Natural Resource Governance Institute

National Petroleum Policy of Tanzania: NRGI Input to CSO Extractive Industry Working Group Position

The Natural Resource Governance Institute has reviewed the analysis of Tanzania's draft National Petroleum Policy of Tanzania published by the CSO Extractive Industry Working Group. We strongly second and support the recommendations from the CSO working group, in particular regarding the importance of transparency and accountability as a major objective of the petroleum policy, as well as the need for a formal consultative process of all stakeholders involved, in order to build acritical mass of understanding and support from Tanzanian citizens.

To build on the working group constructive comments regarding the legal and institutional structure of Tanzania's nascent petroleum industry, we would like to raise broader concerns surrounding the structure, functioning, transparency and accountability of the National Oil Company (NOC). Based on international experience and experts' recommendations, these provisions could be strengthened to ensure that the company fulfills its role and achieves the government's goals as defined in the draft policy.

We identify areas that are critical in this respect and have also provided language below, which may be adapted or edited as necessary, for inclusion in the Working Group comments, if this is deemed relevant by the CSO Working Group.

5.0 Institutional Framework / 5.1.2 National Oil Company

The structure and management of a NOC has a major impact on how effectively the company is able to meet the government's technical and economic goals. While a strong NOC can yield many benefits for the state in terms of financial returns, development of national technical capacity and more, a weak NOC can become plagued by corruption and drain state resources. We note that the draft Petroleum Policy states that the NOC "shall have the structure, mandate, mode of governance, control mechanisms, and financial basis that will ensure the overall national interest." We also note that the Policy sets forth a clear commercial role for the NOC, while a Regulator will handle regulatory responsibilities. This separation of responsibilities will help ensure the NOC has a strategic focus and will prevent the conflicts of interest that may arise when a NOC is responsible for regulating and monitoring its own activities.

It has to be noted, however, that in an environment of limited capacity, devoting scarce resources to setting up a fully-empowered regulator may be challenging. In the short term, Tanzanian authorities may have to prioritize increasing capacity within TPDC and the Ministry of Energy and Minerals, keeping regulatory powers in one or the other. We acknowledge this possibility and recommend that an independent regulatory authority be fully operational at least by the time the NOC is in a position to undertake independent operations in oil blocks. As long as the NOC's role is limited to managing the State's minority ownership in oil projects developed by IOCs, the need for an independent regulator will be less pressing. Whether regulatory powers in the interim period should be kept within the Ministry of the NOC depends on the current institutional structures and existing capacity.

However, a number of other best practices have not been set forth and could explicitly be committed to.

Analysis: best practice for NOCs and new oil and gas producers

It is not clear in the policy how the NOC and its subsidiaries will be financed. Clear sources of funding, proportional to the activities required to fulfill the NOC's objective and for whom the NOC should be accountable to the government, are a key ingredient to NOC's success. In its early stages, it might make sense to endow the NOC with a multi-year budget allocation, approved by Parliament. If the NOC is allowed to develop its own sources of funding, there should be clarity and formal limitations on how it operates.

For the NOC to be successful, it is crucial that it has a competent board and qualified staff. The board of the NOC should be appointed through transparent and well-defined processes and appointment should be based on clear criteria which prove technical expertise. It is important that the board be independent from political influence but accountable to the government for its performance. The current Establishment Order for TPDC provides that the board is supervised by the Minister, but what constitute supervision should be made clear in the law establishing the NOC (and/or the revised Establishment Order for TPDC). Accountability structures for the NOC should allow the board to make ex ante decisions with ex post periodic performance reporting to the government. Rules against conflicts of interest among board members and NOC senior management should also be developed.

International experience has shown that improved transparency has actually boosted the financial performance of NOCs by incentivizing better management practices and attracting external investment. Tanzania is compliant with the Extractive Industries Transparency Initiative (EITI) and the new EITI standard already requires reporting of certain key data like information on beneficial ownership of the NOC and its subsidiaries and joint ventures in oil and gas companies operating in the country, in-kind oil sales managed by NOCs, NOC transfers to and from the treasury and overall revenues earned. The NOC should be required to publicly report on other relevant information including company debts, exploration and production activities, company budget and corporate structure. In any event, the NOC should be at least subject to the same reporting requirements as private companies.

Finally the NOC should publish audit reports conducted by external, independent firms.

Recommendations:

In summary, we recommend including language in the Policy stating:

The legal and regulatory framework governing the NOC will include:

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a) Required disclosure of beneficial ownership in the NOC, its subsidiaries and joint ventures .

b) Formally and clearly defined rules on NOC funding, either from the consolidated budget, independent financing sources, and/or public listing.
c) Clear criteria by which board members are selected, rules ensuring independence of the board from political interference it its decision-making and accountability of the board for performance to the government through submission of periodic reports, rules against conflicts of interest among the board members and senior management

d) Required publication by the NOC of key data such as company debts, exploration and production activities, company budget and corporate structure and at least as much information as is required to be disclosed by private companies

e) Required publication of independent audit reports