



VOICES FROM THE GRASSROOTS

**NO.2 OF 2018**

# GIVE TURKANA ITS FAIR SHARE OF OIL REVENUES

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## BACKGROUND

Kenya is one small step closer to becoming an oil producer following the flagging off of transportation of the first oil barrels from the South Lokichar basin under the Kenya Early Oil Pilot Scheme (EOPS). The EOPS is meant to introduce the Kenyan oil to the international market ahead of full field development in a few years (Tullow Kenya BV, 2017). This follows discovery of commercially viable quantities of oil in the Turkana basin and promising potential in other parts of the country. As part of its efforts to harness the oil and mineral resources, Kenya is undertaking numerous legal and institutional reforms. A Petroleum (Exploration, Development and Production) Bill, 2018 is at advanced stages of enactment pending agreement on clauses relating to the benefits sharing formula. A number of other relevant laws such as the Community Land Act, 2016, Access to Information Act, 2016, Land Laws (Amendment) Act, 2016 and the Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016 have also been enacted. These legal and institutional reforms are taking place within the context of devolved system of governance adopted under Kenya's new Constitution (Republic of Kenya, 2010). If properly managed, the combination of extractive sector revenues, improved governance and a peaceful context could firmly position Kenya on the path towards sustainable economic growth and improved living standards for her citizens.

But experiences from other countries in Africa indicate that oil, gas and mineral extraction are often accompanied by negative political, social, and environmental outcomes. These include displacement of communities and the accompanying loss of land rights and livelihoods; widespread environmental degradation; endemic corruption; poor governance and a lack of transparency. This situation has been termed as “resource curse”, a phenomenon describing how countries rich in natural resources often develop more slowly, more corruptly, more violently and with more authoritarian governments than countries with less natural resources (Auty, 1993). These challenges are already being experienced in varying scales particularly in Turkana County, the most successful county so far with regard to oil exploration and development. Local communities in Turkana are increasingly raising concerns about loss of livelihoods and land without proper compensation and resettlement; noise, water and air pollution; lack of proper community involvement in critical decision-making; insecurity; lack of transparency and accountability; and perceived bias against community members in the proposed petroleum revenue sharing framework.

## SHARING OF PETROLEUM REVENUE

The issue of revenue sharing is particularly emotive in Turkana especially after a deal was struck on the Petroleum (Exploration, Development and Production) Bill, 2018

specifically as regards provisions for revenue sharing. The deal was reached in statehouse Nairobi on May 19th 2018 following a meeting by President Uhuru Kenyatta, Deputy President William Ruto and leaders from Turkana led by Governor Josphat Nanok. In the deal, the national government will keep 75% of the revenue accruing from oil sales while the host county government and community members will take 20% and 5% respectively. Speaking at statehouse Nairobi soon after announcing the deal, the President said “we now have an understanding that can put Kenya on the map of oil exporting countries. We will intensify our exploration efforts not just in Turkana but in the rest of the country now that we have a legal instrument that can help guide how oil and gas will be handled in our republic.” On his part, Governor Nanok said the leadership and the people of Turkana were “now fully in support of the exploration and production of oil after the disagreements were resolved” (Standard Digital, 2018).

However, this deal did not augur well with many local community members in Turkana who are apprehensive that the leaders’ deal in Statehouse did not represent their views and aspirations. These concerns were raised by several community members during the Extractive Sector Forum (ESF) on ‘Land Access and Acquisition for the Extractive Sector’. The forum was held at Cradle Hotel in Lodwar on May 31st 2018. Many participants at the forum reiterated

that the Turkana leaders led by the Governor did not agree to the deal on behalf of the community because they did not even consult them (community members). Instead, the community members prefer that the country sticks to an earlier version of the Petroleum (Exploration, Development & Production) Bill that apportioned the sharing of oil revenue at the ratio of 70%, 20% and 10% by national government, county government and community respectively. According to these views, a lesser share particularly to the community would result in the continued marginalisation of Turkana by successive governments. In fact, some local community leaders are adamant that they will not accept anything less than 10% as the community share of the oil revenue.

But the more contentious issue in Turkana with regard to revenue sharing is the issue of revenue-capping. Revenue-capping refers to the provision in the Petroleum (Exploration, Development & Production) Bill, 2017 (Sec 85 (2)), that the county government's share of oil revenue shall not exceed the national budgetary allocation to the county government in the financial year under consideration, and that the community share shall not exceed one-quarter of the amount allocated to the county government by Parliament in the financial year under consideration. To put this in perspective, Oxfam did an analysis of the proposed revenue sharing models (Oxfam, n.d.). The analysis (see the table below), show what is likely

to accrue to Turkana County based on different oil price scenarios. Table 1 shows the revenue split between national government, county government and the local community using the revenue formula reached in the deal reached by the President and Turkana leaders (75:20:5). Based on Turkana County annual budget and annual transfers from the National Treasury to Turkana County government, the analysis indicates that the oil revenue cap as set out in the draft bill (75:20:5) would be reached at both \$65/bbl and \$85/bbl during peak years of production. Turkana County government's annual budget is between Kshs11-13 billion and annual transfers from the National Treasury to Turkana County government is between Kshs10-11 billion).

**Table 1. Sub-National Revenue Transfers (Kshs billions) based on 75:20:5 sharing formula.**

	2022			2027			2032		
	\$45	\$65	\$85	\$45	\$65	\$85	\$45	\$65	\$85
Total Revenue	28	43	61	64	99	253	39	101	161
National (75%)	21	32	46	48	74	189	29	76	121
County (20%)	6	9	12	13	20	51	8	20	32
Communities (5%)	1	2	3	3	5	13	2	5	8

Source: Oxfam, n.d.

In this proposed revenue sharing model, it is likely that county governments will hit the proposed cap only at \$85/bbl in the

initial oil production period while throughout the peak period, the cap would be reached at all the different price scenarios. This means that at peak production period (2027), the county government could expect to get almost double the current transfers of Kshs\$10-\$11 billion (if the oil price is at \$65/bbl). With current transfers of about Kshs\$11 billion, the community cap represents about Kshs\$3 billion under this revenue sharing model. This means the community share would hit the cap in all the different price scenarios during the peak production period and in the initial production period only at \$85/bbl. The analysis thus concludes that the proposed cap - will highly likely come into play with respect to county government and community payments particularly during peak production.

## **GRASSROOTS VOICES: GIVE US OUR FAIR SHARE, TURKANA CAN ABSORB ALL THE OIL REVENUE**

Proponents of revenue-capping argue that local communities and the fairly new devolved units such as counties do not as yet have the capacity to absorb the billions of shillings that will accrue to them from oil sales in the absence of capping. Over-expenditure on recurrent expenditure such as salaries and low absorption of development budgets witnessed in a number of counties in recent years have been cited as further justification to cap counties and communities 'share of oil revenue. These are in addition to issues of corruption and wastage of public funds by county governments. However,

local leaders and community members are strongly opposed to the revenue capping plans, arguing that capping would deny Turkana the much-needed funds to develop the county. It is interesting to note that the agreement reached recently by the President and Turkana County leaders included a deal to remove the requirement for revenue capping on oil revenue payments to the county governments and local communities. The proposals for revenue capping was apparently ceded by the national government in exchange for the Turkana leaders agreeing to the reduced county share of revenue of 5% down from the initially proposed 10%. Whether the local community in Turkana will agree to this is still unclear.

Turkana like other Kenya's northern frontier counties have suffered years of marginalization and economic underdevelopment due to colonial and successive post-independence government policies that placed higher development premium to the highlands and other regions with apparent economic potential at the expense of the coastal and arid and semi-arid (ASAL) areas. The local communities and the county government of Turkana therefore view the newly-discovered oil wealth as their greatest opportunity to spur economic growth and improve their livelihoods. In fact, the locals pitch the regions years of underdevelopment as a result of neglect as the more reason why Turkana can absorb the revenue since the county is lagging behind in almost all areas of development – education, infrastructure, agriculture, health

and sanitation etc. They also cite Turkana County's position among counties spending the most of development budget in Kenya as another proof that the county can indeed absorb the oil revenue. It is therefore not surprising that the community and leaders led by Governor Nanok are keen that the clause that caps county oil revenue is removed from the Petroleum (Exploration, Development and Production) Bill, 2018.

## **ADDRESS TURKANA'S CAPACITY GAPS INSTEAD**

While admitting concerns over the county's planning and administrative capacity to develop, monitor and report on development projects, the local leaders and community members strongly feel these should not be used to deny Turkana its 'rightful' share of the oil revenue. Instead, they urge the government to support the county and local community to continuously build capacity to enhance planning and revenue management as well as address administrative capacity in regular monitoring and reporting of projects. This position has gained support of a number of lobbies. For instance, in the Oxfam discussion paper 'Sub-national payments in Kenya's Oil Industry, Oxfam Kenya argues that concerns around absorptive capacity should not be used to reduce counties expected oil revenue but rather should trigger planning for capacity reforms at national and county government levels and provision of support for effective oversight and prudent monitoring of the transfers and use of sub-national payments.

It is also important for Turkana County government to enhance its revenue management capacity. It is almost certain by now that Turkana county government will receive money from the oil payments once production proper begins in a few years. It would be good for the county government to start planning in earnest how such monies will be used. The plans should be widely consultative and centred on community needs rather than imposition by the county government. It would also be good for Turkana County assembly to make any necessary laws and/or plans to guide the management and deployment of the impending oil revenues. This should start especially soon after the Petroleum (Exploration, Development and Production) Bill, 2018 is enacted into law, as it would provide the basis for such county laws/plans.

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This 'Voices from the Grassroots' was written by Duncan Okowa. It summarises the voices of many local community members in Turkana as expressed during the Extractive Sector Forum (ESF) on Land Access and Acquisition for the Extractive Sector convened by ILEG in Lodwar in May 2018. For further information please email [ileg@ilegkenya.org](mailto:ileg@ilegkenya.org).

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