



RECOMMENDATIONS

- Government should enact corporate governance guidelines for SOEs and the NOC. Transparency and stakeholder involvement should be emphasised in the guidelines and the broad corporate governance framework. These provisions will help to protect the NOC from corruption and overt government interference. Additionally, the corporate governance framework should be mandatory for both listed and unlisted SOEs, to encourage compliance.
- The corporate governance framework should cater for all stakeholders. Currently Uganda's corporate governance framework, which mainly applies to shareholders, does not provide for the needs of SOEs. Stakeholder involvement will encourage transparency in the NOC.
- Government should set up an institution to ensure that SOEs comply with relevant regulations, especially corporate governance requirements. An institution akin to the Department of State Ownership in Norway should be established to supervise SOEs and the proposed NOC.

Corporate Governance of State-Owned Extractive Companies: What Uganda Can Learn From Norway

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EXECUTIVE SUMMARY

The Petroleum Bills of 2012 provide for the creation of a national oil company (NOC) in Uganda. However, it is arguable whether the corporate governance framework will protect the proposed company from the governance challenges that have characterised other state entities. The corporate governance framework provided in the Companies Bill of 2009 is insufficient and does not cater for stakeholders. Unlike private companies, state-owned enterprises (SOEs) have various stakeholders, such as employees and the citizens of the country. Norway and Uganda are at different levels of development and have different legal systems. However, Norway's corporate governance framework for SOEs, which is based on the corporate governance guidelines of the Organisation for Economic Co-operation and Development, is an example of best practices and can guide the development of a corporate governance framework for SOEs and the proposed NOC in Uganda.

INTRODUCTION

Recently new laws have been approved by parliament to regulate Uganda's petroleum sector. The new pieces of legislation include the Petroleum (Exploration, Development and Production) Bill of 2012 and the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill of 2012. These bills provide for the creation of a national oil company (NOC). The policy briefing examines the corporate governance framework for the proposed NOC. The NOC is discussed in light of the extensive corporate governance framework for state-owned enterprises (SOEs) in Norway and the brilliant performance of the Norwegian state oil company, Statoil.²

SOEs can be defined as enterprises that are wholly or partially owned by the state. Partial ownership, in this regard, refers to majority ownership.

Unlike private companies, SOEs perform both commercial and social functions.³ This makes them relevant in bridging inequalities caused by issues such as gender, income and race. These issues are prevalent in Africa. Some authors have noted that SOEs can play an important role in resolving such social issues, thus highlighting the relevance of SOEs to the African context.

Corporate governance has been acknowledged as an issue of global importance. Nevertheless, the definition of corporate governance and its parameters are still open to debate.⁴ Corporate governance has been examined from multiple disciplinary viewpoints and is characterised by several definitions. This briefing adopts the broad approach, which defines corporate governance as the system of laws, rules and factors that control operations in a company.⁵ A comprehensive corporate governance framework ensures that companies perform efficiently; this is especially true for SOEs, as they have dual functions.

The narrow and broad definitions of corporate governance in turn relate to the shareholder-oriented model of corporate governance and the stakeholder-oriented model of corporate governance. The main characteristic of the shareholder-oriented model of corporate governance is maximisation of shareholder wealth, whereas the major characteristic of the stakeholder-oriented model is wealth and value creation for all stakeholders. The briefing relies on definitions that address stakeholder interests owing to the peculiarity of SOEs and NOCs; all citizens in a particular country are stakeholders in such entities. However, legally citizens cannot be classified as shareholders.

In Uganda, the Institute of Corporate Governance of Uganda and the Capital Markets Authority guidelines define corporate governance from a shareholder perspective and only refer to stakeholders in passing.⁶ Furthermore, the definitions indicate that corporate governance in Uganda mainly applies to listed enterprises and the banking sector. This affects the development of a corporate governance framework for SOEs. It should also be noted that very few companies in Uganda are listed.

In Norway, the definition of corporate governance takes into account stakeholders. This sets the tone for the corporate governance

framework for SOEs, which not only protects shareholders but also addresses the challenges faced by stakeholders.⁷ The Norwegian Code of Practice for Corporate Governance mainly applies to listed companies. Many companies in Norway are listed, which makes it easy to enforce the code. The code also applies to some unlisted companies.

AN OVERVIEW OF THE CORPORATE GOVERNANCE FRAMEWORK FOR SOEs IN NORWAY

The corporate governance framework in Norway also includes administrative policies crafted for SOEs. These policies were made subsequent to a government White Paper, which identified the 10 major principles that should guide state ownership in companies. The principles, together with other materials, form the core of these policies.⁸ These principles also apply to SOEs involved in the extractive sector. Some of the principles that bolster stakeholder protection are discussed below. SOEs have to comply with the principles, owing to the fact that they are enforced by the Department of State Ownership.

Transparency in the state's ownership of companies: Transparency relates to the use of sound accounting methods and conducting of internal and external audits, as well as availing financial information to the various stakeholders. Financial reports and documents that are generated after audits should be accurate to provide a clear, unbiased picture to interested parties. In light of the foregoing discussion, it is worth noting that the state – through the Department of State Ownership – publishes an Annual Ownership Report, with results of the SOEs and the names of their directors. Statoil is bound by the Norwegian Code of Practice for Corporate Governance and ensures that there is transparency in providing information to stakeholders.

Performance targets for SOEs: The state is enjoined to ensure that companies remain relevant to the purpose for which they were established. To this end, performance targets serve as a very important tool for measuring relevance and establishing whether the different companies are meeting their objectives. The board in charge of the day-to-day supervision of the management of the company has to ensure that these targets are met. Stakeholders

are able to monitor the different SOEs through their performance. The Department of State Ownership establishes these performance indicators, which are communicated to the board. As an SOE, Statoil has to meet these targets.

Exercise of independent control of the company's management by the board: Management interacts more with the board than with the shareholders or owners. Thus for the board to perform its role effectively, it should be able to do so with minimal interruption of its mandate. The state as a shareholder or an owner of an SOE is bound to interfere with the running of the entity. This should be discouraged, as it affects decision-making in the company. In Norway, line ministry officials, members of parliament, ministers and state secretaries are not allowed to sit on the board of directors of any SOE.

Recognition of responsibilities to all shareholders and stakeholders in the company: This principle attempts to cover all bases. Companies ought to benefit the shareholders, who are their main financial contributors; and as such they have an obligation to the shareholders. On the other hand, the contribution of stakeholders is not as explicit, except for company employees. Accordingly, the responsibilities to stakeholders are often ignored. The above provision helps the stakeholders to keep track of the company's performance.

The corporate assembly: Related to the above principles, section 6-35 of the Norwegian Public Limited Liability Companies Act of 1997 provides that a company with more than 200 employees has to provide for the election of a corporate assembly. The election of two-thirds of the corporate assembly may be undertaken by the general assembly or the employees. Statoil has a corporate assembly composed of members elected by the general assembly and others elected from and by the employees. The corporate assembly is an example of stakeholder involvement in corporate governance.

COMPARATIVE OVERVIEW OF THE CORPORATE GOVERNANCE FRAMEWORK FOR UGANDA'S PROPOSED NOC

Unlike Norway, Uganda does not have a distinct corporate governance framework dedicated to

SOEs. Further, Uganda does not have a central institution dedicated to supervising SOEs.⁹ Prior to the Companies Bill of 2009, corporate governance matters were largely a preserve of financial institutions and listed companies as set out in the Companies Act chapter 110 of 1961, the Capital Markets Authority Act chapter 84 of 1996 (as amended), and the Financial Institutions Act 2 of 2004. The Companies Bill of 2009 attempts to introduce the concept of corporate governance in all companies and not just the entities mentioned above. Thus the Corporate Governance Code (the Code) that is annexed to the Companies Bill of 2009 is the most appropriate instrument to be used in discussing the corporate governance framework for SOEs and the proposed NOC in Uganda.

Section 14 of the Companies Bill of 2009 provides that public companies should incorporate all or parts of the Code annexed to the bill. Nonetheless, the provision is not mandatory, raising the prospect of an exception being made for Uganda's NOC through executive discretion. Additionally, the bill is silent on the specific parts of the Code that should be adopted. This makes the bill inefficient in dealing with corporate governance matters and protecting stakeholders. For example, although clause 21 of the Companies Bill of 2009 provides for transparency in communications of the board, the provision is not mandatory and so does not adequately protect stakeholders who may rely on such information. Incorporating the NOC under such a legal regime will expose the entity to overt government interference and expose it to the unsound corporate culture, especially corruption, which is perpetuated by the lack of accurate information among the stakeholders.

The Code has maintained the trend of limiting company responsibility to shareholders. This is bound to create an environment in which the interests of the citizens and the employees of the NOC are ignored. Clauses 15 and 16 of the Code provide for sustainability reporting and ethical commitments to stakeholders. Sustainability reporting includes stakeholder reporting and addresses social, ethical, environmental and safety issues. However, as indicated above, the Code is not mandatory and companies can choose to ignore the provision.

Section 43 (1) of the the Petroleum (Exploration,

Development and Production) Bill of 2012 provides for the creation of an NOC under the Companies Act. The Companies Bill of 2009 does not substantially address the corporate governance challenges that affect SOEs, the NOC and stakeholders. Despite the fact that one of the functions of the NOC is to manage state participation in petroleum activities, the Petroleum (Exploration, Development and Production) Bill of 2012 does not address the relationship and responsibilities of the NOC to stakeholders.

Similarly, section 7 of the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill of 2012 provides the mandate of the NOC in the upstream petroleum sector. However, despite the insufficient corporate governance framework in both the Companies Bill of 2009 and the Petroleum (Exploration, Development and Production) Bill of 2012, no attempt is made to address corporate governance challenges discussed above.

CONCLUSION

The corporate governance framework for SOEs and the NOC in Uganda should be revamped to cater adequately for the interests of all stakeholders. The proposed corporate governance framework in the Companies Bill of 2009 is insufficient and fails to meet key regulatory provisions and practices that have provided effective safeguards in the Norwegian context. The brilliant performance of Statoil can be attributed to a comprehensive corporate governance framework that ensures transparency, stakeholder involvement and performance monitoring.

ENDNOTES

- 1 Timothy Kyepa is a doctoral candidate (international trade). The subject of the policy briefing is derived from his LLM thesis, at the University of the Western Cape.
- 2 Statoil is an SOE, as the state is its majority shareholder, with a 67% share. See Statoil, *Financial Statements and Review 1st Quarter*, 2012, <http://www.statoil.com/no/NewsAndMedia/News/2012/Downloads/Financial%20statements%20and%20review%201q2012.pdf>.
- 3 It has been noted that SOEs enhanced diversity and increased female and black employment. See Khala V, *The Role of State Owned Enterprises in Infrastructure Development*, 2007, <http://www.google.co.za/url?sa=t&ct=j&q=&esrc=s&source=web&cd=1&ved=0CDIQFJA A&url=http%3A%2F%2Fwww.cabri-sbo.org%2Fupload%2Ffiles%2FSession%25201.1%2520Vuyo%2520Kahle%2520Transnet.pdf&ei=Q1RRUYfWIYe7hAeL44GIDQ&usg=AFQjCNEST3AdXLBG3k7LmiS9EwDQYNOKhQ&sig2=7vAwhGvVQ1DikDFoCw0K6A&bvm=bv:44158598,d:ZG4>. See also Centre for Corporate Governance in Africa, *Rating Corporate Governance of State-Owned Enterprises: Moving towards Improved Performance*. Stellenbosch: Stellenbosch University, 2012, p. 14.
- 4 Naidoo R, *Corporate Governance An Essential Guide for South African Companies*. Cape Town: Double Storey Books, 2002, p. 1.
- 5 Gillian SL & LT Starks, 'A survey of shareholder activism: Motivation and empirical evidence', *Contemporary Finance Digest*, 2, 3, 1998, pp. 10–34.
- 6 Kyepa T, *Integrating National Oil Companies in the Corporate Governance Discourse: A Comparative Analysis of the Norwegian State Oil Company (Statoil) and the Proposed National Oil Company of Uganda*. Unpublished LLM thesis, University of the Western Cape, 2011, p. 51.
- 7 The Norwegian Corporate Governance Board, *The Norwegian Code of Practice for Corporate Governance*, 2010, p. 6, <http://www.statoil.com/en/About/CorporateGovernance/CorporateGovernance/Downloads/The%20Norwegian%20Code%20of%20Practice%20for%20Corporate%20Governance%2021%20Oct%202010.pdf>.
- 8 The other materials include the Organisation for Economic Co-operation and Development, *OECD Guidelines on Corporate Governance of State-owned Enterprises*, 2005, <http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf>; and the Norwegian Code of Practice for Corporate Governance, *ibid*.
- 9 SOEs in Uganda are supervised by their line ministries, the Ministry of Finance, Planning and Economic Development, and various government bodies. However, there is no dedicated government body to supervise SOEs centrally.

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