Resource Governance Dynamics in Extractive Frontiers
The case of the "new" oil in Turkana County, Kenya

RESOURCE GOVERNANCE DYNAMICS IN EXTRACTIVE FRONTIERS THE CASE OF THE "NEW" OIL IN TURKANA COUNTY, KENYA

ALESSANDRO RUNCI

4044266

A.RUNCI@STUDENTS.UU.NL

September, 2015

MASTER 'S THESIS: GEO4-2321 (30 ETCS)

MSC SUSTAINABLE DEVELOPMENT

TRACK: INTERNATIONAL DEVELOPMENT

FACULTY OF GEOSCIENCES

UTRECHT UNIVERSITY, THE NETHERLANDS

Universiteit Utrecht

Faculty of Geosciences

SUPERVISOR: DR FEMKE VAN NOORLOOS

SECOND READER: DR GERY NIJENHUIS

Title page photos. Above: Woman from Turkana South posing in front of her *manyatta* (photo taken by the author). Below: Aerial photo of Ngamia-1, the well where oil was discovered for the first time in Kenya (Source: Capital FM).

To the People of Turkana

Table of Contents

Executive Summary………………………………………………………………………….I

1. Introduction…………………………………………………………………1

2. Theoretical Framework……......…………………………………………..4

2.1 Introduction

2.2 The *enclavity* of the extractive industries

2.3 The resource curse theory

2.4 The emergence of the good governance agenda

2.5 Political ecology

2.6 Research gaps

3. Methodology……………………………………………………………….15

3.1 Introduction

3.2 Conceptual Framework

3.3 Methodological approach

3.4 Site Selection

3.5 Research population and Sampling

3.6 Data collection methods

3.7 Data analysis

3.8 Ethical considerations

4. The Making of a new “Extractive Frontier”……………………………...32

4.1 East Africa: an uncharted territory

4.2 History of oil exploration in Kenya

5. National Context: Kenya……………………………………………………….39

5.1 Introduction

5.2 Politics, ethnicity, and violence

5.3 The era of the reforms

5.4 Resisting change

5.5 Corruption and insecurity

6. Local Context: Turkana……………………………………………………..51

6.1 Introduction

6.2 Livelihood patterns

6.3 Pressures on Turkana`s livelihoods

7. External governance interventions in the extractive sector…………..61

7.1 The wave of Structural Adjustments

7.2 Direct financial investment in extractive projects

7.3 The Extractive Industries Review

7.4 The response of the World Bank

7.5 A new wave of projects

7.6 The involvement of donors in Kenya`s oil industry

8. The unfolding of the oil industry in Kenya....................................79

8.1 The award of petroleum licenses

8.2 Regulatory and institutional framework

8.3 The journey towards a new regulatory framework

8.4 Land policy and regulations in Kenya

8.5 Sector transparency

8.6 Kenya civil society and oil

9. The unfolding of the oil industry in Turkana County.....................102

9.1 Timeline of events

9.2 Areas of governance

9.2.1 Land access

9.2.2 Stakeholder engagement

9.2.3 Local content

10. Discussion...133

10.1 Introduction

10.2 Forming the enclave

10.3 Actors, influence, and power

10.4 Some positive signs, and many challenges

10.5 Adding to the literature

10.6 Comparison with the Ugandan case

11. Conclusion...147

12. Recommendations……………………………………………………………..149

13. References………………………………………………………………...154

Appendix A – List of Respondents………………………………………..172

Appendix B – Extended Analysis of Proposed Policies and Bills……….174

Appendix C –Turkana County Budget Review……………………………179

List of Figures

Figure 2.1 Conceptualization of Power.

Figure 3.1 EI Value Chain Approach

Figure 3.2 Conceptual Framework

Figure 4.1 Exploration Blocks in East Africa

Figure 4.2 Petroleum basins in Kenya

Figure 4.3 Tullow Oil share price

Figure 5.1 Map of Kenya

Figure 5.2 Countries` contribution to East Africa GDP

Figure 5.3 East African countries` GDP per capita.

Figure 5.4 Sectors` contribution to Kenya GDP

Figure 5.5 Real GDP growth: Kenya, East Africa, and Africa.

Figure 5.6 Map of Kenya`s 47 counties

Figure 6.1 Percentage of population in poverty in Turkana.

Figure 6.2 Percentage of illiterate population in Turkana.

Figure 6.3 Medical personnel in Turkana County

Figure 6.4 Livelihood zones of Turkana

Figure 6.5 LAPPSET Project Plan

Figure 6.6 Cartoon appeared on the Daily Nation the day following the discovery

Figure 7.1 The WBG Extractive Industries Value Chain Approach

Figure 8.2 Comparison of the Kenyan and Ugandan institutional framework of the oil industry

Figure 9.1 Pipeline route agreed by Kenya and Uganda

Figure 9.10 Example of employment opportunities allocated to communities

Figure 9.2 Timeline of the Oil Industry in Turkana County

Figure 9.3 Tullow internal procedures of land access

Figure 9.4 Example (1) of LoU between Tullow and Community

Figure 9.5 Example (2) of LoU

Figure 9.6 Approval to lease from TCC to ACS

Figure 9.7 Tullow Oil Social Performance Team.

Figure 9.8 Components of the KEIDP Pilot Project

Figure 9.9 Illustration of temporary workers needed for each camp

Figure 10.1 Actors` ability to wield influence at different levels

Figure 10.2 Exertion of pressures on Tullow and the central government

List of Tables

Table 3.1 Selection of Governance Areas at the National Level

Table 3.2 Selected Governance Areas

Table 3.3 Preliminary Categories of Stakeholders

Table 3.4 List of relevant actors within each category of stakeholders

Table 3.5 Number and genders of respondents in Village A,B,C

Table 7.1 WBG Investment in EIs

Table 7.2 Governance strengthening projects (2000-15)

Table 7.3 EITI-related Projects (2000-15)

Table 7.4 KEPTAP project components and objectives

Table 8.1 Recommendations by H&W and response by the GoK

Table 9.1 List of grievances filed at Lodwar and Lokichar Tullow Community Resource Centres.

Acronyms and Abbreviations

CEC – County Executive Committee

DAC – District Advisory Committee

DDG – Danish Demining Group

DfID – Department for International Development

EI – Extractive Industry

EIR – Extractive Industries Review

EITI – Extractive Industries Transparency Initiative

FDI – Foreign Direct Investment

FoLT – Friends of Lake Turkana

IFC – International Finance Corporation

IFI – International Financial Institution

KEIDP – Kenya Extractive Industries Development Program

KEPTAP – Kenya Extractive Industries Technical Assistance Program

KSHS – Kenyan Shillings

LoU – Letter of Understanding

MoU – Memorandum of Understanding

NUPAC – National Upstream Petroleum Advisory Committee

PA – Provincial Administration

PE – Political Ecology

TCC – Turkana County Council

TCG – Turkana County Government

TNC – Transnational Company

UPRA – Upstream Petroleum Regulatory Authority

WBG – World Bank Group

Executive Summary

The objective of this Master's thesis is to add on the debate between natural resources and sustainable development, by exploring emerging governance dynamics in a new extractive frontier. In particular, the effects of the so-called *good governance* agenda for the extractive industries, championed by international financial institutions and transnational corporations, are analyzed, using Kenya, where oil was discovered in 2012 in Turkana County by Tullow Oil, as a case study.

Adopting a qualitative and exploratory approach, a multi-level analysis is performed, in order to describe collaborative and conflictual interactions between actors operating at different scales, and analyse how power is exerted within these interactions; explain the formal and informal rules that have resulted from the interplay of the various actors involved in the arena; and identify governance gaps that affect the sector, at the onset of the production phase.

During three months of field work, fifty-nine semi-structured interviews have been carried out, combined with Focus Group Discussions, participant observation, and documentary analysis.

Findings show how a wide range of actors have tried to partake in the creation of the rules of the nascent oil industry in Turkana, using both collaborative and conflictual strategies. In particular, the World Bank has played a fundamental governance role in these three years since the discovery, providing technical and financial assistance to the government of Kenya, and supporting it in the design of a new institutional and regulatory framework for the sector.

Parliament and local authorities have also made various attempts to influence the practices of the national government in relation to the oil industry, by means of petitions and press conferences, in which they demanded more transparency and inclusiveness in decision-making. Their pressures, however, have been resisted by the government, who ignored their requests.

In Turkana, Tullow Oil has also been subject of several pressures from its local stakeholders, who repeatedly accused the company of having illegally acquired community land without the consent of the authorities, of using local representatives of the national government to intimidate communities, and of excluding locals from employment and business opportunities.

Although the company has initially proceeded unconcerned by these criticisms, a large protest staged by communities and some politicians forced Tullow to suspend its operations for two weeks, and to agree a number of measures to implement in order to resume the activities in the region.

A number of governance gaps, at both the national and local levels, emerge from the research, including opaqueness in the award of petroleum licenses, that resulted in a series of corruption scandals, delays in the enactment of the new regulatory framework, over-centralized decision making, poor corporate communication and engagement structures, weak capacity and reputation of the county government, that is also handicapped by strong political rivalries, elite capture of jobs and tenders accruing from the industry, and internal division within local civil society platforms.

The study highlights the many limitations that affect the new good governance agenda for the extractive industries, which falls short of its promise to transform the extractive industries, fostering their contribute to sustainable development.

The rhetoric of engagement and participation conceal enormous asymmetries of power in negotiations between oil companies, local government, communities, and civil society, that cannot be adequately addressed by policies alone, but require a radical transformation of the set of incentives faced by governments and corporations. Otherwise, extraction will continue to exacerbate socio-economic inequalities in producing countries and regions, concentrating benefits to a few elites, and leaving the poor to bear its costs.

1. Introduction

On March 26, 2012, Kenya has struck oil (Forbes, 2012). The breakthrough comes after a series of oil discoveries in East Africa, indicating the emergence of a new extractive frontier (Lundin, 2012; Offshore Tech, 2012). Remarkably, more hydrocarbons have been discovered in East Africa over the past two years, than anywhere else in the world (Deloitte, 2014). Kenya and Uganda alone account for more than 3 billion barrels of estimated oil reserves (ibid). With the rise of new energy hungry economies such as China, India, and Brazil, and African oil production projected to grow faster than elsewhere, East Africa is embarking upon a journey, whose destination is still hard to predict (Frynas and Paulo, 2007).

Host governments have been adamant that the newly found natural wealth will be a springboard for development (WSJ, 2014; African Executive, 2012). International financial institutions (IFIs) appear to share the same optimism, arguing that, if properly managed, the extractive industries (EIs) will foster economic growth in the region, and contribute to poverty alleviation (WB, 2002, 2009). In this respect, the World Bank Group (WBG) continues to play a dominant role in the governance of the sector (Pegg, 2003,2006).

Focus of intense scrutiny and criticism for its support of highly controversial extractive projects throughout Africa, the WB have recently conducted a review of its involvement in the mineral and hydrocarbon sector (Liebenthal et al., 2005). The appraisal resulted in the formulation of a new policy agenda to promote good governance of the EI, in order to ensure that benefits of extraction reach the poor, and mitigate socio-environmental risks (WB, 2011).

At the same time, extractive companies are doing their best to obtain their social license to operate (SLO), adopting voluntary codes of conduct, championing discourses of stakeholders engagement and participation, and promising the development of more inclusive business models that can create more employment and business opportunities for local communities (Gunningham and Kagan, 2004, Kemp, 2010; Gilberthorpe and Banks, 2012).

According to their proponents, these policies should prevent or mitigate the externalities produced by the industry, while enhancing the opportunities available to current and future generation, in order to "strike a better balance" (Salim, 2003).

However, the effects of these policies on the ground appear less straightforward (Van Alstine et. al, 2014; Arellano-Yanguas, 2008; Szablowski, 2007) . Abysmal asymmetries of power, that characterize the relations between actors involved in, and affected by the EIs, are likely to translate into asymmetric negotiations and outcomes. The balance does not seem to have shifted much, and communities in producing regions remain on the losing end.

In Turkana County, the Kenyan region where the majority of oil reserves are located, challenges have soon emerged. Communities lamented exclusion from negotiations, as well as from job opportunities and tenders (Standard (ii), 2013; Charem, 2013). Land appear to have been demarcated for oil exploration without consulting residents, and the local authorities. (Think Africa Press, 2013). In October 2013, more than 2000 residents, led by two area MPs staged demonstrations at three oil sites, leading to the decision by Tullow Oil to suspend operations for two weeks, exposing the fragility of the relationship between the company and Turkana communities (All Africa (ii), 2013; The East African (i), 2013).

While the largest majority of studies on the EIs have focused on countries with a long history of extraction, the dynamics that emerge in new extractive contexts, such as Kenya, remain greatly uninvestigated (Lundin, 2012; Van Alstine, 2014). However, conducting such inquiry during the early stages of the EI, and before production actually begins, holds particular relevance in order for timely interventions to be designed and implemented. Arguably, a particular focus on the local level can add further value to the analysis, since there is where most of the externalities of the EI will be concentrated.

Against this backdrop, this study aims to address the following objectives:

1. To describe the actors/groups involved in the governance landscape of the nascent oil industry in Kenya, and analyze their ability to participate in decision-making processes;

2. To examine the collaborative and conflictual interactions that have occurred between these actors, from the discovery onwards;

3. To describe and analyze the outcomes of these interactions, with particular regards to the formal and informal rules that have developed as a result of them;

4. To identify the governance challenges that affect the sector at the onset of the production phase

Overarching Question

How have actors, operating at different levels, contributed to develop the formal and informal rules of the oil industry in Kenya, and what are the main governance challenges that affect the sector at the onset of production?

In order to provide answers to question, I conducted twelve weeks of field research in Kenya, from February to May, 2015, being prevalently based in Turkana County.

The report is structured as follows. In the next section, I elaborate upon the theoretical debate that surrounds the extraction of natural resources, presenting the main theories that have emerged over the years on the topic.

Thereafter, I provide an overview of the socio-economic characteristics of the national and local contexts of the research, namely Kenya and Turkana County.

Subsequently, I illustrate the methodological approach adopted to carry out the study, describing the methods and techniques employed in order to collect and analyze data and information.

Findings are then laid out in three empirical chapters, that deal with the global, national, and local level respectively. A discussion of the results is then provided, before finalizing the thesis with conclusions and recommendations.

2. Theoretical Framework

2.1 Introduction

The debate on the nexus between natural resources and sustainable development has been one of the most polarized over the last fifty years.

International Financial Institutions (IFIs), transnational companies (TNCs), and host governments alike have repeatedly emphasized the contribute of the extractive sector to poverty reduction and economic growth in developing countries (World Bank, 2002; World Bank, 2009; McMahon, 2010, 2014; Pegg, 2003, 2006). Among the main advocates of the extractive industries (EIs) as a catalyst for development is the World Bank Group (WBG) (Pegg, 2006). In the Bank`s view, "Mining can contribute to poverty reduction in a variety of ways", namely by generating income and foreign exchange, creating employment opportunities, fostering vertical and horizontal linkages, and increasing investments in social services and infrastructure improvements (World Bank, 2002).

The Bank` support for the EI has certainly not been confined in its discourses. From the 1980s onwards, it has pushed countries to increase their rate of natural resources extraction, mainly through structural adjustment programs, sectorial reform lending, and technical assistance. In Africa alone, the WB has committed more than $ 2.75 billion in loans for extraction-related, from 1990 (Pegg, 2003).

Central governments in producing countries have fully embraced the Bank`s vision, and resources exploitation is invariably associated with development in their discourses as well.
Having recently discovered large quantities of hydrocarbon resources in the Albertine Region, Uganda`s President Yoweri Museveni exclaimed "[…] now that we have got oil, it is a good godsend that will quicken the process of *development* and transformation.[1]"
On the same line, Kenya`s President Uhuro Keniatta believes that the oil discovery "is an opportunity for Kenya to lift itself to the next level of *development*, through the exploitation of these resources".

From the 1950s onwards, however, the contribution of natural resource abundance to economic and human development in exporting countries has been subject of intense scrutiny by various schools, that have attempted to demonstrate how mineral wealth seldom achieve poverty reduction, and can often result in poverty exacerbation. In this Chapter, I will briefly present

[1] http://blogs.wsj.com/frontiers/2014/09/26/ugandan-president-museveni-sees-deeper-integration-in-east-africa/

these "pessimistic" theories, and the explanations offered by them as to why oil and minerals may be a curse for countries exploring, extracting, and exporting them.

2.2 The Enclavity of the Extractive Industries

As explained by Hanssen (2014), the resource enclave thesis "essentially holds that natural resource seeking FDI, contrary to what is the case with market and efficiency seeking FDI, will tend to create isolated enclaves in the host economy with few linkages to local products, financial and labour markets and with only small contributions to economic growth."

The foundations of this theory trace back to the 1950s, when an handful of economists, particularly Singer, Prebish, and Hirschman, tabled a series of an ideas to explain why the export-led economic model of many countries in the Global South was the main cause of their development failure.

In a landmark report of the United Nations, Prebish (1950) reflects on the economic trajectories of Latin American countries, noting that: "the enormous benefits that derive from increased productivity have not reached the periphery [developing countries] in a measure comparable to that obtained by the peoples of the great industrial countries."

Hirschman (1958) highlights the importance for developing countries to develop "linkages", which he categorized into: 1) consumption linkages, between consumers and productive sectors of the economy; 2) fiscal linkages, between financial and productive sectors; and 3) direct linkages, that refer to the forward and backward linkages to other productive economic sectors.

Finally, Singer (1950) was the first to reason in terms of "core" (industrialized) and "periphery" (underdeveloped) states, observing that "industrialized countries have had the best of both worlds, both as consumers of primary commodities and as producers of manufactured articles, whereas the underdeveloped countries had the worst of both worlds, as consumers of manufactures and as producers of raw materials."

The author further explains how the nodes of industrial production surfacing across poor areas of the world, such as sub-Saharan Africa, was only illusory since 'the productive facilities for producing export goods in underdeveloped countries are often foreign owned as a result of previous investment in these countries'.

The ideas of these authors have been extensively explored and developed by economists and development scholars, and contributed to the rise of Dependency Theory and World Systems Theory.

More recently, it was Ferguson (2005) to focus on the phenomenon of resource enclavity in the context of the extractive industries. In his famous article "Seeing like an oil company", he reflects on how the significant expansion of capital investment targeting Africa since the late 1980s, "has been overwhelmingly in the area of mineral resource extraction."

However, this investment has been concentrated in "secured enclaves, often with little or no economic benefit to the wider society." His powerful depiction of the Angolan case has become a symbol of the enclave-nature of the extractive industries in developing countries, and deserved to be quoted at length:

"It is worth noting that the movement of capital that is entailed in such enterprises is "global" in the sense that it crosses the globe, but it does not encompass or cover contiguous geographic space. The movements of capital cross national borders, but they jump point to point, and huge areas are simply bypassed. Capital does not "flow" from London to Cabinda; it hops, neatly skipping over most of what lies in between. When capital is invested in spatially segregated mineral-extraction enclaves, the "flow" of capital does not cover the globe, it connects discrete points on it."

The continuous flow of capital from the North to the South have nourished these enclaves, but have generally benefitted only some governments officials and extractive companies, hopping over "usable Africa" (ibid.).

Drawing on his personal experience in Chad, MacEachern (2005) provides another, more material, characterization of the oil enclave:

"[…] *Participation in the project involved fieldwork in Cameroon and also in southern Chad, one of the poorest places on Earth, where the average life expectancy is about 47 years, infant mortality rates are approximately 10 per cent, and other demographic indicators are similarly catastrophic…On the other hand, life inside the wire included Skippy peanut butter and Louisiana hot sauce brought in to stock the cafeterias, private air-conditioned trailers with hot showers and satellite television, and in Chad a posse of armed guards for any movement beyond the camp gates. Ferguson's term 'enclave' is perhaps too mild: this was life on a submarine…*"

2.3 Resource Curse Theory

Despite the contribution made by the authors presented above, the view that oil and minerals were instrumental in reducing poverty and promoting development in developing countries, "still dominated both public discourse and scholarly research until the early 1990s" (McMahon, 2014). Ironically, the main opponents of this conventional wisdom emerged from within the WBG itself. One of its chief economist, Alan Gelb is believed to have coined the expression "resource curse"

in 1988 (Gelb, 1988). The theory has been successively developed by other economists, such as Jeffrey Sachs and Paul Collier, who both hold influential positions within the WB. The *resource curse* is a label for an array of observable negative outcomes that a county endowed with abundant mineral and hydrocarbon resources may experience. Initially, proponents of this theory have focused prevalently on adverse **macro-economic effects** traceable to resource abundance (Auty, 1993; Sachs and Warner, 1995, 2001). The most popular of these is the so-called *Dutch Disease*, which refers to the tendency of oil and mineral-producing countries to reach level of high consumption and investment during boom periods, which are unable to sustain during following downswings (Benjamin and Devarajan, 1989; Bebbington et al., 2008). Moreover, an export-dependent economy is particularly vulnerable to endogenous forces, such as the high volatility of commodities price (World Bank, 2002).

Scholars of the resource-curse theory have also examined the **socio-political effects** caused by natural resource wealth, finding that countries dependent on natural resources frequently experience rent-seeking behaviour, high level of corruption, lack of democracy and authoritarianism (Torvik, 2002; Leite and Weidmann, 1999; Dunning, 2008; Haber and Menaldo, 2011; Damania and Bulte, 2003). These authors argue that natural resource rents, particularly from oil and minerals, create "perverse incentives that allow rulers to do badly without facing punishment." Easy access to resource revenues removes the conditions that lead to the design and implementation of development-friendly policies, favouring instead the origin of grabber-friendly institutions. Rents, in fact, allow politicians to survive by means of patronage, rather than public goods provision and sound reforms.

Subsequently, much efforts have been dedicated to the analysis of the **link between natural resources and conflicts** (LeBillon, 2001; Bannon and Collier, 2003; Ross, 2004). Such conflicts have been analysed through the greed versus grievance conceptual model. The former refers to elite competition over valuable rents. The latter identifies deprivation, and the grievance that it produces, as main driver of conflicts. Central to the concept of grievance are inter-ethnic and horizontal inequality, and identify formation. According to Collier and Hoeffler (2004), conflicts stems from the greedy behaviour of a group, where a range of opportunities (financing, recruitment, and geography) are available. Natural resources rents constitute "booty", and this provides the central motivation for conflicts. The ideas of these authors have had immense influence in the donor and community.

However, other scholars have contested the clear cut explanation provided by Collier, arguing that multiple factors can drive a conflict over natural resources. One of them is certainly grievance, which Hmphreys (2005) explains by identifying four mechanisms through which it

operates: i) countries dependent on natural resources may experience transitory inequality as part of their development process; ii) the economies of these countries are also more vulnerable to shocks; iii) the material process of extraction can produce significant grievances in host regions; and iv) natural resource revenues can been perceived as more unjustly distributed than other wealth.

Recently, however, many advocates of the resource-curse thesis have gradually shifted away from their initial determinism, and paid more attention to the role played by the **political and institutional context** of host countries (Robinson et al., 2006; Mehlum et al., 2006; Ross, 1999). Collier himself argues that "The resource curse is confined to countries with weak governance." (Collier, 2010) Others suggest that "the credibility, quality, transparency, and accountability of policy-making processes […] and sector governance are major determinants of how successfully countries can channel their resource wealth into sustainable development." (Barma et al., 2011, rep. in McMahon, 2014).

2.4 The emergence of the good governance agenda for the EIs

The increased availability of evidences demonstrating that natural resource abundance seldom lead to development and poverty alleviation, and new findings highlighting the importance of role played by host countries` institutions in the resource curse mechanisms, have led to the emergence of what Arellano-Yanguas (2008) calls the "new natural resource policy agenda", which fundamental pillar is *good governance*.

A broad definition of governance encompasses all ways in which individuals, public agencies, and private organisations govern their common affairs in a continuous process of negotiation and cooperation (Commission on Global Governance, 1995, rep. in Moss, 2009).

The concept of governance goes beyond that of government, including the actions of actors such as communities, enterprises, international institutions, donors, and civil society.

The forms through which governance can take place include "international accords, national policies, legislation, local decision-making structures, transnational institutions, and NGOs" (Lemos and Agrawal, 2006) . Here, by natural resource governance I refer to: "the hard and soft rules which shape and constrain the ways hydrocarbons contribute to sustainable development and poverty alleviation within host countries" (Van Alstine et al., 2014). Hard rules include regulations, monitoring, and enforcement mechanisms. Soft rules include norms, standards, expectations, and social understandings (Levy and Newell, 2005).

Financial institutions, donors and extractive companies have been championing the new policy agenda from the early 2000s until nowadays.

The WBG delineates four objectives of its governance interventions in the extractives sector: a) strengthening governance and transparency; b) ensuring that EI benefits reach the poor; c) protecting the rights of people affected by EI; and d) mitigating environmental and social risks (WB, 2011). In order to achieve these goals, a number of programmes have been launched by the Group, such as the: Extractive Industry – Technical Advisory Facility (EI-TAF), Petroleum Governance Initiative (PGI) carried out in collaboration with the Norwegian development agency, the Governance for Extractive Industries (GEI), and the Oil, Gas and Mining Sustainable Community Development Fund (CommonDev), etc. (WB, 2013). The WBG is also the main supported of the Extractive Industries Transparency Initiative (EITI), launched by British Prime Minister Tony Blair, in 2002.

Whereas most of these initiatives target the national level, corporate social responsibility (CSR) is increasingly emerging as a governance intervention at the local level. There is no universal definition of CSR, however, here we use the term to refer to voluntary company activities that attempt to demonstrate the inclusion of social and environmental concerns in business operations (Marrewijk, 2002). Given the scale of the socio-environmental impacts caused by their operations, it is not surprising that mining and oil companies have increasingly championed CSR initiatives, producing uncountable sustainability reports, adopting voluntary codes and standards, such as the Equator Principles or the Voluntary Principles on Security and Human Rights, and the EITI, and forming industry associations, such as the International Council on Mining and Metals (ICMM) and the International Petroleum Industry Environmental Conservation Association (IPIECA), that promote a vision of responsible extractives.

The philanthropic rationale that characterized initial discourses of CSR is gradually being replace by an approach that view communities, local authorities, and civil society as companies` stakeholders. Therefore, concepts of stakeholder engagement and participation are becoming a must of any sustainability report:

*"Stakeholder engagement helps us to achieve our business goals, such as negotiating land access, gaining government approval on plans at project milestones and managing our contractor workforce. Our stakeholders include governments, investors, industry partners, communities, employees, non-governmental organizationz, civil society organisations and the media." (*Tullow Oil, Corporate Sustainability Report, 2014).

"*The process of stakeholder engagement is as important (and at times, more important) as the outcomes of engagement. Stakeholder engagement is an-ongoing process and should be: predictable, transparency, appropriate* […]" (Africa Oil, Corporate Social Responsibility Guidelines, 2015).

Another concept that is gaining particular prominence among extractive companies is Local Content. It refers to the added value brought to a host nation through workforce development (employment and training of local workforce), and investment in supplier development (developing and procuring supplies and services locally).

Tullow (2014) refers to it as “Shared Value”, saying that “this value is not purely focused on financial returns, it also comes from local employment, local sourcing of goods and services, and capacity building.”

Stakeholder engagement, local content, and other measures such as Grievance Resolution Mechanisms, and Social Investments, attempt to redefine the image of the extractive industries, and portray them as more “just”, from both a procedural (as in the case of stakeholder engagement practices, and grievance resolution mechanisms), and distributive (through local content policies) standpoints.

In theory, the rise of these industry-driven initiatives at the local level, combined with financial institutions and donors` strategies to strengthen governance at the national level, should lead to the “disenclavement” of the extractive industries.

In practice, however, the effects of these policies appear less straightforward (Van Alstine et. al, 2014; Arellano-Yanguas, 2008; Szablowski, 2007). Profound asymmetries of power, that characterize the relations between actors involved in, and affected by the extractive industries, are bound to translate into asymmetric negotiations and outcomes.

2.5 Political Ecology

Political ecology (PE) emerged during the 1970s largely as an approach to link environmental changes to the wider political-economic context (Robins, 2012; Bryant, 1992).

Rooted in cultural ecology and ecological anthropology, it has been subsequently taken up by geographers, historians, and anthropologists alike. Rather than as a strictly defined theory, PE can be considered as a response to the environmental determinism that characterized studies on environmental change during the 1960s and 1970s (Galor and Weil, 2000).

Political ecologists argue that, in order to analyse the changing nature of the environment, much attention must be paid to the socio-political ramifications that are linked to these changes (Forsyth, 2008) . In their analysis, the environment becomes “politicised”, an arena of struggle where the plurality of actors, holding different positions, perceptions and rationalities, interact with each other in order to meet their interests (Tsuma, 2010; Bryant, 1997, Paulson et al., 2003). Underlying these interactions, however, are asymmetrical power relations among groups and

individuals, that can also rapidly shift with the entrance of new actors (such as transnational companies, or international NGOs).

The distribution of costs and benefits accruing from changes in the environment (as for instance, those required to extract, produce and transport oil or minerals) is a product of these interactions, shaped by unequal power relations, rather than determined by the structures of resource exchange (Tsuma, 2010). Power can origin from multiple sources and take many forms, both material (technological, economic, political, military, etc.) and non-material (discursive, knowledge, symbolic, cultural, etc.) (Poggi, 2013; Heynen et al., 2006).

In PE power has been primarily conceptualised as "the control that one party has over the environment of another party" (Bryant, 1997).

Power can origin from multiple sources and take many forms, both material (technological, economic, political, military, etc.) and non-material (discursive, knowledge, symbolic, cultural, etc.)

It can also be exerted through various strategies. For instance, Turner distinguishes between power through *Persuasion*, and *Control*. Power through P*ersuasion* is defined as "the power to get people to act in line with one`s desires by persuading them that the desired judgement, decision, belief or action is correct, right, moral, appropriate". The WBG, for instance, is able to persuade host government to adopt certain policies in matters of resource extraction, by convincing them that such policies will lead to positive outcomes (e.g., increased FDI, sound revenue management, etc.).

Power through *Control*, on the other end, refers to "the capacity to get people to do what one wants where they are not persuaded of or are uninterested in the validity of the specific belief or act." Turner sub-divide control into two forms: *authority*, and *coercion*.

Authority is the form of control which is based on the acceptance by the target of one`s right to prescribe their actions. Such authority is thus legitimized by the target, by virtue of one`s position within the group structure, norms, or values. Authority can, for instance, be legal, traditional, or charismatic. Importantly, this type of control is not experienced as an oppression or loss of power by the target, but "as voluntary submission" to one`s will.

Coercion, instead, is the attempt to control others against their will. It is exercised when an actor is unable, or unwilling, to exert influence or authority over another. Coercion occurs by restricting or opposing the freedom of an actor to pursue its own goals.

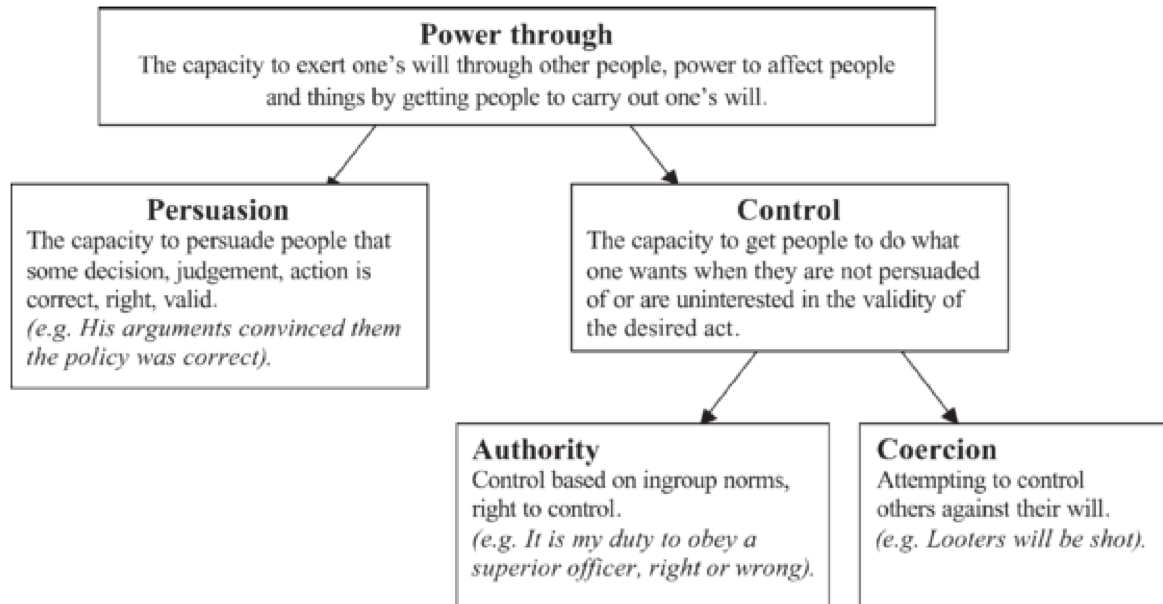


Fig. 2.1 Conceptualization of Power. Source: Turner, 2005

Since its emergence in academic circles, PE has been applied to a variety of subjects, ranging from soil erosion (Blaikie and Brookfield, 1987), to water (Bakker, 2003), tourism (Stonich, 1998), conservation (Adams and Hutton, 2007), and even wars (LeBillon, 2001).

Recently however, scholars have adopted concepts of PE in studies on mineral and hydrocarbon resources (Bebbington, 2013; Bebbington et. al, 2008; Kaup, 2008; Bury, 2004). They have focused on the socio-environmental reconfiguration resulting from the extractive sector (Hindery, 2004), the ways extraction impacts local communities (Bury, 2005), the inequalities it produces (Bebbington and Bebbington, 2010), and the conflicts that surround it (Kaup, 2008).

Bebbington (2012) observes how the dichotomy pro or against the EIs needs to be overcome, as "many encounters with extraction will not fall easily into those of opponents and proponents", and involve much more complicated negotiations, particularly at the local level.

According to him, many indigenous communities have concluded that engaging with, rather than opposing the extractive industries, may lead to better outcomes, as for example the possibility to pursue their own agendas, of economic regenerations, territorial control, or reconstitution of an indigenous identity. This, in turn, has resulted in the emergence of counter-movements that attempt to construct an alternative approach to extraction, that leaves more room for "rights and environmental integrity".

However, studying the case of Bolivia, the same scholar (Bebbington and Bebbington, 2010) notes that negotiations around extractives typically involve only community leaders, and their

results "tend not to be socialized or discussed with or ratified by the communities", due to structured inequities in political and decision-making processes.

Discussing the case of an oil spill in Bolivia, Hindery (2004) argues that the World Bank, who was among the main investor in the pipeline, "failed to prevent, control and mitigate negative impacts that were predicted to arise […]". He furthers argue that the neoliberal policies promoted by the Bank have granted enormous power to transnational mining companies, who are able to influence legislation, co-opt NGOs and politicians, and conduct their operations without real control from the State.

The majority of these studies, however, have been conducted in countries characterized by a long history of extraction, where dynamics and outcomes are already well-defined.

2.6 Attempting to fill a literature gap

Although the literature on extractive industries has grown significantly over the past two decades, there is a remarkable lack of studies carried out at the initial stages of the sector, particularly during exploration and development. The shifting trajectories of these industries in recent years, and the opening of new extractive hotspots, such as East Africa, urge the necessity of exploring how the "new oils" are influencing governance dynamics in countries, like Kenya or Uganda.

Such undertaking has been commenced by a team of researcher based at the London School of Economics (LSE), and the University of Leeds. Using an inductive, and exploratory approach, Van Alstine et al. (2014) have investigated the case of Uganda, in order to identify the main governance challenges that affect the sector, particularly at the sub-national and local level.

Four different governance gaps emerged from their research. The first is the fragmentation and lack of coherence among the three civil society networks on the oil and gas sector – Civil Society Coalition on Oil and Gas (CSCO), Publish What You Pay - Uganda (PWYP), and Oil Watch Network. According to the authors, the fragmentation of civil society is partly due to disagreement between them over the best approach to adopt (collaborative, oppositional, etc.), and partly because of lack of coordination of donors interventions, which led to the duplication of projects and activities. The second gap is the limited civil society access to communities, due to increased restrictions imposed by the central government to engage with research or advocacy in Ugandan oil-bearing regions. They define the third gap as "industry-driven interaction", referring to the lack of actors, other than companies and central government, interacting at the village level on oil-related issues. Moreover, company-communities interaction are prevalently ad-hoc, for instance to gain access to land, or conduct exploration activities.

Finally, the fourth gap that they identify is the weak capacity of the local government to engage with oil issues, caused by both lack of information and resources. They also note how NGOs and donors are not engaging in capacity building activities targeting local governments, nor is the Ugandan national government. This has resulted in the inability of local officials to take an active role in the governance of oil. "Local representatives are largely spectators of developments in the oil sector."

The authors conclude by calling donors and civil society to engage in research-driven engagement at the local level, during the early stages of the industry, and by interrogating themselves on the extent to which their findings are replicable to other new resource contexts.

In another study conducted by the same team in Uganda (Van Alstine et al, 2010), the researchers attempt to identify "priority barrier categories" that can, or are already preventing communities to reap the benefits accruing from the sector. A number (15) of barriers emerge from the analysis, but three of them are significantly more frequently reported by respondents[2]: i) stakeholder engagement; ii) information and communication; and iii) Employment.

With regards to the first, communities and local government officials lament deficient interactions with oil companies, unidirectional flow of information, lack of trust and participation, unfulfilled promises made by companies, but also disrespectful behaviour of company`s officials.

In respect to the second, respondents complain that oil companies are reluctant to share information on the projects, and that even the little information share, are provided through inadequate format – e.g. not translated in the local language.

Finally, major concerns regarding employment include the lack of job opportunities available to community, perception that companies source workforce from outside the area, lack of transparency in the recruitment process, temporary nature of contracts, and inconsistent procedures and salaries adopted by sub-contractors.

The type of research conducted by these authors in Uganda has strongly inspired by investigation, which also aim to answer the call made by Van Alstine and identify possible patterns between these two countries where the industry is still recent.

Although my research could not be as comprehensive as theirs, some of my findings show a remarkable similarity with the ones listed above, as I will show in the next chapters.

[2] Other categories of barrier include: community support, CSR, corruption, compensation, education and training, environment, infrastructure, local economic development, policy and legal, health, and security.

3. Methodology

3.1 Introduction and Research Objectives

The extraction of abundant natural resources (minerals and hydrocarbons) represents the economic backbone of many countries in the African region. Rather than an opportunity, however, this abundancy has often been a curse for sub-Saharan countries and their citizens. Analysing the causes of the negative correlation between natural resources and development, in producing countries, authors have recently reached a large consensus that mis-governance is the main factor responsible for the poor performance of the sector in terms of poverty reduction.

In recent years, donors and financial institutions have created what many calls the new governance agenda for the extractive industries, which comprises a number of provisions and blueprints that are supposed to achieve good governance in host countries. Oil companies, on their side, are attempting to improve their reputation, and gain the social license to operate, through discourses and initiatives that promise to make the industry more “just” from a procedural and distributional standpoints.

A new extractive context such as Kenya represents a valid case-study in order to describe, explain and analyse the results of these interventions, the extent to which they are successful in promoting good governance, and their main limitations.

Against this background, this study aims at addressing the following research objectives and questions:

1. To describe the actors/groups involved in the governance arena of the nascent oil industry in Kenya, and analyze their ability to actively participate in this arena;

2. To examine the collaborative and conflictual interactions that have occurred between these actors, from the discovery onwards;

3. To describe and analyze the outcomes of these interactions, with particular regards to formal and informal rules developed as a result of them;

4. To identify the governance challenges that affect the sector at the onset of the production phase

Overarching Question

How have actors, operating at different levels, contributed to develop the formal and informal rules of the oil industry in Kenya, and what are the main governance challenges that affect the sector at the onset of production?

Sub-questions

1) Who are the actors/groups involved in the governance of the oil industry in Kenya, and at what levels are they able to exert influence?
2) What are formal and informal sector rules that have been established through the interplay of these actors?
3) What are the governance challenges that affect the sector, at the onset of the production phase?

Explaining the Research Approach

Given the multitude of areas that it encompasses, and the broadness of each of them, conducting an analysis of the governance of the extractive industries can be a mammoth task, especially if one wants to cover both the international, national and local level.

Given the wideness of the topic, a researcher can decide to focus on just one scale (international, national, or local), or even to select just one area (voluntary standards, revenue management, environmental protection, etc.).

However, for a case such as the one of oil in Kenya, on which very few scientific studies have been conducted, both of them focusing only at the local level, and addressing the same issue (the nexus between oil and insecurity in Turkana), I considered more appropriate to provide a broader overview of the governance dynamics that have, and continue to take place at all levels, and concerning different aspects of the sector.

The early stage at which the Kenya oil industry currently is, facilitates this selection, given that certain governance areas (such as the collection of taxes, or revenue management) cannot be studied yet.

Nonetheless, covering all the different governance areas that concern the sector, even at the exploration and development phases, would have been impossible, and a selection had to be made.

In order to do so, the Extractive Industries Value-Chain Approach (EI Value Chain) designed by the World Bank Group comes handy, as it disaggregates the industry in a number of links, that can be addressed separately.

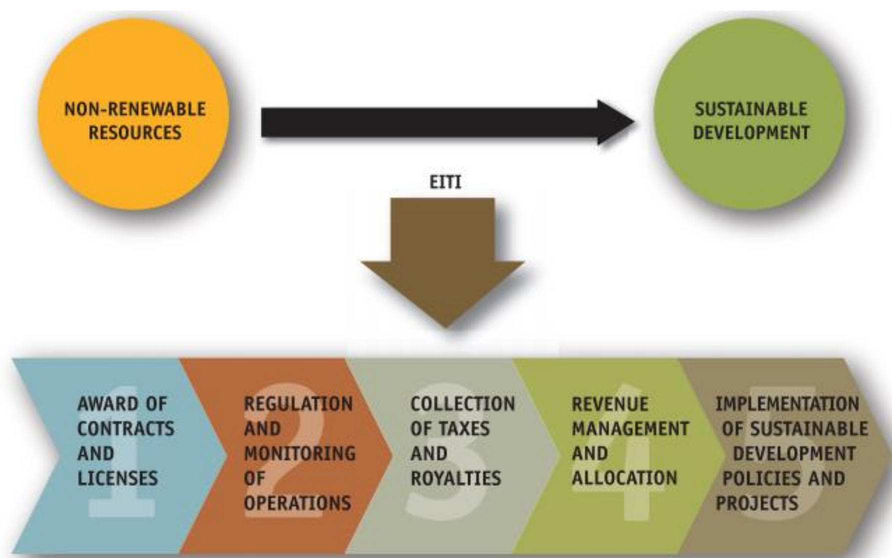


Figure 3.1 EI Value Chain Approach. Source: WBG, 2009

Selection of Governance Areas at the National Level

As shown in Fig. 3.1, the EI Value-Chain encompasses a number of steps of the industry, namely:

1. Awarding of contracts
2. Regulation and Monitoring;
3. Collection of taxes and royalties,
4. Revenue management, and
5. Implementation of sustainable development projects

The overarching issue of ***Transparency***, is represented by the EITI arrow above the value-chain, which also refer to the inclusion of the civil society in the governance of the EIs, as explained by the WBG:

"Civil society participation in this process helps raise awareness of the contribution of the EI sector to a country's economy as well as accountability of both companies and governments. The EITI includes capacity building activities for civil society to understand the information on revenue flows and provides a forum for civil society's views to be presented in an informed and organized manner." (WGB, 2009)

Areas	**Award of Contracts**	**Regulation and Monitoring**	**Collection of Taxes**	**Revenue Management**	**Transparency**	**Civil Society**
Relevance for Kenya	**Relevant**	**Relevant**	**Not observable**	**Not observable**	**Relevant**	**Relevant**

Table 3.1 Selection of Governance Areas at the National Level

As we can see in Tab. 3.1 four governance areas emerge as the most relevant at the national level, namely:

1. Award of contracts
2. Regulation and monitoring
3. Transparency
4. Involvement of the civil society

The remaining two links of the chain – Collection of taxes, and Revenue management – are impossible to be properly studied at this stage, given that revenues have not started to accrue yet[3].

[3] Various type of taxes (corporate income tax, levies and licenses, etc.) have been already paid by oil companies, however, the significance in terms of government revenues is still limited, compared to what is expected once production will start.

Selection of Governance Areas at the Local Level

As we can see in Fig 3.1, the last link of the EI Value-Chain concerns the implementation of sustainable development policies and projects.

This area focuses on both national and local, and comprises of a number of key issues, such as:

1. public investment decisions
2. transparency in the procurement system
3. sustainable development and environmental protection of producing regions
4. monitoring system in place to provide feedback on investment policies

Again, some of these sub-areas assume that revenue are already flowing, while the sub-area "sustainable development and environmental protection of producing regions" appear too broad to be operationalized.

Moreover, the relevance of a certain aspect for a certain region is very likely to be dependent on the specific contextual factors of that region.

Therefore, in order to select the governance areas to address at the local level, I adopted a different, and more inductive approach.

By an extensive review of media articles on oil in Turkana, combined with analysis of reports of Turkana CBOs that I obtained prior to and during the research, I identified 5 areas of governance that can be described as the most contentious in the region. These include:

1. Land Access
2. Stakeholder Engagement
3. Local Content
4. Environmental Protection
5. Insecurity

Given my intention to provide a detailed account of the formal and informal rules that govern these areas, and the dynamics that have produced them, a selection is again necessary.

I autonomously decided to exclude the last two areas – environmental protection, and insecurity.

The decision not to include environmental protection derives from two main reasons. First, the impacts of the industry on the environment are not particularly visible yet, as most of the infrastructure are yet to be built, and also the type of industrial operations currently conducted (mostly exploration and appraisal) are much less environmentally-damaging than extraction itself. Secondly, addressing this area requires specific knowledge and skills (e.g. on what are the

environmentally best practices for the extractive industries, but also on what procedures and equipment should be used, etc.) that are unavailable to the researcher.

With regards to insecurity, the choice of not including it has certainly been one of the hardest I have to made for this research, given its high relevance for the region under investigation.

However, a proper analysis of this aspect would have required extensive visits to the most insecure areas of Turkana, in order to collect the perception of affected communities. Such endeavor was not considered feasible in my case, due to impossibility of hiring security guards, vehicles, etc.

Moreover, as I mentioned before, the link between oil and insecurity in Turkana represents the only area that had already been addressed by other scholars, when this research was planned.

External Governance Interventions

Moving beyond Kenya, the analysis of the international level will focus primarily on the governance interventions – through technical assistance programs, financial investments, capacity building activities, sustainable development projects, etc. – carried out by financial institutions and donors, that specifically target Kenya.

In light of the above, this study will address the following governance areas of the Kenyan oil industry, at the national and local level (Tab 3.2):

<table>
<tr><th colspan="12">International Level</th></tr>
<tr><td colspan="6">Tech. Assistance/
Sust. Dev. Projects</td><td colspan="6">Financial Investments</td></tr>
<tr><th colspan="12">National Level</th></tr>
<tr><td colspan="3">Award of Contracts</td><td colspan="3">Regulations</td><td colspan="3">Transparency</td><td colspan="3">Involvement of CS</td></tr>
<tr><th colspan="12">Local Level</th></tr>
<tr><td colspan="4">Land Access</td><td colspan="4">Stakeholders Engagement</td><td colspan="4">Local Content</td></tr>
</table>

Table 3.2 Selected Governance Areas

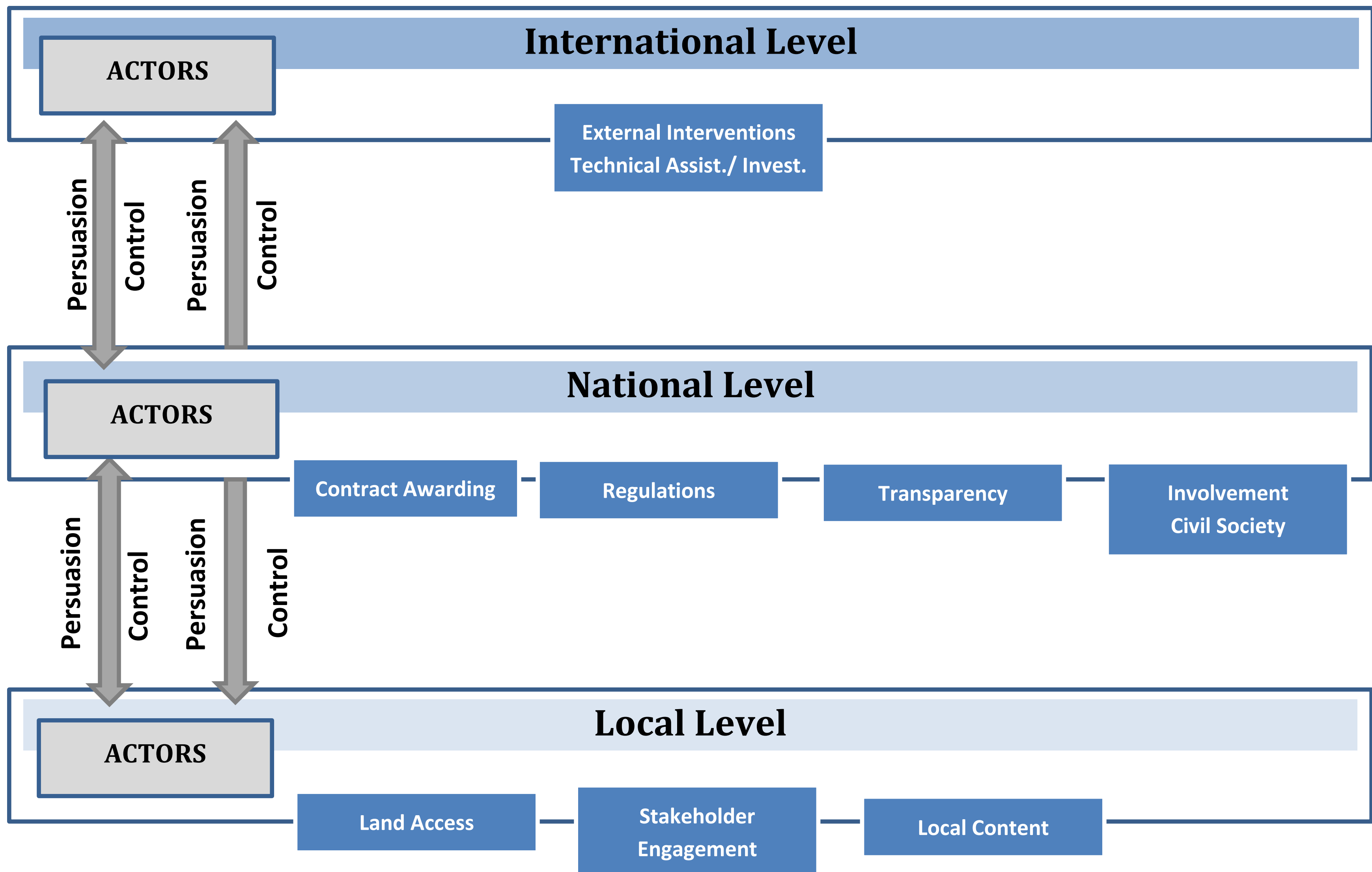


Figure 3.2 Conceptual Framework

3.3 Methodological Paradigm

Given the exploratory nature of this study, which focuses on the nascent oil industry in Kenya, as well as the type of questions that it asks, a qualitative approach emerge as the most appropriate for the conduction of the research.

Even though qualitative research encompasses a wide array of approaches and methods, related to different disciplines, it can be described as: "a set of interpretive, material practices that make the world visible" (Denzin and Lincoln, 2009). It aims at providing in-depth understanding of the social world of the research population, by describing their experiences, perspectives and histories. Whereas quantitative research is primarily concerned with the measurement of variables in order to test pre-set hypothesis, a qualitative approach is designed to "describe processes as accurately as possible in verbal terms" (Nevid and Sta Maria, 1999). It aims at capturing an holistic perspective, through participant own words and perceptions, of how they understand and act within the boundaries of everyday life (Miles and Huberman, 1994).

Its design ought to be flexible and cumulative, rather than containing blueprints and gold standard (Frankel and Devers, 2000).

While there is not a specific set of methods and practices that distinguishes qualitative research, data are often generated through observations, semi-structured and in-depth interviews, focus groups, and documentary research. The volume, diversity, and richness of the data collected is one of the distinctive feature of qualitative research, as opposed to quantitative approaches.

Epistemologically. qualitative research also stresses the importance of the researcher in influencing the researched, and the interactive relationship between the two. Reflexivity is thus considered particular important in qualitative research, as a way to reduce the value-ladenness of the research process (Bernard, 2011).

The number and diversity of stakeholder groups included in this study, the aims to provide a detailed account of their positions, experiences and actions, and to offer an in-depth description of their interactions have driven my choice towards the adoption of a qualitative research paradigm. Given the exploratory nature of the study, the flexibility of a qualitative approach is also an advantage, as it allowed me to include themes and concepts that emerged during the field research.

3.4 Site Selection

In order to carry out this study, twelve weeks of field research has been conducted in Kenya.
In particular, I spent ten weeks in Turkana County, where oil was discovered in 2012, and the remaining two weeks in Nairobi. The decision to base most of the field research in Turkana was driven by the intention to pay special attention to the local level, where the physical operations take place, and the number of, and interactions between stakeholders are particularly high.
A detailed description of the region and the communities that populate it is provided in Chapter 6.

3.5 Research Population and Sampling

In order to identify actors and groups holding interest in the phenomenon under investigation – the oil industry in Turkana County – I performed a comprehensive stakeholder analysis of the sector. Given the virtual absence of academic literature on the topic, such analysis was conducted mainly through documentary analysis, including media articles, grey literature (reports of donors and NGOs involved in the Kenyan oil industry), and key informants interviews.

In order to facilitate the analysis, I first segmented stakeholders into three groups:

1. international
2. national
3. local

At each level, I additionally sub-divided the research population into state and non-state categories of stakeholders. Table 3.3 provides an overview of the categories of stakeholders identified through the analysis.

The categories in bold are those to which belong the actors/groups that I personally approached during the field research. These are: consultancy firms, international, national and local civil society, oil companies, local authorities, and communities.

Within each of these categories, I adopted a purposive sample technique in order to identify specific organizations, department, or individuals that hold particular interest, or play a significant role in the oil industry in Turkana County (Table 3.4).

With regards to consultancies and civil society, the preliminary sampling was done through review of project reports, media articles, organizations websites, attendance to international, national, and local conferences on the sector, etc.

During the field research, snowballing sampling was used to identify other stakeholders that could have been missed by my mapping exercise.

With regard to oil companies, I decided to include only Tullow Oil in my analysis, since it was the only company, at that time, carrying out the operational aspects of the industry in Turkana.

Within Tullow Oil, I selected those individuals with roles that are particularly relevant for the research, namely social performance managers/officers, communication managers/officers, officers responsible for relations with public authorities, and Liaison Officers, in charge of relations with communities.

With regards to local authorities, I decided to approach all the three groups of authorities that were, or are still present in Turkana: the Turkana County Council (now defunct); the Turkana County Government, and the Provincial Administration.

Within the Council, I was able to get in contact with the former Chairman, and to be further referred to another Councillor who was particularly concerned with the industry at that time.

Within the County Government, I selected individuals from those department that are more related to the oil industry, namely Energy and Environment, Land, Pastoral Economy, Finance, and Health. Within these department I have always been able to talk with the person in charge, the County Executive Committee (CEC), but I have also interviewed additional officers in the case of the Energy department.

Communities have been selected using two criteria: the villages` proximity to oil camps, and my ability to reach the village (dependent on the security of the area, distances, etc).

Three communities have thus been identified, Village A, in Turkana East, and Village B, and C, in Turkana South.

Village A is the largest of the three communities – around 1,000 inhabitants – and is located at a few hundred metres from Tullow Oil oldest camp in Turkana, Ngamia-1.

Village B, and C are sparsely populated settlements – approximately 300 to 400 inhabitants each – and are located within a few kilometres from Ekales, and Twiga-1 camps, respectively (Fig 3.3).

Within communities, I first purposively selected elders and opinion leaders that were likely to have more information on the topic. The selection of villagers to include in face-to-face interviews and focus group discussions was done randomly, but ensuring that both genders were adequately represented.

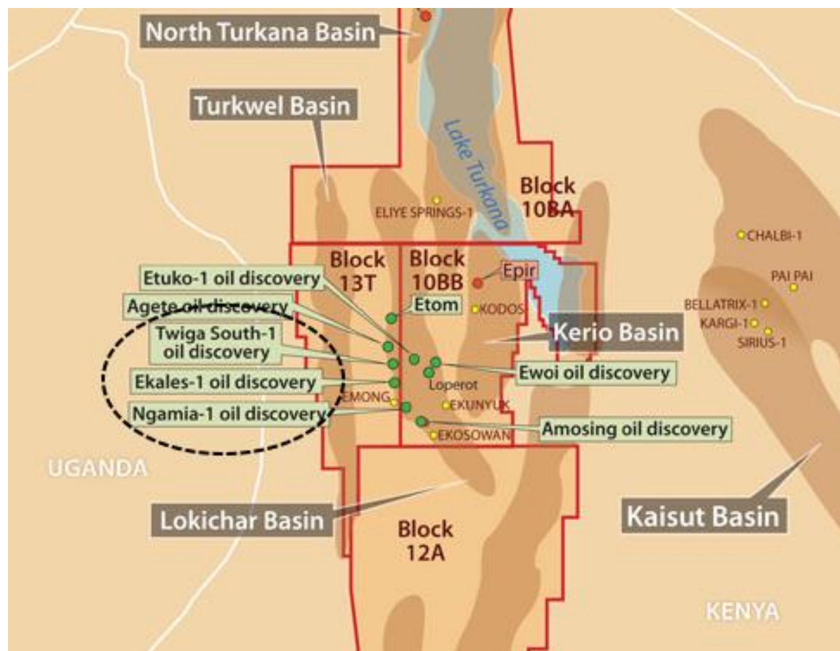


Figure 3.3 Map of oil sites in Northern Kenya. Source Africa Oil, 2013

International Level	
State Actors	**Non-State Actors**
Foreign Governments	Financial Institutions and Donors **Consultancy Firms** **International NGOs** **Oil Companies** Contractors
National Level	
State Actors	**Non-State Actors**
National Government Sector Institutions National Oil Company Parliament	**National Civil Society Organizations**

Local Level	
State Actors	**Non-State Actors**
Local Authorities	**Local CBOs** **Communities**
Categories in bold are those to which belong the actors/groups personally approached during the field research	

Table 3.3 Preliminary Categories of Stakeholders

International Level	
State Actors	**Non-State Actors**
Foreign Governments U.S. Government British Government	***Donors*** World Bank Group, DfID, UNDP ***Consultancies*** Hunton and Williams, Adam Smith Int. **International NGOs** Cordaid, Oxfam, DDG ***Oil Companies*** Tullow Oil, Africa Oil ***Contractors*** KK Security, Africa Camp Solution, …
National Level	
State Actors	**Non-State Actors**
National Government Ministry of Energy and Petroleum ***Sector Institutions*** NAFFAC, NEMA, Land Commission	***National NGOs*** Kenya Civil Society Platforms on Oil and Gas Kenya Oil and Gas Working Group ILEG

National Oil Company NOCK ***Parliament***	African Centre for Open Governance
Local Level	
State Actors	**Non-State Actors**
Local Authorities Turkana County Council Turkana County Government Provincial Administration	**Local CBOs** Friends of Lake Turkana TUBAE APEI … **Communities** Elders, Opinion Leaders, and other villagers
Actors in red are those that have been directly approached during the field research	

Table 3.4 List of relevant actors within each category of stakeholders

3.6 Data Collection Methods

As it might be clear to the reader by now, I adopted a qualitative case study for this research. Yin describes case study research as "An empirical enquiry that investigates a contemporary phenomenon within its real life context, when the boundaries between phenomenon and context are not clearly evident, and in which multiple sources of evidence are used." (Yin, 1994) Case studies allow the researcher to collect in-depth information from a wide range of stakeholders, within the context where the phenomenon under study has, or is occurring. A variety of data collection methods can be applied to case study research.

In this case, information were obtained mainly through four methods, widely used in qualitative research, namely: 1. Semi-structured Interviews, 2. Focus Group Discussions, 3. Participant Observation, and 4. Documentary Analysis.

1. **Semi-structured Interviews and Focus Group Discussions**

Interviews have been the primary data collection methods, as they allowed me to interact directly with the respondents, obtain structured information on a wide range of topics and themes, and also due to their suitability for almost every stakeholder (institutional, community members, representatives from civil society, etc.).

A total of fifty-nine (59) semi-structured interviews have been conducted[4], with:

- consultancy firms – one (1) respondent from one consultancy firm;
- international NGOs – four (4) respondents from three international NGOs;
- national NGOs – five (5) respondents from two civil society platforms, and two national NGOs;
- local CBOs – seven (7) respondents from six local CBOs
- oil companies – five (5) respondents from Tullow Oil
- local authorities – two (2) respondents from Turkana County Council, two (2) respondents from the Provincial Administration, eight (8) respondents from Turkana County Government;
- communities – twenty-five (25) respondents from three communities.

The aim of the interviews was to analyse the perceptions, interests, power of the respondents, their interventions in the industry, and the nature and frequency of interactions between them.

With regards to communities, the interviews have been conducted with assistance of an interpreter. Interview guides have been employed in order to structure the conversation, and cover all relevant themes. Notes have been taken during each interview. I also made use of an audio recorder when the respondent gave her/his permission.

Three Focus Group Discussions (one for each village visited) have been conducted with community members, in order to rapidly collect general opinions and positions with regards to the oil industry, by those who are supposedly the most affected by it.

[4] See Appendix A for the complete list of respondents.

	FGDs		F-to-F Interviews	
	M	F	M	F
Village A	6	4	5	5
Village B	3	3	4	3
Village C	4	3	4	4

Table 3.5 Number and genders of respondents in Village A,B,C

2. Participant Observation

Participant observation enhances the quality of the data obtained, and the quality of the interpretation of data. Thus, it can be considered both as a data collection and analysis tool.
It is also a mean to build rapport with research participants, especially important when the research requires the discussion of sensitive issues. “It involves getting close to people and making them feel comfortable enough with the researcher presence, so that he can observe and record information about their lives” (Bernard, 2011).
Throughout this research, I adopted this method particularly with civil society organizations in Turkana County, order to observe their activities in relation to the oil industry.

I also attended a number of events that were considered relevant for the research, including: a one-week workshop organized by three international NGOs in Lodwar, the kick-off meeting of the DfID-funded Kenya Extractive Industries Development Project (KEIDP), a stakeholder information workshop organized by the firm that conducted the Environmental Impact Assessments related to exploration activities in Turkana, etc.

3. Documentary Analysis

Documentary analysis have been extensively used throughout the research. In particular, I conducted a legal analysis of existing and proposed sector legislation, as well as of other relevant laws, relating for example to land and environment. I have also reviewed local policies and regulations enacted by the County Government since 2013.

Several hundreds of media articles have been reviewed, and more than a hundred (108) are referenced in this report. Among the most consulted sources are: Business Daily Africa, Daily Nation[5], Standard Media[6], Capital FM, All Africa[7], The East African, Reuters, etc.

Projects databases and reports of main donors involved in the Kenyan oil industry, such as the World Bank Group, the DfID, the UNDP, have been analysed in order to understand the type of activities conducted by them, financial commitment, implementing partners and beneficiaries, etc. Moreover, I collected and analysed many other documents, such as: minutes from meeting and workshops held on the industry, reports of civil society organizations, grievance books at Tullow resource centres, Tullow corporate social responsibility and financial reports, etc.

3.7 Data Analysis

Data (including interviews, field notes, documents, and minutes) collected have been transcribed, conceptualized, coded, and analysed through NVivo, in order to identify trends and patterns. Moreover, my own reflections and considerations have been transcribed and added to the software, so as to include them in the analysis. All data have been double checked to spot potential errors and omissions. Media articles have been catalogued according to themes (International, Regional, National, Local level), and sub-themes (e.g., oil contracts, discoveries, corruption; conflicts, politics, etc.), and analysed throughout the entire research process.

3.8 Ethical Considerations

Research participants have been always provided with information regarding the researcher, as well as the nature and goals of the study, the methodology adopted, and potential benefits and risks. Informed consent has been asked before each interview and focus group discussion. Given the sensitivity of the topic, the identity of the respondents have been kept confidential in many cases.

3.8.1 Validity and Reliability

"Reliability and validity are conceptualized as trustworthiness, rigor and quality in qualitative paradigm" (Golafshani, 2003) According to Seale (2002), the "trustworthiness of a research report lies at the heart of issues conventionally discussed as validity and reliability".

---

[5] Cited as "Nation"
[6] Cited as "Standard"
[7] AllAfrica is a membership-based website that aggregate media articles on the African continent

In order to ensure internal validity, the research is designed so as to find an appropriate fit between the research problem, the methods selected, the accuracy of data and their interpretation. Data triangulation has been the main measure adopted to ensure validity of the study. The use of interview in order to give consistency to findings, as well as of audio recorder and hand notes, have also contributed to increase the reliability of the research.

Most importantly, the research has attempted to remain neutral during all the research phases, in order to reduce possible biases and flaws and to include as many perspectives and opinions as possible from different groups of stakeholders, even if in some cases they were not directly approached during the research (e.g. national government and donors).

Overall, validity and reliability of the study has been achieved through:

1. long term involvement; 2. collection of "rich" and detailed data; 3. respondent validation; 5. triangulation; and 6. comparison with similar case-studies. This check list has been drawn from Miles and Huberman (1994) and Becker (1970).

3.8.2 Limitations of the study

A main limitation of the study was the impossibility to interview donors and national authorities due to logistic reasons, e.g. the choice of basing the field research at the local level. However, I tried to address this gap by making extensive use of documentary analysis throughout the process.

Another limitation was the limited number of communities consulted (three). This was due to the lack of public transportations means in Turkana, poor condition of the roads, high cost of vehicles to rent, etc.

The sensitivity and complexity of the topic made data collection very challenging. On one hand, this was due to the limited knowledge available to many informants. On the other, the risk of respondent bias was high. However, I have always tried to back the information collected with documentations or other evidences, and through data triangulation.

Finally, the decision to adopt an approach specifically tailored to the case-study may compromise the replicability of the study, given that other governance areas may be more relevant in different context, and at different stages of the industry.

4. The Making of a New “Extractive Frontier”

4.1 East Africa: an uncharted territory

Until a few years ago, East Africa had barely figured on global energy map, other than as an oil-importer (White, 2014). Its difficult geology, and the lack of political stability have for long discouraged investors to expand in the region (Control Risks, 2013). By 2010, of the approximately 35,000 wells drilled in Africa, only 600 were located in the eastern part of the continent (ibid.).

Nonetheless, during the last decade, a number of factors have triggered a change in this trend. Technology advancement in data acquisition methods have significantly decreased exploration costs, and allowed companies to search for hydrocarbons in areas that were previously considered unviable (Anderson and Browne, 2011). Limited opportunities in more established petro-regions (e.g., North and West Africa, Latin America, and Middle East), where major oil companies already hold virtually every block, and state-owned corporations possess almost 60% of global hydrocarbon deposits, have led small, independent players to look for new “resource frontiers” (Alkadiri and Tesfay, 2014).

“Investors want to diversify away from some of the more mature producing regions and there just aren’t that many [opportunities] left out there. Parts of east Africa are some of the last uncharted oil and gas regions” comments a managing director of Goldman Sachs on the Financial Times (FT, 2011). Finally, growing energy requirements of emerging economies such as China and India, coupled with a steady increase in oil prices until 2014, have given considerable momentum to what some call “the new scramble for Africa`s oil” (Business Insider, 2012; Southall and Meber, 2009).

The new impetus for exploration have resulted in a long series of discoveries, that have the potential to substantially alter the region`s political and economic landscape. Over the past two years, there have been more hydrocarbon discoveries in East Africa than anywhere else in the world (Deloitte, 2014).

In 2006, Tullow Oil opened the floor, striking oil in Uganda`s Lake Albert basin[8], which extends to the Democratic Republic of Congo. Currently, the Ugandan Government estimates that there could be around 6 million barrels of oil in the basin (Bloomberg (i), 2015). In 2012, the British exploration company announced that it had also struck oil in Turkana County, North-Western Kenya[9]. Currently, the country is waiting to enter into the development phase. There are also

[8] http://www.tullowoil.com/operations/east-africa/uganda

[9] http://www.bbc.com/news/world-africa-17513488

hopes that oil, in commercial quantities, can be discovered in neighboring Ethiopia (Oxford Institute, 2014).

In 2010-2011 a series of massive gas discoveries have been made in Mozambique and Tanzania, by ENI and Anadarko (Control Risk, 2013). The success rate of these finds are impressive, with 24 out of the 27 offshore wells drilled in the two countries leading to a discovery (ibid.). The US Geological Survey estimates that coastal areas of Mozambique and Tanzania could contain more than 250 Tcf of gas, and 14.5 billion barrels of oil (White, 2014).

The promises and expectations brought by these developments, however, do not come without several and important challenges. Lack of production experience, huge infrastructural deficits, inadequate and outdated regulatory frameworks, high corruption rates and inefficient bureaucratic systems, and security fears present a long series of obstacles that need to be overcome in order to allow the exploitation of the region natural resources for the development of the region (Akinkugbe, 2013; Control Risks, 2013; Deloitte, 2014).

Moreover, the fall in crude prices started in June 2014, and still continuing today, have forced investors to cut their exploration budget, to focus on their production assets. A few months ago, the Financial Times argued that "Now, before the region (East Africa) has sold a single drop of oil, the collapse in global prices threatens the industry before it has even got going" (FT(i), 2015).

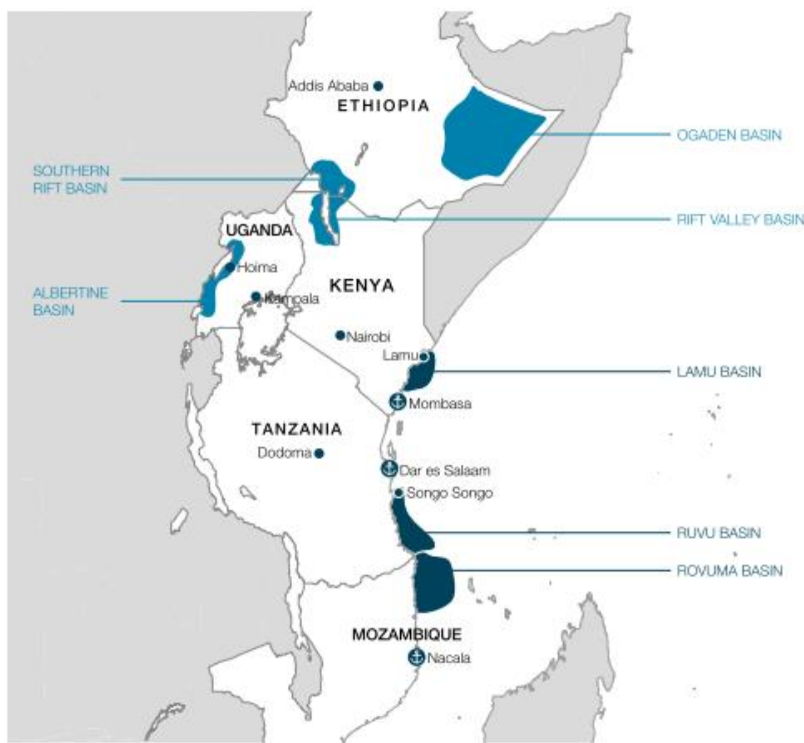


Figure 4.1 Exploration Blocks in East Africa. Source: Control Risk, 2013

Giving evidence of the scale of the problem, Tullow Oil profit plummeted by 50% from 2014 to 2015, and its revenues decreased by 30% (ShareCast, 2015). As a response, the company slashed its exploration budget in 2015 by a fifth from the previous year, saying that it would have switched its focus on "high quality, low-cost oil production in West Africa" (Bloomberg (ii), 2015).

Finally, the relationship between oil companies, communities and governments has been far from rosy until now, and protests in Kenya, Tanzania, and Uganda, as well as the long dispute between Tullow Oil and the Ugandan government, are proofs of the highly risky nature of the business (All Africa (ii), 2013; The East African (ii), 2013; Telegraph, 2013).

East Africa has a huge potential as a market for oil and gas investment. Nonetheless, it still represents a frontier market, and great challenges will continue to surface throughout the course of the investment cycle. Governments will have to learn quickly and rapidly build the capacity of sector institutions in order to cope with those challenges. Donors and civil society organizations can also play a fundamental role in the arena, influencing the governance choices made by government, and the direction taken by their countries.

4.1.1 Regional developments

In addition to the specific challenges that each country will face during their path to become hydrocarbon producers, there are others that take place at the regional level. The capacity of sector to attract the required investments to grow, investors need to be confident about their ability to sell their product on international markets. In the case of oil and gas, this translates in the necessity of an international pipeline that can transport hydrocarbons to the coast, from where they can be sold to the rest of the world.

On the 5th of February 2014, after a long-standing battle, the Ugandan government has finally signed a deal with Tullow Oil, Total, and CNOOC that includes the construction of an export pipeline linking Uganda`s oil fields to Kenya`s port of Lamu (Platts (i), 2014)**.** On its route, the pipeline will also pick up oil from the Lokichar basin, in North-Western Kenya. Under its current proposed structure, the pipeline will run over more than 860 kilometers within Kenya, and an additional 450 km will be required to reach the Ugandan Lake Albert oilfield (PWC, 2015). South Sudan is also planning to build a connector to the pipeline, which will allow the country to interrupt its dependency on Sudan for exporting crude (OilinUganda, 2014).

Several challenges are associated with this ambitious project. The waxy crude found in both Kenya and Uganda will require the entire pipeline to be heated, in order to ensure continuous flow (PWC, 2015). This would make it the longest heated pipeline in the world. Political

competition may hinder Governments ability to collaborate on the project. The uncertainty that Finally, plummeting oil prices pose a serious threat to the financing of this $5 billion project (PWC, 2015).

However, on August 2015, President Kenyatta` spokesman confirmed that a final agreement was reached with Uganda on the route of the pipeline, which will then run from the Hoima district in Uganda, through the Lokichar basin in Northern Kenya, to end on the coastal town of Lamu (Bloomberg (iii), 2015).

4.2 History of oil exploration in Kenya

Kenya`s history of oil exploration dates back to the 1950s, and can be divided into three waves. British Petroleum (BP) and Shell were the first to conduct exploration activities in the country, carrying out aeromagnetic, gravimetric, and seismic surveys which led to the discovery of approximately 300,000 square kilometers of sedimentary basin (Oxford Institute, 2014). Depending on their location and characteristics, four different basins were identified: the Tertiary Rift, in the north-west, Anza in the north, Mandera in the east, and Lamu, in the south-east, and partially on-shore.

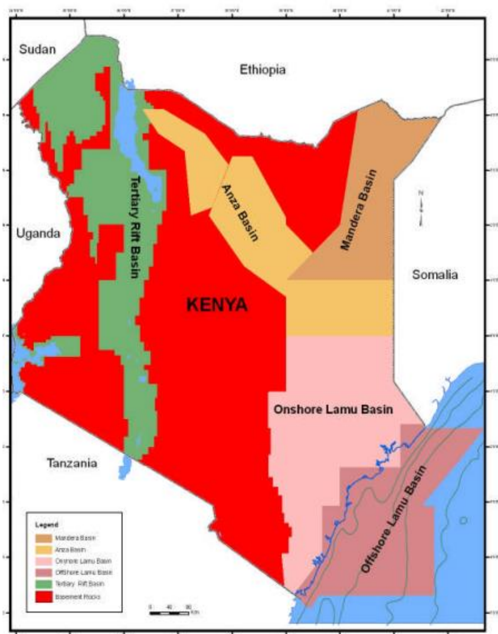


Figure 4.2 Petroleum basins in Kenya

In 1954, the first exploratory well was drilled by BP and Shell in the Lamu embayment, followed by other ten drillings. Despite indications of the presence of both oil and gas, none of the wells were fully evaluated and further developed for production (Purcell, 2014).

During the 1970s, Kenya`s attracted increasing attention from international oil companies, seeking to expand into new territories, in the aftermath of resources nationalizations spanning from the Middle East, to North Africa, and Latin America. From the 1960s to the 1970s, 15 wells were drilled in the country by several consortia, including: Texas Pacific, Chevron, and Esso (NOCK, website) . The operations encountered oil and gas shows, but did not led to the commercial phase.

In 1986, the enactment by the Government of Kenya of the Petroleum Act, which replaced the royalties-based system in place until then with production-sharing contracts, provided new impetus for further exploration. The new, significantly more favorable, fiscal framework attracted a number of international companies to Kenya. During the same year, the Government of Kenya

entered into a joint venture with Petro-Canada, and a group of companies, led by Amoco and Total, drilled further 10 wells, in the Anza and Mandera Basin. Fifteen wells were drilled between the 1980s and the 1990s, leading to more encounters of hydrocarbons, but no commercial finds (Oxford Institute, 2013). In 1992, Shell encountered signs of crude in the Loperot-1 well, located in present-day Turkana County. However, the company was forced to abandon the operations, when the newly established Moi government rejected its request for a time extension (NOCK, website).

In 1991, the National Oil Corporation of Kenya (NOCK) initiated a study of the Lamu Basin, as part of Kenya`s effort to collect more data for each of the four blocks. Following the completion of the study, in 1995, the Lamu Basin was sub-divided into ten explorations blocks. A study of the Tertiary Basin was also carried out between 2000 and 2001. The increased availability of geological and geophysical data triggered a new wave of exploration in the country, which led to the signing of seven Production Sharing Contracts between 2000 and 2002, with Dana Petroleum and Woodside (Heya, 2011).

By 2006, Kenya counted 22 exploration blocks, six of which were acquired by the Chines National Offshore Oil Corporation, as part of President Kibaki`s strategy of “looking East”.

Following a series of oil and gas discoveries in the neighboring Uganda, Mozambique, and Tanzania, Kenya started to attract even more international players (Deloitte, 2014). In 2007, a number of oil companies entered into Production Sharing Contracts (PSCs) with the Kenyan government, including Vancuver-based Simba Energy, Canadian Lion Petroleum, and Vanoil.

In 2010, CNOOC, the largest single investor in Kenya`s exploration work at that time, decided to leave the country, and turn its attention to neighboring Uganda, after a series of disappointing results (Business Daily Africa, 2010).

During the same year, however, Kenya witnessed the entrance of a new player that soon will change its history of exploration. UK-based, independent company Tullow Oil farmed into the country for the first time, acquiring 50% interest in five onshore blocks in Northern Kenya (10BA, 10BB, 10A, 12A, and 13T), from Africa Oil and Centric Energy, later acquired by the same Africa Oil (Bloomberg, 2010).

By 2010, the GoK have demarcated 38 blocks, and licensed 24 of them to 13 international oil companies (FT, 2011). Of the 31 wells drilled by that time, 19 have shown signs of hydrocarbons (Oxford Institute, 2014).

After completing more seismic surveys, on March 2012 Tullow Oil announced that it had struck oil in block 10BB, located in Turkana County (BBC (i), 2012). After more than five decades of exploration, the discovery marked a “major breakthrough” for Kenya, as President Kibaki called it (CNN, 2012). Angus McCoss, the company`s exploration director, echoed President Kibaki` satisfaction, saying that “To make a good oil discovery in our first well is beyond our expectations… This is an excellent start to our major exploration campaign in the East African rift basins of Kenya and Ethiopia.” (ibid.)

Six months later, Tullow made another discovery in Block 13T, also in Turkana. Three more discoveries were made by the company in 2013, within the same blocks, and three in 2014 (Tullow Oil, website). Tullow estimates have increased from 300 million to 600 million oil barrels from 2012 to 2014, slightly above the commercial threshold of 500 million barrels. Nonetheless, to this day, Tullow has yet to declare commerciality of the find, and resisted pressure to confirm when production will actually start (KCSPOG, 2014).

4.2.1 Tullow Oil

Tullow Oil is a UK-based independent oil and gas exploration and production company, founded in 1986 by Aidan Heavy. Its portfolio includes more than 120 licenses over 22 countries (Tullow Oil Website). The company is headquartered in London, and listed on the London, Irish and Ghanaian Stock Exchanges.

In 2004, Tullow doubled in size, after acquiring Energy Africa, and its exploration and production assets in Uganda, Gabon, Equatorial Guinea, Namibia and Congo (Independent, 2004). According to its CEO, the acquisition would have created a “formidable independent oil and gas company.”

The results achieved by Tullow since then are, indeed, quite formidable. In 2006, the company`s record of success began, when Tullow discovered oil in Uganda for the first time (Irish Times, 2006). During the same year, Tullow made four more discoveries in the country. Galvanized by its result, Tullow made its largest ever acquisition, with a US$ 1 billion bid for Hardman Resources (Telegraph, 2006).

In 2007, Tullow registered the largest discovery in its history, in the Jubilee field, offshore Ghana (Irish Times, 2010). As a result of that, the company was promoted to the FTSE100 in September 2007. Finally, in 2012 Tullow continued to discover oil in countries where nobody else did before. This time is Kenya, where Tullow announced to have encountered significant oil deposits at Ngamia-1, Turkana County (All Africa (ii), 2013). Soon after, Tullow made 5 more discoveries in the country, doubling estimated reserves.

The sharp decline in the price of oil that began in 2014 has profoundly impacted Tullow Oil. The company`s profit plummeted by 50% from 2014 to 2015, and its revenues decreased by 30% (ShareCast, 2015). As a response, Tullow slashed its exploration budget by more than a fifth. In this year alone, Tullow market value declined of more than $2 billion.

Figure 4.3 Tullow Oil share price

Tullow Oil has a reputation of a relatively responsible oil company. Global Witness refers to it as "squeaky clean." (News Week, 2014) In 2014, Tullow became the world`s first extractive company to publish all revenue payments to host governments, broken down by each project (FT (i), 2014). "Tullow's welcome disclosure blows a hole in the argument made by some oil companies that project-level reporting will impose a heavy burden on business" said a senior campaigner with Global Witness[10].

However, the company has not been exempted from legal and reputational problems.

In 2010, after that Tullow paid Heritage Oil $ 1.50 million in order to acquire a 50% interest into the Ugandan blocks hold by the company, the Ugandan government demanded $400 million from Heritage, in capital gains tax (Reuters (i), 2013). Initially, Tullow paid one-third of the tax to the Ugandan government, on Heritage`s behalf, and brought the company to court. Heritage claimed that Tullow helped the Ugandan government to formulate the tax claim, in order to keep it sweet.

On June 2013, the court ruled in favor of Tullow Oil (ibid.). However, during the trial emerged that top officials from Tullow oil were discussing the payment of an undocumented $50 million to Ugandan President Museveni, in order to meet his "short-term needs and demands" (New Vision, 2013), and were also considering to fund parts of the re-election campaign of the President. The case also touched upon British Foreign Secretary William Hague, who appears to have personally lobbied on behalf of Tullow with the Ugandan government. Both Tullow officials and President Museveni denied the accusations.

[10] https://www.globalwitness.org/archive/tullows-tax-disclosures-torpedo-big-oils-campaign-secrecy/

5. National Context: Kenya

Figure 5.1 Map of Kenya

5.1 Introduction

The Republic of Kenya is an African country, founding member of the East African Community (EAC). It lies across the equator, on the coast of the Indian Ocean, and it borders with Tanzania to the south, Uganda to the west, South Sudan to the north-west, Ethiopia to the north, and Somalia to the north east. The country has a population of approximately 45 million people, and covers 581,000 sq. km. Nairobi, its capital city, is also Kenya`s city with more than 3 million inhabitants.

Kenya has the largest economy in East Africa and one of the largest in Africa. Agriculture and services account for the largest share of the GDB, followed by manufacturing and tourism. As we can see from Fig 5.4, the mining and hydrocarbon sectors do not contribute significantly to Kenya`s economy, contrary to many other sub-Saharan Africa states.

The country has experience a steady economic growth since early 2000s, reaching a peak of 7% in 2010. The economy slowed down during the first quarter of 2014 due to a decline in tourism provoked by terrorist attacks in the country, but rapidly recovered in 2015, and it is expected to remain high in 2016. Kenya`s economic power also derives from its strategic location in East Africa. In fact, the country represents the main trade hub for landlocked countries such as Uganda, Rwanda, Burundi and South Sudan.

Because of its proximity to the Indian Ocean, Kenya has been able to develop strong linkages with Asian countries, particularly India and China, which are its largest import partners, 14.2 per cent and 12.2 per cent of total import respectively. Uganda and Tanzania are the country`s largest export market, 12 per cent of export each.

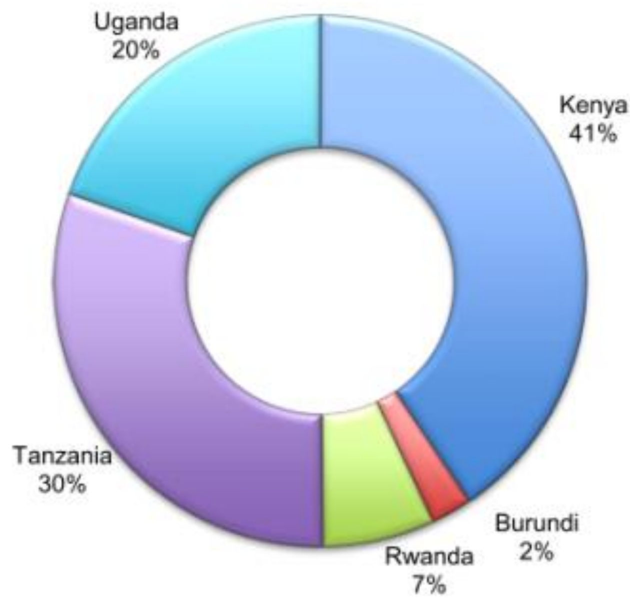


Figure 5.2 Countries` contribution to East Africa GDP. Source: Oxford Institute, 2014

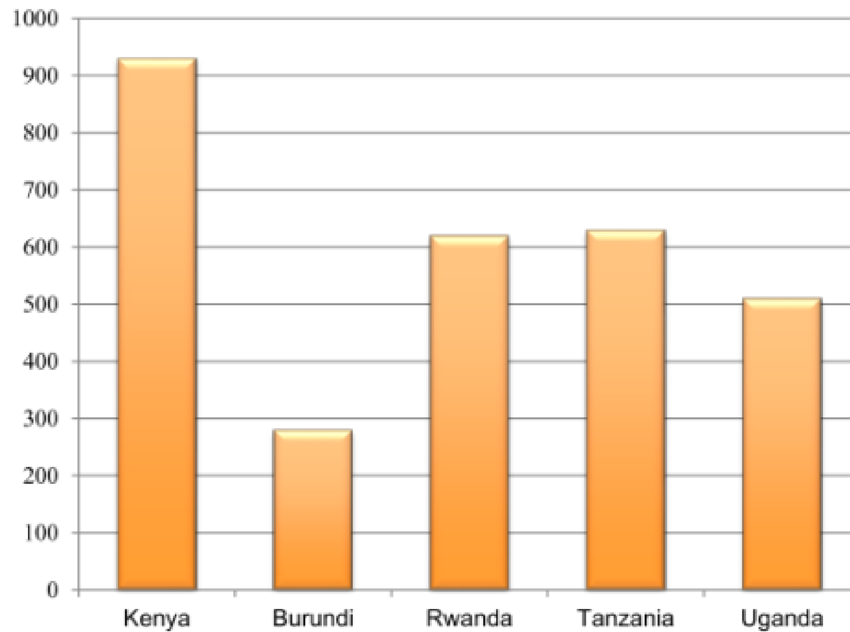


Figure 5.3 East African countries` GDP per capita. Source: Oxford Institute, 2014

	2009	2013
Agriculture, forestry, fishing & hunting	26.1	29.5
of which fishing	...	...
Mining and quarrying	0.7	0.9
of which oil	...	...
Manufacturing	13.4	11.7
Electricity, gas and water	2.5	2.2
Construction	4.4	5.0
Wholesale & retail trade; repair of vehicles household goods; Restaurants and hotels	9.8	10.2
of which hotels and restaurants	2.0	1.4
Transport, storage and communication	10.9	9.9
Finance, real estate and business services	16.2	15.8
Public administration and defence	5.0	5.4
Other services	10.9	9.3
Gross domestic product at basic prices / factor cost	**100.0**	**100.0**

Figure 5.4 Sectors` contribution to Kenya GDP. Source African Economic Outlook, 2015

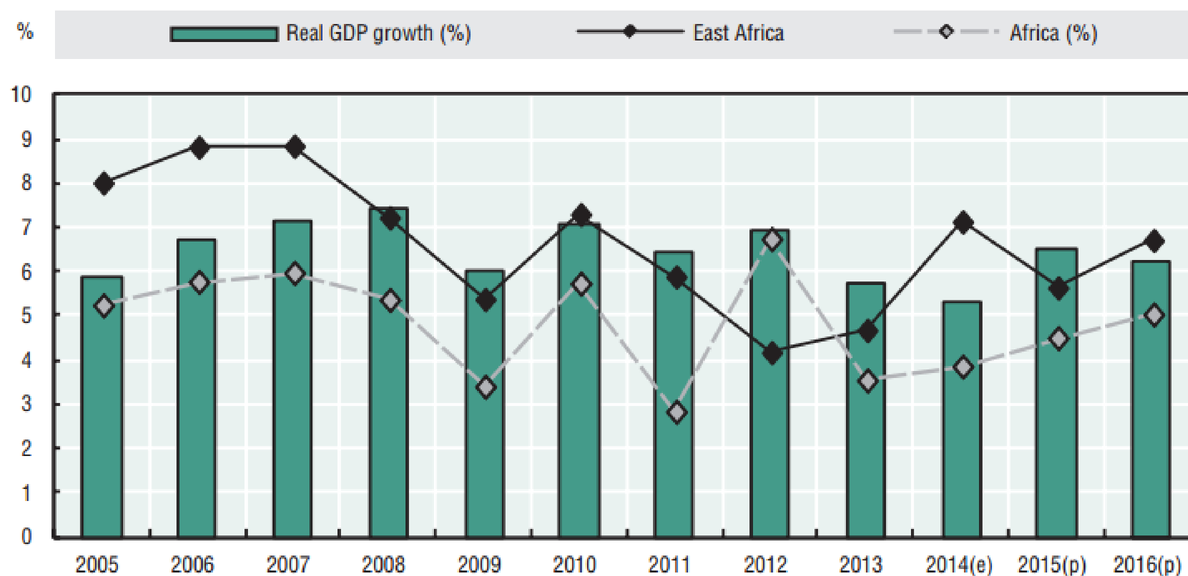


Figure 5.5 Real GDP growth: Kenya, East Africa, and Africa. Source African Economic Outlook, 2015

5.2 Politics, Ethnicity and Violence

Politics, ethnicity, and violence have always gone hand by hand in Kenya, in both the pre and post-colonial era. During the colonial period, the European settlers forged governance institutions designed to advance the economic interest of the elites, and consolidate their political power, particularly with regards to control over land (Kanyinga, 2009).

Independence in 1963 did not result in a fundamental change of these dynamics. The new elites entrenched themselves in the economy, and took control of former settler farms, and of the main agricultural bodies. A number of constitutional amendments were passed, aimed at weakening opposition parties, and centralize power in the executive (Maupeu, 2007).

Two main actors dominated Kenya`s political arena after independence: the Kenya Democratic African Union (KADU), and the ruling party Kenya African National Union (KANU). The former, however, was rapidly dismantled, and its leaders started joining KANU, led by President Jomo Kenyatta, who rewarded them with positions in the government, and access to settler farms in the White Highlands (Kanyinga, 2009). Patronage emerged as the tool to cement relations between KANU and KADU. During this period, imbalances and inequalities among ethnic lines became a crucial feature of Kenyan society.

In 1991, Kenyatta successor, President Daniel Moi, repealed section 2A of the constitution, re-introducing multi-party election in the country. He also pursued some economic reforms, such as the removal of foreign exchange controls, and other market-friendly policies. However, such reforms were mostly cosmetic, and ineffective in triggering economic growth or reducing the high rate of unemployment (Kanyinga and Long, 2012)

Furthermore, both the 1992 and 1997 elections, held under the KANU regime, were characterized by violent conflicts, with more than 1,500 people killed and about 500.000 internally displaced, mainly in the Rift Valley and around Mombasa (ibid.).

In 2002, KANU was defeated for the first time after independence. The new party, National Rainbow Coalition (NARC), led by Mwai Kibaki and Raila Odinga, took power, on a banner of constitutional reforms and anti-corruption measures. However, internal division within the party hampered this process of reforms, and by 2004 NARC had split into two camps. President Kibaki maintained control of the executive, whereas Odinga left the party and formed the Orange Democratic Movement (ODM) (Mueller, 2011). In 2005, President Kibaki and his allies presented the final draft of a new Kenyan constitution. In a referendum held in November 2005, however, the majority of Kenyans voted against the proposal, an indication that Kibaki was losing support among the public (ibid.).

In 2007, at the onset of the fourth multi-party election in Kenya`s history, President Kibaki and Odinga were again the main actors, but this time as opponents rather than allies.

At the center of the electoral debate was the choice between the existing centralized form of government, favored by Kibaki, and a devolved or federal system, supported by the ODM. Although the discussion reached high level of tensions, the elections held on December 27th proceeded in a peaceful manner. Turnout was high, reaching about 70% according to official figures (Roberts, 2009). The first polls seemed to suggest that the ODM was going to defeat the ruling party and Odinga was ready to take the presidency.

The delays in announcing the winner started to create uneasiness in the country, and episodes of violence erupted on December 29th. Towards the evening of the following day, the Electoral Commission of Kenya (ECK) declared Kibaki the winner, with 4.58 million votes against 4.35million for Odinga (Klopp and Kamungi, 2007). One hour later, Kibaki was sworn in as president in a secretive ceremony. It soon became clear that the election was flawed, as both international observers and Kenyan election monitors reported a number of anomalies, such as unusually high turn outs, lack of access to voting centers, police officers killed, etc. As a result, two days later that Kibaki was sworn in, the ECK chairman declared to journalists that he did not know who actually won the election (Harneit-Sievers and Peters, 2008). The events that followed marked the history of Kenya forever.

Immediately after the announcement, protests erupted in Nairobi, Kisumu and other parts of Western Kenya. In the Rift Valley, ethnic fighting started between the Kalenjin and the Kikuyu, fueled and financed by local elders and politicians (Kanyinga, 2009)

Rapidly, ethnic militias re-emerged everywhere in the country, leading to an escalation of violence without precedents in post-independence Kenya.

The fighting resulted in 1,133 casualties, 350,000 internally displaced persons (IDPs), 2,000 refugees, and the destruction of 117,216 private properties and 491 government-owned properties including offices, hospitals and schools (Global Health, 2009).

The country, long considered an oasis of stability in the East African region, appeared to be on the brink of a civil war.

Economic growth collapsed from 7% at the end of 2007 to 2% in the first quarter of 2008. Key industries such as agricultural and tourism were the most affected. Investor confidence was eroded, and the total equity market value on the Nairobi Stock Exchange dropped by $ 600 million in a few days (Klopp and Kamungi, 2007).

The crisis had serious implications for the entire East African region, most of which depends upon Kenyan transportation and infrastructural hub. Food and energy prices skyrocketed,

particularly in landlocked countries such as Rwanda and Uganda (Africa Renewal, 2008). The increased cost of fuel led to the interruption of flights and buses from and within the region. The flow of food aid was also severely disrupted, given the inability to access the port of Mombasa (ibid.).

5.3 The era of reforms

Given the domestic and international impact of the crisis, the international community had to intervene. The African Union (AU) established a Panel of Eminent African Personalities, headed by General Kofi Annan, tasked with leading the negotiation between the Kibaki and Odinga (Kanyinga and Long, 2012)

The efforts resulted in the signing of "An Agreement on Principles of Partnership of the Coalition Government", known as the National Accord, in which the two agreed on the formation of a coalition government, where Kibaki would have served as President, and Odinga as Prime Minister. Odinga and the new Cabinet, constituted by 20 ministers each for ODM and PNU, sworn on April 17, 2008 (Mueller, 2011).

The new coalition government agreed on a package of reforms, which included a review of Kenya`s constitution. By 2010, a draft constitution was presented for national debate, and a referendum for approval was held in August 2010. Both President Kibaki and Prime Minister Odinga supported the draft, and encourage their constituencies to do the same. The referendum registered a 71 percent voter turnout, the highest in Kenya`s history, and the new Constitution was passed, with an approval rating of 67 percent (Kanyinga and Long, 2012)

The most important change introduced by the Constitution is the transition to a devolved governance system. Art. 6 (1) provides for the sub-division of Kenya into 47 counties, and the election of a county government for each of them.

County governments are headed by a directly elected Governor, elected by the citizens, and comprise of a County Assembly and a County Executive.

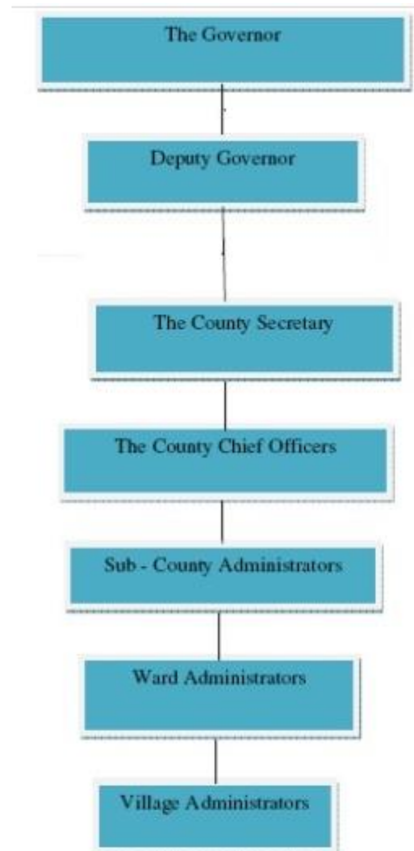
The County Assembly is responsible for formulating laws, overseeing the activities of the county executive committee, and approve plans and policies for the management of the county`s resources.

The County Executive consists of the governor and deputy governor, and members appointed by the governor with the approval of the assembly. The functions of the county executive are to implement county legislation, implement national legislation within the county, and manage and coordinate the functions of the county administrations.

Figure 5.6 Map of Kenya`s 47 counties. Source: Open Data, Government of Kenya

County governments have also power to establish other three levels below the county:

- Sub-county level, headed by a sub-county administrator appointed by the Governor;
- Ward level, headed by a ward administrator appointed by the Governor; and
- Village level, headed by a village administrator appointed by the Governor.



The functions of the County Governments encompass mainly service delivery, including water, sanitation, health, pre-primary education, and public roads, but they also have power over agriculture, trade regulation and development, and county planning, which includes land survey and mapping, housing, etc. However, the authorities of the counties is circumscribed by the fact that the national government retains control over policies regarding the most significant matters, including agriculture, health, education, energy, security, etc.

The revenues raising power of counties is also limited to property taxes, entertainment taxes, charges for services, and licenses. Through a system of fiscal equalization counties are allocated funds from the national government. Collectively, the 47 countries are entitled to at least 15 percent of all revenues collected by the national government.

The Constitution also deals extensively with land matters. Prior to 2010, Kenya had three categories of land: a) government land, which was formerly held by the British and then handed over to the State after independence, b) private land, and c) trust land, which comprised of the previously native areas under colonial rule, and was held in trust by the County Councils.

With regards to oil and minerals, the Constitution vests all sub-soil resources in the national government, and introduces the requirement of parliamentary ratification over all transactions involving the granting of rights for the exploitation of any natural resource of Kenya.

The structure of the State is also reshaped by the new Constitution. The power of the President, which were continuously extended under former governments, are reduced. The National Assembly, for instance, can now reject the nomination of the Members of the Cabinet by the President.

In the legislature, a bicameral structure is created, comprising of the National Assembly and the newly established Senate. The Senate is composed by representatives from the 47 counties.

A Supreme Court is also established by the Constitution, with jurisdiction on disputes relating to the election of the President, or in cases regarding interpretation or application of the Constitution.

As part of the renewed efforts against corruption, there is established an independent institution called the Ethics and Anti-Corruption Commission.

Finally, in the Fifth Schedule, the Constitution specifies timeline for the enactment of legislation over various matters. For instance, laws regarding land and natural resources (including oil and minerals) have to be approved by August 2015.

5.4 Resisting change: the role of the Provincial Administration

Before Devolution, Kenya was divided into eight administrative provinces: Nairobi, Central, Nyanza, Western, Rift Valley, Eastern, North Eastern, and Coast. Provinces were divided into districts, districts into divisions, divisions into locations and sub-locations (Bagaka, 2011).

These administrative levels were headed by the Provincial Administration (PA). The PA was established by colonial authorities, as a means to represent the executive at the local level. It was extensively used in order to suppress any form of political opposition, and thus law and order became its main concern (Hassan, 2013).

After independence, President Kenyatta strengthened the role of the PA, as a coercive institutions, tasked to enforce executive decisions. In 1965, for instance, Kenyatta issued a directive requiring all Members of the Parliaments to obtain permit from the PA before addressing any meetings, even in their own constituencies (ibid.). The PA was also empowered to electoral processes, allowing it to restrict political activities, and even voter registration.

Often accused of being the symbol of repression, corruption and dictatorship in Kenya, the PA was instrumental in maintaining power and control of all Kenyan Presidents from Kenyatta, to Moi, and Kibaki (Akech, 2010).

Housed at the Ministry of State for Provincial Administration and Internal Security, a core ministry within the Office of the President, the PA comprised of Provincial Commissioners and District Commissioners, appointed by the President, and District Officers, Chiefs, and Assistant Chiefs, appointed by the Minister (Oyugi, 1994).

The introduction of the devolved governance system under the Constitution of 2010 raised questions over what should have been the future of the PA. The Committee of Experts on

Constitutional Review (CoE) expressed the opinion that the "PA in its current form is incompatible with, and may impede, the implementation of the system of devolution" (Hassan, 2013).

Although it does not explicitly abolish the PA, the Constitution states that "the national government shall restructure the […] provincial administration to accord with and respect the system of devolved government" within five years. Moreover, the Constitution takes away the power of structure state institutions from the President, and places it within the legislature.

Despite the formal changes, however, the PA continues to be an extremely strong apparatus, serving the interest of the President. Under the National Government Co-ordination Act, the PA is rebranded as National Administration (NA), responsible for the co-ordination of national government functions, at the county level and other decentralized units.

It comprises of a County Commissioner for each county, a Deputy County Commissioner for each sub-county, an assistant county commissioner for each ward, a chief for each location, and an assistant chief for every sub-location.

Initially, the County Government Bill specified that NA officials should report to the county governor and not the president. President Kibaki, however, vetoed the bill, claiming that the provision was unconstitutional (Hassan 2013).

In May 2012, Kibaki appointed 47 County Commissioners, without any legislative approval, showing continuity with the previous system (Capital FM (i), 2012). Six civil society organizations filed a petition arguing that the President had acted against the constitution.

"Our key arguments against county commissioners' appointments (are) the constitutionality and legality of the appointments without proper policy and legal framework which correctly domesticates the constitutional letter and spirit," said Ndung'u Wainaina, the executive director of the International Centre for Policy and Conflict (All Africa (i), 2012).

Prime Minister Odinga also rejected the list, on the basis that he was not consulted by the President. In June 2012, the High Court declared the appointment unconstitutional, stating that: "The President did not have the legal authority to make such appointments and his decision was against the spirit of the Constitution and the National Accord and Reconciliation Act, which called for consultation and gender balance."

Kenyan Attorney General also supported the decision of the High Court, advising the Government against appealing. Notwithstanding, the President and his Ministries ignored the ruling, and told the Commissioners to take office, which they diligently did.

In May 2014, newly elected Kenyan President, Uhuru Kenyatta, continued to strengthen the role of the Administration, by delegating executive powers directly to the County Commissioners:

“We are now giving responsibilities directly to those who are with the people so that the question of ‘we are waiting for orders from above’ no longer exists. There are no orders from above except the efficient delivery of service and you know the functions that you are supposed to be doing.” said the President (Nation (i), 2014).

His move sparked strong criticism among from the oppositions, as well as from governors, who perceived it as a strategy of the President to exercise control over their counties.

In the end, the restructuring of the PA envisioned by the Constitution has been used as an excused by President Kibaki first, and Kenyatta afterwards, to strengthen the apparatus and grant even more power to its officials.

5.5 Corruption and Insecurity

“Everyone is corrupt in Kenya, even grandmothers” titled the Foreign Policy a year ago (Foreign Policy, 2014). Corruption, indeed, is deeply rooted in the country. In 2010, the UK suspended its support for an education program in Kenya, after audits revealed that $880,000 had been embezzled (Harrington and Manji, 2013). Corruption accounts for 8% of the gross domestic product, and the Treasury estimates that 20-30% of public monies are lost every year through dishonest procurement, rigged bidding, etc (ibid.). The average urban Kenyan is believed to pay 16 bribes per month on average (Transparency International, 2002). Kenya ranks 145th out of 175 countries in the Transparency International Corruption Perception Index[11].

In April 2015, A total of 175 people were named in a corruption report submitted to the parliament by the Ethics and Anti-Corruption Commission, including five cabinet ministers, 13 governors , many civil servants, MPs and members of the judiciary (Business Daily Africa (i), 2015).

The report, for instance, describes the Ministry of Lands as "bedeviled with rampant corruption" and run by a "cartel" linked to minister Charity Ngilu. The Minister of Transport and Infrastructure, Minister Michael Kamau, is accused of irregularly awarding contracts and inflating the cost of infrastructure projects (ibid.).

A recent report from Kenyan Auditor General found that, during the year 2013-14, only 1.2% of the country`s budget was correctly accounted for (BBC (i), 2015).

[11] https://www.transparency.org/country/#KEN_DataResearch

In his recent visit to Kenya, the first in the history of American presidents, Obama defined corruption as the “biggest impediment to growth” (ISS, 2015)

Corruption is particularly entrenched in the security sector. Transparency International reports that the police is the most corrupt institution in Kenya, and that 90% of citizens do not trust it. Twelve-years ago, one of the biggest corruption scandal erupted in Kenya, the so-called Anglo Leasing affair. At the heart of it were 18 state security contracts, totaling $770 million. The tenders were awarded to fictitious companies, and regarded military equipment such as naval ships, but also a high-technology passports printing system, and forensic laboratories. None of these contracts was honored (Guardian, 2004; Reuters, 2012).

In recent years, the security situation in Kenya deteriorated exponentially. Since the 2013 attack at Nairobi`s Westgate Mall, which costed the life of 67 people, terrorist group al-Shabab carried out two attacks in Mandera, northern Kenya, in which 64 people were killed (Time, 2015).

Last April, a dozen militants stormed the university in Garissa, 100 miles away from the border with Somalia, killing about 150 students, in what has been the deadliest attack on Kenyan soil since 1998 US. Embassy bombing. Al-Shabab immediately claimed responsibility for the attack (News African, 2015).

According to many analysts, the corruption that pervades the security sector in Kenya has left the county completely unprepared to face the terrorist threat.

“We may have reached a juncture where corruption has permeated the entire fabric that now includes national security and safety,” says Ahmed Salim, an analyst from Teneo Intelligence (Bloomberg (vi), 2015).

“Al-Shabaab is becoming stronger day after day despite the authorities in Kenya devoting massive resources to combat terrorism. This is because of the endemic corruption that is deeply ingrained in the public sector,” confirms Michael Juma, a retired police officer (News African, 2015).

Since his election in 2013, President Kenyatta took a strong position against “the pervasive threat of corruption” (Guardian, 2015). However, his credibility has been repeatedly questioned. The President belong to one of Kenya`s wealthiest family, with stakes in media company Mediamax, Commercial Bank of Africa, and the country`s biggest milk producer, Brookside Dairy (Forbes, 2015). Moreover, the International Criminal Court (ICC) linked Kenyatta to the post-election violence in 2007. The charges, however, were dropped by the ICC on December 2014 (Reuters, 2015).

6. Local Context: Turkana County

6.1 Introduction

Located in the north-western part of Kenya, Turkana was one of the districts of the former Rift Valley Province, and it is now the biggest of the 47 counties, covering an area of approximately 77,500 sq. km (Government of Kenya, 2011).

It borders West Pokot and Baringo Counties to the south, Samburu to the south-east, and Marsabit to the east. It also shares international borders with Ethiopia to the north, South Sudan to the southwest, and Uganda to the west. Its location is adjacent to the disputed Ilemi Triangle, an area contested by Kenya, South Sudan and Ethiopia.

The county`s most prominent feature is Lake Turkana, the world`s largest permanent desert lake. that occupies an area of 6,540 sq. km., and hosts hundreds of species of birds, fish, mammals (Avery and Eng, 2012). The lake is listed as a UNESCO World Heritage site.

Turkana`s climate is arid/semi-arid and drought prone. Temperatures range between 20° and 40° C, rainfall patterns are very erratic, and the landscape is prevalently characterized by sand, rocks, shrubs, and scattered trees.

The County is divided into 7 sub-counties, Turkana South, East, North, West, Central, Loima and Kibish, 6 constituencies, 30 wards, 56 locations, and 156 sub-locations (Cordaid, 2015).

The region is sparsely populated, with a population of approximately 785,000 people. The largest towns are Lodwar (the county administrative capital city), Kakuma, Lokichar, Lokichoggio, Lokitaung, Lokori, and Katiulu (Mkutu, 2014).

Turkana is the poorest county in Kenya, with a poverty rate of 94% compared to a national figure of 47%[12]. Less than 20% of households have access to improved sanitation facilities, compared to 90% nationally. Turkana has also one of the worst literacy rate in Kenya, with only 18% of the population able to read and write, compared to a national average of 66%. Health facilities are limited and only 6.9 of women had delivered in an health centre. More than half of the population is still dependent on food aid for survival.

[12] Data are retrieved from https://www.opendata.go.ke

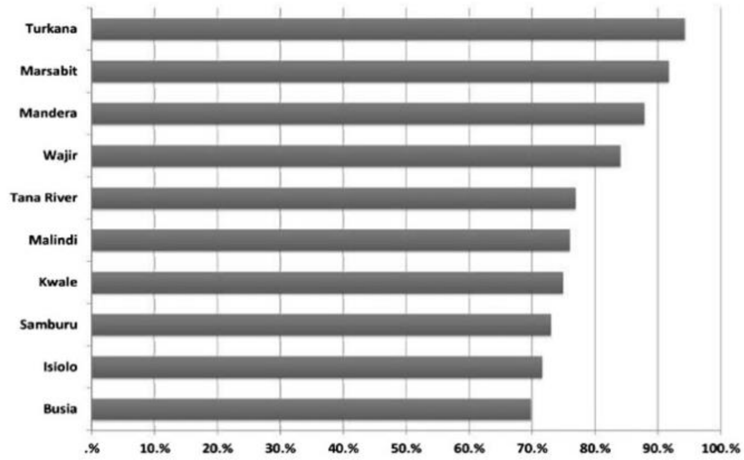


Figure 6.1 Percentage of population in poverty in Turkana. Source: Johannes, 2014

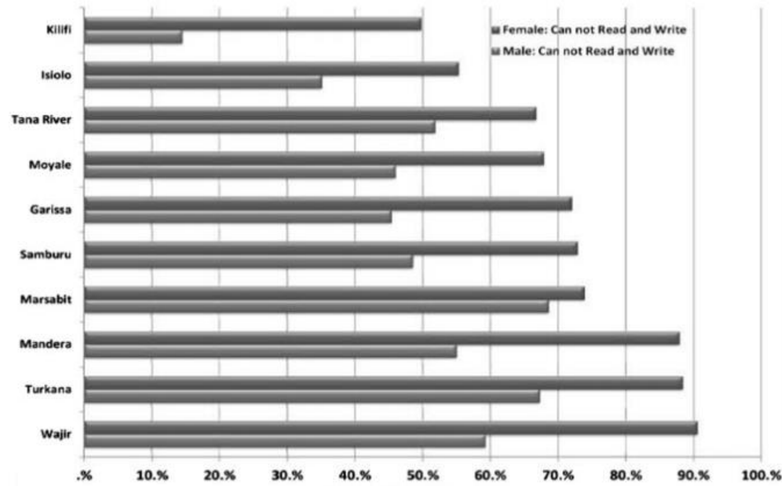


Figure 6.2 Percentage of illiterate population in Turkana. Source: Johannes, 2014

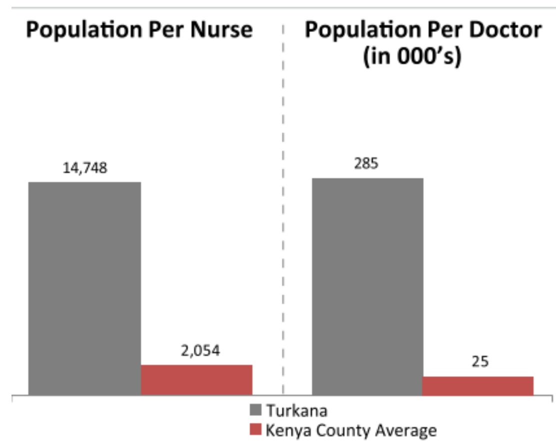


Figure 6.3 Medical personnel in Turkana County.
Source: http://www.healthpolicyproject.com/pubs/291/Turkana%20County-FINAL.pdf

6.2 Livelihood Patterns in Turkana

Turkana County can be divided into six livelihood zone (Oxfam, 2012):

- *Central Pastoral Livelihood Zone* (TCP), where the majority of the population are prevalently pastoralists, and the rest depend on self-employment activities (charcoal, basket making, etc.), and relief food.
- *Border Pastoral Livelihood Zone* (TBP), which is also a pastoral zone, but with more heads of cattle than the central zone, since it receives more rain, and thus there is more availability of grassland. Given its proximity to the border, the area is prone to raiding from other counties. There is high dependence on food aid.
- *Kerio Riverine Agro-Pastoral Livelihood Zone* (KAP), where crop and livestock production represent the basis of the economy. The area is also very insecure, and therefore the number of animals kept by households is low.

Figure 6.4 Livelihood zones of Turkana. Oxfam, 2012

- *Turkwell Riverine Agro-Pastoral Livelihood Zone* (TAP); where the population is engaged in livestock and crop production, the latter allowed by the presence of irrigation schemes, connected to the Turkwell River. Other important activities of the zone include charcoal production, collection of building materials, and honey production.

- *Lake Turkana Fishing Livelihood Zone* (LTF)*;* which lies along the western shores of Lake Turkana, and where fishing constitutes the primary source of livelihood, although the population has a pastoral background. The importance of livestock in this zone is however limited, and there is no agriculture.

- *Lodwar Urban Livelihood Zone* (LUZ); which is located along the main road that connects Kenya with South Sudan, and where livelihood is mostly labor-based. Many households rely on the natural resources available, and sell charcoal or firewood. There are also employment

opportunities available, accruing from shops, NGOs, government offices, and faith-based organizations based in Lodwar.

6.3 Internal and External Pressures on Turkana`s livelihoods

Pastoralism has always represented the backbone of Turkana`s livelihood, and 70-80 percent of the population in the county are classified as nomadic pastoralists (Bersaglio et al., 2015). They manage multiple species of livestock, including camels, goats, sheep, cattle and donkeys.

Given the harshness of the environment, the Turkana have traditionally relied upon a number of strategies in order to cope with it, including the use of range lands, high level of mobility that enabled them to exploit different land and resources during different seasons, preservation of dry season pastures, and finally the integration with farming, fishing, and a combination of other income-generating activities (Oba, 1992; Omolo, 2011).

Land is communally owned, and herders have traditionally moved freely with their animals within the region, as boundaries between different clans have always been fluid (Watson and van Binsbergen, 2008)

The Turkana are constantly on the move with their livestock, from plains to river banks, to the mountains, and back again (Chemelil, 2015). Because of this, the majority of them do not build permanent homes or settlements, but live in temporary shelters (ibid.).

From the 20th century onwards, the pastoral economy of the region, and of the entire Horn of Africa, has been affected by a number of factors.

One is the establishment of international frontiers, which reduced their ability to move easily in the search of pastures, across Uganda, Sudan and Ethiopia (Herrera et al., 2014) (Love, 2012)

Furthermore, the frequency of droughts in Turkana has dramatically increased over the years, from one every ten years during the 1970s, to one every year during the 2000s (Bersaglio et al., 2015). The occurrence of these periods has had catastrophic consequences for pastoralists. On each drought, herders can lose up to 50% of their animals, and it can take more than 10 years for households to recover (ibid.). The consequences are particularly severe for the poorer families, with smaller livestock holdings, and limited access to social support mechanisms.

Climate shocks, restricted mobility, and more pressure on already scarce natural resources – particularly land and water – due to increasing human and livestock populations, have all contributed to the long-term impoverishment among Turkana pastoralists (Opiyo et al.,2015; Schilling et al., 2014). Increased insecurity in the region is another factor hindering the capacity of pastoralist to pursue their livelihood (Wamuyu, 2014; Greiner, 2013).

6.3.1 Insecurity

Cattle raiding has been an important feature of Turkana and its neighboring regions. Raiding was used as a means to expand into new grazing areas, accessing water sources, and re-stocking (Omolo, 2011; Oba, 1992) . Conflicts have occurred both between Turkana and other Kenyan counties, such as Baringo, Marsabit, Samburu, and West Pokot, and with ethnic groups from South Sudan, Ethiopia, and Uganda (Cordaid, 2015).

Over the past years, however, the characteristics and dynamics of conflict in Northern Kenya have dramatically changed. First, the proliferation and influx of modern weaponry, mostly coming from border areas of Uganda, Ethiopia, and Somalia, have resulted in the shift from bows and arrows, to AK-47 and other automatic weapons (Oba, 1992; Triche, 2015). Secondly, raiding has evolved from what could be considered mostly as a cultural practice, to a commercial and predatory activity, that see the involvement of politicians, and criminal gangs (Shilling et a., 2014; Matthew and Boyd, 2014). These two factors combined have contributed to an exponential increase in the frequency of conflicts, and number of victims.

To make but a few examples, in November 2012, around 30 Kenyan police officers were killed in a military-style ambushed by allegedly Turkana cattle rustlers in Baragoi, at the border with Samburu County (CNN, 2012), in one of the worst attack on Kenya police in living memory. Dozens of other villagers lost their lives during the fighting.

Two years later, in October 2014, other 21 police officers were ambushed and killed in Kapedo, at the border with West Pokot. The responsible for the attack, however, are believed to be Pokot raiders. More recently, in May 2015, 46 villagers have been found dead in Nadome, at the border with East Pokot. Practical Action estimated that more than 40,000 people in Turkana, and 165,000 in northern Kenya have been displaced by the conflicts.

The limited presence of public security in the region, have left communities no choice but to provide for their own protection (Johannes et al., 2015). The Kenya Police Reserve (KPR) is an auxiliary force, independent from the Kenya Police, constituted by armed volunteers, that operate in their localities (Agade, 2015). In Turkana they represent the principal, and most visible security force. Although communities are generally in favor of the KPRs, there are many concerns because of the lack of control over these armed troops (Osse, 2014). Media have frequently reported of abuses by the KPRs, accused of engaging in banditry, and livestock raiding (Amnesty International, 2013).

6.3.2 Hydroelectric Projects

The GIBE III project is one of a series of damming projects undertaken by the Ethiopian government, currently under construction in the Lower Omo Valley (Avery and Eng, 2012). The works started in 2006, and the project is expected to be completed by the next two years.

It will be the tallest dam in Africa, and has a capacity of 1,870 megawatt, 500 hundred of which will be exported to Kenya (Avery, 2014). The dam will also allow the abstraction of significant amount of water for irrigation of large-scale cotton and sugarcane plantations (International Rivers, 2013). The planned irrigated area is almost equal to the total area currently irrigated in Kenya (ibid.).

Lake Turkana depends on the Omo River for 90% of its inflow (Arvey and Eng, 2012). Studies conducted by International River estimates that, as a result of the project, the lake level will drop by more than 20 metres (International River, 2013). The consequences could be simply catastrophic for the delicate ecosystem of the region, and the livelihoods of the 300,000 people that live around its shores, including the Turkana, Samburu, Rendille, and many other ethnic groups (ibid.).

In 2008, Turkana activist Ikal Angelei formed Friends of Lake Turkana (FoLT), a community-based organization aimed at opposing the construction of the dam by the Ethiopian government (FoLT, Website). After several consultations with communities and leaders, Angelei began to make pressure on Members of the Parliaments and relevant Ministries, urging them to reconsider Kenya`s power deal with Ethiopia. A few months later, the Parliament issued a unanimous resolution demanding the commissioning of an independent environmental impact assessment from Ethiopia. Because of the campaign launched by FoLT, major financial institutions such as the World Bank, the European Investment Bank, and the African Development Bank stopped considering to finance the project (Goldman Prize, Website).

For her achievements, Angelei was awarded the Goldman Environmental Prize in 2012, and FoLT gained the recognition of the international community.

6.3.3 Lamu Port and New Transport Corridor Development

The Lamu Port and New Transport Corridor Development to Southern Sudan and Ethiopia (LAPPSET) is a Kenyan flagship infrastructural project, designed to develop a new transport corridor to South Sudan and Ethiopia. The project was first contemplated in 1975, but later abandoned for its cost (Nyanjom, 2014). It was then revived in recent years, and launched in March 2012 with a formal ceremony held in Lamu, in the coastal region (Johannes et al., 2015).

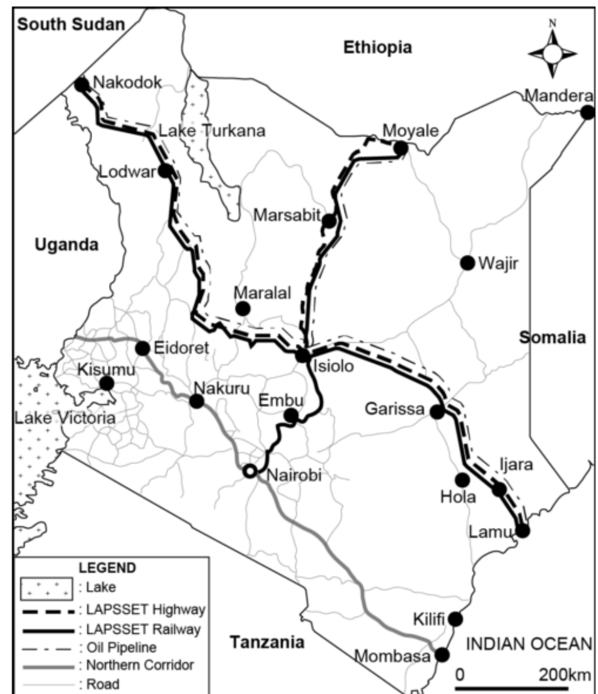


Figure 6.5 LAPPSET Project Plan. Source: Nyanjom, 2014

LAPPSET comprises of a number of components (Nyanjom, 2014), including:

- A port at Manda Bay, Lamu;
- Standard gauge railway line to Juba, South Sudan, and Addis Ababa, Ethiopia;
- A new road network;
- Oil pipeline
- Oil refinery at Bargoni, in the coastal region
- Airports in Lamu and Isiolo
- Three resort cities, in Isiolo, Lamu and Turkana

The project, which will cost approximately US30 billion, and is expected to contribute to a 3% increase of Kenya`s GDP by 2020. The World Bank and the Development Bank of South Africa are the main donors involved.

The LAPPSET is promoted as the backbone for opening up Northern Kenya, and foster integration of the region with the national, regional and international economy. The new infrastructure is expected to trigger socioeconomic development around the corridor, and particularly in the underdeveloped counties of Northern Kenya, including Turkana.

The project is managed by the LAPPSET Corridor Development Authority, established through Presidential Order in 2013, to plan, coordinate, and manage the implementation of the operations. Despite its promise of bring development to the region, the construction of LAPPSET has already resulted in the emerge of grievances and conflicts across its locations (Nyanjom, 2014).

In Lamu, communities complained about lack of consultations, and irregular land allocation involving local Member of the Parliaments, and authorities of the Provincial Administration (Deutche Welle, 2014; Standard (i), 2014).

A number of violent conflicts occurred in Isiolo have also been associated to the planned resort city (Nation (iii), 2015). The risk of increasing land disputes and conflicts between communities, due to LAPSSET, is certainly very high in Turkana. A number of CSOs, including FoLT have recently formed the LAPSSET Community Forum (LCF), in order to examine the impacts that the corridor will have on communities in Northern Kenya (Angelei, pers. conv).

6.3.4 The discovery of oil in Turkana County

The discovery of oil in 2012 by Tullow Oil has brought Turkana into the spotlight. A few hours after President Kibaki announced the discovery, #TurkanaOil was one of the most popular hashtag on Twitter globally (All Africa (i), 2012). The paradox inherent in the fact that the discovery occurred in the poorest county in Kenya, and the most disconnected from the rest of the nation, caught the attention of many. *"By the way when will news of #TurkanaOil reach residents of Turkana?"* sarcastically asks a citizen on the social network, referring to the poor access of the region to means of communication.

The day after the discovery, the Daily Nation, the most sold daily newspaper in Kenya, published a cartoon showing a group of Turkana, depicted as backwards and destitute, asking to find water to the many oil prospectors flocking in the region (Fig 6.6).

A number of opportunities can arise with the growth of the industry. Some have already emerged, e.g. jobs and tenders, implementation of CSR projects, and increased revenues to the county governments in the form of land fees and additional taxes.

Others will arise as the industry will move to the successive phases, including: more revenues for the county government, through payment of royalties from the central government, and taxes from oil companies, the development of infrastructure that could be planned in order to serve all, and promote inclusive development, etc.

Figure 6.6 Cartoon appeared on the Daily Nation the day following the discovery

However, alongside these opportunities are the many risks posed by any extractive venture, accentuated by the delicate balance, on which the region is based.

Even it has just started off, the industry has already had negative consequences in Turkana, including: i) environmental degradation due to destruction of vegetation during seismic surveys and for construction of roads and camps, ii) company-community low intensity conflicts, iii) episodes of tension between communities, iv) alteration of livestock migration routes due to fencing and other dangers for the animal (e.g. trucks, wires, etc.), v) loss of community land.

The scale of these impacts, however, is projected to increase as the industry will expand.

Its environmental footprint will become significantly bigger, and much more land will be required by the operations, due to the construction of the pipeline and other facilities. When the resource will start to be transported the risk of oil spills, caused by technical accidents or deliberate sabotaging, will also come. Oil may also be a trigger to more insecurity and conflicts, and as we will see in the next chapter, the industry has already played a role in this regard.

There could also emerge intense social conflicts over revenue allocation, or provoked by the influx of migrants in search of economic opportunities. And the list could be much longer.

EMPIRICAL CHAPTERS

7. External governance interventions in the extractive sector

In this first empirical chapter, the analysis focuses on the international scale, with particular regards to the role of financial institutions in the extractive industries.

First, I provide an understanding of the nature and extent of the involvement of the World Bank Group in the sector, during the era of Structural Adjustment Programmes, and analyze the outcomes that the investor-friendly reforms supported by the institution have had on African countries.

Then, I describe the dynamics that led the WBG to commission a review (EIR) of its involvement in the extractive industries, and analyze the results of that review.

Subsequently, I describe the official response of the WBG to the recommendations contained in the review, and how this has led to the emergence of the new policy agenda of the extractive industries, with transparency at its core.

In order to understand how, and to what extent, the WBG approach has changed after the EIR, I include an overview of the projects implemented by the institution on the extractive sector, from 2000 onwards, isolating those that aim at promoting good governance.

Finally, I analyze the role of the WBG and other donors in the emerging oil industry in Kenya.

7.1 The wave of Structural Adjustments

Over the past thirty years, the World Bank (WB) has exerted substantial influence over the economic and political development of African countries (Herbst, 1990; Desai and Jarvis, 2012).

Initially, the Bank primarily acted as a lender for African states, through the International Finance Corporation (IFC), but its role became greater and greater in the course of time (Pegg, 2003).

As a result of the oil price shocks of 1973 and 1979, which dramatically increase costs for importing countries, and the concomitant skyrocketing of international interest rates, many African states approached the 1980s in desperate financial and political situations (Pegg, 2003, 2006; Gaynor, 2014).

The Bank`s response was to design and implement a long series of Structural Adjustment Programmes (SAPs), in collaboration with its financial arm, the International Monetary Fund (IMF), all over the African continent (Hilson, 2012; McMahon, 2010).

Aimed at enhancing financial growth, improving economic efficiency, and increasing resilience to market changes, SAPs were imposed on debtor countries as a precondition for debt relief, additional loans and grants (Liebenthal et al., 2005). Between the 1980s and 1990s, 37 countries

in the region implemented a total of 162 SAPs (Pegg, 2006). In return for this loan packages, governments were required to undertake a number of important reform, such as reducing public spending, suspending subsidies on commodities, dismantling support services for the agricultural sector, reducing public sector employment, de-regulating and privatizing industrial sectors (Loxley, 1990; Hilson, 2004; Hilson and Potter, 2005).

The extractive sector, in particular, has received priority attention under the programmes (Hilson, 2004; Pegg, 2003). The WB landmark report, Strategy for African Mining, published in 1992 (Strongman, 1992) well summarizes the overarching goal of the those sector reforms: "Overall, the main objective of donor intervention in African mining [...] should be to facilitate private investment and help reduce the [...] risk for the private investor."

In its diagnosis, the Bank identified lack of foreign capital, poor infrastructure, lack of technology and skills, and inefficiency of state-owned enterprises, as the main factors responsible for the weak performance of the African extractive sector (Strongman, 1992; Tsuma, 2010).

The cure of the WB to these illnesses consisted in design and implementation of a series of reforms aimed at increasing host countries attractiveness to investors. These included massive privatization of state mines, fiscal liberalization of the sector, new "enabling" mining laws, and strengthening of sector institutions (Hilson, 2012; Pegg, 2003, 2006). From 1989 to 2000, the Bank has supported 35 mining sector reforms in 24 countries, two-thirds of which were located in Sub-Saharan Africa (McMahon, 2010).

The new legislation enacted provided a wide range of concessions to investors, such as reduction of corporate income taxes, royalties rates and other duties, increased capital allowances, and a number of additional benefits, including exemption of companies` staff from payment of income taxes, and removal of taxes on remittances from expatriate personnel (Akabzaa and Darimani, 2001; Hilson, 2012; Tsuma, 2010).

7.1.1 The outcomes of the structural adjustments

An immediate outcome of the reforms was the disengagement of the state from management and ownership of the sector, and the consequent emergence of international extractive companies as key players (Tsuma, 2010). Ghana was the first country to undergo structural adjustment, in 1983 (Yeboah, 2000). In a few years, five new sector legislations were enacted, and several sector institutions established (Akabzaa, 2009). By 1990, all the five biggest mines previously owned by the Government, were sold to foreign companies (Tsuma, 2010). In South Africa, domestic ownership in mining assets dropped from 22 per cent in 1975 to 5 per cent by 1999 (Pegg, 2006).

From a sector perspective, the reforms have obtained significant achievements. In 1991, Africa accounted for a mere 4 per cent of worldwide exploration expenditure. By 1998, the figure had increased to 17.5 per cent (EIR, 2003). Investments in exploration and mine development in sub-Saharan African doubled between 1990 and 1997 (ibid.). Ghana is undoubtedly the county that obtained the most striking results. Between 1983 and 1993, the Ghanaian mining sector received more than US $900 million of foreign direct investments (FDI), and domestic gold production increased by more than 500% under SAP (Akabzaa and Darimani, 2001; Hilson and Potter, 2005). In other instances, such Zimbabwe and Tanzania the results have been less pronounced (Chachage, 1993; Mwanza, 1992; Banchirigah, 2006).

However, even in those countries where the reforms have achieved positive macro-economic outcomes, few of the benefits have reached the local economy. The Bank of Ghana has estimated than more than 70% of the value of national mineral exports is held in offshore accounts, due to increased capital allowances granted to transnational companies (Gaynor; 2014).

Furthermore, large-scale extractive activities create few backward linkages and employment opportunities relatively to other sectors (Auty, 2006; Klueh et al.; 2007). On the other hand, large-scale operations require vast amount of land, and have led to the displacement of thousands of people across the region (Downing; 2002; Banchirigah; 2006) . In the Ghanaian region of Tarkwa alone, the expansion of gold mining activities post-SAP caused the displacement of 30,000 people (Tsuma; 2010). The intensification of exploration and extraction also provoked a number of negative environmental consequences, sometimes disastrous (Akabzaa, 2006).

A study of the WWF found that: “Despite efforts by the World Bank to improve the social and environmental performance of the extractive sectors, expansion of these sectors under the aegis of structural reform programs has led to higher than necessary social and environmental costs, and, in some cases, exacerbation of macroeconomic vulnerabilities” (Mainhardt-Gibbs, 2002). In sum, “although foreign investment in the sector boomed, poverty alleviation did not occur.”

7.2 Direct Financial Investment in Extractive Projects

In addition to promote the implementation of investor-friendly reforms in host countries, the WBG has also provided significant capital directly to extractive companies, through the IFC, the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA) (Gary and Karl, 2003). Between 1980-92, the IFC has approved around $500 million worth of investment in the sector (EIR, 2003).

However, the financial commitment of the WBG has dramatically increased over the years. The Sustainable Energy and Economy Network (SEEN) calculated that, between 1992 and 2002, the Group has approved over $24 billion in financing for 229 fossil fuel projects (SEEN, 2003).

Between 2010 and 2014, investment in the sector totaled $ 4,481 billion (Table XX).

Year	**Investment**
2010	1,000
2011	678
2012	695
2013	1,329
2014	779
Total Investment	4,481

Table 7.1 WBG Investment in EIs. Data retrieved from: WBG, 2010, 2011, 2012, 2013, 2014

Besides its own contribution to extractive projects, the involvement of the WBG often paves the way for additional private investment, by leveraging the perceived business and political risk associated with a project (EIR, 2003; Pegg, 2006). The presence of the WBG, in fact, serves as a sort of "good housekeeping seal of approval" for other commercial banks and equity markets (Gary and Karl, 2002).

7.3 The Extractive Industries Review: a paradigm change?

At the onset of the 21st century, the involvement of the financial institutions in the EIs became subject of intense criticism, particularly from academia and civil society circles (Pegg, 2003; 2006; Van Alstine et al., 2014). In September 2000, during an annual meeting of the WBG in Prague, activists from developing countries protested against the socio-environmental damages caused by extractive activities in their countries (EIR, 2003; Doherty, 2006). In that occasion, Friends of the Earth Chairman, Ricardo Navarro, presented a petition to the Bank, urging it to phase out all investment in oil, mining and gas ventures (Gaynor, 2014; .

In response, WBG President, James Wolfensohn, committed to establish an independent review to evaluate the Group`s investment in the extractive sectors. "We can stand back and take a look

at the actualities of these extractive industries, the pros, the cons, the pluses, the minuses […]" he said[13].

The Extractive Industries Review (EIR) was officially launched in July 2001, when former Minister of the Environment for Indonesia, Dr. Emil Salim, was appointed as Eminent Person leading the review (EIR, 2003). Five regional workshops were conducted, each preceded by an open forum with representatives from the civil society (ibid.). The overall goal of the process was to evaluate if WBG-financed extractive industries projects were aligned with the Group`s mission of poverty reduction, and contributing towards it.

The EIR Secretariat commissioned six research projects and visited four project sites. In November 2003, the EIR final report – Striking a Better Balance (SBB) - was published, and then formally presented by President Wolfensohn in January 2004. According to many, its publication marked the beginning of the global agenda for the "good governance" of the EIs (Van Alstine, 2014; Pegg, 2003; McMahon, 2010).

Assessing of the impacts of 20 years of WBG`s involvement in the EIs, the authors of the EIR report notes that, while the reforms supported by the Bank have led to increased investments in the sector, such investments "have not necessarily helped the poor", but rather "the environment and the poor have been further threatened by the expansion" of extractives ventures (EIR, 2003; p. 42). Therefore, "if the WBG is to promote sustainable development […] through its involvement in EIs, it need to rebalance its work and focus equally on the environmental and social aspects." (p. 44)

Remarkably, the EIR concludes that the WBG "should not promote an expansion of these sectors" (p. 45), unless three "enabling conditions" are already in place in the host country.
These are:

- pro-poor public and corporate governance;
- effective social and environmental policies; and
- respect for human rights.

With regards to the first, the EIR asserts that the WBG should promote transparency at country and company level, and disclosure of production sharing agreements, and other project documents (such as Environmental and Social Impact Assessments (ESIAs).
It should also help governments to design modern regulatory frameworks for the sector, and develop governments capacity to manage revenues responsibly.

[13] http://members.foei.org/en/media/archive/2000/18_nov_world_bank.html

Moreover, the report affirms that the Group should provide assistance to governments, through the use of independent consultants, during the negotiation of the agreements with extractive companies (p. 49).

In respect to the local level, SBB asserts that local communities should give their "free, prior and informed consent" (**FPIC**), and be able to negotiate the conditions under which the project can proceed. Local governments, it adds, should play a primary role in such processes (p. 50).

In terms of social and environmental policies, SSB urges the WBG not to support projects that result in forced settlements (p. 55). It also calls for the completion of ESIAs at the beginning of each project`s phase, and for the establishment of clear "no-go zones" for extractive projects (p. 54).

With regards to human rights, the report recommends the WBG to adopt all the Core Labor Standards formulated by the International Labor Organization, and support sector reforms that recognize indigenous peoples` rights to land, territories and natural resources (p. 59, 60). Moreover, the rights of women in relation to extractives should be explicated, especially protection from gender-based human rights violations (e.g., forced prostitution and rape) (p. 61).

Finally, the authors decided to conclude the report with a call to phase out all the WBG investment in oil production by 2008, as a means to contrast climate change, which disproportionally affect the poor (p. 65).

7.4 The Response of the World Bank Group

In spite of the concerns that were raised at the beginning over the independence and transparency of the EIR process, due to its financial link to the WBG, Striking a Better Balance embodies a bold criticism of the role played by the Bank in the extractive industries, over 20 years.

It recommends the Bank to undergo a radical paradigm shift, away from investor-friendly fiscal reforms, towards ensuring that extractive projects in the most socially and environmentally responsible manner possible. In particular, what sparks is the introduction of ex-ante "enabling conditions" that must be in place *before* a project can qualify for WBG funding.

In its initial response to the report, representatives from the oil industry emphatically rejected such a prerequisite, arguing that: "Requiring a wide-ranging set of governance standards before WB investment is permitted is not appropriate", and that "it should be possible to build improved governance as an EI project moves forward toward the completion." (Nore et al., 2003)

They further affirm that companies "may not be very interested to participate in projects if there are too many obstacles and conditions that are imposed on them by the WBG or their

constituencies." (ibid.) Finally, industry representatives strongly rejected the idea that the WBG should phase out all investment in oil and gas by 2008, and the establishment of no-go zones. (ibid.)

The WBG response to the EIR was published in September 2004, in a long report that include comments from the WBG for each of the recommendations contained in SBB (World Bank, 2004).

The Bank comes to similar conclusions to the oil industry on the issue of minimum governance adequacy level to be met by a country before the WBG can promote extractives projects there. While recognizing the "vital importance of governance to sustainable development", the Group considers "not appropriate" to adopt a "one-size-fits-all approach", to decide whether or not to support a project (World Bank, 2004). With regards to FPIC, the Bank rejects the formula proposed by the EIR, and replaces it with a weaker requirement of "free, prior and informed consultations", which does not grant veto power to any group or individual. The Group excludes the introduction of strict no-go zones, but announce a revision of the IFC Social and Environmental Safeguards.

Furthermore, the WBG affirms that it would have not stopped investing in oil and gas projects by 2008, as this "would not be consistent with its mission to fight poverty […] in the developing world."

The Group`s response was received with strong criticism from the civil society, that accused the institution of ignoring the main recommendations made by the EIR, and of being unwilling to change its modus-operandi. Dr. Emil Salim, who was appointed to lead the review, defined the Group`s response: "business as usual with marginal changes." (Washington Post, 2004) However, as noted by Bebbington et. al (2008), "[…] the Review nonetheless forced the institution to engage with issues that up to then had been largely sidelined", and a number of measures have been taken by the Group since then.

With regards to public governance, the focus has undoubtedly been on transparency, "one of the few issues that everyone could agree on." (Van Alstine, 2014) The WBG now requires full disclosure of revenues "as condition for new investment in the extractive industries sector." (McMahon, 2014) The Group also became one of the main supporter of the Extractive Industries Transparency Initiative (BOX 1), and provides assistance to more than 50 countries throughout the implementation of the EITI. It also provides direct support to civil society organizations to strengthen their capacity to participate in the EITI process (WBG, 2014).

BOX 1

Voluntary and Mandatory Transparency Initiatives for the Extractive Industries

The Extractive Industries Transparency Initiative (**EITI**) is a global standard, voluntarily implemented by countries in collaboration with companies and civil society, that aims at strengthening governance of the extractive industries, through the disclosure of revenues, contracts, and other relevant documents (Aaronson, 2011; Aufler, 2010).

Countries are divided into two categories: candidate, and compliant. To become EITI "candidate", Governments must commit to four initial actions: issue a public statement of its intention to implement the EITI, appoint an official to lead the ETI implementation, establish a multi-stakeholder group that include members from the civil society and the private sector, to oversee the implementation of the EITI; 4) publish a workplan aligned with the deadlines established by the EITI Board. After completing all these steps, a government, with support of the multi-stakeholder group, can submit an EITI Candidate application to the Board (EITI, 2015).

The initiative was launched in 2002 by British Prime Minister, Tony Blair, in the wake of a number of events, such as the launch of the EIR, and the formation of the Publish What You Pay coalition (Wilson, 2014). Since then, the EITI has grown dramatically, with 48 countries currently implementing the standard, and over 90 extractive companies that have committed to support it (EITI, 2015). In 2007, in light of the difficulties experienced by countries in implementing the standards, donors established the EITI Multi-Donor Trust Fund (MDTF), to assist countries throughout the implementation of the EITI (McMahon, 2010). The MDTF is administered by the WBG, which currently provides EITI-related assistance to more than 50 countries (WBG, 2014). Activities include direct support to civil society organizations in order to strengthen their capacity to participate in the initiative.

Studies on the impacts of the EITI in producing countries have started to surface, but the authors recognize the complexity of establishing causality between EITI and governance improvements, given the myriad of factors at play. However, Corrigan (2014) finds a positive relation between EITI membership and economic development and quality of policy making, but no effect on corruption. Others points at the fact that some of the EITI signatories, are among the most corrupt and undemocratic countries in the world (such as Chad or Guinea), and it is unlikely that they will embrace practices of good governance (Hilson, 2008, 2010). The outcomes of the EITI at the local level seem to be constrained as well, due to difficult access to information in many host regions (Wilson, 2014).

Despite the challenges, the EITI has certainly the merit of bringing the attention of the global community on the issue of secrecy and corruption in the extractive industries, and since then new, and this time mandatory requirements have been implemented, such as the U.S. Dodd-Frank Act, enacted in 2010 by President Obama, that requires extractive companies listed on US stock exchanges to publish annual payment to foreign governments (Firger, 2010), and the European Market Infrastructure Regulation (EMIR), enforced in 2012 and containing similar requirements for European companies (Ramdoo, 2013).

7.4.1 Other Initiative and Programmes of the WBG

In addition, the WBG has launched three governance-specific programmes, which is currently implementing in most of African oil exploring and producing countries, the:

- Extractive Industries – Technical Advisory Facility (EI-TAF), which provide assistance to host government during the initial stages of the industry, particularly in relation to contract negotiation and the design of regulatory frameworks (EI-TAF, 2012). The support, however, is provided through consultants, and not directly by the Bank.
- Petroleum Governance Initiative (PGI), a bilateral collaboration between the Group and the Government of Norway, which provide support to producing countries in the implementation of governance frameworks. It focuses on three main pillars: 1) transparency and revenue management; 2) environment; 3) community development (PGI, 2009). The PGI closed in October 2013.
- Governance for Extractive Industries (GEI), that aims at promoting transparency and accountability along the extractive industries value chain (FIG 1). The main focus is on the contracting phase, during which the program helps promoting disclosure of contracts, and building collective capacity to monitor oil, gas and mining agreements (WBG, 2012). GEI supported the formation of a multi-stakeholder coalitions in Ghana and Uganda that are responsible monitoring petroleum contracts (Desai and Jarvis, 2012).

With regards to corporate governance, the IFC has launched the Oil, Gas and Mining Sustainable Community Development Fund (**CommDev**), which support IFC clients in the design and implementation of community development investments, building positive relationship with communities, and the adoption of effective local content policies (WBG, 2012).

In terms of social and environmental policies, the IFC has introduced its Sustainability Framework in 2006, which consists of the: i) Policy on Environmental and Social Sustainability, defining IFC`s commitment to environmental and social sustainability, ii) Performance Standards, that concern clients` responsibilities for managing environmental and social risks iii) Access to Information Policy, which delineates IFC`s commitment to transparency (IFC, 2006).
In 2012, the Sustainability Framework was updated with the inclusion of four new standards on environmental and social risks assessment, labor rights, community health and safety, and pollution prevention (IFC, 2012). Furthermore, the IFC introduced a more comprehensive requirement of information disclosures for its clients.

With respects to human rights issues, the WB has revised its Indigenous Peoples Policy, and now requires all partners to adopt the Voluntary Principles on Security and Human Rights (Desai and Jarvis, 2012).

Moreover the Gender and Extractive Industries Program has been launched, which focus on the gender dimension of the sector (WBG, 2014).

The new approach of the WBG to the EIs is well represented by the Extractive Industries Value Chain (EIVC), introduced in 2008 (WBG, 2009). The EIVC outlines al key decision points that governments in resource-rich countries have to go through, from the award of licenses and contracts, through regulation and monitoring of operations, collection of taxes and royalties, revenue management and allocation, and implementation of sustainable development policies and projects.

When asked to explain what was different with this new approach, Bank representatives explained that: “putting the work of separate WBG departments and government ministries into a bigger framework will allow people to see how their area of responsibility is linked to the bigger mission of using EI revenues to alleviate poverty and can help identify the most urgent priorities and gaps and avoid inconsistent approaches.”[14]

Some, however, criticizes the Bank value chain approach for being too simplistic, and missing “the scalar and temporal dynamics of the industry”, particularly in new extractive contexts such as Uganda, or Kenya (Van Alstine et. al, 2014).

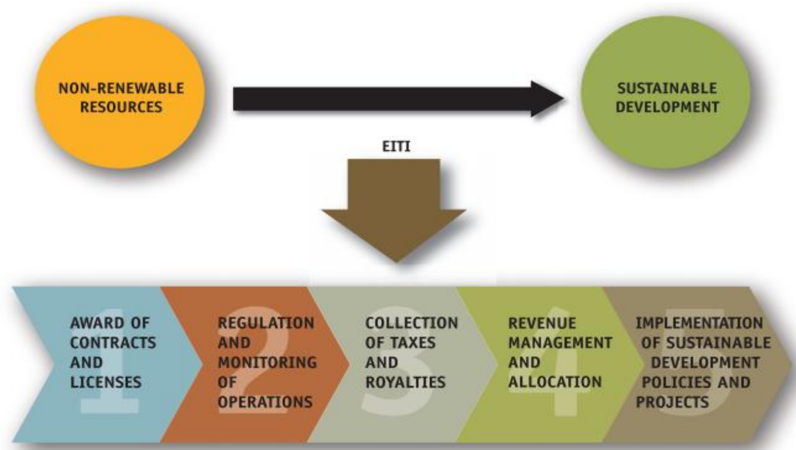


Fig. 7.1. The WBG Extractive Industries Value Chain Approach. Source: WBG, 2012

[14] http://siteresources.worldbank.org/INTOGMC/Resources/minutes2008.pdf

7.5 A new wave of projects

A comprehensive review of the WBG involvement in the extractive industries after the EIR has not been conducted yet, and such undertaking is certainly beyond the scope of this study.

However, by performing an overview of the projects implemented by the World Bank on the sector from 2000 until now, it is possible to identify certain elements of the Bank`s "new" approach.

In order to narrow the field of analysis, I focused only on projects concerning oil and gas in Africa, therefore excluding other minerals[15].

Out of the 80 projects implemented from 2000 until 2015, I found 26 (33%) of them explicitly oriented towards strengthening sector governance. These include capacity building to sector institution, technical assistance for contract negotiation and design of the regulatory framework, mitigation of socio-environmental impacts, transparency, vocational skills development, etc.

Out of the 26 "good governance" projects, 13 (50%) consists in technical and financial support for the implementation of the EITI, and 9 (34%) have a specific component on sustainable development.

Most of the remaining 54 projects consist of Economy Recovery or Structural Adjustment loans (12), or infrastructural development (11), such as supporting the construction of pipeline, grid connection to gas fields, etc.

On the other end, of the 40 projects implemented by the Bank between 1987 and 1999, 18 (45%) consists of structural adjustment or economic recovery programs, six focus on infrastructural development, and the rest are a combination of privatization, sector rehabilitation, and other programs. None of these projects, however, entails components specifically related to good governance of the sector.

The data show how, at least on paper, there has been a change in the nature of the involvement of the World Bank in the oil and gas industries. However, a much more detailed analysis of these projects, and their outcomes, is required in order to assess the practical implication of the "good governance" approach.

[15] Data on projects have been retrieved from the World Bank database, available at: http://www.worldbank.org/projects. Some projects, especially those conducted as part of the EI-TAF seem missing from the list. This could be due to the fact that activities of the EI-TAF are mainly conducted by consultants hired by governments with support from the World Bank. However, the purpose here is only to provide a general overview of what the World Bank has done from the 21st century, with regards to the EIs in Africa.

Governance-strengthening Projects (2000 to 2015)

Project	Country	Cost ($M)	Comments
Kenya Petroleum Technical Assistance Project (KEPTAP)	Kenya	50	Specific components on sust. dev.
Africa Higher Education Centers of Excellence Project	Western Africa	150	Broader project aimed at enhancing Universities` capacity of delivering quality training in key areas, including EIs.
Uganda: Albertine Region Sustainable Development Project	Uganda	145	Specific components on sust. dev.
Energy Sector Capacity Building Project (ESCBP)	Tanzania	21,46	Specific components on sust. dev.
UGANDA: Support for the Uganda Petroleum Institute	Uganda	1,18	The project aims at improving facilities and quality of training of the Ugandan research and training institute on petroleum issues
Ghana Natural Resource and Environmental Governance - DPO	Ghana	10,00	Specific components on sust. dev.
Rwanda - Support from Extractive Industries Technical Advisory Facility	Rwanda	0,33	Support in contract negotiation, regulatory framework, etc.
2nd Mining Sector Capacity Building Supplemental	Mauritania	5,00	Specific components on sust. dev.
Transparency and Governance Capacity Building Project	Congo, Rep. of	7,00	The project aimed at strengthening transparency in decision-making, with particular focus on oil management
Petroleum Development and Pipeline Project	Chad	39,50	Specific components on sust. dev.
PETROLEUM SECTOR MANAGEMENT CAPACITY BUILDING PROJECT	Chad	23,70	Specific components on sust. dev.
Cameroon Petroleum Environment Capacity Enhancement (CAPECE)	Cameroon	5,77	Specific components on sust. dev.
Petroleum Development and Pipeline Project	Cameroon	53,40	Specific components on sust. dev.

Tab. 7.2 Governance strengthening projects (2000-15). Personal elaboration

EITI-related Projects (2000 to 2015)		
Project	**Country**	**Cost ($ M)**
Seychelles: Extractive Industries Transparency Initiative Implementation	Seychelles	0,20
Mauritania - EITI Post-Compliance II	Mauritania	0,35
Sao Tome & Principe: EITI Implementation	Sao Tome and Principe	0,29
Nigeria Post-Compliance I EITI	Nigeria	0,90
Republic of Congo: Extractive Industries Transparency Initiative	Congo, Republic of	0,35
Mozambique Phase II: EITI Implementation	Mozambique	0,35
Ghana EITI - Post Compliance I	Ghana	0,40
Niger EITI - Post Compliance I	Niger	0,20
Cameroon Phase II: EITI Implementation	Cameroon	0,20
Mauritania: Post Compliance I: EITI Implementation	Mauritania	0,28
Nigeria Phase II: EITI Implementation	Nigeria	0,90
DR of Congo-Extractive Ind. Trans. Initiat	Congo, Dem. Republic of	0,40
Equatorial Guinea-Extractive Industries Transparency Initiative	Equatorial Guinea	0,26

Tab. 7.3 EITI-related Projects (2000-15). Personal Elaboration

7.6 The involvement of the WBG and other donors in the Kenyan oil industry

World Bank Group

The involvement of the World Bank in Kenya`s extractive sector started in 2012, by means of its Extractive Industry Technical Advisory Facility (EI-TAF). Within the EI-TAF the WB provided technical assistance to the GoK with regards to the development of gas terms for exploration and production contracts, identification of gaps in the current petroleum regulatory framework, and negotiation of "deals that maximize the Government take from future revenues." (EI-TAF, 2012). The general goal of the EI-TAF is, indeed, to assist resource-rich developing countries to set up the right institutions from the outset, particularly during licensing phases. Contract negotiation, capacity building for members of countries negotiation teams, and technical assistance on how to implement licensing rounds, are the main activities carried out under the project (ibid.).

In July 2014, the World Bank (WB) announced that it approved $50 million for the Government of Kenya "to strengthen its capacity to manage the oil and gas sector and the distribution of its revenues to create sustainable growth across all areas of the country's economy." (WBG, website).

The project, called Kenya Extractive Industries Technical Assistance Project (**KEPTAP**), aims to support effective government management of the oil and gas sector through "capacity building, technical assistance, training programs, and the development of a legal and institutional framework." (KEPTAP, 2014).

According the project proponents: "Transparency and good governance in oil contracts and revenue will be ensured through stronger collaboration between the national and county governments hosting the new petroleum resources and also with civil society organizations, private sector and local communities in these areas."

Initially, the project was designed to comprise of three components (KEPTAP, 2013):

a) **Petroleum sector reforms and capacity building**; which aim is to support the Government in the implementation of a regulatory and institutional framework for the sector, and in the negotiation of petroleum deals with oil companies.

b) **Revenue and investment management reforms and capacity building**; which aim is to support the design of a fiscal framework to improve taxation of the sector, and to address transparency across the value chain by assisting Kenya to become compliant with EITI.

c) **Project management**.

However, an additional component has been added in KEPTAP final plan (KEPTAP, 2014), namely:

d) **Sustainable impact of oil and gas industry**; which aims at strengthening upward and backward linkages of the oil industry, in order to support local procurement of goods and services – with particular attention to the inclusion of women – and at building knowledge and skills among Kenyans, that can meet the demand of the oil industry.

The project appraisal report (KEPTAP, 2014) states that Kenya`s outdated petroleum legal framework is no longer adequate, given the increasing corporate interest in the sector. Other aspects that are identified as in need of improvements are: compensation schemes, revenue sharing, corporate social responsibility, and local content provisions. The institutional set up of the sector, and the lack of a regulatory and safety authorities is also reflective of the country`s limited exploration interest, it continues. Moreover, the capacity building component is considered crucial, as the level of expertise required by the GoK to govern the industry will "dramatically increase" over the next years.

The project end date is set for the beginning of 2021 (ibid.), by when the Bank expects to achieve a series of targets, including: the formulation and approval of petroleum policy and legal acts, training of a number of sector institutions, the establishment of a Sovereign Wealth Fund, the development of a fiscal policy for the industry revenues, the establishment of a new regulatory body, the restructuring of NOCK, the conduction of a gender assessment, and design of a local content policy.

Currently, outcomes produced by KEPTAP are the drafting of the Petroleum Bill, Energy Bill, and Sovereign Wealth Fund Bill, and the formulation of a multi-year budget, though still without "clear process of investment project selection" (KEPTAP, 2015). In the last update, the Bank defines the progress made so far in KEPTAP "moderately satisfactory" (ibid.).

KEPTAP – Project Components and Objectives	
Project Component	**Objective**
A) Petroleum Sector Reforms and Capacity Building	***To strengthen the capacity of the GoK`s institutions engaged in the development and governance of the petroleum sector.***
A.1. Petroleum Resource Deals A.2. Petroleum Vision, Policy and Communication A.3. Legal, Regulatory and Institutional Reforms A.4. Managing the impacts A.5. Strengthening of NOCK and KPC[16]	
B) Revenue and Investment Management	***To strengthen the capacity of the GoK to manage revenue streams from the petroleum sector for sustainable development impacts***
B.1. Revenue Management B.2. Transparency and Accountability B.3. Public investment management	
C) Sustainable Impact of Oil and Gas Industry	***To strengthen the capacity of the GoK to integrate the petroleum sector in its broader economy***
C.1. Strengthen Upward and Downward Linkages C.2. Education and Skills Development	
D) Project Management	***To support the GoK in managing and coordinating the Project through the provision of technical advisory services, acquisition of goods, and operating costs.***

Tab.7.4 KEPTAP project components and objectives. Personal elaboration from KEPTAP, 2014

[16] Kenya Pipeline Company

Department for International Development

In 2012, the UK Department for International Development (**DfID**) commissioned Adam Smith International (ASI) to conduct a scoping study on the extractive sector in Kenya (ASI, website). The stated objective of the undertaking was to "support all stakeholders, including the GoK and development partners, to devise a fit-for-purpose programme of development of Kenya`s extractives sector for the benefit of all Kenyans, now and in the future." After completion of this six-months study, in September 2013, the DFID launched the Kenya Extractive Industries Development Programme (KEIDP), which goal is to support "efforts to develop a stable, transparent and sustainable extractive industry (covering oil, gas and mining) that delivers inclusive benefits to Kenyan citizens." (DfID, 2014).

Thus far, the project team has supported the Ministry of Mining in the formulation of the new Mining Bill, and the Ministry of Energy and Petroleum in the drafting of the proposed sector legislation, including the Petroleum Bill and particularly Local Content regulations. The establishment of the Information Center for the Extractive Sector (ICES) has also been facilitated through the project (ibid.).

In December 2014, an agreement was signed in Turkana, between DfID and the Turkana County Government, to implement a community engagement activity, as part of the KEIDP Community Engagement Pilot Project (Gov. UK, website). However, the pilot took much longer time to start, due to coordination problem and lack of funding (rep. of INGO, pers. comm., 2015). A Kick-off meeting was finally held in Lodwar, at the end of April 2015. The pilot has been coordinate by ASI, and implemented by a consortium of three international NGOs (INGOs), namely the Danish Damining Group (DDG), Cordaid, and Oxfam International. A Turkana`s community based organization (CBO) - Alemun Pastoralists Empowerment Initiative (APEI) – was selected as the local implementing partner of KEIDP- Turkana Community Engagement Pilot Project.

The delays in the start of the project, however, have significantly compromised the team`s ability to deliver the expected results (rep. DDG, pers. com.).

The Pilot will soon reach its end, and DFID has already announced that the second part of KEIDP will start in January 2016[17]. KEIDP II will continue supporting the development of the EIs legal and regulatory framework; and government authorities capacity to oversee and collaborate with extractive industry actors, as well as promoting demand-side transparency and social accountability of the industry; and provide technical and financial assistance to small and

[17] http://chc.tbe.taleo.net/chc06/ats/careers/requisition.jsp?org=DAINC&cws=1&rid=2201

medium enterprises linked to extractive industry supply chains. Leading the next phase of the KEIDP will be another consultancy firm – DAI Europe – which will replace ASI.

United Nations Development Programme

In 2014, the United Nations Development Programme (**UNDP**) launched the Extractive Industries for Sustainable Development in Kenya (UNDP Kenya, website), a two-year project that addresses three main areas of the industry: a) Inclusive Sustainable Growth and Human Development, b) Transformative Governance, and c) Risks and Impacts of Conflicts, Violence, and Disasters Reduced and Managed at National and County Levels. Key projects activities include the collection and dissemination of information regarding the sector, supply chain analysis to promote the inclusion of small- and medium-size national enterprises as supplies to the industry, the development of corruption risk mitigation systems, the delivery of training to civil society organizations to promote them as industry watchdogs, and undertaking of capacity assessment of key governance institutions in the sector, focusing on transparency and accountability.

From 2014 the UNDP has also funded the Turkana Resource and Public Engagement Project, with the aim of increasing public awareness and participation in the governance of the extractive industries in Turkana County (rep of Turkana CBO, pers. comm., 2015). The project, however, was not renewed for the year 201.

Conclusion

In this Chapter, we were able to observe how external interventions carried out by financial institutions and donors influence the governance of the extractive industries in host countries, and the specific programmes that are currently being implemented in Kenya.

In the next Chapter, the analysis moves to the national level, and focuses on the four governance areas identified in the methodology, namely: Award of Contracts, Regulatory Framework, Transparency, and Involvement of the Civil Society. We will also see how the global actors presented in this chapter have, through various actions, played a role in shaping the rules that have developed around these areas.

8. The unfolding of the oil industry in Kenya

Natural resource endowment represents both an opportunity and a challenge for a country, particularly in the case of point-resources such as hydrocarbons and minerals. Arguably, if properly governed and managed, this natural wealth can be used to foster development of current and future generations. On the other hand, when squandered, it can lead to conflicts, environmental degradation, inequalities, and deterioration of the institutions of exporting countries. The governance of the extractive sector involves a broad range of decisions, and requires governments to consider several options, and associated trade-offs. In order to translate resources in sustainable and inclusive prosperity, governments must formulate and implement a number of good policies that address each link of the value chain (FIG 8.1), possibly with support from citizens, civil society, private sector, and international institutions.

This chapter focuses on four of such links: i) Award of licenses, ii) Design of the institutional and regulatory framework, iii) Transparency, and iv) Involvement of the civil society. These four steps are of paramount importance for countries where the sector is at a formative stage, and the "rules of the game" still are evolving, as in the case of Kenya.

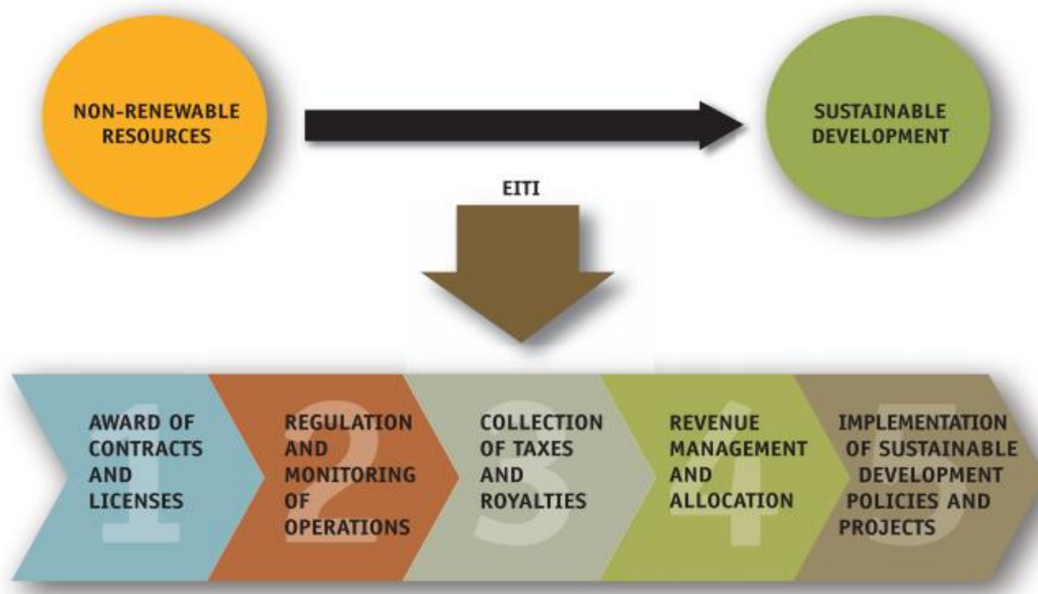


Figure 8.1 WBG Extractive Industries Value Chain

8.1 The award of petroleum licenses

Identifying the most appropriate procedure for the awarding of a petroleum license is one of the first step that governments have to do, after a decision to extract has been made[18].

There are two main methods through which a government can award exploration and production rights to an oil company: direct negotiation, or competitive auction[19]. In *direct negotiation* of contracts, there is only one contractor involved, and he negotiates with Government officials the terms and conditions of the contract. Government are generally advised against this method, as they are disadvantaged vis-à-vis the contractor, due to significant information asymmetries between them. Moreover, the process is usually very secretive or completely confidential, leaving ample room for bribery and corruption. In *competitive auctions*, the government announce the opening of an exploration Block, and invites companies to submit bids for acquiring the block. After bids have been submitted, the government evaluates them according to various factors, such as cost and price, but also the bidder`s history and experience in the industry, and its capacity to carry out the project. Competitive auctions are considered the best option for the awarding of petroleum contracts, especially when adequate information are available for the blocks. The competitive nature of the process considerably reduce the information asymmetry problem associated with direct-negotiation systems, and the final result of the auction is likely to be more representative of the actual value of the deposit. When conducted in an open and transparent fashion, this method also reduce the risk of political patronage, and increase the likelihood that awards will be based on objective criteria.

The Government of Kenya adopted a direct negotiation system to award petroleum licenses for all the country`s exploration Blocks, as provided for by the Petroleum Act, 1986, the primary sector legislation. The outcomes produced by this policy seem to confirm the risk associated with it. Only a day after Tullow Oil announced the discovery in Block 10BB (Turkana County), the Nation reported how that very block was initially sold to Africa Oil (which then farmed out 50% of its interest to Tullow Oil) by a certain Turkana Drilling Company (TDC), parent company of Turkana Energy Incorporation (TEI) (Nation (i), 2012).

Two high Kenyan officials (Trade Minister, Moses Wetang`ula, and Energy Permanent Secretary, Patrick Nyoike) have been found to be connected with TEI, raising doubts on the procedure through which that license was obtained.

---

[18] One might argue that the first decision to make is whether or not to extract, and that this should be based on a broad consultative process. Addressing this point, however, is beyond the scope of the study.

[19] Competitive auction can however take different forms.
(see http://www.fao.org/docrep/005/y1398e/y1398e09.htm for an overview)

An unpublished study, conducted by a member of the Kenyan civil society, revealed that TDC entered into a PSC for Block 10BB with the GoK in 2007. In 2010, the company then sold 100% of its interest in the block to Africa Oil, for the amount of $10 million. Former Trade Minister, Moses Wetang`ula denied the accusations, but the case well exemplified how lack of transparency in the licensing process may favor malpractices and leave ample room for politically connected individuals to grab a piece of the oil pie.

There have also been other instances that raise concerns over the regularity of the awarding process. In 2010, Canada-based Centric Corporation, was given a license for Block 10BA (also in Turkana County), at the price of $615,000. Just over a year after acquiring the block (which was the company`s only asset), Centric Corporation sold all its shares to, again, Africa Oil for $60 million (The East African (i), 2012).

And the list of examples is not over; in September 2008, Platform Resources acquired licenses for Block 12A and 13T. Three years later, with no additional work conducted, the company tried to sell its stakes to, once again, Africa Oil. Initially, the Ministry of Energy rejected the sale, stating : "Given that there is very little to show in terms of work done, your request will not be granted." A few months later, however, Platform was allowed to sell its interests at an estimated $6 million (Nation (i), 2012).

At the end of last year, Canada-based Vanoil Energy began an international arbitration case against the Government of Kenya, after that the latter rejected its request for an extension of the exploration period. The company based its request on the ground that it was forced to halt the operations in Garissa province due to increasing terrorist activities in the region. After rejection from the Ministry of Energy, the company Chief Executive, Don Padgett, accused the Government of trying to put its hands on the concessions, to sell them for a better price (Financial Post, 2014). Regardless of what the court will decide, these disputes may certainly have the effect of discouraging anyone looking to invest in Kenya.

8.1.1 Unlearnt lessons from the mining sector

The case of the Kenyan mining industry is equally illustrative of the risks of opaque contracts procedures. In August 2013, with a move that almost shocked the entire sector, Kenyan Mining Secretary, Najib Balala, revoked 41 mining permits from just as many mining companies.

He asserted that insufficient taxes and royalties had been paid to the government, under the terms included in those contracts – which were negotiated with the previous government. Following the decision, he announced raises in royalties for all minerals, from gold, on which royalties passed from 2.5 per cent to 5%, to titanium and rare earth, on which royalties increased to 10 per cent.

As a result of that move, the Government is still engaged in an international litigation with mining companies Cortect Mining – which directly accused Mr. Balal of corruption.
In May 2015, the Secretary revoked other 65 mining licenses, including the one of Australian mining company Base Titanium, over tax matters. "There have been bad practices before, so we want to change that," Balala said. He accused the company of not paying KES 300 million of due royalties. "These allegations are untrue and significantly undermine the work Base is doing in implementing Kenya's flagship, first large - scale modern mining project and its contribution to the economy of Kenya and Kwale County. Unfortunately they are also potentially damaging to Kenya's reputation as an investment destination," declared the company. Negotiation between the government and Base are still ongoing.
Kenya ranked third from the bottom in the 2014 Fraser Institute Global (Mining) Investment Attractivness Index, and last in Africa. Lack of transparency in the mining title process and risk of terrorism are mentioned as the two main reasons for the low score.

8.1.2 Different contexts, same story

The practice adopted by the Kenyan government resemble the cases of the other two African countries where the oil industry has recently started off. In Ghana, where oil was discovered in 2007, the government has never conducted a competitive tender to award petroleum licenses.
Civil society organizations are denouncing that many contracts have been awarded by the government to shady, "minnows" companies, six of which are Nigerian, with no previous experience in oil exploration (Platts (ii), 2014; GhanaWeb, 2015). Currently, the Ghanaian government is caught in international disputes with oil companies who accused it of breaching the contracts (PeaceFM Online, 2011; VibeGhana, 2014).
In Uganda, where oil was discovered in 2010, the Government has also adopted direct negotiation to award licenses, and Members of the Parliament have repeatedly accused Ministers and the President of taking bribes in order to influence the award process (BBC, 2011; All Africa (i), 2013). At the end of 2011, a moratorium was passed by the Ugandan parliament to interrupt the awarding of licenses until new legislations, including procedure for competitive bidding, were approved (New Vision, 2011).

8.2 Regulatory and Institutional framework of the upstream petroleum industry

The establishment of a clear and comprehensive regulatory framework, and the ability to enforce it, are essential to ensure transparent and efficient management of the extractive industries. Several aspects need to be addressed by sector legislations, including the assignment of clear role and responsibilities to different government bodies, definition of the procedure by which the

Government can enter into exploration and production agreements, delineation of a revenue sharing formula between levels of government and communities, and provisions concerning transparency, environmental protection, community rights, to name but a few. In the next paragraphs, I will first describe the existing sector legislation in Kenya, and highlight its main limitations. Then, I will provide an overview and analysis of the proposed laws and regulations, that the Government has formulated with support from the World Bank and the international law firm Hunton and Williams (H&W). The most important provisions introduced by the new legislation will be discussed, in order to understand how the new framework can promote good governance of the sector, and what are the gaps that still need to be address. Afterwards, I will consider the extent to which the Government has accepted and implemented the recommendations made by the law firm that he has engaged for assisting it in the undertaking, and pinpoints similarities and differences between Kenya`s proposed institutional framework, and the one adopted by Uganda in the years following the discovery.
Finally, a detailed analysis of the most relevant policies and bills drafted by the Kenyan government with regards to the oil industry is presented in Appendix B. Given the recent formulation of Kenya`s regulatory framework (drafted over the past two years), its analysis has not been done yet by other academics. Therefore, such undertaking proves particularly relevant, as it allows to timely identify loopholes and weaknesses, that have to be addressed before the industry moves to the next stages, and revenues start flowing.

8.2.1 Existing Petroleum Legislation

For the past three decades, Kenya`s petroleum sector has been governed by the Petroleum (Exploration and Production) Act (Petroleum Act), enacted by the Government in 1984, and then revised in 1986, in order to regulate the negotiation and conclusion of petroleum agreements by the Government of Kenya (GoK). The act vests ownership of all hydrocarbons in the GoK, who can conduct operations either through the national oil company, or a contractor.

The Cabinet Secretary of the Ministry of Energy (CS) can negotiate and enter into petroleum agreements with a contractor. Such agreements must be based on a Model Production Sharing Contract (Model PSC), available on the Ministry website. An inter-ministerial committee named the National Fossil Fuels Advisory Committee (NAFFAC) is established to assists the CS in the negotiation of PSCs. NAFFAC comprises of representatives from the Ministry of Energy, the Office of the Attorney General, the National Oil Company of Kenya (NOCK), the National Environmental Management Authority (NEMA), the Kenya Revenue Authority (KRA), and the Petroleum Institute of East Africa (PIEA).

Under the Act, the CS is also responsible for supervising petroleum operations, and making regulations on virtually all aspects of the sector, from exploration, to development, extraction, production, transportation and sale.

The Model PSC spells the terms and conditions of the agreement signed between the GoK and the contractor, and defines:

i. the terms for each exploration period (initial, first additional, and second additional exploration periods);
ii. the areas to be surrendered at the end of each exploration period;
iii. the obligations of the contractor for each exploration period (minimum work and expenditure);
iv. the service fees payable by the contractor;
v. the conditions under which the PSC can be terminated;
vi. the rights and obligations of the contractor in relation to conduct, liabilities and indemnities, local employment, reporting procedures, etc.;
vii. the rights and obligation of the Government;
viii. the requirements of the contractor in relation to the formulation of work programme, plans and budget; and
ix. terms relating to Government participation, production sharing and cost recovery.

The shortcomings of existing sector legislation are many and important, though this is be partly justifiable, as it was formulated more than 30 years ago, at a time when Kenya`s petroleum industry was relatively underdeveloped. The Petroleum Act was indeed enacted to increase the country`s attractiveness to international oil companies, by introducing PSCs as license type, moving away from the tax and royalty system, that was in used before the Act.

First, petroleum agreements, under the Act, are negotiated directly by the CS with contractors, on a first-come-first-served basis. No public auction or competitive bidding rounds are envisaged by the Act. The Parliament is never mentioned in the Act, and it is not mandated to ratify such agreements.

Besides, negotiating and signing PSCs, the CS has also supervisory and regulatory power over the sector, and no independent institution (a part from the NAFFAC) is established in order to balance such enormous powers.

Transparency and anti-corruption measures are also not included in the Act. Moreover, the confidentiality clause contained in the Model PSC prohibits disclosure of the signed PSCs.

With respects to environmental matters, the Act simply requires contractors to adopt "measures necessary […] for the protection of the environment and human life", but does not go into any further detail, nor does the Model PSC.

The same vagueness applies to local content provisions, as the Act only states that contractors should "give preference to the use of products, equipment and services locally available", whereas the Model PSC demands contractors to "where possible, employ Kenya citizens in the petroleum operations". However, no clear percentages are set, and also the term "local" remains undefined.

The rights of the host community in relation to the industry are not mentioned in the two documents.

With the regards to land access, the Model PSC states that the Government must make available to the contractor the land required for the operations. If such land is "Trust Land[20]", the Government must set it apart for the contractor. Compensation procedures for setting apart of trust land are provided by the Trust Land Act[21] (last revised in 2012). If it is "private land", the contractor is required to give 48 hour-notice to the owner, and is liable to compensate him for any damage provoked by the activities.

8.3 The journey towards a new petroleum regulatory framework

The rapid expansion of the industry in recent years, and especially since the discovery in 2012, has urged the necessity of designing new rules and institutions, able to address the new developments. This need has also been recognized by the GoK, and in 2013, supported by the World Bank (WB), the it engaged the American law firm Hunton and Williams (H&W), in order to conduct a review of the country`s petroleum legal framework, and provide guidance on how to align it with international best practices. The firm is an established partner of the WB, for which it conducted other analysis on different thematic.

In July 2013, H&W published its final report for Kenya, which contains several recommendations for the design of the new regulatory and institutional framework of the petroleum sector. The followings are among the key recommendations made by the consultants to the GoK:

[20] Land in Kenya was classified as Government, Trust, and Private Land. With the new Constitution of 2010, however, such categories are re-defined as Public, Community, and Private Land.

[21] However, the first time that Tullow Oil accessed land in Turkana was in 2011, when the new Constitution had already been enacted, and thus land already fell into the category of community land. Compensation procedures for loss of community land are to be established by the Community Land Bill, which has yet to be approved by Parliament (see Section 3.3 in this Chapter).

i. The GoK should retain the production sharing approach, but award PSCs through a public tendering regime, rather than through direct negotiation.
ii. The GoK should adopt the practice of publishing PSC
iii. The CS should retain his role of negotiating petroleum agreements, upon advice of NAFFAC.
iv. A new sector institution should be established, to play regulatory and supervisory roles over the sector.
v. The GoK should conduct a broad consultative process in order to determine the best revenue allocation formula (between governments and communities), before revenues actually start flowing.
vi. The Model PSC should require contractors to prepare and submit Environmental and Social Impact Assessments (ESIAs)
vii. Flaring of natural gas should be prohibited, except in prescribed circumstances.
viii. The existing land regulatory framework should be applied to the petroleum industry, expect to the extent that certain petroleum operations-related provisions are required.
ix. NAFFAC should be assigned the role of local content monitoring, and of issuing guidelines for implementation of local content plans.
x. The GoK should apply for EITI candidature.

Other recommendations provided by H&W include the introduction of R-Factor sharing regime, segmentation of the sector into upstream, midstream and downstream sub-sectors, and introduction of a Capital Gain Tax.

Soon after the report was published, the Government drafted a number of new sector policies, bills and regulations, that aim at reshaping the institutional and regulatory framework of the oil industry in the country. As we saw in the previous chapter, the World Bank has assisted the Government in the undertaking, first through its Extractive Industries – Technical Advisory Facility (EI-TAF), and then as part of the Kenya Petroleum Technical Assistance Program (KEPTAP).

The main pieces of legislation proposed by the Government in relation to the industry are:

i. National Energy and Petroleum Policy, 2015
ii. Energy Bill, 2015
iii. Petroleum (Exploration, Development and Production) Bill, 2015 (Petroleum Bill)
iv. Model Production Sharing Contract, 2015
v. Petroleum (Exploration, Development and Production) Local Content Regulations
vi. National Sovereign Wealth Fund Bill, 2014

For the majority of these documents, a first version was published by the Government in February 2014, and a second one in January 2015.

Delays in the legislative process

The Petroleum Bill seeks to replace the Petroleum Act, 1987 and will become the dominant legislation of the sector. Initially, the Bill was supposed to be brought to the Parliament by August 2012, but the deadline was then move to November 2013. However, in January 2014 the Principal Secretary of the MEP announced that, due to delays, the bill would have been presented to the Parliament before June 2014, and approved by October 2014 (HIS, 2014).

Several factors slowed down the process, including President Uhuru indictment by the International Crime Court (NYT, 2010), the terrorist attacks in Nairobi and Lamu (All Africa (i), 2015), and internal rivalries in the ruling coalition (HIS, 2014). The Constitution, 2010 set August 2015 as the deadline for the enactment of legislation in matters relating to energy and natural resources, however, by September 2015 most of these bills have yet to be tabled in Parliament. Kenya, however, is not the only country to have experienced this problem. In Ghana, the Petroleum Bill has yet to be approved, although the oil industry is more than seven years old there (Petroleum Economist, 2015). In Uganda, the Petroleum Act was enacted only in 2013, seven years after President Museveni announced the discovery (Independent, 2013).

8.3.1 New provisions included in the proposed legislation

The new legislations proposed introduce many and important institutional and regulatory changes for the petroleum sector, that generally seem to go in the direction indicated by H&W.

The institutional framework is enriched with two new sector institutions, established by the Petroleum Bill: the National Upstream Petroleum Advisory Committee (**NUPAC**), and the Upstream Petroleum Regulatory Authority (**UPRA**).

The NUPAC is an inter-ministerial committee, that seeks to replace the NAFFAC, from which it inherits the role of advising the CS on the negotiation of petroleum agreements with contractors. NUPAC Chairman and Secretary are the Principal Secretary of the Ministry of Energy and Petroleum (MEP), and the Director General of UPRA, respectively. Other members of the Committee are the: Attorney General, Chief Executive of the National Oil Corporation of Kenya (NOCK), Director General of the National Environmental Management Authority (NEMA), and Commissioner General of KRA. It composition is thus similar to the one of its predecessor, NAFFAC. Incidentally, the Petroleum Bill 2014 indicates NOCK Chief Executive as NUPAC Secretary, rather than the Director General of UPRA, stated in the last version of the Bill.

The UPRA is charged with regulatory, monitoring and enforcing roles over the upstream petroleum sector. It consists of a Chairman, appointed by the President, and a Director General appointed by the CS. Other members include the Principal Secretary of the MEP, and Principal Secretary of The National Treasury, and a boards (of five members) also appointed by the CS.

Within the proposed institutional framework, the CS is responsible for formulating sector policy and plans, negotiating, signing or revoking petroleum agreements (upon advise of NUPAC), supervising petroleum operations carried out under such agreements, and approving work plans and budgets submitted by contractors.

With regards to contract type and awarding, the new legislations provide for the retaining of the production-sharing approach, but require PSC to be awarded on the basis of competitive bidding rounds, rather than through direct negotiation with the CS. Nonetheless, direct negotiation is still envisaged when no bids are received at the end of the bidding rounds, or if the bids received do not satisfy certain criteria, and if no adequate data are available for the blocks. Parliamentary ratification of all PSCs is also required by the new legislation, in accordance to the Constitution.

A CGT, set at 5 per cent, is also introduced, and extended over the transfer of interests in PSCs, from one company to another.

The new legislations also deal with the issue of revenue sharing between level of governments and host communities. According to the formula proposed, National Government, County Government, and local community are entitled to: 75, 25, and 5 per cent of petroleum revenues, respectively. The local community` share shall be paid to a board of trustees established by the County Government in consultation with the local community.

In respect to revenue management, the new regulatory framework provides for the establishment of a National Sovereign Wealth Fund (NSWF), in which the totality of the National Government` share of revenues accruing from oil has to be deposited. The NSWF consists of three components: the Stabilization Fund, that will be used to address volatility in oil revenues, the Infrastructure and Development Fund, that will be used to finance social and economic development, and the Future Generation Fund, intended to address issues of inter-generational equity. The Fund is administered by a Council, that comprises of the President, and representatives from the National Treasury, MEP, Ministry of Mining, and Ministry Economic Planning, and the Attorney General.

With regard to environmental management, oil companies are required to uphold all relevant laws already in place. Flaring of gas and oil is prohibited, unless with prior authorization of the UPRA, in consultation with NEMA. When requesting such authorization, companies have to

demonstrate that no other alternatives are available to flaring. The new legislation also explicitly requires contractors to conduct an environmental and social impact assessment (ESIA) and submit it to NEMA. It also deals with abandonment and decommissioning, stating that the physical and ecological conditions of the area should be restored, before abandoning it.

In terms of land access for upstream petroleum operations, the existing regulatory framework for land is made applicable to the industry. Moreover, contractors that wish to enter upon any land, have to seek the prior consent of its owner. Nevertheless, if an agreement between the parties is not reached, the CS may apply to the National Land Commission to proceed with compulsory acquisition of that land.

New provisions of transparency and accountability are also provided for. In particular, the CS is tasked with formulating a framework for reporting, transparency and accountability. Such framework shall include the publication of all petroleum agreements, revenues, and other relevant data and information on the sector (payment types, production volumes, transfer of revenues between National and County governments, and communities, and contractors contribution to county government and local communities). It is worth noting that the first version of the National Energy and Petroleum Policy (2014) urged the Government to implement the EITI "as a demonstration of its commitment to good governance". However, the reference to the EITI has been removed in the last version of the policy (2015), which only requires the Government to "undertake the requisite process of ensuring transparency and accountability" in the industry, same as in the Petroleum Bill.

Local content is defined in the new legislation as "the added value brought to the Kenyan economy from petroleum related activities through systematic development of natural capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits." Contractors are required to prepare long term and annual local content plans, before engaging in upstream operations, and submit it to UPRA. The general plan should include sub-plans regarding: employment and training, technology transfer, succession plans for position not held by Kenyans, etc. The CS is charged with making regulations on local content, while UPRA is responsible for the monitoring and enforcement. The UPRA should also establish a Local Content Development and Monitoring Unit. There are also delineated the minimum levels of local content to be attained over the project lifespan, which range from 10-30% at the beginning of the PSC, to 80-100% by the end of the 10th year.

Finally, the legislations deal with community rights, stating that communities in producing regions have the right to: a) be informed prior to the conduction of upstream petroleum

operations; b) adequate compensation for land loss and environmental damage; c) be educated and sensitized on upstream petroleum operations; and d) participate in the design of CSR projects to be implemented within their county.

8.3.2 Strengths and Weaknesses of the Proposed Legislation

The proposed legislations contain a number of provision that can significantly improve Kenya`s chances to achieve good governance of the petroleum sector.

In the field of contract awarding, the shift from direct negotiation to competitive bidding rounds is a major step forward, in multiple respects. First, the introduction of competitive procedures can mitigate the effect of information asymmetries between the government and oil companies, and ensure that the final result of the auction reflects the actual value of the Block. In addition to improving its efficiency, bidding rounds also reduce the scope for corruption in the award process. The inclusion of parliamentary ratification for all petroleum agreements is another step toward transparency.

The establishment of a Sovereign Wealth Fund (SWF) can facilitate sound management of future revenues, by ensuring economic stabilization, earmarking of resources for future development, and achieve inter-generational equity (Bacon and Tordo, 2006).

Introduction of new transparency provisions, including mandatory disclosure of petroleum agreements and revenues, represents another welcome move towards good governance of the sector.

The clearer definition of local content provided, and the delineation of contractors` requirement in relation to local employment and other benefits can help ensuring that communities are able to seize the opportunities that arise from the industry. At the same time, the introduction of the right for communities to be compensated for loss of land, and to be informed prior to the conduct of the operations adds some protection from the threats posed the industry at the local level.

In general, the Government seems to have accepted the majority of the recommendations included in the report produced by Hunton and Williams (Table 1).

However, there are also several weaknesses present in the new legislations.

Although the establishment of two new sector institutions, NUPAC and UPRA, better allocates sector roles and responsibilities, a number of shortcomings risk to hinder their ability to exercise their respective functions. Firstly, the NUPAC is relegated to a merely advisory role, despite the level of expertise contained in its body. Furthermore, the possibility for the CS to reject any advice given by the Committee further weakens its powers.

Secondly, the envisioned regulatory Authority (UPRA) is likely to encounter significant challenges in exercising its functions. This is partly due to the fact that its role is confined to post licensing operations, thus excluding it from any activities related to the awarding of licenses to contractors. Moreover, the composition of the Authority considerably dampens its independence, since both the Director General and Board are appointed by the CS. Finally, some of the responsibilities of the Authority overlap with those of the CS, especially with regards to the supervision of the exploration work conducted by a contractor under a petroleum agreement.

If established in the proposed form, the Authority independence is far from guaranteed, and risks to be reduced to a department of the CS. Thus, the potential for corruption and rent-seeking remains considerable.

In Uganda, where oil was discovered in 2006, the Government has undertaken the same effort of the GoK, and designed a new regulatory and institutional framework for the sector[22], with support from the Norwegian Agency for Development Cooperation (NORAD), as part of its Oil for Development (OfD) programme. The new laws enacted establish three new institutions for the upstream industry (see next page), which was previously entirely in the hands of the Ministry of Energy, as in Kenya. Ugandan new institutional framework appears affected by the same problems of the Kenyan one. For instance, the Minister has mandate to appoint the Executive Director of the Petroleum Authority – the equivalent of Kenya`s UPRA – which is supposed to be an independent body. Moreover, the Minister can give directions to the Authority with regards to "policy to be observed and implemented." On a better note, members of the Board of the Authority must be approved by the Ugandan parliament, upon indication from the President.

With regards to transparency, even though the new provisions represent an improvement from the status-quo, no mention is made in the legislations of the EITI. The first draft of the National Energy and Petroleum Policy (2014) explicitly urges the Government to implement the EITI "as a demonstration of its commitment to good governance". However, the reference to the EITI has been removed in the last version of the policy (2015), and never included in the Petroleum Bill.

Finally, no clear compensation regime is delineated, and the delays in approving the Community Land Bill (see next section) further complicate land management within host regions.

[22] http://www.norad.no/en/front/countries/africa/uganda/

Institutional landscape for the Kenyan Upstream Petroleum Sector

Ministry of Energy and Petroleum

Roles

- Policy-making
- Monitoring

Main functions

- Negotiating PSC
- Licensing
- Supervise operations
- Develop and review policy

NUPAC

Roles

- Advisory

Main functions

- Advise the Minister on upstream operations
- Advise the Minister during negotiation of PSC
- Participate in evaluation of bids received

UPRA

Roles

- Regulatory

Main functions

- Regulate upstream operations
- Promote capacity building
- Enforcing laws
- Enforce HSE standards
- Monitor and enforce local content requirements

NOCK

Roles

- Commercial

Main functions

- Participating in exploration activities in Kenya
- Facilitating marketing of Kenya`s exploration blocks

Institutional Landscape for the Ugandan Upstream Petroleum Sector

Directorate of Petroleum (in Ministry of Energy)

Roles

- Policy-making
- Monitoring

Main functions

- Licensing
- Issuing petroleum regulations
- Negotiating PSCs
- Approving field development plans

Petroleum Authority of Uganda

Roles

- Regulatory

Main functions

- Monitoring and regulating petroleum operations
- Proposing sector regulations
- Assisting in negotiating PSCs
- Ensuring HSE standards

National Oil Company

Roles

- Commercial

Main functions

- Managing business aspects of state participation
- Developing expertise in the industry
- Administering contracts
- Proposing new petroleum ventures (locally and internationally)

Fig. 8.2 Comparison of the Kenyan and Ugandan institutional framework of the oil industry. Personal elaboration

Hunton and Williams – Main Recommendations to the Government of Kenya

Domain	Recommendation	Government response	
Licensing Regime	• To adopt a public tendering regime for contract award	√	
Fiscal structure	• To retain the production sharing approach	√	
Sector roles and responsibilities	• The Ministry should be in charge of negotiating petroleum agreements, advised by a sector institution (NAFFAC)	√	Rather than assigning this role to NAFFAC, the Bill establishes a new institution for this purpose (UPAC)
	• To establish a new entity (reporting to the Ministry) responsible for assessing contract compliance	√	The bill establishes UPRA with such role
Revenue allocation	• Conduct a broad consultative process to determine the best approach to allocate petroleum revenues	X	Even though a revenue sharing formula has been introduced, not consultative process has been conducted
Tax matters	• Introduce a Capital Gain Tax	√	Introduced in the 2014 Finance Act
Environmental matters	• Introduce as a contract requirement the preparation and submission of ESIAs	√	This provision is included in the new model PSC
	• Explicit prohibit gas flaring, except in prescribed circumstances	√	
Land rights	• Adhere to the applicable land laws, except when petroleum operations-related provisions are required	√	

Local Content	• NAFFAC should be assigned the role of local content monitoring, and empowered to develop guidelines for implementation of local content programs	√	This function has been assigned to UPRA
EITI	• To join the EITI	X	
	• To publish PSCs	√	
	• To publish as much petroleum information as is feasible	√	
√ = included in the new legislations X = not included in the new legislations			

Table 8.1 Recommendations by H&W and response by the GoK. Personal elaboration

8.4 Land Policy and Regulations in Kenya

In addition to specific sector legislation, there are several other laws and policies that are equally important in relation to the industry (for instance, those that concern public finance, environmental management, access to information, etc.). Provisions on land ownerships, management and administration can play a central role in ensuring that the development of the industry does not lead to land-related conflict in the host regions.

Kenya has lacked a single and clear land policy since independence (Odote, 2014). This has resulted in various problems, such as fragmentation, disparities in land ownership, deterioration in land quality, and tenure insecurity. The failure to build a comprehensive framework for land ownership and management has led to over-centralized land administration, lack of governmental accountability, protection of illegally-acquired property rights, and inequitable access to land (Land Policy, 2009). Customary land rights, and traditional resource management institutions have also been largely ignored by colonial and post-colonial administrations. Furthermore, there has been a widespread abuse of compulsory acquisition procedures, resulting in illegal allocation of land, without regard of the public interest (ibid.).

In February 2004, Kenya began the formulation of its first National Land Policy (NLP), which was finally approved in June, 2009. In the foreword, former Ministry of Land, James Orengo,

describes the achievement as "a hall mark of the rare sense of dialogue and collaboration between the Government and the Citizenry in tackling the most emotive and culturally sensitive issue in Kenya." A main provision of the NLP is the replacement of the former categories of government, trust, and private land with state, private, and community land. Community land is vested in communities, identified on the basis of ethnicity, culture or similar community of interest. All unregistered community land shall be held in trust by county government on behalf of the communities. The policy also states the necessity to recognize and protect customary land rights, which had been largely neglected by previous administrations.

A National Land Commission (NLC) is established by the NLP, to manage public land on behalf of the State, establish a register of all lands in the country, and exercise the powers of compulsory acquisition and development control. The NLC is also charged with the formulation of the legal and administrative reforms needed to facilitate implementation of the NLP.

With regards to land access for investment purposes, the Policy suggests the Government to "acquire all land on which mineral resources have been discovered before allocating such land to interested investors", in order to facilitate access to that land, and prevent exploitation of local communities and environmental degradation. It also encourages the Government to devise and implement participatory mechanisms for compensation, in case of loss of land and related non-renewable natural resources.

Following approval of the NLP, three land-related bills have been passed by the Parliament on April 2012: the Land Act, the National Land Commission Act, and the Land Registration Act.

At the same time, a Task Force was set up, under the Ministry of Lands, to work on the Community Land Bill (CLB), which is the first piece of legislation directly addressing community land in the country. A first draft of the CLB was published in November 2013, but something unusual happened in that occasion. Instead of releasing the last version of the Bill, the one that circulated was a previous draft, dated May 2013, which did not include additional inputs from the Ministry of Lands, the National Land Commission, and other stakeholders (Standard (i), 2013). As a result, the bill was eventually not tabled in the Senate, and the Task Force resume the work. In April 2014, the Senate Lands Committee announced that it was finalizing a new draft of the CLB, which was later published in October 2014. A public hearing on the bill was conducted in December 2014, in Nairobi, attended by members of the Senate Land Commission and civil society organizations (Natural Justice (blog), 2014). Nonetheless, as of today, the CLB has yet to be presented to Parliament, and the deadline set by the Constitution for the enactment of the Bill (August 2015) has just passed (All Africa (ii), 2015).

BOX 2

Tullow`s reaction to the CLB

The release of the CLB, 2013 by the Government was received with strong opposition by Tullow Oil. In February 2013, the company submitted a 19-pages long document to the Task Force, containing its comments on the Bill. Such document has not made public, however, a copy was obtained from a CSO for the purpose of this study. Even though it characterize itself as “generally supportive of the Ministry`s considerable efforts to formulate this Bill”, Tullow Oil included several and important criticisms in its comments.

First, the company stresses the importance of the sanctity of the contracts, signed at a time when “Kenya`s upstream petroleum industry was not as vibrant” and when there was no legislation on community land. It then highlights the remarkable risk that the company had to bear, by investing in the country despite the level of uncertainty present. It thus argues that provision of the CLB should not have retrospective effect.

Secondly, the company recommends that priority should be given to already existing laws, such as the Petroleum Act, 1986 and the Land Act, 2012, though these do not really apply to community land.

Finally, Tullow Oil argues that the CLB 2013 may limit the Government ability to exercise compulsory acquisition for purposes of petroleum operations, especially in light of the infrastructural development, and the future production operations, that will require access to land over long periods (20 years at least).

Tullow`s move against the proposal spurred some reaction from the civil society. The Director of the Economic and Social Rights Centre, Odindo Opiata, said to the media that the company`s argument about the sanctity of the contracts was a recipe for impoverishment of local communities. A legal advisory of the former Turkana County Council, Ekuru Aukot, commented that “contracts can be invalidated or re-negotiated” in order to safeguard constitutional land rights of the locals.

A few weeks after Tullow submitted its comments, Ruth Nyambura, from the African Biodiversity Network, posted her reaction on Twitter, saying: “Why on Earth is Tullow Oil giving recommendation and proposed wording on Kenya`s community land bill?” and

8.5 Sector Transparency

The demand for transparency in the contracts initially came from Turkana leaders. In May 2012, Member of the Parliament (MP) for Turkana South, Josephat Nanok (currently, the Governor of Turkana County), said to the media: "The license exploration contracts have never been shared with anyone. What we are still insisting on, is that the Energy Minister should declare publicly what is in the contract they have signed with the exploration companies" (Capital FM (iii), 2012) The call was reinforced by former Ministry of Justice, Martha Karua a few months later (Capital FM (iv), 2012).

In July 2013, an article on the Business Daily reported that an IMF team was denied access to mining agreements signed by the GoK (Business Daily Africa (i), 2013). In August 2014, during a conference at the Brookings Institution, Ian Gary from Oxfam America was able to ask President Kenyatta whether it was his intention to disclose petroleum agreements in his country. In that occasion, the President unambiguously answered "Absolutely!" (GOXI, 2014).

Nonetheless, none of the PSCs signed by the Government of Kenya has been published, as of August 2015.

Moreover, Kenya is neither a compliant nor a candidate country for the EITI, despite numerous actors, including the British High Commissioner to Kenya, and even some mining companies, have encouraged the Government to join the initiative (Platts, 2014; BaseTitanium, website).

A search on the official records of the National Assembly shows that in 2009, when no oil was found yet in Kenya, the Assistant Minister for Environment and Mineral resources was asked by a MP whether it was his intention to apply for EITI candidature. The Assistant Minister explained that an inter-ministerial committee was currently assessing the "desirability and feasibility of implementing EITI in Kenya". He concluding the session by stating "I promise that by next year we should be able to be members of the EITI." (Kenya National Assembly Official Records, 2009). Six years have passed, but nothing has changed since then.

The transparency movement in Kenya is still at its infancy stage. For instance, the Publish What You Pay coalition counts only three members in the country, compared to thirty-three in Uganda (Publish What You Pay, Website).

However, some civil society organization have tried to push the Government to make this step, but with disappointing results. In April 2013, the Kenya Oil and Gas Working Group (KOGWG) organized a conference in Nairobi, and invited various stakeholders to discuss how Kenya could join EITI in a timely fashion (KOGWG, website). A representative from KOGWG well recalls that time: "When we did that meeting, the Government let us down. We asked them to come a

month before, sent letters and made calls, but not a single representative [from the GoK] showed up. So we ended up talking amongst civil society organizations. I am still angry for that." (rep. of KOGWG, pers. comm, 2015).

After President Obama`s visit to Kenya on last July, the White House published the following statement on its website: "The Government of Kenya commits to implementing the Extractive Industries Transparency Initiative (EITI) domestically and to identifying and enabling an EITI implementation focal point within the government within six months." (White House, 2015).

On the other hand, Tullow Oil voluntarily published all its payments to both National and Country Government, with a level of detail that some consider unprecedented. As the company explained, "This information is being released as part of our commitment to ensure that there is transparency around our payments to governments in the countries in which we work" (FT (i), 2014). Tullow has also been on record saying that they would be in favor of disclosing the PSCs that they signed with the GoK, as they did in Ghana (KOGWG, 2014). The company is also a corporate support of the EITI since May 2011 (Tullow Oil, website).

8.6 Kenyan Civil Society and Oil

The presence of a strong, capable and coordinated civil society, and its ability to participate in conversation regarding resource extraction, are crucially important factors, in ensuring good governance of a sector that has been rationally veiled in secrecy, and exclusively managed by political elites and large corporations.

In recent years, there has been an upsurge in the number of NGOs (Global Witness, Transparency International, Revenue Watch, Natural Resource Governance Institute, etc.) that are chiefly concerned with extractives. Global civil society coalitions have also emerged, as for instance the Publish What You Pay, founded in 2002 by Oxfam, Transparency International, Save the Children, and others. A primary objective of the EITI, as stated by its proponents, is indeed to "empower civil society to hold government accountable for the management of extractive resources." (Drilling Down).

The emergence of the oil industry in Kenya has been accompanied by the formation of two coalitions of civil society organizations, that are exclusively concerned with the sector. These are the Kenya Civil Society Platform on Oil and Gas (**KCSPOG**) and the Kenya Oil and Gas Working Group (**KOGWG**). In the next sections, I will present these two alliances, and their main features and scope, to then look how, and to what extent, the two have been able to find a space in the governance of the sector.

KCSPOG was officially launched in February 2013, with the mission to work towards "A Kenya where there is equitable and sustainable development through the efficient and transparent management of oil and gas resources" (KCSPOG, website). Currently, KCSPOG counts 13 members, including international and national NGOs, media organizations, and CBOs from two extractive regions (ibid.).

According to his coordinator, the main objective of the platform is to "build a collective voice among the civil society", in order to increase its advocacy power over the extractive sector. "If you come together, you have a stronger voice. If you keep doing piecemeal things, you are less likely to be effective in your advocacy. Even the Parliament wants a collective voice, we should be able to present ourselves as a common front." (KCSPOG Coordinator, pers. com.).

Thus far, the main product of the efforts made by KCSPOG has been the "Setting the Agenda for the Development of Kenya`s Oil and Gas" report, in July 2014 (KCSPOG, 2014). The document presents the Kenyan civil society`s perspective on how the extractive industries should be managed in order to contribute to sustainable development in the country, and concludes by making recommendations to the Government, Parliament, oil companies, donors, civil society, and the media. It identified some critical areas for civil society engagement, namely: institutional framework, petroleum revenue management, transparency and accountability, local content, land and environmental rights. The report was then presented during a Chatman House conference titled "Kenya's Emerging Oil and Gas Sector: Fostering Policy Frameworks for Effective Governance" held in London in October 2014. The platform coordinator considers the undertaking as "very successful", explaining that "more organizations are now talking about the issues we highlighted in the report, as transparency, local content, land regulations, etc."

KCSPOG is also trying to support the formation of county level platforms, and providing CBOs information about issues that are happening in Nairobi, in order to "promote conversation between county and national level" (KCSPOG Coordinator, pers. com.). At the end of April 2015, a two days training was held in Lodwar (Turkana County), by the chairman of the KCSPOG, and a representative from the community-based organization Friends of Lake Turkana,. The training was attended by members of Turkana CBOs, and its programme encompasses issues ranging from water and forests, mining and oil legislation, land issues, and devolution.

The Kenya Oil and Gas Working Group (**KOGWG**) is a "public interest network advocating for sustainable development and good governance of the nascent oil and gas development sector in Kenya" (KOGWG, website). It was formed in 2009, long before the oil discovery, by an initiative of the Community Action for Nature Conservation (CANCO), in order to "provide a platform for

constructive stakeholder and community engagement" and to facilitate "knowledge management in oil and gas development." (rep. KOGWG, pers. com.). The network receives technical and financial support from the World Wildlife Fund (**WWF**). Its geographical scope covers the entire Coastal Region, which includes five counties, where both oil and minerals are being currently explored or extracted. So far, the KOGWG has organized three National Civil Society stakeholder meetings on oil in gas (2009, 2011, 2012), and established three Community oil and gas network nodes in Lamu, Kilifi, and Tana counties (rep. KOGWG, pers. com.). In 2013, KOGWG has conducted workshops and training, aimed at enhancing capacity of civil society and media in the coastal region to engage in extractives, and conducted several community outreaches. According to its members, the Group acts as a vehicle for sharing information between the National, County and Community level, organizing seminars, sensitization sessions, and distributing fact sheets.

Other Kenyan civil society organizations concerned with the sector are the Institute for Law and Environmental Governance (**ILEG**), the Institute of Economic Affairs (**IEA**), and the African Center for Open Governance (**AfriCog**), all of which have implemented project or conducted research on the industry (IEA, 2014; AfriCog, 2014; ILEG, website).

8.6.1 Involvement of the Civil Society

According to the CSOs interviewed, the national government has been considerably reluctant in involving the civil society in the governance process of the oil sector.

As one representative of a Kenyan NGO explains: "there is a feeling within the national government, that civil society is against oil, and therefore it doesn`t want to listen our opinions." (rep. NGO, pers. com.). With regards to the policy and regulatory framework, the Government did not seem to be concerned with receiving inputs from the CS. "What happens with policies and bills", says a representative from the KOGWG, "is that the government engage us only at the end, when decisions have been already taken".

A member of the KCSPOG expresses similar dissatisfaction: "Last year, after we made our review of the Petroleum Bill, we found out that the bill they [the government] sent us was not the right one. So after all the efforts, we had to start from the scratch."

Moreover, engagement seems to be largely dependent on personal relationships between members of the CS and government officials, as the coordinator of KCSPOG explains: "to be involved you need to have contacts within ministries and the parliament. […] it depends on how good is the network that you rely on to obtain information."

However, respondents believe that the situation is gradually improving, also due to external influence. A representative from KOGWG believes that “The WB is really pushing the government to involve us in the KEPTAP, but the government is still making some resistance.” KOGWG and KCSPOG represent the focal point of the project, in relation to the civil society.

There seem to be also some internal issues, that could affect national civil society`s ability to participate in the sector. Commenting on the presence of various civil society platforms on the industry, a representative from one of them says: “when you multiply, it`s easier for the Government to choose who to work with. […] Besides the two of us, there is even another platform that currently being set up.” A member of the other group, however, has a different, and more optimistic opinion: “we have different strands, they comprises mainly of policy analysts, consultants, and they are very good when it comes to legal and policy review. Our structure is very good when it comes to conveying that information to the person at the grassroots level […] we are quite complementary.”

A representative from an international NGO believes that competition between the “leaderships” of the Platforms and the Working Group exist already, and that it is already having some impacts. “They [KCSPOG and KOGWG] were supposed to prepare a list of CSOs that will represent civil society in KEPTAP, and send it to the government and the WB a few months ago. […] but they haven`t done it yet.”

Building the capacity of the civil society on the sector is also a crucial issue: “To me is worrying sometimes”, says a representative of an international NGO, “that you are in a meeting with government and oil companies, and you see people [from the civil society] that are only able to shout. […] There is a time to fight? Yes. But we also need to dialogue. And we need to understand what we are talking about. We need to do more trainings on the industry, otherwise, the effect is that the Government and companies will never take us seriously.”

Conclusion

This Chapter provided an analysis of the four governance areas that I identified as crucial for the national level, and we saw how each of them is affected by numerous and important gaps.

In the next, and final empirical chapter the focus will be on the local level, and the remaining three governance areas – Land Access, Stakeholder Engagement, and Local Content – will be analyzed, after an overview of the main events that marked the development of the oil industry in Turkana. As we will see, the governance dynamics triggered by the discovery in the region present even more challenges, and how relations between actors are largely conflictual rather than collaborative.

9. The unfolding of the oil industry in Turkana County

This chapter focuses on the development of the oil industry at the local level, in Turkana County. First, an overview of the main events that have characterized the expansion of the sector in the region will be provided.

Subsequently, three main aspects of the industry will be addressed in the Chapter: 1) Land Management 2) Stakeholder Engagement, and 3) Local Content. These areas have been identified as the most contentious in Turkana through extensive review of media articles and several interviews with key informants (see Chapter 3 for an explanation of how these areas have been identified). The paragraph on Stakeholder Relationship is sub-divided into three sub-paragraphs that address the relationship between Tullow and local authorities, communities, and civil society respectively. For each area, I will describe the formal and informal rules that are in place, the process through which they evolved, and the impact that they are having on the ground.

9.1 Timeline of events

On March 25, 2012, just 18 months after drilling its first well in Turkana, Tullow Oil discovers oil in Ngamia-1, located in the Lokichar basin of Turkana County (Forbes (i), 2012).

A few days after the discovery at Ngamia-1, representatives of the Turkana County Council (TCC) hold a press conference in Nairobi, accusing the Government of having given out (community) land where Ngamia-1 is located, without consulting the TCC, which is the custodian of that land (Capital FM (ii), 2012).

A week after, in April 2012, MPs for Turkana South and Turkana Central, Josephat Nanok and Ekwee Ethuro, hold another press conference in Kenya`s capital city, calling the Government to make public all contracts that it signed with oil companies, in relation to the Blocks in Turkana County (Capital FM (iii), 2012).

On June 21, 2012,Ethuro issues a public petition against the National Government, ”on behalf of citizens residing in Turkana County”. He presents a series of requests to the Ministry of Energy and Petroleum, such as disclosing the contract (for the second time), make EIAs public, clarifying how land for Ngamia-1 was leased out, etc. (Kenya National Assembly Official Record, 2012; Business Daily Africa (i), 2012)

Two days later, a two-day meeting is held Lodwar, attended by members of the TCC, representatives from Tullow Oil and the Ministry of Energy, and more than 500 Turkana

residents[23]. During the meeting, members of the TCC and communities make several accusations to Tullow. They claim that the company is using the Provincial Administration to access land, and intimidate communities. Tullow representatives are accused of behaving arrogantly, disrespecting local authorities, and importing workers from other regions.

In March 2013, the Turkana County Government (TCG) take the place of the Turkana County Council. Josephat Nanok, former MP for Turkana South, becomes the first Governor in the history of Turkana (Capital FM (i), 2013). County Executives Committees[24] (CECs) were appointed in June 2013 (Kenya Gazette, 2013). Sub-county and ward administrators will only be appointed several months later, around beginning of 2014. As of August 2015. village administrators had not been appointed yet (rep. TCG, per. com.).

On the 28th of October, 2013, Tullow Oil suspends all operations in Turkana County, after that hundreds of residents stormed some of the company`s camps, accusing it of excluding Turkanas from employment and business opportunities (All Africa (ii) , 2013). At the head of the protest are MP for Turkana East and Turkana South, Nicholas Ng`ikor and James Lomenen. Governor Nanok immediately distances himself from the protest (Business Daily Africa (ii), 2013), and a few days later Interior Cabinet Secretary, Joseph Lenku, announces that the National Government is investigating MP Lomenen for inciting communities against an investor (Tullow Oil) (Nation (i), 2013). He is also accused of having vested interest in tenders awarded by Tullow, and to have organized the demonstration for his own gain (Shitemi, 2013).

Two weeks afterwards, On November 7, 2013, Tullow Oil resumed the operations, after signing a Memorandum of Understanding (MoU) with the Ministry of Energy, where it agrees on a number of undertakings, such as: opening three Community Resource Centers in Lodwar, Lokichar and Lokori, establishing formal grievance resolution mechanisms, doubling its social investment budget to USD 2 million, and revisiting its local content procedures (Business Daily Africa (iii), 2013; Reuters, 2013). The company also increases the size of its social performance team up to almost 40 members (Tullow Oil, 2013).

In August 2014, another protest is staged at one of Tullow`s rig. Workers complain over inconsistencies in wages among different sub-contractors (Tullow Oil, 2014). A few weeks later, on the 15th of August, a meeting is held in Eldoret, between Tullow Oil, Ministry of Energy and Petroleum, and a few Turkana leaders. The parties signs a Memorandum of Understanding

[23] https://gregoryakall.wordpress.com/2012/07/07/turkana-residents-doubt-accountability-in-tullows-oil-exploration-deal/

[24] The expression CEC formally refers to the Governor, Deputy Governor, and the rest of the executives. However, CEC is generally used in Kenya to indicate the head of a specific department of the Executives (e.g. Energy, Finance, etc.), and this is the solution chosen for this report.

(MoU), in which Tullow agrees to several pay raises and new allowances (rep. Tullow Oil, pers. com.).

In November 2014, due to a collapse of the oil price, Tullow Oil announces that it would have cut its exploration budget for 2015 to USD 300 million, from USD 1 billion (Bloomberg, 2014). In January 2015, the company slashed exploration expenses by another 30%, to USD 200 million (Nation (i), 2015).

Also in January 2015, the TCG enacted the Turkana County Finance Act, 2014 which significantly increases land rates for exploration companies, and introduces several other fees and charges that concern the operations.

On April, 29, 2015, the DfID-funded Kenya Extractive Industries Development Program launches its Community Engagement Pilot Project in Turkana County, implemented by Adam Smith International, Oxfam, Danish Demining Group (DDG) and Cordaid.

In July 2015, Tullow posts its half-year results, reporting revenues down by 35%, and gross profit plummeted by 50% (CityAm, 2015).

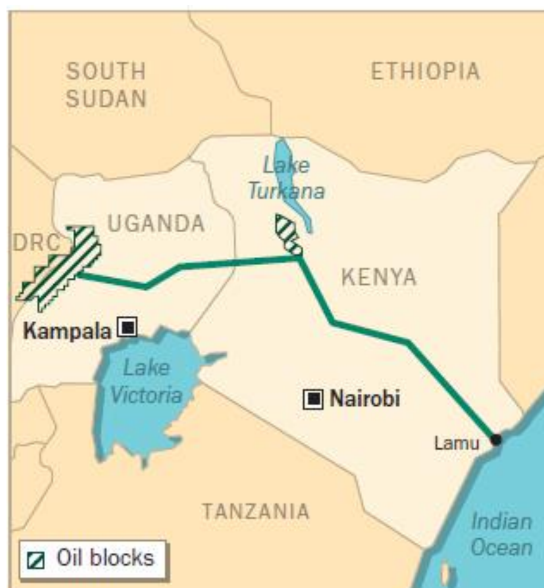


Figure 9.1 Pipeline route agreed by Kenya and Uganda. Source Oil in Uganda, 2015

On August 10, 2015, the Kenyan and Uganda governments issue a common statement, announcing that the two countries have agreed on the construction of a pipeline, that will run for about 1,500 kilometers, from Uganda's Hoima district through the Lokichar basin in Turkana County, and to the Kenyan coastal town of Lamu. The project is expected to be completed by 2020, when production should start, and will costs around USD 4 billion. The IFC has pledged USD 600 million for the project.

A few days later, the International Finance Corporation announces its intention to invest USD 50 million in oil exploration and development in Turkana, by entering in an equity subscription agreement with Africa Oil, Tullow`s partner in Block 10BB, 13T, and 10BA (Business Daily Africa, 2015).

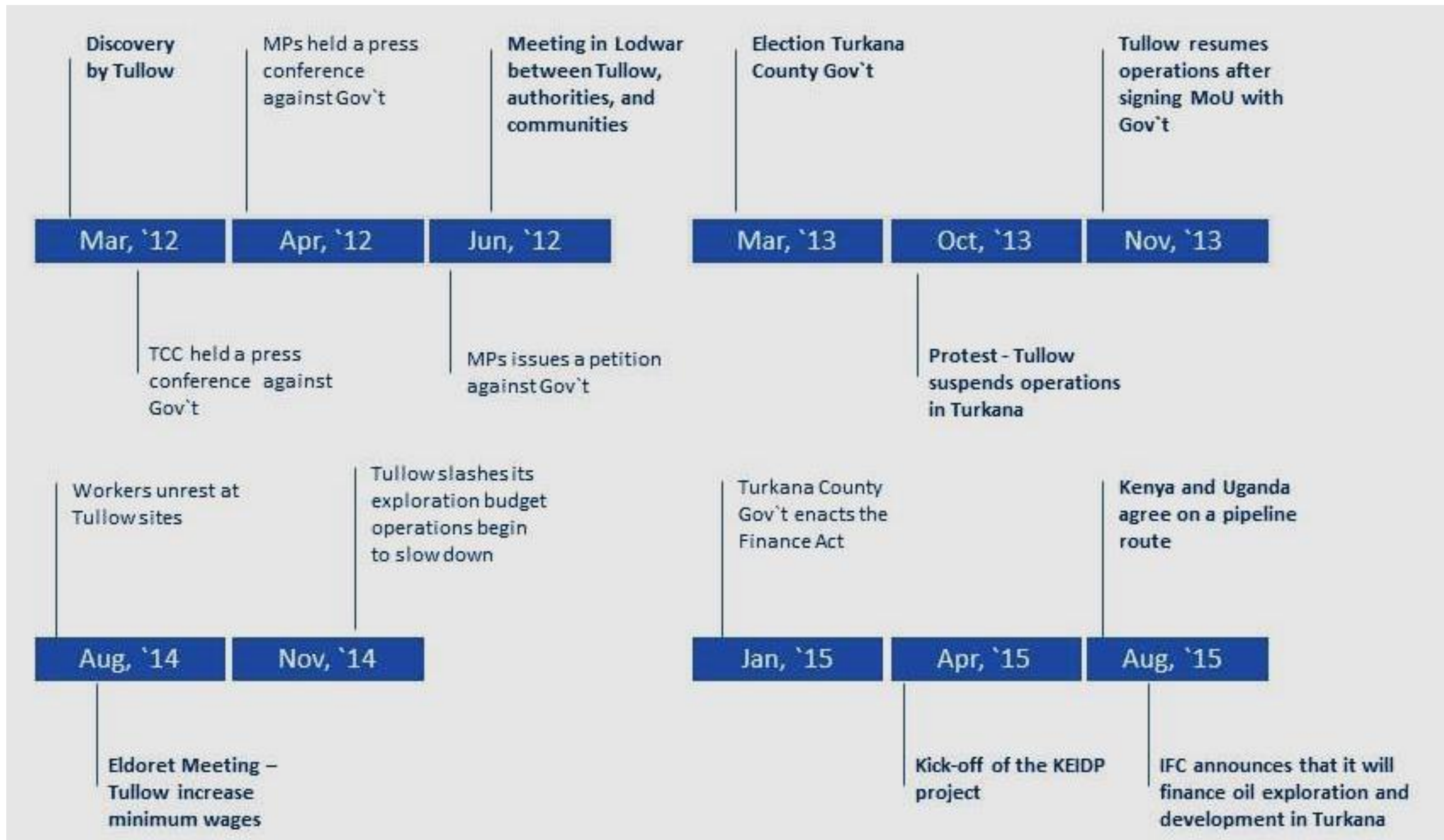


Figure 9.2 Timeline of the Oil Industry in Turkana County. Personal Elaboration

9.2 Areas of Governance

9.2.1 Land Access

Land has always been a thorny issue in Turkana (Oba, 1992), and the expansion of the oil industry in the region has further complicated the matter. Just a few days after the discovery, members of the Turkana County Council (TCC) held a press conference in Nairobi, accusing the Government and the Provincial Administration (PA) of having bypassed the Council in the allocation of land for exploration activities (Capital FM (ii), 2012) . "As the true custodians of the land where the oil has been found, we need to be involved in these processes", Eliud Kerio, Chairman of the TCC, told the reporters, "we would like to know how the land in Ngamia-1 area where oil has been discovered was sold, without the consent and involvement of the County Council of Turkana" (ibid.).

In order to access community land, Tullow and other companies have to apply for an entry permit to the local government (first to the TCC and, since March 2013, to TCG), that has to be renewed every year (rep. TCG, pers. com.). To obtain the permit, oil companies have to pay a fee, the amount of which has been drastically changed over the time.

In a meeting held on June 2012[25], in Lodwar, Tullow Oil Country Manager, Martin Mbogo, affirmed that the company paid KES 204,000 (EUR 1,800) to the TCC, as a land fee for Ngamia-1. In that occasion, the TCC challenged his statement, claiming that that payment was not related to land access, but to the extraction of materials, such as sand and morrum.

In a document, produced by Tullow, which I was able to obtain from the TCG, the company reports that it was paying a rate of KES 8,700 per acre for each of the camps opened when the TCC was in charge. By comparing the two figures, one would assume that Ngamia-1 covers an area of approximately 23 acres, which seems quite exaggerated[26].

A few months after the TCG took power, it considerably increased the land rate due to oil companies. First, the rate was set to KES 197,200 (EUR 1,700) per acre, an increase of 2000 per cent from the initial figure. Such increase, however, was not anchored in law, but only negotiated by the TCG and Tullow, which apparently did not pose any resistance (CEC Land, pers. com.)

In January 2015, however, the TCG enacted the Turkana County Finance Act, 2014 which prescribes taxes, fees and charges payable to the TCG, including those related to land access for petroleum operations. The Act establishes a rate of KES 1,000,000 per acre, for "temporary oil

[25] https://gregoryakall.wordpress.com/2012/07/07/turkana-residents-doubt-accountability-in-tullows-oil-exploration-deal/

[26] According to officers from the TCC Land Executive, camps occupy an area ranging from 7 to 13 acres.

exploration" permit, a 400% increase from the previous one[27]. A few days after the enactment of the act, Tullow called a meeting in Lodwar, inviting several members of the TCC, during which company representatives affirmed how the new land rate would have provoked a slowdown in the operations, especially in a scenario of low oil price. By the end of my research (Jun 2015) Tullow had not yet paid such figure for a permit, but from the document that I have obtained, it appears willing to do so.

Tullow has been often accused by the TCC to use the Provincial Administration in order to silence communities and gain access to their land (Capital FM (ii), 2012). The communities interviewed during my research seem to confirm this hypothesis. A woman from Village A describes how: "Tullow negotiated with Chiefs and DCs first, and then they all come to us. Initially, we were skeptical, because we didn`t know how we were going to benefit from this oil. But our leaders convinced us that we would have got many benefits. We have been cheated by both them and Tullow."

An elder from Village B explains that "Land was given out by our leaders, we didn`t have any say on that. When they organize forums here in the community, the decisions have already been taken." Finally, an opinion leader from Village C remembers how "Initially, we made a lot of resistance. Land is the most important precious asset that we have. But our leaders told us that only the Government has the right to exploit oil, and that it would have taken this land anyway. They convinced us to agree with Tullow."

A representative from the Provincial Administration seems to confirm this pattern: "first, communities were not believing that oil had been found, and so they didn't want them [Tullow]. But we conducted baraza[28], with people from Tullow, and communities were convinced to give their consent" (rep. PA, pers. com.).

Another element, that emerges from the interviews, is the practice of over-promising in order to gain access to land. All communities interviewed complain that they had been promised a number of benefits by Tullow Oil, generally related to education, water and employment. In Village B, respondents told me that Tullow pledged to build a fence around the village to protect it from raids, an hospital, and to provide employment opportunities for the youth, and cash assistance for the elderly. In virtually all the cases that I encountered during the research, most of these promises remained unmet, and communities were still very angry at the company.

Tullow`s land access procedures have been re-designed by the team of social performance managers that was hired by the company a few months after the protest occurred in October 2013

[27] The Act states Kshs 1,000,000 per lease, but this was a mistake made during its drafting.
[28] public meetings

(Tullow SP manager, pers. com.). The new procedure consists of three phases – Scouting Phase, Draft Staking Phase, and Final Staking Phase – each comprising of a number of sub-components (FIG 9.3).

The *Scouting Phase* begins with a request from the Geology and Geophysics department sent to the Land Access Manager, and involves the identification of engineering, environmental, cultural or security issues that might compromise the feasibility of the proposed site location.

If no "show stoppers" are identified, the procedure moves to the *Draft Staking Phase*, which comprises the application for a permit to the County Government, preparing a plan of community engagement, undertaking a socio-economic mapping of the area, and designing impact mitigation measures. During the *Final Staking Phase*, the stakeholder engagement team has to negotiate and reach an agreement, for temporary access to land, between Tullow and the community (Land Access Procedure for Exploration and Appraisal, internal document, Tullow Oil).

After such agreement is signed, a site ceremony is held, and the operations can eventually begin.

An interesting feature of the new guidelines is the introduction of community agreements for land access, documented in the form of Letter of Understandings (LoUs) signed by Tullow`s legal team and community leaders, prior to the commencement of the activities. The LoU formalizes the commitments of the company in relation to local employment, and "land access benefit projects". The latter, which can include the construction of a classroom or a hospital ward, have to be implemented within 6 months of the signed LoU. Previously, such agreements were not being formalized on paper (rep. Tullow Oil, pers. com.).

Tullow provided me with copies of two LoU signed with Turkana communities. The first, dated November 2014, shows that Tullow committed to construct a maternity ward and one classroom. In the other LoU, dated February 2015, Tullow agrees to assist the community with the construction of a dormitory at the community primary school.

The company, however, does not provide monetary compensation for loss of land, but only for damages to crops and properties (rep. Tullow Oil, pers. com.).

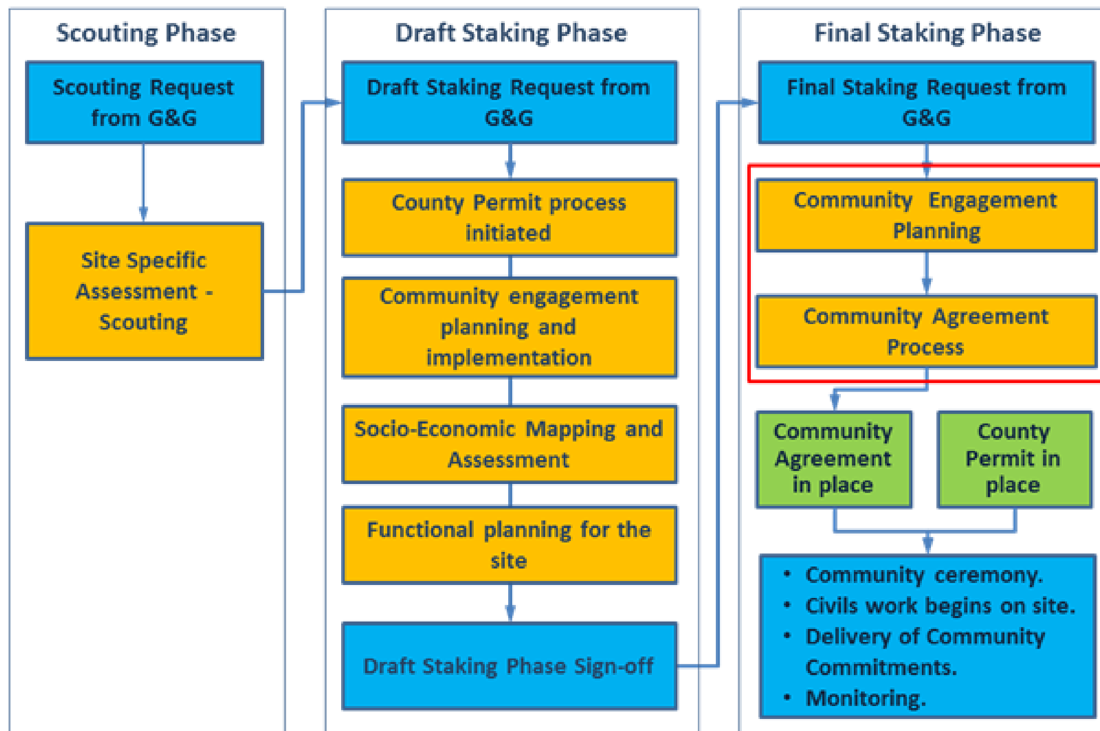
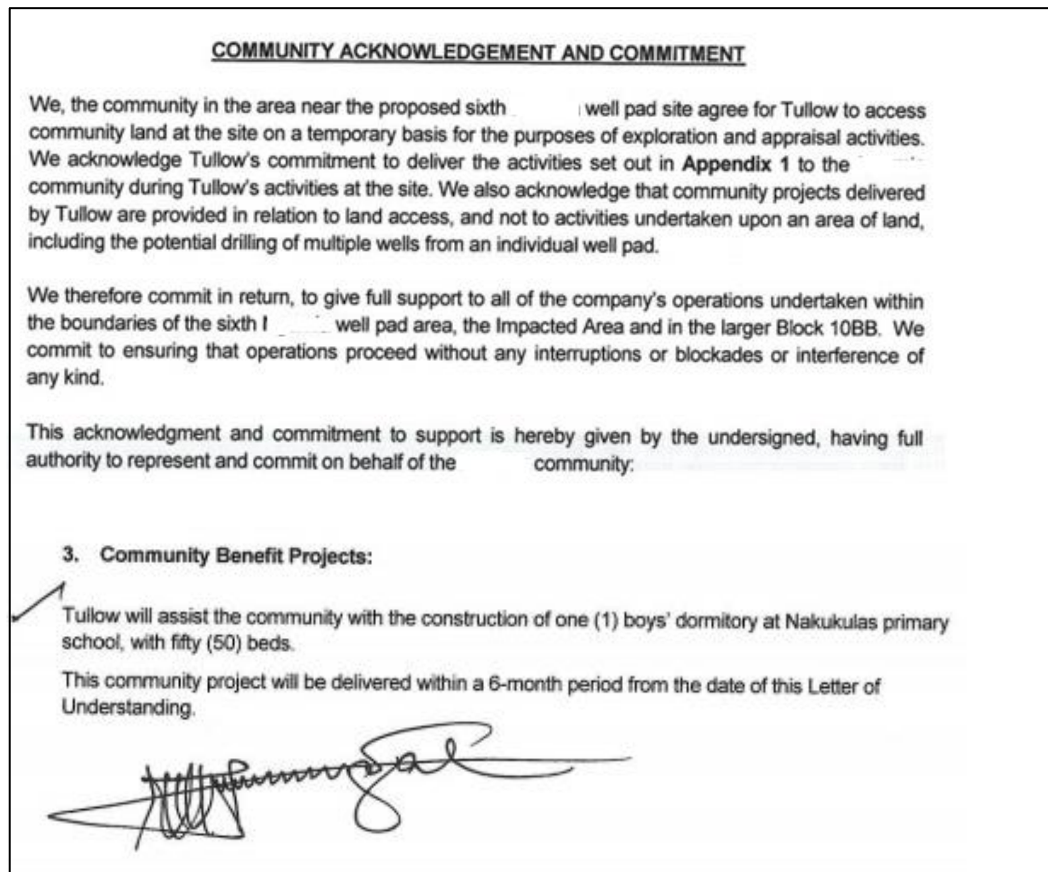


Figure 9.3 Tullow internal procedures of land access. Obtained from Tullow Oil



COMMUNITY ACKNOWLEDGEMENT AND COMMITMENT

We, the community in the area near the proposed sixth well pad site agree for Tullow to access community land at the site on a temporary basis for the purposes of exploration and appraisal activities. We acknowledge Tullow's commitment to deliver the activities set out in **Appendix 1** to the community during Tullow's activities at the site. We also acknowledge that community projects delivered by Tullow are provided in relation to land access, and not to activities undertaken upon an area of land, including the potential drilling of multiple wells from an individual well pad.

We therefore commit in return, to give full support to all of the company's operations undertaken within the boundaries of the sixth well pad area, the Impacted Area and in the larger Block 10BB. We commit to ensuring that operations proceed without any interruptions or blockades or interference of any kind.

This acknowledgment and commitment to support is hereby given by the undersigned, having full authority to represent and commit on behalf of the community:

3. Community Benefit Projects:

Tullow will assist the community with the construction of one (1) boys' dormitory at Nakukulas primary school, with fifty (50) beds.

This community project will be delivered within a 6-month period from the date of this Letter of Understanding.

Figure 9.4 Example (1) of LoU between Tullow and Community. Obtained from Tullow Oil

CONFIRMATION OF THE COMMUNITY BENEFIT PROJECTS TO BE DELIVERED ON BEHALF OF THE ENGOMO COMMUNITY

1. Community Projects

Tullow and the Community in the area of the Engomo exploration well site signed the Letter of Understanding relating to the Engomo well site on 10th August 2014. At the date of signing the community had not yet identified the community project that Tullow agrees to support on behalf of the Engomo community.

Tullow now commits to the following community benefit projects:

- The construction of a maternity ward at the existing health facility in Lowarengak, including 10 beds and sanitation facilities. On-going staffing, operation and maintenance of the maternity ward, and the supply of necessary equipment will be the responsibility of the Turkana County Government and not Tullow Kenya.

- The construction of 1 (one) primary school classroom and the supply of 40 desks and chairs at .

  This community project will be delivered within a 6-month period from the date of this signed Appendix to the Well Pad Letter of Understanding.

Figure 9.5 Example (2) of LoU. Obtained from Tullow Oil

Other oil land-related investments

Tullow is certainly not the only industry player interested in acquiring (leasing) land in Turkana.

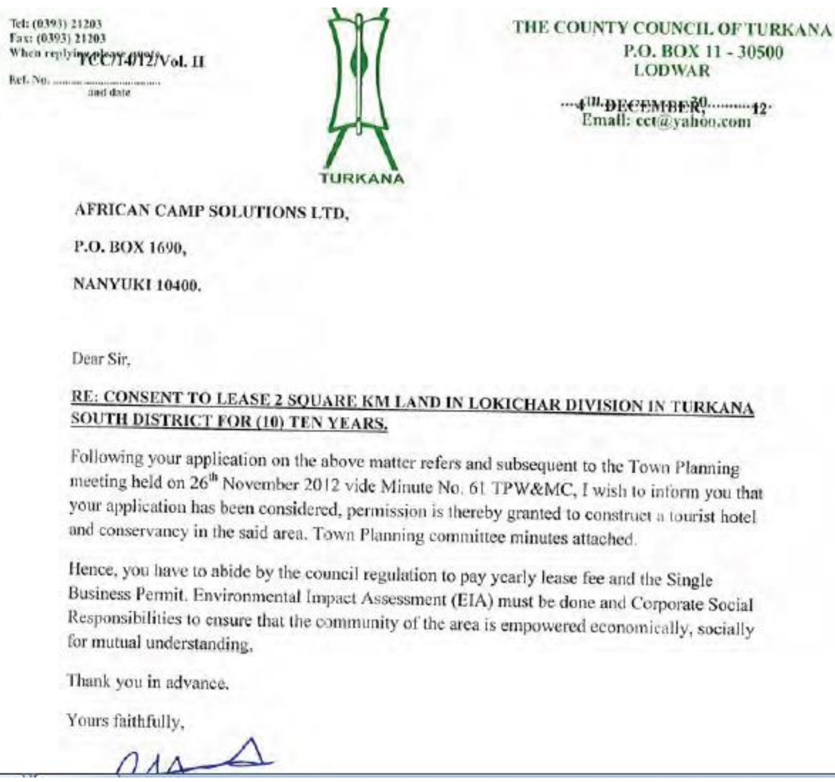
In April 2012, African Camp Solutions (ACS) applied for a leasing permit to the County Council, in order to build an "accommodation lodge, airfield and storage/workshop facility to service the oil industry in Turkana"[29]. Essentially, ACS wanted to establish a one-shop stop for the booming sector. The company committed itself to implement a number of projects as part of their Corporate Social Responsibility plan. These projects include: i) a Community Centre, located in Lokichar, for sharing information on the oil industry, jobs and other opportunities; ii) a Bursary Fund for academic and vocational training; iii) a Micro-Finance Scheme aimed at increasing the local supplier base for the oil industry; and iii) a Conservancy, located in Kapese, to be set up by Northern Rangelands Trust (NRT).

In a Council meeting held on November 2012, the Chairman of the Council affirmed that the project would have brought many benefits for communities, by creating employment and increasing the revenue base of the TCC. In December 2012, the TCC consented the leasing of 2 square km of land to ACS (Fig 9.6). The permit states that "Corporate Social Responsibility must be done to ensure that community of the area is empowered economically, and socially". It did not take long, however, before ACS got into the first troubles. In April 2012, community members have staged a protest on the location where ACS was building the camp, impeding to its workers to erect the fence. In the meantime, none of the CSR projects promised by ACS were

[29] This information are included in a Stakeholder Information Packaged submitted by ACS to representatives of the TCC. The document was obtained by a member of the Turkana civil society during the field research.

implemented, or even started. In February 2014, ACS transferred its lease to Tullow Oil, officially due to its inability to raise enough capital to proceed with the work (rep. Tullow Oil, pers. com.). During the opening ceremony, Tullow Deputy General Manager said: "Establishing this centrally located base will allow us to better support multiple operational work faces and improve our overall ability to manage what we and our contractors are doing on the ground".[30] Nonetheless, the move sparked strong criticism among the TCG and the civil society, which complaints how ACS deceived authorities and communities, and speculated on community land.

In another instance, an industry service provider, who has been working for Tullow Oil since the very beginning, constructed a warehouse in the Lokichar area, where to store vehicles and other equipment (All Africa, 2014). However, the TCG did not receive any request for permit by the company, and thus started to inquire how was land acquired (rep. TCG, pers. com.). It was then revealed that the company had obtained the land from a group who is believed to be closely associated with an area MP. In light of this, the TCG requested the company to apply for a permit, in line with county regulations



Tel: (0393) 21203
Fax: (0393) 21203
When replying please quote
TCC/T4/12/Vol. II
Ref. No. .... and date

TURKANA

THE COUNTY COUNCIL OF TURKANA
P.O. BOX 11 - 30500
LODWAR

4th DECEMBER, 2012
Email: cct@yahoo.com

AFRICAN CAMP SOLUTIONS LTD,
P.O. BOX 1690,
NANYUKI 10400.

Dear Sir,

RE: CONSENT TO LEASE 2 SQUARE KM LAND IN LOKICHAR DIVISION IN TURKANA SOUTH DISTRICT FOR (10) TEN YEARS.

Following your application on the above matter refers and subsequent to the Town Planning meeting held on 26th November 2012 vide Minute No. 61 TPW&MC, I wish to inform you that your application has been considered, permission is thereby granted to construct a tourist hotel and conservancy in the said area. Town Planning committee minutes attached.

Hence, you have to abide by the council regulation to pay yearly lease fee and the Single Business Permit. Environmental Impact Assessment (EIA) must be done and Corporate Social Responsibilities to ensure that the community of the area is empowered economically, socially for mutual understanding.

Thank you in advance.

Yours faithfully,

Figure 9.6 Approval to lease from TCC to ACS

[30] The quote is reported in a 2014 news brief produced by Tullow Oil and obtained from its Lodwar Resource Centre

9.2.1.1 Implications of land use change for Turkana communities

By their nature, extractive projects necessitate of significant amount of natural resources, such as land, water, construction materials (sand, morrum, etc.) and the like. Dispossession of land from indigenous and local communities is often at the center of extraction-related conflicts in producing regions. Even though petroleum operations are generally much less land-intensive than open-cast mining, the change in land use generated by the expansion of the industry can have profound consequences for host communities, particularly when their livelihood is strongly dependent on land. This is certainly the case for Turkanas, given that pastoralism represents their main occupation, and their fears resonated in national media outlets (Standard (i), 2012; Market Place, 2013)

Communities living in proximity of Tullow camps claimed that they have already been affected by the loss of land due to industrial activities. In particular, they say that the construction of fences around the camp have altered their migration routes and reduced the availability of grazing land. Furthermore, noise and vibrations produced by the drilling, as well as the increased traffic of cars and trucks, going back and forth from the camps to the towns, are all elements of disturbance for the livestock. During my visits at the camps, I could see how very few pastoralists were grazing their animals around the sites, confirming the communities` claim.

Moreover, the need to find new grazing zones has forced many pastoralist to move with their animals into the most insecure areas, closer to the borders with West Pokot, Samburo, and Baringo counties, all of which are – to a different extent – engaged in a conflict with Turkana over land and cattle. This trend has been reported also by the media, representatives from local CSOs, and other researchers.

Some, however, seem to be more skeptical of communities` claims. Even the CEC for Pastoral Economy shows incredulity. " People would still go in insecure areas, because land is more fertile there [around the borders]. I have not really seen the impact of oil on the pastoral economy. If there was people would have made noise." (CEC Pastoral Economy, pers. com.).

Members of the civil society, however, argue that county government officials seldom engage in visits to communities living around exploration sites, and therefore are largely unaware of their grievances, or "bury their heads in the sand to avoid problems."

Particularly interesting is the view of a sub-County Commissioner in Turkana. County and sub-county commissioners are part of the Provincial Administration, and thus representatives of the National Government. When I asked him about the impact that oil was having on pastoralist in Turkana, he said:

“I think it won’t affect them negatively. This is an alternative source of income, many things are happening, and the lifestyle of the community is going to change. Oil extraction have brought a new market for livestock, pastoralist will benefit more, and extraction comes with better infrastructure that will open up this area completely (better roads, railway, airstrip). I think the community will benefit more than when they had that chunk of land, where in most cases there is nothing, it is not useful even for the livestock. I perceive a positive transformation, but maybe I am perceiving it from a business point of you.”

There are a few elements of his statement that strike me as crucial. First, the official refer to the land taken away by the industry as “nothing”, even though in most cases it was being used as grazing land. Secondly, he envisions a “positive transformation” and a “change in lifestyle” due to the industry. However, it is unclear how pastoralist should benefit from this transformation, given the relatively little employment that the sector can generate in the region. During the peak of the operations, Tullow was employing around 1000 locals, compared to more than 70,000 people living in Turkana. The benefits mentioned by the official – roads, railways, airstrip – are actually additional sources of pressure on land, and thus on pastoralists themselves.

Finally, the infrastructural development that will soon take place in Turkana, especially the construction of the pipeline that will connect the different sites, will certainly increase the footprint of the sector on land.

There are fears among members of the civil society, that Tullow is pushing for the establishment of conservancies around the oil sites, a strategy frequently, and conveniently adopted by extractive companies (Bebbington et al., 2008) As the Director of a local CBO explains: ‘they want to set up conservancies, but the goal is make operations easier, not to protect pastoralists.”

During one of my visit at Tullow`s camp, I noticed a business card belonging to Northern Rangeland Trust (NRT) on the desk of a social performance manager. NRT was also mentioned by African Camp Solution as the organization that would have established a conservancy in the region, as part of ACS corporate responsibility commitments. When I asked him more about Tullow`s relationship with NRT, his answer was quite surprising, and it is worth reporting it at length:

> “When they entered into the lease [with TCC], ACS made a lot of promises, and we need to meet those commitments that they made. I suppose, you would question what is the background of NRT […] and why are we using them? Is it for our benefit or… I think, it may be for mutual benefit, but….. why? They (NRT) are gonna get money, but what are we gonna get out of it? Is it going to be just so that they can clear the way for us, to get land access to get access to communities? I mean, you wonder, what consultation took place prior to us

getting involved with these guys, it wasn't revealed to us until… last month, when they just showed up."

First, Tullow SP manager refers to the commitment inherited by ACS, after that Tullow leased the land from them. Secondly, he mentions NRT background. In this regards, it is worth saying that the Mr. Keith Hill, CEO of Africa Oil – Tullow`s partner in Turkana – seats in the Board of Directors of NRT. Lastly, when he says "they just showed up" the SP manager seemed to be quite disappointed of the fact that decisions were being taken at Tullow headquarter, without involving the staff on the ground, even when such decisions concern issues such as corporate social responsibility.

Commenting on the practice of NRT, who has been very active in Northern Kenya, a representative from the civil society says: "They come here, put some of the leaders on a plane, and show them some beautiful conservancies that they have set up somewhere else. But how is this model going to work in Turkana? And who has been consulted on this matter?"

9.2.2 Stakeholder Relations

9.2.2.1 Tullow Oil and Local Authorities

Tullow and the Turkana County Council

The relationship between Tullow and local authorities in Turkana started off on a wrong foot. Towards the end of June 2012, three months after the discovery, a two-day meeting was organized in Lodwar, attended by members of the TCC, representatives from Tullow Oil, and more than 500 Turkana residents[31]. The conversation started with a Councilor accusing Tullow of behaving arrogantly and with no respect for local authorities. The Councilor directly addressed Tullow General Manager saying: "This man is the most arrogant man I have dealt with in my entire working life", and accused him to constantly find excuses when asked to meet with local authorities. He also claimed that Tullow had accessed land and set up its camps without informing the Council, or paying any fees. Turkana leaders also accused the company of co-opting the Provincial Administration, particularly Chiefs and District Commissioners, with money, allowances and free flight to Nairobi, and using them to intimidate communities.

The former Chairman of the TCC, Eliud Loong`acha, remembers those days with resentment: "As custodians of the land, we expected Tullow to come to us and ask for permission, before

[31] https://gregoryakall.wordpress.com/2012/07/07/turkana-residents-doubt-accountability-in-tullows-oil-exploration-deal/

beginning the operations", he says, "instead they simply started setting up their fences and pitching their camps, moving from one place to the other. […] Tullow had very little respect for us and our communities. Another former member of the TCC confirms the impression of his Chairman, "You know, Tullow came here before the Devolution, and came with the belief that there was no point in dealing with local authorities."

Both the representatives claim that Tullow was only dealing with the PA that, being the national government`s arm at the local level, was there to facilitate the company in the operations,

Tullow and the Turkana County Government

On March 2013, the first Turkana County Government (TCG) was elected and replaced the TCC as the main local authority in the region. However, the relationship with Tullow did not seem to improve, at least at the beginning.

When I asked to the CEC for Energy and Environment if she felt engaged enough by the company, she exclaimed: "Not at all, not at all! They came to exploit our resources, with their letters from the Ministry of Energy, and they don`t care at all about the County Government […] I barely get any information [from them]." The officer also blamed Tullow of involving the TCG only when it is in its own interest as, for instance, when the company has trouble with some communities: "only in that case, they come running and saying < Oh, we have a problem! >".

The CEC for Pastoral Economy supports the words of his colleague, saying: "Tullow and the National Government have completely left out the County Government, even though exploration is taking place here, on our land". He also mentions a case when the TCG tried to raise its voice with Tullow, and threaten to halt the operations. "We told them that this is community land, and we, as the County Government, are the custodians of this land. So, if you want to go ahead with the activities, you must involve us in every decision."

The Deputy Governor explains how "When we came on board, it was clear that Tullow was reluctant to involve us. So, we had our first meeting, and explained them that, even if they had an agreement with the National Government, they had to recognize our authority." He, however, also believes that the change in Government might initially have caused some confusion to Tullow, particularly with regards to roles and responsibilities of the two governments.

At the ward level, the situation does not seem to differ much. As a ward administrator explains: "When we came in, Tullow was used to deal with the National Government and the Provincial Administration, so they did not want to engage us meaningfully." He says that his only opportunity to meet with Tullow representatives is during public meetings that the company organizes, but that such meetings are attended only by Community Liaison Officers, and not by

its managers. A sub-county administrator shares this opinion: “They (Tullow) were comfortable working with MPs, District Commissioners, and Chiefs” he explains “so we were left to fight for some space in this arrangement.”

Even though most of the TCG representatives interviewed acknowledged that relations with Tullow have improved over the time, there are still issues that negatively affect this relationship. For instance, looking at the visitor books of two local administrators, I could see that one of them had interacted with a company manager more than 4 times, between January and May 2015, whereas the other administrator had never received a visit from company representatives. Yet, the two officers play a very similar role in the County, and their offices are even located in the same compound. I tried to find out more, and the administrator who had more interactions with Tullow told me that he had developed a positive personal relationship with that particular manager, and that is why he was able to meet him often. However, he also adds how “When [NAME] is on leave, I have no idea of what the company is doing.”

Furthermore, the TCG seems to remain virtually excluded from the company`s interaction with communities. as another county administrator laments: “most of the times, you see Tullow meeting the community, without our involvement! We always tell them that we need to be there, and that they should not go and engage the community alone. But you still see that in 90% of the meetings they don’t invite us.” He also added that, when such meetings do not go the way Tullow expects, then the company reached back to the authorities crying for help: “Why didn`t you come to us in the first place, is what I ask them. And they always say that it was <just an oversight>, it`s always an oversight for them…”

A Tullow representative admits how, at the beginning, the relationship with the TCG was “on a need basis”, “…if we needed something we would go talk with them.” According to him, however, the protest in October 2013 made the company more aware of the importance of dealing with all authorities: “now, we got a proper stakeholder engagement strategy”, he claims.

Tullow has two Government and Public Affair (GPA) officers, both Turkanas, who are responsible for interactions with the TCG. One of them, however, was hired only on March 2015, and was currently preparing a “County Government Engagement Matrix”, that is supposed to help the company making interactions with the TCG more systematic. The other GPA, instead, has been working with Tullow from the beginning, and there is one aspect of him that it is worth mentioning. In fact, it is common knowledge in Turkana that he is going to run for Senator at the next election, in 2017. A company manager acknowledges the risk that his personal agenda can pose for Tullow: “You have to look at positions and interests… For example, we have local staff

with political aspiration, and… this could be negative for us, especially if he is there to pursue his own business."

The readiness of the Turkana County Government

Given the level of complexity of the oil industry, and the technical skills that are needed to fully understand its mechanisms, it can be extremely hard for a local government to fully participate in the governance of the sector. This capacity gap has been recognized by virtually all officers interviewed during the research. The National Government, through its "Kenya School of Government"[32], should build this capacity, but the efforts made so far are far from being adequate.

The CEC for Energy told me that she has attended two workshops on the oil industry held by the National Government since 2013, and that she was invited to a third one, but it was then canceled. Civil society organizations, such as ILEG and Friends of Lake Turkana (FoLT) have also conducted a few trainings on the sector in the region, attended by members of the TCG. The length and frequency of these initiatives, however, appear too limited to actually build the necessary capacity of local authorities.

The World Bank Technical Assistance Project does not include a component on County Governments. A representative from an international NGO comments this lack in the project: "How is the TCG going to have the skills to sit at the table and negotiate with oil companies? The WB cannot forget county governments" (rep. I-NGO, per. com.).

Members of the civil society, however, complain that the lack of competences within the TCG is also due to how the Executives have been appointed by the Governor. As the director of a local CBO explains: "At least 5 of the current Executives were running for other positions, and when they lost, the Governor wanted to reward them for their support during the campaign. […] Skills and experience had nothing to do with it."

Moreover, a certain lack of commitment from county government officials also seems to emerge. When I asked to officers at the Energy CE what was their opinion on the new petroleum policies and bills drafted by the National Government, they told me that they had not read them yet. More specifically, they were not even aware of such legislations, even though it was published many months before the interviews were conducted. When I reported this episode to a representative of Turkana civil society, she smiled and told me: "I would be surprised if anyone (within the TCG)

[32] http://www.ksg.ac.ke/

A company representative I also skeptical about the actual commitment of the TCG. “The County Government never did anything to make us change the ways we do business. Which tells me they either know nothing about it, or they don`t care…” (rep. Tullow Oil, pers. com.).

The enactment of the Finance Act, 2015 by the TCG, and the abrupt increases in fees and taxes payable by oil companies that it introduced, did certainly not go unnoticed by Tullow. As one SP manager notes: “they [TCG] looked at our operations, and saw where they could get money: prospecting licenses, , vehicles and water movements, morrum extraction, the type of vehicle we use, installation of radio mass, everything that was not there before it is now.” (Tullow SP manager, pers. com.).

Understaffing within the Executive department of the TCG has also been a crucial issues, at least at the beginning. A note prepared by the Turkana Energy Executive, in March 2015 before a cabinet meeting, states: “In FY 2013/2014, the Ministry was heavily understaffed, since I only had the Chief Officer as the only technical and decision makers”. However, in 2015 the Ministry for Energy received its own Director, Deputy Director, and later a Petroleum Director, who was previously working for the NOCK. The delays in the appointment of what constitutes the local branch of the TCG, namely sub-county, ward, and village administrators, have significantly weakened the government presence around communities and oilfields. As of June 2015, village administrators had not been appointed yet.

Furthermore, there seem to be a reputational problem for the TCG. The idea that its executives and assembly members have accumulated unreasonable wealth since they took office, is widespread among the public. An officer of a CBO comments: “They (TCG officials) have mansions for houses. How can you make all these moneys in a few years. […] something doesn`t add up.”

On March 2015, the name of Turkana Governor, Josephat Nanok and the CEC for Finance, Paul Ekwom, appeared in the EACC corruption report (The Star, 2015). The two are accused of making an irregular payment of KES 14 million to a bridge contractor, although no sign of such bridge could be found. Although both of them have immediately denied all accusations, and even sued the EACC for defamation (Ipsos, 2015), the commission is still investigating the case. In May 2015, the Turkana Road Executive and Road Superintended have been arrested by the EACC for another case of illicit payments for work not done (Business Daily Africa (ii), 2015).

In July 2015, the Kenyan Auditor-General release a report on "The financial operations of Turkana County Executive and Assembly"[33].

The auditors ascertained the existence of numerous malpractices within the County Government including: irregularities in procurement processes, payments for services that did not materialize, abuse of travel and sitting allowances, and opacity in the procedures to hire personnel. Moreover, the greatest majority of the procurement expenditure were not accounted for.

The amount spent by the Turkana County Assembly in sitting allowances – SHS 45.5 million – exceeded the annual budget allocation by a striking 333 percent (Standard (i), 2015) . This means that funds that should have been used for other activities, have been actually pocketed by politicians. The scandal was so big that some MCAs had to pledge to refund the misappropriated money[34].

In September 2015, Governor Nanok had to appear before the Senate Public Accounts Committee in order to explain irregularities in the budgeting process (All Africa, 2015). The session was attended also by the Senator for Turkana County, John Munyes, despite not being part of the committee. Senator Munyes has already announced that he will run for Governor at the next election, in 2017, and Nanok accused him to use the Committee for his political purposes: ""I will want political issues that are outside this committee not to be brought here, Senator Munyes is now my rival for governorship". The Senator replied by accusing the Governor of interfering with procurement and other irregularities.

Criticism to the Governor is increasingly mounting from MPs as well.

In 2014, a report from the World Bank names Turkana as the second, best-performing county in Kenya, in terms of utilization of development funds[35] (see Appendix C for an overview of budget allocation from TCG for 2013/14). On that occasion, the MP from Turkana North, however, questioned the credibility of the report, saying that it does not reflect the reality on the ground, and that Governor Nanok was doing a poor job. (Nation (ii), 2015). Rivalries, however, are exacerbating. Five Turkana MPs, as well as Senator Munyes, have boycotted the last Turkana Cultural Festival, held at the end of August 2015, calling it "a waste of resources", perpetrated by the Governor (All Africa (iii), 2015). The increasing pressure appears to have had a strong effect on the Governor, and the entire County Government. In September 2015, Nanok announced a

[33] http://www.kenao.go.ke/index.php/reports/cat_view/2-reports/11-county-governments/79-county-government-reports-2014/108-turkana-county

[34] https://www.youtube.com/watch?v=yMsLxB-gooo

[35] https://openknowledge.worldbank.org/bitstream/handle/10986/21507/940210WP0v10Bo0ort0Vol01201400FINAL.pdf?sequence=1

reshuffle of his cabinet, with effective immediate. The CEC for Energy – Rhoda Loyor – is among those who were suspended from office (North Rift News (i), 2015).

9.2.2.2 Tullow Oil and Turkana Communities

Given the precarious equilibrium of social relations in Turkana County, media have repeatedly pointed out the challenges that the oil industry could have faced in the region (IBT, 2012; Emerging Markets, 2012; Economist, 2012).

At least at the beginning, Tullow seemed intended to approach these issues, from a security perspective only. As one manager from a consultancy firm that has worked with the company explains: "It seemed like everything was about asset protection for them". He also recalls an interesting episode when the director of a private security firm contracted by Tullow approached him at the end of the meeting and said: "What we really need is bigger guns and higher fences".

Hundreds of armed guards, including militaries, private security, and Kenya Police Reserves (KPR), were deployed around Tullow camps and were regularly patrolling the roads in those areas. The approach has certainly not facilitated the development of a positive relationship between Tullow and local communities. As one company manager explains: "There was a lack of balance… If you have five or six social performance guys, and.. let`s say 50 asset protection guys, then communities will identify you with large presence of security."

Communities, on their side, tried to make their voice heard by organizing roadblocks which, as a member of the Turkana civil society recalls, "became the main channel of communication between Turkanas and Tullow".

A series of clashes had occurred between Tullow and communities (Business Daily Africa (iv), 2013), but it was only in October 2013, that the company witnessed the first "real" effect of its rocky relationship with locals. Led by two area MPs, hundreds of villagers staged a protest at one of Tullow`s main camp, accusing the company of excluding locals from employment and tenders, among other things (All Africa (ii), 2013).

Given the high level of tension, Tullow immediately decided to suspend all operations in the region, in order to "*to prevent further escalation of the demonstrations while discussions to resolve this issue for the long term are ongoing,*" (Business Daily Africa (ii), 2013)

Two weeks afterwards, On November 7, 2013, Tullow Oil resumed the operations, after signing a Memorandum of Understanding (MoU) with the Ministry of Energy, to "ensure that operations can continue without disruption in the future" (Reuters (i), 2013).

Soon after signing the MoU, Tullow set up three Community Resource Centers in Lodwar, Lokichar, and Lokori. Each of the center is staffed with two communication officers, that coordinate with the mobile field officers (Community Liaison Officers).

At the centers, communities can also find brochures and other information material, including report of the EIAs conducted. Furthermore, the company substantially increased the size of social performance team, to almost 40 members, including three new social performance managers (Tullow Oil, 2013). Formal grievance resolution mechanisms (GRM) were also established by the company (Tab 9.1, located at the end of the chapter, contains a list of grievances that I collected from two of the three Community Resource Centres opened by Tullow Oil). Even the public security personnel at the camp was reduced by 41%, according to the company (Tullow Oil, SRI Slideshow, 2015).

Even if the politicians who led it appear to have been driven by self-interest, and to have mobilized communities for opportunistic reasons (CSR 21, 2013) the protest have forced Tullow to rethink its modus operandi in Turkana. As one company manager says: “There are things that we didn`t get right at the beginning, but I think the turning point was October 2013. After the closure. we changed so many things in the way we do business. We increased our presence on the ground, as opposed to earlier when we had a thin field team, now we have a very big team, guys solely dedicated to relationship building, and this is why we opened our satellites offices. Previously we were only in the camp, and the community wants to talk with us […] The protest was a real paradigm shift.”

Another company representative explains: “When we came here, we were only thinking about the first oil […] Within two or three years Tullow grew heavily, from one rig to almost six rigs […] we were not able to listen, to listen to the community […] We were more operations oriented… but this community is also looking to establish a relationship with us.”

Despite the efforts made by Tullow to increase its presence on the ground, however, its relationship with the locals remains quite problematic.

Community Liaison Officers (CLOs), who represent the very interface between the company and the community, are quite unpopular among the latter. Most of the villagers interviewed accused CLOs of having been corrupted by Tullow, “betraying” their own communities. All CLOs are, in fact, locals, since they must be able to speak the Turkana language. “They (CLOs) used to be like us, but they have changed” says an old woman in one of the village that I visited, “They don`t even live with us anymore, they stay in Tullow`s camp”. The resentment against CLOs was such, that communities forced Tullow to change the name of the role to “Stakeholder Engagement Officers (SEOs)” (rep. Tullow Oil, pers. com.)

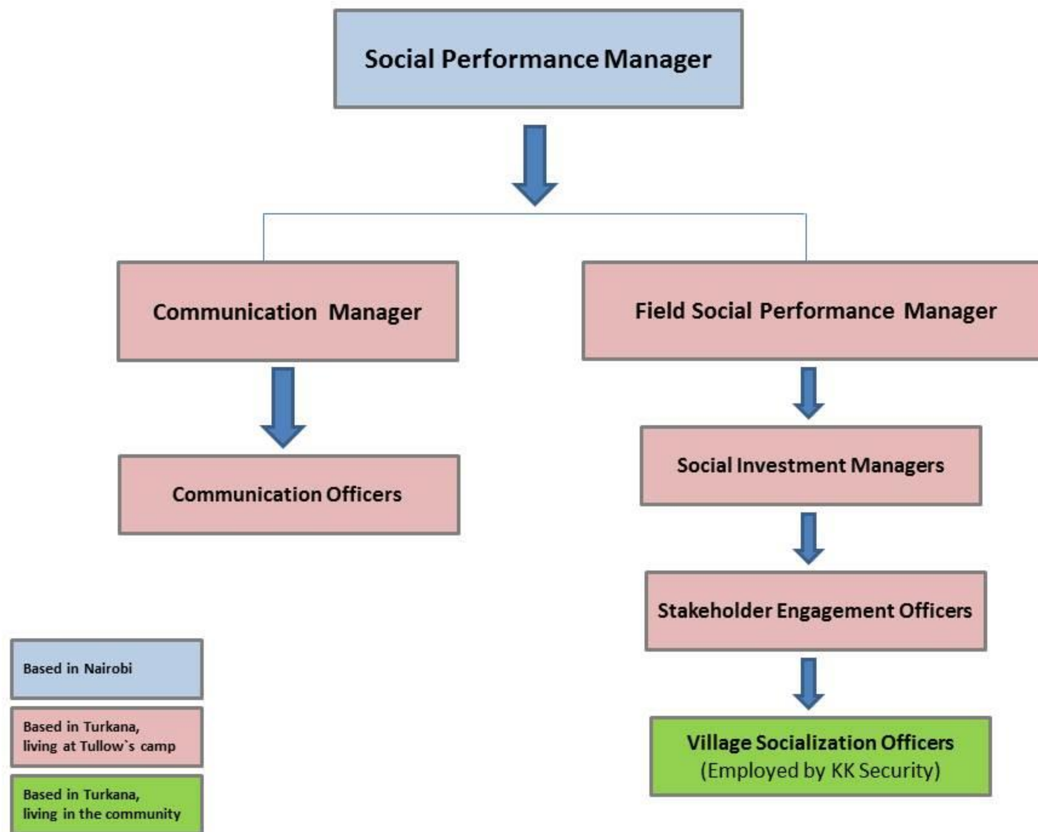


Figure 9.7 Tullow Oil Social Performance Team. Personal elaboration

Moreover, interactions with communities seem to be problem-driven, rather than systematic. Only in one of the three communities interviewed – Village A - respondents affirmed to meet with SEOs almost every week. In the other two villages, respondents claimed that SEOs would come only if there was a problem, or in the event of a ground breaking ceremony. In Village B, elders told me that the last time they had met a company representative was many weeks before, whereas in Village C it was three weeks before, but only for a ceremony. Even in Village A, community members said that SEOs were only meeting with the elders, and not with the rest of the community. Women, in particular, complain that their view was never asked for, and that they were not allowed to participate in most of the meetings. Other community members accused elders to be concerned only about their relatives, which are the only ones getting some jobs, according to them. The elders confirmed me that SEOs were only meeting with them, but denied the rest of the allegations. In turn, they accuse SEOs of holding parallel meetings with the District Chief, to the disadvantage of the community – for instance, by allocating in secret job opportunities and tenders. This practice has been reported also in some news articles (Nation (ii), 2014). Although an analysis of intra-community relationship in Turkana was beyond the scope of this study, pre-existing asymmetries of power within communities seem to influence the degree to

which community members are included in the decision-making process, and have access to benefits generated by the sector.

In addition, towards the end of the field research in Turkana, the number of SEOs was being dramatically reduced, due to redundancies. The contraction of the company`s social performance team is like to make company-community interaction even more intermittent.

The mistrust in SEOs represents, to a large extent, the heritage of the many, broken promises that they made to communities, on behalf of Tullow, in order to gain access to land. “Why should I have confidence in Tullow now? Where are all the benefits that it promised to us when it took our land?”, says a resolute man in Village B. As one of the new Tullow SP manager explains: “[…] the previous S.P. guys made a lot of commitments, and now we are forced to deliver” “but we are not delivering as they (communities) want.”

Finally, road blocks continue to be frequent in Turkana, and seem to have become quite accepted by the company, as one company representative puts it: “for us, a road block is like a phone call”. Just recently, in August 2015, Turkana CEC for Energy, Rhoda Loyor, had to intervene in order to end a blockade mounted by a group of villagers near one of Tullow`s camp (North Rift News (ii), 2015).

9.2.2.3 Civil Society and Tullow Oil

The Turkana civil society comprises of multitude of organizations, including CBOs, NGOs, and a few multilateral organizations, such as USAID, and FAO. The UNDP is also currently establishing its presence in the region, by opening a field office (rep. UNDP, pers. com.).

Interactions with Tullow, however, seem to be extremely limited. An exception is represented by Friends of Lake Turkana (FoLT), a local CBO who gained extraordinary international recognition during the past years, due to its campaign against the construction of the GIBE III dam(BBC, 2012; NYT, 2012). Its director, Ikal Angelei, is a very influential figure in the region, and organized several meetings and workshops on the industry, as the Natural Resource Conference, held in Lodwar on the 22nd of October, and attended even by Tullow Oil Vice President, Sandy Stash (Angelei, pers. com.). Although, FoLT has been somehow able to interact with Tullow in various occasions, contacts between them seem to be based on personal relationship between FoLT director and a few of Tullow employees, rather than on institutionalized practices (Angelei, pers. com.).

For the rest of Turkana CBOs, however, the chances to meet with company officials are much lower, as well as it is their leverage. Many of the organizations interviewed complain that Tullow has never accepted to meet them, or replied to their emails and letters. When some of them tried a

different approach, and went directly to the camps, their access has been refused by Tullow security guards. In general, a very negative perception of the company run across all the CBOs interviewed. “We are not involved. They (Tullow) are excluding us, so that they can co-opt with politicians, and take advantage of the community”, says the Director of TUBAE, a local organization based in Lodwar.

As one company manager admit: “at the moment we still don`t have a clear structure of engagement with local civil society, but we are trying to lay out a framework for that” (rep. Tullow Oil, pers. com.)

Around March 2015, a consortium of three international NGOs, Danish Demining Group **(DDG)**, Cordaid, and Oxfam, with support from a consultancy firm, Adam Smith International (ASI), started the implementation phase of the KEIDP Community Engagement Pilot Project, funded by DfID. The Pilot consists of four components – i) Local and community driven development approach, ii) Public participation, iii) Public awareness, and iv) Monitoring and evaluation. During the Pilot “a process of engagement would be designed, tested, and logged, providing the opportunity […] to develop guidelines for future engagement.” (ASI, KEIDP Concept Paper).

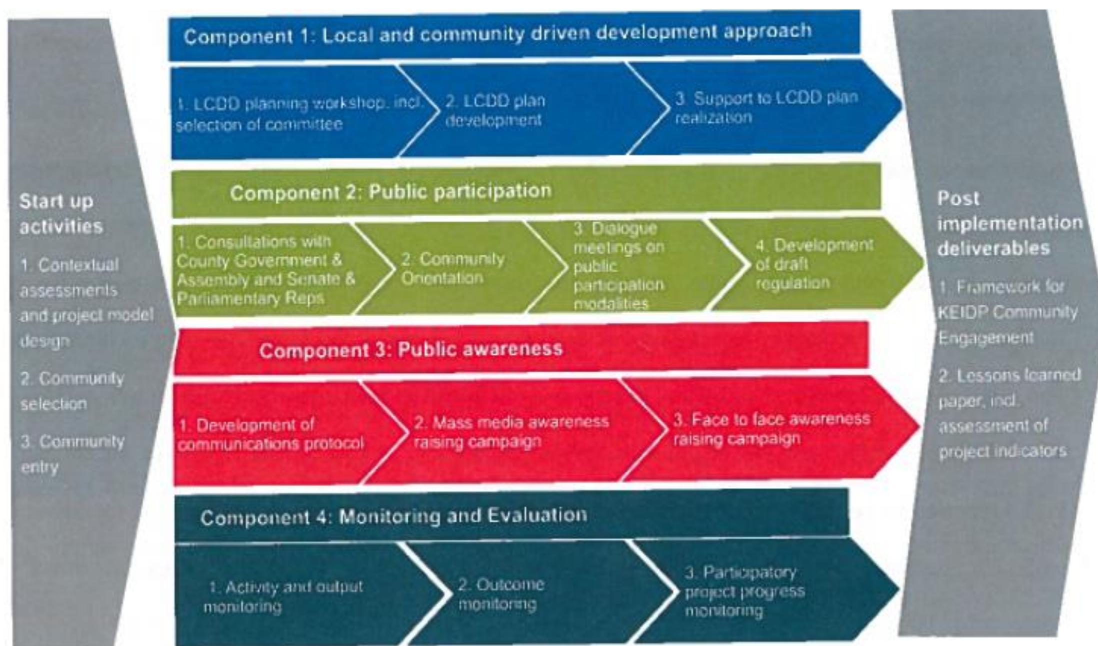


Figure 9.8 Components of the KEIDP Pilot Project. Obtained from DDG

The project can certainly strengthen the role of civil society in the oil industry in Turkana, given the financial, technical, and human resources brought by the new players. Interactions between them and Tullow are also more frequent, and company officials have also attended the Project Kick-off Meeting held on the 29th of April, at FoLT resource centre.

Internal weaknesses of civil society in Turkana

The Turkana civil society appears affected by numerous gaps. Currently, there exist two platforms of local CSOs, the Turkana Civil Society Platform (TCSP) and the Turkana Natural Resources Governance Hub (Hub). The TCSP was formed in April 2013, after the dismantling of the Greater Turkana Civil Society Network. It is chaired by Eliud Emeri, the director of TUBAE, a local CBO, and counts 16 members (Emeri, pers. com.).

The Hub was formed in October 2013, by an initiative of Ikal Angelei, director of FoLT, who also acts as its coordinator, and counts around 15 organizations. The set up of the hub was supported mostly by private foundations (Angelei, pers. com.).

Relationship between the two groups appear far from ideal. Members of the TCSP claim that there was no need to form another umbrella organization, and that the initiative was "a one-man show". Moreover, some believe that the establishment of the Hub have created overlaps, weakening civil society in Turkana, by disuniting it. There is also who claim that the Hub has been co-opted by the TCG and oil companies.

On the other hand, the Hub coordinator affirms that 'there was nothing before the hub!", referring to the limited activities implemented by the Platform. Others in the Hub accuse the management of the Platform of misusing moneys, and other wrongdoings. With regards to co-optation, a member of the Hub retorts by saying: "here in Turkana, if you don`t yell, they accuse you of being co-opted." It is true, however, that Tullow tried to convince Ikal Angelei to work for the company in multiple occasions, and then offered her to fund FoLT. She, however, rejected all the offers.

When the KEIDP Pilot started, its implementers have decided to work exclusively with the Hub. This has further aggravated the resentment among members of the Platform, who feel left out. In August 2015, an online newspaper managed by TUBAE published an article titled "Advocacy in Turkana is dead", stating "CORDAID extractive programme has weakened CSOs advocacy due to biased assessment and identification of weak and non-functional organization […]" (Turkana Mirror, 2015).

Generally, local CSOs appear to experience difficulties in collecting information and establish their presence among communities. Only a few (2) of the CSOs interviewed had conducted visits to communities living in proximity of the camps. This is mostly due to the lack of transportation means, and the high cost of hiring one (renting a car for one day in Turkana can cost about EUR 80). Moreover, the vastness of the territory, and high level of insecurity in some areas make access to communities very difficult for many CBOs.

Capacity of the local civil society on the oil sector is very low, as confirmed by many representatives of CBOs, and by the NGOs who have interacted with them. Being oil a relatively new issue in the region, building knowledge and skills of the civil society is of paramount importance. In this sense, the trainings national NGOs, such as ILEG , and by the KCSPOG are a positive move. In April 2015, KEIDP implementers conducted the first project activity, namely a two-day Local and Community Driven Development workshop, held at FoLT resource centre, and attended by a number of local CBOs and two ward administrators. At the end of the workshop, a Turkana civil society organization, Alemun Pastoralists Empowerment Initiative (APEI), was selected as local implementing partner for the Pilot. Towards the end of my field research, in May 2015, Cordaid was looking for a consultant to implement a two-weeks capacity building program that will target members of the Hub.

There are also challenges within the international organizations operating in Turkana. The launch of the KEIDP Pilot had been delayed for more than a year, due to internal problems (rep. DDG, pers. com.). Some representatives of the NGOs involved, lament that the project was poorly designed, by people with little experience on extractives, and that a rushed staffing process resulted in the assignment of officers to areas that were unrelated to their experience and competences. Skepticism on the project comes also from some Turkana CSOs. As the director of a CBO says: "When you see all these officers and mangers coming and going (to and from Turkana), you wonder whether most of the money is actually spent for flights and hotels".

The project was supposed to start almost one year before – the agreement with the TCG was signed in December 2014 but encountered a series of delays (rep. DDG, pers. com.).

9.2.3 Local Content

The issue of jobs and tenders has been one of the most conflictual since from the very beginning of oil exploration in Turkana. Locals have repeatedly accused Tullow of not excluding Turkana from employment opportunities, and importing workforce from Nairobi even for position that do not require special skills (The East African (i), 2013; Nation (ii), 2013). Communities have also lamented that tenders were not being awarded to local businesses for basic services such as food or cleaning[36].

In its 2013 sustainability report, Tullow claimed that 80% of jobs were held by Turkanas (Tullow Oil, Sustainability Report, 2013). However, data obtained by Internews Kenya on that period of

[36] goryakall.wordpress.com/2012/07/07/turkana-residents-doubt-accountability-in-tullows-oil-exploration-deal/

time show significant disparities in employment practices among sub-contractors, some of which did not employ any Turkana at all (Internews, 2014).

The data also show that people from other regions were hired even for unskilled or semi-skilled jobs, that could have been given to Turkanas. Of the 1,772 people employed by Tullow (and its sub-contractors) as of November 2013, only about half were Turkana , much less that the 80% claimed by the company. Furthermore, less than 20% of locals were employed in skilled jobs, but this cannot be considered surprising in a region with a striking 93% illiteracy rate.

Not only communities lamented that workers were hired from other regions and countries, they also complained that opportunities available for Turkanas were often seized by politically-connected individuals.

In 2012, a County Advisory Committee (CAC) and two District Advisory Committees (DACs) (for Turkana South and Turkana East) were established "to ensure transparency and integrity in the employment process" (rep. Tullow Oil, pers. com.). The main task of DACs was to provide Tullow and sub-contractors with lists of community members that were to be employed as casual labors (rig workers, security, etc.). The goal was to ensure fair distribution of jobs and tenders between and within communities. However, communities started questioning the integrity of these committees quite soon. As a representative of a local CSOs remembers: "MPs and MCAs were appointing members of the committees, they became politically-dominated." In turn, DACs were allocating jobs and tenders to the cronies of those politicians, spurring anger among communities.

The issue of jobs and tenders was at the core of the protest in October 2013 (Standard (ii), 2013). However, many believes that the MPs leading the protest have used communities to meet their own interest. In particular, it appears that the two politicians were angry at Tullow for not awarding enough tenders to their companies, and wanted to send a message to the company, by mobilizing communities (CSR21, 2013). It is almost public knowledge in Turkana that the brother of one of the two MPs has been awarded contracts by Tullow for food services, transportation and cleaning.

In the MoU signed by Tullow prior the resuming of the operations in Turkana, the company committed to: a) consult on and refine the local content and employment programme; b) put in place further processes and procedures to strengthen sub-contractor management[37].

In August 2014, another protest was staged at one of Tullow`s site. This time the protestors were complaining about inconsistencies in wages and benefits among sub-contractors (Tullow Oi,

[37] http://www.documentcloud.org/documents/900069-oil-mou.html

Kenya Case Study Report, 2015). On the 15th of August, a meeting was held in Eldoret between Tullow Oil, the Ministry of Energy and Petroleum, Senator for Turkana County, MP for Turkana South, and other parties. A MoU was signed, in which Tullow agreed to increase the minimum wage to Kshs 22,000 per month, a striking figure when compared to the average income in Turkana[38]. Further raises were also planned after six months (KES 25,500) and twelve months (32,500). According to a company manager "this agreement will have an impact on Labor laws in Kenya".

A few months later, in November 2014, the company launched its Light Vehicle Scheme[39], as a strategy to increase opportunities for Turkana-based companies to win transportation-related tenders. 36 vehicles were purchased and awarded to 36 Turkana-based companies. Immediately after the award, Tullow leased the car back from these companies, generating an income stream for them.

In addition, new job positions were created by Tullow, such as Road Marshals, Environmental Marshals, and Village Socialization Officers (VSOs)[40]. The first are responsible for watching the roads that lead to the camps, and making sure that animals do not occupy them. The second are employed street cleaners. The VSOs are usually community leaders who are appointed to collect grievances from community members and report them to the CLOs (rep. Tullow Oil, pers. com.).

Tullow has also changed the approach for allocating jobs, gradually moving away from DACs. "The good intentions of the beginning have been corrupted, because politicians had an interest in these committees, and this has compromised the work. We had to change strategy ", explains a company representative.

The new approach consists of negotiating the number of casual jobs to be allocated to a community with the elders of that community, and then formalize the figure in the LoU signed prior to enter the land. Overall, five types of jobs are available to communities: 1) civils construction jobs; 2) camp housekeeping; 3) drilling – general workers; 4) Road or Environmental Marshalls; 5) Village Socialisation Officers. As we can see in Fig 9.9, however, these positions are temporary in nature, ranging from 4 weeks to a few months. The short duration of employment contracts was frequently lamented by communities interviewed during the research.

[38] A 2009 study of the African Development Bank (AFDB, 2009) estimates an average income in Turkana of KES 50,000 per household per year, and a family size from 4 to 6 people per household.
[39] www.tullowoil.com/media/case-studies/light-vehicle-scheme-in-kenya
[40] employed by KK Security

On its internal guidelines, Tullow "encourages transparent public recruitment by communities, whereby the community puts forward employment candidates through open meetings and ensures a fair distribution of jobs amongst nearby communities", provided that, "100% of unskilled jobs should go to Turkana and, of these jobs, 50% should go to the host sub-county where the E&A well pad is located; and as many skilled and semi-skilled jobs as possible should go to Turkana." (Tullow Oil, Internal Document)

Job type:	Illustrative number and duration of jobs:	Mandatory Requirements for Identifying Jobs	TKBV Functional Ownership
Temporary civils construction jobs, via the TKBV civils sub-contractor	20 to 25 jobs for the duration of the civils construction works, for 4 weeks.	Numbers and duration of temporary civils jobs must be agreed with the TKBV Civils function and Civils sub-contractor.	Civils
Temporary Camp housekeeping (eg. catering, mess servers, laundry, cleaning).	3 to 10 jobs for the period drilling operations require camp housekeeping services, (typically 4 to 6 weeks).	Numbers and duration of temporary housekeeping jobs must be agreed with TKBV Drilling AND the Camp Services Provider.	Drilling (the Camp Service providers is usually a sub-contractor of the drilling contractor)
Temporary Drilling – General Workers	Varies from site to site.	Numbers and duration of temporary General Worker jobs must be identified by TKBV Drilling team.	Drilling
Temporary Road or Environmental marshalls	Depends on site specific EHS assessment of community road safety risks.	Number of positions must be informed by an EHS assessment of community road safety risks.	EHS
Temporary Village Socialisation Officers (VSOs)	Depends on village size, proximity to site and existing VSO representation. For up to 2 months.	VSO positions	SP

Figure 9.9 Illustration of temporary workers needed for each camp. Obtained from Tullow Oil

2. Temporary Employment

Through our subcontractors, Tullow commits to supporting the following employment positions during civil operations and drilling only. The employment period of local community members will be subject to the requirements of the roles during drilling and civils operations only i.e. casual employment for the required period only.

New employment opportunities will consist of:

- Twenty-five (25) temporary employment positions during civil engineering construction of the well pad. Temporary civils employment positions will last for a 4-week period.
- Four (4) environmental marshals employed for a 4 week period to undertake environmental duties outside the well pad.
- Five (5) Road Marshals for an estimated period of 2 months. (These will be 5 'back-to-back' positions, i.e. involving 10 people).
- Five (5) Village Socialisation Officers (VSOs) for a maximum period of two (2) months.

Figure 9.10 Example of employment opportunities allocated to communities. Obtained from Tullow Oil

Challenges, however, are still evident. First, disputes over what share of jobs and tenders should be allocated to each sub-counties appeared to have generated regionalisms in Turkana. As one company representative explains: "when we opened the first rig in Turkana South, people from other sub-counties started flocking in, looking for jobs. But they were chased away from local communities (in Turkana South). Then, we the rigs move to Turkana East, workers from Turkana South moved as well, to re-take their positions. But this time, they were the one being pushed back by communities in the East". A communication manager describes the problem: "sometimes, communities around our camps feel more entitled than others, and this can lead to conflicts, but you need to stick to the truth and give the right information. You can`t get into tribal wars!"

Secondly, ensuring that sub-contractors uphold their commitments is not an easy task. Tullow includes guidelines to be followed by all contractors in relation to number of locals to employ, wages, allowances, benefits, etc. However, as one company manager admits: "in term of measuring compliance and conformance… contracting management is very poor".

Many villagers lament that contractors barely respect the pacts, and leave the area before fulfilling their commitments. As we can see in Table XX the largest majority of employment or tenders-related grievance are pointed towards sub-contractors rather than Tullow.

Thirdly, even with the new procedures, jobs allocation seems to be still biased. "Chiefs, MPs, and MCAs are still influent […] and there are a lot of favouritisms", says the same manager, "I`m sure than many people that we employ are close to some of the leaders." Again, access to benefits accruing from the industry seem to be much easier for those who have connections with local authorities and traditional leaders (See Tab 9.1, grievance of 15/02/2015).

Furthermore, there are some who raise the issue of training and skills transfer, which they consider as important as the number of jobs. “Local content is a means to an end, not a means of itself”, says Ikal Angelei, director of FoLT. She explains how the conversation around local content is only about numbers and quotas, but “what skills are present locally, and what need to be added?” she asks. In 2012, Tullow has launched its Tullow Group Scholarship Scheme (TGSS), managed by the British Council, with the aim to “to build capacity in areas where Tullow’s host countries experience significant skills gaps, especially, but not exclusively, around these countries’ oil and gas industries.” More recently, in August 2015, Tullow launched another training program at a cost of USD 1 million (Oil News Kenya, 2015).

Finally, after the collapse of the oil prices, Tullow initiated a series of laid-off which have dramatically reduced the number of its employees (Telegraph, 2015; Oil News Kenya, 2015) including Turkanas. At the end of my research there were only a few hundred of people employed by Tullow and sub-contractors. The slow-down of the activities was also evident by the absence of trucks and vehicles on the roads. This have created further resentment among the people who feel betrayed by the company, once again. The argument that I have heard from them in many occasions is: “If Tullow is still there, why have we been sacked?” referring to the fact that camps are still present in the region. As one social activist explains: “communities here have been told about pay raise, and progressivity of the salary. Nobody ever told them about “redundancy”. So, I`m not surprised that they are angry now. They think that Tullow is cheating them.” In some cases, communities also complain than they had not received the redundancy package or gratuity that was agreed with their employers (See Tab 9.1 for some examples).

Conclusion

This Chapter presented the analysis of the resource governance dynamics occurring at the local level, in Turkana County. We saw the many problems that have affected the development of the industry since from the beginning, and how Tullow Oil has largely excluded local stakeholders from the decision-making. This conduct has resulted in a number of low intensity conflicts that culminated in a large protest held in October 2013, that forced Tullow to halt its operations for two weeks, and to agree on a series of measures to adopt before resuming the activities. Despite the positive changes introduced by the company, however, the situation remains highly problematic, and relationship between company, local authorities, and communities is still conflictual. Moreover, we saw how both the county government and the civil society are affected by numerous gaps, that hinder their ability to carry out their mandates.

In the next Chapter I present a reflective discussion of the main findings of the research, answering the research questions, and drawing out the policy implications of the study.

Lodwar Community Resource Centre	
Date	**Description of Grievance**
17/12/14	Interruption of car lease without proper notice
16/02/15	Tender for provision of WASH services allocated to foreign firm
18/02/15	Vehicle leased to a sub-contractor was returned with damages
20/02/15	Sub-contractor did not pay for 3 vehicles leased
10/03/15	Sub-contractor paid less than what agreed for provision of meat and dairy
Lokichar Community Resource Centre	
Date	**Description of Grievance**
13/04/14	Reduction of salary with no explanation
14/04/14	Employ of sub-contractor sacked without notice and recommendation letter
16/04/14	The wife of a man that was working by a sub-contractor, asks to be employed in his place, since he passed away
20/04/14	No payment for provision of 4 sheep that Tullow acquired for a ground-breaking ceremony. The grievance holder heard rumours that the community refused the sheep, as they wanted money instead.
14/09/14	Students complain that their names were removed from beneficiary list of bursaries
16/09/14	Elders complain that sub-contractor was supposed to lease a vehicle from them, but then leased it from a local politician.
25/09/14	Elders complain that Tullow is paying less than what agreed for construction materials collected from their community
1/10/14	Vehicle leased to a sub-contractor was returned with damages
2/01/15	Vehicles not paid by a sub-contractor
03/01/15	Sub-contractor never adverts position and lack transparency in recruitment process
03/02/15	Six people were promised to be employed as housekeepers at the camp, but only 3 actually employed
15/02/15	Community members complain that Assistant Chief is allocating jobs to his family and should not be involved in job negotiation process
15/03/15	Drivers employed by a sub-contractor are all non-Turkana
16/03/15	Fired without notice by a sub-contractor
10/04/15	Redundancy packaged not paid by sub-contractor (multiple individuals with same grievance)
26/07/15	Chairwoman of local suppliers complain against sub-contractor because of non-payments and lack of formal partnership agreement

Tab. 9.1 List of grievances filed at Lodwar and Lokichar Tullow Community Resource Centres. Personal elaboration

10. Discussion

10.1 Introduction

In this chapter I offer an academic reflective discussion on the main findings that emerged from this study.

First, I focus on the two dominant actors in the governance landscape of the extractive industries – national government and oil company – and discuss how both of them have attempted to form an enclave, by operating in isolation from the other stakeholders, and ignoring their demands.

Subsequently, I present a brief overview of the various actors that we have encountered throughout the report, and the different and sometimes multiple levels at which they operate.
Then, I reflect upon the strategies employed by these actors in order to exert pressure, by means of persuasion, authority, and coercion, on the national government and Tullow Oil, as well as the outcomes of such strategies.

In the second part of the discussion, I pinpoint the positive signs that have emerged during the evolution of the formal and informal sector rules at the national and local level, to then discuss the many governance challenges that still affect the industry, and how do they fit within the rest of the literature, particularly on the Ugandan case.

Finally, in the last section I highlights and reflect on the several limitations inherent to the new good governance agenda for the extractive industries. In particular, I argue that the approach underlying it largely fails to pay enough considerations to the factors and dynamics characterizing new extractive contexts, and falls short of its promise of catalyzing the transition towards a "new" extractive industries.

10.2 Forming the *enclave*: national government and Tullow Oil

Soon after oil was discovered in Kenya, the media, sector analysts, and civil society alike, have invoked the bogeyman of the Niger Delta, and warned against the perils associated with extractive ventures in the Global South.

The alarms raised by multiple parties, however, have not concerned the Kenyan government, who, at least initially, did nothing to reassure the cautionaries. The decision to award all petroleum licenses through closed-door negotiations, despite the risks linked with this approach, immediately manifested the intention of the government to operate in the shadows, without transparency or accountability.

The consequences of this approach have rapidly emerged. The case of Block 10BB, where oil was first found, shows how the opacity of the process has allowed some politicians and their cronies to easily acquire a license, and then sell it for millions of dollars a few years later, pocketing what should have been state revenues. And that is but one example of how corruption and rent-seeking behavior can strongly reduce the chances of a nation to reap the benefits accruing from extractive industries.

Another worrying sign, is the absolute refusal from the government to publish any of the PSCs that it signed, despite Tullow` willingness to do so. The leaked news of an IMF team that was denied access to the contracts from the Government, and the negative experience of the mining sector in the country, arouse strong suspicion and apprehension.

Moreover, national civil society coalitions engaged in the sector believe that the government is trying to prevent their participation in all relevant decisions, for fear that their criticism could slow down the development of the industry in the country. Given the inherent complexity of the sector, and the little experience of Kenya in this regard, it is particularly unfortunate that the government does not feel the need to use all the knowledge and competences that it can find within the country.

We also saw how the government`s conduct presents strong similarities with the practices adopted by governments in the other two, newly-established oil countries in Africa, Ghana and Uganda. In all three cases, licenses have been awarded in the dark, with no regards for transparency or competitiveness, resulting in widespread wrongdoings, politically-influenced award, and strong opposition from Parliaments and civil society.

Central governments across the continent continue to exhibit strong reluctance in managing the industry in a more transparent and inclusive fashion, and persist in entrenching themselves in the enclave, veiling the sector in secrecy.

The initial approach taken by Tullow in Turkana County is equally questionable. Since from the start, the company showed reluctance in engaging its external stakeholders, and paying attention to their requests.

Local authorities have been completely ignored by the company, as demonstrated by the repeated accusations moved by officials from both the County Council and the County Government.

Without going into the details of such allegations, what clearly emerges is the feeling shared by Councilors and Executives of having been excluded by the company (and by the national government), that did not recognize and respect their authority.

The procedures used by Tullow to access land are also problematic. Rather than seeking consent from communities through a broad consultation process, the company has used the PA in order to "extort" such consent from them, or lured them with promises that have remained largely unfulfilled.

With regards to local content, Tullow had left the issue in the hands of sub-contractors. However, leaving these companies to deal autonomously with a crucial issue such as jobs, had its consequences. In particular, the large number of firms involved has resulted in policy inconsistencies, as shown by the wide difference in the share of locals employed by each of them. Furthermore, sub-contractors are often tasked with short-term assignments, and therefore their incentive to establish a good relationship with communities, and to adopt sound employment procedure, requiring more complex administrative procedures and thus time, may be limited.

The practices adopted by Tullow suggest a lack of commitment to build a positive and collaborative relationship with its local stakeholders. This, in turn, appears to be due to a profit-driven mentality, that made the company focus exclusively on achieving the First Oil, as fast as possible, and by any means.

Although operational targets have been successfully met by the company, which made an impressive series of discoveries within a series of months, the consequences of its lack of regard for authorities and communities have been severe, as demonstrated by the number of roadblocks and protest that have occurred over the years, and continue to be felt.

10.3 Actors, influence, and power

Although the central government and oil companies represent the dominant players in the governance landscape of the oil industry in Kenya, and both of them have tried to advance without including other parties in decision-making, we saw throughout the report how a plurality of other actors are involved in the arena, even if to a different extent.
We were also able to observe how each of these actors operates at a certain level (global, national, sub-national, and local), but how some of them have been able to play a significant role in multiple ones.

Figure 10.1 represents the various actors involved in the Kenyan oil industry, and the level of influence that they have been able to exert, at different levels. The shade of the bar at each level indicates the level of influence that an actor has had at that level, that is the darker the shade, the bigger the influence. A dotted bar means that an influence might be wielded in the future, but it is not observable yet. White arrows indicate that influence is exerted (mainly) through another actor (e.g. central government have influence over the local level by means of the provincial administration authorities).

As we can see from the graph, the WBG not only exerts a major influence the global level, through discourses, standards, and investments, but also at the national level, through the implementation of programmes that target the central government and other state institutions. Over the next years, as the KEPTAP will progress, the WBG is also expected to increase its direct interaction with Kenyan civil society, by means of capacity building and training.

The Group`s influence, however, is extending to the local level as well. This is so because the recent IFC decision to finance the oil sector in Turkana, through an equity investment in Tullow`s partner, Africa Oil, may cause companies to change their policies, as they will have to comply with the IFC`s Social and Environmental Performance Standards.

The WBG is not the only actor that has been able to operate at multiple levels. The DfID-funded, KEIDP has initially targeted Kenya central government alone, similarly to KEPTAP. However, with the launch of the Community Engagement Pilot Project at the end of 2014, the donor, and the consortium of international NGOs involved in the project, have expanded its influence over the sub-national and local level.

Members of the parliament from Turkana seem to hold a privileged position in the governance landscape of the industry, mostly due to their ability to participate in conversations and meetings that take place both in Nairobi and the region.

National civil society coalitions have also managed to extend their reach to different levels, but to a limited extent only. The KCSPOG, for instance, has not only tried to lobby and connect with representatives from the central government, but also conducted a few trainings in Turkana, targeting local CSOs. Moreover, the coalition has been able to enter into the international arena, by participating, and presenting its report, at the 2014 Chatman House conference held in London, also attended by Tullow Oil Chairman.

An exceptional case of a local actor that has been able to engage at higher levels, is represented by Ikal Angelei, and her CBO, FoLT. In addition to being a very influential figure in Turkana, Angelei has also been invited to both international conferences on the sector organized by Chatman House in London. Moreover, FoLT is the only CBO in Turkana that has a direct link with the national level, thanks to its Nairobi-based staff.

However, the rest of Turkana civil society not only operate in relatively isolation from the national level, but also seem to struggle in establishing its presence at the village level, due to financial and other constraints.

Finally, it is particularly striking the virtual absence of the Turkana County Government from the local arena. In the relatively short time since its formation, the TCG has not been able to put in place a strong enough structure to ensure control of the vast territory that it is supposed to govern. Moreover, the delayed appointment of officials, such as sub-county, ward, and village administrators, has further reduced its ability to engage at the most decentralized levels.

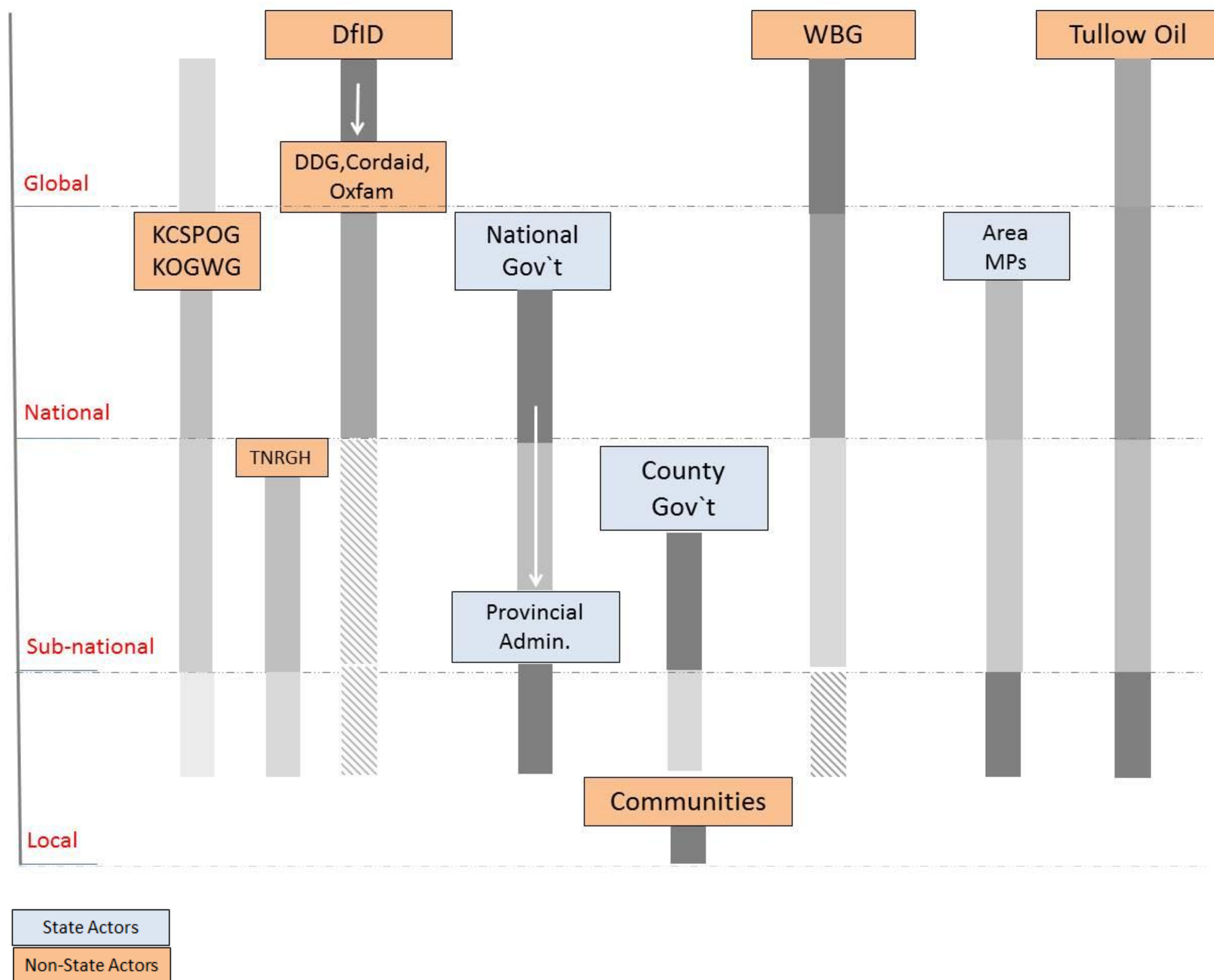


Figure 10.1 Actors` ability to wield influence at different levels. Personal Elaboration

Persuasion and Control

Another interesting point of discussion, which directly relates to the presence of multiple actors, is their ability to interact or exert power – by means of persuasion or control - on the dominant stakeholders, namely the central government and the oil company.

Figure 10.2 represents the pressures exerted by actors on the national government and Tullow Oil. Blue arrows indicate a pressure through persuasion or other collaborative strategies. A yellow arrow represents power exerted through authority, and a red arrow refers to power exerted through coercion. Yellow arrows indicates pressures that are likely to be exerted in the future, but not observable yet. It is important to note that the only manifestations of power identified during the research are represented in the graph, but it is possible to assume that power is continuously wielded in other, less visible ways.

The WBG has immediately encouraged the government to adopt a series of measures, first of all, the formulation of a new institutional and regulatory framework for the sector. To this end, the WBG has first financially supported the government in commissioning an American law firm (H&W) – which had already collaborated with the Group on other occasions – for conducting a review of Kenya existing sector legislation. Consequently, the WBG has provided technical assistance to the government for the drafting of a number of new policies and bills that, once approved, will represent the formal rules of the sector. The new legislations contain most of the recommendations made by H&W, symbolizing the strong persuasive power that the WBG has been able to exert on the central government. However, the government has been able to resist to one of the key recommendation addressed to it by both the WBG and H&W, namely to make petroleum contracts public.

Pressure on the Kenyan government has also come from foreign governments, as exemplified from the recent President Obama`s visit to Kenya, following which the two countries have issues a common statement, where the government of Kenya commits to implement the EITI, and other measures aimed at promoting good governance and reducing corruption.

Local authorities, such as the Turkana County Council, and area MPs, have also tried to exert pressure on the central government, by means of press conferences and parliamentary petitions. However, we have seen how their persuade the government to "open" the enclave, and share data and information, have not produced tangible outcomes.

Tullow Oil has also been the subject of strong, and repeated pressures. The Council was the first actor that tried to make the company change its modus-operandi, as illustrated by the meeting that was held in Lodwar, on 2012. Its efforts, however, have not produced the expected results.

MPs and communities have pooled their resources, and coerced Tullow to halt the operations for more than fourteen days, causing the company significant financial losses.

Although the politicians that led the protest appear to have been driven by self-interest, and to have mobilized villagers only in order to receive tenders from Tullow, the outcome of the mobilization has been more far-reaching than that. The protest also shows how greed and grievance can certainly be co-drivers of conflicts over natural resources.

The national government, on the other end, has used its authority to intimidate the MPs, by charging one of them with incitement and robbery.

In 2014, it was again a demonstration, this time led by Tullow`s local workers, that forced the company to agree on a sharp increase in wages and other benefits for its employees.

The County Government, on his side, has used its authority and imposed a series of new taxes and levies on Tullow, which accepted the raises, also when these were not based on laws.

Finally, although their outcomes are not known yet, we can expect that new pressures will exerted on Tullow, by for instance the IFC, who just became an active player of the industry, and the consortium of international NGOs that has been recently formed as part of the KEIDP project.

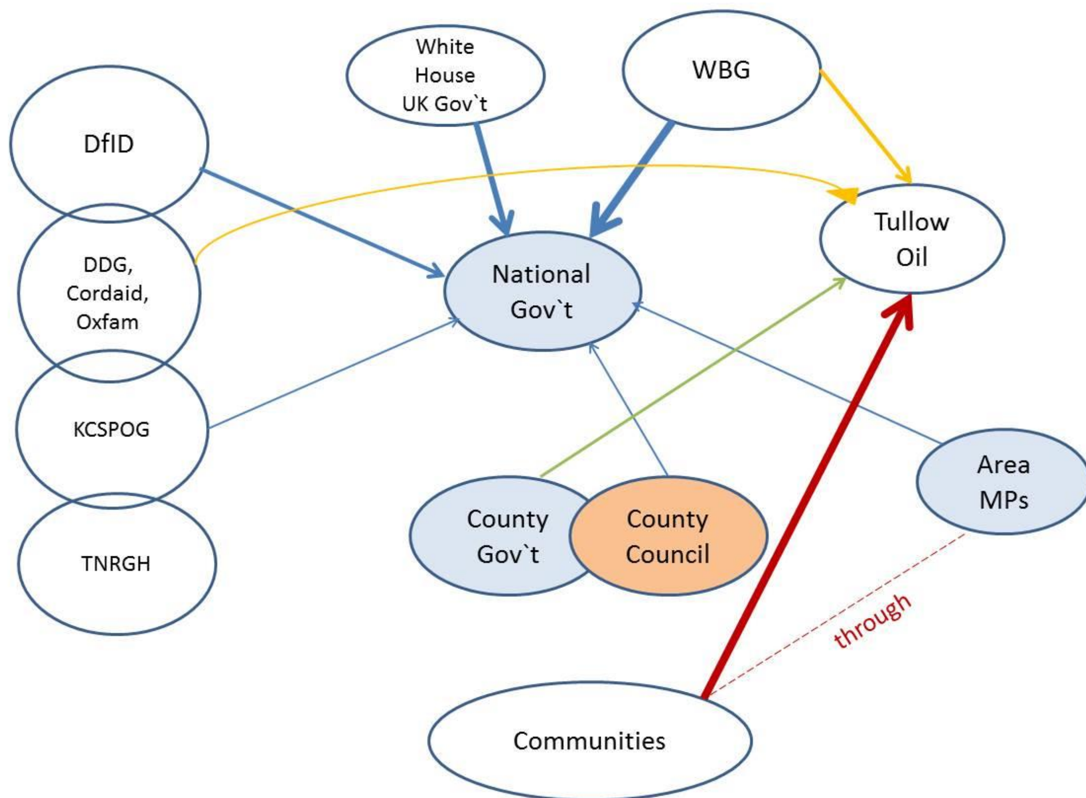


Figure 10.2 Exertion of Power on the National Government and Tullow Oil

10.4 Some positive signs, but many challenges ahead

During the course of almost four years that have passed since the oil discovery in Kenya, some positive signals have certainly emerged.

One is the design of the new institutional and regulatory framework of the industry, a product of the co-efforts of the central government and the WBG. The provisions included in the new legislations go in the right direction, and represent a sharp improvement from the existing, and outdated laws.

Particularly promising is the switch to competitive bidding rounds for allocation of petroleum contracts, which can guarantee a more transparent and efficient process.

To make an example of the impact that such procedure can have, in Uganda, where the Government announced its first round last February, NGOs have been able to scrutinize each of the companies who participated in the auction, to then publish a review in which they expose the irregularities and wrongdoings that some of them have committed in the past[41]. Whether or not the Ugandan government will decide to take into consideration their input, and exclude these companies from the successive round, remains to be seen. However, the report has certainly increased the pressure on the government to make the right choice.

However, the new legislations is also affected by important fallacies. The most worrying is the lack of independence that the new regulatory Authority is expected to have, if established in the form provided by the bills.

As we have seen, this problem also appears in the Ugandan institutional framework, among other, and seems to reflect the hesitancy of central governments to introduce a strong system check and balances, that could support sound management of the sector.

Moreover, the legislative undertaking has been slowed down by significant delays, and the deadline set by the Constitution for enacting these laws has just passed.

The legislative process in Ghana and Uganda has been hampered by the same fallacies and delays, where the industry has expanded for years in the absence of a comprehensive and up to date institutional and regulatory framework.

There are also positive signals coming from Tullow Oil. The two-weeks halt in the operations that it has experience at the end of 2013, seems to have made the company aware of the importance of improving its relationship with local stakeholders. Such awareness was expressed

[41] https://www.globalwitness.org/press-releases/uganda-names-companies-shortlisted-next-round-oil-bids-global-witness-response/

by all the company`s representatives interviewed in this research, who also openly recognized the mistakes that were made in the past.

The two most important steps taken by the company after the protest are, in my view:

i) the revision of land access procedures, with the introduction of formalized Benefits Agreements, that increase the ability of communities and authorities to make Tullow accountable for its commitments; and
ii) the remarkable increase in the size of the company`s social performance team, that signals its intention to take "stakeholder engagement" more seriously, and to be more responsive towards communities, authorities and civil society.

It is also worth noting that, before expanding its non-operational team, the main interface between the company and communities was represented by security guards, which certainly could not send a positive message to the public. In sum, the main outcome of the protest was to make Tullow much more attentive to the social context that it its embedded into, that it was before.

However, the situation at the local level remains problematic.

First, the reactive, rather than proactive policy adopted by Tullow, appear to have sent the message among locals that protests represent the only effective means to be make their voice heard by the company, and influence its behavior. It is thus not surprising that episodes of low intensity conflicts have been persisting until now. After all, it was through another protest that workers managed to have their wages increased in 2014. The practice, witnessed by some members of the civil society, of distributing money or other goods in order to end roadblocks can also produce the effect of increasing their frequency.

Secondly, stakeholder engagement continues to be highly transactional and ad-hoc, rather than systematic and integrated in the corporate strategy. Moreover, interactions with communities appear still limited, and in most cases meetings represent mere outreach activities, rather than meaningful consultation processes. Thirdly, even the few interactions that occur are exclusively industry-driven, and devoid of the presence of the local government or civil society organizations. Therefore, company and communities interact in an unchallenged arena, where communities have very few means to hold the company accountable (with the exception of the Benefit Agreements), and almost everything is left to the company`s own strategy of CSR.

In addition, the newly elected county government is affected by numerous gaps. First of all, the weak capacity of the officials to engage in the oil sector, and participate in the governance process. In this regard, the arrival of new personnel in the Energy Department, as well as the few trainings and workshops conducted by the civil society are certainly welcome moves. However,

there is a crucial need to design and implement more structured capacity building programs, and donors could play an important role in this sense, and extend their focus beyond the central government. At the same time, the County Government suffers of a reputational problem as well, that may compromise its authority with the other stakeholders. Finally, the exacerbation of political tension between member of the government (which resulted in the recent suspension of several members of the Cabinet), and between the Governor and the Senator, are another worrying sign, considering that oil could easily be transformed in an electoral weapon.

Internal division among the Turkana civil society is also a challenge that may strongly limit its ability to fulfil its role of watchdogs. Given the complexity of the topic, and the difficulties posed by the territory where they operate, it is essential for CSOs to pool their resources, and work in a collaborative fashion.

Political capture of the benefits accruing from the industry is also an important issue. The DACs, for instance, used their position to allocate of jobs and tenders to their families and cronies, leaving the rest of the community to compete for even meager opportunities that those available.

Although communities have successfully persuaded Tullow to change its policy on the matter, and to let them decide who should benefit, from the temporary employment opportunities negotiated in the LoUs, it seems that CLOs, chiefs, and politicians are still very influent in the allocation of jobs and tenders.

10.5 Comparison with the Ugandan case

The similarities with the Ugandan case analyzed by Van Alstine et. al are remarkable.

The weak capacity of the local governments, and its poor engagement in the sector affect both regions, and emerges as one of the most important governance gap at the local level.

Another common element is the absence of government officials and CSOs during most of the interactions between company and communities. In the case of Turkana, the Provincial Administration seems to be more present in these occurrences, but, as we saw, it seem to play a mere role of facilitator for the oil company, rather than representing the interest of the communities.

With regards to civil society, Van Alstine et al. find lack of coherence among the three national coalitions on oil and gas. In the Kenyan case, the type of activities conducted by the platform and the working group seem to be quite distinct, and the two have also a different geographical scope. Although some believe that political wrangles exist between the leaderships of the two group, their decision to present themselves as a united front to the national government and WBG, and constitute a single focal group for the KEPTAP, is certainly appreciable. On the other end, an

united front does not exist among the local civil society, where the two coalitions almost represent two rival factions.

The ability of host communities in both countries to benefit from the employment opportunities accruing from the industry seem to be compromised by many shared factors, such as the influx of workforce from other regions, and lack of technical skills among villagers, which relegates them to the most basic and temporary roles. Moreover, in both countries emerge the issue of policy inconsistency among sub-contractors, and elite capture of jobs and tenders.

10.6 The many limitations of the good governance agenda

As it emerges from this study, what I, and many others, referred to as the new *good governance agenda* for the extractive industries, falls short of its ambitious goals in several ways.

First, host governments in producing countries continue to follow the same patterns of the past. The strong resistance made by the Kenyan government to publish the petroleum contracts that it signed, and the unclear procedures by which some of these contracts have been awarded, are clear signs of an unwillingness of the government to adopt the new agenda.

Second, there is a profound mismatch between the pace at which *good governance* interventions are implemented, and the rate of expansion of extractives on the ground.
The design of a regulatory framework for the sector, as well as strengthening the capacity of host government agencies and civil society to monitor and enforce compliance, require intense and prolonged efforts, particularly in countries such as Kenya or Uganda, where the industry has just emerged, and there is little or no experience to draw upon.

The same gap applies to transparency initiatives. Even though the Kenyan government, as well as the Ugandan one, have repeatedly expressed commitment to join the EITI, nothing has happened so far in this regard. In the meantime, most of the contracts have already been signed, and governments continue to make choices that will have significant consequences for the future of the sector and their countries, while civil society and the public are almost completely left in the dark.

In part, delaying the implementation of transparency measures could be a strategy for governments to take the most important decisions on the sector – e.g. who to award licenses to, and on what terms – in secrecy and without pressure from outside the enclave. On the other end, it must be acknowledged that the process to become compliant with comprehensive standards, such as the EITI, is a lengthy and cumbersome one, that requires significant administrative and

bureaucratic capacity, which are often missing among government and civil society in new extractive contexts.

What emerges is the inadequacy of the WBG “value chain” approach, conceptualized as a linear sequence of activities and interventions to be carried out over time, in capturing the temporal dimension of the extractive industries in resource frontiers. As recommended by the Extractive Industries Review, good institutions in host countries should be in place *before* the emergence of the industry in these countries, since building them ex-post could prove unfeasible or take simply too long.

Moreover, the rhetoric of participation and engagement of all stakeholders conceals the actual over-centralization of planning and decision-making processes, and the exclusion of actors outside the enclave.

Devolution without real transfers of power over management of oil and minerals does not necessarily improve governance or accountability. In cases like Kenya, where decentralization is a new concept, and many local governments are still struggling with their mandates, and facing several organizational challenges, it is unclear how the creation of a new level of government will impact the industry in the future. Thus far, the formation of the County Government in Turkana has not proved to be a game-changer for the sector.

At the same time, the risk of devolution resulting in the decentralization of corruption and other poor governance practices appears quite real. With the next election approaching in 2017, the danger that oil will inflame local politics is another important issue to consider.

Civil society is also confined to a marginal role in the governance of the sector, and prevented from accessing the spaces where crucial decisions are made. Moreover, local civil society organizations, whose ability the role of industry watchdog is essential, particularly in view of the envisaged upscaling of the operations and associated impact, appear caught in internal politics and power struggles, rather than united in the pursuit of a common goal.

The parallels between Kenya and Uganda show the need to go beyond the assumption that decentralization and involvement of the civil society automatically improve natural resource governance, leading to better outcomes for communities. Both these actors need to be analyzed with more details, and context specific factors must be comprehensively taken into considerations.

Finally, the most important weakness of the new policy agenda lies in its failure to reshape the distribution of costs and benefits accruing from extractive ventures. Even at these initial stages, there are already clear signs in Turkana that communities are disproportionally affected by the

industry`s externalities. For the moment, loss of land and interruption of pastoralists` migration routes, which in turn resulted in increased insecurity for many of them, represent the main negative impacts experienced by communities. However, the scale of these impacts is projected to increase as the sector will expand, and new ones are likely to emerge.

On the other end, the ability of communities to reap the opportunities arising from oil is constrained by two main factors. One relates to the limited number of opportunities available; even at its peak, the sector employed approximately 1,000 locals, out of a population of almost 800,000. Moreover, not only most of the jobs held by Turkanas are casual and temporary in nature, but their number is also constantly fluctuating, as the commodity prices remains highly volatile.

The other constraint is represented by the unequal allocation of these meagre benefits among communities. Political and economic elites are able to capture the bulk of the gains, by using their power and connections in order to divert opportunities toward themselves and their cronies, while the rest of their communities have to struggle for the scraps left behind. Pre-existing inequalities within and between local communities appear doomed to be reinforced by large-scale extractive projects. Instead of waiting for the revenue to start flowing, and the pie to get bigger, the focus should be on how to make sure that such pie will be more evenly shared.

A real transition to a new “extractive industry” would necessitate of a radical change in the set of incentives faced by governments and oil companies; a shift from the current “get it all and quick” hysteria, towards a more gradual and prudent management of the sector. However, it also requires a more thorough consideration of pre-existing inequalities and power imbalances characterizing any context, otherwise their exacerbation is almost inevitable.

11. Conclusion

The case of the new oil in Turkana County, Kenya, provides a fascinating backdrop to investigate and analyze how the extractive industries unfold in new resource frontiers.

Having hypothesized that a wide range of players, operating at various scales, are immersed into the governance arena of the Kenyan hydrocarbon sector, this study was carried out in order to describe interactions between this multitude of actors, analyze the formal and informal rules that have developed through these interactions, and identify the main governance challenges that affect the sector at the onset of the production phase.

An overarching research question was thus formulated in order to guide the investigation:

How have actors, operating at different and multiple levels, contributed to develop the formal and informal rules of the new oil industry in Turkana County, Kenya, and what are the governance challenges that affect the sector at the onset of production?

A multi-level (international, national, local) analysis has been performed, in order to capture the diversity of stakeholders involved in the industry, and their ability to influence the rules that are developing along with its expansion.

The analysis showed that, from the very beginning, and in spite of the rhetoric of good governance and participation, the Kenyan government and its contractor – Tullow Oil – have manifested a clear intention to assume full control over all decision-making related to the new resource. The coalition formed by these two dominant players, sanctioned by an exploration and production license awarded under murky circumstances, and that still remains secret, has deliberately excluded the other actors constituting the governance landscape, as the Parliament, local government, civil society, and communities.

The enclave, however, has not been left unchallenged. Several pressures, coming from different levels, have, to a various extent, constrained the ability of the government and Tullow to manage the industry in isolation from the rest of the society.

Some of these pressures have, indeed, been quite successful in their intent to alter the status-quo, and challenge the enclave. Through its technical expertise, the World Bank Group has effectively persuaded the central government to re-design the formal rules of the sector, and to include most of the policy prescriptions that constitute the foundation of the “good governance” agenda for the extractive industries.

Given the limited results obtained by their repeated attempts to persuade Tullow to change its modus-operandi in Turkana, local communities, and some of their political leaders, have resorted to more conflictual strategies in order to make their voice heard by the company.
Roadblocks, and protests represented the means through which communities have been able to exert power on the company, forcing it to listen to their demands.

Even though both the central government and Tullow appear to have realized the inherent danger of ignoring the pressures coming from the international, national, and local community, the challenges that may hinder the sector`s potential to contribute to sustainable and inclusive development are still many.

The implementation of the new institutional and regulatory framework, designed by the government in collaboration with the World Bank, has been repeatedly delayed, failing to meet the deadline set by the Constitution, 2010. Therefore, the industry continues to be governed by legislations that date back to more than thirty years ago, that lack most of the provisions that are, at least, necessary to ensure good governance.

Profound unbalances of power between Tullow Oil, local government, civil society and communities, and within some of these groups, are unlikely to be addressed by policies alone, even when these are arguably well-designed.

Furthermore, those who are supposed to protect the right of communities, such as the county government and local civil society organizations, appear largely unable, or uninterested to do so, due to lack of technical and financial capital, and the presence of internal rivalries.

The relationship between Tullow and communities remains conflictual, and the trust of the latter seems permanently compromised by the many promised made, and never fulfilled by the company.
After the striking series of hydrocarbons discoveries recorded in East Africa over the past five years, financial institutions, governments, and oil companies have adamantly maintained that the newly found natural wealth represents an enormous opportunity for the region to embark on a path of growth and development. Plunder, corruption, and conflicts associated with the extraction of natural resources belonged to the past, according to them.

Judging from the initial stages of the sector in Kenya, the new policy agenda has largely failed to prevent, or even mitigate, these illnesses, and the risk that oil will continue to bring benefits only to a few elites, leaving the majority of communities to bear the huge socio-environmental associated with extraction, is still frightfully high.

12. Recommendations

This Chapter contains the main recommendations that emerge from the study. The aim here is not to include all the possible improvements that could be made, but rather to provide a short list of feasible actions that can be taken by the different stakeholders in order to remediate, or at least mitigate the governance problems identified during the research. Even if implemented tout court, these measures cannot guarantee good governance of the sector, but they would certainly represent steps in the right direction.

For the Government of Kenya

- In the proposed form, the ability of the Upstream Petroleum Regulatory Authority (**UPRA**) to exercise its functions independently is compromised by the power granted to the Cabinet Secretary to appoint its Director General and members of the Board.
  The head of the new institution should approved by the Parliament, and nominated by the President, rather than by the Cabinet Secretary. Members of the Board should also be approved by the Parliament, as an additional safeguard.

- The Production Sharing Contracts (PSCs) of all petroleum blocks allocated to oil companies should be made public, as well as all relevant information including: project documents, criteria used to award the contract, taxes collected, etc. The measures on transparency contained in the Petroleum Bill could have been already implemented. In addition, strong anti-corruption provisions should be added into the new Model PSC and the Petroleum Bill.
  In line with the commitment made last August, 2015, all mechanisms should be put in place in order for Kenya to become EITI-compliant at the earliest.

- More than three years have passed since oil was discovered, and the sector remains governed by an Act that dates back to the 1986. The deadline set by the Constitution for enacting the new regulatory framework was August 2015 and, as of the end of September, most of the legislations are still being re-drafted. The legislative process should be speeded up, and enriched by systematic consultations with the civil society and all relevant stakeholders.

- The civil society platforms, and individual organizations engaged in the Kenyan extractive industries should be considered as a resources, rather than as an adversary. A formal and

comprehensive communication structure should be established, to ensure that the civil society is fully involved in the governance of the sector.

For the Turkana County Government

- Engaging with the oil industry should be considered as a main government priority, given the far reaching consequences that the sector will have for the region in the near future. The executive and the assembly should together increase their participation in the governance of the sector, by clarifying the mandates of the various authorities, and develop policies and long-term strategies containing a roadmap for future engagement in the sector.

- A vision should also be developed, together with communities and civil society, illustrating the development trajectory envisioned for Turkana County, and how oil can contribute to its achievement.

- The cases of corruption that involved several members of the executive, and the widespread irregularities found by the Auditor General in the expenditure and procurement procedures adopted during these first two years should be a red flag. In light of the future revenues that will come in the form of royalties and other taxes, effective anti-corruption and transparency measures should be implemented and enforced.

For Tullow Oil

- During this prolonged time of low oil prices, Tullow should put in place the proper communication structure, and establish an integrated strategy of stakeholder engagement, that include systematic consultations with communities before and during the conduction of any activity on their land.

- Inputs from the County Government should be asked for and taken into consideration, before implementing CSR projects, or when planning the construction of infrastructure. Moreover, Tullow should provide the county government with detailed, but clear information on the progress of the operations. In addition, representatives from the county government, as well as from the civil society, should be invited to attend any meeting with community that involves negotiations or signing of agreements.

- A communication structure with the local civil society should be established, and should be as inclusive as possible rather than based on personal connection

- A comprehensive Strategic Environmental and Social Impact Assessment should be conducted, in relation to the approaching production phase, and the construction of the pipeline.

- Senior staff could be more present on the ground, instead of leaving all public affairs matters exclusively in the hands of the local staff. In addition, more attention should be paid in the selection of those who represent the company with local stakeholders, to avoid that their actions might be driven by political or economic agendas.

- Sub-contractors play a significant, and often overlooked role in shaping the relationship between communities and oil companies. This is so because the largest majority of jobs and tenders are provided by these firms, and also due to the fact that communities may not differentiate between companies and their sub-contractors. Given the importance that communities` perceptions hold for the peaceful development of the industry, proper due diligence should be conducted before and after the award of a contract to an external firm.
  The additional investment necessary to strengthen the monitoring and enforcement processes could pay huge dividends to Tullow, by means of avoiding future conflicts with communities, and the associated costs.

For Financial Institutions and Donors

- The sophisticated technical competencies that host governments necessitate in order to ensure proper management of the extractive industries cannot be developed in short time. It is thus vital that technical assistance and capacity building programs are planned and implemented as early as possible, and continued throughout the course of the industry.
  There should be coordination among donors and institutions during the design and implementation of projects, so as to avoid duplication of efforts, and ensure that all areas are adequately addressed by the interventions.

- Evidence of the difficulties experienced by local government in engaging with the extractive sector, due to technico-financial constraints and absence of industry-related skills among local

officials, it is of paramount importance to design specific project components targeting regional and local governments and administrations.

The same should be done with local civil society organizations, as a measure to ensure that the private sector do not operate in an unchallenged arena, where excessive freedom is granted to the management of extractive companies.

For the Civil Society (General)

- In order to design effective projects and lobbying strategies, it is essential to collect factual data and information related to the extractives in Kenya, and in particular on the consequences that they are having in producing regions. To this end, civil society should make more efforts to take part in research-driven engagement, in coordination with donors.

- Proper involvement in the sector requires a wide set of skills and knowledge that cannot be expected to exist already in context without history of extractives. Civil society should carry out a process of skills assessment, that should results in the identification of strengths and weaknesses of each organization that is engaging with the sector. Consequently, capacity building programs can be designed and implemented in collaboration with donors.

Specifically for the International Civil Society

- In order to increase the sustainability of planned interventions, all projects should be accompanied by long-term and well coordinate capacity building activities, that should target both county governments and local civil society organizations. The sporadic and short-term workshops conducted until now are welcome, but not enough to fill the existing knowledge and skills gap on the sector.

Specifically for the Turkana Civil Society

- CBOs in Turkana could represent the closest link to communities, and act as a megaphone for their views and complaints. Moreover, members of the local civil society could assume the role of intermediaries between communities and oil companies. However, this would require that communities perceive CBOs and other organizations as their true representatives. In order to gain this legitimacy, local civil society organization should increase their presence at

the village level, and be more inclined to the hard work that often cannot be done from behind a desk.

- Legitimacy should be gained not just among communities, but also with oil companies. Therefore, civil society organization should be more responsible in their advocacy, and ensure that their reports and views are based on factual information collected through sound research, and not on assumptions or speculations.

- The internal division that afflict the Turkana civil society will result in fragmented interventions, duplication of activities, and will play in favor of those who do not wish a strong counter-voice in Turkana. The two platforms should resolve their disputes, and start collaborating for the benefits of their constituencies.

For researchers

- The new wave of hydrocarbons and minerals exploration in East Africa, and the impressive series of discoveries that it led to, will have profound consequences for the socio-economic development of the region, and for the fragile environmental conditions that characterize many of the new resource "hot spots". It is strongly advisable that scholars start engaging with research activities in these uninvestigated contexts from this moment, and not only when the issue will become mainstream. A proactive approach can help to identify gaps in the governance dynamics that are emerging around natural resources in East Africa, which in turn can result in the timely suggestion of corrective actions to take in order to address them.

- Collaboration between the research teams engaged in this area of research should be strengthened to the maximum, in order to increase coherence in the methodological approach adopted, ensure optimum allocation of efforts and resources, increase the comparability of results, and contribute to the validation of trends and patterns, that already seem to emerge from the few studies conducted. The work initiated by the University of Leeds and the London School of Economics, as part of the Company-Community Assessment process, could certainly be used as a starting point by other research teams or even individual scholars and students.

13. References

Aaronson, S. A. (2011). Limited partnership: Business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI). *Public Administration and Development*, *31*(1), 50-63.

Adams, W. M., & Hutton, J. (2007). People, parks and poverty: political ecology and biodiversity conservation. Conservation and society, 5(2), 147.

Africa Oil (2015). Corporate Social Responsibility Manual.
Available at: http://www.africaoilcorp.com/i/pdf/hsec/5-aok-csr-ppm.pdf

AfriCog (2009). Mission Impossible? Implementing the Ndung`u Report

Agade, K. M. (2015). Changes and Challenges of the Kenya Police Reserve: The Case of Turkana County. African Studies Review, 58(01), 199-222.

Akabzaa, T. (2009). *Mining in Ghana: implications for national economic development and poverty reduction* (pp. 25-65). London, Pluto Press.

Akabzaa, T., & Darimani, A. (2001). Impact of mining sector investment in Ghana: A study of the Tarkwa mining region. *Third World Network*.

Akech, M. (2010). Institutional reform in the new constitution of Kenya.*International Center for Transitional Justice*.

Akinkugbe, (2014) The east African oil and gas sector: is the region now realizing its potential?

Alkadiri and Tesfay (2014) Africa`s new energy frontier: the promise and the peril.

AmanigaRuhanga, I., Bazira, H., Manyindo, J., Parker, A. R., & Van Alstine, J. (2011). Seeking Benefits and Avoiding Conflicts: A communitycompany assessment of Uganda's hydrocarbon industry. *Rights, Risk and Responsibilities: Building Capacity for Community-Company Engagement. University of Leeds, Leeds*.

Anderson, D. M., & Browne, A. J. (2011). The politics of oil in Eastern Africa.Journal of Eastern African Studies, 5(2), 369-410.

Auty, R. (2006). Mining enclave to economic catalyst: large mineral projects in developing countries. *Brown J. World Aff.*, *13*, 135.

Auty, R., & Warhurst, A. (1993). Sustainable development in mineral exporting economies. Resources Policy, 19(1), 14-29.

Avery, S. (2014). What future for lake Turkana and its wildlife?. SWARA (Magazine of the East African Wildlife Society), January to March.

Avery, S., & Eng, C. (2012). Lake Turkana & the Lower Omo: hydrological impacts of major dam and irrigation developments. African Studies Centre, the University of Oxford.

Bagaka, J. O. (2011). *Restructuring the provincial administration: an insider's view*. Society for International Development (SID), Regional Office for East & Southern Africa

Banchirigah, S. M. (2006). How have reforms fuelled the expansion of artisanal mining? Evidence from sub-Saharan Africa. *Resources Policy*, *31*(3), 165-171.

Bannon, I., & Collier, P. (Eds.). (2003). Natural resources and violent conflict: options and actions. World Bank publications.

Barma, N., Kaiser, K., Le, T. M., & Viñuela, L. (2011). Rents to riches. The Political Economy of Natural Resource-Led Development. Washington DC: World Bank.

Bebbington, A., & Humphreys Bebbington, D. (2011). An Andean avatar: Post-neoliberal and neoliberal strategies for securing the unobtainable. New Political Economy, 16(1), 131-145.

Bebbington, A., Bebbington, D. H., Bury, J., Lingan, J., Muñoz, J. P., & Scurrah, M. (2008). Mining and social movements: struggles over livelihood and rural territorial development in the Andes. World Development, 36(12), 2888-2905.

Bebbington, A., Hinojosa, L., Bebbington, D. H., Burneo, M. L., & Warnaars, X. (2008). Contention and ambiguity: Mining and the possibilities of development.*Development and Change*, *39*(6), 887-914.

Bebbington, D. H. (2013). Extraction, inequality and indigenous peoples: Insights from Bolivia. Environmental Science & Policy, 33, 438-446.

Bebbington, D. H., & Bebbington, A. J. (2010). Extraction, territory, and inequalities: Gas in the Bolivian Chaco. Canadian Journal of Development Studies/Revue canadienne d'études du développement, 30(1-2), 259-280.

Becker, H. S. (1970). Sociological work. Transaction Publishers.

Benjamin, N. C., Devarajan, S., & Weiner, R. J. (1989). The 'Dutch'disease in a developing country: Oil reserves in Cameroon. Journal of Development Economics, 30(1), 71-92.

Bernard, H. R. (2011). Research methods in anthropology: Qualitative and quantitative approaches. Rowman Altamira.

Bersaglio, B., Devlin, J., & Yap, N. (2015). Contextualising emergency responses to famine among Turkana pastoralists in Kenya. Development in Practice, 25(5), 688–702.

Blaikie, P., & Brookfield, H. (1987). Land degradation and society. Methuen.

Bryant, R. L. (1997). Beyond the impasse: the power of political ecology in Third World environmental research. Area, 29(1), 5-19.

Bury, J. (2004). Livelihoods in transition: transnational gold mining operations and local change in Cajamarca, Peru. The Geographical Journal, 170(1), 78-91.

Bury, J. (2005). Mining mountains: neoliberalism, land tenure, livelihoods, and the new Peruvian mining industry in Cajamarca. Environment and planning A,37(2), 221-239.

Chachage, C. S. L., Ericsson, M., & Gibbon, P. (1993). *Mining and structural adjustment: studies on Zimbabwe and Tanzania* (Vol. 92). Nordic Africa Institute.

Charem, A. C. (2014). Influence of oil exploration projects on the social/economic development of communities in marginalized areas in Kenya: a case of Turkana community (Doctoral dissertation, University of Nairobi).

Chemelil, P. K. (2015). Ecology and History as Essentials of Deprivation in Turkana County Kenya, 22, 10–17.

Collier, P. (2010) 'The Plundered Planet', Cursed by Nature? The Politics of Natural Assets, (Oxford: Oxford University Press)

Control Risk, (2013) A new frontier: Oil and Gas in East Africa

Cordaid. (2015). Oil exploration in Kenya: Success requires consultation.

Corrigan, C. C. (2014). Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative.*Resources Policy*, *40*, 17-30.

Deloitte (2014) The Deloitte Guide to Oil and Gas in East Africa

Denzin, N. K., & Lincoln, Y. S. (2009). Qualitative research. Yogyakarta: PustakaPelajar.

Desai, D., & Jarvis, M. (2012). Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank. *Journal of Energy & Natural Resources Law*, *30*(2), 101-128.

DFID (2014) Annual Review. Available at: iati.**dfid**.gov.uk/iati_documents/4961076.odt

Doherty, B. (2006). Friends of the Earth International: Negotiating a transnational identity. *Environmental Politics*, *15*(5), 860-880.

Downing, T. E. (2002). *Avoiding new poverty: mining-induced displacement and resettlement* (Vol. 52). International Institute for Environment and Development.

Dunning, T. (2008). Crude democracy: Natural resource wealth and political regimes (Vol. 37). Cambridge: Cambridge University Press.

EI-TAF (2012). Annual Report. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/11/19/000456286_20131119131113/Rendered/PDF/826990AR0EI0TA0Box379340B00PUBLIC0.pdf

EITI, (2015). The EITI Standard. The EITI International Secretariat

Ferguson, J. (2005). Seeing like an oil company: space, security, and global capital in neoliberal Africa. American anthropologist, 377-382.

Firger, D. M. (2010). Transparency and the natural resource curse: Examining the new extraterritorial information forcing rules in the Dodd-Frank Wall Street Reform Act of 2010. *Georgetown journal of international law*, *41*, 1043.

Forsyth, T. (2008). Political ecology and the epistemology of social justice.Geoforum, 39(2), 756-764.

FRANKEL, R. M, AND DEVERS, K. J (2000). Study Design in Qualitative Research – 1, Developing Questions and Assessing Resource Needs. Education for Health Journal, 13(2), 251-261.

Galor, O., & Weil, D. N. (2000). Population, technology, and growth: From Malthusian stagnation to the demographic transition and beyond. American economic review, 806-828.

Gary, I., & Karl, T. L. (2003). *Bottom of the barrel: Africa's oil boom and the poor*. Catholic Relief Services.

Gaynor, M. (2014). *African mining regime reform: Is the Western Australian experience of resource development aligned with the Africa mining vision?*(Doctoral dissertation, Murdoch University).

Gelb, A. H. (1988). Oil windfalls: Blessing or curse?. Oxford University Press.

Gibbon, P. (1992). A failed agenda? African agriculture under structural adjustment with special reference to Kenya and Ghana. *The Journal of Peasant Studies*, *20*(1), 50-96.

Gilberthorpe, E., & Banks, G. (2012). Development on whose terms?: CSR discourse and social realities in Papua New Guinea's extractive industries sector. Resources Policy, 37(2), 185-193.

Government of Kenya (2011) National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands. Nairobi: Government Printers.

Greiner, C. (2013). Guns, land, and votes: Cattle rustling and the politics of boundary (re) making in Northern Kenya. African Affairs, 112(447), 216-237.

Gunningham, N., Kagan, R. A., & Thornton, D. (2004). Social license and environmental protection: why businesses go beyond compliance. Law & Social Inquiry, 29(2), 307-341.

Haber, S., & Menaldo, V. (2011). Do natural resources fuel authoritarianism? A reappraisal of the resource curse. American political science Review, 105(01), 1-26.

Hansard, (2009)
Available at: https://books.google.nl/books?id=-7z58p6zdx8c&pg=pt14&lpg=pt14&dq=%e2%80%9ci+promise+that+by+next+year+we+should+be+able+to+be+members+of+the+eiti.%e2%80%9d&source=bl&ots=gu5fwdjcck&sig=uwpieyuxgs6koeivgcmd0jikomy&hl=en&sa=x&redir_esc=y#v=onepage&q=%e2%80%9ci%20promise%20that%20by%20next%20year%20we%20should%20be%20able%20to%20be%20members%20of%20the%20eiti.%e2%80%9d&f=false

Hansen, M. W. (2013). Working Paper.

Harneit-Sievers, A., & Peters, R. M. (2008). Kenya's 2007 general election and its aftershocks. *Africa Spectrum*, 133-144

Harrington, J., & Manji, A. (2013). Satire and the Politics of Corruption in Kenya. *Social & Legal Studies*, *22*(1), 3-23.

Hassan, M. O. (2013). Continuity Despite Change: Executive Power and Kenya's New Constitution'. Democratization.

Haufler, V. (2010). Disclosure as governance: the extractive industries transparency initiative and resource management in the developing world.*Global Environmental Politics*, *10*(3), 53-73.

Herbst, J. (1990). The structural adjustment of politics in Africa. *World Development*, *18*(7), 949-958.

Herrera, P. M., Davies, J., & Baena, P. M. (2014). 1 Principles of pastoralist governance and land management. The Governance of Rangelands: Collective Action for Sustainable Pastoralism.

Heynen, N., Kaika, M., & Swyngedouw, E. (2006). Urban political ecology. The nature of cities: Urban political ecology and the politics of urban metabolism, 1-20.

Hilson, G. M. (2004). Structural adjustment in Ghana: Assessing the impacts of mining-sector reform. *Africa Today*, *51*(2), 53-77.

Hilson, G., & Potter, C. (2005). Structural adjustment and subsistence industry: artisanal gold mining in Ghana. *Development and change*, *36*(1), 103-131.

Hilson, G., & Maconachie, R. (2010). The extractive industries transparency initiative: panacea or white elephant for sub-Saharan Africa?. In *Mining, society, and a sustainable world* (pp. 469-491). Springer Berlin Heidelberg.

Hilson, G. (2012). Corporate Social Responsibility in the extractive industries: Experiences from developing countries. *Resources Policy*, *37*(2), 131-137.

Hindery, D. (2004). Social and environmental impacts of World Bank/IMF-funded economic restructuring in Bolivia: an analysis of Enron and Shell's hydrocarbons projects. *Singapore Journal of Tropical Geography*, *25*(3), 281-303.

Hirschman, A. O. (1958). The strategy of economic development (Vol. 10). New Haven: yale university Press.

Humphreys, M., Sachs, J., & Stiglitz, J. E. (Eds.). (2007). Escaping the resource curse (pp. 11-13). New York: Columbia University Press.

Hunton and Williams (2013). Kenya Oil and Gas Sector Development: Review and Update of the Legal, Regulatory, and Fiscal Framework (Final Report)

IFC (2006) International Finance Corporation's Policy on Social & Environmental Sustainability . Available at:

http://www.ifc.org/wps/wcm/connect/5159190048855a4f85b4d76a6515bb18/SustainabilityPolicy.pdf?MOD=AJPERES&CACHEID=5159190048855a4f85b4d76a6515bb18

IFC (2012) International Finance Corporation's Policy on Social & Environmental Sustainability. Available at : http://www.ifc.org/wps/wcm/connect/5159190048855a4f85b4d76a6515bb18/sustainabilitypolicy.pdf?mod=ajperes&cacheid=5159190048855a4f85b4d76a6515bb18http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/sp_english_2012.pdf?mod=ajperes

International Rivers (2013). The Downstream Impacts of Ethiopia's Gibe III Dam East Africa's "Aral Sea" in the Making?

Johannes, E. M., Zulu, L. C., & Kalipeni, E. (2015). Oil discovery in Turkana County, Kenya: a source of conflict or development? African Geographical Review, 34(2), 142–164.

Kanyinga, K. (2009). The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya. *Journal of Contemporary African Studies*, *27*(3), 325-344

Kanyinga, K., & Long, J. D. (2012). The political economy of reforms in Kenya: the post-2007 election violence and a new constitution. *African Studies Review*,*55*(01), 31-51

Kaup, B.Z., 2008. Negotiating through nature: resistant materiality and the materiality of resistance in Bolivia's natural gas sector. Geoforum, 1734–1742

Kemp, D. (2010). Mining and community development: problems and possibilities of local-level practice. Community Development Journal, 45(2), 198-218.

KEPTAP (2014). Project Appraisal Document. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/07/10/000333037_20140710085735/Rendered/PDF/PAD8310PAD0P14010Box385278B00OUO090.pdf

KEPTAP (2013). Project Information Document (Concept Stage). Available at: http://www-wds.worldbank.org/external/default/wdscontentserver/wdsp/sdn/2013/10/24/090224b081fd9bdc/1_0/rendered/pdf/project0inform0t00keptap0000p145234.pdf

KEPTAP (2015). Implementation Status and Results Report.

KCPOG (2014) Setting the agenda for the development of Kenya's oil and gas resources – The perspectives of civil society

Klopp, J., & Kamungi, P. (2007). Violence and elections: will Kenya collapse? *World Policy Journal*, 11-18.

Klueh, U. H., Pastor, G., Segura, A., & Zarate, W. (2007). Inter-Sectoral Linkages and Local Content in Extractive Industries and Beyond--The Case of Sao Tome and Principe. *IMF Working Papers*, 1-49.

Lavachery, P., MacEachern, S., Bouimon, T., Gouem Gouem, B., Kinyock, P., Mbairo, J., ... & Nkokonda, O. (2005). Cultural heritage management in Central Africa: regional survey on the Chad-Cameroon oil pipeline. Antiquity, 79(303), 56-60.

Le Billon, P. (2001). The political ecology of war: natural resources and armed conflicts. Political geography, 20(5), 561-584.

Leite, C. A., & Weidmann, J. (1999). Does mother nature corrupt? Natural resources, corruption, and economic growth. Natural Resources, Corruption, and Economic Growth (June 1999). IMF Working Paper, (99/85).

Lemos, M. C., & Agrawal, A. (2006). Environmental governance. Annu. Rev. Environ.

Levy, D. L., & Newell, P. J. (Eds.). (2005). The business of global environmental governance. MIT press.

Liebenthal, A., Michelitsch, R., & Tarazona, E. I. (2005). *Extractive Industries and Sustainable Development: An Evaluation of World Bank Group Experience*. World Bank Publications.

Love, R. (2012). Borders and borderlands as resources in the Horn of Africa.Review of African Political Economy, 39(132), 396-398.

Loxley, J. (1990). Structural adjustment in Africa: reflections on Ghana and Zambia. *Review of African Political Economy*, *17*(47), 8-27.

Mainhardt-Gibbs, H. (2002). The World Bank Extractive Industries Review.

Mainhardt-Gibbs, H. (2010). Survey of civil society participation in the extractive industries transparency initiative and the role of the World Bank. *New York: Bank Information Center*.

Mathew, S., & Boyd, R. (2014). The cost of cowardice: punitive sentiments towards free riders in Turkana raids. Evolution and Human Behavior, 35(1), 58-64.

Maupeu, H. (2007). Revisiting post-election violence. *The general elections in Kenya*, 193-230

McMahon, G. (2010). The World Bank's Evolutionary Approach to Mining Sector Reform.

Mehlum, H., Moene, K. and Torvik, R. (2006), Institutions and the Resource Curse. The Economic Journal, 116: 1–20

MILES, M. M., AND HUBERMAN, A. M. (1984). Qualitative data analysis, A sourcebook of new methods. Newbury

Mkutu Agade, K. (2014). “Ungoverned Space” and the Oil Find in Turkana, Kenya. The Round Table, 103(5), 497–515.

Moss, T. (2009). Intermediaries and the governance of sociotechnical networks in transition. Environment and planning. A, 41(6), 1480.

Mueller, S. D. (2011). Dying to win: Elections, political violence, and institutional decay in Kenya. *Journal of Contemporary African Studies*, *29*(1), 99-117.

Mwanza, A. M. (Ed.). (1992). *Structural adjustment programmes in SADC: experiences and lessons from Malawi, Tanzania, Zambia and Zimbabwe*. Sapes Books.

Nevid, J. S., Maria, S., & Nelly, L. (1999). Multicultural issues in qualitative research. Psychology & Marketing, 16(4), 305-325.

Nore P, Grant A, O'Neill D, Moorcroft D. (2003). Reactions to EIR Report from representatives of the oil industry. Document submitted to the Extractive Industries Review.

Nyanjom, O. (2014). REMARGINALISING KENYAN PASTORALISTS: THE HIDDEN CURSE OF NATIONAL GROWTH AND DEVELOPMENT.

Oba, G. (1992). Ecological factors in land use conflicts, land administration and food insecurity in Turkana, Kenya. Retrieved from http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5389.pdf

Oba, G. (1992). *Ecological factors in land use conflicts, land administration and food insecurity in Turkana, Kenya*. London: ODI.

Ocheje, P. (2006). The Extractive Industries Transparency Initiative (EITI): voluntary codes of conduct, poverty and accountability in Africa. *Journal of sustainable development in Africa*, *8*(3), 222-39.

Odote, C. (2014). The Legal and Policy Framework Regulating Community Land in Kenya: An Appraisal

Omolo, N. (2011). Gender and climate change-induced conflict in pastoral communities: Case study of Turkana in northwestern Kenya. African Journal on Conflict Resolution, 10(2), 81–102.

Opiyo, F., Wasonga, O. V., Nyangito, M. M., Mureithi, S. M., Obando, J., & Munang, R. (2015). Determinants of perceptions of climate change and adaptation among Turkana pastoralists in northwestern Kenya. Climate and Development, (ahead-of-print), 1-11.

Osse, A. (2014). Police reform in Kenya: a process of 'meddling through'.Policing and Society, (ahead-of-print), 1-18.

Oxfam (2012). Livelihood profiles: Six livelihood zones in Turkana County, Kenya. June 2012 report prepared for Oxfam and Save the Children UK

Oxford Institute, (2014) Kenya, An African Oil Upstart in Transition

Oyugi, W. O. (1994). Uneasy alliance: party-state relations in Kenya. *Politics and Administration in East Africa, Nairobi: East African Educational Publishers*, 153-192.

Pegg, S. (2003). Poverty reduction or poverty exacerbation. *World Bank Group support for extractive industries in Africa. Report sponsored by Oxfam America, Friends of the Earth-US, Environmental Defense, Catholic Relief Services, Bank Information Center, Washington, DC*.

Pegg, S. (2006). Mining and poverty reduction: Transforming rhetoric into reality. *Journal of Cleaner Production*, *14*(3), 376-387.

PGI (2009). Assessment of environmental governance and management systems in oil producing countries.

Poggi, G. (2013). Forms of power. John Wiley & Sons.

Prebish, R. (1950). The Economic Development of Latin America and its Principal Problems ONU.

PricewaterhouseCoopers (2015). Towards a Petroleum Sector Master Plan for Kenya, 2015)

Ramdoo, I., & Große-Puppendahl, S. (2013). Commodities and the Extractive Sector. *Financial Times*.

Roberts, M. J. (2009). Conflict analysis of the 2007 post-election violence in Kenya

Ross, M. L. (2004). What do we know about natural resources and civil war?. Journal of peace research, 41(3), 337-356.

Sachs, J. D., & Warner, A. M. (1995). Natural resource abundance and economic growth (No. w5398). National Bureau of Economic Research.

Sachs, J. D., & Warner, A. M. (2001). The curse of natural resources. European economic review, 45(4), 827-838.

Salim, E. (2003). Striking a better balance: the World Bank Group and extractive industries. The final report of the Extractive Industry Review.

Schilling, J., Akuno, M., Scheffran, J., & Weinzierl, T. (2014). On raids and relations: Climate change, pastoral conflict and adaptation in north-western Kenya. Conflict-sensitive adaptation to climate change in Africa, 241.

Seale, C. (2002). Quality issues in qualitative inquiry. Qualitative Social Work,1(1), 97-110.

SEEN. (2002). The World Bank and Fossil Fuels: A Clear and Present Danger. *Washington, September*.

Southall, R., & Melber, H. (Eds.). (2009). A new scramble for Africa?: imperialism, investment and development. Scottsville: University of KwaZulu-Natal Press.

Stonich, S. C. (1998). Political ecology of tourism. Annals of tourism research,25(1), 25-54.

Strongman, J. (Ed.). (1992). *Strategy for African mining* (Vol. 181). World Bank Publications.

Szablowski, D. (2007). Transnational law and local struggles: mining, communities and the World Bank. Bloomsbury Publishing.

Torvik, R. (2002). Natural resources, rent seeking and welfare. Journal of development economics, 67(2), 455-470.

Triche, R. (2015). Pastoral conflict in Kenya: Transforming mimetic violence to mimetic blessings between Turkana and Pokot communities. African Journal on Conflict Resolution, 14(2), 81-101.

Tsuma, William (2010). Actors, alliances & power in negotiations.The Case of Gold Mining Concessions in Tarkwa Area of Ghana. PhD research proposal, ZEF/GLOWA-Volta, Bonn.

Tullow Oil (2013). Corporate Sustainability Report.
Available at: http://www.tullowoil.com/Media/docs/default-source/5_sustainability/2013-tullow-cr-report.pdf?sfvrsn=4

Tullow Oil (2014). Corporate Sustainability Report.
Available at: http://www.tullowoil.com/Media/docs/default-source/5_sustainability/2014-tullow-cr-report.pdf?sfvrsn=4

Tullow Oil (2015). SRI Roadshow. Available at: http://www.tullowoil.com/Media/docs/default-source/3_investors/sri-roadshow-presentation.pdf?sfvrsn=2

Turner, J. C. (2005). Explaining the nature of power: a three-process theory.European Journal of Social Psychology, 35(1), 1-22.

USAID (2009). Kenya Land Policy: Analysis and Recommendations

Van Alstine, J., Manyindo, J., Smith, L., Dixon, J., & AmanigaRuhanga, I. (2014). Resource governance dynamics: The challenge of 'new oil'in Uganda.*Resources Policy*, *40*, 48-58.

Van Marrewijk, M. (2003). Concepts and definitions of CSR and corporate sustainability: Between agency and communion. Journal of business ethics,44(2-3), 95-105.

Wamuyu, I. (2014). The effects of livestock rustling on livelihoods of pastoral communities in the Turkwell river belt along the Turkana/Pokot border (Doctoral dissertation, University of Nairobi).

Watson, D., & van Binsbergen, J. (2008). Livestock market access and opportunities in Turkana, Kenya, v–95.

WBG. (2004). Striking a better balance : the World Bank Group and extractive industries - the final report of the extractive industries review. Washington, DC: World Bank.

WBG (2009). Extractive Industries Value Chain. *A Framework for Managing Non-renewable Resources: Do Local/Subnational Priorities Really Matter*.

WBG. (2010), The World Bank Group in Extractive Industries 2010 Annual Review,

WBG. (2011), The World Bank Group in Extractive Industries 2011 Annual Review,

WBG. (2012), The World Bank Group in Extractive Industries 2012 Annual Review,

WBG. (2013), The World Bank Group in Extractive Industries 2013 Annual Review,

WBG. (2014), The World Bank Group in Extractive Industries 2014 Annual Review,

Wilson, E., & Van Alstine, J. (2014). Localising transparency: Exploring EITI's contribution to sustainable development. *International Institute for Environment and Development: London. Available from: http://pubs. iied. org/16555IIED. html*.

Yeboah, I. E. (2000). Structural adjustment and emerging urban form in Accra, Ghana. *Africa Today*, *47*(2), 60-89.

Yin, R. (1994). Case study research: Design and methods . Beverly Hills.

Media Sources

(Africa Renewal, 2008)
http://www.un.org/africarenewal/magazine/april-2008/east-africa-feels-blows-kenyan-crisis

(African Economic Outlook, 2015)
http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2015/CN_data/CN_Long_EN/Kenya_GB_2015.pdf

(All Africa (i), 2012)
http://allafrica.com/stories/201205241225.html

(All Africa (ii), 2012)
http://allafrica.com/stories/201203270020.html

(AllAfrica (i), 2013)
http://allafrica.com/stories/201304230661.html

(All Africa (ii), 2013)
http://allafrica.com/stories/201310290098.html

(All Africa, 2014)
http://allafrica.com/stories/201412031714.html

(All Africa (i), 2015)
http://allafrica.com/stories/201509031058.html

(All Africa(ii), 2015)
http://allafrica.com/stories/201508061268.html

(All Africa (iii), 2015)
http://allafrica.com/stories/201509080675.html

(BBC, 2011)
http://www.bbc.com/news/world-africa-15266613

(BBC (i) , 2012)
http://www.bbc.com/news/world-africa-17513488

(BBC (ii), 2012)
http://www.bbc.com/news/science-environment-17701682

(BBC (i), 2015)
http://www.bbc.com/news/world-africa-33708519

(Bloomberg, 2010)
http://www.bloomberg.com/news/articles/2010-09-02/tullow-oil-expands-in-kenya-ethiopia-with-africa-oil-license-acquisitions

(Bloomberg, 2014)
http://www.bloomberg.com/news/articles/2014-11-12/tullow-oil-cuts-exploration-budget-to-focus-on-drilling-in-kenya

(Bloomberg (i), 2015)
http://www.bloomberg.com/news/articles/2015-03-05/tullow-and-partners-to-invest-14-billion-in-uganda-oil-fields

(Bloomber (ii), 2015)
http://www.bloomberg.com/news/articles/2015-02-11/tullow-suspends-dividend-after-posting-2014-loss-amid-low-oil

(Bloomberg (iii), 2015)
http://www.bloomberg.com/news/articles/2015-08-10/kenya-uganda-agree-to-build-oil-pipeline-through-kenya-s-north

(Bloomberg (iv) , 2015)
http://www.bloomberg.com/news/articles/2015-05-26/kenya-s-corruption-fight-backfires-as-security-gaps-exposed

(Business Daily Africa, 2010)
http://www.businessdailyafrica.com/Corporate-News/CNOOC-quits-Kenya-oil-drill-and-heads-for-Uganda/-/539550/1077918/-/wcxnoez/-/index.html

(Business Daily Africa (i), 2012)
http://www.businessdailyafrica.com/Marende-orders-ministry-to-table-details-on-Turkana-oil-/-/539546/1434742/-/2rpfs9z/-/index.html

(Business Daily Africa, 2013)
http://www.businessdailyafrica.com/Tullow-Oil-strikes-deal--to-resume-work-in-Turkana--/-/539546/2064608/-/9l7egaz/-/index.html

(Business Daily Africa (i), 2013)
http://www.businessdailyafrica.com/Kenya-denies-IMF-access-to-secret-mining-agreements/-/539546/1922406/-/14passh/-/index.html

(Business Daily Africa (ii), 2013)
http://www.businessdailyafrica.com/Tullow-shares-dip-after-stop-in-Turkana-operations/-/539552/2051070/-/9yoc5o/-/index.html

(Business Daily Africa (iii), 2013)
http://www.businessdailyafrica.com/Tullow-now-says-57pc-of-employees-are-from-Turkana-region/-/539552/2050134/-/l32wojz/-/index.html

(Business Daily Africa (iv), 2013)
http://www.businessdailyafrica.com/Corporate-News/Oil-exploration-in-Turkana-resumes-as-workers-end-strike/-/539550/1655758/-/qrgc5yz/-/index.html

(Business Daily Africa (i), 2015)
http://www.businessdailyafrica.com/Senate-reveals-names-on-EACC-List-of-Shame/-/539546/2671598/-/10x91qbz/-/index.html

(Business Daily Africa (ii), 2015)
http://www.businessdailyafrica.com/EACC-fights-Turkana-governor-as-officials-arrested-/-/539546/2729334/-/h10y15/-/index.html

(Business Daily Africa, 2015)
http://www.businessdailyafrica.com/IFC-invests-Sh5-billion-in-Turkana-oil-/-/539552/2839138/-/11w6qmez/-/index.html

(Business Insider, 2012)
http://www.businessinsider.com/energy-demand-2040-emerging-markets-2012-1?IR=T

(Capital FM, 2012)
http://allafrica.com/stories/201203270020.html

(Capital FM (i), 2012)
http://www.capitalfm.co.ke/news/2012/05/kibaki-names-47-county-commissioners/

(Capital FM (ii), 2012)
http://www.capitalfm.co.ke/business/2012/03/turkana-council-raises-red-flag-on-land-deals/

(Capital FM (iii), 2012)
http://www.capitalfm.co.ke/news/2012/04/make-turkana-oil-deal-public-mps/

(Capital FM (iv), 2012)
http://www.capitalfm.co.ke/news/2012/03/karua-wants-open-books-on-turkana-oil/

(Capital FM (i), 2013)
http://www.capitalfm.co.ke/news/2013/03/ex-mps-make-list-of-first-kenyas-governors/

(CityAm, 2015)
http://www.cityam.com/221265/tullow-oil-profit-halves-price-oil-stays-low

(CNN, 2012)
http://edition.cnn.com/2012/03/26/world/africa/kenya-oil/

(CSR 21, 2013)
http://www.csr21.org/content/tullow-protests-kenya-look-mps

(Daily Nation, 2012)
http://www.mwakilishi.com/content/articles/2012/03/27/ministers-firm-sold-turkana-oil-block-for-sh800m.html

(DW, 2014) http://www.dw.com/en/east-african-leaders-push-ahead-with-controversial-lapsset-transport-corridor/a-18126160

(Economist, 2012)
http://www.economist.com/node/21552265

(Emerging Markets, 2012)
http://www.emergingmarkets.org/Article/3099383/EAST-AFRICAN-OIL-Paradox-of-plenty.html

(Epmag, 2013)
www.epmag.com/kenyas-energy-bill-delays-oil-licensing-round-706001

(Financial Post, 2015)
http://business.financialpost.com/news/mining/canadian-firms-cry-foul-over-kenyan-government-as-obama-visits

(Forbes (i), 2012)
http://www.forbes.com/sites/mfonobongnsehe/2012/03/26/kenya-strikes-oil-for-the-first-time/

(Forbes, 2015)
http://www.forbes.com/sites/mfonobongnsehe/2015/06/01/kenyas-2nd-richest-man-sells-dairy-firm-to-to-kenyatta-family-owned-business/

(Foreign Policy, 2014)
http://foreignpolicy.com/2014/05/06/everyone-is-corrupt-in-kenya-even-grandmothers/#q=anglo+leasing

(FT, 2011)
http://www.ft.com/intl/cms/s/0/28676b6c-3d1a-11e0-bbff-00144feabdc0.html

(FT (i), 2014)
http://www.ft.com/intl/cms/s/0/67ed17c8-b12f-11e3-9548-00144feab7de.html#axzz3mIhROYrh

(FT (i), 2015)
http://www.ft.com/intl/cms/s/0/0961f6a2-b13c-11e4-831b-00144feab7de.html#axzz3mIhROYrh

(Ghana Web, 2015)
http://www.ghanaweb.com/GhanaHomePage/business/US-probes-Ghana-oil-contracts-361800

(Global Health, 2009)
http://www.smartglobalhealth.org/blog/entry/post-election-violence-in-kenya-and-its-aftermath/

(GOXI, 2014)
http://goxi.org/profiles/blogs/absolutely-kenya-president-backs-full-oil-contract-disclosure

(Guardian, 2004)
http://www.theguardian.com/world/2004/jul/06/kenya.davidpallister

(Guardian, 2015)
http://www.theguardian.com/global-development/2015/aug/06/kenya-barack-obama-visit-anti-corruption-plan-democracy

(Heya, 2011)
http://www.vanoil.ca/i/pdf/EAPC-Kampala-2011.pdf

(IBT, 2012)
http://www.ibtimes.com/kenyan-oil-discovery-big-payday-offing-214438

(Internews, 2014)
http://landquest.internewskenya.org/tullow-oil-sub-contractor-employee-data-reveal-contracting-driven-by-market-forces-not-economic-policy-in-turkana/

(Ipsos, 2015)
http://www.ipsos.co.ke/NEWBASE_EXPORTS/Afrobarometer/150423_The%20Star%20-%20Thursday_4_96b20.pdf

(ISS, 2015)
https://www.issafrica.org/iss-today/cloudy-with-a-chance-of-corruption

(Lundin, 2012)
http://www.africaoilcorp.com/i/pdf/sep2012final.pdf

(Market Place, 2013)
http://www.marketplace.org/topics/world/kenya-election-issue-one-region-oil

(Nation (i), 2012)
http://www.nation.co.ke/News/Minister+s+firm+sold+oil+block+for+Sh800m+/-/1056/1375036/-/6b4bpbz/-/index.html

(Nation (i), 2013)
http://mobile.nation.co.ke/News/MP-under-probe-over-Turkana-riots/-/1950946/2053848/-/format/xhtml/-/pd78haz/-/index.html

(Nation (ii), 2013)
http://www.nation.co.ke/business/news/Oil-firm-offers-Turkana-locals-more-jobs/-/1006/1891538/-/5y917g/-/index.html

(Nation (i), 2014)
http://www.nation.co.ke/news/politics/Uhuru-delegates-executive-power-to-County-Commissioners/-/1064/2315576/-/ug3k9nz/-/index.html

(Nation (ii), 2014)
http://mobile.nation.co.ke/counties/Tullow-Oil-Turkana-Basin-Jobs-Lokichar/-/1950480/2290720/-/format/xhtml/-/gflel4z/-/index.html

(Nation (i), 2015)
http://mobile.nation.co.ke/news/crude-oil-prices--tullow-oil--Africa-Oil-Corporation--kenya/-/1950946/2590130/-/format/xhtml/-/15ual29/-/index.html

(Nation (ii), 2015)
http://www.nation.co.ke/counties/Christopher-Nakuleu-Turkana-World-Bank-Budget-Development/-/1107872/2615704/-/j931yt/-/index.html

(Nation (iii), 2015)
http://www.nation.co.ke/counties/Lapsset-corridor-mapping-Garbatulla-Isiolo/-/1107872/2706514/-/b28hxmz/-/index.html

(Natural Justice (blog), 2014)
http://natural-justice.blogspot.nl/2014/12/public-hearing-on-kenyas-community-land.html

(New African Magazine, 2015)
http://newafricanmagazine.com/how-corruption-makes-terror-easy-in-kenya/

(New Vision, 2011)
http://www.newvision.co.ug/news/18344-mps-call-for-a-halt-on-gov-t-execution-of-oil-contracts-and-transactions.html

(North Rift News (i), 2015)
http://www.northriftnews.com/governor-nanok-announces-changes-to-his-cabinet/

(North Rift News (ii), 2015)
http://www.northriftnews.com/turkana-energy-cec-rhoda-loyor-intervenes-as-youth-block-road-to-amosing-oil-well-in-protest-for-employment/

(NYT, 2012)
http://green.blogs.nytimes.com/2012/04/16/to-fight-a-dam-rather-than-live-on-your-knees/?_r=0

(Offshore Tech, 2012)
http://www.offshore-technology.com/features/featureeast-africa-new-gas-frontier-exploration-exploitation/

(Oil News Kenya, 2015)
http://www.oilnewskenya.com/?p=2272

(OilinUganda, 2014)
http://www.oilinuganda.org/features/infrastructure/uganda-kenya-south-sudan-pipeline-plans-on-track.html

(Peace FM, 2011)
http://comment.peacefmonline.com/pages/features/201112/85393.php

(Petroleum Economist, 2015)
http://www.petroleum-economist.com/Article/3483446/Ghanas-reality-check.html

(Platts (i), 2014)
http://www.platts.com/latest-news/oil/capetown/uganda-signs-oil-development-pact-with-tullow-26690710

(Platts (ii), 2014)
http://www.platts.com/news-feature/2014/oil/africa-oil-gas-energy-outlook/ghana-corruption-oil-gas

(Purcell, 2014)
http://www.geoexpro.com/articles/2014/09/oil-and-gas-exploration-in-east-africa-a-brief-history

(Reuters, 2012)
http://www.reuters.com/article/2012/09/05/us-kenya-corruption-idUSBRE8840RJ20120905

(Reuters, 2013)
http://uk.reuters.com/article/2013/11/07/uk-kenya-tullow-idUKBRE9A60GN20131107

(Reuters (i), 2013)
http://www.reuters.com/article/2013/11/07/kenya-tullow-idUSL5N0IS2BS20131107

(Reuters, 2015)
http://www.reuters.com/article/2015/03/13/us-kenya-icc-idUSKBN0M91SH20150313

(ShareCast, 2015)
http://www.sharecast.com/news/tullow-takes-massive-write-down-as-profits-more-than-halve-in-2014/22392597.html

(Shitemi, 2013)
www.shitemi.com/extractive-industry/the-turkana-oil-protests/

(Standard (i), 2012)
http://www.standardmedia.co.ke/article/2000072981/state-should-address-turkana-oil-fears

(Standard (i), 2013)
http://www.standardmedia.co.ke/thecounties/article/2000098919/experts-raise-red-flag-over-land-bill

(Standard (ii), 2013)
http://www.standardmedia.co.ke/thecounties/article/2000097042/turkana-outlines-demands-to-be-met-before-tullow-oil-resumes-operations

(Standard (i), 2014)
http://mobile.nation.co.ke/news/-private-companies-ranches-allocated-land-in-Lamu-named-Ngilu/-/1950946/2404810/-/format/xhtml/-/wppybo/-/index.html

(Standard (i), 2015)
http://www.standardmedia.co.ke/business/article/2000166360/counties-blow-billions-on-wages-travel

(Telegraph, 2006)
http://www.telegraph.co.uk/finance/2947860/Tullow-in-581m-bid-for-Hardman.html

(Telegraph, 2013)
http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/9949319/Tullow-Oil-apologises-to-Ugandan-government-over-bribery-allegations.html

(Telegraph, 2015)
http://www.telegraph.co.uk/finance/newsbysector/energy/11341056/Tullow-Oil-to-cut-jobs-as-North-Sea-braces-for-investment-slump.html

(The East African (i), 2012)
http://mobile.theeastafrican.co.ke/News/Wildcat+prospectors+make+billions+out+of+Kenya+oil+blocks/-/433842/1358716/-/format/xhtml/-/4vvv88z/-/index.html

(The East African (i), 2013)
http://www.theeastafrican.co.ke/business/Tullow-Oil-woes-in-Turkana-expose-the-soft-underbelly-of-EA/-/2560/2066904/-/4jyjr9z/-/index.html

(The East African (ii), 2013)
http://www.theeastafrican.co.ke/news/Tanzania-police-arrest-90-after-Mtwara-gas-pipeline-protest-/-/2558/1860394/-/75w1m0/-/index.html

(Time, 2015)
http://time.com/3771445/kenyans-blame-corrupt-government-al-shabaab-violence/

(Vibe Ghana, 2014)
http://vibeghana.com/2014/05/27/the-scramble-for-ghanas-oil-blocks/

(Washington Post, 2004)
http://www.washingtonpost.com/wp-dyn/articles/A38174-2004Aug3.html

(WBG, 2013)
http://www.worldbank.org/en/news/feature/2013/08/27/kenya-sets-framework-to-manage-new-petroleum-wealth

(White House, 2015)
https://www.whitehouse.gov/the-press-office/2015/07/25/government-republic-kenya-government-united-states-america-joint

Appendix A

List of Respondents

Third Sector		
Name of the Organization	**Category**	**Role of Respondents**
Adam Smith International	Consultancy Firm	Manager
Cordaid	International NGO	Manager Advisor
Danish Demining Group	International NGO	Manager
Oxfam International	International NGO	Advisor
Kenya Civil Society Platform on Oil and Gas	Coalition of CSOs	Coordinator
Kenya Oil and Gas Working Group	Coalition of CSOs	Coordinator Officer
Institute for Law and Environmental Governance	National NGO	Officer
Africa Centre for Open Governance	National NGO	Officer
Friends of Lake Turkana	Local CBO	Director
TUBAE	Local CBO	Director Officer
TUPADO	Local CBO	Officer
APEI	Local CBO	Officer
SAPCONE	Local CBO	Officer
RIAM RIAM	Local CBO	Officer

Private Sector		
Name	**Category**	**Respondents**
Tullow Oil	International Oil Company	Social Performance Manager (1) Communication Manager (1) Communication Officer (1) Community Liaison Officers (2) Governance and Public Affairs (1)

Local Authorities	
Authority	**Respondents**
Turkana County Council	Chairman Councilor
Turkana County Government	CEC Energy and Environment CEC Land CEC Pastoral Economy CEC Health Officers (2) Energy and Environment Sub-County Administrator (Turkana South) Ward Administrator (Lokichar)
Provincial Administration	Deputy County Commissioner District Chief

Appendix B

Extended Analysis of Policies and Bills

National Energy and Petroleum Policy (NEP)

The NEP stated objective is to "ensure affordable […] sustainable and reliable supply of energy to meet national and county development needs […] while protecting and conserving the environment. " The document seeks to replace the Sessional Paper No. 4, 2004 which has guided the Kenyan energy sector until now, in order to accommodate the changes brought by the publication of Kenya Vision 2030, in 2008, the promulgation of the new Constitution, in 2010, and the first discovery of significant petroleum reserves, made in 2012.

With regards to the (upstream) oil industry, the policy identifies several challenges, such as the necessity to attract substantial foreign capitals, the high cost of technology, the scarcity of primary data on reserves, and absence of provisions addressing the licensing regime, community awareness and participation, environmental protection, and benefits sharing mechanisms between national and county government and local communities.

In order to address these challenges, the policy encourages the GoK to intensify data acquisition in order to make the blocks more attractive to investors, and to develop a sound supply infrastructure, including the set up of a new refinery in Lamu. Furthermore, it proposes the establishment of an inter-ministerial committee, called National Fossil Fuels Advisory Committee (NAFFAC), responsible for, among other things, negotiating agreements with investors, on behalf of the National Government. The NEP explicitly advise the GoK to "adopt and implement the Extractive Industries Transparency Initiative (EITI), as a demonstration of its commitment to good governance".

In January 2015, a new draft version of the NEP was published by the MEP, called National Energy and Petroleum Policy (NEPP), 2015. One of the main changes introduced in the NEPP is the replacement of the newly established NAFFAC, with two committees, the National Upstream Petroleum Advisory Committee (NUPAC), and the National Coal Advisory Committee (NCAC).

Whereas in the previous draft of the policy petroleum and coal operations were both managed by the NAFFAC, the NEPP separates the two, and creates a specific institution concerned with petroleum exploration and development matters. Moreover, the policy calls for the establishment of a dedicated regulatory body responsible for upstream petroleum operations.

The explicit reference to the EITI made in the NEP, is missing in the NEPP, which simply encourages to "undertake the requisite process of ensuring transparency and accountability in extractive industries". There is, however, a stronger solicitation to develop local content regulations in order to maximize business and employment opportunities for Kenyans in the extractive industries.

Energy Bill (EB)

The EB seeks to replace the Energy Act, 2006, with the aim to "provide for national and county government functions in relation to energy, to provide for the establishment, powers and functions of the energy sector entities, […]". It calls for the Cabinet Secretary (Ministry of Energy and Petroleum) to develop a national energy policy, to be reviewed every six years, and national energy plans, to be reviewed every three years. The EB establishes the Energy Regulatory Commission (ERC), charged, among other things, of regulating "exploration, production, […], refining, […] and sale of petroleum". It also established the Energy Tribunal, with jurisdiction to hear and determine all matters relating to the energy sector.

In Part V, the bill vests all petroleum in Kenya in the national Government, in trust for Kenyan citizens. It allows the GoK to conduct petroleum operations either through a national oil company, or through a contractor.

For the first time, the bill spells out a formula of revenue sharing between levels of government and communities, stating that: "the county government`s share shall be equivalent to twenty percent of the government share of the profit oil". Local community are entitled to one quarter of the amount received by the county government.

The EB also establishes a Sovereign Fund to be financed by the revenues accruing from oil, with the purpose of supporting development for the future generations, when reserves may have been depleted, and cushioning the impact on public expenditure capacity during periods of revenue shortfalls.

As called for in the NEP, the EB establishes the National Fossil Fuels Advisory Committee (NAFFAC), composed by representatives of the Ministry of Energy and Petroleum (MEP), National Oil Corporation of Kenya (NOCK), National Treasury, National Environmental Management Authority (NEMA), etc. Its functions encompasses the petroleum and coal industries, and include negotiating agreements with investors, advising the Cabinet Secretary on all petroleum and coal operations, coordinate petroleum infrastructure development, and build capacity in the sectors.

In terms of land access, the EB declares that a person who wishes to access any land, in order to undertake activities relating to the exploitation of energy resources, "shall seek the prior consent

of the owner of such land", and that compensation shall be paid to the latter. However, if the parties do not reach an agreement, the Cabinet Secretary may, through the National Land Commission, compulsorily acquire such land.

A new draft version of the EB became available in 2015. The EB 2015 replaces the EC with the Energy Regulatory Authority (ERC), and excludes petroleum exploration from its mandate. In general, the entire section in the EB 2014 concerning upstream petroleum operations has been withdrawn from the 2015 version. This includes all references to revenue sharing formula, the Sovereign Fund, and the terms of petroleum agreements, which are not present in the new draft.

Petroleum (Exploration, Development, and Production) Bill

The Petroleum (Exploration, Development, and Production) Bill (Petroleum Bill) was first drafted in 2014 by the GoK, in order to provide a legal and institutional framework for the contracting, exploration and development of petroleum, as well as for production operations. It seeks to repeal the Petroleum (Exploration and Production) Act (Chapter 308), that governs the petroleum industry in Kenya since 1986.

The last draft of the Petroleum Bill was published in 2015, with little changes from the 2014 version. In this paragraph the analysis will thus be based on the last document published.

The bill starts by delineating the institutional framework that will surround the oil industry in Kenya. The chief authority of the sector continues to be the Cabinet Secretary of the MEP (CS), whose functions encompasses all aspects of the industry. He is responsible for developing a national policy specifically on upstream petroleum operations, to be reviewed every five years, and upstream petroleum strategic plans. The CS remains in charge of negotiating, signing or revoking petroleum agreements with investors, upon advise of the Advisory Committee, and conducting bidding rounds or direct negotiation for granting such agreements. He is also tasked with supervising all upstream operations, approve contractors` annual work programmes and field development plans.

Giving rise to the NEPP, the Petroleum Bill establishes a new sector institution, the National Upstream Petroleum Advisory Committee (NUPAC). Its main function is to advise the CS on all that regards upstream petroleum operations. The NUPAC also participates in the negotiation and granting of petroleum agreements, and in the evaluation of bids and applications for awarding of blocks. The CS, however, can reject any advice given by the NUPAC, provided that he will have to communicate the reasons for doing so.

NUPAC management will consists of i) Principal Secretary of the MEP, appointed as Chairperson, ii) Chief Executive of the national oil company, iii) Attorney General, iv) Principal

Secretary of the National Treasury, v) Director General of NEMA, and vi) Commissioner General of the Kenya Revenue Authority.

Also in line with what recommended in the NEPP, the bill establishes a regulatory institution, called the Upstream Petroleum Regulatory Authority (UPRA). Its functions are to: regulating upstream petroleum operations, collecting upstream petroleum data, and conducting due diligence on every contractors before granting non-exclusive exploration permit.

UPRA has also power to: coordinate the development of upstream petroleum infrastructure, assess field development plans and make recommendation to the CS, ensure that contractors uphold relevant laws and agreement terms, make proposals of regulations to the CS, formulate and enforce environmental and safety standards, monitor and enforce local content requirement, etc.

UPRA`s management will consists of: i) Chairperson, appointed by the President, ii) Principal Secretary of MEP, iii) Principal Secretary of the National Treasury, iv) Director General, appointed by the CS and v) five other members appointed by the CS.

In Part IV, the bill vests all petroleum in the Government, in trust for the people of Kenya. The CS has power to zone Kenya into areas, called blocks. A person who wishes to undertake upstream petroleum activities in the country has to apply for a petroleum agreement to the CS, or for a non-exclusive exploration permit, to the UPRA.

Petroleum agreements, according to the bill, must be awarded on the basis of bidding rounds, but the CS can still award agreements through direct negotiations if i) no bids have been received after the bidding rounds, ii) the bids received do not satisfy the minimum criteria for the assignment of an agreement, or iii) where the blocks do not have adequate data.

Each petroleum agreement has to contain a number of obligations for the contractor, such as performing certain minimum work and incur certain minimum expenditure during the exploration activities, presenting a field development plan of any commercial field to the CS, presenting a work programme and budget for each year of operation to the CS, adopting measures for environmental protection, giving preference to locally available materials, products, manpower, etc.

All petroleum agreements must be then submitted to parliament for ratification. Moreover, the bill states that, before issuing a permit, “the local community in the County where […] operations are to take place shall be sensitized”, by the UPRA in collaboration with the contractor.

In Part VI, the bill deals with local content provisions, making mandatory for each contractor to give priority to local services, goods, and human resources. It also requests each contractor to submit a long-term and annual local content plan to the UPRA, who will then assess it.

Part VII concerns with payments and fees, and restate the formula of revenue sharing between governments and communities. The County Government is entitled to 20% of the National Government share. Local communities, instead, get 5% of the Government share, “payable to a trust fund managed by a board of trustees established by the County Government in consultation with the local community”. This board of trustees has been introduced in the last version of the bill, whereas the first draft did not make any mention to it.

A Sovereign Wealth Fund is also envisioned by the bill, and the Secretary of the National Treasure is made responsible to determine: i) the amounts payable into the Fund, ii) the management of the Fund, and iii) the withdrawals from the Fund.

With regards to access to land, the bill states that any person who wishes to enter upon any land “shall seek the prior consent of the owner of such land”, and that the CS shall prescribe the procedures for seeking and granting such content, provided that compensation has to be paid for any damage resulting from the operations. If two parties do not reach an agreement, the CS can proceed with compulsory acquisition of land or rights in land through the National Land Commission.

According to the bill, the CS must develop a framework for transparency and accountability in the upstream petroleum sector, including the publication of all petroleum agreements, reports of revenues and payments, etc.

Finally, the bill delineates community rights in relation to the oil industry, stating that communities have the right to: i) be informed prior to carry out any operations within their county, ii) adequate compensation for land taken over for conducting operations, iii) be compensated for any environmental damage or pollution, iv) be educated and sensitized on upstream petroleum operations and v) take part in planning for corporate social responsibility projects that are going to be implemented within their areas.

Appendix C

Turkana County Budget Review

FY 2013/14

- **Revenue Collection**[42]

Funding from National Government: KES 7.7 billion

Revenue from local sources: KES 129.7 million

Balance brought forward from 2012/13: KES 28.9 million

Total Budget: KES 7.86 billion

- **Expenditures**

Recurrent activities: KES 1.5 billion (44% of total expenditure)

Development activities: KES 1.9 billion (56% of total expenditure)

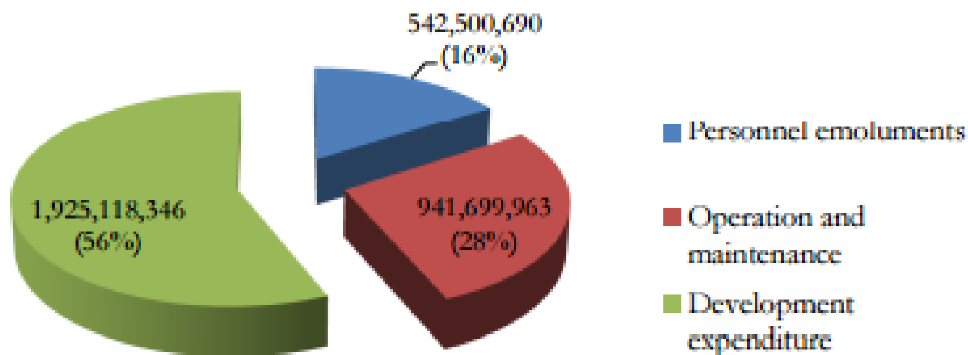


Figure C1 Budget Expenditure Turkana County Government

As we can see in Figure C2, however, the majority of development funds has been used for "Purchase of motor vehicles", which hardly fits in the definition of development project. Following in the ranking are: Refurbishment of dispensaries, construction and upgrading of roads, and construction of Early Childhood Development (ECD) Centres.

Figure C3 shows development projects implemented during half year 2014/15. "Other projects" account for the majority of the expenditure, and no clarification is provided on the budget in regards to what "other projects" means. Moreover, it is unclear how expenditure related to vehicles of Members of the County Assembly (MCA) can be included among development projects.

---

[42] Number and information included in this Appendix are taken from an unpublished report which I have obtained from Friends of Lake Turkana called "Tracking of County Government Budget Implementation Performance."

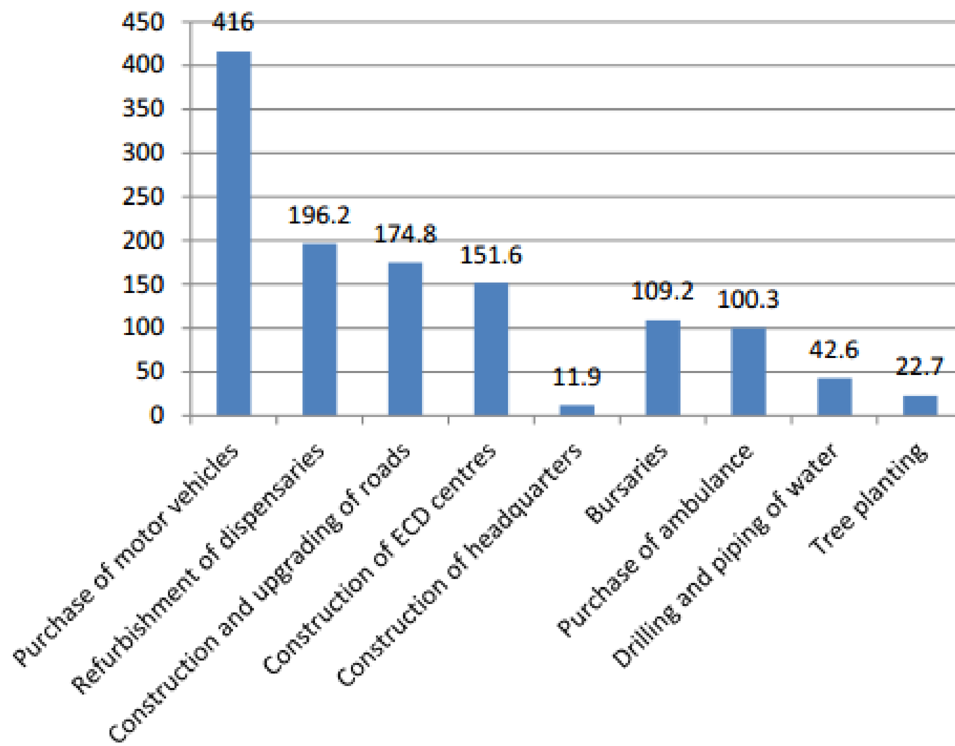


Figure C2 Development Projects implemented during FY 2013-14

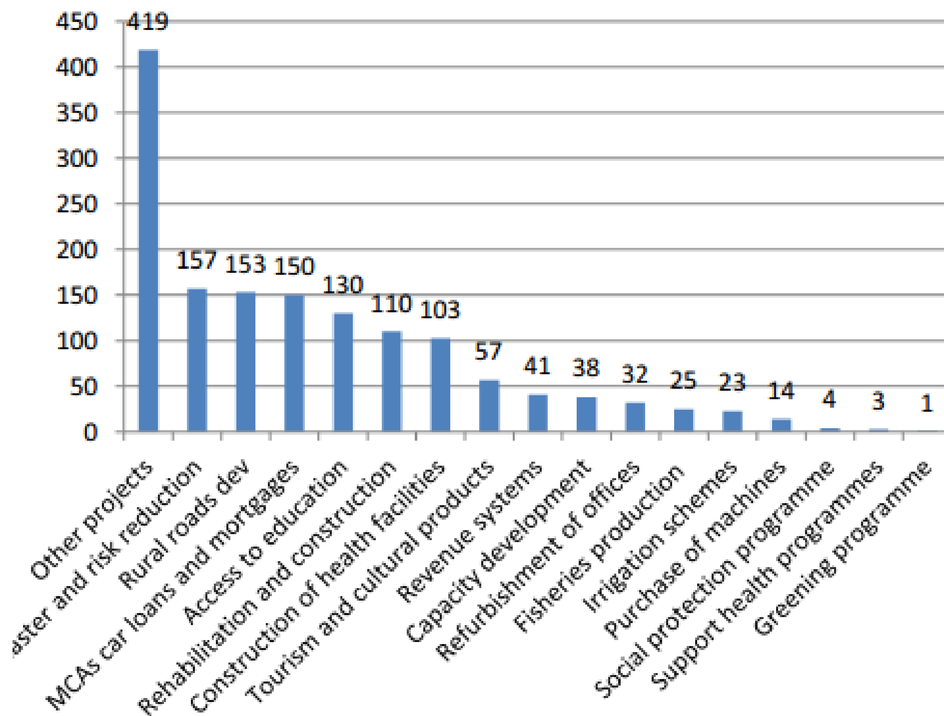


Figure C3 Development Projects implemented during half year FY 2014-14