What the strategy will look like will largely be influenced by the type of risks they face during their operations.[3]

A GENERAL OVERVIEW

The hunt for oil in Uganda dates back to the early 1920's when significant oil exploration was done by E.J, way land, a government geologist who documented substantial amounts of hydrocarbons in the Albertine Graben. The Albertine Graben in which oil has been discovered in Uganda is located in the western part of the country, mainly in Masindi, Kibale and Hoima district around lake Albert which forms the northern foremost part of the western arm of the East African Rift valley. It is situated at the Ugandan and Congo border further stretching to the border with Sudan.[4]

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[1] *N.T Earnest ,Commissioner Petroleum Exploration and Production Department presentation on: Developments in Uganda's Oil and Gas Sector at Oil and Gas seminar Organized by ICPAU Friday 12th April 2013.*

[2] *King & S, An Introduction to Upstream Government Petroleum Contract; Their Evolution and current use January 2005 pg 46*

[3] *Donor Engagement* in *Uganda's Oil Gas Sector; An Agenda Fraction a briefing by global witness october2010*

[4] *Donors Engagement in Uganda's Oil & Gas sector; An agenda Fraction a briefing by global Witness October 2011.*

In 2006, Uganda made its first commercially viable petroleum discovery. Since 2006, oil companies have drilled approximately 39 exploratory wells in western Uganda, only three of which were reportedly dry.[5]Today, Uganda has an estimated reserve capacity of over two billion barrels and a potential flow rate of up to 350,000 barrels-a-day (over a 25 year period). These statistics place the country in the company of Equatoria Guinea, Gabon, and the Republic of Congo (although not in the company of Nigeria and Angola—the reigning titans of African oil)[6].

Alongside the anticipation of the wealth generated by oil, the experience of other oil producing countries tells us that oil also creates new risks and challenges for the country. No country in sub-Saharan Africa has managed to achieve sustainable growth and stable development from oil alone. The example of Nigeria shows that oil production has the potential to inflict environmental degradation and insecurity, while failing to lift a majority of a country's poor out of the grip of poverty. To prevent this, Uganda needs effective, transparent, and accountable state structures to ensure that oil production translates into economic development and prosperity[7].

Oil companies whether national or international can be considered as providing the central driving force in the oil industry right across the supply chain from exploration to production through processing and transportation, to final marketing, sales and distribution. Terror threats, kidnappings, natural disasters and civil war-all recognized dangers to the world's oil producing nations[8]. All these are before considering more commonly associated risks, including fluctuations, equipment failure and pollution. The main issue is how the international oil and gas firms protect themselves and mitigate against the hazards[9]

Tullow has been successfully operating in Africa since 1986. In recent years the Group has had significant exploration success in Uganda and Ghana where two new hydrocarbon provinces have been established and major developments have commenced. The success from these two basins and geological play types has led Tullow to expand its acreage positions in an

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[5]*Speech of the Minister of Energy and Mineral Development, Hon. Engineer Hilary.O. to the Parliamentary Symposium on Oil and Gas Development, delivered on 18 June 2010*

[6] Ibid

[7] *Enhancing oil and gas* in *Uganda critical review of the draft petroleum(Exploration development production and value addition)Bill 2010.Civil society coalition for oil and gas in Uganda(CSCO)CSCO research paper No.12010.*

[8] *K & Spalding ,An Introduction to Upstream Government Petroleum Contracts: Their Evolution & current Use ,January 2005 pg 45*

[9] *ibid*

effort to replicate the transformation success Ghana and Uganda has brought to the business. In West Africa and across the Atlantic in South America, Tullow has made further Jubille-like deep-water discoveries and a high-impact exploration campaign continues. In East Africa, Tullow acquired significant acreage positions in Kenya and Ethiopia with the first well in Kenya, in 2012, making an important discovery at Ngamia-1[10].

Tullow Oil is one of the largest independent oil and gas exploration and production companies in Europe. Its in the next phase of transformational growth with a major focus on Africa, where its already a dominant player. Key to achieving growth ambitions is delivery of first oil in Ghana in November 2010 and developing the significant resource base discovered in Uganda with its new partners CNOOC and Total.[11]

But Environmental and community risks are likely to harm the Business. For example; Reputational risk International and local media criticism, Legal risk-Company enters long, costly litigation. Construction and operational risk-Local conflict slows operation. Host government risk -Government withdraws permits and licenses, Political risk-National opposition to the company prevents future business opportunities. Financial risk -Companies lose access to finance.[12]

Risk management is therefore paramount in the oil industry in Uganda. The purpose of risk management is to ensure that adequate measures are taken to protect people, the environment and assets from harmful consequences of the activities being undertaken as well as balancing different concerns, in particular HES (Health, Environment and Safety) and costs. Risk management includes measures both to avoid the occurrence of hazards and reduce their potential harms.[13]

According to John H. Dittmer [14] Project Managers need to recognize that all projects entail a certain degree of risk and that Risk management plan needs to be incorporated in project plans.

The most common risks to the industry, which raise important legal implications, include market risks (changes to the oil price, interest rates and exchange rates); credit risks (default); operational risks (equipment failure); geological risks (dry wells): Environment risks (pollution) and political risks (change of government, regulatory regime and contractual arrangements).Additionally, legal risk includes the kind of conduct, at

[10] *www.Tullow oil.com as accessed on 4th June 2014.*
[11] *Ibid pg 30.*
[12] *World resource Institute .Case study: Chinese Investment in Uganda's Oil and Gas sector*
[13] *A Terje & Jan, Risk management :With applications from the offshore petroleum Industry.(1995)PG 76*
[14] *Risk Management and the PMBOK v 1 PMB, CISSP-ISSMP.*