Serving the Rich or the Poor?

Implications of WTO Energy Service Negotiations for Resource Rich Developing Countries: The Case of Uganda

The Norwegian Council for Africa (NCA)

Southern and Eastern African Trade Information and Negotiations Institute (SEATINI Uganda)

Table of Contents

Acknowledgements

Authors

Karine Kålsås (The Norwegian Council for Africa), Susan Nakacwa, Bridget Mugambe, Munu Martin Luther and Jane Nalunga (SEATINI Uganda).

Copyright

Southern and Eastern African Trade Information and Negotiations Institute (SEATINI Uganda) and the Norwegian Council for Africa (NCA)

Editors

Jane Nalunga and Karine Kålsås

Language and stylistic review

Synne Vik Torsdottir, jtbd.no

Layout

Synne Vik Torsdottir, jtbd.no

Print

07 Gruppen

Published by

NCA and SEATINI Uganda

Acknowledgements

SEATINI Uganda and NCA would like to acknowledge the Norwegian Agency for Development Cooperation (Norad) for their financial support to produce this book.

The contents within this document are the sole responsibility of SEATINI Uganda and NCA and can under no circumstances be regarded as reflecting the position of Norad.

We are also grateful to the board of the Norwegian Council for Africa, Kristin Dypedokk, Heidi Lundeberg, Ambassador Nathan Irumba, CSO's and other organizations that were approached for the compilation of this document; KACITA, ACODE, AFIEGO, UMA, NOTU, the Norwegian Embassy in Uganda and Oil for Development in Norad.

Abbreviations

AFIEGO - the African Institute for Energy Governance
CSO –Civil Society Organization
EAC – East African Community
EFTA – The European Free Trade Association
EU – European Union
GATS - General Agreement on Trade and Services
GATT - the General Agreement in Tariffs and Trade
GDP – Gross Domestic Product
GIEK - the Norwegian Guarantee Institute for Export-
GNI PPP – Gross National Income – Purchasing Power Parity
GRAS – Green Resources AS
ICH - the International Centre for Hydropower
IMF – International Monetary Fund
KACITA – Kampala City Traders' Association
LDC – Least Developed Country
MFA – the Norwegian Ministry of Foreign Affairs
MFN – Most Favoured Nation
NGO – Non-Governmental Organization
NHO - the Confederation of Norwegian Enterprise
NORAD - the Norwegian Agency for Development Cooperation
Norfund - Norwegian Investment Fund for Developing countries
NOTU – National Organisation of Trade Unions
OfD – Oil for Development
PPP – Public-Private Partnerships
REA – Rural Electrification Agency
SAP- Structural Adjustment Programme
TRIPS –Trade-related aspects of intellectual property rights
UEB – Uganda Electricity Board
UETCL - Uganda Electricity Transmission Company Limited
UMA - Uganda Manufacturers Association
UN – United Nations
WTO – World Trade Organization

1. Introduction

1.1. A new international regime for energy services?

Norway, together with eleven other countries has within the General Agreement on Trade and Services (GATS) directed demands on liberalization of energy services towards a range of resource rich developing countries[1]. In addition, Norway has sent bilateral requests on energy services to 28 countries and is negotiating Free Trade Agreements through The European Free Trade Association (EFTA)[2]. The collective request on energy services within WTO is very comprehensive and calls for the full liberalization and deregulation of the energy services sector. This includes the entire chain of activities involved and increased commitments on market access and national treatment.

The ongoing Doha-round is according to WTO's General Director Pascal Lamy in its final phase as he is expecting to see the round brought to an end during 2011[3]. Intensive negotiations on every subject can be expected and members have to prepare for high pressure to liberalize a vast range of sectors. If energy services are established as a separate sector within the negotiations, a new international regime will become a fact and the pressure on resource-rich countries to liberalize their energy services will increase[4].

Norway has a highly developed energy service sector and the country is known for having exploited its national oil and gas resources in a way that has led to long lasting social and economic development. Political means like national and local ownership, strategies to secure employment, competence and technology, as well as conditioned access to common energy resources has been vital to secure national control over the energy resources[5]. For instance, through including local content requirements[6] in the oil and gas policy Norway ensured that foreign companies involved in the Norwegian oil and gas sector transferred knowledge and technology and used Norwegian sub suppliers[7].

As local content requirements are regarded problematic within the WTO energy service negotiations it is timely to ask whether Norway's position on energy services hampers developing countries' possibility to use the same political means as Norway did to achieve a strong national resource control. There is reason to believe that developing countries with limited possibility to protect their own energy service sector and without political means to ensure development of their own competence, technology and capacity, will see little positive spin-off effects in the wake of their energy resources. There is a profound need for exploring the implications of the WTO negotiations on energy services for recourse rich, developing countries.

1.2. The case of Uganda

Uganda is a land locked resource rich country in East Africa. The country has vast potential for renewable energy and oil and gas extraction. However, less than 10% of the population has access to electricity. This creates a huge problem for small scale businesses, manufacturers, different industries and the population in general [8]. Several attempts to develop hydropower have been delayed and attempts to promote other sources of renewable energy are limited. However, the large

1 WTO. 2006. "Collective request in energy services"
2 Utenriksdepartementet (2006) "Boks 2. Hvilke land har Norge stilt krav overfor sektorvis". Accessed from http://www.regjeringen.no/nb/dep/ud/tema/handelspolitikk/wto/wto---doha-runden/krav_tjenester/9.html?id=275686 11 November 2010.
3 Utenriksdepartementet (2010) "Doha-runden – mot "the final countdown". Accessed from http://www.regjeringen.no/nb/dep/ud/tema/handelspolitikk/nyhetsbrev/status_doha.html?id=628804 13 January 2011.
4 Menotti, Victor (2006) and Herning, Linn (2010).
5 Ryggvik, Helge (2010)
6 Local content requirements can be defined as "portion of a product or the share of hiring that must come from domestic sources". Dypedokk, Kristin (2010) "Serving Public or Private Interests? – A Study of Norway's Oil for Development Initiative in Ghana".
7 Ryggvik, Helge (2010)
8 Norway's Official website Uganda. "The energy sector in Uganda". Accessed from http://www. norway.go.ug/Embassy/Development/Energy-and-Petroleum-Sector/energysectorinuganda/ 12 December 2010. Interview with Per K Johansen (First secretary) and Katrin C Lervik (Energy Counsellor), Royal Norwegian Embassy in Kampala, Uganda 18 October 2010.

Bujagali hydropower project is now under construction and in 2006 oil was discovered in the Western parts of the country. Foreign oil companies have already been licensed to explore the oil reserves and Uganda is in a vulnerable starting phase of oil exploration. Uganda's institutions are weak and there is a lack of capacity when it comes to finances, technology and skills. Legislation is currently being developed to regulate the oil and gas sector[9], and a public debate on how Uganda should manage its resources to create long-lasting development has just started. The choices Uganda makes today will influence how the country will develop in the future. Making the right decisions and finding ways to make sure the oil resources contribute to a sustainable development is decisive for Uganda if they are to avoid the oil curse so many other resource rich African countries have faced.

Norway has a long tradition for providing development aid to Uganda, and has for fifteen years also been involved in capacity building in the Uganda's energy sector. Today Uganda is a long term core cooperation country for the Norwegian Norad-led aid programme Oil for Development (OfD)[10] . In addition, several Norwegian companies are involved in Uganda's energy sector, and offer services like consultancy, engineering and construction within hydro and thermal energy projects. As Uganda is emerging as an oil producer and deep water drilling on Lake Albert could be establish in the future, Uganda will emerge as an interesting country for Norway's oil service delivery companies.

Least Developed Countries (LDCs) have an exemption in the GATS negotiations meaning they are not obliged to undertake liberalization and Norway withdrew all bilateral requests towards LDCs in 2005 [11]. As a LDC Uganda is therefore not a receiver of the request on energy services in WTO. Nevertheless, several LDCs have already undertaken commitments in energy services [12] and a decision to establish energy services as a separate sector in WTO will increase the pressure to liberalize on all countries, including LDCs [13].

Uganda and other LDCs faces pressure of liberalization from many actors, for instance from regional ones like the EU and through bilateral Free Trade Agreements. International institutions like the World Bank and the IMF have long been involved in liberalization and privatization processes in Uganda through the Structural Adjustment Programmes implemented in the 1980s and 1990s, contributing to a very liberal policy environment [14]. Due to limited access to information on the content of Free Trade Agreements and negotiations, the available WTO documents are a meaningful starting point to assess the consequences of liberalization regardless of where the pressure originates from.

As a developing country with vast energy resources, Uganda makes a good case for this report. Although "resource rich developing countries" is a category consisting of many heterogeneous political unities with different histories, political regimes, socioeconomic development levels and trade policies, we believe that the findings in this report might be relevant for other countries in the same situation. Developing countries share the same experience of being under pressure to liberalize and the restrictions on what kind of political measures they would be allowed to use are the same, even though the consequences of these limitations differs. Uganda here exemplifies possible consequences for a developing country that commits itself to the liberalization of energy services.

Uganda found oil in 2006 and is expecting large investments in their energy sector in the years to come. Energy services will be an important part of this development and the pressure to liberalize this sector might increase as Uganda becomes

9 Interview with Per K Johansen (First secretary) and Katrin C Lervik (Energy Counsellor), Royal Norwegian Embassy in Kampala, Uganda 18 October 2010 10 Norad. About Uganda on the Oil for Development homepage. Accessed from http://www.norad.no/en/Thematic+areas/Energy/Oil+for+Development/Where+we+are/Uganda 14. November 2010.

10 Norad. About Uganda on the Oil for Development homepage. Accessed from http://www.norad.no/en/Thematic+areas/Energy/Oil+for+Development/Where+we+are/Uganda 14. November 2010.

11 Utenriksdepartementet (2006) "Norske interesser og prioriteringer. Bilaterale krav". Accessed from http://www.regjeringen.no/nb/dep/ud/tema/handelspolitikk/wto/wto---doha-runden/krav_tjenester/2.html?id=275679 2 November 2010.

12 WTO (2010)"Background Note from the Secretariat".

13 Herning, Linn (2008)

14 ILO (2000) "Structural adjustment and agriculture in Uganda". Working paper by Baffoe, John K. Accessed from http://www.ilo.org/public/english/dialogue/sector/papers/uganstru/index. htm 20 January 2011.

a more interesting country to invest in. As mentioned earlier, Norway has interests in the Ugandan energy service sector. Even though Uganda is not a receiver of the WTO request today, there is no guarantee that they will not receive such a request at a later stage. With a change of political regime in Norway, it is likely that the policy towards LDCs will change. Uganda's hopes of advancement from being an LDC also increased when oil was discovered. Once out of this category, they will no longer be protected by the LDC exemption in WTO.

1.3 Methodology

During the process of writing this report we have examined relevant WTO documents on the energy service negotiations in WTO. This include the collective request in energy services from 2006, a follow-up document titled "Plurilateral Negotiations on Energy Services", also from 2006, and a Background Note by the Secretariat on energy services dated January 2010 [15]. There has already been some public discussion in Norway about Norway's position in the WTO on energy services, and three reports are relevant in this context. In 2008 Forum for Environment and Development released a report putting Norwegian positions in WTO in the context of Norway's own oil history and the development of a national energy service sector [16]. An additional report analyzing Norwegian interests and positions within energy services was released by Handelskampanjen 2010 [17]. Inter-nationally, the document "The Other Oil War: Halliburton's agenda at the WTO" is the most relevant when it comes to assessing the possible implications of the WTO request. It was released in 2006 by International Forum on Globalization [18].

When describing Uganda's energy sector and analyzing the possible consequences of the request we have used information gathered through interviews with relevant Ugandan organizations, including CSOs, trade unions and a manufacturers association [19] . During the interviews we discussed Uganda's energy situation, energy policy and how Uganda should manage the oil and gas resources in order to secure a positive socioeconomic development. Liberalization of the energy sector and consequences for Uganda of a further liberalization constituted the frame in the discussions. Relevant policy documents are also important in our analysis and includes Uganda's National Energy Policy from 2002, the Renewable Energy Policy from 2007, the National Oil and Gas Policy from 2008 and the Petroleum Bill that is to be tabled in the Parliament [20].

The report start with an introduction to the negotiations on energy services in WTO, including Norwegian positions. This is followed by a presentation of Uganda's energy sector and a separate section on Norwegian interests in this. In the analysis we see the request on energy services in light of Ugandan organizations' viewpoints on liberalization and the Ugandan energy sector. We also compare relevant Ugandan energy policies with the WTO energy service request and analyze what consequences a commitment on energy services might have for Uganda. On the basis of this, we will argue that commitments on energy services in WTO could have vast implications for Uganda and other resource rich developing countries.

15 All documents can be found on WTOs "Documents Online Homepage: http://docsonline.wto.org/. The easiest way to find a document is by using its document symbol in advanced search. See the reference list at the end of this report for the WTO documents' symbols. If you do not have the document symbol, try searching on title.

16 Kristoffersen, Berit (2008) "Gjør som vi sier, ikke som vi gjorde – Norske krav til liberalisering av energitjenester under WTO". Forum for Utvikling og Miljø. Can be accessed from www.forumfor.no/noop/file.php?id=4758

17 Herning, Linn (2010) "Norske økonomiske interesser og posisjoner innen energitjenester". Handelskampanjens tekstserie – Hva er norske interesser. Can be accessed from http:// www.handelskampanjen.no/ 18 Menotti, Victor (2006) "The Other Oil War: Halliburton's Agenda at the WTO - A Policy Brief on the Energy Services negotiations in the World Trade Organization (WTO). Can be accessed from http://www.ifg.org/reports/WTO-energy-services.htm

18 Menotti, Victor (2006) "The Other Oil War: Halliburton's Agenda at the WTO - A Policy Brief on the Energy Services negotiations in the World Trade Organization (WTO). Can be accessed from http://www.ifg.org/reports/WTO-energy-services.htm

19 Interviews with KACITA, NOTU, UMA, AFIEGO, ACODE and the Norwegian Embassy in Kampala in October 2010. See list over interviews at the end of the report.

20 The policies are accessible on the webpage of Ministry of Energy and Mineral Development: http://www.energyandminerals.go.ug/. The Petroleum Bill is available at the resource centre of the Parliament in Uganda.

2. Negotiations on Energy Services in WTO

2.1. Introduction to WTO and GATS negotiations

The World Trade Organization was established in 1995 after the conclusion of the Uruguay-round in GATT (the General Agreement in Tariffs and Trade). GATT started in 1949 as an agreement that soon developed into an unofficial organization dealing with trade in goods through several negotiations rounds. As the need for an extended international trade system appeared, WTO was established. The main goal of the WTO negotiations is to establish a set of rules to secure free trade amongst member countries. Liberalization of trade will according to WTO increase world trade and foreign investments, stimulate economic growth and raise incomes [21]. In addition to goods, WTO has been dealing with trade in services (GATS) and intellectual property (TRIPS) [22].

Trade in services has become increasingly important the last decades, and now account for over 60 % of the global output. GATS is a treaty that includes all internationally traded services. No services are excluded from the negotiations, even services within healthcare, education, culture and water are included. As agricultural and industrial production is increasingly being transferred to developing countries, and services contribute to an increasing share of industrialized countries' GDP, GATS has become very important in the ongoing Doha Development Agenda [23].

GATS negotiations are characterized by being a process of requests and offers. When a WTO-member wants improved trade relations for its services in one specific sector in another country, it requests that the country commits to open up its market to foreign service suppliers within the specific sector. The requested country will then decide to what extent it will offer to commit itself. No countries are obliged to commit themselves to any request. However, WTO negotiations are dependent on countries willingness to make commitments in order for the negotiations to progress. This, backed with strong commercial interests, leads to intense political pressure on countries to open up their markets [24]. WTO negotiations have been heavily criticized for this as developing countries with low negotiation capacity commits themselves without knowing the full extent of what they sign.

WTO has a set of principles that are important when understanding the implications the negotiations and agreements within the WTO will have for the negotiating countries. Of specific interest are the principles of "Most-favoured-nation" (MFN) and "National treatment". MFN means that a country cannot give one trading partner/country advantages in trade without giving the same advantages to all other trading partners. For instance, if one country is granted lower customs duty rate for a product, this is regarded as being discriminatory towards all other WTO members. As cited on WTO's website [25]: "In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners - whether rich or poor, weak or strong." The principle of "National treatment" is also established to prevent discrimination. In GATS it means that a country has to treat all service deliverers the same way, they cannot give favourable conditions to local or national service deliverers. Foreign and domestic services have to be treated equally [26].

21 WTO (2008) "10 benefits of the WTO trading system". Accessed from http://www.wto.org/english/res_e/doload_e/10b_e.pdf 13 December 010.
22 WTO "What is the World Trade Organization". Accessed from http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm 13 December 2010.
23 Kristoffersen, Berit (2008)
24 Menotti, Victor (2006)
25 WTO "Principles of the trading system". Accessed from http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm 20 November2010.
26 Ibid.

2.2. Collective request in energy services in WTO

Requests on energy services

Countries behind the collective request:

Australia, Canada, EU, Norway, Japan, Saudi Arabia, Korea, Taiwan, Penghu, Kinmen & Matsu, Singapore and USA.

Countries receiving the request:

Argentina, Brazil, Brunei, Chile, China, Colombia, Ecuador, Egypt, India, Indonesia, Kuwait, Malaysia, Mexico, Nigeria, Oman, Pakistan, Peru, The Philippines, Qatar, South Africa, Thailand, Turkey and The United Arab Emirates.

Norway has bilaterally also requested:

India, Indonesia, Kyrgyz Republic, Nigeria, Kina, Cuba, Ecuador, Egypt, Tunisia, Turkey, Argentina, Brazil, Chile, Gabon, Malaysia, Mexico, Oman, Trinidad and Tobago, Venezuela, Bahrain, Brunei, Kuwait, Qatar, The United Arab Emirates, Australia, Canada, Switzerland and USA [27].

In the WTO a group of 12 countries, including Norway, EU and USA, have made a collective request in energy services to 23 other countries. The recipient countries can be categorized as developing countries with vast natural resources, a few of them being in the category of "major emerging economies". As LDCs have an exemption from all new commitments in the services sector they are not amongst the receiving countries of this request. However, as we shall see later, several LDCs are already involved in the negotiations and have undertaken specific commitments on energy services.

The request implies that all receiving countries are to undertake commitments on energy services. The definition of an energy service is however to some extent unclear within the negotiations. In many cases it is difficult to distinguish between a service and the actual production of a good. Energy services are not negotiated as a separate sector in GATS and the request is formulated as a check-list where selected sub-sectors from different GATS-sectors are included [28]. When going through all the services listed in the relevant WTO documents [29], we find that the request is extensive. Most services along the energy chain are affected by the request. For instance, for the oil and gas sector it includes everything from feasibility studies and geological services to drilling, monitoring, processing, distribution and wholesale amongst other. The request also includes services in connection with every energy sector like oil and gas, coal, renewable energy, electricity and other.

Resource rich developing countries often lack the finances and technology necessary to develop their domestic energy sector, and therefore tend to depend on foreign investments. According to WTO, international energy services companies want predictability and clear policy in the countries they invest in. It is believed that commitments to liberalize energy services will increase foreign investments, stimulate economic growth and help resource rich countries attract technology and knowledge [30]. However, as we shall see later, this depends on domestic regulations and the content of the contracts developing countries sign with the investment companies.

27 Utenriksdepartementet (2006) "Boks 2. Hvilke land har Norge stilt krav overfor sektorvis". Accessed from http://www.regjeringen.no/nb/dep/ud/tema/handelspolitikk/wto/wto---doha-runden/krav_tjenester/9.html?id=275686 11 November 2010.

28 Utenriksdepartementet (2006) "Norges deltagelse i kollektive krav". Accessed from http://www.regjeringen.no/nb/dep/ud/tema/handelspolitikk/wto/wto---doha-runden/krav_tjenester/5.html?id=275682 12 November 2010.

29 WTO (2010) "Energy services – Background Note by the Secretariat"

30 Ibid

2.3. Norwegian requests in energy services

Norway is one of the 12 countries behind the collective request for liberalization of energy services in WTO. In addition, Norway has made bilateral requests to 28 countries in the same sector. There is limited accessible information about Norwegian bilateral requests. According to information on the Governments website, Norway's goal with the requests is to secure better market access and equal treatment on the world market for the Norwegian energy service companies. It is stated that better trade conditions for Norwegian companies within the international oil and gas industry, amongst them the Norwegian offshore industry, is prioritized [31]. The bilateral request is more far-reaching than the collective one, especially when it comes to maritime services related to offshore drilling. What "far-reaching" implies in this matter is however not specified in available information.

Most of Norway's Free Trade Agreements are negotiated through the European Free Trade Association (EFTA). EFTA has Free Trade Agreements with 22 countries, joint declarations on cooperation with six countries and on-going negotiations with six other countries [32]. Norway is also involved in on-going bilateral negotiations with China. When going through available information on the Government website, energy services are not part of the existing agreements. However, such services are important in the ongoing negotiations with China, India and Algeria [33]. Information about Norwegian and EFTA positions on energy services within these negotiations is limited. As Norwegian positions in WTO are already identified, there is reason to believe that Norway has the same ambitions in the EFTA negotiations [34].

In Norway, as in the rest of the world, service companies have become increasingly important in the energy sector, and specifically within oil and gas. In 2005, the international share of Norwegian energy services companies' turnover was on the average 46 % and the ambitions are high when it comes to increasing this share even further. In comparison, Statoil's production abroad constituted 20 % of their total production in 2006. Thus, Norwegian energy services companies have this far been more successful internationally than the Norwegian oil company, Statoil [35]. As Statoil now invests more internationally than in Norway, it is however expected that the abroad share of the production will increase in the years to come. The international profile of the Norwegian energy service companies leads us to think that they are the force behind the Norwegian engagement in the request in energy services in WTO. However, according to Kristoffersen (2008) this is not the case. The companies believe they are well positioned to reach their goal of expansion regardless of the ongoing negotiations and are not actively lobbying the Government in this matter. However, the Confederation of Norwegian Enterprise (NHO) have been active in the process of formulating the Norwegian request and are pushing hard for liberalization of the energy services.

2.4. Implications of the request

2.4.1. Policy space and the right to regulate

Developing countries need space to choose between different policy options for their development strategies. This space is often referred to as policy space. It implies using different policy means over time, and can for instance include restrictions on foreign service supplier's activities in the country. The need for policy space is why developing countries are granted "special and differential treatment" in WTO meaning that WTO agreements contain provisions which give them special

31 Utenriksdepartementet (2006) "Norske interesser og prioriteringer. Bilaterale krav". Accessed from http://www.regjeringen.no/nb/dep/ud/tema/handelspolitikk/wto/wto---doha-runden/krav_tjenester/2.html?id=275679 15. November 2010.

32 EFTA homepage "Ongoing negotiations and talks". Accessed from http://www.efta.int/free-trade/ongoing-negotiations-talks.aspx 13 February 2011.

33 NHD (2009) "Om handelsavtaler". Accessed from http://www.regjeringen.no/nb/dep/nhd/tema/handelsavtaler/handelsavtaler.html?id=438842#status 13 February 2010.

34 Herning, Linn (2010).

35 Kristoffersen, Berit (2008)

rights [36]. According to the above mentioned request, all members have the right to regulate: "Currently, the GATS explicitly recognize the right of WTO Members to regulate services and to introduce new regulations to meet national policy objectives" [37]. It is further stressed that the regulatory measures "must be clearly defined, transparent and non-discriminatory". However, earlier disputes brought to the WTO have shown that the "right to regulate extends only so far as it does not impinge on the trading rights countries grant through the GATS" [38]. For instance, in a dispute over telecommunications services with USA, a panel found that Mexico was violating its GATS commitments and had to change their regulations [39]. This case shows that commitments on liberalization of services in WTO might necessitate changes in national restrictions and laws. Restrictions and policy meant to contribute to achieve a country's development goals might have to be changed, limiting countries policy space. More recent developments also show that commitments in WTO can affect a country's strategy to promote renewable energy. In December 2010, USA requested WTO Dispute Settlement Consultations on China's subsidies for wind power equipment manufacturers. They believe the subsidies are discriminating against foreign suppliers. If China is found to be violating its GATS commitments it means that WTO-members will not be allowed to use policy measures to promote domestic initiatives on renewable energy [40].

2.4.2. Local content

As mentioned, claims for local content is a means to secure national and local spin-off effects from foreign companies' activities. This is especially important to developing countries with vast natural resources that want to secure a sustainable development. Many developing countries are dependent on export of primary commodities, often generating very low incomes compared to export of processed products. In order to escape the situation often referred to as "the commodity – dependence trap" they will need to secure processing of the primary commodities in their country and to develop other sectors of their economy [41]. Local content requirements like technology transfer, joint ventures, use of local labour and national sub suppliers can secure employment opportunities and contribute to development of related sectors and industries. This is specifically important in the energy sector where natural resources like oil, gas and coal have vast potential to boost revenues and to create long-lasting development if managed in a sustainable way. As mentioned earlier, such requirements were important to the development of the domestic oil and gas service delivery sector in Norway, today employing thousands of people and generating vast income also from their activities abroad [42]. However, countries committing themselves to the collective request in energy services might lose the opportunity to require local content from foreign energy service companies operating in their countries. An argument used by opponents of local content requirements, including WTO, is that developing countries often lack competitive companies making requirements of using them much more expensive. Some also believe they can hinder foreign investment.

The request involves the removal or substantial reduction of foreign equity limitations and economic needs tests. It also includes "substantial elimination of joint ventures and joint operations requirements for foreign service suppliers" and "elimination of discriminatory licensing procedures" [43]. This implies extensive reductions in the receiving countries possibilities to protect their own energy service sector, or development of such. Menotti (2006) and Kristiansen (2008) argue that the countries will have limited opportunities to secure local and national involvement and create linkages with the national

36 For trade in services, SDT has been provided in the three following shapes: 1)Non-reciprocity in negotiations; whereby developing countries are allowed to liberalize less than rich countries. 2) Technical assistance; whereby poorer WTO members are given aid-for-trade (AfT) in order to promote trade, enhance their negotiating capacity or strengthen institutions. 3) Transitional arrangements; whereby developing countries are given longer time to phase in trade reforms. Source: Melchior, Arne (2010). NUPI-report: "Services and Development. The Scope for Special and Differential Treatment in the GATS".

37 WTO (2006) "Collective request in energy services"

38 Menotti, Victor (2006)

39 WTO "Dispute Settlement: Dispute DS204: Mexico – Measures Affecting Telecommunications Services". Accessed from http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds204_e.htm 29 January 2011. And WTO "Mexico – Telecoms". Accessed from http://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds204sum_e.pdf 29 January 2011.

40 Office of the United States Trade Representative (2010) "United States Requests WTO Dispute Settlement Consultations on China's Subsidies for Wind Power Equipment Manufacturers". Accessed from http://www.ustr.gov/about-us/press-office/press-releases/2010/december/united-states-requests-wto-dispute-settlement-con 21 January 2011 and Gallagher, Kevin (06.01.2011).The Guardian: "US should exercise green power". Accessed from http://www.guardian.co.uk/commentisfree/cifamerica/2011/jan/06/china-renewableenergy 21 January 2011.

41 UNCTAD (2010) "The Least Developed Countries Report 2010: Towards a New International Development Architecture for LDCs". Background paper by Nissanke, Machiko. Accessed from http://www.unctad.org/sections/ldc_dir/docs/ldcr2010_mnissanke_en.pdf 23 January 2011.

42 Ryggvik, Helge (2010)

43 WTO (2006) "Collective request in energy services"

economy when their opportunity to restrict foreign equity or to require joint ventures with local companies disappears. Developing their own energy service sector also becomes difficult once they are not allowed to give preference to local or national companies as this is defined as discriminatory. Many receivers of the request have a limited energy service sector or none at all. Without any possibilities of regulating or restricting the involvement of large international energy service companies or to demand the transfer of technology and use of local sub suppliers when this is relevant, it is likely that the domestic energy service sector will be ousted or not allowed to develop at all. This again, could lead to an increased dependency on foreign energy service companies [44].

Further, the request on energy services includes the liberalization of "presence of natural persons". This implies that foreign energy service companies should have the possibility to import their employees from abroad. In a WTO document [45] it is stated that energy companies need to move intra-corporate specialists, managers and technicians quickly to areas where projects are being developed and that nationality and residency requirements fall under GATS disciplines. The implication of this is that foreign companies will be free to import their own workforce, often occupying the highest-paid jobs in the sector. It is up to the foreign companies to decide if they want to employ local workers. There are reasons to believe that this will result in few real job opportunities for local workers beyond the very low-skilled jobs resulting in limited transfer of knowledge and competence [46].

The request also extends to services provided by companies without commercial presence in the committing country, so-called cross-border supply of services. For the services provided this way the "requesting" countries want "substantial reduction of marked access limitations" and "removal of existing requirements of commercial presence" [47]. This paves the way for moving services like technical testing, analysis, diagnostic, consultancy, engineering and monitoring to abroad. Specific examples of services that can be provided cross-border are analysis of geological data, remote monitoring and diagnosis of wind turbines and remote control and monitoring of pipelines and pumping from wells [48]. This will make it easier for international energy service companies to expand their business in the countries receiving the request without having to establish any operations or employing any persons in the host country. As demands of commercial presence and other marked access limitations are removed, international companies can control several critical aspects related to the production process from other countries. Transfer of skills, technology and creation of new jobs will be limited when these services are delivered from abroad. Another aspect is how host countries can maintain control over the exploitation of their energy resources when those services are controlled remotely [49].

2.4.3. Limitations on management of environment and resources

Several elements in the request might reduce the requested countries possibilities of managing their energy resources in an environmentally friendly manner. Committing to the request might also limit their possibilities to control essential aspects of the energy sector.

According to WTO, over 60 countries, including a number of developing countries, have implemented some kind of support mechanism for promoting renewable power generation [50]. However, favouring renewable energy sources could be regarded discriminatory in the WTO. For instance, eight countries and twenty American states have implemented "Renewable Portfolio Standards", these countries are being targeted in GATS of being discriminatory against non-renewa-

44 Menotti, Victor (2006) and Kristoffersen, Berit (2008)
45 WTO (2010) "Energy Services - Background Note from the Secretariat"
46 Menotti, Victor (2006)
47 WTO (2006) "Collective request in energy services"
48 WTO (2006) "Plurilateral negotiations on energy services" and WTO (2010) "Energy Services - Background Note from the Secretariat"
49 Kristoffersen, Berit (2008)
50 WTO (2010) "Energy Services - Background Note from the Secretariat".
51 Menotti, Victor (2006) Kristiansen, Berit (2008) and Herning, Linn (2010)

ble energy sources [51]. As mentioned above, China's promotion of domestic renewable energy has also been accused of being in violation of GATS commitments. It is reason to believe that further liberalization of energy services in WTO can make initiatives to promote domestic development of renewable energy difficult [52].

The collective request is "neutral with respect to energy source, technology and whether offered onshore or offshore" [53]. This principle of technological neutrality was first introduced in GATS Telecommunications in 1996 to prevent the unequal treatment of different communication technologies, for instance between cable and wireless. However, extended to the energy service sector the principle can have vast consequences for the use and development of environmental friendly technology. Even though the principle is vague and are yet to be tested in the Dispute Settlement Body, a consequence might be that governments lose the possibility to choose renewable energy sources and technology over carbon energy. It could also imply that committed countries will lose the opportunity to require the use of specific technology from foreign companies. Thus, national strategies to increase the use of environmentally friendly energy sources and technology might be undermined [54].

In a WTO note [55] it is stated that "In the WTO, Members have consistently expressed the view that natural resources were under the sovereignty of each Member and that the issue of ownership of energy resources remained outside the scope of the negotiations". However, this does not mean that international companies cannot have extensive influence over the use of those resources. This influence, or control by international companies can to a large extent be increased as a consequence of a commitment to liberalization of energy services. As mentioned earlier, control and monitoring of pipelines and pumping from wells are examples of services that can be accomplished remotely. By opening for such services to be controlled from abroad you risk giving away control over services that are crucial to extraction of the resources [56].

2.5. Development in the negotiations and the way forward

Little progress has been made in the negotiations on energy services. The last development seems to have been during the Services Signalling Conference in July 2008. According to a WTO report [57] many countries expressed interest in expanding their commitments on energy services, both sectoral and modal coverage. However, there is no written information about which countries these are. Commitments on energy services have been limited so far. According to the WTO-section at the Norwegian Ministry of Foreign Affairs (MFA) many countries are reluctant to make commitments because they are afraid of losing control over their own resources. However, the Norwegian MFA underlines that ownership of energy resources are and will remain outside of the negotiations. The negotiations are now in the last phase without any decision on a final date [58].

A WTO Background Note (2010) includes a list showing commitments made on services incidental to mining, energy distribution, and pipeline transportation of fuels. Fifty-two countries have made commitments within one or several of these three categories. Furthermore, many countries have committed themselves in other energy-related sectors. Examples of sectors where over fifty countries have made commitments are engineering, management, technical testing and analysis, maintenance and repair of equipment, site preparation work for mining, wholesale trade and retailing services [59].

52 Menotti, Victor (2006) Kristoffersen, Berit (2008) Herning, Linn (2010) and Gallagher, Kevin (06.01.2011).The Guardian: "US should exercise green power". Accessed from http://www.guardian.co.uk/commentisfree/cifamerica/2011/jan/06/china-renewableenergy 21 January 2011

53 WTO (2006) "Collective request in energy services". In addition, a summary of delegation's comments on the negotiations on energy services, including their comments on the principle of technological neutrality, can be found in the WTO-document: "Energy services – Information note by the Secretariat", reference number JOB(05)/204. Dated 22.09.2005.

54 Menotti, Victor (2006)

55 WTO (2010) "Energy Services - Background Note from the Secretariat".

56 Menotti, Victor (2006)

57 WTO. Report by the Chairman of the TNC "SERVICES SIGNALLING CONFERENCE". WTO-document symbol: JOB(08)/93

58 Telephone conversation with Ingvild Belle in WTO/OECD section at The Norwegian Ministry of Foreign Affairs 30 October 2010, and e-mail correspondence with Knut Sørlie in NHO 1 November 2010

59 WTO (2010) "Energy Services - Background Note from the Secretariat"

Even though LDCs have an exemption from commitments within services in WTO, several LDC's have undertaken specific commitments on energy services. In the above mentioned list, seven of the fifty-two countries listed are LDCs. These are Cambodia, Gambia, Lesotho, Malawi, Nepal, Sierra Leone and Zambia. In addition we find Cape Verde that "graduated" from being an LDC in 2007. These countries have made commitments to one or several of the three categories. However, as the list only shows commitments in three categories, one has to search through every country's list on the WTO website to find other commitments made in related sectors [60]. By doing this we find that several of the seven LDCs have also undertaken commitments in related sectors. For instance have Malawi and Zambia undertaken commitments in technical testing and analysis services. Other LDCs have also made commitments in energy-related sectors, such as Burundi and Madagascar within maintenance and repair of equipment and construction and related engineering services.

There are several reasons that can explain why these LDCs have undertaken commitments in energy services. First off all, many developing countries lack finances, competence and technology to develop a domestic energy sector and liberalization might be a means to attract foreign investment. There are also reasons to believe that the above mentioned countries lack capacity to fully participate in the WTO negotiations. Limited resources make it difficult to sustain representation in Geneva at all times and to keep well informed. Also, negotiations within different sectors take place at the same time. This makes it difficult for countries with limited capacity to keep updated and to ensure that their concerns and national priorities are included in all negotiations. Lack of capacity might result in LDCs undertaking commitments without being aware of the full scope and implications of what they are signing. Another factor is pressure. Aid dependency constitutes a problem in such negotiations as LDCs might feel pressured into making commitments they otherwise would not have chosen [61].

2.6. Summary

Twelve countries are behind a collective request for liberalization of energy services in WTO. Receivers of the request are mainly resource rich developing countries. The request is comprehensive and calls for the full liberalization of energy services. This is by WTO believed to create effective energy sectors and to increase energy supply in the countries committing to the request. However, critical voices claim that undertaking commitments on energy services will limit the countries possibilities of creating domestic employment opportunities, securing transfer of competence and technology, and undermine national strategies to increase the use of renewable energy technology and sources.

60 Services database on WTO's homepage. Enables you to search for commitments made by members: http://tsdb.wto.org/default.aspx

61 Murphy, Sophia. "The WTO Agricultural Negotiations and The Least Developed Countries – Limitations and options". Accessed from http://library.wur.nl/frontis/trade_liberalization/13_murphy.pdf 12 January 2011. See also: Shah, Anup (2002) "WTO-meeting in Doha, Qatar, 2001". Accessed from http://www.globalissues.org/article/296/wto-meeting-in-doha-qatar-2001 12 January 2011.

3. Uganda's energy sector: An unexploited opportunity

Uganda's diversity and natural endowments including its energy resources places the country with great potential for sustainable development without necessarily looking for solutions outside the country. Yet this is not the case. Uganda's power tariffs remain the highest in the region, and less than 10% of the population is supplied power from the national grid. The country experiences rampant deforestation due to reliance on biomass for energy. This chapter explores the background of Uganda's energy sector and the policy space that informs the governance of energy; with specific focus on Uganda's Energy Policy 2002, the Renewable Energy Policy 2007 and the National Oil and Gas Policy 2008. The chapter makes an analysis of these documents and concludes with recommendations from different stakeholders.

3.1. Background on Uganda's Energy Sector

During the 1970s and 1980s Uganda experienced a lot of civil unrest which greatly affected the social, political and economic wellbeing of Ugandans. Since 1986, Uganda's political and economic development has experienced remarkable changes. In 2007, Uganda's per capita income (GNI PPP) was approximated at US$ 920. The annual growth rate is estimated at 3.2% [62]. However, these achievements have been largely influenced by privatization and liberalization of Uganda's economy for purposes of modernization [63]. In the late 1980's, similar to many other African countries, Uganda embraced liberalization through the Structural Adjustment Programmes (SAPs) fronted by the World Bank and the IMF. The SAPs which have had adverse effects on Uganda's economy have consequently also impacted on the livelihoods of the people in the country. Uganda is for instance still highly dependent on development assistance which amounted to 1,551 Million US$ in 2006 [64]. Uganda is also categorized by the UN as being a LDC.

Uganda's wealth in natural resources presents a lot of potential for sustainable development, especially in the energy sector. With all her natural resources, Uganda can ably generate enough energy to supply her population and industries with electricity. If effectively exploited, Uganda has the potential to position herself as the largest supplier of energy to her neighbors thereby enhancing the regional integration process.

In the late 1990s Uganda opted to privatize its hydro energy sector, phasing out what was initially the government owned Uganda Electricity Board (UEB) to form separate private entities responsible for power generation, distribution and transmission. These were ESKOM, Uganda Electricity Transmission Company Limited (UETCL) and UMEME. This was intended to develop the sector and further increase access to electricity. However, the privatization of UEB has had many controversies, including political interference and mismanagement [65]. Ultimately, this policy has not achieved what it was intended for and has made the situation worse than it already was [66]. Less than 10% of the total population has access to electricity [67] and Uganda largely depends on biomass for its energy sources. Despite several attempts from the Government to find solutions, the problem is still largely unsolved with massive load shedding and high power tariffs. In Uganda, a unit of electricity costs over 20 American cents. Compared to its other partners in the East African Community these charges are much higher [68]. This prompted the African Institute for Energy Governance (AFIEGO) to sue UMEME in 2010 with a position that "It is time court intervened to save consumers"[69] .

62 Odi (2010) "Uganda: Case Study for the MDG Gap Task Force Report ". Accessed from http://www.un.org/esa/policy/mdggap/mdggap2010/mdggap_uganda_casestudy.pdf 13 January 2011.

63 Francis, Paul and James, Robert (2003) "Balancing Rural Poverty Reduction and Citizen Participation: The Contradiction of Uganda's Decentralization Program". In World Development, Vol. 31, Issue 2.

64 World Development Indicators database, September 2008, http://ddpext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED&HF=N/CPProfile.asp&WSP=N

65 Interview with Issa Sekitto, Spokesperson, Kampala City Traders Association (KACITA) 19 October 2010.

66 SAPRI (2001) "The privatization process and its impact on society". Accessed from http://www.saprin.org/uganda/research/uga_privitazation.pdf 24 January 2011.

67 Norad "Uganda". Accessed from http://www.norad.no/en/Thematic+areas/Energy/Clean+Energy/Where+we+are/Uganda 13 January 2011.

68 Regional charges per electricity unit: 14 cents in Kenya, 9 cents in Tanzania and 18 cents in Rwanda. Reference: The Observer (2010) "Energy firm sues Umeme over high tariffs". Accessed from http://www.observer.ug/index.php?option=com_content&task=view&id=10258&Itemid=68 23 January 2011.

69 Interview with Kamugisha Dickens, Executive Director, African Institute for Energy Governance, AFIEGO.

Therefore, the majority of the population is still largely and heavily reliant on firewood, charcoal and fuel wood. This situation has seen Uganda facing a number of challenges in regard to environmental destruction, development of small businesses and Uganda's industrial sector in general. The dependence on biomass has also had serious implications on the environment. Between the 1950s and the 1960s, Uganda was a model for natural forest management among the Commonwealth countries and the use of biomass as energy source was not a cause for alarm. However, over the last 15 years Uganda has lost more than 1.5 million hectares of forest cover which amount to 26% of the total cover. It is estimated that in the next 50 years, Uganda might not have any forest cover left [70].

3.2. Solar energy

In substitution of hydro energy and use of charcoal and fuel wood, the country has beefed up its efforts towards the promotion of solar energy. The Rural Electrification Agency (REA) which is a semi-autonomous agency started by the Ministry of Energy and Mineral Development is charged with the responsibility of operationalizing the Government's rural electrification function under a public-private partnership, this is being implemented through the Rural Electrification Board. However, this is still on the low side due to the costs involved. One of the main obstacles is the expenses related to the purchase of the necessary installation equipment. Hence, solar energy has in most cases been left to the rich and to income generating ventures and businesses.

In 2004, Phase I of the Energy for Rural Transformation (ERT) programme began, REA conceived that the extension of electricity to rural areas would be private sector led with only support from the government.

Government made available marketing and business development support, a form of cost sharing where the government would cover 50% of the private company's cost of starting up and developing of rural electrification related businesses, up to $50,000. Government would also give subsidy support to companies that install solar systems. Companies would be paid $2.5 per watt generated for the first 30 watts and $1.5 for the next 50 watts.

When the programme was launched it, response was poor, so the Government, through REA, decided to instead take up the burden of establishing the required infrastructure. Only after this would it contract the private sector to run and maintain it. www.independent.co.ug

In October 2009, Phase II of ERT was granted $75million funding from the World Bank. In this phase, REA is adopting the Photovoltaic Targeted Market Approach (PVTMA), which is intended to address three primary challenges that it identified during phase I:

- affordability (initial cost of installing solar power),
- accessibility (where to buy/get solar services)
- information gaps because most people, it was realized, did not know much about solar energy. [71]

70 National Forestry Authority (2005) "Uganda's forests, functions and classification".
71 www.independent.co.ug

3.4. Discovery of oil

In recent years Uganda discovered oil and this has raised a lot of hopes when it comes to reducing energy costs within the country, as well as raising income through exportation of oil products. If properly and efficiently exploited, oil would be an alternative to the over utilized biomass energy. The first oil reserves were discovered in Uganda in 2006 and according to estimations made by Tullow Oil Company the county currently has about2.5 billion barrels of oil. To date the country is still a net importer of oil products amounting to US$ 537.43 million spent during the 2008/09 financial year [72] .

The discovery of oil brought much anticipation within the energy sector. But it also largely limited the energy debate as oil has to a large extent overshadowed other viable energy alternatives. Oil has been received both with high expectations and some skepticism. The sector is being looked at by many as a launch pad for Uganda from being a LDC to a developed country. A number of oil companies have been contracted to extract crude oil and there are expectations to have a national refinery to boost the country's capacity to process the extracted oil [73].

On the other hand there is skepticism on the potential benefits of oil production in Uganda. This is based on the fact that most resource blessed African countries, and especially those with oil resources, have often not lived to the expectations. For instance, the Niger delta becomes the least developed region in Nigeria despite it being the most oil rich part of the country. The population has experienced environmental degradation, with oil spill damaging their livelihoods. They have not gained from the high oil profits resulting in civil unrest, human rights violations and conflict [74]. The skepticism in Uganda has also been created by the direction that the Government seems to be taking in terms of policy in regard to this sector. Policies so far developed have raised a number of questions on the Government's will to use the energy sector to develop the country.

3.5. Uganda's Energy Policy

The 2002 National Energy Policy [75] sets the main policy goal in the energy sector as being to, "meet the energy needs of the Ugandan population for social and economic development in an environmentally sustainable manner." Similar to almost all sectors within the country the energy sector has largely been liberalized with the Government playing a very minimal role. While the energy sector has been liberalized, legislative and regulatory gaps still exist, resulting into unfair practices by the players. Until recently, foreign companies and the Government of Uganda have been embroiled in a long standing battle over tax payments. This calls for government interventions to ensure fair play, protect consumers, ensure the financial viability of private investments, promote competition and collect information.

The Broad objectives of Uganda's National Energy Policy 2002 are:

a) To establish the availability, potential and demand of the various energy resources in the country.
b) To increase access to modern affordable and reliable energy services as a contribution to poverty eradication.
c) To improve energy governance and administration.
d) To stimulate economic development.
e) To manage energy-related environmental impacts.

72 Bank of Uganda, Balance of Payment (BOP) Data 2008/2009 report
73 Kisambira, Edris (2011) "Uganda opts for refinery, export pipeline". Newspaper article accessed from www.busiweek.com 23 January 2011.
74 Houeland, Camilla (2010) "Landprofil Nigeria 2008-2009". Accessed from http://www.afrika.no/Detailed/18957.html 22 January 2011.
75 The policy can be accessed from www.rea.or.ug

The policy calls for open and competitive markets as fundamental to achieving an efficient and sustainable energy sector. No local content requirements are included in the policy. Well-functioning markets are generally regarded as the most efficient means of allocation of resources. However, the argument fronted for government intervention is that "where markets are imperfect, energy prices may not accurately reflect the full social cost and energy suppliers may not choose the most efficient options. In such cases, government intervention may be warranted" [76]. In this case, Ugandan trade unions and a manufacturers association (NOTU) feel that a public-private partnership remains the most effective way of running Uganda's energy sector and a policy towards a public –private partnership would promote sustainable oil exploitation [77].practices by the players. Until recently, foreign companies and the Government of Uganda have been embroiled in a long standing battle over tax payments. This calls for government interventions to ensure fair play, protect consumers, ensure the financial viability of private investments, promote competition and collect information.

3.6. Renewable Energy Policy

In 2007, out of the realization of the need to promote the use of clean energy, Uganda developed a policy on renewable energy with the overall goal of increasing the use of modern renewable energy from the current 4% to 61% of the total energy consumption by the year 2017. The renewable energy policy emphasizes the use of energy sources like solar energy technologies, bio fuels, and bio mass. It includes several financial means to promote the development and use of renewable energy, as for instance subsidies, preferential tax treatment, tax exemption, tax rebates, accelerated depreciation, credit enhancement instruments, and grant financing and feed-in-tariffs.

The policy lays out guidelines on power purchase agreements as being negotiated on a case by case basis. However, energy costs remain so high that the Government continues to subsidize power in order to promote energy consumption. December 2010 witnessed power companies proposing to raise electricity tariffs. But faced with public outrage, the Government decided to continue with the subsidies. It is expected that production costs will remain high until the Bujagali hydropower project is commissioned by 2012 [78].

Uganda has put much effort in developing hydro energy to curb the energy shortfall currently being faced. The abovementioned Bujagali hydropower project is a 250 MW generating plant currently under construction along River Nile. This is expected to increase electricity supply, lower power costs, improve air quality, increase jobs and improve livelihoods of surrounding villages [79]. Other major hydroelectric power plants to be developed include Karuma falls and Ayago [80].

The major point of concern however remains the use of bio fuels where the strategy is to license companies to blend up to 20% of bio fuels into gasoline and diesel. Government will also provide financial incentives for the production of bio fuels. This poses more risk to food security as large expanses of arable land are being put aside for bio fuel in spite of the increasing population and surge in food prices [81].

76 Ibid.
77 Interview with Kampala City Traders Association (KACITA) 19 October 2010 and Uganda Manufacturers Association (UMA) 21 October 2010.
78 Interview with Per K Johansen (First secretary) and Katrin C Lervik (Energy Counsellor), Royal Norwegian Embassy in Kampala, Uganda 18 October 2010, and with Dickens Kamugisha, African Institute for Energy Governance (AFIEGO) on October 21st 2010.
79 Bujagali Energy Limited, "Bujagali Hydropower Project". Accessed from http://www.bujagali-energy.com/default.htm 12 January 2011.
80 Interview with Per K Johansen (First secretary) and Katrin C Lervik (Energy Counsellor), Royal Norwegian Embassy in Kampala, Uganda 18 October 2010.
81 Kagolo, Francis (2010) "Biofuels take root in Uganda as experts warn of severe hunger". Accessed from http://africareportingproject.org 24 January 2011.

3.7. National Oil and Gas Policy

With the discovery of larger quantities of oil, a National Oil and Gas Policy was developed in 2008 with the objective of using the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society [82]. The Petroleum Bill 2010 has also been tabled in Parliament by the Ministry of Energy and Mineral Development for debate and subsequent approval. When approved the Bill is intended to among others; operationalize the National Oil and Gas policy, establish institutions to manage petroleum resources and regulate petroleum activities including licensing, exploration and development; to promote the development and regulation of petroleum refining and to support the development of Ugandan industries and labor market.

The Bill calls for the licensed companies to: "give priority to competent citizens of Uganda and registered entities owned by Ugandans for the provision of goods and services". Competent means that these individuals or entities "have adequate resources and capacity to add value to the petroleum operations carried out by the licensee". Purchase of local products or services shall be on condition that they are competitive in terms of price, quality and timely availability.

The Petroleum Bill places Uganda's oil resources in the hands of the private sector with limited government role. For a sector that is relatively new and very sensitive to the development of Uganda and the EAC as a region, the willingness of the Government to still play a limited role and leave it to the running of private companies has raised a number of questions and opposition from different sectors of the public. Whereas the policy mentions the use of local content where possible, this limited government role renders it almost impossible for it to enforce such requirements [83].

The policy advocates for local content by requiring contracted foreign oil companies to train Ugandans expected to replace expatriates at a later stage. They are also required to add value, use local sub suppliers and improve the living conditions of local communities. This would help in building and enhancing the industrial sector. However, provision is ad hoc with no clear guidance on the kind of training expected or the numbers meant to benefit from this and most importantly the duration in which this is expected to start. Furthermore, the lack of transparent and clear guidelines in the value chain has greatly undermined prospects of enforcing local content. This is because there is a general lack of information on the contents within the agreements by the potential Ugandan firms [84].

The recent tax war between the Government and one of the key oil extracting companies has further exhibited a loophole in the National Oil and Gas policy. Due to limited government intervention, the Government was faced with a tax loss amounting to $283 million resulting from the sale of oil wells by Heritage oil to Tullow oil. The dispute is about whether or not 30 % capital gains tax should be paid to the Government [85]. The expectation that Uganda is to up its revenues as a result of oil extraction and production is hence still seemingly on the low side. This tax war has also raised questions on the content of the Production Sharing Agreements between the Government and the foreign oil companies. It raises the question of how the Government expects to increase revenues if oil companies can have transactions involving sell and transfer of oil companies amongst themselves without the intervention or inclusion of relevant government Ministries and Agencies. The Government is however still skeptical on releasing these agreements with just a few leaks here and there and in some cases only releasing bits that it deems 'fit for public consumption' [86] .

All these scenarios point to the fact that there are still a number of loopholes in Uganda's energy policy and the expectations to raise earnings through this sector is still a vision far yet to be achieved.

82 Ministry of Energy and Mineral Development, National Oil and Gas Policy for Uganda (2008)
83 Heidi Lundeberg (2010) "A developmental analysis of Ugandan Oil Policy, bill and contracts". SEATINI Uganda
84 Interview with Andrew Luzze, Uganda Manufacturers Association (UMA) 21 October 2010.
85 Mason, Rowena (2010) "Uganda seizes Tullow oil field over Heritage's tax bill". The Telegraph.
86 PLATFORM "Uganda's contracts – a bad deal made worse". Accessed from http://www.platformlondon.org/carbonweb/showitem.asp?article=375&parent=9 18 January 2011.

3.8. Summary

Uganda's energy sector has got great potential of fostering sustainable development as envisaged with the huge resources the country possesses. This ranges from both renewable and non-renewable energy sources like dams, biomass, sunshine, and petroleum respectively. To make full use of these, there needs strong commitment at all levels including the ordinary citizen, policy makers and the Government by providing the necessary policies, policy environment, enforcement and implementation, something that is greatly lacking at the moment.

4. Norwegian interests in the Ugandan energy service sector

Norwegian companies constructing and operating power plants have established business in Uganda, and are planning to expand. Several consultancy companies have also set up offices in Kampala. The Norwegian state is present through the Oil for Development programme, Uganda being one of their core cooperating countries. In addition, the Norwegian state has been supporting several energy and electrification projects in the country as well as being involved in most of the projects where Norwegian private interests are represented. In this chapter, Norwegian interests in the Ugandan energy service sector will be presented.

Norwegian state actors in Uganda

The Norwegian state institutions involved in the Ugandan energy sector is Norad, the Royal Norwegian Embassy in Kampala, Norfund and GIEK. Norad is the Norwegian Agency for Development Cooperation administering Norway's development assistance to the country, a lot of this assistance is channeled through the Norwegian Embassy located in Kampala. Norfund (Norwegian Investment Fund for Developing countries) is an investment company owned by the Norwegian Government and acts "as a key instrument of Norwegian development policy" [87]. Norfund's mandate is to invest in profitable businesses in developing countries in order to fight poverty and create sustainable development. However, in 2006 Norfund was criticized by Office of the Auditor General in Norway as only 25% of their portfolio was invested in LDCs 88, the countries originally meant to gain from the fund. Norwegian NGOs did also recently criticize Norfund for investing Norwegian state money in tax havens, again not benefitting the intended beneficiaries [89] .

GIEK is the Norwegian Guarantee Institute for Export-credit. On behalf of the Norwegian Government GIEK guarantees for Norwegian companies' export credits, helping Norwegian companies establishing business in high-risk countries [90]. This way, GIEK and other export credit bureaus can help developing countries getting investments they otherwise would not have been able to attract. However, such bureaus have generally been criticized for supporting unsustainable projects with negative impact on developing countries. GIEK was for instance criticized for giving export credit to the Norwegian company Veidekke when they were involved in the Bujagali hydro power project in Uganda. This was due to the expected negative consequences on the environment. Worth noticing is also the fact that about one-fourth of developing countries total debt originates from export credits [91].

4.1. Hydroelectricity

Both the Norwegian state and Norwegian private companies are involved in hydroelectricity projects in Uganda. Due to high financial risk and high costs private companies and state actors often cooperate. Most commonly known is the small Bugoye hydro power plant located in Western Uganda. It was constructed and financed by the Norwegian regional energy utility company TrønderEnergi together with Norfund, and opened in October 2009. Bugoye power plant has increased Uganda's electricity supply by 7 % and the project is described as a success from both the Norwegian and the Ugandan side. Thirteen Ugandans are employed at the plant, and has been trained in how to operate it. About 500 others were employed in the construction process. The power plant will be transferred to the Ugandan state after 25 years [92.]

87 Norfund. "About Norfund". Accessed from http://norfund.no/index.php?option=com_content&view=category&layout=blog&id=76&Itemid=234&lang=en 12 December 2010.
88 Dagens Næringsliv (2007)"Knusende Norfund kritikk". Accessed from http://www.dn.no/forsiden/article1129161.ece 12 December 2010.
89 RORG (2010) "Bistandsbudsjettet 2011 og samstemt politikk". Accessed from http://www.rorg.no/Artikler/2277.html 13 December 2010.
90 GIEK. "Who we are". Accessed from http://www.giek.no/om_giek/181/en 9 December 2010.
91 SLUG (2009) "Økt støtte til GIEK". Accessed from http://www.slettgjelda.no/tema/norsk_gjeldspolitikk/artikler/%C3%98kt+st%C3%B8tte+til+GIEK.b7C_wlbU25.ips 9 December 2010.
92 Presentation by Bernhard Kvaal from TrønderEnergi at the seminar "Energibistand og forretningsmuligheter i Afrika" 11.11.2010 at Håndverkeren, Oslo.

TrønderEnergi is satisfied with their experiences from Bugoye, and are already in the process of locating new hydroelectricity projects in Uganda. Currently they are working on five different possible projects [93]. In addition to co-funding one of these new projects, Norfund wants to replicate the Bugoye project in other parts of East Africa. Together with the Norwegian state-owned enterprise Statkraft, Norfund own SN Power, a commercial investor and developer of hydro projects located in developing countries. SN Power has been involved in Uganda on an earlier occasion. In 2005 they engaged Norplan and Alstom to carry out a feasibility study for four power station projects [94]. In 2009, SN Power established SN Power AfriCA together with BKK and TrønderEnergi. This subsidiary will focus on hydropower projects in Africa and Central America [95]. As both TrønderEnergi and Norfund are present in Uganda there is reason to believe that Uganda will be one of SN Power's focus countries.

TrønderEnergi and Norfund's experiences from Bugoye has contributed to an increased interest in the potential for Norwegian companies to invest in Uganda's energy sector, and Norwegian authorities are arranging for interested Norwegian actors to get contacts in Uganda. In November 2010 a renewable energy business delegation visited Uganda in order to explore the potential for different renewable energy technologies and the business opportunities. The delegation consisted of TrønderEnergi, Norfund, Jacobsen Elektro, SINTEF, the International Centre for Hydropower (ICH), Energi Norge, NHO, NORAD and INTPOW [96].

Besides the current interest in smaller hydroelectricity projects in Uganda, Norwegian companies have been involved in larger projects on earlier occasions. Norplan and Veidekke were originally both involved in the Bujagali hydro project, but had to withdraw from the project due to financial reasons. Veidekke was also accused of corruption in connection with their involvement in the project. Further, Norpak Power Limited, a Norwegian consortium, was involved in the Karuma project. However, as the World Bank rejected financial support for the project, Norpak withdrew from it in 2008 [97].

Through Norad and The Norwegian Embassy in Kampala, the Norwegian state has also been involved in different clean energy projects in Uganda in the last years. In addition to granting development assistance money to the Bugoye project, Norway has financed a project aimed at building UETCLs capacity with Statnett as the Norwegian cooperating partner. Norway has also financed four feasibility studies. The Norwegian consultancy company NORPLAN is involved in one of them, the Isimba Hydropower project [98].

The Norwegian Government has in the state budget for 2011 doubled the expenditure on clean energy initiatives in the development aid budget, from approximately NOK 800 million to NOK 1,6 billion [99]. This is a strong political signal that renewable energy is a prioritized area within Norwegian aid policy.

4.2 Oil and gas

Norwegian actors within the Ugandan oil service sector are limited. The private company Jacobsen elektro is involved in the construction and operation of thermal power plants, and Norad's Oil for Development programme (OfD) has been working closely with Ugandan authorities for several years. Currently there are no Norwegian oil companies operating in Uganda.

93 Two are located in Bugoye, one in Kagega River, one at Nzongezi, and one in connection with Muzizi River. Source: Norfund. "Portefølje". Accessed from http://www.norfund.no/index.php?option=com_content&view=category&layout=blog&id=93&Itemid=229&lang=no 12 November 2010.

94 SN Power (2005) "SN Power annual Report 2004 – Powering development India – Chile – Uganda ". Accessed from www.snpower.com 18. November 2010.

95 Presentation by Kjell Roland from Norfund at the seminar "Energibistand og forretningsmuligheter i Afrika" 11.11.2010 at Håndverkeren, Oslo.

96 The Royal Norwegian Embassy in Kampala (2010) "Norwegian renewable energy business delegation visits Uganda". Accessed from http://www.norway.go.ug/News_and_events/Events/Norwegian-renewable-energy-business-delegation-to-visit-Uganda-/ 21 November 2010.

97 Teknisk Ukeblad (2008) "Verdensbanken sier nei til norske kraftutbyggere". Accessed from http://www.tu.no/energi/article186498.ece 25 November 2010.

98 One focused on six rural electrification projects, another on a transmission line from Hoima to Kafu. The two others are feasibility studies of the Karuma interconnection project and of Isimba Hydropower project. Reference: Norad (2009) "Clean Energy for Development Annual Report 2009".

99 Finansdepartementet, statsbudsjettet 2011. "Olje og energi – samarbeid med utviklingsland". Accessed from http://www.statsbudsjettet.dep.no/Statsbudsjettet-2011/Statsbudsjettet-fra-A-til-A/Olje-og-energi--samarbeid-med-utviklingsland/ 8 January 2011.

4.2.1. Oil for Development

Norway has a long tradition for giving development aid to Uganda, and has for fifteen years also been involved in capacity building in the country's petroleum sector. Today Uganda is one of OfDs long term core cooperation countries. Currently, OfD has a five years agreement with Uganda and a total budget of NOK 80 million. The project is called "Strengthening the State Petroleum Administration of the upstream sector in Uganda" and consists of three main pillars; resource management, revenue management and environmental management.

OfD is one of Norway's main focus areas within development aid. The programme builds on Norway's vast experience with managing oil and gas resources. However, when it comes to policies, OfD does not promote or advise for a Norwegian model for management in the petroleum sector. The main argument is that policies must be tailored to meet the different challenges in every country [100].

As mentioned earlier, Norway used a number of policy means in order to secure national control over the oil resources, including local content requirements. OfD claim they are concerned about local content in Uganda's oil industry, but are however reluctant to advise the Government to require such content from foreign companies. Instead they use several means to build capacity amongst Ugandans and Ugandan companies in the industry. For instance, together with Rogaland Training and Education Centre (RKK) they are financing and facilitating training and education of workers enabling them to get employment at the oil installations. To help establish linkages with the national economy they localize local mechanical workshops and connect them with the oil companies operating in the area. They are also assessing the possibility of establishing a base in the Lake Albert area consisting of international and local suppliers to the oil industry. To centralize such services will make operating in the area more efficient for the oil companies, and it would be easier to access the services they need [101]. However, without requirements implemented in the policy there is no guarantee that foreign companies will employ Ugandans and use Ugandan sub-suppliers contributing to national involvement in the sector.

4.2.2. Jacobsen elektro

Jacobsen elektro is a Norwegian electro-technical company that operates through Jacobsen Uganda Power Plant Company Ltd. in Uganda. Jacobsen elektro has been present in Uganda since 1998 as "a turnkey contractor for substation refurbishment and supply of electrical equipment" [102]. In 2008 they opened a 50 MW Thermal power plant based on heavy fuel-oil in Namanve, just outside Kampala. The power plant was built in order to reduce load shedding in Kampala, and was co-financed by Norad. The plant will be handed over to the Ugandan state after a period of six years.

Jacobsen elektro is also contracted by Tullow oil to construct a 57 MW heavy fuel-oil power plant and 132kV transmission lines covering a distance of approximately 200 km in the Western part of Uganda [103]. The plant and transmission lines are part of an Early Production System also including a refinery. The system was originally planned to be located in the Kabwoya wildlife reserve in Hoima, but the project met massive protests from civil society organizations [104]. Jacobsen elektro are dependent on an export credit guarantee from GIEK to take on this project. As GIEK follow the World Banks standards in environmental and social aspects, they set as a condition for a guarantee that the power plant must be located outside the reserve. The location is now changed and Norad, advising GIEK in this matter, has contracted Norconsult to make an assessment of the profitability and sustainability of the project. The assessment is yet to be finished. Even so, the Norwegian Embassy in Kampala has already undertaken to finance NOK 300 million of the costs in connection to the transmission lines [105].

100 Norad. "Oil for Development" Accessed from http://www.norad.no/en/Thematic+areas/Energy/Oil+for+Development/Oil+for+Development.127154.cms 15 November 2010.
101 Interview with Ivar Aarseth and Heidi Hegertun from Oil for Development, Norad, 07 December10
102 Jacobsen Elektro. "Namanve 50 MW Thermal Power Plant, Uganda". Accessed from http://www.jel.no/index.php?option=com_content&view=article&id=52%3A50-mva-power-station-in-uganda&catid=1%3Asiste-nytt&lang=en 3 November 2010.
103 GIEK. "Environment and social responsibility – projects". Accessed from http://www.giek.no/miljo_og_sosialt_ansvar/prosjekter/en 5 November 2010.
104 ACODE (2008) "Comments on the Environment Impact Assessment for the Proposed Early Production System (EPS-EIA) – Kaiso Tonya area, Block 2, Lake Albert, Uganda". Accessed from http://assets.wwf.no/downloads/csos_letter_with_comments_to_nema_070808.pdf 3 November 2010.
105 Interview with Ivar Aarseth and Heidi Hegertun from Oil for Development, Norad, 07 December10.

4.2.3. The future for Norwegian oil companies in Uganda

Factors like high risk, landlockedness, corruption and unstable political situation are used as arguments why Norwegian oil actors have not invested in Uganda so far [106]. However, another important factor is that Norwegian oil service companies have specialized competence within deep-water oil activity. As the oil fields in Uganda are located around Lake Albert, OfD believe it is only a matter of time before deep-water drilling will be explored. In order for the Ugandan authorities to be prepared, OfD have advised them to carry out baseline studies of sediment and water quality and to write an emergency plan [107]. When deep-water drilling is an option and Norwegian energy companies have proven that making business in Uganda is profitable, there is reason to believe that Norwegian oil actors will start looking at Uganda as a potential market.

4.3. Consultancy companies

At least two major Norwegian consultancy companies are offering services within the energy sector in Uganda. NORPLAN and Norconsult have both been contracted to deliver services, specifically in connection with hydro power projects.

NORPLAN is an engineering and development consultancy. Within the energy sector they offer services in natural resources, renewable energy, industry, oil and gas. They offer their services worldwide and currently own 40% of NEWPLAN Ltd, a consultancy company located in Kampala. NORPLAN was the consultant for TrønderEnergi's hydro power plant in Bugoye [108]. They also carried out the Environmental Impact Assessment for Jacobsen Electro's power project in Namanve. Currently, NORPLAN is working on a study of the Isimba hydro power project in the Nile River. Isimba hydro power station will be located downstream of the Bujagali project. NORPLAN is contracted together with Fichtner to carry out a feasibility study and to prepare tender documents for the power plant as well as a transmission line to Bujagali [109].

Norconsult has a local office in Kampala and are offering services within many sectors. The company was involved in feasibility studies in connection with two hydropower projects in Uganda already in 1976 [110]. In 1993 they wrote a pre-investment report about four hydropower systems in Western Uganda 111 and have later on been involved in two World Bank reports on hydro power [112]. In addition, Norconsult is now contracted by Norad to assess the profitability and sustainability of the power plant and transmission lines that Jacobsen elektro has been contracted to construct in Western Uganda [113]. As accessible information about their projects is limited, both Norconsult and Norplan may be involved in other projects in the energy service sector in Uganda not known to us.

4.4. Other

Green Resources AS (GRAS) is a private Norwegian company working with forestation in East Africa. The company has previously been known as Fjordgløtt AS and Tree Farms AS. They plant trees to "generate carbon credits and bio-energy and to manufacture wood products" [114]. The company currently has two plantations in Uganda. The company has earlier been criticized by Norwatch because of the unfavorable land lease agreement with the Ugandan authorities, as well as conflicts over land and unpaid labour in connection with their plantations [115]. In addition, the plantations consist mainly of

106 Interview with Per K Johansen (First secretary) and Katrin C Lervik (Energy Counsellor), Royal Norwegian Embassy in Uganda, 18 November 2010.

107 Interview with Ivar Aarseth and Heidi Hegertun from Oil for Development, Norad, 07 December 2010.

108 Multiconsult. "Vannkraft – Bugoye, Uganda". Accessed from http://www.multiconsult.no/-Test-22/Referanser_Energi/Bugoye/ 09 December 2010.

109 NORPLAN (2010) "NORPLAN consortium signs contract for the Isimba hydro power project in Uganda". Accessed from http://www.norplan.com/news.html 10 December 2010.

110 They submitted two prefeasibility studies of hydropower development on the Kagera River, and one indicative Kagera basin plan. Reference: Nile Basin Initiative (2005) "Strategic/Sectoral, Social and Environmental Assessment of Power Development Options in the Nile Equatorial Lakes Region - Stage I: Burundi, Rwanda and Western Tanzania". Accessed from http://siteresources.worldbank.org/EXTAFRNILEBASINI/Resources/SSEA_Synopsis1.pdf 9 December 2010.

111 NorConsult (1993) "Four Hydropower Systems, Western Uganda – Pre-investment Report".

112 One on opportunities for Power Trade in the Nile Basin, the other is an economic and financial evaluation study of the Bujagali II project. Reference: Nile Basin Initiative (2005) "Strategic/Sectoral , Social and Environmental Assessment of Power Development Options in the Nile Equatorial Lakes Region". Accessed from http://www.ecolve.com/forum/viewtopic.php?f=10&t=214 8 December 2010.

113 Interview with Ivar Aarseth and Heidi Hegertun from Oil for Development, Norad, 07.12.10.

114 Green Resources "Welcome to Green Resources". Accessed from http://www.greenresources.no/Home.aspx 2 December 2010.

eucalyptus and pine, trees reportedly drying up land and claimed to destroy biological diversity and hence threaten food security in developing countries. It has also been argued that Carbon trading is an incentive for further exploration of fossil fuels rather than contributing to find sustainable alternative energy sources [116].

4.5. Summary

Norwegian interests in Uganda's energy service sector are limited to a few private energy and technical companies, some consultancy companies and several state actors. There are however reason to believe that more Norwegian private companies will find Uganda as an interesting investment possibility as Norwegian companies already involved in Uganda gains experience and make profit. More Norwegian investments in hydro power projects are underway and the Norwegian Embassy is active in bringing Norwegian investors and Ugandan private companies together. There is also reason to believe that Uganda will become interesting to Norwegian oil and gas service companies if and when deep water drilling in Lake Albert becomes a reality.

115 House of Commons - Environmental Audit Committee (2007) "The Voluntary Carbon Offset Market". Accessed from http://www.publications.parliament.uk/pa/cm200607/cmselect/cmenvaud/331/331.pdf 2 December 2011.

116 Dag Hammarskjold Foundation (2005). "To keep the oil flowing – A conversation on Carbon Credits". Accessed from http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/CarbConv.pdf 2 February 2011.

5. Uganda and possible consequences of liberalization

Uganda is a resource rich country with vast potential for development of hydro, solar, bio and fossil energy. In contrast, the country provides electricity to less than 10% of its population and there is an urgent need to develop the energy sector. Uganda lack the finances, technology and competence needed in order to handle this large task alone. As a means to improve the situation, the Government has implemented a very liberal policy on foreign investments, in line with the country's overall private sector-led growth strategy. But the strategy has not lived up to its expectations. The discovery of oil in 2006 however brought a cautious optimism to Uganda and the public hope the oil and gas resources can contribute to a positive development for the country and its population. Uganda is currently working on the oil and gas legislation and is in a vulnerable phase when it comes to developing policy to secure sustainable management of the valuable natural resources.

International energy service companies play an increasingly important role in the energy sector globally. Norwegian energy service companies are also a part of this current trend and they are expanding internationally. As a result of this, Norway and eleven other countries are behind a collective request in WTO, calling for full liberalization and deregulation of the energy services sector. As a LDC, Uganda is not a receiver of the request. Nevertheless, because Uganda expects an increase in foreign investments in the energy sector, and because Norway is likely to be among these investors, we will here use Uganda as a case when assessing possible consequences of liberalization of energy services for developing countries. As seen earlier, several LDCs have already undertaken specific commitments within energy services. Pressure to liberalize towards Uganda and other developing countries is high, and the assessment of consequences in the following analysis must also be seen in relation to pressure from other actors than WTO.

In this part of the report we will present possible implications for Uganda should they choose to undertake full commitments within energy services in WTO the way it is formulated in the collective request from 2006, the follow-up note called "plurilateral negotiations on energy services" and the Background Note from the Secretariat 2010. To assess the possible implications we have used information gathered during interviews with Ugandan CSOs, trade unions and the National Manufacturers Association (NOTU). In addition we have examined Uganda's relevant energy policies and the Petroleum Bill, as well as a World Bank document about policy affecting professional services in East Africa [117].

5.1. Policy space and democratic implications

Once a country undertake a commitment in the WTO it is more or less impossible to reverse it. WTO does allow countries to modify or withdraw commitments made in WTO, but this can be done at the earliest three years after the commitment was made, and involves difficult and lengthy negotiations as the country will need to compensate trading partners. These negotiations and agreements shall according to WTO[118] include "a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations".

As seen earlier, Uganda is in the starting phase of oil exploration and is working to build capacity both in the Ministries, institutions and amongst the civil society. Legislation and regulations are being developed for the country to control the development of the oil and gas sector. In order for the politicians to make decisions based on what is in the best interest of Uganda, they need policy space. However, undertaking commitments on energy services in WTO might limit this policy

117 World Bank (2010) "Reform and Regional Integration of Professional Services in East Africa: Time for Action". Accessed from http://siteresources.worldbank.org/INTAFRREGTOPTRADE/Resources/NEWReformProfessionaServicesEACReport.pdf 13 January 2011.
118 WTO "Part IV – Progressive liberalization" Accessed from http://www.wto.org/english/tratop_e/serv_e/4-prolib_e.htm 21 December 2010.

space as relevant policy means could be conflicting with WTO rules. This includes local content requirements which are strongly affected by the request on energy services. Because commitments are almost impossible to reverse, Uganda will in the future be obliged to the WTO agreements today's politicians enter into. This poses a democratic problem as a future change of policy will be limited by the decisions and commitments made by earlier governments. As Uganda is new in the oil industry and is still identifying the proper policy to regulate the sector, they need to be able to make adjustments and changes to the policy along the way and in the future. Undertaking commitments on energy services in WTO might limit this possibility, and hence mean a constraint on Uganda's policy space.

5.2. Local content and socioeconomic development

In order to achieve socioeconomic development resource rich countries are dependent on general spin-off effects including the creation of employment opportunities in connection with foreign investments. Local content is means to secure such effects and includes requirements such as use of local labour and local sub suppliers, joint ventures between foreign and domestic companies and transfer of competence and technology. While some regard local content as an unnecessary hinder for foreign investment leading to increased expenses for developing countries which lack competitive companies, others see local content as one of the most important factors to secure sustainable development. Uganda's Government focuses on private-sector led growth, the energy sector is liberalized and local content in Uganda's energy policy is generally weak. However, we do find several formulations both in the National Oil and Gas Policy 2008, the current Petroleum Bill and the Renewable Energy Policy 2007 regarding local content. In addition, there seems to be a general opinion amongst the civil society[119] that requirements of local content should be implemented in the policy.

5.2.1. Market vs. political control

As argued earlier, limited policy space can be a consequence of committing to liberalize energy services within WTO. When the policy space decreases and the means to regulate foreign companies' activities are limited, one can argue that control is transferred from the state to the companies and the market. This is of great concern to all the Ugandan organizations we spoke to in connection with this report. They all acknowledge Uganda's limitations on finances, technology and competence, especially within the oil sector. Because of this, Uganda is dependent on investments from international companies to develop the sector. In order to make sure that the foreign companies comply with existing regulations and to ensure public control, public-private partnerships (PPPs) is preferred. According to NOTU, some of the Ugandan workers engaged in the ongoing oil exploration activities in the Western part of the country do not have contracts or appointment letters, they lack identification cards and do not to get proper payment. A very liberal investment policy combined with lack of proper employment legislation and little control over the foreign companies' activities is believed to be the reason. It is believed that a further liberalization will make this situation even worse. According to some of the organizations we spoke to, government shares in the foreign companies will increase the public's possibilities to hold the companies responsible for their actions. This is because the Government is accountable to the public. While on the one hand making sure that the foreign companies is kept accountable, it is believed that the same companies will contribute with skills and ensure effectiveness in the joint projects. As KACITA's representative formulated it "In PPPs one is a watchdog over the other, and you get the best from both".

PPPs are important within the Renewable Energy Policy 2007 and "will form the basic mechanism for renewable energy investments". PPPs will be encouraged in both large-scale and small-scale power projects. Such partnerships are also to be promoted in the oil and gas sector and a National Oil Company is to be established to secure national participation in the

119 Interviews with KACITA, NOTU, UMA and AFIEGO October 2010.

industry, including in the licenses[120]. Even though the policies and the Petroleum Bill do not require foreign companies to cooperate with the National Oil Company, there is a clear strategy that the state shall participate in the development of the oil and gas sector. In the Petroleum Bill it is stated that "The Government may participate in petroleum activities under this Bill through a specified share of license, permit or contract granted under this Bill and in the joint venture established by a joint operating agreement in accordance with the license and this contract". As this is not formulated as a requirement, but rather a possibility, it does not conflict with the request on energy services in WTO. However, the formulations in the Bill are not yet concluded on, and changes might be incorporated.

If Uganda were to undertake commitments in energy services in WTO, requirements on state shares, PPPs and joint ventures would be difficult to implement. For instance, the request from 2006 clearly states that there should be a "substantial elimination of joint ventures and joint operations requirements for Foreign Service suppliers" and a "removal or substantial reduction of foreign equity limitations". Generally, all restrictions on foreign investment and limitations on foreign capital participation might fall under GATS disciplines [121]. This would leave Uganda with little opportunity to change their liberal investment policy in the future, specifically on the issues of joint ventures and state participation. There is a worry amongst some Ugandan organizations that foreign companies will have the power to decide the extent of state participation in the sector. There is little reason to believe that the foreign companies will engage in PPPs voluntarily, especially not when the public partner is a National oil company in need of technology and competence.

5.2.2. Opportunities for Ugandan companies

The energy sector is very capital-intensive and the job opportunities are limited. Job-creation in related sectors is therefore important in order to achieve social and economic development in resource rich countries. Several formulations regarding the use of local sub suppliers and local services are included in Uganda's Petroleum Bill. For instance, article 128 states that "the licensee, its contractors and sub-contractors shall give priority to competent citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services". The entities "shall have adequate resources and capacity to add value to the petroleum operations carried out by the licensee". Further, the licensee shall "give priority to the purchase of local products and services from Ugandans wherever they are competitive in terms of price, quality and timely availability".

These requirements are in accordance with the views of representatives from the two Ugandan workers associations KACITA and NOTU, and to Uganda Manufacturers Association (UMA). They believe that as far as Ugandan companies have the skills and competence needed, foreign companies should be required to use them. Without such a requirement, it is feared that the foreign companies will choose sub suppliers from their own or other countries. According to UMA, Ugandan companies working within construction, steel, cement and wire production can supply the energy sector. Some of these companies would need some support to gain the necessary competence while others already have the skills needed. Requirements to use Ugandan companies as sub suppliers could be an important mean to secure development of competence and job-creation domestically.

Given that Uganda undertake commitments on energy services, the WTO principle of national treatment could make it difficult to enforce the abovementioned requirements. As all services deliverers are to be treated equally, the requirements would probably be defined as being discriminatory against foreign service suppliers. Protection of local service suppliers against competition from foreign, often large multilateral energy service companies could hence prove difficult. Further, as the request in WTO includes removal of restrictions on cross border supply of services, national and local service suppli-

120 According to Uganda's National Oil and Gas Policy of 2008.
121 WTO (2010) "Energy Services - Background Note from the Secretariat"

ers could also experience increased competition from foreign suppliers not present in Uganda, offering their services from abroad. Without using policy means to secure local employment, there is a concern that the objective of optimum national participation in the oil and gas activities mentioned in the National Oil and Gas Policy of 2008 will be limited.

5.2.3. Employment opportunities for Ugandans in foreign companies

In addition to being capital-intensive the oil industry does to a large extent require highly skilled professionals. Multilateral oil service companies usually bring their own educated employees to the countries they operate in, leaving little employment opportunities beyond operations requiring unskilled labour to the local and national workers [122]. This is also the view of the Ugandan workers associations we spoke to. One representative put it very straight: "With liberalization Ugandans remain unemployed. Private foreign companies will use their own workers" [123].

Employment issues are not at all mentioned in the National Energy Policy 2002 or the Renewable Energy Policy from 2007. However, the Petroleum Bill contains several formulations about employment of Ugandans. The main formulation can be found under article 130, point 6: "The licensee shall give preference to the employment of Ugandans with the requisite qualifications, competence and experience required to perform the work". This formulation is conflicting with the WTO-article regarding national treatment and could be contested should Uganda undertake commitments on energy services[124].

According to a Survey made by the World Bank [125], entry regulations for foreign service providers in Uganda vary according to the type of service. There are almost no restrictions on commercial presence within all kind of services in Uganda, but strong regulations on some types of cross-border services. For instance, foreign companies or individuals offering engineering services are not allowed to engage in any procurement activities in Uganda without being commercially present. This limits what kind of services foreign companies can provide from abroad, and secures the national control over foreign companies engineering activities in the country. The collective request in energy services in WTO includes several measures to ease the cross-border supply of services including the removal of existing requirements of commercial presence[126]. There is reason to believe that international energy service companies has much to gain from being allowed to offer services from abroad, not having to set up offices in the host country. If Uganda makes commitments on energy services they might have to open up for engineering services to be supplied from abroad. This could result in less job opportunities for Ugandan engineers within the energy sector and a possible transfer of engineering jobs to abroad. Another consequence could be limitations on technology and competence transfer from foreign to local companies as the foreign companies would not have to establish any activities in Uganda. In addition, a result could be reduced control over services that are important to national control in the energy sector such as analysis of geological data, remote control and monitoring of pipelines and pumping from wells[127].

5.2.4. Transfer of competence and technology

Strategies to develop a national oil industry often include requirements on transfer of technology and competence from foreign companies. In Norway for instance, such transfer were vital to the development of the Norwegian oil and gas sector, including the related service sector. Uganda's Petroleum Bill contains few formulations regarding the transfer of technology, but do include requirements on training programmes within all phases of the petroleum operations for local employees. Further, according to article 129 a license shall include "a commitment by the licensee to maximize knowledge transfer to Ugandans and to establish in Uganda management and technical capacities and any necessary facilities for technical work, including the interpretation of data".

122 Menotti, Victor (2006)

123 Interview with Issa Sekitto, Spokesperson, Kampala City Traders Association (KACITA) 19 October 2010.

124 WTO (2010) "Energy Services - Background Note from the Secretariat".

125 World Bank (2010) "Reform and Regional Integration of Professional Services in East Africa: Time for Action". Accessed from http://siteresources.worldbank.org/INTAFRREGTOPTRADE/Resources/NEWReformProfessionaServicesEACReport.pdf 29 January 2011.

126 Government procurement is excluded from the GATS articles II, XVI and XVII and could have consequences for the energy sector in cases where Government is directly involved in the purchase of energy services. Procurement by private companies, domestic or foreign, is not affected by the exclusion. Reference: WTO (2010) "Energy Services - Background Note from the Secretariat".

127 Examples used in the WTO documents from 2006 and 2010.

Provided that Uganda undertake commitments on energy services in WTO, some of these formulations could be difficult to put into practice. For instance, interpretation of data is a service that can be offered from abroad. A commitment on energy services in WTO would include elimination of requirements on commercial presence. To require the establishment of the abovementioned facilities in Uganda could then be conflicting with a WTO-commitment. Further, de facto technology transfer requirements are in the WTO Background Note from 2010 mentioned as a measure that may fall under GATS disciplines. There is reason to believe that the abovementioned formulations in the Petroleum Bill could be defined as de facto technology transfer requirements, again conflicting with possible WTO obligations. Generally, local content requirements on goods and services are regarded as "problematic measures" and will be subject for discussions in the negotiations.

When discussing transfer of technology and competence it is important to recognize the use of joint ventures as a means of securing such transfer. This includes both joint ventures between foreign and domestic private companies, and private foreign companies and state companies. However, as discussed earlier, one of the main objectives in the collective request is to remove existing requirements of joint ventures and joint operations. This will take away one of the main policy means countries have to secure transfer of competence and technology from foreign companies operating in their countries. It is also important to consider the removal of restrictions on commercial presence. In the instances where services is provided from abroad, there is no transfer of technology or competence as both parts remains in the country were the services are provided from. At the moment Uganda requires commercial presence for suppliers of engineering services, this policy might have to be changed if they were to undertake commitments. The result could be limited transfer of competence and technology in connection with this type of services.

5.3. Promotion of environmental friendly energy

Environmental issues are frequently mentioned in Uganda's National Oil and Gas Policy 2008. For instance, the Government will try to influence what kind of technology the energy sector use. This is reflected in the Policy where it is stated that the Ministry responsible for labour shall ensure "that the equipment and technologies brought into the country are environmentally friendly and comply with the desired safety and health standards".

When it comes to renewable energy, Uganda has very high ambitions. The share of energy from renewables is targeted to be 61% by 2017. In order to reach this target Uganda has included several means to promote the development and use of renewable energy in the Renewable Energy Policy 2007. For instance, they will use "targeted subsidies to stimulate the market penetration of renewable energy technologies". Further, they will introduce preferential tax treatment, tax exemption and accelerated depreciation. In addition, credit enhancement instruments, grant financing of renewable energy projects and feed-in-tariffs will be established. Other incentives include risk hedging mechanisms, tax rebates, favourable power purchase/pricing terms and forex exchange conversion. The Government can also proactively start implementation of desirable projects [128].

As long as those financial mechanisms are not favouring national suppliers over foreign ones, and are available to all suppliers on equal terms, they are probably not subject to the national treatment obligation. However, subsidizing and promoting one type of energy source or technology over another might be conflicting with the formulation in the collective request stating that "the request is neutral with respect to energy source and technology". In other WTO-documents this is often referred to as the "principle of technological neutrality". As discussed earlier, this principle was established in GATS in order to prevent unequal treatment of communications technologies. The same principle applied to energy services could

128 Uganda's National Renewable Energy 2007.

imply that, if Uganda undertake commitments, the above mentioned financial means could be contested in WTO because they are available to renewable energy only and not to fossil energy. This is also applicable to Uganda's desire to choose the most environmental friendly technology possible within the oil and gas sector. As the principle of technological neutrality is used to prevent the unequal treatment of different technologies, it could be used to contest requirements to use specific types of technologies in the energy sector. As stated earlier in this report, the principle is vague and yet to be tested in the Dispute Settlement Body. The consequences of the principle are therefore still uncertain. However, before making any commitments, all countries should be aware that the principle of technological neutrality can hamper their attempts to promote environmental friendly technology and to follow up on their energy strategies.

5.4. Norwegian involvement in Uganda's energy service sector

As seen earlier in this report Norway has interests in Uganda's energy service sector, specifically within hydroelectricity, oil-related industry and capacity building through the OfD programme. Uganda has an urgent need to increase their power supply, and Norwegian actors have so far contributed to the construction and operation of two power plants. The Norwegian state has also supported several renewable energy and electrification projects, and Norwegian consultancy companies have been involved in several energy projects. Norwegian investments in Uganda's hydro power sector are expected to increase as several Norwegian actors are planning projects in the country. Jacobsen elektro will also expand their involvement in Uganda when the construction of the thermal power plant in Tullow Oil's Early Production System starts.

There seems to be a tight bond between the Norwegian state and Norwegian private actors operating within the energy service sector in Uganda. As mentioned earlier, the risk of operating in Uganda makes most private Norwegian investors dependent on financial support from Norad, Norfund or the Embassy, the larger projects are also dependent on guarantee from GIEK. Most of the projects mentioned in this report include several Norwegian actors. For instance, Namanve power plant was constructed by Jacobsen elektro, sponsored by Norad, the environmental impact assessment was carried out by Norplan while GIEK guaranteed for the credit. The Bugoye project involved TrønderEnergi, Norfund and Norplan as well as a development grant of 50 million and a political risk guarantee from GIEK. The ongoing feasibility study of Isimba hydropower project is financed by Norad and carried out by Norplan.

There is reason to question this tight bond as development assistance can act as a door opener for private interests. The Norwegian state is in Uganda on the one hand financing development projects within the energy sector while on the other accommodating for Norwegian private investments in the same sector. This can be interpreted as a mixing of roles, especially when both state and private Norwegian actors are involved in the same projects. OfD has on earlier occasions been an object of similar criticism. By fronting Norway as an success story when it comes to oil management and by engaging Norwegian oil and gas companies like Statoil as advisors in the process, Norad has been accused of using development assistance to promote Norwegian companies in the countries they have been involved in, as for instance in Iraq [129]. Since no Norwegian oil companies or oil service companies have established business in Uganda yet, this does currently not constitute a problem. However, the question seems to be relevant in connection to the Norwegian involvement in the above mentioned energy projects in Namanve, Bugoye, Mputa and Isimba.

129 Ny Tid (2006) "Oljens velsignelse". Accessed from http://www.nytid.no/arkiv/artikler/20060629/oljens_velsignelse/ 2. February 2011.

6. Conclusions and recommendations

6.1. Concluding remarks

Uganda has a very liberal investment policy and the energy sector has been liberalized as part of a marked-led growth policy. In this regard it is easy to argue that the consequences of a commitment to further liberalization within the WTO would be limited. However, there is currently vast development within Uganda's energy sector and the country is in a vulnerable starting phase of oil and gas exploration. If the oil resources are managed in an unsustainable manner, Uganda might experience severe negative consequences. Sound management, environmentally, socially and economically, is necessary in order for Uganda to prevent what is often referred to as "the oil curse". Laws and strategies are currently being developed in order to regulate the oil and gas sector and to secure national participation. Some claim the content of both the policy and the Petroleum Bill is too weak to assure the oil and gas exploration activities contribute to a positive development for the country, and a public debate on the issue has just started. In the process of developing the legislation, Uganda need policy space to identify the strategies and the policy means they believe is best suited to achieve their goals. To undertake commitments on energy services could however imply loosing this policy space as the country could be prevented from using selected policy means. This includes local content requirements and cross border services. A commitment in energy services could further have severe democratic implications as it will be binding also in the future. Because commitments made within WTO is almost impossible to reverse, future politicians could be prevented from implementing the policy they and their voters want. This way, a commitment would cement the liberalization of energy services in Uganda for a long period of time.

CSO's and trade unions in Uganda is warning about the consequences of a further liberalization of the energy sector. Because of Uganda's limited financial and technological capacity they believe that Uganda needs foreign companies to invest in the energy sector. However, without regulations and requirements to control the activities of the foreign companies, consequences would be limited employment opportunities and minimal transfer of competence and technology resulting in little national involvement in the energy sector. A commitment on energy services could also hinder the establishment of PPPs and joint ventures which by the Ugandan organizations is regarded as decisive in order to keep the foreign companies accountable for their actions. Given Uganda's weak employment legislation and workers' experiences from the oil fields in the Western parts of Uganda, this is especially worrying. Before undertaking any commitments on energy services in WTO Uganda should also consider the implications for their ambitious targets on renewable energy. Despite uncertainties, there is reason to believe that the principle of technological neutrality in the collective request on energy services could prevent Uganda from using the financial mechanisms implemented in the Renewable Energy Policy. The same principle could also be used to contest attempts to make foreign companies use a specific type of technology in the energy sector.

Many of the policy means affected by the request on energy services were used by Norway in order to build national competence and technology within the oil and gas sector. Even though Uganda and other developing countries are in a very different situation now than Norway was in the 1960s and 1970s, those countries should be free to choose whatever policy they believe is best to secure their national energy interests. By pushing bilateral and collective requests on energy services in WTO Norway is requesting other resource rich countries to commit to manage the resources a different way than Norway did, and to lessen restrictions on foreign involvement in the sector. As seen in this report, the consequences of such a policy could be severe for the affected countries.

6.2. Recommendations

6.2.1. Uganda

- Uganda should not undertake commitments on energy services in WTO. Uganda should rather join forces with other developing countries to increase awareness of the consequences of committing to liberalize energy services.

- Ugandan CSOs and relevant Ministries should work together to create awareness of the consequences of committing to energy services in WTO. This work should also be viewed in the context of bilateral and regional free trade agreements.

- Uganda should take advantage of the still existing policy space to work on its energy related policies and regulations.

6.2.2. Norway

- Norway should not pursue negotiations and agreements that might curtail policy space for developing countries. Hence, Norway should withdraw from the collective request on energy services in WTO. Norway should maintain the existing policy of exempting LDCs from bilateral and collective requests on liberalization, and reconsider all bilateral requests that potentially will have adverse effects for national participation in developing countries' energy sector.

- If investments are made on the terms of developing countries, and local content is included, Norwegian investments can be an important and positive factor in the development of the energy sector in resource rich developing countries. Also, existing programmes like Oil for development should be strengthened in line with LDCs development agenda through national consultations with CSOs, trade unions, traders, policy makers and the government. Norway's history on energy resource management and the importance of local content should also be given more emphasis.

6.3. Recommendations on oil

Uganda's civil society has shown a lot of interest to participate in dialogue with the Government and the private sector to promote pro-development in Uganda's energy sector, especially in the areas of oil production. However, they face a number of challenges ranging from transparency issues, low levels of capacity and low public awareness on the oil sector. Captured in this last part of the report are the recommendations from different stakeholders [130] on how the energy sector with specific focus on oil can be managed for the betterment of Uganda;

130 The recommendations are gathered from the interviews with representatives from KACITA, AFIEGO, ACODE, NOTU and UMA in Kampala, October 2010.

6.3.1. Recommendations for the Ugandan Government

- Provide adequate and timely information about oil and the energy sector to the public.
- Provide the details of the Production Sharing Agreements so that Ugandans, especially those intending to work within the oil sector can make better and informed decisions. The Ugandan people and the civil society need to be included in the process of developing and regulating the Ugandan oil sector.
- Allow ease for organizations to track formulation of policy in parliament
- Proceeds from the oil should benefit the ordinary citizens through investments in infrastructure, health, education and job creation.
- Value addition and local content need to be emphasized in laws and regulations and within the Production Sharing Agreements.
- Law needs to ensure that environmental protection is a priority
- Engage Ministry of Gender, Labour and Social Development to streamline labour relations between oil companies and Ministry in western Uganda where the oil is found [131]
- Public Private Partnerships (PPPs) and a policy to guide PPP in the energy services is important and needs to be prioritized if the best interests of Uganda are to be realized.
- We need to further explore the formation of a National oil company and how it will work for the benefit of all Ugandans especially when it comes to the transfer of technology. There is need for a plan on what experts we have and what kind of experts we need to have.
- The Petroleum Institute in Kigumba needs to get better funding and resources. Furthermore, there needs to be an all conclusive consultative process with regard to the criteria used to select the students that are taken for oil courses.
- The Government needs to pronounce itself on where refining is going to take place

6.3.2. Recommendations for Ugandan CSOs and others working on oil issues

- Continue the pressure towards the Ugandan Government to provide information about the content of the Production Sharing Agreements
- Make sure laws and regulations relevant to the energy sector include the necessary policy in respect to environmental protection, labour rights, taxation and national control over the oil resources.
- Ugandan CSOs, especially those working in the energy sector need to urgently train and build their capacity on issues regarding energy, especially on the issues of oil so that they can freely and competently engage the Government.

131 Uganda has had no employment policy up until October 2010 when a new National Employment Policy was passed, and the minimum wage currently stands at 6000/= per month (ap proximately USD $3)

7. References

Herning, Linn. 2010. "Norske økonomiske interesser og posisjoner innen energitjenester". Handelskampanjens tekstserie – Hva er norske interesser.

Kristoffersen, Berit. 2008. "Gjør som vi sier, ikke som vi gjorde – Norske krav til liberalisering av energitjenester under WTO". Forum for Utvikling og Miljø.

Menotti, Victor. 2006. "The Other Oil War: Halliburton's Agenda at the WTO - A Policy Brief on the Energy Services negotiations in the World Trade Organization (WTO)". http://www.ifg.org/reports/WTO-energy-services.htm

Ryggvik, Helge (2010). "The Norwegian Experience: A toolbox for managing resources?" Centre for Technology, Innovation and Culture.

WTO. 2006. "Collective request in energy services". Can be downloaded from: http://docsonline.wto.org/

WTO. 2006. "Plurilateral negotiations on energy services". Can be downloaded from: http://docsonline.wto.org/

WTO. 12.01.2010. "Energy services – Background Note by the Secretariat". Document symbol: S/C/W/311. Can be downloaded from: http://docsonline.wto.org/

Interviews with:

- Per K. Johansen (First secretary) and Katrin C Lervik (Energy Counsellor), Royal Norwegian Embassy in Uganda, 18th November 2010
- Issa Sekitto, Spokesperson, Kampala City Traders Association (KACITA) 19th October 2010.
- Usher Wilson Owere, National Organisation of Trade Unions (NOTU) 19th October, 2010.
- Turyahebwa Anthony, National Organisation of Trade Unions (NOTU) 19th October 2010.
- Andrew Luzze, Ugandan Manufacturers Association (UMA) 19th October 2010
- Onesmus Mugyenyi, Deputy Executive Director & Manager Environmental Democracy, Advocates Coalition for Development and Environment (ACODE), 4th August, 2010
- Dickens Kamugisha, African Institute for Energy Governance (AFIEGO) 21st October 2010.
- Ivar Aarseth and Heidi Hegertun from Oil for Development, Norad, December 7th 2010.

The Norwegian Council for Africa (NCA)
www.afrika.no
Southern and Eastern African Trade Information
and Negotiations Institute (SEATINI Uganda)
www.seatiniuganda.org