

ADVANCING TRANSPARENT AND SUSTAINABLE EXPLOITATION OF OIL AND GAS IN KENYA

International Best Practices and Comparative Analysis

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INTRODUCTION

- ▶ Oil & gas plays critical role in world's political & socio-economic development.
- ▶ Currently meet 60% of world's primary energy needs.
- ▶ Top ten producers - US, Russia and Saudi Arabia, Iran, China, Canada, Iran, UAE, Mexico, Kuwait
- ▶ Other notable producers Norway, Nigeria, Angola

Sector experiencing tremendous changes e.g.:

- ▶ More and more countries joining traditional producers
- ▶ Oil prices have moved to a permanently high level since 2005
- ▶ Push for alternative fuels
- ▶ New technologies for producing 'unconventional' oil and gas

Introduction cont'd

Tremendous success in East Africa e.g.:

- ▶ Uganda in 2006 - production yet to begin
- ▶ Natural gas discoveries in Tanzania
- ▶ Ethiopia - possibility of exploitable oil in the South Omo Block
- ▶ Mozambique - gas exploration boom recently
- ▶ Kenya - discoveries in Turkana, exploration in Lamu, Mandera etc

Justifiable fear of “Resource Curse” - Examples: Nigeria and Venezuela, Sierra Leone

- ▶ Laws, policies & institutions key to determining whether “oil curse” or “oil boom”.

Introduction cont'd

Kenya:

- ▶ Recent discoveries have sparked intense interest
- ▶ Critical social, economic and environmental issues
- ▶ Fear of “resource curse”
- ▶ Concerns already raised e.g. irregular land transactions; integrity of licenses; competing claims; lack of clear regulations
- ▶ Need to deal with these challenges
- ▶ Lessons from other nations

OVERVIEW OF OIL AND GAS GOVERNANCE IN KENYA

Myriad Challenges:

- ▶ Limited experience and skills
- ▶ Lack of reliable independent data
- ▶ High costs and risks - reliance on foreign companies
- ▶ Weak and outdated regulatory framework
- ▶ Lack of Community land law
- ▶ Managing expectations

CONSTITUTIONAL CONTEXT

- ▶ **Constitution of Kenya 2010** - brought a raft of changes:
- ▶ Devolved system of governance
- ▶ Foundation for effective natural resource governance
- ▶ Defines tenure of minerals and oils
- ▶ Obligates national government to govern natural resources sustainably
- ▶ Requires parliament to enact legislation
- ▶ Requires State to ensure equitable sharing of benefits
- ▶ Revenue to be shared equitably among national and county governments
- ▶ Establishes Equalization Fund
- ▶ Bill of rights
- ▶ Public participation

INTERNATIONAL REGULATION

International policy and regulatory regime

- ▶ The United Nations Convention on the Law of the sea (UNCLOS)
- ▶ The Convention on Biological Diversity
- ▶ Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal
- ▶ The United Nations Framework Convention on Climate Change
- ▶ The Africa Mining Vision (AMV) and the Action Plan for Implementing the AMV
- ▶ East African Community (EAC) Treaty and the treaty's Protocol on Environment and Natural Resources Management

International reg cont'd

Non-binding Declarations and Documents

- ▶ The Rio Declaration, Agenda 21 and the Johannesburg Plan of Implementation
- ▶ UN Guiding Principles on Business and Human Rights
- ▶ Organization for Economic Co-operation and Development (OECD) Guidelines for multinational Enterprises

Global initiatives

The Kimberly Process (KP)

- ▶ Aims at preventing blood diamonds from entering the supply chain.
- ▶ Is an import-export certification scheme
- ▶ Governments to certify origin of rough diamonds
- ▶ Member to enact domestic legislation to implement scheme
- ▶ Members can only trade rough diamonds with other members.
- ▶ KP pioneered a tripartite approach to solving international problems
- ▶ Helped some of the worst hit countries increase revenue
- ▶ Weaknesses include failure to deal effectively with problem cases such as Zimbabwe, Côte d'Ivoire and Venezuela.

Global initiatives cont'd

The Extractive Industries Transparency Initiative (EITI)

- ▶ Aims at increasing transparency over payments between companies and governments in both home and host countries
- ▶ Comprises oil and mining companies, home and host country governments, and NGOs
- ▶ Calls for voluntary disclosures of payments by governments & companies
- ▶ EITI reconciles data and makes it publicly available
- ▶ Disclosures are made in an annual EITI Report
- ▶ Benefits: improved investment climate; accountability and good governance; greater economic and political stability etc

Global Initiatives cont'd

Publish What You Pay (PWYP)

- ▶ A global leading non- governmental initiative to promote revenue transparency in the oil, gas and mining industries.
- ▶ Calls for multinational oil, mining and gas companies to reveal the same basic information about the payments to a state in the developing world that they already routinely disclose in the developed world.
- ▶ Members have to adhere to PWYP principles and standards
- ▶ Overall objective of PWYP is to campaign for a world where all citizens benefit from their natural resources

Other initiatives e.g.

- ▶ Dodd-Frank Wall Street Reform and Consumer Protection Act
- ▶ Directive 2013/50/EU of the European Parliament and of the Council

COMPARATIVE LESSONS

NIGERIA

- ▶ First discovered commercially viable crude oil in 1957
- ▶ Oil and gas industry is Nigeria's lifeblood, most important sector in the economy
- ▶ Accounts for about 95% of exports
- ▶ Proved oil reserves of 37.2 billion barrels at the end of 2011, equivalent to 41.4 years of current production
- ▶ Largest oil and gas producer in Africa, 11th largest in the world.
- ▶ Governed under several legislations e.g.
- ▶ Petroleum Act 1969 (PA)
- ▶ Nigerian Oil and Gas Industry Content Development Act 2010;
- ▶ Petroleum Profits Tax Act 1958 (PPTA);
- ▶ Oil Pipelines Act 1965 (Oil Pipelines Act);

NIGERIA cont'd

- ▶ Sector has faced enormous socio-economic & political challenges.
- ▶ The Niger Delta crisis epitomises these challenges.
- ▶ Exploitative relationship between host communities and the multinational oil companies on one hand and the Nigerian state on the other.
- ▶ Oil spills, gas flaring and degradation of the land etc.
- ▶ In spite of the large profits made by oil companies operating in the Niger Delta, the people of the region live in squalor without basic amenities.
- ▶ Upsurge of violent activities

NIGERIA cont'd

- ▶ Transparency and accountability a major impediment
- ▶ Nigeria endorsed EITI
- ▶ However, past reports have revealed serious deficiencies in coverage or government accountability procedure or both.
- ▶ Some progress - Nigeria launched the Nigerian EITI (NEITI).
- ▶ Challenges with NEITI too: e.g.
- ▶ state interference, overdependence on foreign donors; overconcentration of in the oil and gas sector; too much attention to revenue transparency and accountability and little or no attention to how revenue is spent.

NIGERIA cont'd

- ▶ Challenge with revenue allocation formula - 13% to areas from which resources were derived - Formula unsatisfactory to the people
- ▶ Funds allocated to governments of the states, instead of communities
- ▶ Led to continuing protests and agitations by such communities.
- ▶ Absence for many years of an agency specifically devoted to revenue management was at the core of the Niger Delta protests.
- ▶ Complex, arbitrary, and politicisation of compensation
- ▶ Lack of an effective dispute settlement mechanisms
- ▶ Overemphasis on the oil sector
- ▶ Widespread corruption

NIGERIA cont'd

Attempts to solve challenges:

- ▶ Petroleum Industry Bill (PIB) introduced in July 2012
- ▶ The PIB proposes a raft of changes
- ▶ Yet to be passed into law.

GHANA

- ▶ Offshore oil reserves first discovered in 1970s
- ▶ First production in 2010
- ▶ The regulatory framework consists of 3 laws:
- ▶ Petroleum Exploration and Development Law, 1984 (PNDCL 84);
- ▶ Ghana National Petroleum Corporation Law, 1983 (PNDCL 64); and
- ▶ Petroleum Income Tax Law, 1987 (PNDCL 188).
- ▶ Supplemented by: Model Petroleum Agreement (MPA), Environmental Protection Agency Act, 1994 (Act 490), National Petroleum Authority Act, 2005 (Act 691).
- ▶ Petroleum Revenue Management Act and the Petroleum Commission Act enacted in 2011.

GHANA cont'd

Petroleum Exploration and Development Law, 1984 (PNDCL 84)

- ▶ Provides framework for the management of oil and gas exploration and development
- ▶ Spells out contractual relationship between State, GNPC and prospective investors
- ▶ Gives GNPC the right to undertake exploration, development and production of petroleum
- ▶ Enjoins GNPC in auditing the works, equipment, operations, etc. of contractors
- ▶ Thus gives GNPC role of regulator - raises questions as to whether a level playing field in the Ghana oil and gas industry is possible.

GHANA cont'd

- ▶ **Local Content and Local Participation in Petroleum Activities - Policy Framework**
- ▶ Seeks to ensure the control as well as benefits from oil and gas discovery and production remain with Ghanaians.
- ▶ Makes it mandatory for every participant in the Ghanaian oil and gas industry to have an annual Local Content Plan.
- ▶ Requires the government to give first consideration to Ghanaian operators in the award of oil blocks, oil field licenses, oil lifting licenses etc.
- ▶ Operator in the petroleum sub-sector to provide opportunities for training and employment for Ghanaians citizens.

GHANA cont'd

Petroleum Revenue Management Act, 2011

- ▶ 2011 act provides for the collection, allocation and management of petroleum revenue in a responsible, transparent, accountable and sustainable manner for the benefit the citizens of Ghana
- ▶ Establishes the Petroleum Holding Fund
- ▶ Requires records of petroleum receipts to be published
- ▶ Creates the Ghana Stabilization Fund
- ▶ Creates the Ghana Heritage Fund

GHANA cont'd

Challenges in Ghana's oil and gas industry

- ▶ Include lack of clarity in petroleum policy direction,
- ▶ slow momentum in development of legislative framework and institutional overlap.
- ▶ Clear absence of transparency in licensing and contracting.
- ▶ Lack of well structured mechanisms for monitoring revenue management and spending.
- ▶ Administrative challenges.

BOTSWANA

- ▶ One of the fastest growing economies in the world and moved into the ranks of upper-middle income countries.
- ▶ Growth attributable to diamonds, nature of the minerals policies
- ▶ Policy has aimed to engage the private sector in constructive partnership with the Government.
- ▶ Transferred mineral rights government.
- ▶ Innovative mineral taxation regime
- ▶ Regulatory framework requires government involvement in all mining ventures through equity participation and board representation.
- ▶ Minimum controls exercised on business operations
- ▶ Management is left entirely to the private sector.

BOTSWANA cont'd

- ▶ Long established transparent procedures
- ▶ Key participant in the Kimberly process.
- ▶ Reasonable success with value addition:
- ▶ Economic diversification
- ▶ Sustainable fiscal policy that de-linked expenditures from revenue.
- ▶ **The Pula Fund: Saving and Investing Mineral Revenues**
- ▶ Fund has 2 functions: it is a stabilization fund and a savings fund for future generations.
- ▶ Successful both in accruing assets as well as in preventing government from interfering.
- ▶ In summary, institutions including the Pula Fund, sustainable fiscal rules, political stability, and good governance.

NORWAY

- ▶ First petroleum production in 1971
- ▶ Followed by several large discoveries
- ▶ Early years of oil exploration and development dominated by foreign companies
- ▶ Eventually, the Norwegian involvement increased
- ▶ A policy established to give State a mandate for 50% participation in each license
- ▶ In 1993, principle changed to assess each individual case
- ▶ Production has fallen considerably since the top in year 2000
- ▶ But this has been compensated by an increase in the production of gas.

NORWAY cont'd

Petroleum Act (Act of 29 November 1996 No. 72

Provides the overall regulations and requirements for the award of licences

Petroleum Regulations of 27 June 1997

- ▶ Aims to achieve efficient use of facilities in order to ensure licensees promote efficient resource management.
- ▶ **Act of 13 June 1975 No. 35 Relating to taxation of subsea petroleum deposits etc.**
- ▶ Sets out the legal basis for the special tax regime for oil and gas companies
- ▶ **Petroleum Policy** - maximizing total production of the petroleum resources seen as a key feature of the policy

NORWAY cont'd

Regulatory bodies

- ▶ Parliament is responsible for the framework of Norwegian petroleum activities, including passing legislation. Government holds executive power over petroleum policy and is responsible towards the *parliament* for this policy.
- ▶ Government supported by the ministries and subordinate directorates and agencies.
- ▶ Also Petoro AS, a state-owned company which manages the Norwegian state's direct financial interest on the state's behalf.
- ▶ Statoil ASA, in which the state, through the MPE, has a 67% ownership stake.
- ▶ Gassco AS, an independent state-owned company, operates integrated system for transporting natural gas from the Norway EU countries.

NORWAY cont'd

- ▶ Transparency and public participation - leading principles in the management of the Norwegian petroleum sector.
- ▶ Secretariat for the EITI moved from London to Oslo in 2006
- ▶ In 2010, it became the first OECD country to publish its oil-revenue figures
- ▶ Norway also supports developing countries' efforts to increase transparency directly through the EITI and via World Bank - supports international NGOs e.g Revenue Watch Institute (RWI) and through various measures under the Norwegian Oil for Development Programme (OfD).

NORWAY cont'd

- ▶ Transparency reflected in its sovereign wealth fund, called the Government Pension Fund of Norway.
- ▶ Fund characterized by a high degree of transparency and its managers are directly accountable to democratic institutions.
- ▶ Political good will
- ▶ Rule of law and developed democratic institutions.
- ▶ Norway has climbed to the top of the human-development indexes and avoided the “Dutch disease” at the same time.

LESSONS FOR KENYA

Need for effective, clear and coherent laws and policies

- ▶ E.g success of **Norway** attributable to good governance, characterised by good laws and institutions
- ▶ Elaborate mechanisms to ensure enforcement
- ▶ Innovative Petroleum policy, and predictable and transparent legislation to help in implementing it
- ▶ Laws give state and oil companies different roles, but a common goal - maximising values
- ▶ Laws also make close dialogue between the authorities and the industry a mandatory requirement.
- ▶ Clear provisions that foster transparency in licensing and contracting.
- ▶ **Ghana** has well-formulated national policies and legal frameworks that regulate oil and gas operations.
- ▶ Ghana's challenge lies in their enforcement and this has been attributed to several factors including weak institutional capacity, inadequate resources, and lack of political will.
- ▶ Regulatory uncertainty a major obstacle in **Nigeria**

LESSONS cont'd

Transparency and accountability

- ▶ Vital ingredients for good oil and gas governance
- ▶ Minimizes risks of corruption and mismanagement
- ▶ Transparency and public participation have been leading principles in the management of the Norwegian petroleum sector.
- ▶ A key ingredient of Botswana's considerably good natural resource stewardship is its tradition of openness and transparency.
- ▶ Lessons from the global initiatives on transparency and accountability
- ▶ However, experiences from Norway and Nigeria show that the success of EITI in a country depends to a large extent, on the governance system put in place by the country and on the country's commitment to the EITI process.

LESSONS cont'd

Benefit sharing and local content development

- ▶ Need for public and stakeholder participation in determining benefit sharing formula
- ▶ This would lead to wider acceptance of such formulae
- ▶ Need to maximize value creation from petroleum activities rather than elements like ownership, expenditure in the local economy or employment.
- ▶ Ghana & lately Nigeria have very fine local content development plans.
- ▶ Challenge lie in overemphasis on ownership and employment at the expense of value addition.
- ▶ Also administrative challenges with the local content plans.

CONCLUSION AND RECOMENDATIONS

- ▶ Late entry puts Kenya at a good position to learn from other countries
- ▶ Not to make blanket application of any country's policies or principles
- ▶ RECOMMENDATIONS
- ▶ **Develop key legislations to guide further exploration and the exploitation of oil - eg Energy policy and Energy Bill, Mining Policy and Mining Bill, Community Land Bill.**
- ▶ **Increase state participation in oil operations - reasonable mandate for participation in each production license. - distinguish state participation from its regulatory role.**
- ▶ **Enhance Transparency and Accountability - through legislation and other local mechanisms as well as international initiatives eg EITI**

RECOMMENDATIONS cont'd

- ▶ Local content plans and benefits for host communities - devise policies, capacity-building for domestic producers
- ▶ Establish Petroleum Sovereign Fund
- ▶ Earn and retain public trust and manage public expectations
- ▶ Build capacity and enabling actors to be functional

-END-

-THANK YOU-