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Petroleum Policy and Constitutional Paradox in the United Republic of Tanzania

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INTRODUCTION

Prospects of existence of oil reserves along the Zanzibar Islands' coastal belt threatened to split the 45 years old Tanzania Union government. The threat arose out of existence of oil sips seen along the Isles' coastal belt prompting heated debate between members of the Zanzibar House of Representatives and Tanzania mainland legislators on ownership and petroleum revenue sharing between the two governments and developers.

The Isles' representatives argued that petroleum resources be withdrawn from the Schedule of Union matters while their mainland counterparts firmly held that constitutional matters must not be deliberated unilaterally outside the constitutional mechanism. As the debate took the media attention an international consultant was commissioned to design and propose a mechanism for equitable revenue sharing from petroleum resources beside that of

Production Sharing Agreement (PSA).

Tanzania Knowledge Network (TAKNET) forum found it an opportune moment to seek Tanzanians' views over the union's controversial petroleum governance and such other natural resources abounding Tanzania. This brief presents diverse opinions expressed at the forum www.taknet.or.tz before the consultant had presented his final report to the Union government. Contextual literature from other sources has been supplemented to bridge the information gap.

This brief consists of: introduction, petroleum context, discussion, conclusions, and recommendations.

PETROLEUM CONTEXT

Tanzania resource base has been intermittently explored over the last 50 years. The core legal framework for petroleum exploitation is governed by the Exploration and Production Act of 1980, known as the Petroleum Act with the model

of operation governed by Production Sharing Agreement (PSA) regulated by the Tanzania Petroleum Development Corporation (TPDC).

As of June 2009 TPDC owned 34 exploration blocks located offshore and onshore Tanzania. Of the 34 blocks, 21 have already been granted exploration licenses while three companies have submitted application for 8 blocks and developments have been done to 2 blocks, one owned by Artumas Group Inc. and the other by Pan African Energy Limited.

The remaining 3 blocks are still available for exploration and are located at Rukwa basin, Kilosa basin and Selous basin respectively. Petroleum exploitation activities in the country are dominated by international companies from Europe, South and North America. From 1952, when exploration activities begun, 42 wells have already been drilled and the 43rd one is still under drilling. To date no petroleum discovery has been made

except for natural gas reserves at Songosongo and Mnazi Bay which are already in production.

Petroleum exploration blocks' distribution stands at 4 offshore blocks in Zanzibar while the rest of them, 30 blocks, hence more than 80% are in the mainland. Recent oil sips along the Isles' belt raised great hopes that crude oil could be found in Zanzibar earlier than in mainland Tanzania.

In the wake of these positive exploration activities oil companies including Maurel & Prom and Atrim Resources which initially were licensed by TPDC to carry exploration in the Isles were discontinued by the Zanzibar government on grounds that a new oil revenue sharing mechanism be in place prior to any further explorations. Zanzibar government was discontented with PSA mechanism under TPDC and wished to negotiate its own terms through its own Directorate of Petroleum that oversees petroleum sector in Zanzibar. Consequently an international consultant was appointed to resolve the impasse.

The consultant revealed that the geological features of Pemba and Zanzibar coast, particularly its low water depth, could prove that the assumed oil reserves were of less significance than the oil sips existing along the belt. He further recommended that if reserves were to be found anywhere in Tanzania, revenue sharing mechanism

be such that 60% be retained by the developer and the remaining 40% to the Republic. Even this consultancy was received with some misgivings in Zanzibar.

DISCUSSIONS

The discussions on Petroleum Policy which lasted for four months and whose moderator persistently reminded contributors to do justice to the gravity and sensitivity of the topic under scrutiny; wound up with only mentioning some important subjects and events happening in the country without focusing on the policy and legal provisions needed to handle disorders in respective issues promptly. Suffices here to mention Article 27 of the Constitution, to which we are all called to respond responsibly, to emphasize the moderator's call for contributors to delve into the complexity of the situation we are in with a purpose of recommending sound constitutional formulations, policies, regulations and legal framework on natural resources management for the common good.

The principle of two governments in the United Republic of Tanzania enables Zanzibar distinctions to be taken into account giving room for Isles' initiatives in own welfare and development while simultaneously preventing possible abuse of it by union bodies.

The Constitution of the United

Republic of Tanzania 1977 Article 4 (3) obligates the government and its agencies to efficiently exercise their powers as specified in this article carefully discharging their functions in accordance with the provisions under Union matters as well as non-union matters.

It states "Mineral oil resources, including crude oil, other categories of oil products and natural gas is the 15th on the list of 22 union matters listed in the First Schedule of the Constitution." The Petroleum Act of 1980 and the governing Production Sharing Agreement (PSA) were instituted to regulate exploration functions demanding accountability and transparency from the investors to government, stipulating also revenue sharing mechanisms where oil or natural gas were found.

However, the government of Zanzibar acted unilaterally and established its own Directorate of Petroleum to regulate exploration activities in Zanzibar there by incapacitating TPDC to function on the Isles and grounding to a halt explorations licensed by TPDC in Zanzibar. In such circumstances only diplomacy, good political will and contextual justice in truth to all parties concerned must be expeditiously applied to resolve the impasse.

But the way the matter was handled showed that the Union had no prompt response from authority to address contentious union matter as well as land use

conflicts by not putting in place well designed regulatory mechanisms to justly compensate all stakeholders when exploitation of the nation's natural resources was being carried out.

To drive home well the above perspective, a contributor Deo said this, *"Paradox or no paradox:The Zanzibar's claim to exclusive ownership of the oil is along ethnic sentiments. They forget that exploitation of oil reserves will not happen if the country as whole is not perceived by investors as peaceful, the security of which is guaranteed by national defense forces....."*

Another contributor, D.P.Mutalemwa sites inter-cine squabbles between Farmers and livestock keepers in Kilosa; Ulyankulu inhabitants and Gold mine investors and Inhabitants bordering national game reserves against wardens etc. He concludes with a passionate call that God-given resources should, above any body else, be destined to the indigenous populace.

CONLUSSIONS

Revenue Sharing

Revenue Sharing accrued from minerals and natural resources was a sensitive issue and the crux of the matter in the wealth of nations. It required correct information and just regulatory mechanisms to face up to challenges in these sectors for the satisfaction of people's basic needs particularly where

they are oppressed by poverty or constrained by socio-political dictates. Even good governance got threatened wherever fundamental national and individual rights were ignored or trampled upon without safeguards but subordinated to preconceived interests and exploitation of the weak by the strong.

Tanzanians were aware of their inheritance as was given to them by nature in the natural resources and what investors ought to have for their investing of already developed technology that was appropriate for exploitation of their inheritance. In this regard they were demanding for equitable share from the authority.

Any attempts to exclude the indigenous who were the natural owners would not justify invocation of Mwalimu's Dictum: that once one tasted taboo meat, he/she would be haunted by it, in reference to public demand for their fair deal from the oppressors and exploiters who were appealing to constitutionalism without upholding the core principle which subjected all state actions to law and justice – hence predictable and examinable for the citizen. Secretive and un-examinable conduct from the Executive which is subject to supervision from the legislature will brew conflict when the latter is forced by the public domain to demand for redress of their robbed inheritance.

Lessons from other African countries

In many African countries legally constituted States at their independence were overthrown by the military in connivance with domestic or foreign private interests for power and divergence of national resources for their own profit. This has persisted to-date even where legally constituted states have survived or have been restored after a lengthy internationally assisted democratic process.

Hence internal conflicts of interest and tribalism conducted through armed struggles have taken heavy toll in human life and natural resources to the detriment of the poor masses. Discovery of petroleum in countries like Nigeria (Niger Delta), Sudan (Abyei), Angola (Cabinda) and Uganda – Zaire border is more of a curse than a boon. Revenue from these natural resources is used to support armed conflicts causing immense suffering and displacement of innocent women and children creating armed boy child soldiers and girl-child sex slaves in wealthy African zones.

Could such miseries come to Tanzania at the discovery of petroleum? The Executive is cautioned and requested to be vigilant and do whatever it takes to put in place just regulatory mechanisms to protect and compensate appropriately all stakeholders and the environment to the benefit of future generations when exploiting our abundant natural resources.

RECOMMENDATIONS

1. All non renewable natural resources which are potentially available for extraction are capital and not surplus. Revenue accruing from them should be used to develop infrastructure and build sustainable basic social services of health and education throughout the United Republic.
2. Being a signatory of the Extractive Industries Transparency Initiative (EITI), Tanzania should enforce transparency and accountability in all extractive industries through companies' information publications to enable the natural communities to participate in negotiations at early stages of exploration for their common good.
3. Innovative mechanisms for facilitating technology transfer from industrial countries should be urgently put in place with a view of maintaining the functionality and growth of our domestic extractive industry.
4. Contagious internecine community, investors and national squabbles should be resolved at their onset. History teaches us that the past is different from the present politically, socially and in meaning and value. There is nothing that remains the same. The Executive at all levels should act timely and wisely and should know that search for *Justice and Peace is an ever present challenge*.
5. All natural resources extraction regulatory policies and agreement should entail fair compensations to natural inhabitants of the land at which development is carried out.

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