



Somaliland Non State Actors Forum

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Civil society position paper on Extractive Sector:

Pursuant to SONSAF's ongoing policy, dialogue and advocacy initiatives, on 3rd December 2014, SONSAF hosted the First Somaliland Extractive Sector Forum, in Hargeisa. The aim of the forum was to establish an information sharing platform to enhance transparency around the development of this sector. SONSAF commends the high level delegation from the government for attending, notably the Minister of Energy and Minerals, **Mr. Hussein Abdi Dualeh**, the Minister of Interior **Mr. Ali Mohamed Waranade**, the Government Solicitor General, **Mr. Ibrahim Idle**, and the Chairman of the Chamber of Commerce **Mr. Mohamed Shukri**.

SONSAF had established permanent civil society/non state actors thematic working group dedicated to the issues of state-building, peace-building and conflict prevention. Despite, the rapid expansion of the extractive industry in recent years, gaps remain in the regulatory and legislative frameworks. The government is applauded for committing to developing such frameworks, in line with the New Deal Peace-building and State-building Goals on economic foundations for development, and must move to do this as soon as possible.

CSOs have an important role to play in shaping how exploration takes place, and in supporting the development of the governance of the sector, to regulate how exploration and extraction can take place in an accountable, transparent manner in line with principles of good governance, safeguarding the environmental and in line with conflict sensitive approaches. This will serve to support Somaliland's future management of its natural resources. In line with this role, this is the first policy briefing paper on the extractive sector of Somaliland.

During the forum, the Minister for Energy and Minerals highlighted the Ministry's achievements over the previous four and a half years. He also explained the significant risks involved in the industry. The Minister discussed the development of Production Sharing Agreements (PSAs), a form of contractual arrangement now widely used in determining the financial and legal duties and entitlements in oil and gas exploration and production. They are used in over 40 countries, including in Africa, Central Asia and South-East Asia¹. The Minister indicated that Somaliland is closer than it has ever been in its history to exploit its natural resources for the benefit of its people in a fiscally and environmentally responsible way. However, he added that the chances of

¹ See Allen & Overy 2013, p3

making a commercial discovery in Somaliland are highly likely although worldwide average in making a commercial discovery during exploratory drilling is around 10%.

During the forum, the following issues were raised:

Oil and Mineral Information:

The absence of accurate information about oil and gas exploration has resulted in conflicting perspectives around exploration activities. The Minister confirmed the existence of misinformation at the community level which needed to be clarified.

- The government of Somaliland has signed several agreements with international oil companies (IOC) namely Genel Energy, Ophir Energy, Prime Resources, Asante Oil, DNO and Ansan, but only DNO and Ansan have signed new Production Sharing Agreements with the current government.²
- The Minister presented that new legal frameworks are in development to strengthen the transparency of the extractive sector and revenue management. “The Extractive Industries Transparency Initiative (EITI) will provide a best practice approach to exploration and the exploitation process and provides clear guidelines for operators to follow to mitigate any adverse environmental impacts that can result from these operations”.³
- The Ministry has been informed by one exploratory company that they are hopeful to find a hydrocarbon resource that can be commercially exploited in their respective acreage and others are hopeful to do so as well.
- The Minister stated the need for the international community to support Somaliland’s peaceful efforts to exploit its natural resources for the benefit of its citizens.
- The Minister appealed to all Somaliland citizens to support this process of exploration.
- The Minister emphasized that the Ministry of Energy and Minerals is ready to increase its information sharing with public and civil society engagement.

Possession of Territory, Right and Title over the Territory: Advise

A key area of contention requiring legal clarity relates to overlaps between Somaliland’s contemporary Oil Company Agreements and the pre-1991 Somali Republic licenses of 1986⁴ on oil exploration for a three-block area in the Guban area of Somaliland, for Chevron (onshore and offshore)⁵ and the Somali Republic license agreement to Conoco (onshore) in 1986⁶, and an oil exploration agreement for Nogal, Sool and Togdher regions.⁷ Most of the pre-1991 license

² See Needs Assessment for the Development of Somalia's Extractive Industries, Adam Smith International, April 2014, p-28,

³ Presentations made in the first Extractive Sector meeting held in Hargeisa, on 3rd December 2014, by Mr. Hussein A. Duale, Ministry of Energy and Mineral and Guleid Ahmed Jama, Advocate, Xaqdoon Law Firm, promises made by newly proposed Petroleum and Mining Legal Frameworks.

⁴ Needs Assessment for the Development of Somalia's Extractive Industries, Adam Smith International, April 2014, pp.3-54 “Somaliland Agreements with Ophir Energy, Prime Resources and Asante Oil: exploration and seismic, reported as overlaps with pre-1991 license holders Conoco and Chevron, added FGS does not recognize the agreements”.

⁵ See **Chevron** (onshore and offshore) 1986, oil exploration agreement for a three-block area in the Guban area of northern Somali Republic, see p.55 (Ibid).

⁶ See the Government of Somali Democratic Republic, **Conoco** (onshore) 1986, oil exploration agreement for Nogal, Sool and Togdher regions; (Ibid)..

⁷ Needs Assessment for the Development of Somalia's Extractive Industries, Adam Smith International, April 2014, pp.3-24,

holders are holding conversations with the Federal Government of Somalia⁸, while Somaliland is not member of the Federal Government of Somalia. And since 2003 Somaliland attracted the interests of multiple oil, gas and mining companies.

Petroleum and Mining Legal Framework:

The meeting addressed the need for a Somaliland extractive sector legal framework. According to the Minister of Energy and Minerals, Somaliland is “developing a new modern regulatory framework to guide the sector before anything gets out of the ground”. In addition, he pointed out that Somaliland used the existing laws that they inherited from the former regime of Somali Republic before the breakup on a temporary basis until we develop our own, and are in the process of establishing laws applicable to Somaliland. According to the Minister:

- The Ministry of Energy and Minerals engaged a Norwegian law firm for the development of Somaliland’s oil and gas policies, legal framework and regulations.
- In the Somaliland legal framework, documents are at draft stage including the Upstream Petroleum Policy, Upstream Petroleum Bill, Petroleum Revenue Bill, and the Establishment of the Petroleum Fund. These will establish transparent revenue management processes and will establish a supervision mechanism and Consultative Council for Petroleum Revenue Management. The framework will also establish internal audit and external audit institutions functions.
- Somaliland has developed its own Mining Code, the code will be sent to the Council of Ministers for their endorsement.

The Resource Curse:

Somaliland is aware of the potential that the development of the extractives sector may trigger a resource curse⁹. The Minister advised the forum that “oil companies can no longer afford to work with governments with corruptive practices or commit environmental disasters”, and stated that all PSAs that this government entered into had anti-bribery clauses; violation of which could result in the termination of their contract. The Minister said “We want to chart the path of prudent management of our natural resources to bring about a positive impact on the lives of our people and our economy”.

Environmental Safeguarding:

The meeting addressed provision of environmental safeguarding in oil exploration operations. During discussions the minister for Energy and Minerals stated that:

- The Ministry of Energy and Mineral is working closely with the Ministry of Environment and Rural Development to ensure proper environmental oversight prior to operations.

⁸ See Dominik Balthasar, *Oil in Somalia Adding Fuel to the Fire?*, Published in 2014 by the Heritage Institute for Policy Studies Amira Hotel Road, KM5 Junction, Mogadishu, Somalia, p.27

⁹ The *Resource Curse* is a widely used term to denote the adverse impacts of extractive sector development specifically related to violent competition over control of resources and corruption within the sector that has taken place in other developing countries.

- All extractive sector activities are to be preceded by a thorough environmental impact assessment studies performed by reputable international companies.¹⁰
- All PSAs signed with oil companies and any mining agreements will include environmental impact assessment studies.
- Where findings on environmental studies were requested during the meeting by participants, the Minister promised to make these available.

Provision of Oil Exploration Security:

The meeting addressed the provision of security services to those engaged in the sector. Despite a report by The Adam Smith Institute¹¹ stating that security in the sector would be provided by a private security firm, the Ministry of Interior stated that no private security firm would be involved in the protection of oil exploration activities, and that security would be provided by a specialized Oil Protection Unit (OPU) of the Somaliland police. The Minister of Interior clarified the structure and command of the OPU, which will fall under the National Police Commission and the Ministry of Interior. Following the OPU's establishment, seismic exploration work which was suspended in 2013 will be resumed.

SONSAF analyzed the outcomes of the meeting, reviewed relevant literature and concluded the main recommendations as recorded and documented throughout the proceedings, which were validated by all participants during the final session of consultations. These recommendations are as follows:

Recommendations:

To the Government

- Commit regular information sharing on extractive sector, and must promote participatory and inclusive governance of the extractives sector.
- Address issues of ownership, disputes, and rights to enter into and sign agreement, possession and responsibilities of the territory.
- Lay down the foundation and measurements of transparent and accountable governance within a national extractive sector policy formulation and a clear regulatory framework.

Policy and Legal Framework

- Enhance and support public participation in developing the legal and regulatory frameworks for extractives exploration. Ensure that the regulatory and legal framework clarifies ownership and jurisdiction of the territory, in order to mitigate conflicts within the Somaliland boundaries or across.
- If multiple interested companies are found, a competitive bidding process for extractives companies should be implemented at both domestic and international levels to ensure transparency of process and the granting of contracts.

¹⁰ Presentation made by Hussein Abdi Dualeh at Maansoor on 3rd December 2014

¹¹ See Summary of findings, Community Engagement Assessment of Extractive Sector April 2014, p.75

Extractive Sector Strategies Required

- Develop and implement a public awareness-raising strategy and action plan for outreach and community engagement at the grassroots level. This will create an atmosphere in which all state, international and community actors can incorporate and consolidated their efforts towards constructive extractive industry exploration.
- Develop and implement a strategy for international oil companies to conduct community engagement. Ensure public awareness and participation in the development of the extractive sector policies and legal framework.
- Ensure all actors are aware of the roles, functions and rationality of the OPU through public oversight and consultations.
- Develop strategy for environmental safeguarding in the extractive sector.

To Civil Society /NSAs

- Undertake proactive advocacy initiatives in the participation of extractive sector development management and operational strategies. In a streamlined manner at the district, regional and national levels.
- Maintain close relations with the Ministry of Energy and Minerals and maximize access to information, communication and timely updates on extractives industries.
- Conduct independent monitoring and oversight activities. Conduct regular conflict analysis surveys and make recommendations on conflict prevention and risk mitigation.

To International Oil Companies (IOCs)

- Respect national laws and regulations.
- Maximize efforts towards community engagement through the Ministry and civil society organizations. Contribute resources towards public awareness and community engagement campaigns that are needed in your respective acreage. This will be a worthwhile investment.
- Maximize participatory governance approaches and support to institution building
- Commit to conforming to industry good practice in transparency and accountability
- Develop and implement strategies for community engagement, and community monitoring and oversight of activities.

To the International Community

- Respect Somaliland national laws and people's self – determination and principles of international territorial laws.
- Be neutral on political disputes between Somaliland and Somalia
- Should base their analysis with more facts and political reality on ground
- Support, facilitate and promote Somaliland's sustainable, ethical and conflict sensitive resource exploitation in order to achieve sustainable economic development and alleviate poverty
- Support the Somaliland government in the development of its extractives sector mechanisms of strengthening the governance and regulatory framework.