

## Viewpoint

### Natural Resource Abundance, ~~and~~ Local Economic Development, and Eminent Domain – A Ghanaian Perspective

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#### Abstract

*This viewpoint article draws on the doctrine of Eminent Domain (or compulsory purchase) as an analytical framework to analyse the regional and local impacts of a new source of oil. Sekondi-Takoradi, an oil city located in Ghana, West Africa, is used as case study to explore the differentiated experiences of local people. The article shows that, although there are complex distributional issues that require different levels of compensation and betterment to be assessed and paid for, it is unlikely that they will, in fact, even be considered.*

*Key Words: Oil, Land, Law, political economy, eminent domain, resource curse, Africa, Ghana*

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*1. I thank Andrew Jones, Director of Local Economy Policy Unit, for helpful comments on an earlier draft of the paper. The usual caveat applies.*

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## Introduction

Africa is a continent with a significant amount of oil, with rising production and frequent new finds. In the last two decades, oil reserves in Africa, as a whole, shot up by a quarter, while gas reserves doubled. The leading oil producers in Africa are Libya, Algeria, Nigeria, Angola, and Sudan, where 90 per cent of Africa's oil reserves are located (African Development Bank and African Union 2009).

The latest entrant into the league of oil producers in Africa is Ghana, whose initial deposits of oil are around 3 billion barrels. According to *Staff Writers* (2008), Ghana is likely to become the seventh largest oil producer in Africa. Ghana's oil is 'sweet' (low in impurities) and 'light' (easily convertible to gasoline). Hence its demand among refineries around the world is likely to be high.

It is estimated that about 60,000 barrels of oil will be exported per day at the initial stages in 2010, 120,000 barrels a day in 2011 and thenceforth, about 200,000 barrels a day. The country is expected to earn \$836 million annually and \$20 billion over the production period 2012-2030 from offshore oil deposits, mainly at Cape Three Points near Efasu, Axim, and Takoradi in the Western region. Available official estimates indicate that total revenue from oil in 2011 was 1.9 per cent of GDP (Ministry of Finance and Economic Planning, 2010) and the effect of oil on the GDP growth rate is anticipated to be substantial, as shown in Table 1.

Table 1 Projected GDP Growth Rates, with and without oil, 2011 - 2013

GDP	2011	2012	2013
Without oil	7.0	7.0	7.0
With oil	12.3	9.3	8.3

Ministry of Finance and Economic Planning, 2010

Much academic argument about the impact of new oil finds tends to be pre-occupied with the ‘resource curse’ thesis (Corden and Neary, 1982), in which an abundance of natural resources tends to associated, variously, with a rising exchange rate, declining productivity in other sectors, and corruption. While useful in providing a macro account of the political economy of oil, the resource curse thesis hides other aspects of the oil industry, in particular possible contestations about peri-urban and urban land, housing, and labour issues in areas where oil is drilled.

This Viewpoint article focuses on the relatively narrow issues of compensation and betterment, being a slice in a wider, forthcoming study. It engages the doctrine of Eminent Domain to explore and analyse property rights in Sekondi-Takoradi, the twin and oil city in Ghana. In particular, it draws on recent anecdotal evidence to ascertain the effects of the oil find on land and housing and the resulting issue of compensation and betterment. Although narrow, the focus is important particularly because compensation and betterment issues are understudied in developing countries (Alterman, 2011, p.4), and the synthesis of property rights and the political economy of

oil (Wenar, 2008) has focused mainly on the weaknesses in the international trade regime.

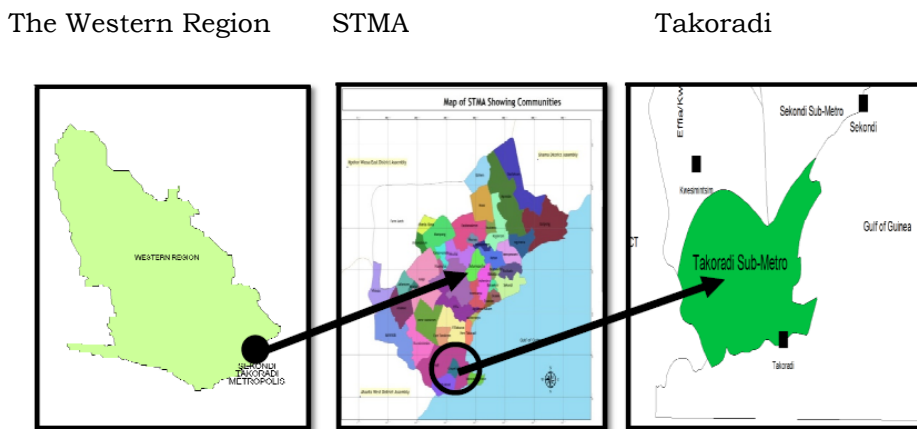
The paper argues that oil will not be a curse for all or a blessing for all. Rather, there are complex distributional issues about costs and gains that require different levels of compensation and betterment assessment and payment.

The rest of this paper does three things. First, it looks at some of the characteristics of the oil city. Next, it examines key socio-economic issues that arise as a result of oil exploration in the city by engaging the doctrine of Eminent Domain. The conclusion highlights the key insights garnered from the available evidence.

## Sekondi-Takoradi: An Oil City in West Africa

Takoradi is the city closest to the oil site. It is located in the Sekondi-Takoradi Metropolitan Area (STMA) in the Western Region of Ghana (Figure 1). Being a twin city, people often talk of 'Sekondi-Takoradi', not Takoradi. 'At the end of the nineteenth century', wrote Richard Jefferies (1978, p.9), 'Sekondi was little more than a fishing village. Its only claim to distinction lay in the location there of both British and Dutch forts, established in the seventeenth century, but by then long disused'.

Figure 1: The City and its Environs



Source: Edem, 2011

Today, Sekondi-Takoradi is the capital city of the Western Region, the third largest city, and the seat of oil production in Ghana. Its population is estimated at over 400, 000 people (UN-HABITAT, 2011).

Housing conditions in the city are inadequate in terms of both number and quality. The Western Region has only 11.91 per cent of the total housing stock in the country, although it is one of the largest regions (Ghana Statistical Service, 2000). Most of the houses lack toilet, drainage, and pipe-borne water facilities (Owusu and Afutu-Kotey, 2010).

Eighteen per cent of the population are employed in agriculture and about 51 per cent of the land in the entire metropolis is suitable for agriculture. Some 5,000 people are involved in fishing and some 47,000 people farm plots of land which average 5 acres (Sekondi-Takoradi Metropolitan Assembly [hereafter, STMA], 2011).

Table 1: Tillage (in hectares) of various crops in the STMA, 2001 - 2005

Crop	2001	2002	2003	2004	2005
Maize	586	608	620	1,154	1,270
Rice	96	141	140	184	193
Cassava	2,091	2,194	2,190	2,210	2,531
Yam	28	36	40	41	33
Cocoyam	118	134	140	138	110
Plantain	227	339	440	342	359

STMA, 2011

While farming is a vibrant activity in the metropolis (Table 1), STMA (2011) has recently noted that only 34 per cent of the cultivable land in the metropolis is under farming.

It is important to consider the implications of oil exploration for the metropolis. A ~~comprehensive response full response to these questions~~ is not possible at this stage, given that oil exploration has only just begun. However, analysing the available evidence (mostly anecdotal) and current regulations within the framework of Eminent Domain (focusing on compensation and betterment) can enhance our state of knowledge on the political economy of oil in Ghana with implications for other emerging oil economies.

### **The Doctrine of Eminent Domain: Compensation and Betterment**

Compulsory acquisition and compensation can be understood as actions that are necessary for the public good at the outset of the process of economic development. The doctrine of Eminent Domain gives the state the right to act on behalf of its people as a whole to acquire property for public benefit subject to appropriate compensation. Each state in the process of economic development will need to use this option.

The justification for the payment of compensation is attached to the notion of *taking*. A taking is either a compulsory physical acquisition of land or a reduction in the market value of land (Frieden, 2000). It may be classified as direct (arising – directly - from an act or a process) or indirect (as in a ‘third party’ loss), total (complete reduction of market value to zero) or partial (relatively minor reduction in property value). Alternatively, it can be private (a diminution in value caused by private estate developers) or public (value



reduction that results from state or public execution of projects) (Alterman, 2011). Takings deprive landowners of their property rights which derive from the protection they receive from the public. For that reason, the state normally awards compensation to landowners who suffer a taking (Bromley, 1997).

A political economic analysis of compensation processes entails the assessment of at least three elements. First, is compensation justified or required? Second, do the existing laws protect property rights by providing for compensation? And third, does the state, in fact, pay compensation, and if so to whom?

The few existing studies on the impact of oil on property rights in Sekondi-Takoradi anticipate three types of takings. The first relates to loss of fishing rights as a result of offshore oil drilling; the second relates to loss in farmlands whose value can diminish because of oil-related environmental damage; and the third to physical loss of land arising from onshore oil exploration. Indeed the Petroleum Revenue Management Act, 2011 anticipates such takings (see s. 25). Therefore, the payment of compensation is justified.

On the subject of legal protection from property rights, ~~we can turn to the Petroleum Revenue Management Act, 2011, which anticipates such takings (see clause 25).~~ The laws in Ghana ~~guarantee~~protect property rights (article 18 of the Constitution of Ghana) and offer protection against both

partial and physical takings. Article 20 (1) of the Constitution states that “No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State” unless it is absolutely necessary (20 (1a)) and that necessity is made public and backed by and done in accordance with law (20 (1b)). Even when these conditions are met, the expropriated persons are entitled to fair and adequate compensation which is paid promptly (20 (2a)). And, in circumstances where there is physical displacement, the state shall settle the displaced people (20(3)). Also, the affected persons shall have a right of access to the High Court to challenge the taking (20 (2a)).

The constitutional provisions deal with physical taking or compulsory acquisition, but other laws protect takings in the form of a reduction in market value. The Local Government Act, Act 462 (section 56) and the Town and Country Planning Act, 1963 (sections 21-26) stress the legal protection and compensation rights of landowners whose properties suffer a reduction in market value as a result of the implementation of a planning scheme, any work related to its execution, or any actions or inactions done by any persons to make it possible for the scheme to work.

The final question is would the state pay compensation to those people who would suffer a taking and if so, to whom? History does not always predict the present, but it is important as a guide especially in the present case where oil exploration has only just begun. History suggests that the laws on partial takings exist only in name. A search via the *Ghana Law Finder*

(2009), the Legal Library Services, Gud 9t containing all the Ghana Law Reports shows that the compensation arising from partial takings has never been contested in the courts of law. It may be so because of a lack of market information about before and after property values or the non institution of schemes that cause partial takings, but whatever the reason, the fact that the issue has not been tested in court means that it is difficult to make a determination on whether the state would pay compensation.

The realm of physical taking is rather different. There is plenty of evidence to inform a political economic analysis. Historically, the Ghanaian state has chronically defaulted on compensation payment for physical takings. Between 1850 and 2004, the state executed 1,336 instruments to compulsorily acquire land. It did so in all the ten regions of Ghana. In a few instances, the state has paid compensation. However, even then, it tends to make procedural errors in its payment mainly because of the fear of offending powerful interest groups such as tribal chiefs (Brobbe, 1990). Sometimes too, the method of assessing compensation is problematic as it generates conservative estimates (Larbi et al., 2004).

Perhaps, for these reasons, some of the chiefs in the Western region tried to lobby the Parliament of Ghana to pay 'their people' 10 per cent of the revenue from oil as compensation, although it is not clear how the chiefs arrived at the 10 per cent formula. But quite apart from the failure of the chiefs to persuade the legislators to accede to their request, the activities of the chiefs raise important political economic issues.

There is some evidence that, with respect to the land question, chiefs have recurrently abused trust reposed in them (Ubink, 2008). Also, it is not clear whether chiefs are sufficiently skilled to negotiate with the state and mining companies. Evidence from countries where participatory engagement is in place (O'Faircheallaigh, 2010) shows that indigenous people are often involved in negotiations about compensation, but some are not sufficiently skilled in that art of negotiation. Finally, the public discourse on compensation and the activities of the chiefs both ignore the role of transnational corporations, and whether they would pay compensation, and honour their so-called 'corporate social responsibility'. Although some mining companies pay some compensation, there is no systematic study of whether its contribution is 'fair' or 'adequate'. What is clear is that mining towns in Ghana are among the poorest in the country.

In summary, the available evidence suggests that the residents of Sekondi-Takoradi require some compensation, but also that neither the state nor private capital is fully committed to its payment. It is also apparent that issues such as like the quantum of compensation or its negotiation and distribution should not all be left to international private capital, the state, or tribal chiefs to decide.

### **Betterment**

If it is unfair to deprive landowners of their land rights without compensation, is it fair to accord them windfalls arising from public

investment? A balanced analysis requires that betterment be considered side-by-side with compensation.

It is pertinent to consider whether a case for the payment of betterment can be made, whether betterment payment is required by existing laws, and whether, in fact, betterment payment will be made. On the first item, there is vast amount of evidence that property values are rising. Gadugah (2009) has reported that there have been sharp increases in rental values, ranging from 20 to 88 per cent since the discovery of oil. Also, landowners are also selling off their land whose value has increased since the oil discovery.

According to section 24 (1) of the Town and Country Planning Ordinance (of Ghana), 1945:

Where the operation of any provision contained in a scheme or by the execution of any work under a scheme, any property within the area of which the scheme applies is increased in value, the Minister, if he makes a claim for the purpose within three years after the completion of the work, as the case may be, shall be entitled to recover from any person whose property is so increased in value the amount of that increase.

It must be determined what the factors that affect land values are and ascertain whether they are the result of public investment. Earlier studies suggest that there are three causes. First, there has been a surge in the number of immigrants who have come from different cities and towns in Ghana, neighbouring countries and other countries around the world, and in a situation where demand is outstripping supply, rental values have

tended to rise as a result. Second, there are the public investments in the city (e.g., road construction) that the state has made since the oil find. Finally, property values have been driven up by speculation, especially by investors who are making purchases of land in the area for investment ~~or~~ purposes.

It may be argued that, because not all the increase in property values can be attributed to public investment, landowners should not be made to pay betterment. Thus, from a legal, town planning perspective, at least only partial betterment is required from landowners. But perhaps a broader perspective would include consideration of how inclusive are the recent increases in land and property values. Edem's (2011) survey shows that most of the 'local' migrants find it difficult to obtain accommodation because of the high rental level in the city. In turn, they tend to settle in low-income areas of the city such as New Takoradi (Owusu and Afutu-Kotey, 2010). Thus, there is perhaps a case for ~~or~~ betterment to be taken from landowners and invested in social services.

However, an analysis of the cases reported in the Ghana Law Reports, using the *Ghana Law Finder* (2009), shows that, in practice, the law on betterment has never been tested in any major case in the Ghanaian courts. This situation may be because of the institutional and logistical challenges that face local governments in Ghana, although there are also structural issues such as the legal provisions that enable the propertied class to speculate in real estate investment (see s.96(7)) of Act 462).



## Conclusion

This Viewpoint shows that a political economic analysis of oil should go beyond the simple ‘resource curse’ thesis. After examining the available evidence and the use of existing regulations within a framework provided by the doctrine of Eminent Domain, it would appear that there are few winners, many losers, and many others in between in the oil city of Sekondi-Takoradi. Fisher and farming folk are likely to miss out however the rules are applied: from a compensation perspective, the track record of the Government of Ghana does not offer them much hope; from a betterment angle, they do not stand to gain much either. In fact, looking at the spate of land sales and increases in rent, some of them could be rendered both homeless<sup>2</sup> and landless. Small to medium landowners who live very close to the oil sites could suffer a taking in terms of losing the land or part of its market value.

However, small, medium and large land owners who live farther away from the exploration drilling sites stand to make different levels of windfalls from increases in property values. Given that this latter group is not likely to pay any land taxes and betterment, they would make huge unearned profits. Large land owners, including chiefs who hold land ‘in trust’ ~~for~~ the ‘people’, are likely to benefit on a net basis. Tribal chiefs do not suffer personally from a taking, but they gain personally from selling land and receive compensation payment in the instances when it is paid. Big, private

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<sup>2</sup> That is losing their rental tenancies and likely going to live in traditional homes.



capital including investors, and oil companies stand to make the most profit – this class would make windfalls from speculation which is even sweeter when the existing institutions in Ghana do not regulate their behaviour with much enthusiasm ~~their unruly behaviour~~.

The doctrine of Eminent Domain is not the only instrument for local economic development and framing the story of Sekondi-Takoradi only in terms of compensation and betterment is too narrow. Further, the best precedent for anticipating the troubles that accompany a ~~-~~natural resource find, from a local economic development perspective, is not the ‘resource curse’ thesis, but the current complexities in the Niger Delta in Nigeria. It is a location with tensions and contradictions that have both local and global dimensions. These include a lack of sufficient robust political institutions and fiscal instruments to absorb the fruits of oil riches equitably and the means to channel them into sustainable development, especially for the people most affected by these activities. It is such issues that the wider, forthcoming study, of which this Viewpoint paper is a part, will address.

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