

# KENYA MUST AVOID THE 'OIL CURSE' IN EXPLOITING ITS OIL DEPOSITS

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## Kenya discovers oil in Turkna County

In March 2012, President Mwai Kibaki announced that Tullow Oil had discovered oil deposits in its Ngamia-1 well in the expansive Turkana County to the North West of Kenya. With intensified exploratory efforts, this announcement has since been followed by a series of others all pointing towards the possible existence of commercially viable oil deposits in this country. The possibility of commercial extraction of oil in Kenya spells the beginning of a journey rich with opportunity but wrought with challenges. Kenya must therefore invest in strategies to exploit the opportunities while carefully managing the challenges. Lessons from jurisdictions that have successfully managed their oil industries to improve the livelihoods of citizens should inform Kenya's 'journey with oil' while lessons from jurisdictions that have mismanaged their oil industries must be avoided.

In an earlier write up, Mwathane [\[1\]](#) noted that lessons from Gambia, Nigeria, the Congo basin and some oil rich North African states inform that the oil mining industry comes with challenges of territorial jurisdiction, displacement of people, compensation of lost land rights, environmental degradation, concession or licensing agreements and raw theft of public money.

## Nigeria: Oil led to neglect of non-oil sectors

Writing about Nigeria, Professor Abdul Kasozi [\[2\]](#) , a Ugandan Scholar, observes that as oil

money began to pour into Nigeria four decades ago, the country totally neglected other non-oil sectors of the economy, including agriculture, with cocoa production falling by 43%, rubber by 29%, cotton by 65% and groundnuts by 64%. He further observes that political participation shifted from serving the people to grabbing state control in order to command oil revenues. Corruption and ethnic royalties increased at Federal and State levels. Oil mining activities also led to environmental degradation through oil spills, blowouts and hydrocarbon releases, Prof Kasozi notes.

Mikidadu Mohammed [\[3\]](#) of New Mexico State University documents the adverse lessons from Nigeria too. He notes that dreams of prosperity rose with the discovery of crude oil in the Niger Delta of Nigeria in 1956. Alluding to the neglect of agriculture following the oil discovery, he notes that Nigeria has gradually moved from being self-sufficient with food at independence in 1960 to a massive importer. Mikidadu notes that managing Nigeria's oil wealth is at the heart of the country's oil experience and that initially, the distribution of oil revenue between the Federal government and the States disproportionately favoured the Federal government to the detriment of the oil-producing States. He observes that Nigeria had no environmental protection agency until 1988, thirty years after its first commercial oil exports. Subsequently, oil spills, which have been plenty, have had far reaching effects on the local communities' ecology, livelihoods, and health.

### **Norway: Introduced sovereign wealth funds**

A former American Ambassador to Nigeria, John Campbell [\[4\]](#) , contrasts Nigeria's lessons with Norway's. Norwegians make their money from oil from a structured modern economy through shipping, banking and timber. Norway developed prudent strategies and institutions to avoid injecting oil revenue directly into the economy. Norway has developed a sovereign wealth fund which is characterized by a high degree of transparency and whose managers are directly accountable to democratic institutions. Norway's success in managing oil wealth has been underpinned by political will, the rule of law and developed democratic institutions.

### **Ghana : Good legal framework; oil funds used in developing infrastructure and strengthen agriculture**

While talking to professional colleagues from Ghana, I was informed that Ghana is seemingly managing its oil wealth quite well. The country has put in place some elaborate legislation to govern the collection and management of its oil revenue. A vigilant media and civil society are

also said to be helpful in demanding continuous accountability in the use of oil revenues. In his contribution to '*Africa Renewal Online*' Efam Dovi, Accra [\[5\]](#) indicates that Ghana's Revenue Management Act outlines clear mechanisms for collecting and distributing petroleum revenue. The Act sets aside what percentage should go to the annual budget, what should be set aside for future generations and what should be set aside for a rainy day. Petroleum revenue apparently contributed 4% of the government total capital spending in 2011, with funds going mainly to investments in road infrastructure, building the capacity of the oil and gas sector, repaying loans and strengthening agriculture. He notes that in developing this law, Ghana borrowed from Norway, Timor-Leste and Trinidad and Tobago, countries that have developed legislation to govern the exploration and production of the oil and gas industry and manage the associated revenues.

Neighbouring Uganda too has lessons. Oil discovery has led to intense national debate with its national assembly under pressure to formulate suitable legislation to guide concessions for oil exploitation in order to protect national interest. Local communities are also concerned about possibilities of losing their land rights without prompt and adequate compensation.

The above lessons should inform Kenya upfront. It is important for instance that Kenya focuses on developing key legislation to guide further exploration and the exploitation of oil. In doing so, those concerned must ensure that legislation takes into account the provisions of Kenya's national land policy regarding the exploitation of land-based natural resources, benefit sharing, conservation and the principles of sustainable management. The legislation must incorporate the constitutional provisions on the protection of private and communal land rights and the need to provide prompt and adequate compensation where compulsory acquisition must be done. The constitutional obligation to ensure that local communities must benefit from any investments in property and that all agreements for the exploitation of natural resources in Kenya embed equitable sharing arrangements of the resultant benefits must be reflected in the legislation.

Luckily, Kenya's recently enacted land laws, the Land Act 2012, the Environment and Land Court Act 2011, the Land Registration Act 2012 and the National Land Commission Act 2012, have incorporated some of these policy and constitutional requirements and prospective local and international investors should familiarize with the pertinent sections. There is also legislation under preparation which will further inform the exploitation of natural resources and the consequences of displacing private land owners and communities. The Community land law, currently under preparation, will spell the rights and obligations of owners of land under community ownership arrangements like in Turkana. The contents of the law should be of interest to communities and investors. An Evictions and Resettlement law is also under preparation. This will further clarify how the private or community land rights of people, including squatters, affected by projects of a public nature will be handled. This too should be of interest

to investors.

## **Kenya needs to develop legislation on benefit sharing and mitigate environmental impacts**

A Geology, Mining and Minerals Bill was also tabled for discussion in the 10<sup>th</sup> Parliament. This was not enacted and is likely to be placed for discussion and enactment by the 11<sup>th</sup>

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Parliament once opened. This Bill details how prospecting and mining licenses and agreements may be acquired and has some detail too on royalties and compensation of affected land rights. But from my reading, none of the above laws is explicit on benefit sharing such as Ghana's Revenue Sharing Act. As our Parliament therefore sets to enact a law to guide the equitable sharing of benefits and agreements on the exploitation of natural resources, specific and very clear text should be embedded to ensure win win results for the national and county governments as well as the communities and the investors to avoid the Nigeria experience. The proportionate sharing ratios and details should complement the growth productive sectors like agriculture and livestock as well as the service sectors like roads, energy, tourism and Information Communication Technology. Otherwise the Geology, Mining and Minerals Bill should be thoroughly audited and reviewed to incorporate such details. The lesson from Ghana informs that this is possible.

The agreements for oil exploitation should also ensure that the jurisdictions of exploitation benefit from physical and social infrastructure such as power, roads, water, schools and hospitals. In a county such as Turkana which is largely pastoral, such efforts should also ensure the provision of adequate water points for animals within the county. They should also require investors to provide environmental degradation plans upfront to avoid the lessons such as the oil spills in Nigeria. Kenya's National Environment Management Authority (NEMA) will need to be made a key player before any such agreements are concluded, and should also be provided with monitoring and compliance powers during the duration of exploitation by the companies involved.

With adequate borrowing from successful oil nations, good local coordination of key agencies and attention to policy, constitutional and legal requirements while drawing bidding agreements, Kenya should be able to ensure that the exploitation of its oil resource becomes a 'boon' and not a 'curse' for its people. No one should suffer displacement without compensation, any likely adverse environmental impacts should be mitigated upfront and county and the national government should be able to use oil revenues to complement and not undermine the productive sectors of our economy. Legislation and appropriate agreements should protect the

county and national governments from the possible diversion of oil revenues into private pockets. Norway's sovereign fund could be a helpful feature in the management of Kenya's oil wealth. Vigilance by local media and civil society in the awarding of concessions and the actual exploitation and management of oil revenues in Kenya, as in the case of Ghana, will be helpful too.

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[1] Ibrahim Mwathane, *Why Kenya must avoid the oil curse*, Business Daily, April 2012:  
<http://www.businessdailyafrica.com/Opinion-and-Analysis/Why-Kenya-must-avoid-oil-curse-/-/539548/1377958/-/gnbyb1/-/index.html>  
<http://www.businessdailyafrica.com/Opinion-and-Analysis/Why-Kenya-must-avoid-oil-curse-/-/539548/1377958/-/gnbyb1/-/index.html>

[2] Prof Abdul Kasozi: *Nigerian 'Curse'-Lessons to Learn*: <http://urhoboland.com/News%20Files/Nigerian%20%27Curse%27%20-%20Lessons%20to%20Learn.htm>

[3] Mikidadu Mohammed, *Lessons from Nigeria Oil Experience*,  
<http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=245498>

[4] John Campell, *Norway, Nigeria and the lessons of oil*, November 2011:  
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[5] Efam Dovi, Accra, *Ghana's 'new path' for handling oil revenue*, Africa Renewal Online, January 2013:  
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