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Engaging Women and Marginalised groups

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LAW, OIL & GAS, LEADERSHIP, GOVERNANCE

Mining

Zawadi (not her real name), a 25 year old artisanal miner in Kwale County, wakes up early every morning, prepares her 3 children and with her 3 month-old baby on her back heads off to the quarry where she will spend most of the day up to 3pm crushing stones for ballast with the aim of building up the pile for collection by brokers.

It will take her around 5 days to fill and sell 1 lorry full of ballast to brokers at KSh2,500 per lorry.

Sometimes it will take 1 month for the ballast to be bought as there is a lot of competition from the young men who are able to produce more within a short time.

The competition and poverty sometimes forces the women to sell the ballast for as low as KSh1,500.

Zawadi is lucky as her husband also works at the quarry site and with the brokers which helps her to sell what she has crushed. Other women are not so lucky as the brokers demand sexual favors before they can buy the ballast from them.

Sexual violation cases at the quarry site are not reported as the deeply rooted cultural practices stigmatises the victim more than the perpetrator. The victims are afraid of reporting to authorities for fear of victimization from community members.



Mining and gender

- Extractive Industries (EIs) are largely perceived as a **masculine** occupation.
- Only **9.4%** of those employed in the extractive sector are women, while overall women constitute **25%** of the wage employment force.
- Majority of women employed occupy low-skilled positions as well as positions at the lower end of the value chain.
- **Low employment in large-scale projects** but **40-100% in the artisanal and small-scale mining (ASM)**.

Yet, **by empowering women** and ensuring their full participation in leadership and decision-making roles, results have shown

- increased **transparency and accountability** at all levels
- more **inclusive partnerships** at the community level, leading to **better protection for the most vulnerable**
- stronger emphasis on addressing the industry's **environmental** impact
- empowering women economically, results in **stronger economies** overall
- extractive companies with women in leadership positions see **5-20% more profit** and **more robust corporate governance** and transparency (World Bank)
- improved and more sustainable economic, social and environmental outcomes



Mining and Communities

- Other than the environmental and economic impacts, EI's also have **socio-cultural** impact.
- Examples:
 - clearance of vegetation could **disrupt cultural shrines** and **traditional economic activities**
 - mushrooming of urban settlements may lead to **influx of commercial sex workers**
 - **family tensions** due to remote working of family members
 - **communities being uprooted** from their traditional lands
 - **destruction of cultural bases**
 - **changes in land-use patterns**
 - **loss of livelihoods**
 - **increased immigration** due to new access routes and employment possibilities
 - **inflation** of the local economy

The negative impacts on culture and social structures may be immense and **more than money can compensate.**

The loss of traditional livelihoods and socio-cultural **impacts may not be accurately recorded.**

Challenges faced by Women

- From Taita Taveta to Migori to Kakamega, women are usually **small-scale miners** or **casual laborers**
- Low or no **capacity to negotiate** for better contractual deals
- Usage of **manual processes** and sometimes **harmful chemicals** like mercury thus endangering the women's health
- **Sexual exploitation**
- Many live in **patriarchal** settings where their voices are not heard or appreciated
- Lack of awareness or understanding of **policies and procedures** that should be followed
- Not aware of or not involved in drafting **benefit-sharing agreements**
- Lack of awareness of the **contracts or details signed** between investors and the government
- Where traditions dictate that the **husband has the final say** families may be displaced without consulting the woman or considering her role in providing for her family
- Payment of **compensation and royalties** is often directed to men “on behalf of” their families. The money may not reach the family
- Sometimes **women-headed households** may not receive payments if they do not have a male representative
- **Women** may in cases be the **breadwinners**, thus environmental degradation can undermine their capacity to do this. They may have to go much further to get clean water, firewood and land for farming.
- Limited access to **affordable capital** that would allow them to buy equipment to add value to their produce
- Lack of **land security tenure** and control of other productive assets disadvantages women in compensation & resettlement/relocation processes
- Some of the above issues are also applicable to marginalized communities.

Enhancing Benefits of EI Projects to Women

Economic Empowerment

Improve access to **employment opportunities** both in the project and in **linked businesses** including at **management level** •

Improve access to **micro-credit and financial services** for women •

Spin-off jobs aimed at women •

Skills/vocational **training** for women in the workforce and the community

Distribution of a percentage of EI benefits by government to support **community-based sustainable development programs** including women's projects.

Inclusion of women among community leaders to ensure equitable distribution of EI benefits

Gender **wage equity**

Improve **access to markets** through **improved infrastructure**

Social Empowerment

Appointment of a **gender desk** in EI companies and the local government to address the concerns of women in the workforce and the community.

Selection of **women's groups** to represent community concerns in EI forums and committees

Inclusion of women in government EI review **committees** as well as planning committees

Inclusion of women among community leaders and committees that are **consulted at all stages** of an EI project

Improve Health and Education:

Ensure **equal access** to education opportunities for boys and girls

Adult literacy programs

Initiatives to raise awareness and prevents the spread of **STDs**.

Improve **access to health care**, including reproductive health:

Initiatives to **reduce violence** against women and promote their safety

Counseling services for men and women to reduce **domestic violence**

Counseling centers and **shelters** for women victims of violence and sexual crimes



Examples of local empowerment initiatives - women

Civil society organizations such as Haki Madini and Groots Kenya among others have been championing women's rights in different ways:

- Consistent **engagements and dialogue with men** and stakeholders on the discriminations
- **Formation of women groups. Challenge became getting more men to participate.** One of the solutions to this challenge is holding meetings at the mining sites.
- Building the **capacity of women entrepreneurs**
- Involving women in **decision-making processes** eg in elections of artisanal and small scale miners **committees**
- Involving women in the **County Integrated Development Plan (CIDP)** development process - ensuring the issues that affect them like **health, environment** etc are captured in the CIDP
- Training on **book keeping and leadership**
- **Exchange visits** for women from and to different parts of the country
- Participation in **radio programs** to inspire others on how to strengthen their participation and engagement in EI.

Local empowerment initiatives- community

- Initiatives to make the community take control of their situation to influence change
- Building **organised but informal community entities** to sustainably inspire **coordinated efforts** and **collective action** on **common goals/agenda** in their communities by supporting communities in the extractives to **build their own capacities, share ideas and information**, develop the sense of **desired change** and **effectively respond** to emerging issues in the EI
- Development of a **comprehensive guide** that provides a **clear and replicable formula** to assist communities **rally and organise** in community platforms and build a **collective voice** on common extractive concerns. The guide is currently being used eg in Kitui County Mui Coal basin, Kanziko and Ngaie Limestone areas.

Oil and Gas

2009: Africa Oil acquires interest in first blocks in Turkana

2010: Tullow Oil acquires 50 percent joint interest and role of operator in some blocks, including Block 10BB

2012: Tullow's first discovery at Ngamia-1

October 2013: protests and road blockages at various Tullow work sites

2015–16: Exploration and appraisal

August 2015: IFC investment in Africa Oil, triggers IFC Performance Standards

February 2016: Tullow Human Rights Policy released

July–October 2016: Consultation processes with Lokicheda and Nakukulas communities

November 2016: Signing of agreements and ceremonies

December 2016–March 2017: Construction and drilling in Amosing-6 and Ngamia-10



Aerial view of a Tullow oil rig in Turkana County. Turkana Governor Josphat Nanok and Petroleum and Mining Cabinet Secretary John Munyes have asked local residents to allow the Early Oil Pilot Scheme to begin in June as scheduled.
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'Testing Community Consent: Tullow Oil Project in Kenya'

- Oxfam in Kenya, commissioned a research to assess Tullow Oil's implementation of Free Prior Informed Consent (FPIC) in the Turkana oil fields.
- The research, titled- 'Testing Community Consent: Tullow Oil Project in Kenya'- was premised on **Tullow's application of FPIC in Turkana** given that one of the project partners exploring and developing the blocks in the South Lokichar Basin, Africa Oil, received **funding from the International Finance Corporation (IFC)**.
- As the **operator** of fields and as a **condition for IFC funding**, Tullow Oil is **obligated to comply with the IFC Performance Standards, including the requirement to obtain Free, Prior and Informed Consent (FPIC)** of communities of indigenous peoples affected by their operations.
- The research also assessed Tullow's **performance against its own Human Rights Policy** which requires the company to obtain '**broad community support**' and '**the informed agreement**' of communities affected by projects.
- The primary focus of the research was on Tullow and its implementation of FPIC but the findings and recommendations provide important lessons for anyone interested in the EI.

Free, Prior and Informed Consent

Free, Prior and Informed Consent (FPIC) is both a **principle and a process** that **safeguards the rights of indigenous communities** which are affected by major investments. FPIC is a **right** for indigenous peoples and is also emerging as a principle of **best practice** for sustainable development, used to **reduce social conflict** as well as to **increase the legitimacy of a project** in the eyes of all stakeholders and rights holders.



The four components of FPIC.



Turkana FPIC case study

- Turkana is the largest, **most marginalized** and **poorest** county in Kenya. It borders the counties of West Pokot and Baringo to the south, Samburu to the southeast and Marsabit to the east.
- The county is very **remote** and very poor, with **low levels of literacy and numeracy**, and few people are well informed about the oil industry.
- The population is estimated at about 1,400,000. The **population is young**; around 60% of the county's estimated population is 19 or younger.
- 80+ % of residents have no **formal education**, around 15 % have some primary education, and just around 3 % have secondary education (gender-disaggregated data on education are not available). **Low incomes**: only 6 percent of people have paid employment, and the poverty rate is one of the highest in the country at around 94 %.
- **Patriarchal norms** that emphasize male leadership in communities and within families are pervasive. Internal power dynamics are significant barriers to active engagement, especially for women.



3 Triggers for FPIC

Based on its pre-investment analysis, IFC rated this as a Category A project, meaning that it has **‘potential significant adverse social or environmental impacts that are diverse, irreversible, or unprecedented’**. IFC’s Environmental and Social Review Summary of Africa Oil notes that this project must comply with all eight IFC Performance Standards, which are a core part of IFC’s Sustainability Framework, along with the IFC Policy on Environmental and Social Sustainability and the IFC Access to Information Policy.

The IFC Performance Standards lay out general obligations for clients, and the associated Guidance Notes (GN) provide advice on how to comply. The two key triggers for IFC’s FPIC standards in Tullow’s operations are the following:

IFC PS7, paragraph 4 notes that **indigenous peoples** may be **referred to in different countries by such terms as ‘indigenous ethnic minorities’, ‘minority nationalities’, ‘first nations’ or ‘tribal groups’**. In line with this, the **Constitution of Kenya’s** definition of **‘marginalized people’** in Article 260 fits the broad Turkana community, as it refers to nomadic or settled **‘pastoral persons and community’** that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole’. This is buttressed by the **Commission on Revenue Allocation of Kenya’s classification** of Turkana as the **most marginalized community** in the country.

Tullow’s exploration and potential extraction of oil involves **‘impacts on lands and natural resources under customary ownership and use by the indigenous people’**. As noted in IFC PS7, paragraph 13, this is one of the **three circumstances that trigger the need for FPIC** in terms of IFC investments, the other two being in cases where projects will require the **relocation of indigenous peoples** or may significantly **impact their critical cultural heritage**.

Tullow Oil's Human Rights Policy

Tullow published its **Human Rights Policy** in 2016. The policy **mentions important concepts that are relevant to FPIC, but does not provide guidance on implementation.**⁴¹ Key excerpts include:

- 'To **engage meaningfully** with and obtain **broad, community support** from **impacted communities** throughout the **project life cycle**, including, where appropriate, using **traditional community governance** mechanisms and obtaining the **perspectives of vulnerable groups**, including **women**';
- 'To obtain the **informed agreement** of **project-affected communities early in the project cycle**, and **prior to major project developments or changes** that would **significantly** affect them';
- 'To ensure that affected communities have access to a **transparent and fair non-judicial project-level grievance mechanism** which operates in a timely and predictable manner.'

When **requirements** come **from multiple sources**, IFC stipulates that projects must achieve '**whichever is more stringent**'. In this case, while the Tullow Oil Human Rights Policy is in line with the IFC standards, the latter are clearer and are more stringent.

Kenya regulatory requirements

Kenya's legal framework **does not explicitly use the key terms used in FPIC** – 'free, prior, and informed consent'. However, the country has some **existing laws and constitutional protections that can be used to emphasize fundamental FPIC principles**. These also provide a foundation that could be used to bring more explicit attention to FPIC into the legal framework. For example, IFC emphasizes the need for FPIC when the affected communities are 'indigenous people'; PS7, paragraph 4, notes that different terms may be used in different countries.

Kenya's legal framework **does not explicitly refer to FPIC**. In fact, the current **petroleum law** provides **concessions** for exploration in oil blocks **before** affected **communities are even aware of the process**; there is **no legal requirement to seek 'prior consent'** before a company begins early exploration, **apart from the Environmental Impact Assessment (EIA)** process, which is meant to be consultative with affected communities.

However, the **principles of public participation** are provided for in multiple articles, such as Article 35, which highlights the importance of **access to information**, providing every citizen with **'the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom**. Every person has the right to the correction or deletion of untrue or misleading information that affects the person'.

Chapter 5 of the Constitution goes on to give communities the **right to own land collectively 'on the basis of ethnicity, culture or similar community of interest'** and provides for **affirmative actions to protect these rights**. It also grants relevant rights such as the **right to resources, a clean and safe environment, livelihoods and culture**, and encourages **'public participation in the management, protection and conservation of the environment'**.

Regulations cont..

The **Environmental (Impact Assessment and Audit) Regulations (June 2003)** guide EIAs. Article 22 requires that when an EIA has been received by NEMA, **a public hearing must be conducted to ensure that members of the public have the opportunity to give both oral and written comments.** The **date, venue and process of advertising the hearing** should be **accessible and convenient** to the people who are likely to be affected by the project.

The **Community Land Act**, enacted in September 2016, provides for the **recognition, protection and registration of community land rights** and **guides the management and administration of community land**, including the **roles of county governments** in relation to unregistered community land. This act provides for **community administrative structures** that should ensure that **communities are informed and compensated before their land is acquired** for prospecting purposes or for any other functions.

There are opportunities for those engaging with the EI to influence the wording of new legislation, as well as of the subsequent regulations that will guide implementation to widen the space and clarify the details of public participation and consent.

Local Community Engagement

Africa Oil received its concession for oil exploration in Turkana County in 2009. Tullow Oil subsequently bought a 50 percent share in 2010, coming in as operational partner. Maersk Oil purchased half of Africa Oil's shares in 2015, leaving Tullow as the majority partner in blocks 10BB (which includes Nakukulas and Lokicheda communities), 13T and 10BA. All work in these blocks is still in the exploration and appraisal phase. The joint venture partners have received a three-year extension to the Second Additional Exploration Period for a period of three years (expiring 18 September 2020) on Blocks 10BB and 13T.

The communities of Nakukulas and Lokicheda, and the small pastoralist villages of Lotimaan, Lokisim Ekori and Kodekode, are located about 30km southeast of the town of Lokichar. These are the communities **most directly affected** by the Ngamia and Amosing wells, which lie within 7km of them. According to the Area Chief, **Nakukulas has about 2,500 residents and Lokicheda about 3,000**; he could not provide a gender or age breakdown. The pastoralist villages of Lotimaan, Lokisim Ekori and Kodekode, also located near the wells, each have about **30–40 families** (approximately 180–240 residents per village). **The area is quite arid and sparsely populated**, with an estimate of **less than five people per square kilometre** outside of settlements. **Pastoralist families** live in or move across this area in search of water and grazing for their animals, returning to their villages during the rainy season.

No estimates on the number of pastoralist families from county government nor the Kenya National Bureau of Statistics.

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- **Land in Turkana is communally owned**, although it is entrusted to the government for its management according to the 2010 Constitution.
 - The area is **arid**, and the majority of families are **pastoralists**, with about 80 percent of the population involved in grazing and other forms of self-employment such as weaving and charcoal selling.
 - The oil exploration and impending production came with **high expectations of benefits** such as employment and business opportunities for the community.
 - It also generated **anxieties among local communities** with regard to issues such as **disruption of grazing land, impacts on water and increased interest by land speculators**.
 - Turkana **communities feel that they are unheard** and complain about a **lack of transparency** and **failure to disclose information on contracts** that have been signed. They are increasingly accusing businessmen, government officials and other politicians of not consulting them and of corruption and the 'grabbing' and selling of community land, particularly around the urban centres of Lodwar and Lokichar.

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- Internal inequality and inequity are issues within many communities. Every society is composed of women, men, youth, elderly people and **diverse** marginalized groups, all of whom have **varying levels of capacity and opportunity to engage in negotiations**.
 - **Pastoralists**, are simply **not available to participate in extended negotiations at certain times of the year**.
 - In highly **patriarchal** societies, **women may be excluded from meetings** or the **times and locations of meetings** may make it **hard for them to participate** in light of their **multiple daily chores**.
 - When they are able to attend meetings, they are **expected to be relatively silent** while men manage the conversations.
 - A key **challenge for FPIC** is ensuring that **consent is granted by a diverse range** of community members, and not only by traditional leaders and other influential people, who often tend to be older men. This goes **beyond just having a range of people sit in meetings**. FPIC processes require careful design to ensure that the full range of community members are involved, informed and able to understand the issues, and are able to participate meaningfully.

Research Findings

- Oxfam defines **FPIC** as ‘the principle that indigenous peoples and local communities must be adequately informed about projects in a timely manner and given the opportunity to approve (or reject) a project before operations begin’. This includes **participation in setting the terms and conditions** that address the economic, social, and environmental impacts of all phases of extraction and post-extraction operations.
- Communities should have the **right to continue to provide informed consent, or alternatively to withdraw consent**, during the implementation of the project, in line with agreed procedures.
- The FPIC research found that Tullow’s community engagement process has improved since 2015. However, **challenges** remain on the **participation of women** in consultation processes as **traditional pastoralist practices make it harder for women** to know about, participate in or influence consultations as currently structured.
- Consultations have largely also focused on the **short-term implications in terms of land access** for the exploration phase **without assessing implications for the community with respect to the full range of potential risks and impacts throughout** petroleum development process.
- The research also found that **FPIC implementation also requires that county and national governments provide support** and oversee the consultation process while not derogating from their responsibility to support the development of local communities.

Areas for Improvement

There exists room for improvement and the research recommends the following key actions, for a truly FPIC compliant process:

- Facilitation of efforts by communities and county governments to **document consultation processes and agreements in appropriate languages** and to ensure that this is **readily accessible** by all community members including **following through on all outstanding commitments** related to negotiations over land access or are part of the company's corporate social responsibility efforts.
- **Strengthening of implementation** of the IFC performance standards through **use of third parties and independent specialists**, such as legal advisors, to support communities in understanding issues and monitoring FPIC.
- Enforcement of **contract disclosure** by IFC to ensure that communities have adequate information regarding the fiscal terms of agreements reached between companies and governments.
- **Diversity consideration** by community leaders in participation and decision-making processes, especially for marginalised groups like women, the youth and pastoralist communities.
- **National and local governments require to be more actively involved** in consultation processes, in overseeing negotiations and in helping to shape agreements for the benefit of local community members. Extractive companies to **reveal the same basic information** about the payments to a state and communities including benefits to citizens.
- Companies to **regularly monitor** public engagement and information-sharing sessions and ensure **promises made to the host communities are known**.
- Companies to **disclose** their **contracts** to help communities have adequate information regarding the fiscal terms of agreements reached between companies and governments.
- Those working in the oil and gas sector to **seek to influence the country's and county's legal framework** to be more explicit in mentioning the Free Prior and informed Consent (FPIC) and build in key FPIC concepts and language.

Cross-cutting Issues

Gender and community sensitive approaches requires a **recognition that these issues exist** and need to be addressed in all aspects of an extractives operation.

Such mainstreaming in the extractives industry should begin right from the social impact assessment at the **exploration stage and continue throughout the operations life cycle.**

The regulatory environment should include **Gender Impact Assessments** to complement Social and Environmental Impact Assessment, and **Social Impact Management Plans** to **identify vulnerable groups** in the community and engage with gender issues.

Some countries have **set targets and/or quota systems** to promote women into decision-making and leadership roles within organizations. These should be accompanied by **flexible working conditions, mentoring programs and creating safe working environments.** In addition **improving their negotiation skills.**

When the women **organise themselves into groups** this enhances their capacity to engage both county and national government for support and ultimately benefit of their communities.

Cross-cutting Issues cont.

- **National and county governments** need to put in place **mechanisms that will enhance public participation, access to information and community access to related resources.**
- The report established that many **community members** are **not aware of the existence or contents** of the public participation and benefit-sharing documents and residents raised **differing understanding of what was agreed** with the mining companies.
- **Information-sharing** and especially **in land use or content of production sharing agreements** by the international investors are still wanting and face resistance by the host communities.
- Gaps in terms of **monitoring implementation of commitments** provided in the Corporate Social Responsibilities by the mining companies and who supervises the **monitoring of emerging social, environmental effects** on the communities in light of changing dynamics. The **community leaders** may not have the **full range of potential risks and impacts** across the project life cycle to make informed decisions.
- **Women are excluded** from the public participation and benefit-sharing meetings, which are dominated by relatively **well-off influential men** – which runs the risk of **male biased elite capture** and the **marginalization of women voices**, combined with **personal conflict of interest.**
- The communities may **not understand the industry, lack experience in negotiating** long-term arrangements with international investors and are **not clear on how to maintain active engagement.**

Data, data, data!

- **Lack of information** makes it difficult to **regulate the sector** to make things better for women and marginalized communities, to **quantify the secondary impact** of the effects of extractive activities.
- Data disclosure will enable identification of areas of disproportionate under representation or marginalisation and facilitate the **necessary interventions**.
- Ensures **transparency and accountability** and allows for citizens to engage with the various issues including those affecting the inclusion of women and other vulnerable communities.
- Equal opportunities to **access data**, and **data disaggregation** along gender lines where possible is equally important.

Conclusion

- **Sensitization on the laws** that govern the extractive sector in Kenya at local and national levels, on both legislative and policy frameworks. This enables communities, including women and the marginalized, to **comprehend the protection procedures and gaps** that exist in the law, they can **identify, define and claim their rights by demanding inclusion, consultation and participation** to ensure that free, prior, and informed consent is an entrenched practice in the extractive sector.
- **Recognition, training and education** of all stakeholders would ease governance challenges in the sector.
- Women working in the extractive industry should be trained on how to **organise themselves into groups** establish and run **micro-financing institutions** and revolving funds amongst organized women groups. Empowers them to **save, secure loans** to invest into their small-scale mining activities, **access health care** and be able to **seek redress** in cases of abuse or discrimination.
- To enhance Kenya's extractive sector host communities and women must be provided with **balanced and objective information** in regards to the anticipated natural resource extraction and the large scale investment that will be set up in their locality. This will assist them in understanding the issues, alternatives, opportunities and/or solutions to arising issues.
- In addition to the above, to maximize the potential benefits of the extractive sector to Kenya and its people its development and regulation needs to take into account **major global and national trends**, including the convergence of poverty, insecurity, climate change, and threats to biodiversity, among other factors.

Conclusion



The **human development approach** to the exploitation of natural resources focuses beyond the money. It is about creating an **environment** in which people can **develop their full potential** and **lead productive, creative lives** in accordance with their needs and interests.

To do this we require the **participation of both genders** and the **diverse members of the community** to improve their overall living standards.