

Newsletter Number One - Multi-Donor Secretariat for the Extractive Sector in Kenya – 15th May 2013

Dear Stakeholders of the Extractive Sector in Kenya and the EAC region, this is our first edition and wish you good reading.

Message from Mr. Gabriel Negatu, Regional Director, AfDB/EARC



The African Development Bank's East Africa Regional Resource Center (EARC) has kicked off consultations with stakeholders to deliberate on the potential opportunities of launching a Multi-Donor Secretariat for the Extractive Sector in Kenya. The consultations with the Development Partners, Private Sector, Civil Society, Nongovernmental Organizations and Community Based Organizations with representations of Indigenous Groups have yielded positive results supporting the idea of an information-based service Secretariat. Similar consultations with various stakeholders in the Government of Kenya (GoK) will be held shortly. The purpose of the Secretariat will be to provide information on the extractive sector through electronic newsletter, website, round-table discussions and workshops. Additional services will include:

- Establishment and maintenance of contacts with all stakeholders;
- Collecting, analyzing and disseminating information;
- Maintaining an information database; and
- Contributing to building capacity and raising awareness within the sector.

The Secretariat is an AfDB-driven initiative in collaboration with stakeholders with keen interest in addressing the problem of inadequate information in the sector. In recognizing the growing interest in the extractive sector with recent discovery of oil and gas, rare earth elements, coal, iron ore, gold, limestone, gypsum, soda ash, gemstones, manganese ore, fluorspar, diatomite, titanium, zircon, chromite, niobium and silica sand. The Government of Kenya invited the Bank to assist, as appropriate, in providing support that will contribute to the review of the policy, regulation and institutional frameworks. The AfDB will supplement the World Bank- and IMF-related initiatives in helping the Kenyan government build capacity required to prudently manage flow of revenues, address environmental and social issues regarding community resettlement and compensation. Some of these issues are broader in scope and require collaborative efforts in building strong structured institutions.

The Bank is in the process of concluding a Grant Agreement with GoK to support the review of current and future contract negotiations, support development of coherent policy, legal, regulatory and institutional frameworks that will strengthen institutions in the extractive sector.

The governing structure of the Secretariat will be established in the short-medium term. This will include establishment of an Advisory Board that will oversee, guide and provide directions on implementation of the activities to be undertaken by the Secretariat. In brief, the composition of the Advisory Board will include: representatives from each stakeholder including the various GoK line ministries, private sector, NGOs, Research and Academic institutions. With time, the Secretariat may expand information-based services to the EAC member countries.

The Secretariat is open to stakeholders' participation in a number of areas. These include:

- Direct technical support;
- Secondment of experts; and or
- Provision of information that can be packaged and uploaded on the website of the Secretariat for onward dissemination to stakeholders.

The Bank welcomes participation, contribution and support to the Secretariat once launched at a National Workshop after consultations with the Government. We acknowledge efforts by our Development Partners in particular the World Bank, IMF, UK Department for International Development (DFID), AusAID, and UNDP, among others, in lending a hand to build a strong extractive sector and strengthening the Secretariat. We would like to leverage our efforts through partnerships, collaboration and networking to promote the development of the extractive sector in Kenya and in the East African Community.

Multi-Donor Secretariat for the Extractive Sector

In keeping up with the flow of information and making sure that stakeholders are informed of the new developments in the extractive sector, this quarterly newsletter provides an opportunity and a knowledge platform to update you on the emerging economic sector of oil, gas and minerals in Kenya and what role it can play to contributing to the country's economic development, transforming institutions and well-being. Above all, the Secretariat will reinforce the role, function and responsibility of AfDB/EARC in collaboration with Development Partners, the Government of Kenya and other stakeholders, in supporting the extractive sector in the country and beyond.

Recent Developments

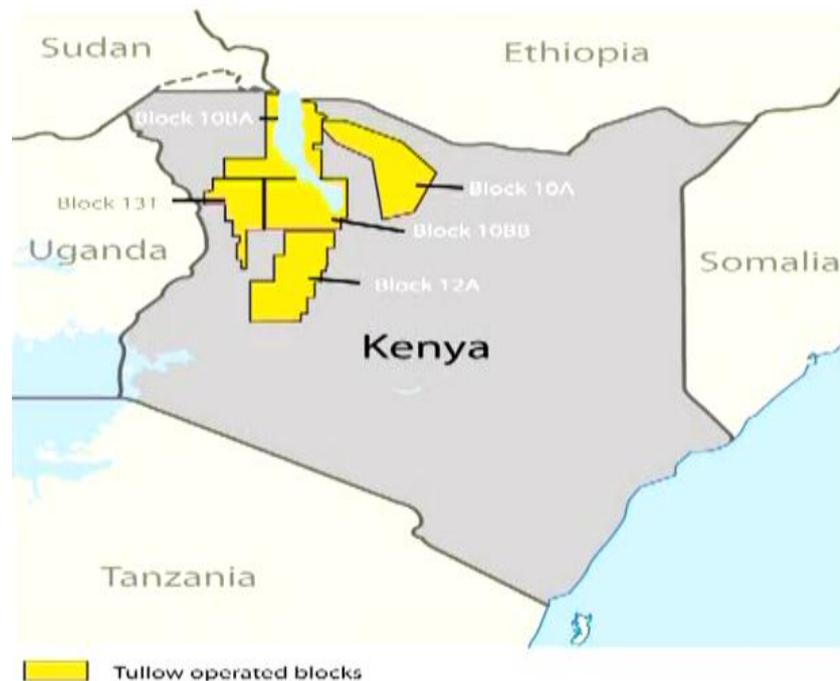
The AfDB is in the process of concluding a Grant Agreement with the Government of Kenya to support the review of current and future contract negotiations, and in collaboration with the World Bank, to lead the review of policy, legislation and institutional frameworks for the extractive sector.

The IMF is taking the lead on review and formulation of a fiscal policy on mineral wealth following the recent discovery of oil and gas deposits in the country.

The African Development Bank has successfully held consultations with the Development Partners and Private Sector, Civil Society, NGOs, and Community Based Organizations on the value addition of the Multi Donor Secretariat for the Extractive sector as an information portal. One more consultation is planned with the Kenyan Government.

Petroleum

The Kenyan Government has established a Ministry of Energy and Petroleum. This Ministry will lead and coordinate sector work in energy, oil and gas. For decades, sector work was mainly downstream on importing and refining crude oil. Now the challenge is on upstream with a focus on the exploration and exploitation of oil and gas. To address this challenge, there is need to formulate policies, regulatory and institutional frameworks that will guide processes for both downstream and upstream as well as middle stream (transportation, transmission and distribution) in the sector.



Source: KTN

Kenya imports crude petroleum accounting for 20-25% of the national import bill (2009 Economic Survey). This is a huge cost to a developing country. To address this problem, the Government initiated a Petroleum Act in 1986. This Act has been overtaken by events following the discovery of oil in March 2012. The challenges for the Government include lack of capacity to deal with emerging oil sector in the country, new issues from environmental, emerging markets and international best practices to deal with oil revenues and local communities as stakeholders. In this context, the African Development Bank has established a Multi-Donor Secretariat to assist the Government and stakeholders by identifying information and knowledge gaps in the sector and providing appropriate support.

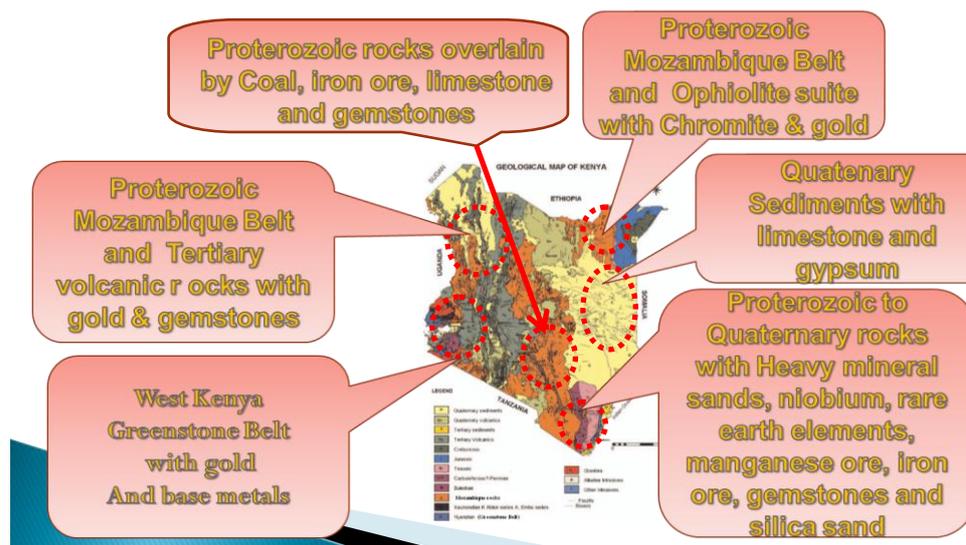
Gas

Gas plays a key role as a source of energy as it is considered to be clean in comparison to other energy sources with high carbon contents. However, 100% of gas is imported and packaged into various cylinders for accessibility and affordability, although available in most areas. Still most poor households cannot afford a 2-6 kg cylinder. New developments in discovery of gas in large amounts will contribute to transformation of rural lives that are still dependent on charcoal, fuel wood and other high-polluting energy sources. There are possibilities of creating employment opportunities in the energy sector that will support penetration of gas as a source of energy to a majority of Kenyan population. The AfDB Multi-Donor Secretariat will document necessary and relevant information and engage stakeholders on possible options of promoting use of gas other than flaring it.

Mining

The Kenyan Government has established a new Ministry of Mining. Mining has been neglected as it contributed very little estimated at 0.8% to the GDP. Recent discovery of rare earth, among others, titanium/tiomin, generates interest in the sector. New 3 D seismic data shows that the entire country could be a hub of mineral deposits and requires capacity-building and investments.

Mineral Occurrences



Source: Kenya Department of Mines and Geology presentation at the Local Equity Forum, January 30, 2013, Norfolk Hotel, Nairobi

The Mining Sector in Kenya is diverse, but with essential minerals. This sector has the potential of accelerating growth by diversifying exports, providing raw materials for industry, developing infrastructure, creating employment and contributing to poverty alleviation. The country's geology has shown numerous occurrences of minerals. Kenya is endowed with a variety of mineral resources. Some of the noted minerals include: base metals (gold, silver, copper), dimension stones (granite, marble

and limestone), industrial minerals (fluorspar, titanium and limestone), gemstones (ruby, sapphire, rhodolite) and chemical minerals (soda ash, carbon dioxide, salt and hydrocarbons—oil and gas).

Mineral production in Kenya is still underexplored and its full potential still unknown. Mining production has been limited to a few minerals including: soda ash, fluorspar, diatomite, limestone and gold. However, there is little exploration being undertaken in the country. This could be in part that the exploration in itself is capital intensive and faces challenges and high risks. Most of these challenges are information based. Therefore, the AfDB Multi-Donor Secretariat will contribute to unlocking these barriers by engaging with the stakeholders, identifying information and knowledge gaps and seeking strategic solutions that will unlock these barriers and explore potential of development in the sector.

Policy, Regulation and Institutional Frameworks

Policy, Regulatory and Institutional Framework are instrumental in providing strategic guidance and directions for the extractive industries in Kenya. To date, Kenya relies on the Mining Act enacted on October 1, 1940 with subsequent reviews for specific amendments. The first attempt to develop such instrument is the 1986 Petroleum Act and the revision of Mining Act into the new Mining and Minerals Act (2006) that requires all prospecting licenses to have an initial duration of four years. Renewals are granted up to seven years in total, plus provisions. Exploration licenses are transferable.

The formation of Kenya Chamber of Mines (KCM) in 2001-2002 has provided some active role in the mining sector of Kenya. Currently, the larger mining companies in the country are still financing the Chamber's activities, but it is hoped that it will become self-sustaining in the near future. The KCM in conjunction with the Kenya Geological Society and the Ministry of Energy have been promoting mining activities in Kenya. Many of Kenya's mineral deposits lie under land or property that has been settled and privately owned for many years; however, within the country itself private property ownership is protected by the constitution and only the minerals belong to the country. In the past, royalties within the country have been negotiable. As a result of this the government is introducing a fixed policy where fees and royalties are calculated on a formula that will be differentiated according to the type of mineral.

The development of the sector has, however, been affected by lack of a specific mining policy and enabling legislation. There is need to provide a guiding policy and legal framework to replace the Mining Act, Cap 306, as well as the Trading in Unwrought (raw) Precious Metals Act, Cap 310. The realization of this framework has taken unnecessarily a long time to materialize. The Government started this process in 1993 with the assistance of the United Nations Development Programme (UNDP) without success.

The establishment of the AfDB Multi-Donor Secretariat has initiated some legal work with the African Development Legal Service (ADLS). This work will take stock,

review current policies and legal situations in the country, and provide innovative suggestions on how the country can proceed systematically with the development of policies, regulatory and institutional framework that will enhance transparency, accountability, sustainability, governance of the sector in the most efficient and cost-effective approach.

Revenues from Oil, Gas and Minerals

The Oil, Gas and Minerals sector has potential for generating revenues for the country. In the context of County Governments, this will be a challenge for the Government in ensuring that a mechanism is in place to collect revenues adequately, and a formula is established to distribute and or share these revenues on a national scale. The current proposed formula in draft Mining Policy makes provisions for Central Government retaining 80% of the revenues; 15% for the County Government and 5% given to the Local Communities. The AfDB Multi-Donor Secretariat will add value to this process by reviewing best practices, lessons and experiences of other countries that have developed such mechanisms for collecting, distributing and sharing revenues from the extractive and proposing prudent governance systems.

Communities, Environment and Employment

Issues relating to communities, environment and local employment are complex, sensitive and difficult to deal with in project areas of extractive industries. The challenge that is more common relates to transparency on how communities are engaged, compensated or rewarded. In addition, environmental issues that are of external factors pose tremendous challenges for the industry to ensure no negative effects are generated by the extracting processes. And, employment is difficult to only accommodate local people as some activities required special skills and high qualifications that cannot be provided by local labour market.

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Integrated Management Team



Source: Base Resources Ltd. presentation at the Local Equity Forum on January 30, 2013, Norfolk Hotel, Nairobi

Some of these issues are not easy to understand and require some strategic interventions. In this regard, the AfDB Multi-donor Secretariat will undertake stakeholders’ consultations, assessments, analysis and mapping. The outputs of these engagements will be informative information-based briefs that will contribute to creating awareness on the challenges, opportunities and enabling environment in the extractive industries sector.

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