DEVELOPMENTS IN THE OIL AND GAS SECTOR IN UGANDA

Petroleum exploration and extraction can inject vast sums of money into a country’s economy. But contracts signed by governments for exploration and mineral rights have caused serious problems for some countries, so the Parliament of Uganda is acting to ensure oil deals are drafted and implemented properly, writes a Member with some of the professional qualifications needed for this specialized and highly technical area of parliamentary oversight.

Hon. Elijah Okupa, MP, in Kampala.
Mr Okupa is a Member of the Parliament of Uganda for the opposition Forum for Democratic Change, the Parliament’s second largest party. He was a government revenue officer prior to entering Parliament in 2001 and has a Master’s degree in economics with added qualifications in taxation and auditing.

Sub-Saharan Africa is the fastest growing oil-producing region in the world, with production having risen by 36 per cent in the past 10 years against a 16 per cent rise worldwide. It is estimated that over US $50 billion, the largest such amount in African history, will be invested in Africa by end of this decade as a result of the oil and gas discoveries. Uganda is one of the African countries that are expected to benefit from increased flow of investment resources. Uganda has discovered 20 oil fields containing 64 wells of which 59 are productive. This is approximately 2.5 billion barrels. Between 1 billion to 1.5 billion barrels is extractable. If the country produced 100,000 barrels of oil per day, it is estimated the deposit will be exhausted within 30 years.

As such, Uganda’s five year National Development Plan (2010/11-2014/15) cites the Minerals, Oil and Gas Sectors as the two key primary growth generators for Uganda’s future. If resources from these sectors are realized and utilized in a professional, prudent, sustainable and transparent manner; the potential for Uganda to become a middle income country in 25 years may be realized. However, developments in Oil and Gas Sector do not reflect best practices to guarantee the desired benefits. There are fears that the dramatic development failures that have characterized most oil dependent countries could befall Uganda or even result in an oil curse. Among the many institutions that have shown great concerns on the developments in the sector was the Parliament of Uganda, particularly the 9th Parliament.

A brief history
Significant oil exploration in Uganda was first done by EJ Wayland, a government geologist who documented substantial hydrocarbon occurrences in the Albertine Graben in the 1920’s. The Albertine region forms the northernmost part of the western arm of the East Africa Rift System, and is the principle prospective area for oil reserves in Uganda. It stretches from the border with Sudan in the north to Lake Edward in the south, covering an area of 24,000 sq km, and extends into the Democratic Republic of Congo.
UGANDA’S OIL AND GAS SECTOR

Uganda is one of the African countries which is expected to benefit from international investments in oil and gas exploration on the continent estimated to total US$50 billion to date.
Oil exploration in Uganda was interrupted during the Second World War, and resumed more seriously in the early 1980s with the acquisition of aeromagnetic data across the entire Graben region.

In the last decade, Uganda renewed efforts in oil exploration by licensing a number of prospectors. These efforts yielded results with a breakthrough by Hardman Resources Company’s discovery of huge petroleum deposits in the Albertine Graben region, and subsequently other licensed companies. Exploration is on-going in 10 areas including Rhino Camp (Arua District), Pakwach (Nebbi District), Semiliki and around Lakes Albert and Edward. The total oil volume in Uganda is estimated at 6 billion barrels.

The key players in Uganda’s oil and gas sector are Heritage Oil and Gas Limited, Hardman Petroleum Africa (pty), Tullow Oil Plc, Neptune Petroleum, Dominion Oil and Alpha Oil.

Uganda’s Oil and Gas Sector has attracted the attention of international investors. This is evident through farming-down and farming-up by the existing companies that are exploring the oil in the country.

Uganda is now entering a critical period of commercial production of the oil and gas products, which is expected to take off in the medium term. This is a very critical period with new investors and further huge investments are expected in the sector. Already, big companies like the Italian Oil Company, ENI, Chinese National Offshore Oil Company (CNOOC) and France’s Total from have shown interest in the sector through farming-down the interest of Tullow Oil Plc.

Despite the country putting in place the Oil and Gas Policy, 2008, there has been no effective implementation. The laws and institutions that were expected to be in place as a result of this policy were not, and the transactions arising from the growth of the sector have becoming increasingly complicated to the point of litigation. This has created anxiety amongst Ugandans, including within the Parliament of Uganda and Civil Society Organizations that now believe the country could be headed for a resource curse if corrective measures are not undertaken.

The significance of legislation

Like other countries with a vibrant oil and gas sector, Uganda’s Legislature has an important role to play. The country must perform its law making, oversight and representation duties if success in the sector is to be realized. Article 79 (1) of the Constitution of the Republic of Uganda gives the Parliament the power to make laws on any matter for peace, order, development and good governance. The oil and gas sector, given the high expectations it will generate and the financial resources necessary to transform and develop the country, is a critical area that should have the necessary laws. However, the same constitution restricts Parliament from making laws that impose a charge on the consolidated fund or any payment or withdrawal from this fund. This has tied the hands of the Parliament of Uganda. Thus, the Members cannot move a private member’s Bill on the oil and gas sector.

Due to these frustrations and constitutional limitations to make laws for the development of the oil and gas sector in Uganda, the Members of the Parliament in October 2011 moved a motion to convene a special session of Parliament which implored the government to submit all the necessary Bills for the development of the sector for consideration within 30 days from the date of the resolution. The constitution requires of the Speaker to call the House to discuss matters of national interest when one third of the Members request him or her to do so. To this effect, about two thirds of members in Parliament signed the petition, which was submitted to the Speaker on 20 September 2011. In this respect, the debate on the matter took place on 10 and 11 October 2011. The motion and
resolutions of Parliament that were passed implored the government to fast track the oil and gas laws in the areas of revenue collections and management; participation and empowerment of Ugandan’s; and social, environmental and economic aspects of this sector.

Prior to this motion, Parliament had used common methods of passing motions, initiating questions, conducting public hearings, and summoning ministers before committees without success. Most of these tools were used in the 8th Parliament before reaching a climax in the 9th Parliament where the house debated a motion for two days and unanimously passed ten resolutions on improving the performance of Oil and Gas Sector in Uganda. These resolutions, among others:

- Placed a moratorium on the Executive to execute oil contracts and transactions until the following conditions are instituted: the necessary laws are in place;
- The government reviews all the production sharing agreements already executed;
- Accountability of revenues so far received from the sector, covering license fees, signature bonuses, taxes and royalties and any expenditure executed on the same;
- The government joins the Extractive Industry Transparency Initiative;
- The removal and desisting from executing contracts in the oil industry with confidentiality clauses or provisions; and
- An inquiry into the sector.

It is hoped by carrying out their representation function legislators will help shape the sector programmes and make them reflect the interests of all Ugandans. The Legislature is united and very vigilant in ensuring that the sector is run in a transparent manner and in the interest of the people they represent. It should be noted the work of 9th Parliament on the sector has yielded positive results and changed the perception of the public about Parliament.

Investigating senior MPs

An Adhoc Committee on the oil sector investigated the involvement of the Prime Minister, Rt. Hon. John Patrick Amama Mbabazi, MP, the Minister of Internal Affairs Hon. Hilary Onek, MP, and the Minister of Foreign Affairs, Hon. Sam Kutesa, MP, who were alleged to have been comprised while conducting their duties in the oil and gas sector. According to the terms of reference cited for the committee, it will examine the process for the procurement of all companies involved in the oil sector, including the memorandum of understanding executed between the Uganda Revenue Authority and Tullow Oil in March 2011. They will also scrutinize all revenues so far received by government and where they have been deposited.

One of the pertinent issues being investigated by the Adhoc Committee on oil was how the revenue from the sector had been collected, managed and utilized since 2001. Mrs Maria Kiwanuka, the Minister of Finance, Planning and Economic Development, submitted to the floor of the house the memorandum that the government had realized a total accumulated capital gains tax plus stamp duty of US $449,424,960 as of 11 April 2011. These taxes were collected from Heritage Oil and Gases Limited and Tullow Oil Plc. She also informed that a total of US $3,240,881.40 was realized as oil-related non-tax revenues credited to the Ministry of Energy and Mineral Development for financial years running from 2006/2007 to 2010/2011. She promised to provide information for the period 2001-2006.

Mr Sam Kutesa, the Minister of Foreign Affairs stepped aside from the Cabinet as a result of another corruption prosecution in lieu of the Commonwealth Heads of Government Meeting (CHOGM) reports by the Auditor General, the Parliament and the Inspectorate of Government.

However, the Prime Minister and the Minister of Internal Affairs did not step aside nor did the President of the Republic of Uganda act on all resolutions of Parliament.

It was further reported in the media that the President would not respect three out the ten resolutions of Parliament including the one which demanded the three Ministers to step aside.

Most Members in Parliament made it clear they believed that a smooth investigation could take place if the Prime Minister and the Minister of Internal Affairs remained in office. As a follow-up to the resolutions on the oil and gas sector, the Members of Parliament instituted another motion under the Rules of Procedure of the Parliament of Uganda to find the Prime Minister and Minister of Internal Affairs in contempt of Parliament. A controversy arose on what contempt of Parliament meant and the matter was referred to the Standing Committee on Rules, Discipline and Privileges before a final conclusion arrived on the floor of Parliament.

Information was also been received from the Uganda Revenue Authority indicating that total tax revenues realized from oil companies for 2001 to October 2011 was US $487,155,517 as per November 2011 exchange rates. This was from tax heads of pay as you earn; withholding taxes; stamp duty, fees and licenses; penalties; import duties; and corporation taxes. It is important to note that there were VAT refunds to the oil companies amounting to US $6,035,378. The Adhoc Committee also investigated this matter and is due to report its findings to Parliament.

As a result of the resolutions on the oil and gas sector during the special session of Parliament, the Minister of Energy and Mineral Development submitted to Parliament 10 confidential agreements on the sector. However, The Speaker of the Parliament of Uganda using the constitution and the Rules of Procedure, issued strict guidelines on how Members of Parliament and Authorised Persons could access these agreements. She also limited wider public access, noting that the (Exploration and Production) Act, prohibited disclosure of such information.

This limitation on the access of the agreements contravenes of the Access to Information Act, 2005. This Article states that every citizen has a right of access to information and records in the possession of the state or any public body except where the release of the information is likely to prejudice the security and sovereignty of the state or interfere with the right to privacy of any person.

In effect, there was a contradiction between the Petroleum (Exploration and Production) Act and the Access to Information Act which needed to be reconciled.

As the Parliament of Uganda moves to ensure that the necessary legislations are in place, and that oversight, transparency and accountability in the Oil and Gas Sector are maintained, it still grapples with a number of challenges which include:

- Lack of knowledge or capacity to address complexities in the oil and gas Sector;
- Lack of the specialized expertise on oil and gas by the committees;
- Lack of coordination among Parliamentary committees;
- Lack of timely access to useful information on the sector; and
- Limited availability of resource to oversee the sector.