



Call off the hydrocarbons licensing and put the house in order first

TANZANIA, like most African countries, is endowed with vast, various and valuable resources including forestry, minerals, and hydrocarbons like crude oil and natural gas. However, the country is also among the poorest in the world with two-thirds of the population living in extreme poverty (less than \$1.25 in purchasing power parity terms).¹

Extractive industries, in particular the gas and petroleum sector, are known to be highly profitable as world market prices have raised sharply during the recent years due to strong growth of global demand for commodities. Recent exploration activities offshore of Tanzania revealed considerable deposits of natural gas and, possibly, oil.

The government of Tanzania, through the Tanzania Petroleum Development Corporation (TPDC), has announced a fourth bidding round for licensing its nine oil and gas deep offshore blocks before developing sector policies and laws that govern the extraction process. Our neighbour countries have also made big discoveries of oil and gas and some people are afraid that Tanzania fails to keep pace.

While this process has been temporarily stopped recently, we HakiElimu, Legal and Human Rights Centre (LHRC) and Sikika call for the suspension of the bidding process until the sector laws and policies are updated and clear development strategies and sound revenue management frameworks are in place. Sustainable development begins with the end in mind! Therefore, we should get started by putting our house in order first – instead of the initiating a licensing process. Tanzania will only benefit from these valuable commodities in the long run if the government formulates clear and transparent sector laws and policies that are implemented by strong and effective regulatory institutions. Prospective windfall revenues need to be administered by a sound financial management framework and integrated into a comprehensive and a development strategy that is compatible with the nation's macro-economic perspective.

Therefore, reviewing of the whole value chain of gas and oil exploitation – from the awarding contracts and licenses, the regulation and monitoring of operations, the collections of taxes and royalties and the implementation of sustainable development policies and projects – must be supported by transparent and participatory processes. Wide and meaningful consultations among the government, Parliament, the private sector and civil society are necessary to avoid poor policy choices, grand corruption and possibility of societal conflicts. Together, we need to ensure that linkages with other elements of the value chain are in place with a comprehensive country development strategy that guides how the new windfall revenues will ensure sustainable and equitable economic growth and development.

¹See <http://hdrstats.undp.org/en/countries/profiles/TZA.html>, accessed 15.09.2012.

HakiElimu, Legal and Human Rights Centre (LHRC) and Sikika therefore propose that the following basic questions (compare E. Alba 2009)² need to be answered and addressed before the Tanzanian Petroleum Development Corporation initiates the 4th Offshore Licensing Round 2012.

LINK 1: AWARD OF CONTRACTS AND LICENSES

- The sector law and regulations should define the legal and institutional framework for the exploration and exploitation of a country's hydrocarbon resources.
- The role of every local actor should be defined in the sector law, ideally separating commercial activities from the state regulatory functions.
- Licensing procedures and contract terms should take into account the geological, financial, and country risks. Country, sector, and market knowledge is needed to define appropriate licensing and contractual terms.
- The fiscal terms that determine the sharing of benefits between the government and the investors should be progressive and preferably linked to project profitability to cope with changes in prices and different site conditions throughout the project life.
- The development of "local content"—including local consultations and the use of local labour, goods and services—are key aspects of hydrocarbon projects. When properly defined, local content obligations improve projects' economic and social benefits, and help minimize their long-term risk.

Licensing procedures, contractual arrangements and signed contracts should be open/Transparent to improve citizens' understanding on the expected benefits from Gas and Oil in terms of revenue and other social corporate responsibilities to be performed by the investor.

LINK 2: REGULATION AND MONITORING OF OPERATIONS

- The responsibilities of the various government entities tasked with gas and oil operations regulation and compliance monitoring should be clearly defined, and their authority and resources should be commensurate with their responsibilities.
- Gas and oil regulations should incorporate internationally recognized technical, environmental, accounting, and auditing standards.
- Adequate environmental regulations should be in place, as should a competent authority with the capacity to approve and monitor environmental impact assessments and management plans and enforce compliance
- Regular audits should be carried out to assess production and export volumes, valuation of hydrocarbons, and the cost of operations.
- The development of a national cadastre and a national data bank is key to improving transparency, certainty of rights, the knowledge of the resource base, and the quality and reliability of government revenue estimates.

²Compare E. M. Alba (2009), Extractive Industries Value Chain, Africa Region Working Paper Series #125.

- Coordinated procedures among different government entities should be in place to avoid regulatory gaps.
- The technical capacity of the government agencies entrusted with the regulation and monitoring of compliance is critical for the effective, efficient, and sustainable implementation of the government's policies.

LINK 3: COLLECTION OF TAXES AND ROYALTIES

- The choice of fiscal regime should take into consideration the administrative and audit capacity of the relevant government entities.
- Inter-affiliate transactions regarding product sales, charges for goods and services and provision of inter-affiliate loans should be subject to verification and audit that arms length prices are used
- All revenue streams should be properly accounted for.
- The sale of crude oil, gas, and products should follow transparent and arms-length procedures as specified in the sector law and the relevant contract or license. To ensure compliance, it is essential to collect data on the volumes produced, consumed, and exported, and on the prices actually realized by the seller.
- All transactions should be clearly traceable and accounted for in the state budget. All payments to the government by private companies and by the state enterprises should be made to a treasury account at the central bank.
- Audits and reconciliations of the treasury's accounts and of the companies' accounts should be performed regularly.
- It is important to carry out efforts to build capacity and coordinate procedures among the sector and financial authorities involved in the collection of hydrocarbon revenue.
- Revenue generated by gas and oil activities should be regularly published by the government. Disclosure mechanisms like the EITI involving civil society organizations are useful to improve citizens' understanding of hydrocarbon activities and their financial impact.

LINK 4: REVENUE MANAGEMENT AND ALLOCATION

- Gas and oil resources and revenue should be administered in the context of an overarching macro-fiscal framework that recognizes the volatility, uncertainty, and cyclical nature of their prices and, over time, the exhaustibility of oil, gas, and mining resources. Policies should aim to enforce mechanisms to smooth spending flows. Due attention should be given to long-term fiscal sustainability and to policy measures to mitigate Dutch disease. In particular, consistent links should be established to annual budgets and the medium-term macro-fiscal framework, based on realistic and transparent prices and volumes assumptions.
- Transparent decisions should be made based on (1) how much revenue is used for current and capital spending priorities or debt reduction and how much is set aside for stabilization, expenditure smoothing, saving for future generations or other precautionary needs, and (2) how to design revenue saving mechanisms—including institutional arrangements—to foster their transparency and sound governance.

- The operation of oil and gas funds and of any other saving arrangement should have transparent procedures and an adequate governance structure. Direct spending authority should be avoided and savings should be invested prudently. Regular, independent audits and performance assessments are essential.
- Revenue sharing between the central government and the sub-national governments should be established by laws. The use of rule-based, transparent, simple, and equitable allocation criteria is recommended.
- Earmarking revenue for specific social needs usually results in a suboptimal allocation of resources.
- Effective revenue management mechanisms need to be supported by complementary public finance reforms and institutional capacity building efforts, including at the sub-national level.

LINK 5: IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT POLICIES AND PROJECTS

- Public expenditure plans should take into account the non-renewable and volatile nature of gas and oil revenues, the overall fiscal sustainability, the priorities expressed in the MKUKUTA, and the importance of diversifying the economy.
- Decisions on spending choices (for example, social infrastructure versus physical infrastructure) often need political consensus.
- Partnerships involving government, industry, parliament and civil society, especially in the producing region and at sub-national levels, play a key role in forging sustainable action-oriented organizations. These can be very effective in formulating and implementing programs designed to mitigate the social and environmental effects of gas and oil projects and share the projects' benefits.
- The evaluation of gas and oil projects should include an estimate of environmental and social impacts, and expected socioeconomic benefits and their long-term sustainability. Issues related to the decommissioning of old oil and gas fields and mines deserve careful attention, including post-closure monitoring.
- Attention should also be paid to utilizing existing government and nongovernment project implementation capacity and particular attention given to strengthening this capacity where needed.
- Coordination among government, regional authorities, and gas and oil companies is important for the design and implementation of sustainable projects.

This joint statement was issued by: **HakiElimu, Legal and Human Rights Centre (LHRC)** and **Sikika** on September 24th, 2012 - Dar es Salaam, Tanzania.