OIL GOVERNANCE AND TRANSPARENCY ALLIANCE - OGOTA

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Chairperson and Members
Parliamentary Committee on Commissions
Statutory Authorities and State Enterprises
Parliament of Uganda

PETITION ON ILLEGAL TAX WAIVER OF US$157,095,366 GRANTED TO TULLOW BY GOVERNMENT OF UGANDA UPON THE SALE BY TULLOW OF PART OF ITS INTEREST IN EXPLORATION AREAS EA1, EA2 and EA3 TO CNOOC AND TOTAL

We send you greetings and extend our appreciation for the work you are doing to inquire into the so-called presidential handshake of UGX6 billion paid to selected public officials. Ugandans are counting on you and the entire parliament to approach this inquiry with a sense of urgency and public accountability.

Hon. Chairperson, through you, we extend our appreciation to all those public officials who continue to serve our country in various capacities, and particularly those who have made a contribution towards accelerating the development of our Nation's oil and gas resources. We acknowledge and honor those who continue to serve our country with excellence, integrity and full commitment to public service.

Your petitioners are Ugandan civil society organizations engaged in policy research, advocacy and monitoring implementation of public policies in the areas of public expenditure governance, budget transparency and accountability, anti-corruption, good governance in the extractives industry with particular focus on oil and gas resources, equitable development and social justice. It is in this regard, and based on our commitment to contribute to ensuring that Uganda's oil and gas resources are developed and exploited in a manner that derives the greatest benefit for our country and the majority of Ugandan citizens that we are presenting this petition.

We would like to address the Committee in respect of a tax waiver amounting to US$ US$157,095,366 with regard to a sale by Tullow of part of its interest in Exploration Areas EA1, EA2 and EA3 to CNOOC and Total.

1. As you may be aware, Uganda Revenue Authority (URA) assessed (SA/LTO/2569 and SA/LTO/2570) the amount of tax to be paid to Government of Uganda on the sale by Tullow Uganda Limited (TUL) and Tullow Uganda Operations Pty Ltd (TUOPL) of interest in Exploration Areas EA1, EA2 and EA3 to CNOOC and Total for the consideration of US$ 2,933,330,400 amounting to US$475,924,120.05. The said tax assessment, which was duly acknowledged, by TUL and TUOPL is dated October 18, 2010.

2. On December 1, 2010, TUL and TUOPL jointly lodged an objection to the aforementioned assessment.

3. Upon consideration of the objection by TUL and TUOPL, Uganda Revenue Authority issued an Objection Decision on February 24, 2011 (Annex 1) and revised the total tax to be paid by TUL and TUOPL on the said transaction to US$467,271,971 (cf. TAT Application No. 4 of 2011).

4. On March 15, 2011, the Memorandum of Understanding was concluded between the following parties:
   a. The Government of Uganda represented by the Ministry of Energy and Mineral Development;
   b. The Uganda Revenue Authority;
   c. Tullow Uganda Limited
   d. Tullow Uganda Operations Pty Ltd;

to the effect that TUL and TUOPL would pay US$141,824,438 (see para 3.2(i) of the MoU) being 30% of the amended assessment amount. The parties also agreed that the dispute in relation to the Amended Assessment Amount would be determined in accordance with the objection and appeals procedures contained in the Income Tax Act (Photocopy of MoU attached as Annex 2).

5. On the March 25, 2011, TUL and TUOPL filed an application for review before the Tax Appeals Tribunal (TAT) contesting the assessments and the objection decision by the Uganda Revenue Authority.

6. Upon hearing of the dispute, the Tax Appeals Tribunal ruled that TUL and TUOPL pay a capital gains tax amounting to US$407,095,366 being the tax payable after deducting the pre-investment relief (cf. TAT Application No. 4 of 2011).

7. TUL and TUOPL appealed the decision of the Tax Appeals Tribunal to the High Court. However, before the High Court could determine the application on its merits, Uganda Revenue Authority entered into a consent judgement in which it agreed to a payment of US$250 million as the capital gains tax instead of the US$407,095,366 confirmed by the Tax Appeals Tribunal.

We therefore petition the committee to address itself to the following issues:

8. Demand for greater transparency in oil contracts and related transactions

We invite the Committee to address itself to issues of transparency by Government of Uganda regarding oil transactions. The MoU of March 15, 2011 (Annex 2) between GoU, URA, TUL and TUOPL is marked "PRIVATE AND CONFIDENTIAL". It is inconceivable that Government and public sector agencies can enter into contracts that are considered "PRIVATE".

We believe that in spite of the continuous assurances by Government of Uganda officials that oil will not become a curse, the level of secrecy with which Government is transacting business with regard to oil and gas resources is the very definition of an oil curse.

9. Holding public sector and private sector officials more accountable
We are concerned that the MoU of March 15, 2011, which sets out the framework for the payment of capital gains tax to Government of Uganda, is marked "PRIVATE AND CONFIDENTIAL." It is extremely important that the Committee interest itself in understanding why a memorandum of understanding signed regarding payment of taxes concluded by Government of Uganda on behalf of Ugandan citizens would be considered a "private" matter. It would be private to who?

We believe that the oil and gas sub-sector will not benefit the majority Ugandans unless it is managed in the most transparent manner where public sector officials look at themselves as servants of the Ugandan citizens and trustees of the offices they occupy and the authority they hold. The import of Section 151 of the Petroleum (EDP) Act No. 3 of 2013 is that the public must has access to information regarding petroleum activities. It is therefore incumbent on public sector officials, in particular a minister to ensure that they are not parties to instruments that will deny Ugandans access to relevant information regarding petroleum activities, provided that such information is not exempted by business confidentiality. We don't see how disclosure of tax related information could prejudice the business of any company.

In this regard, we implore the Committee to ensure that the following officials who signed on the MoU of March 15, 2011 be summoned to testify before the Committee with regard to the presumed "private and confidential" nature of the MoU. The officials are:

i) Hilary Onek, former minister for energy and mineral development;
ii) F.A Kabagambe-Kaliisa, former permanent secretary, ministry of energy and mineral development;
iii) Harrient Lwabi, Ag. Solicitor General;
iv) Allen Kagina, for Commissioner General, Uganda Revenue Authority;
v) Doris Akol, former Secretary to the Board of URA and current Commissioner General, URA.
vi) Graham Martin, General Counsel, TUL & TUOPL

10. Authority to waive tax
This case raises the issue of who has authority to waive tax. We believe that once URA has made a tax assessment, appropriate procedures as prescribed under the Income Tax Act should be followed in adjusting the assessment.

We invite the Committee to interest itself in who exercised the authority to enter into a consent judgment in a case, which URA had won before the Tax Appeals Tribunal. The Committee should establish whether the Board of URA, the Minister or the President authorized URA to enter into this consent judgment, or if the Commissioner General took such a decision in her own discretion - which in our view would tantamount to abuse of discretionary administrative authority.

Hon. Chairperson and Members, under Part VIII of the Uganda Public Finance Management Act, Parliament set the rules governing the collection, deposit, management, investment, and expenditure of the petroleum revenue, which accrues to Government from the exploitation of the petroleum reserves in Uganda. We believe that the so-called consent judgment constitutes a gross abuse of discretionary administrative authority, if such authority exists at all.

11. Coincidences create perceptions of collusion
We are particularly intrigued by the coincidence between the consent judgment and the authority to discontinue the arbitration proceedings from the International Centre for Settlement of Investment Disputes (ICSID) (See ICSD Case No. ARB/13/25). The Committee may wish to learn that the letter in which Government of Uganda, Tullow Uganda Limited and Tullow Uganda Operations Pty Ltd communicated the discontinuation of the Tribunal proceedings is dated June 19, 2015, exactly the same day the consent judgment was registered in the High Court. Without a doubt, it is possible for parties to act expeditiously in handling communications regarding transactions of this nature. However, given the circumstances surrounding this matter, the degree of efficiency in action by the three parties raises a red flag regarding the credibility and legitimacy of the entire transaction (The Order of ICSID is attached for reference as Annex 3).

12. TUL and TUOPL still owe the people of Uganda US$157,095,366
We invite the Committee to address itself to whether the actions of URA in entering a consent judgment (See Civil Appeal No. 19 of 2014) in a case, which the Authority had won in the first instance, tantamount to irregular conduct. The Committee should also put on notice TUL and TUOPL that they owe Ugandan tax payers US$157,095,366 which the balance unpaid on the total tax of $407,095,366 upon deducting the US$250 million which was paid as per the consent judgement in Civil Appeal No. 4 of 2011.

13. The UGX6 billion "presidential handshake" is a handshake for colluding to let someone steal US$157,095,366 from Ugandans.
We invite the Committee to consider the so-called UGX6 billion "presidential handshake" as an appreciation or a bribe for public sector officials to let Uganda lose US$157,095,366 rather than appreciation for defending a tax of US$250 million that was paid by TUL and TUOPL.

As the Committee may be aware, Uganda earned US$313,447,500 from the sale by Heritage to Tullow for a transaction amounting to US$1.45 billion. How is it possible that the sale by CNOOC/TOTAL amounting to US$ 2,933,330,400 9 (more than two times the value of the Heritage transaction) could only yield a capital gains tax of US$250 million? There can be no doubt that the decision by URA to enter into a consent judgement for only US$250 million lack both in business logic and common sense or was deliberate to deny Ugandan citizens the full benefits arising from this CNOOC/Total sale.

Finally, we request for an opportunity to interact with the Committee on the issues addressed in this petition and how they relate to the specific issue of inquiry before the Committee.

SO WE PRAY

Dated this 14th day of February, 2017

CC: Rt. Hon. Speaker Kadaga
CC: Members, COSASE
CC: Rt. Hon. Prime Minister Ruhakana-Rugunda

Signed for and on behalf of:

1. Great Lakes Institute for Strategic Studies (GLISS)
http://www.gliss.org/

2. Uganda National NGO Forum
http://ngoforum.or.ug/

3. Transparency International Uganda
http://tiuganda.org/

4. Uganda Debt Network – UDN
http://www.udn.or.ug/

5. Civil Society Budget Advocacy (CSBAG)
www.csbag.org

6. ActionAid Uganda
www.actionaid.org/uganda

7. Forum for Women in Democracy (FOWODE)
www.fowode.org

J. Oranje Odida

8. ~~Federation of Uganda Women Lawyers (FIDA)~~ The Uganda Association of Women Lawyers (FIDA Uganda)
http://fidauganda.org/

9. Africa Institute for Energy Governance – AFIEGO
http://afiego.org/

10. Oxfam International Uganda
https://www.oxfam.org/en/countries/uganda

11. Global Rights Alert
http://www.globalrightsalert.org/

12. Centre for Constitutional Governance (CCG)
http://www.ccgea.org/

13. Anti-Corruption Coalition of Uganda - ACCU
http://accu.or.ug/

14. Platform for Labour Action
http://www.pla-uganda.org/

15. Southern and East Africa Trade Information and Negotiation Institute - SEATINI http://www.seatiniuganda.org/

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