Tanzania Special Committee Report: Oil and Gas

08 June 2018

Executive summary:

- Any Eleven oil and gas contracts were reviewed during the Special Parliamentary Committee investigation to establish how Tanzania benefits from extraction of oil and gas. The full report has not yet been released but key findings have now been read to Parliament highlighting key findings and recommendations.
- Probable changes which the government will look to implement include greater need for local content in supply chains, requirement for oil and gas companies to keep funds in Tanzanian bank accounts, a requirement for all arbitration to be conducted through Tanzanian courts and increased taxes.
- The committee claims to have found 'loopholes' in contracts which have contributed towards Tanzania being denied US$128 million in revenue. Five former ministers of energy and minerals have also been accused of signing 'dubious' contracts which have disadvantaged the country.
- Authorities have now been tasked to investigate whether previous agreements were signed in good faith and it has been recommended that all exploration and production contracts are reviewed to ensure that Tanzania is receiving maximum benefits.
- Findings of the committee mirror those of a similar investigation into the mining industry conducted in 2017 which were used to justify a second more extensive review of the industry and review of agreements. It is highly likely that the government will use similar tactics in the oil and gas sectors to gather evidence to renegotiate more favourable contracts.
- Instability in the business environment has already caused uncertainty which has discouraged investment and is cited as one reason for a 15% dip in foreign direct investment (FDI) in 2016. Continued pressure on the oil and gas sector is almost certain to impact business investment decisions in other sectors which will probably lead to a further dip in FDI over the medium term.

Report findings and recommendations

Conflict On 02 June 2018, a summary of findings from the Special Parliamentary Committee investigation into how Tanzania benefits from the extraction of oil and gas was read out in front of Tanzania's Parliament: the full report has not yet been released. During the investigation, 11 exploration and production contracts between government and privates were investigated, key findings were:

- Five former ministers of energy and minerals have been implicated in the report for signing 'dubious' contracts (*a listed of contracts signed by these former ministers can be found at Annex A*). These former ministers are:
    - Mr Daniel Yona.
    - Mr Edgar Maokola Majogo.
    - Mr Ibrahim Msabaha.
    - Mr Nazir Karamagi.
    - Mr William Ngeleja.

All contracts were signed by Tanzania Petroleum Development Corporation Managing Director, Yona Killaghane.

- 'Loopholes' in contracts were identified which had denied the government Sh291 billion (US$128 million) of revenue. Pan African Energy Tanzania (PAET), a gas producer, was specifically singled out as having avoided paying Sh136bn in tax (US$60 million).

- It was claimed that Songas, a producer of electricity, and PAET had been collaborating to shift their burden of operations to the Tanzania Petroleum Development Company (TPDC) and Tanzania Electricity Supply Company (TANESCO).
- The ability of companies to maintain foreign bank accounts was deemed to have prevented full benefit for Tanzania, as was the continued ability of O&G companies to settle disputes abroad.
- Ability to gain a recoverable loss through shifting the costs of exploration from one well to another was cited as a method being used to increase company profits and decrease government tax.
- The government was reported to be receiving 5% in off-shore royalties as opposed to the 7% to which it is entitled.
- Involvement of the Tanzania Petroleum Development Company (TPDC) in projects should be 25%: it was found to be between 5-20%.
- A large disparity in pay was identified between expatriates and local workers working in the same positions.

The report recommended the following actions:

- A full review of existing contracts and redrafting where necessary to ensure maximum benefit for Tanzania.
- The Committee specifically proposed that the government does not renew its power production and gas drilling contracts with Songas due to losses that have been incurred in the present 'unfair deal': the government – Songas contract is set to expire in 2024.
- The Committee has tasked law enforcement bodies to investigate all contracts and ministers involved in the signing of 'dubious' deals to find out whether they were made in good faith.
- Government institutions should be empowered and tasked to check on the capacity of expatriate workers in the oil and gas sectors.
- The Attorney General's office should have lawyers who are capable and understand the oil and gas.
- To make sure that the TPDC can fully participate in the oil and gas sectors, the government needs to provide it with more financing.

Private sector response

The full report has not yet been released but PAET, and their parent company Orca, have already disputed findings and asserted their cooperation with the investigation and commitment to agreements. PAET has denied allegations against the company and stated that the committee has intentionally misinformed the public despite being given clear facts.

Assessment

- The committee's findings are similar in theme to those found during a special committee investigation of the mining sector in 2017. Similarities include accusations of 'loopholes' in contracts being used to decrease the benefits for Tanzania, unfair contracts and manipulation by companies to decrease their tax payments. After an initial investigation of the mining sector, findings were used to justify a second more extensive investigation; a tactic which could possibly be replicated within the oil and gas sector.
- It is highly likely that ultimate intent of the government is to use the findings of this, and any subsequent investigation, as basis to review and renegotiate all existing oil and gas contracts, including production and exploration. Based on the track record of government renegotiations in the extractives industry, it is probable that any contract renegotiations would include:
    - Removal of ability to seek arbitration through international courts.

  - Impose increased local content requirements on oil and gas companies, including greater employment of Tanzanian workers and favouring of Tanzania companies for services and procurement.
  - Make it harder for expatriate workers to secure work permits.
  - Increase taxes and royalty rates.
  - Include a requirement for oil and gas companies to keep profits from operations in Tanzanian bank accounts.
  - The legal requirement for maximum beneficiation of national resources is currently unclear in this context, and requires government clarification. It does however leave open the possibility of government pressure for on shore refining of oil prior to export, which is unlikely to be government funded given the current budgetary limitations.
- The investigation into former ministers is likely to be used to demonstrate commitment of the current government to tackling corruption; this will likely be used as a tool to increase the popularity of the current government.
- In most cases where companies are accused of tax evasion it is not unusual for governments to impose punitive measures until debts are paid. However, in the case of Songas and PAET they are providing a vital service which the country's development is reliant on: electricity. Hindering their operations would therefore have significant impact on businesses and private users which would in turn disrupt development and domestic politics. It is therefore possible that the government could recoup payments through other methods, for example, stopping payments from TANESCO to the companies for electricity up to the value of debt.
- Foreign direct investment into Tanzania dipped by 15% in 2016 attributed to the introduction of stringent policies by government which had caused uncertainty in the business environment. The findings of this report and their disruption to the oil and gas sector will create further uncertainty which will almost certainly have a negative impact in the medium term on FDI. The extra money that the government subsequently receives from the oil and gas sector is unlikely to offset the losses of FDI which could reduce investment in development for the country.

Annex A: Some of the contracts signed by the five former Minsters accused of signing 'dubious' deals.

Production

- The Mr Edgar Maokola Majogo signed the Songosongo PSA with PAET in 2001: the project is now in production stage.
- Mr Yona signed the Mnazi Bay block production sharing agreement (PSA) between the government and Artumas in 2004. Artumas later sold the licence to Maurel and Prom: the project is now in the production stage.

Exploration

- The Mr Daniel Yona signed the Ruvuma PSA in 2005 with Ndovu Resources.
- Mr Daniel Yona and Mr Ibrahim Msabaha signed the Deep-Sea Block I & IV deals with BG in 2005 and 2006.
- Mr Nazir Karamagi signed the Block II deal with Statoil in 2007.
- Mr Nazir Karamagi also signed the Ruvu block PSA in 2007 with Dodsal Hydrocarbons and Power (Tanzania) Pvt Ltd.
- Mr William Ngeleja signed the Uni area PSA with Ndovu Resources in 2011.
- Mr William Ngeleja signed the Rukwa South block PSA in 2011 with Heritage Oil Tanzania.
- Mr William Ngeleja also signed the Kilombero PSA in 2012 with Swala Oil.
- Mr Killaghane, as TPDC head for 18 years, co-signed all the contracts mentioned.