



Advancing transparency and sustainable
exploitation of oil and gas in Kenya;
international best practises and
comparative analysis – peer review report



By Judy Ndichu
17/6/2014





- The need for not copy and pasting is vital and has been brought out very clearly
- Good governance is a mix of policies, institutions and interaction between the two as well as public accountability
- Need to highlight best policy practise /ideal world such as access to information legislations, how have this contributed or hindered achievement in this sector in other countries
- Rule of law / how has this been applied

BACK GROUND

- ❖ Kindly include the figures to justify the findings in barrels in the East Africa region to show its comparative large discovery in the last two years
- ❖ There is a mention of good institutions – consider elaborating either as part of the report what this means or as a foot note
- ❖ corruption in the land sector and in licencing is well identified, kindly foot note the newspaper/ ruling / record of the corruption allegations this will go a long way in bringing the matter close home to the reader
- ❖ Political patronage on the mining sector by the national government , as well as absence of clear laws in benefit sharing is a major gap that may lead resource course – as in the case of Nigeria / this need more emphasis hence the need for the benefit sharing legislation



Governance in Kenya

- Link / connectivity between old regulations (petroleum Act) and the integrity of prospecting companies is not very clearly identified. Consider elaborating in detail
- The provisions in The Constitution 2010 is very clear and well identified. A connecting emphasis on the need to follow the provisions in the constitution to avoid Nigeria's example is required.



Conventions /

- Kindly mention which of the processes is Kenya part of, this will form a good link with the requirement in the constitution to domesticate protocols ratified by Kenya internationally
- EAC Treaty what room is there for CSOs and other non state actors
- As a good governance strategy, does the EAC Treaty welcome access to information for all or does it limit to sharing of information only between government member states only
- Other declarations – Rio declaration – there was a summit last year/what are the current provisions ,-
- Kindly include the provision on good governance and anticorruption in the declaration as a principle to development
- OECD MAI – is mentioned to had failed in 1998 is not clear and whether or not it is still applicable –
- Publish what you pay pillars may need more emphasis as it would mean information that is more detailed – probably a recommendation to non state actors In Kenya
- May 30 2014 is a past date any update on which companies have compiled/ recommend future documentation on this



What worked / not worked

- Kenya's ancient laws ===== Nigeria's ancient laws
- Inadequacy of penalties is worth noting as compared to Kenya in the case of high penalties in the traffic sector that have been accused of increasing the size and occurrences of bribes to avoid penalties/
- PPTA 1958 any gaps in this law that are worth a mention?
- Nigeria 13% of proceeds allocation to oil producing areas and through the government, relevance to Kenya how are the county governments structured/ prepared to receive these resources ?
- How are the institutions in and else where organised to have lead to the curse
- Rule of law how does it apply in the oil and gas sector / this is relevant to Kenya where in other sectors rules and laws exist but lot of inadequacies are observed in administration
- Ghana: Powers on the company -Nigeria power by the minister what difference does it make, identify what is working well as Separation of advisory and regulatory role / who plays oversight is an important lesson for Kenya
- Operations of the funds- holding fund, stabilization fund, heritage fund good lessons – need for more emphasis (Libya for example)



- Institution mandate overlaps – commission and the oil cooperation
- The priorities of investments under the heritage fund - how is this arrived at and how is expenditure monitored / how often is it published?
- Botswana (Clarity of the law – including time and limiting discretion of the minister and on penalties and conditions is an important lesson
- Value addition has taken Botswana to a different path than Nigeria – importing crude oil
- Transparency and accountability engrained in the government procedures
- How about the rule of law how have this been achieved in Botswana what is done differently would be worth a mention



LESSONS /TAKE HOME

- Effective policies and Effective administration and implementation of policies and rules need more emphasis
- Kenya joining EITI be recommended along side other institutionalisation of transparency and accountability .
- Progressive development of the sector and nationalisation is key in the case of Norway and Botswana
- Management of resources and publication of the revenues is vital
- Strengthened oversight role of parliament ie approval in change of budgets need more emphasis
- Adherence of fiscal policies and plans, Budget discipline / public resources oversight by parliament (Auditor general report)
- Remuneration of public officers???????
- Strengthening of oversight institutions in the fight against maladministration practises and corruption ie the CAJ, EACC
- Add recommendations to CSOS and non state actors in Kenya



Laws vs practise

- Access to information
 - Complaints and grievance mechanism,
 - Anti corruption laws and practise – toothless lion
 - Witness and whistle blower protection
 - Role of parliament in enhancing governance
 - Political financing / how has oil and gas contributed positively/negatively
 - Devolution and public finance laws
-
- Good opportunities from the west, is there anything going on in the East (caution)



Thank you

