Will oil and gas prove a blessing, a curse or a dilemma?
The view from 2030

SPECIAL ISSUE ON THE EXTRACTIVES SECTOR
The fiscal, legal, gender and environmental policy challenges ahead; how colonial Africa was structured around exploitative extraction and how to avoid a repeat; and geopolitics, risks and opportunities.
When resources are degraded, we start competing for them, whether it is at the local level in Kenya, where we had tribal clashes over land and water, or at the global level, where we are fighting over water, oil, and minerals. So one way to promote peace is to promote sustainable management and equitable distribution of resources.” - Wangari Maathai

A WORD FROM THE CEO

I am pleased to invite you to read this fourth issue of the Policy Magazine of the Institute of Economic Affairs (IEA-Kenya). While this publication presents a wide range of policy analyses, the main articles are a summary of an eight-month project of research work on the extractive sector in Kenya. Known as the Extractives Sector Analysis and Policy Engagement, the project gave rise to five analytical policy papers covering facets of the industry such as fiscal policy, the legal and regulatory situation, implications for the environment and gender and the value chain, concluding with an analysis of the political economy of the sector.

The recent confirmations of discovery of the energy and mineral resources within Kenya’s boundaries mean that a sector that has thus far comprised a miniscule 1% of GDP shows promise of substantial future returns while presenting unique challenges that call for dispassionate analysis, policy engagement and public education.

Meanwhile, Uganda and Tanzania have also announced the existence of energy resources with the result that the issue of the implications of mineral resources in development has become relevant there too. Essentially therefore, the same policy discourses that the Institute of Economic Affairs hoped to inform through this project are also taking place in varying degrees in the two neighbouring countries. Thus this issue of Policy Magazine would have been incomplete without addressing the regional component of the theme. Readers will find a number of articles dedicated to individual countries in East Africa tied to other development imperatives such as investments, financial sector development and the policy alternatives at hand.

The articles and commentary pieces make clear that there are significant regulatory and policy gaps in all the countries in East Africa regarding management, capacity and the fitness of institutions. A subtle fact that emerges from an attempt to reconcile the full readings of the summarised research papers is that there is a questionable assumption that prices of hydrocarbons will remain high and thereby assure governments and citizens of high resource rents. This presents a clear danger because the expectation of high rents informs the discourse in the national press that takes it for granted that these countries are “oil-rich”.

In conclusion, public attention is focused disproportionately on controlling the ostensible “greed” of multinationals with disturbingly little insistence on opening up government finances to public scrutiny.

Let’s subject government finances to public scrutiny

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Kwame Owino
Chief Executive Officer
Institute of Economic Affairs

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Overview
Oil, gas, mineral discoveries trigger avalanche of FDI into East Africa

Now, Uganda, Kenya and Tanzania are preparing new rounds of licensing for oil, gas and mining blocks in 2015 that are expected to confirm East Africa’s emerging status as a global energy powerhouse.
Everyone is busy talking about oil and gas yet there are also significant resources in the mining sector and a poor legal framework to govern the sector. We may be risking livelihoods by ignoring this sector.

Everyone wants a piece of Africa, nobody wants the Africans themselves

“The mistake has been to make the investors deal with the landowners, they should deal with the government; and then the government will deal with the landowners. You just tell those villagers to get out. You cannot stop the state from accessing its assets.”
- Uganda’s President Yoweri Museveni

$6.8b
Global consulting firm EY estimates that the region plus Ethiopia are expected to attract a total of $6.8 billion per annum over the next five years.

6.5b barrels
Uganda’s confirmed oil deposits have already risen from 3.5 billion barrels to 6.5 billion barrels. Kenya expects its estimate of oil resources to almost double to 1 billion barrels.

IEA estimates that Kenya could earn $780 million per year and $1.8 billion per year, respectively.

Earnings based on two oil price scenarios

9.4%
When the national extractive sector employment data is disaggregated by gender, female participation in the sector is discouraging, as only 9.4% of those employed in this sector are females.

The emerging extractive sector is likely to have huge negative externalities that span the whole extractive industry value chain. Oil pipeline ruptures during exploration and transportation pose a serious environmental threat.
The Institute of Economic Affairs (IEA) is a Nairobi-based think tank that seeks to promote plural and informed debate on current public policy issues. This special issue on the extractive sector has been made possible in large part by the support of Canada’s Department of Foreign Affairs, Trade and Development.

Kenya exploration and appraisal update from Tullow Oil

TULLOW OIL plc announces the results of a series of recent exploration and appraisal activities conducted in Blocks 10BB and 13T onshore Kenya.

Kodos-1 wildcat exploration well in the Kerio Basin
The Kodos-1 exploration wildcat in Block 10BB is the first well drilled in the Kerio Basin, northeast of the successful South Lokichar Basin. Hydrocarbon shows were encountered in Kodos-1 which indicates the presence of an active petroleum system.

The Weatherford Rig-804 drilled Kodos-1 to a final depth of 2,500 metres and the well will be plugged and abandoned. The rig will now be moved to drill the second well in the basin at Epir-1, 25 km north of Kodos-1 in a separate sub-basin.

Ekosowan-1 exploration well in the South Lokichar Basin
The Ekosowan-1 well in block 10BB is the most southerly well drilled to date in the South Lokichar Basin, 12 km southeast and up-dip of the previous Amosing-1 oil discovery. The well extended the proven oil basin southwards having encountered a 900 metre section of near continuous oil shows throughout an interval of tight faulted sands.

Ngamia-4 appraisal well in South Lokichar Basin
The Ngamia-4 well in Block 10BB continued the successful appraisal of the Ngamia oil field. The well was drilled 1.1 km west of the Ngamia-1 discovery well and successfully encountered up to 120 metres of net hydrocarbon pay, of which up to 80 metres was oil.

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Oil, gas, mineral discoveries trigger avalanche of FDI into East Africa

By Steve Mbogo

Now, Uganda, Kenya and Tanzania are preparing new rounds of licensing for oil, gas and mining blocks in 2015 that are expected to confirm East Africa’s emerging status as a global energy powerhouse.

For five decades after Independence, the countries of East Africa were seen, and saw themselves, as poor nations dependent on erratic rain-fed agriculture, with their principal exports being tea, coffee and tourism. Tanzania had its gold and emerald mines, but the country saw little benefit from this resource.

All this has changed dramatically in the past few years. It started with the discovery of commercially viable deposits in the Albertine Graben in Uganda, followed by confirmation of huge gas deposits offshore of Tanzania and oil in Kenya, both onshore in the north and offshore in waters parts of which are disputed with Somalia.

Suddenly, the prospect of growing seriously rich from extraction of mineral resources became breathtakingly real.

Now, Uganda, Kenya and Tanzania are preparing new rounds of licensing for oil, gas and mining blocks in 2015 that are expected to confirm East Africa’s emerging status as a global energy powerhouse.

The East African trio have already confirmed commercially viable reserves of oil, gas, coal and rare earths, with production of oil and gas expected to start in 2017.

The most recent discoveries happened in Kenya in the months of June and July with oil discoveries offshore Lamu in June, and subsequent gas discoveries in Wajir, a town in arid northeastern Kenya.

Later, in August, Uganda invited bids from consultants to advise the government on its next oil licensing round in early 2015. Kampala plans to license at least 15 more exploration blocks, the biggest auction ever in the country’s history.

Uganda’s Minister of Energy and Mineral Development Irene Muloni said the consultant will help the government put together data to establish the actual prospects of the blocks.

“The consultant will generally help to market the blocks to realise better prices. The consultant will liaise with international companies, as well as help in the pricing and monitoring of the accessed data,” said the minister.

Kenya will also offer a similar number of blocks to investors in 2015 as soon as the proposed Petroleum Bill becomes law. A decision is yet to be made about whether the offer will be done under the open-door policy or the new competitive bidding round.

“It is a debate that has opened. We have many applications that have piled up from 2012 when the ministry froze the awarding of blocks,” said Cabinet Secretary for Energy Davis Chirchir.

Uganda’s confirmed oil deposits have already risen from 3.5 billion barrels to 6.5 billion barrels. Kenya meanwhile expects its estimate of oil resources to almost double to 1 billion barrels, with the ongoing drilling.

Investors come calling

The new discoveries and expectations of more have triggered an avalanche of oil, gas and minerals-related foreign direct investment with all the three countries more than doubling FDI inflows in the past five years.

Global consulting firm EY estimates that the region plus Ethiopia are expected to attract a total of $6.8 billion per annum over the next five years. Another forecast by Africa Assets, a financial consulting firm with a private equity bias, predicts that FDI flows will increase tremendously in the coming years, driven by oil, gas and mining activities.

“Going forward, a few large deals might also be seen in the extractive or related industries, driven by the ongoing exploration activities of oil and gas in Eastern Africa,” says the 2014 East Africa Private Equity Confidence Survey by Africa Assets.

The optimism is driven by the fact that the region is just starting to discover its vast reserves of minerals, giving investors confidence that the large swathes of unexplored areas will turn out to hold much more.

Uganda, for instance, has reported a large discovery of uranium, to exploit which it has reached out to India to share...
The discoveries have caught the beneficiary countries short in terms of legal preparedness, so much so that in the existing policy in Kenya on energy, known as Sessional Paper No. 4 on Energy for 2004, there is only one paragraph that talks about oil and gas.

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The technology with a view using it to generate nuclear powered electricity.

The country’s confirmed oil deposits have already risen from 3.5 billion barrels to 6.5 billion barrels, according to the Commissioner for Petroleum Exploration Ernest Rubondo.

Kenya expects its estimate of oil resources to almost double to 1 billion barrels, with Petroleum Commissioner Martin Heya attributing the estimate to the ongoing drilling.

He said most exploration licences will move to drilling next year. “We are expecting new finds in virgin areas. The interest and enthusiasm from investors is very encouraging,” said Mr Heya. Tanzania is also expecting to double its gas reserves, currently estimated at about 50 trillion cubic feet, as more drilling takes place, officials said.

While rare earths have been discovered in Kenya, additional finds are likely after the government engaged Exploration Technology Institute of Jansu Province JGET of China to undertake aerial mapping of the country’s mineral resource wealth.

The deal, signed with the Ministry of Mining in 2013, involves remote sensing, airborne geophysical surveys and upgrading of geological services in Kenya at a cost of $70 million, all to be financed by a grant from the Chinese government.

Kenya Cabinet Secretary for Mining Najib Balala said the main objective of the survey is to undertake multiparametric remote sensing, aeromagnetic, and radiometric survey in combination with satellite imagery studies as well as upgrad- ing of geological services in Kenya with a view to determining the mineral potential of the country.


the operation. The royalty rate or the government’s share of production may increase with increasing R-factor.

The proposed law is expected to be presented to parliament soon. It also proposes a new regulatory framework for awarding exploration area and production licences, by introducing competitive bidding rounds to be overseen by an independent regulator.

But even as Kenya lays the foundations for a prudent legal structure, its recent introduction of the capital gains tax has been criticised as likely to discourage investors in the oil, gas and mining sector.

Africa Oil chief executive Keith Hill said the tax rate of between 30% and 37.5% was not sustainable and could end up discouraging other explorers whom the industry needs to take the development of the sector to the next level.

“Africa Oil, alongside the industry representative body Kenya Oil & Gas Association (KOGA) are working closely with all levels of the Kenyan government to discuss the potential negative impact such a tax policy will have on the development of the oil and gas industry,” he said in a statement.

“This will include potential barriers to entry for new investors, erosion of present investor confidence and potential delays in exploration and development activity,” Mr Hill added.

Another controversy is simmering over a new law proposed by the Ministry of Mining. The proposed law will replace that enacted in 1940, when Kenya was still a British colony.

The draft Mining Bill 2014 has generated heated debate, with the Kenya Chamber of Mines criticising it as being unfriendly to investors, but the government appears to have settled on it.

The highlights of the proposed law include a 10% carried interest, meaning the government gets a 10% share of profits without funding mining activities; a requirement for prospectors to declare prospecting budgets; and a provision allowing the Cabinet secretary to amend rates of royalty paid by companies every two years.

Another key concern is the high royalty rates. While these are not part of the current draft law, will be incorporated into it and are already being applied under a special notice signed by Mr Balala earlier this year.

For example, rare earth, niobium and titanium will be charged royalty of 10% of gross sales, a jump from 3%, while coal and gold will be charged at 8%, up from the previous 3%. Foreign mining companies will be required to list 20% of their equity on the Nairobi Securities Exchange.

“This is a sure way to scare off investors. The royalties are the highest in Africa,” said Adiel Gitari, chairman of the Kenya Chamber of Mines.

The new law proposes the setting up of a regulatory body known as National Mining Corporation as well as a minerals and metals commodity exchange.

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The discoveries have caught the beneficiary countries short in terms of legal preparedness, so much so that in the existing policy in Kenya on energy, known as Sessional Paper No. 4 on Energy for 2004, there is only one paragraph that talks about oil and gas.
The region is grappling with the challenge of how to fast-track training of oil and gas engineers after unexpected and continuing discoveries position the region as a future global oil hotspot.

There is a clear risk that locals will be sidelined as expatriates take dominant positions when oil and gas pumping starts by 2017, the estimated time given by Tullow Oil for the start of pumping in oil in Kenya.

"The first steps we should be taking are finding ways and means to build local capacity. Our universities rarely teach oil and gas courses. We need international partnerships to start such training here," said Wanjiku Manyara, the chief executive of the Petroleum Institute of East Africa.

Global consulting firm EV estimates that the region plus Ethiopia are expected to attract a total of $6.8 billion per annum over the next five years, with investors confident that the large swathes of unexplored areas will turn out to hold much more oil and gas.

For starters, the engineer registration boards of the three East African countries do not list oil and gas engineers in their registration categories based on membership records.

According to Mr Nyaga of Oil and Energy Services, given a choice, foreign firms would prefer to hire locals if they are cheaper and help them gain political capital.

For the legal and local content draw-downs are however not slowing the march towards production, as countries put pressure on investors to reach the production stage so they can start benefitting from the petrodollars.

East African economies are agro-based and are highly vulnerable to the volatility of the agro-produce market as they largely export unprocessed commodities. The region is therefore causing excitement as it will significantly alter the balance of payments of all the countries and could for the first time enable them to change from being net importers into net exporters.

On average, the bulk of the export pipeline. "We expect the development pace of the pipeline and other facilities needed for evacuation of oil to take another three years," said Tullow Uganda country manager Jimmy Mugera.

There has also been increased activity in mergers, fundraising and acquisitions, among the most recent being IMX Resources Ltd completion of a placement of 110 million shares which raised $2.97 million to be used for exploration of graphite and gold in Tanzania. Tanzanian Royalty Exploration Corporation is seeking a joint venture with an investor from United Arab Emirates for the Buziba-Busidawa gold mine. Compañía Española de Petróleos (CEPSA) of Spain and Mlilo International have formed partnership with firms already owning exploration area 11A in northeastern Kenya and acreage L6 along the coastline respectively.

The region was brought in to perform the same job that the foreign companies, given a choice, foreign firms would prefer to hire locals if they are cheaper and help them gain political capital.

"The implementation of this succession plan will influence the extension of work permit application. This will give effect to the operator, contractor, subcontractor, service provider etc. to make every reasonable effort within a reasonable time to meet this requirement. However, some have already been brought in to perform the job that the foreign country national was to perform," notes Mr Obath.

"So almost everybody who is working in the sector here now has come here because they are associated with exploration companies," said Mr Obath. "How do we turn that into an opportunity for people to invest in this country? The key thing that needs to happen is that we need to put in an overall policy on transfer of knowledge and the transfer of business across the oil, gas and mining sector," he said.

Local content is also missing in financial services like insurance where discussions have not moved on from how the industry should benefit despite existing insurable risks in oil, gas and mining.

One idea being floated is the formation of an oil and gas insurance pool. "The option is pooling so that we can redistribute risks," said the chairman of the Association of Insurance Brokers of Kenya, Muchemi Ndung’u.

"The legislation could contain a requirement for local service companies to partner with a local firm in order to operate in Kenya, as well as stipulating utilisation of local banking, financing, insurance and legal services and reinsurance," said the officials.

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Blessing, curse or dilemma? The view from 2030

By Katindi Sivi-Njonjo and Chrispine Oduor

Researchers at the Institute of Economic Affairs, drawing from workshops with key informants, interviews and a review of the relevant literature, have identified three possible scenarios, which are essentially stories about the future.

A BAD CASE OF THE RESOURCE CURSE

Following the nationalisation of the extractives sector, economic growth stagnates. Perhaps things could have been different – there was so much hope – but the haphazard development of the sector and weaknesses in the policy, legal and fiscal frameworks have taken their toll. The inefficiencies of the public sector, in particular, plague the extractives industry. The sector is marred by corruption, resulting in some of the biggest scandals we have ever seen. Civil society groups are angry, but when you look closely, you see very little involvement of stakeholders at the local level; there is virtually no social licence to operate in the communities where the extractives are located, leading locals to frequently disrupt activities. Far from achieving Vision 2030, Kenya is now unquestionably a fragile state.

How did we get here?

After the significant discovery of various extractives, the government opted to keep a stranglehold on the oil sector. Due to excessive red tape, especially in the licensing of transnational corporations and the high cost of doing business, many potential investors were discouraged and looked for other opportunities in the region. Meanwhile, the government fostered a strong partnership with China, making it the biggest extractives investor in the country. There was no disclosure of the contractual agreements and the revenue sharing framework was not at all clear. Resources from the extractives industry were shared between the Chinese companies and government officials, who embezzled most of the funds. At the county level, revenue sharing was done as prescribed by the County Revenue Authority, but with so little oversight at the local level, that was embezzled too. Due to lax fiscal controls, budgets were based on over-optimistic projections of the tax revenue, which were sometimes used as guarantees for borrowing during periods of economic slowdown. A huge proportion of the income also went to recurrent expenditure and corrupt dealings. Government ended up overspending and incurring more debt, thus experiencing major budget deficits and creating an unstable macroeconomic environment.

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Both the skilled and the non-skilled labour was provided by expatriate employees, mainly from China. Local people found it difficult to get employment in the sector largely because the training for relevant skills was not available, and no policies existed to compel companies to employ a certain proportion of locals. The counties where extraction took place remained largely rural and the high unemployment levels led to community members, especially the youth, being increasingly resentful. With regards to community engagement, the government and the Chinese companies viewed the consultation process as a waste of time or as a means to unnecessarily compensate people. This assumption led to negotiation avoidance, which escalated frustration among communities, acts of violence, lawsuits, work stoppages and increased wage demands, all of which were costly and time-consuming.

When it became impossible to quell the chaos in the communities, negotiations were held with the most threatening groups for “protection” of the Chinese companies and for work to continue. Without realising it, acts of violence were legitimised,

W

ill the discovery of oil and other hydrocarbon resources turn Kenya into the Nigeria of the East, heavily reliant on oil revenues and beleaguered by conflict? Into the Norway of the South? Or will Kenya set its own example?

The true impact of oil on Kenya’s future, of course, depends on myriad factors too difficult to predict, but through a technique called scenario analysis, we can identify a small number of realistic possibilities of where the emergence of the oil sector could take the country.

Researchers at the Institute of Economic Affairs conducted such an analysis – drawing from workshops with key informants, interviews and a review of the relevant literature. Based on this research, they identified three possible scenarios, which are essentially stories about the future. Each scenario describes a future possibility and how the country could end up there. One scenario is disastrously bad, one decidedly mixed and one quite good.

Resource Curse, Resource Dilemma or Resource Blessing, which of these scenarios becomes a reality will depend on the many factors that influence these scenarios, but two above all: The policy decisions made by the government regarding how the extractives sector will be run, and the nature and extent of stakeholder engagement in the sector.

This article briefly describes those scenarios, writing as though it is 2030 and each has come true. We are looking back at how we arrived at the situation we are hypothetically in.

Researchers at the Institute of Economic Affairs, | Institute of Economic Affairs
Due to the emphasis on the growth of the extractives sector, two-thirds of the country’s GDP, over half of government revenues, and nearly 75 per cent of exports are from the extractives sector. The country has achieved its middle-income status, but other sectors like agriculture and manufacturing have shrunk. Due to the prominence of the transnational corporations in the extractives sector, resource governance and the level of prudence in managing resources is relatively transparent (depending on who you are). Stakeholder engagement is still weak in many parts of the country, undermining the social licence to operate in the communities where some of the largest mineral and oil deposits are located.

How did we get here?

After the significant discovery of various extractives, the government opted to promote Public Private Partnerships (PPPs) in the sector. The government gave high tax incentives to the investing companies, from traditional players like Australia, Britain and Canada. The contractual agreements were not fully disclosed to the public and the revenue sharing framework gave more advantage to the transnationals than to the government; it was urgent that the country proceed with exploitation, and the foreign companies had the skills, we were told. During good times, when there was a boom in the prices of the extractives, because the government had not established windfall profit taxes or sliding scale royalties, the companies alone benefited. However, during bad times when there was a drop in prices, the government bore most of the losses. At the county level, the revenue allocation formula prescribed by the County Revenue Authority (National 75%, County 20%, Community 5%) was opposed by counties as being unfair. However, nothing was really done to change it. In subsequent years, the country experienced budget surpluses at times, but mostly budget deficits as the money was quickly spent on capital projects and recurrent expenditure with minimal savings channelled into the trust fund as originally designed. Still, national debt was lower. Corruption was still present, but major scandals were avoided courtesy of the efficient management of the transnational corporations. Eventually the sector dominated the economy at the expense of others, such as agriculture, the service sector and manufacturing, which had all been neglected for years. Extractives, as mentioned above, accounted for two-thirds of the GDP, over half of government revenue and the country’s export nearly 75% of exports. The sector was dominated by expatriate employees who provided all the skilled labour. Locals provided all the unskilled labour, which initially was in high demand when the extraction process began but reduced significantly with time. Skills transfer was theoretically required by the government, but the law was not enforced. The locals therefore remained in the working poor category. As a result, the counties where the minerals and oil were located grew into peri-urban centres, but with numerous mushrooming slums to accommodate the migrant workers. With regard to community engagement, the companies viewed the consultation process as part of an environmental and social impact analysis to meet external requirements. The process was therefore made easier by consulting community elites who did not represent the wider interests of the communities but positioned themselves between the company and the community for personal gain. This greatly undermined cohesion and resulted in a weak social licence to operate. The little engagement that occurred between the companies and the communities was approached with a fixed agenda by the transnational corporations, thus limiting the space available for meaningful engagement. The focus was on ‘winning’ and achieving specific outcomes. A lynchpin approach to corporate social responsibility was employed by the companies, where occasional one-off contributions to community projects were made with much fanfare.

Even though communities indirectly benefited from the extractives companies through social development projects, extreme inequalities were witnessed, with some people benefiting immensely from the sector, while the majority did not experience any change at all in their lives. Most citizens became passive in their experience any change at all in their lives. Extractive companies / TNCs made in the sector.

How did we get here?

After the significant discovery of various extractives, the government opted to foster long-term partnerships with transnational mining and oil corporations to inject much-needed foreign capital investment, while enjoying an ownership stake and promoting a satisfactory climate for such investment in all major mining operations. The government did not give any tax incentives whatsoever, but ensured access to reliable energy and a low cost of doing business. The efficient licensing administration coupled with the strategic positioning of the country in relation to its landed neighbours, the access to a sea port and a robust rail infrastructure; made the country an attractive destination for both traditional players in the sector like Australia, Britain and Canada as well as investors from emerging markets like the BRICS.

Carefully worked out revenue- and risk-sharing agreements enabled the country to gain major benefits from the sector and share equitably in the risks. At the county level, after many learning lessons, CRA finally arrived at a widely accepted resource sharing formula based on equal sharing of revenue between the national and county governments. The development of an integrated IT-based extractive industry revenue management system helped in accounting for resources. In subsequent years, the country realised handsome revenues from extractives due to a strong fiscal position, permitting a budget surplus. Kenya invested huge resources in a trust fund and paid off all its foreign debt. Significant financial reserves were built up, enabling the economy to ride out external economic shocks. Major resources were also used to finance a wide range of social and economic infrastructure including roads, water, education, health as well as social services and welfare support schemes not only in the counties with oil and minerals, but countywide.

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<td><strong>Resource ‘dilemma’</strong></td>
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<td>Economy is dominated by the EI sector that is partially well managed</td>
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<tr>
<td><strong>Resource ‘blessing’</strong></td>
<td>Very strong stakeholder engagement and a strong social licence to operate</td>
<td>Economy is driven by a mix of sectors (EI, manufacturing, service and agriculture) that are managed transparently and accountably</td>
<td>3 Management is about extent of resource governance and level of prudence in managing revenues</td>
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There was no disclosure of the contractual agreements and the revenue sharing framework was not at all clear. Resources from the extractives industry were shared between the Chinese companies and government officials, who embezzled most of the funds. At the country level, revenue sharing was done as prescribed by the County Revenue Authority, but with so little oversight at the local level, that was embezzled too.

**STRAIGHTENING A RESOURCE DILEMMA**

| THREE SCENARIOS FOR THE FUTURE | |
| --- | --- | --- | --- |
| **Scenario** | Government dominated EI sector that is badly managed | Non involvement of stakeholders and nonexistent social licence to operate | 1 Stakeholder engagement is about the relationship between actors and the decisions key players make in the sector. |
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Enjoying the Resource Blessing

The extractive sector becomes a major GDP earner with agriculture, manufacturing, service, tourism, retail and wholesale still contributing significantly to the country’s economic growth, thus maintaining a balance of productive sectors. The government establishes an equal partnership with the big oil and mining corporations, carefully working out revenue- and risk-sharing agreements that enable the country to gain major benefits from the sector and share equitably in the risks. Strong monetary policies allow for fully transparent management of resources. Strong stakeholder engagement leads to a strong social licence to operate and by 2024, Kenya achieves upper middle-income status, surpassing the Vision 2030 aspiration.

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After the significant discovery of various extractives, the government opted to foster long-term partnerships with transnational mining and oil corporations to inject much-needed foreign capital investment, while enjoying an ownership stake and promoting a satisfactory climate for such investment in all major mining operations. The government did not give any tax incentives whatsoever, but ensured access to reliable energy and a low cost of doing business. The efficient licensing administration coupled with the strategic positioning of the country in relation to its landed neighbours, the access to a sea port and a robust rail infrastructure; made the country an attractive destination for both traditional players in the sector like Australia, Britain and Canada as well as investors from emerging markets like the BRICS.

Carefully worked out revenue- and risk-sharing agreements enabled the country to gain major benefits from the sector and share equitably in the risks. At the county level, after many learning lessons, CRA finally arrived at a widely accepted resource sharing formula based on equal sharing of revenue between the national and county governments. The development of an integrated IT-based extractive industry revenue management system helped in accounting for resources. In subsequent years, the country realised handsome revenues from extractives due to a strong fiscal position, permitting a budget surplus. Kenya invested huge resources in a trust fund and paid off all its foreign debt. Significant financial reserves were built up, enabling the economy to ride out external economic shocks. Major resources were also used to finance a wide range of social and economic infrastructure including roads, water, education, health as well as social services and welfare support schemes not only in the counties with oil and minerals, but countywide.
The sector contributed greatly to employment as 40 per cent of its workforce were skilled workers, half of whom were locals. This was especially after the intensive human resource development programmes carried out through student scholarships to universities abroad in 2017 as well as the establishment of relevant courses in local universities. The strong enforcement of skills transfer laws and mandatory employment quotas for locals in the sector contributed to the success of the programme. The well-paid employees contributed significantly to the rise of a new middle-income group of Kenyans. As a result, the headquarters of the counties where the extractive industries were established blossomed into urban centres.

Anti-corruption legislation and structures were reviewed. A “three pronged attack” on the phenomenon was implemented: Public education and reporting, detailed public investigation and prosecution (even of the most powerful individuals). As a result, corruption reduced drastically and by 2019, Transparency International’s Corruption Perceptions Index ranked the country at 7 out of 163 countries, making it the least corrupt country in Africa.

With regard to community engagement, the transnationals were required by law to extensively engage with communities. The companies saw the consultation process as one that generated creative ideas. They also saw it as an opportunity to receive creative solutions even before exploratory operations commenced. The investors consulted with threatening groups, positive community actors as well as ordinary community members. While some of the conversations were more difficult than others, the social licence to operate was very high due to comprehensive stakeholder engagement. In the interest of longer-term contributions to peace and stability, companies thought creatively about using their convening power to foster peaceful relations between different stakeholders in the region e.g. by sponsoring annual inter-community marathons or beauty pageants. They also partnered on a long-term basis with groups to support community projects. The companies also floated shares and gave community members first priority thus raising the level of trust and ownership. Many community members reported an increase in household incomes and poverty significantly reduced in these areas.

By 2024, six years prior to the Vision 2030 goal, Kenya has achieved an upper middle-income status, and many other countries are now trying to follow its lead.

Kenyans have a choice, and choices have responsibilities. These scenarios are all possibilities, but the blissful final scenario will only come true with sober decision-making and tireless efforts at efficient implementation. At the IEA, we hope to do our part.
Can Kenya manage and spend its coming oil wealth wisely?

The commodity boom is an unprecedented opportunity for the continent, region and country to improve welfare through the provision of infrastructure, health services, education, water and sanitation. But this opportunity will be squandered without sound fiscal policy, and our research finds that Kenya is not yet ready to confront the unique fiscal challenges of its own commodities boom.

By Davis Osoro and John Mutua

The production of oil and gas in Kenya will bring with it a bounty of new resources. But for whose benefit?

The questions that Kenya faces over how to manage its coming oil wealth are all essentially questions about the distribution of resources. Between levels of government, between this generation and the next, between the rich and the poor, between regions and even between sectors.

These may seem like difficult political questions, and they no doubt generate some of the most acrimonious political debate in the extractives sector, but let us not be distracted from the simple economic truth. The best distribution is that which lifts the largest number of Kenyans out of poverty and contributes the most to the economy overall.

The 2013 Africa Progress Report heralded the commodity boom as an unprecedented opportunity for the continent to improve welfare through the provision of infrastructure, health services, education, water and sanitation. But this opportunity will be squandered without sound fiscal policy, and research by the Institute of Economic Affairs finds that Kenya is not yet ready to confront the unique fiscal challenges of its own commodities boom.

This contribution to Policy Magazine draws from the most comprehensive look yet at the fiscal implications of recent natural resource discoveries. The research made projections for natural resource revenue, reviewed the state of fiscal policies, considered debates on how best to spread the windfall, and ultimately looked at how all of this can maximise poverty reduction.

The extractives industry is small – but not for long

At present, the extractives industry – which is comprised mostly of low-value soda ash and crushed soda mining – contributes precious little to Kenya’s economy or government revenues. Mining and quarrying account for just 1% of nominal GDP.

By comparison, consider the potential of the oil sector. Kenya currently has about 600 million barrels of confirmed oil reserves, oil that can almost certainly be extracted – and that figure is expected to rise to 1 billion barrels very soon. That puts Kenya’s reserves slightly below those of Ghana, which is now producing 98,000 barrels of oil per day, and has earned about $2.1 billion in revenue from oil sales over the past three years.

There are many reasons why Kenya’s oil revenue will be different from Ghana’s, not least of them the fluctuating price of oil. But based on two oil price scenarios of $60 per barrel and $100 per barrel, and making some predictions about the rate of return that the government could expect from contracts, IEA estimates that Kenya could earn $780 million per year and $1.8 billion per year, respectively. In Kenya’s economic context, those are massive revenue receipts, especially coming from just one sector. Even under the more conservative scenario, they would represent 3.5% of the 2014/2015 budget. And there is evidence to suggest Kenya’s potential to generate revenue from oil may actually be much higher.

Though not confirmed, industry players estimate that there may be up to 2.6 billion barrels worth of oil in the Turkana and Mandera basins.

Aside from the obvious impact of oil price fluctuations on revenue (which could be partially mitigated with a Stabilisation Fund), the fine print of the contracts can also have a big impact on the government’s share.

In Kenya, the state predominantly uses taxes and royalties to capture rents from extraction of minerals. Contractors pay royalties to the government either as a percentage of gross revenues or in the form of a fixed payment per unit of production, as well as taxes on the remaining income of the contractor. In the petroleum sector, however, Production Sharing Contracts (PSCs) have become the standard in developing countries because they pose so little risk to the state (the international oil company provides the capital).

The PSC method most often used is the Daily Rate of Production (DRP) method, which gives the state a greater share of profit as the daily rate rises. But this mechanism, which is not progressive with respect to oil prices, has been criticised for leaving windfall profits with the companies as international prices rise. How Kenya fine-tunes these mechanisms could have a huge influence on revenue.
The country and specifically government will not run away from the fact that this wealth must be distributed to its rightful owners – Dr. Amenya Nyakundi, Commission for Revenue Allocation, Advisor for Natural Resource Governance

Managing the windfall wisely
The first problem that Kenya must seek to avoid through its fiscal and monetary policies is what is termed the “Dutch Disease.” This is a situation where the development of high value natural resources for export causes a rapid appreciation of the local currency as the dollars start flowing in, with the effect of making the country’s manufacturing and agriculture less competitive in global markets. This was the experience of the manufacturing sector in the Netherlands with the discovery of natural gas in 1959. Without a focused and co-ordinated effort to keep the shilling steady, the gains made in extractives will be eroded by losses elsewhere.

Fiscal policy must also address the need for a fair and equitable distribution of the resources among communities, counties and the national government – one of the thornier issues around natural resource benefits. The Commission on Revenue Allocation (CRA) has come up with a proposed sharing formula: National 75%, County 20%, Community 5%. This is intended to support county and community-level capital development projects, which would ideally be based on development plans that outline administrative/political tenures. In this regard, CRA will need to build the necessary technical capacities at these levels.

Any processes to distribute revenue to the county and local level should be realistic about these counties’ absorptive capacities (vis a vis normal revenue receipts from central government) – Robert Simiyu, Governance Advisor, Canadian Cooperation Office

Any processes to distribute revenue to the county and local level should be realistic about these counties’ absorptive capacities (vis a vis normal revenue receipts from central government)

That the areas most likely to see oil production are also among the most marginalised areas in Kenya lends support to this sharing arrangement, but only if the money is spent effectively, and devolution has made it clear that technical capacity for the transparent management of resources is not transferred overnight. If these capacity building efforts are not begun now in earnest, many of the potential benefits will have been squandered.

Mineral resource exhaustibility gives rise to another issue of equity – one of distributing resources among different generations. In other words, how much of the windfall should be spent now, and how much should be saved for the benefit of future generations?

And there is another, more practical point that should influence this decision, which is the ability of the government to spend more resources. At the moment, the government routinely underspends its capital budget year after year.

Without fundamental changes to the budgetary system to hasten disbursements and penalise ministries and agencies who habitually underspend, injecting more resources into the system would be a waste. Almost all stakeholders agree that a sovereign wealth fund is an inevitable ingredient in natural resources developments that would safeguard the benefits for generations to come – though the IMF has warned that legislation currently being developed to create such a fund is “premature.” Providing an institutional framework that improves the transparency of natural resource revenue is also crucial.

FISCAL POLICY: AVOIDING THE CURSE

Sudanese employees of Zhongyuan Petroleum Exploration Bureau (ZPEB) of Sinopec work at a jobsite for oil drilling in Sudan, Africa, 10 June 2008.

Source: KNBS, Economic Survey 2012

Adjustments  Fishing  Mining and quarrying  Electric and Water Supply  Hotel and restaurants  Construction  Real Estate  Public admin. and defence  Education  Financial intermediation  Manufacturing  Transport and communication  Wholesale and retail  Agriculture and forestry

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With steady revenue secured through fair and transparent contracts, the currency shielded by intelligent monetary policy against Dutch Disease, and the resources safeguarded in a sovereign wealth fund, then – and only then – can the country get down to the business of spending these benefits wisely.

Leaving aside the debates currently raging over whether agriculture or infrastructure or education gives the best poverty reduction rate of return, there is a more procedural question. There is a concern that channelling extractives industry revenue through the mainstream budget cycle will hide the government’s economic inefficiencies and may disrupt the country’s organic growth. The sovereign wealth fund provides the alternative to this too. With all natural resource revenues saved to the fund, they could be drawn to finance specific capital investments.

But there are risks here too if we are honest with ourselves. Given the country’s poor track record, it will be crucial to divorce the fund from the executive’s discretionary powers and to staff it with credible experts. It must have a professional and technocratic culture unto itself. And accountability and oversight safeguards must be entrenched in the law that governs the fund.

These institutions and frameworks will go a long way to ensuring that the windfall of oil production are the Kenyan people. But laws and regulations can only go so far. The fate of fiscal management will depend on communities, civil society organisations, international oil companies, bureaucrats and citizens working hard to uphold the framework. Without that, we shall see Kenya’s future leaking away with every turn of the pump jack.
Mining law concerns forced underground by oil hype

By Edgar Odari

The development of new mineral reserves is already moving quicker than oil exploitation. However, with everyone fixated on oil and gas, there appears to be a wilful blindness to the many loopholes and gaps in the regulatory framework for the mining sector.

The legal regime governing the energy sector is generally moving towards coherence with the formulation of the Natural Resource Charter regarding management of extractive sector revenues. The introduction of bidding rounds, for instance, follows the standards set by the Charter, which bodes well for the sector as it introduces an element of competition and accountability.

And the institutional framework is moving towards providing clear lines of responsibility and accountability at the different parts of the value chain, for example through the establishment of the Upstream Petroleum Authority and National Upstream Petroleum Advisory Committee.

There are, however, areas where the framework could be improved. There is a need, for example, to better balance the objective of attracting investments in the sector against the need to capture the rents through taxation. And while the proposed framework indeed addresses the issues of investing of revenues and smoothing expenditure volatility, the failure to place the Sovereign Wealth Fund within the confines of the Public Finance Management Act risks disarticulating financial discipline in the management of revenues with the consequence that the economy could be susceptible to “Dutch Disease” shocks owing to a detached financial mechanism that will inject significant dollar resources into the country’s economy without adequate checks.

Finally, (and this is quite a large exception) the failure to legislate on transparency and accountability through the Freedom of Information Act as required under the precepts of the Natural Resource Charter.

While even with these shortcomings, the mining sector, by comparison, still has the greatest loopholes and contradictions.

Everywhere we go, the public sees a trend towards increasing transparency and access to information, and documents and data related to extractive industries are provided to the public.

A thorough examination of the process by the Institute of Economic Affairs found that these efforts are proceeding apace in oil, and steps being taken to bring Kenya’s governing system for oil in line with the precepts of the Natural Resource Charter. Though not perfect in every respect (the full IEA report makes recommendations for improvements in energy as well, the Petroleum Exploration and Production Act, the Energy Bill and the Sovereign Wealth Fund Bill, among other key laws, are poised to establish a legal structure for the oil sector that is at least coherent.

The mining sector, however, remains riven with overlaps and loopholes and falls short of the benchmarks set in the NRC regarding exploration and allocation of licenses.

Shortcomings of the Mining Act

One of the key shortcomings at the moment is that the Mining Act gives the Commissioner of Mines and Geology almost complete discretion over prospecting and mining rights, limited only by the oversight of the National Environmental Management Authority. Till a competitive mechanism for awarding licences is in place, this will continue to limit the ability of the country to secure full value for resources, and will provide significant incentives for corruption.

The Mining Act does not make provision for local content requirements or obligations for consultation with local communities before the commencement of exploration and mining operations. There is no express requirement that mining companies engage in public consultation with regard to exploration rights, mineral rights and environmental impacts. Failing the approval of the Freedom of Information Act, the Mining Act alone does not make any provisions related to the issue of transparency and access to information, and documents registered are not generally available to the public.

There is also as yet no fiscal mechanism specific to the mining sector. Taxes are usually paid in the form of corporate...
income tax as well as royalties payable depending on the mineral in question. Furthermore, provisions relating to compensation mechanisms, community engagement and participation, as well as defined criteria for evaluating applications and local content regulations, are lacking in this law.

The meagre improvements of the Mining Bill 2014

The Mining Bill 2014 seeks to bring the Mining Act in line with Articles 60, 62, 66, 67 and 69 of the Constitution so far as they apply to minerals as well as provide for prospecting, mining, processing, refining, treatment, transport and any other dealings related to minerals. In doing so, it establishes a host of new institutions, including the National Mining Corporation, the Minerals and Metals Commodity Exchange, and an ad hoc mining tribunal. It also provides for the setting up of a Minerals Sovereign Wealth Fund.

These institutions are needed; the establishment of the National Mining Corporation as an investment arm of the government, for example, is a step in the right direction as it promotes greater participation, transparency and accountability both in the sector and the community, as it helps to address fiscal management of mining revenue.

Yet, in spite of some of these progressive changes, many of the shortcomings described above are not resolved with the 2014 Mining Bill. To begin with, the 2014 Bill does not introduce competitive bidding and merely shifts discretion higher. Under the proposed Bill, the Cabinet Secretary has a range of powers including but not limited to establishing the criteria for determining strategic minerals and strategic mineral deposits, appointing ad hoc tribunal members, granting, denying or revoking mineral rights, approving and repealing licence applications, determining the conditions of community development, assessing the environmental impact of a mining activity, making the necessary adjustments to the relevant provisions of this contract, determining labour issues like the replacement and number of expatriate staff, setting thresholds of capital expenditure that will compel listing on a stock exchange, as well as approval of an organisation’s ownership interests exceeding 25%. These vast powers under the Bill limit the functional ability of institutions and administrative structures set up in the Bill.

“The Mining Bill creates institutions and yet fails to give them the functional authority to undertake their respective mandates. While these institutions have the potential of promoting regulatory coherence in the sector, the power to make decisions is resident in the Cabinet Secretary. This severely undermines their ability to regulate the sector” said a member of the Kenya Chamber of Mines.

The Bill makes no mention of counties and remains silent on a clear mechanism under which benefits accruing from mining activities are to be shared between the communities where mining is undertaken, the county governments and the national government. The power to impose taxes, royalties or any other charges is not made distinctly clear in the Bill. This may lead to uncertainty over the power of counties to impose levies on mining operations.

The Bill may even introduce legal complications in the energy sub-sector of coal by setting up a latent conflict with the Energy Bill with regard to regulation. The Mining Bill envisages that its scope extends to coal by stating that it doesn’t extend to petroleum and hydrocarbon gases. However, the Energy Bill envisages that coal resources are to be managed in accordance with its provisions. The National Coal Advisory Committee, established under the Energy Bill, is not clear in terms of composition and is required to negotiate with potential investors on the terms of development and production on behalf of the national government.

Toward a deeper framework for mining

There are several problems in the mining sector that can be addressed during the Mid-Term Review.

There should be a concerted effort to foster competitive bidding in the allocation of licences to ensure Kenya secures the best value for its natural resources. As such, both the mining and petroleum sector should adopt measures that promote public tendering for minerals. The process of awarding contracts should involve a multistakeholder process for all relevant government agencies involved in the sector.

The legislation should pass the Freedom of Information Act to enable access to information regarding the sector. Beyond that, contract transparency should be promoted through legislation to promote greater accountability of the extractive sector.

We need a fiscal regime specific to the mining sector that is predictable and not amenable to discretionary adjustment, which is especially pronounced within the mining sector.

The legal and institutional framework should be made to provide clear lines of responsibility and accountability of institutions, and reconsider provisions that hinder the autonomy of newly created institutions such as the mining tribunal.

These legal frameworks should include provisions relating to revenue sharing between national and county governments as well as communities. The community share should be operationalised through community development agreements; where expenditure plans are approved in a consultative framework involving all local stakeholders.

Finally, the legal framework should be adjusted to capture the unique peculiarities of artisanal mining and address the interests of historically disadvantaged persons including women. Above all, we must not forget that all sectors, not just the largest, deserve a legal framework that maximises their contribution to national development. Indeed, achievement of Vision 2030 depends upon it.

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\text{Source: World Bank}
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The colonial era saw the creation of states whose core extractive function eventually came into conflict with post-colonial notions about the interests of villager-citizens. Those interests -- related to broadening access to education, health care and training -- were essentially tacked on to the state's obligations after Independence. This created a tension between two mutually incompatible missions: To exploit, or to uplift? The logic of such purpose-built vehicles meant that these renamed (or de-named) natives would always have to give way to the essential function of the new state, hence the mass displacements and land grabbing of the colonial period in the name of economic development. That, we could say, was then. What about now?

“The mistake has been to make the investors deal with the landowners, they should deal with the government, and then the government will deal with the landowners. You just tell those villagers to get out. You cannot stop the state from accessing its assets.” Thus Uganda’s President Museveni robustly summed up his thinking on what will be a key element in Uganda’s mining policy as the industry moves into higher gear in the coming years. The event was a Mineral Wealth Conference, organised by the Uganda Chamber of Mines and Petroleum at the start of October.

This conference is one of a series of regional gatherings that have been taking place on the continent in the past few years. Bringing together financiers, mining corporations and policy-makers, they serve to create forum where quantities may be estimated, confidences built, and networks established.

Like with much of Britain’s former African empire, Uganda’s Office of the President is what used to be known as the Governor’s Office when it was established in 1900. President Museveni’s statement, as well as the vehemence with which it was delivered, is therefore very logical from where he stands. Being essentially the latest governor of this colony, he will have to remain faithful to the core extractive function, even at the expense of any post-colonial notions about the interests of villager-citizens.

Those interests -- related to broadening access to education, health care and training -- were essentially tacked on to the state’s obligations after Independence. This created two strategic problems: The first was a tension between two mutually incompatible missions: to exploit, or to uplift? The second was the creation of the impression that the recent colonial subjects were now all somehow stakeholders or owners in the post-Independence dispensation.

The eventual stripping away of those ‘free’ things that occurred with the arrival of global neo-liberalism three decades later, was the evidence that laid bare this myth. If forced to make the choice, the state, and its current governors will always opt for facilitating exploitation over engineering upliftment, and the villager-citizen’s alleged rights be damned. A couple of years ago, during the media rounds in promotion of his book Car Guys vs. Bean Counters: The Battle for the Soul of American Business, Bob Lutz, a four-decade captain of American industry, said his experience had taught him that the only real sources of actual new value are: Digging something up from the ground; making something with one’s hands; or growing something. ‘Every other economic activity’, he asserted, “is merely an exchange of such value already created.”

The mistake has been to make the investors deal with the landowners, they should deal with the government; and then the government will deal with the landowners. You just tell those villagers to get out. You cannot stop the state from accessing its assets. - Uganda’s President Yoweri Museveni

The agricultural sector was bolstered by a network of state-protected co-operative societies that underpinned bulk buying from smallholder producers. In the same spirit, protectionist barriers were erected in the hope of nurturing a nascent manufacturing base. With the IMF-induced disruption of the agricultural co-operatives and local manufacturing, growing things and making things with one’s hands have become somewhat hazardous, to say the least; so it is actually logical that we should see intensification in the only other area where new value can be not just created, but also have a certainty of financial return: The digging up of precious minerals.

The most visible aspect to this has been the much-talked about and controversial setting up of the oil exploration and drilling industry. The entire first phase concentrated on working areas already under central corporatisation, such as game parks. Nevertheless, this created a land buying spree in which already rich regime cronies flexed their financial muscle.

At its heart is the concern of the extremely opaque policy evolution; the operator contracts remain basically a state secret, and the presidency has exhibited an overbearing control of the oversight processes, safeguarded by a fire-breathing head of state. Africans obsess over struggling to belong to countries that they did not create and that were not created for their benefit. The reasoning seems to be that “since Uganda now exists, then our duty is to find a way of belonging to it.” This is what has severely hampered the emergence of a cogent opposition movement capable of challenging these injustices at root, and makes us near-permanent victims of these processes, as fidelity to the Uganda project will inevitably require fidelity to its core repress-and-exploit functions.

The correct reasoning, if these
minds were to be capable of fully decolonising themselves, should be the other way round: “Since Uganda found us already in existence, its challenge is to find a way of gaining our acceptance.”

The general opposition community -- in which more than a few NGOs can be counted -- has shown a reluctance to properly enter into this question, and has spent decades wavering between siding with the natives in defence of their rights on one hand, and advocating for the “rights” of an implicitly anti-native type of citizenship, on the other.

If anything, it seems often to have been the dictatorship of the day that paradoxically retains the initiative in addressing the issue of the use and misuse of native resources. During the first Milton Obote presidency, the state rolled out an ambitious development programme based on critical expansions in education and infrastructure. As these were premised on a massive land grab from the country’s largest ethnic group, it eventually created political tensions that consumed the regime.

Obote’s second presidency through a comeback a decade later, maintained the policy tension by seeking accommodations from the then emerging neo-liberal dogma, while trying to remain close to its social-democratic thinking. The result was arrangements to massively boost industrial processes largely through foreign borrowing to support them, while keeping democracy and the inconvenient demands that come with it, at bay. Civil war soon followed.

As for the idiosyncratic General Idi Amin, he found time to make an enormous grant of land, previously seized by the state, to Palestinian militants in an act of progressive solidarity with their cause. The residents of Kinyandongo, possibly some 3,000 in number, were obliged to move elsewhere.

It says everything about your peculiar wretchedness in the world, when your native rights can be so easily violated so as to make way for someone as already wretched as a stateless Palestinian refugee. But this has been the African experience. Everyone wants part of Africa, but nobody wants the Africans themselves.

For the foreign investors, the wish seems to be that these “villagers” would simply get out of the way. For the modernity-rooted African elite, the wish seems to be that the native would sacrifice its identity at the altar of some shiny, new modern “African” identity built on a foundation of the European-planted states, leading to the folly of attempting the “complete flattening of the ethnic landscape” that the Africanist historian Basil Davidson warned about. It does not have to be this way.

The Alaska Native Claims Settlement Act, signed into law in 1971, heralded the largest single transfer of land in the United States whereby nearly 150,000 acres (or 601,000 square kilometres) of land were essentially returned to native ownership, having become federal property from when the United States simply bought Alaska from the neighbouring Russian empire in 1867, over the heads of the “Indians” there.

Each person with a quarter or more of native DNA automatically became a stockholder in a series of corporations established by the Act for the development of Alaska’s vast natural resources. Genocide is only a historical problem when it fails in its mission to wipe out an entire people. Unsuccessful genocides create vigilant, suspicious survivors who have few illusions about the true nature of the new dominant race. One of the outcomes of this is new forms of law-making in which the survivors force a jurisprudence rooted in European philosophies to bend itself to non-European outlooks.}

Unsuccessful genocides create vigilant, suspicious survivors who have few illusions about the true nature of the new dominant race. One of the outcomes of this is new forms of law-making in which the survivors force a jurisprudence rooted in European philosophies to bend itself to non-European outlooks. Many of the legal remedies that have been worked out within the United States are rooted in this thinking, that is usually dismissed as “unrealistic”, “backward”, or “sectarian”, or “divisive and selfish” by African leaders when the natives assert themselves here. The tragic irony here is that the average African “leader” does so in the belief that this is the true path to the kind of state of “modernism” they imagine exists in the developed countries.

The Navajo make up the largest indigenous nation among those that survived the genocide that the European races perpetrated so as to create the United States. Based in the states of New Mexico and Arizona, their native government has just been awarded slightly over half a billion dollars by a United States court in response to the Navajo suing the US for misusing and mismanaging Navajo lands in its custody, and also for not passing on to the Navajo nation their agreed portion of royalties accrued from US licensed mining activities.

In East Africa, such native demands are strongest in Uganda, just about the only country in the region whose name bears some connection to some of its indigenous.

We are the so-called Red Indians in the African context. Such pressure is what has led to the invention of “oil monarchs” who are state-backed neo-monarchs feted by the presidency in those territories believed to be sitting on oil and other mineral deposits. Their purpose is to serve as a counterweight to the legitimate native leaders.

With its current mindset, the Uganda state is simply incapable of solving these problems fairly, or even of simply creating a framework within which others may organise lasting solutions rooted in a philosophy of restoration. For now, the looting will continue.
In September 1876, Belgium’s King Leopold II convened a three-day meeting, the Brussels Geographical Conference. The conference brought together 40 renowned geographical explorers, bankers and philanthropists from across Europe and the United States. This was not a strange mix of people at all for the time. And besides, philanthropy and exploration were supposedly Leopold’s abiding passions – and because of which he had gone so far as to bring the world’s leading explorers together with the serious money. The Rothschilds sent in a donation, as did other major European bankers and aristocrats. Some 400 years of European exploration of Africa were invoked at the conference. Every inch of Africa had been explored, except the Congo.

Unknown to the delegates, this was the real objective of the Brussels conference: to lend legitimacy to Leopold’s personal ambition to colonise the Congo. As a constitutional monarch of a very minor European nation, Leopold had been unable to convince his government of the viability of a number of colonisation schemes that he thought would raise Belgium’s status to at least that of a mid-ranking imperial power. Frightened of the consequences for its own security – a tiny nation in the middle of aggressively expanding big states – the Belgian government had baulked. And so, Leopold had decided to make the Congo a personal possession.

Between 1879 and 1884, Stanley acted on the spot, Henry Morton Stanley, in competition with the Frenchman Pierre Savorgnan de Brazza that exposed the sham philanthropy of the Association Internationale Africaine and set off the Scramble for Africa. Before long, members of the Association were all mimicking Leopold’s brand of imperialism that would become cynically known as “philanthropy and 10%.”

Two years after the Brussels conference, Henry Morton Stanley returned to Europe after becoming the first white man to cross the Congo rapids and breach the interior. Basking in his celebrity, Stanley expected a major commission from the British government to return to the Congo. It was slow in coming. At meetings, he attempted to drum up support for the idea of the 3Cs – consumers, civilisation and Christianity – an enthusiasm, it could be argued, for Africa Rising.

“There are 40,000,000 naked people that shall presently be made into ironwork...and factories are glowing with the red metal to clothe them,” he wrote. “[...] Birmingham’s cotton-spinners of Manchester are waiting on the other side of the rapids, and the cotton-spinners of Manchester are waiting to clothe them,” he wrote. “[...] Birmingham’s factories are glowing with the red metal that shall presently be made into ironwork in every fashion and shape for them... and the ministers of Christ are zealous to bring them, the poor benighted heathen, into the Christian fold.”

It seemed that the only person who was listening was Leopold. Europe’s first-order imperial powers were content with their existing possessions and regarded Africa as too expensive an investment without guaranteed returns. Leopold understood the presented opportunity and assiduously courted Stanley. But it was only after Stanley realised that the British Crown were not going to finance his dream of building a railway from the Congolese coast to Stanley Pool (where Kinshasa and Brazzaville were eventually founded) that he accepted Leopold’s offer.

Beneath Somalia’s decades-long governance crisis is, say informed sources, a territory floating on potentially one of the largest African oil fields in a generation. Now as Somalia moves towards stability, it is this interest in its oil deposits that is attracting Western interest.

Between 1879 and 1884, Stanley acted as Leopold’s agent. For £1,000 a year and working under an assumed name, he picked a team consisting of white mercenaries and black porters and set about the vast task of making the Congo an economic objective of colonising the Congo – had been created: the International Association of the Congo.

It was the activities of Leopold’s man-on-the-spot, Henry Morton Stanley, in competition with the Frenchman Pierre Savorgnan de Brazza that exposed the sham philanthropy of the Association Internationale Africaine and set off the Scramble for Africa. Before long, members of the Association were all mimicking Leopold’s brand of imperialism that would become cynically known as “philanthropy and 10%.”

Two years after the Brussels conference, Henry Morton Stanley returned to Europe after becoming the first white man to cross the Congo rapids and breach the interior. Basking in his celebrity, Stanley expected a major commission from the British government to return to the Congo. It was slow in coming.

At meetings, he attempted to drum up support for the idea of the 3Cs – consumers, civilisation and Christianity – an enthusiasm, it could be argued, for Africa Rising.

“There are 40,000,000 naked people that shall presently be made into ironwork...and factories are glowing with the red metal to clothe them,” he wrote. “[...] Birmingham’s factories are glowing with the red metal that shall presently be made into ironwork in every fashion and shape for them... and the ministers of Christ are zealous to bring them, the poor benighted heathen, into the Christian fold.”

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games being played in Africa would set off a new season of open war in Europe, the great powers convened a conference in Berlin in early 1885 to divvy up the continent in a more civilised fashion.

Over the past decade, amid the great public relations spin campaign called Africa Rising, a plague of opportunistic Western optimism over Africa’s economic possibilities, there have been numerous Brussels conference moments. In London, Washington and Beijing, the venues of investment summits and new economic partnerships, the language of exploration and discovery has been replaced with a market sophistry so absurd, it has had to borrow once more from philanthropy to pass muster.

Since Tony Blair’s 2001 Labour Party conference in which he described Africa as a scar on the world’s conscience, the rhetoric has shifted dramatically from the old structural adjustment-era mix of despair, assistance and instruction to a language of optimism, co-operation and opportunity. Disaster-porn, which a decade ago dominated Western media images of Africa, has been replaced by the delification of the mobile phone with commercial breaks for Ebola, jihad’s wide bombings and other unscripted radio interferences.

The question is not whether Africa is rising but for whom this language of optimism is deployed, as the Nigerian literary scholar Dias Adesanmi has recently pointed out. Because outside the bubble inhabited by the continent’s new elite – the shiny office blocks, gentrified neighbourhoods and upscale Western restaurant and hotel franchises – the resistance to the Africa Rising narrative has been surprisingly stubborn. Outside the bubble and the massaged statistics generated by the growing battalions of communications consultants, the discourse of Africa Rising is considered to be a luxury few can indulge in.

But the creation of the British oil firm Soma Oil and Gas that properly conveys the atmosphere of neo-imperial intrigue around London’s current interest in Somalia. The firm is led by former UK home secretary and head of the Conservative Party Michael Howard – Prime Minister Cameron’s former boss. Sitting on its board are former UN deputy secretary-general and Labour Party minister Mark Malloch-Brown as well as a Palestinian financier of the Tory Party, Basil Shibly. Indeed, the entire outfit is composed of experienced oil executives drawn from almost every single Western oil major. Beneath Somalia’s decades-long governance crisis is, say informed sources, a territorial floating on potentially one of the largest African oil fields in a generation. Now as Somalia moves towards stability, it is this interest in its oil deposits that is attracting Western interest.

On the sidelines of the US-Africa Summit in August this year, Somali oil minister Dawood Omer spent two days meeting with US State Department officials as well as executives from the oil majors. Mr Omer is said to be harbouring presidential ambitions in 2016. The meetings were designed to explore the possibility of US oil companies funding a commitment from Omer that their concessions were still valid.

In late September this year, the World Bank leaned on the Somali President Hassan Sheikh Mohamud administration to review several contracts it had signed, including the deals with Soma Oil and Gas, which it stated were highly irregular, and a Mogadishu port management deal with a Turkish firm. Further south, a simmering offshore boundary dispute between Kenya and Somalia escalated, with the Somali government claiming a 64,000 square-kilometre chunk of Kenya’s offshore territory. The oil blocks within the disputed area are clearly the main driver of the boundary dispute. More significant is that US, Norwegian and British oil companies are said to have concessions in the disputed region.

Will Somalia become the first theatre for a 21st century Scramble for Africa’s resources? Will fixing Somalia ironically fuel much wider regional disorders in which African client states will be pitted against each other to protect and promote Western and other interests? It is unlikely that we shall have to wait very long to find out. Cameron hosted a Somalia investment forum. At a closed-door session, British corporate leaders met with Somali President Hassan Sheikh Mohamud. In attendance via satellite link were oil executives from BP, Shell and Soma Oil, a newly created firm, representatives from Deloitte and PriceWaterhouse Coopers, both of which managed AMISOM’s financial affairs, as well as representatives from Barclays Bank plc and the British currency printing firm, De La Rue. In a separate session, then Somalia Foreign Minister Fawzia Yusuf Haji Adan met with another set of British business executives from oil juniors and business associations interested in Somalia.
Gender goes beyond the biological distinction between a man and a woman and refers to a set of culturally based roles and behaviours assigned to males and females. Gender is a social construct because it is society that determines the roles, relations and activities that are considered appropriate for men and women. Gender roles therefore socially define men and women; these roles vary among different cultures, classes, age groups and regimes. They are also subject to household structure, access to resources and external factors outside of the influence of the particular society such as national or global policies, climate change etc.

Gender relations are the ways in which society defines rights and responsibilities by sex. These relations have the tendency to change as a result of economic, legal, political or even environmental conditions. They do not work in isolation but also interact with other social factors such as age, class, ethnicity or religion.

Conventionally, certain roles such as child-care, family care, cooking, tilling of land and so forth have been largely left to women, being strongly associated with their biological role of bearing children. Men, on the other hand, have been the decision makers in the home, protecting the family from any harm, and shouldering financial responsibility for the family. Some of these roles are arguably unrelated to their biological nature.

The economic implications of gender relations largely play out in labour force participation. In the labour market, women tend to engage in activities that have come to be culturally associated with women in society. Men also tend to engage in activities that culturally have been associated with men, such as leadership. This skewing of the labour market means women are unlikely to benefit as much as men from any structural transformation of the economy that results in economic development. For example, the benefits accruing from the exploration of the oil, gas and mineral discoveries in Kenya are unlikely to benefit women if they are not actively participating in sectors of the labour market where such activities are taking place.

From cooks and cleaners to skilled workers and managers

Women’s participation in the extractive sector is much lower than in other sectors of the economy. The Mining Bill must therefore include specific provisions on gender equality and equity that will empower women in the sector.

By Dr. Miriam Omolo
THE GENDER CHALLENGE

Socio-economic Profiles

Table 3 provides gender disaggregated socio-economic indicators of the counties where extractive operations are taking place. Kilifi and Kitui counties are the most populous with more than one million people. These counties have high poverty incidence in the country apart from Kajiado County, with only 38% of the population being classified as poor. Kajiado County, which has the lowest poverty incidence, however has a low immunisation rate of children less than one year; which stands at 12%. Turkana County equally has a low immunisation rate of around 31% for children less than one year.

<table>
<thead>
<tr>
<th>National</th>
<th>Kilifi</th>
<th>Kajiado</th>
<th>Kwale</th>
<th>Kitui</th>
<th>Turkana</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>38,610,097</td>
<td>1,109,735</td>
<td>687,312</td>
<td>1,012,709</td>
<td>855,399</td>
</tr>
<tr>
<td>Population Density (per km²)</td>
<td>66</td>
<td>88</td>
<td>31</td>
<td>79</td>
<td>33</td>
</tr>
<tr>
<td>Poverty Incidence (%)</td>
<td>47.2</td>
<td>71.4</td>
<td>74.9</td>
<td>63.5</td>
<td>94.3</td>
</tr>
<tr>
<td>School Attendance (Age 6-13)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>58.2</td>
<td>58.6</td>
<td>59.7</td>
<td>60.5</td>
<td>58.9</td>
</tr>
<tr>
<td>Female</td>
<td>59.4</td>
<td>60.0</td>
<td>59.7</td>
<td>60.5</td>
<td>58.1</td>
</tr>
<tr>
<td>School Attendance (Age 14-17)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>22.6</td>
<td>22.5</td>
<td>21.9</td>
<td>22.1</td>
<td>24.8</td>
</tr>
<tr>
<td>Female</td>
<td>21.8</td>
<td>23.1</td>
<td>23.7</td>
<td>22.9</td>
<td>24.8</td>
</tr>
<tr>
<td>Post Secondary Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>3.8</td>
<td>1.2</td>
<td>2.5</td>
<td>0.5</td>
<td>1.3</td>
</tr>
<tr>
<td>Female</td>
<td>3.8</td>
<td>1.0</td>
<td>2.7</td>
<td>0.5</td>
<td>2.0</td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fully Immunised &lt;1year</td>
<td>64.0</td>
<td>78.0</td>
<td>30.9</td>
<td>68.1</td>
<td>59.8</td>
</tr>
<tr>
<td>Malaria Incidence (% 1st outpatient visit)</td>
<td>27.7</td>
<td>16.1</td>
<td>24.8</td>
<td>22.6</td>
<td>21.3</td>
</tr>
<tr>
<td>TB in very 10,000</td>
<td>39</td>
<td>30</td>
<td>15</td>
<td>40</td>
<td>29</td>
</tr>
<tr>
<td>Household Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% with access to electricity</td>
<td>22.7</td>
<td>16.7</td>
<td>39.8</td>
<td>10.6</td>
<td>4.8</td>
</tr>
<tr>
<td>% access to improved drinking water</td>
<td>66.5</td>
<td>75.9</td>
<td>72.3</td>
<td>65.8</td>
<td>50.8</td>
</tr>
<tr>
<td>% with access to improved sanitation</td>
<td>87.8</td>
<td>65.5</td>
<td>74.2</td>
<td>48.6</td>
<td>69.1</td>
</tr>
</tbody>
</table>

These counties have a higher primary attendance rate than secondary school; moreover, there is gender parity in both primary and secondary school attendance. Levels of post secondary education, which includes polytechnics, tertiary colleges, masters and PhDs, remain very low. This has negative implications for the engagement of locals in the high skilled openings in the capital-intensive extractive sector.

GENDERED LABOUR FORCE PARTICIPATION

The total number of persons in Kenya actively engaged in employment is around 12.7 million. Of these, 2.1 million are in formal sector wage employment, 769,000 are either self-employed or unpaid family workers while informal employment accounts for the rest. The focus of this research is on wage employment due to data availability. Out of the 2.1 million Kenyans in wage employment as at 2013, males constitute 1.5 million (75%) while the rest 813,200 are females.

The sectoral breakdown of employment indicates that education, agriculture, forestry and fishing and other services are the three top sectors that absorb females. This implies that if there are strong backword linkages in the extractive sector with these sectors where there are more females employed, women are likely to benefit from its operations.

The cultural aspect of gender relations can also be seen in these employment statistics; culturally, men are supposed to do work that requires more stamina, as can be seen in sectors such as mining and quarrying where the number of men is almost eight times that of women. A similar trend is seen in the construction sector. Conversely, women are more active in health, social work and other services sectors. Other services is largely made up of domestic servants, which resonates with women’s child and family care roles based on societal norms.

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, forestry and fishing</td>
<td>234.2</td>
<td>107.2</td>
<td>209.9</td>
</tr>
<tr>
<td>Mining and quarrying products</td>
<td>7.6</td>
<td>1.1</td>
<td>7.3</td>
</tr>
<tr>
<td>Manufactures</td>
<td>214.0</td>
<td>62.9</td>
<td>192.8</td>
</tr>
<tr>
<td>Electricity, water and Gas</td>
<td>15.6</td>
<td>4.7</td>
<td>15.9</td>
</tr>
<tr>
<td>Construction</td>
<td>94.7</td>
<td>12.6</td>
<td>94.2</td>
</tr>
<tr>
<td>Wholesale and retail trade; repairs</td>
<td>135.0</td>
<td>35.7</td>
<td>147.0</td>
</tr>
<tr>
<td>Transport and storage</td>
<td>68.8</td>
<td>7.7</td>
<td>62.2</td>
</tr>
<tr>
<td>Accommodation and catering services</td>
<td>50.3</td>
<td>20.5</td>
<td>44.5</td>
</tr>
<tr>
<td>Information and communication</td>
<td>51.3</td>
<td>26.9</td>
<td>52.4</td>
</tr>
<tr>
<td>Financial and insurance services</td>
<td>29.2</td>
<td>20.2</td>
<td>33.8</td>
</tr>
<tr>
<td>Real estate services</td>
<td>2.1</td>
<td>1.5</td>
<td>2.0</td>
</tr>
<tr>
<td>Professional and support services</td>
<td>46.8</td>
<td>15.4</td>
<td>47.8</td>
</tr>
<tr>
<td>Public administration</td>
<td>119.0</td>
<td>52.4</td>
<td>133.5</td>
</tr>
<tr>
<td>Education</td>
<td>237.6</td>
<td>146.8</td>
<td>220.8</td>
</tr>
<tr>
<td>Health and social work</td>
<td>41.9</td>
<td>59.6</td>
<td>41.6</td>
</tr>
<tr>
<td>Other services</td>
<td>79.1</td>
<td>81.7</td>
<td>60.9</td>
</tr>
<tr>
<td></td>
<td>1,427.2</td>
<td>656.9</td>
<td>1,366.6</td>
</tr>
</tbody>
</table>

Table 4: Wage Employment in Kenya '000

Source: GOK (Various)
Women’s participation in the extractive sector is much lower than in other sectors of the economy. Also, the quality of employment in the extractive sector remains low and if no standard classification of skill levels is obtained, neither males nor females will gain...
The economic implications of gender relations largely play out in labour force participation. In the labour market, women tend to engage in activities that have come to be culturally associated with women in society. Men also tend to engage in activities that culturally have been associated with men, such as leadership.

Empirical results from the analysis undertaken show that the major determinant of male and female labour force participation in Kenya is age; the older one gets, the more the likelihood of participation in the labour market. The more the number of children one has, the greater the probability of participating in the labour market for both men and women.

Married women are less likely to participate in the labour market as compared with divorced or single women, probably due to cultural pressures to remain at home to produce non-market goods. Married men on the other hand are more likely to participate in the labour market as compared with single individuals. Education, which was measured by years of schooling, was found to be a significant determinant for one to participate in the labour market.

Women were found to be more likely to participate in health, ICT, accommodation and catering, wholesale and retail and mining. Men on the other hand have an increased probability of participating in electricity, gas and water, ICT, real estate and education. Men are therefore more likely to gain more from extractive sectors if these sectors have strong backward linkages, which is quite likely given that the extractive sector is likely to demand inputs from these sectors.

In the mining sector, those with more education were unlikely to participate. In both the wholesale and retail sector and transport, divorced and single individuals were found to be more likely to participate. Those living in urban areas were also more likely to participate in the wholesale and retail sector. Women were found to participate more in the wholesale and retail sector as compared with the transport sector.

Gender and Extractive-Sector Value Chain Mapping

Table 5 provides a summary of the employment of Kenyan nationals versus expatriates by an oil and gas company. Some 82.5% of those employed are Kenyan nationals while the rest are expatriates. Most of the expatriates are either in management or directorial positions. The nationals are largely made up of skilled and unskilled workers.

A further scrutiny of the definition of “skilled” shows that this category includes welders, plumbers, electricians, crane operators, assistant drillers, masors, and group financial controllers. For the expatriates, skilled employees include surveyors, drillers, and vibration technicians. Management positions for the expatriates include managers (operations, finance), supervisors, rig supervisors, tenders and tool pushers. The positions held by Kenyan nationals for this category include surveyors, advisors and engineers.

In a sample Kenyan company providing services to the oil companies, skilled employees include ecologists and sociologists. Semi-skilled positions for the Kenyan nationals include floor sweepers, sample catchers and junior cooks. The unskilled nationals include road marshals, guards, general workers, laundry people, dishwashers, drivers, ablation attendants and waitresses.

There is a large disparity in the manner in which positions given to the nationals are clustered (skilled, semi-skilled, management, directors). The government should ensure that the extractive sector uses the official labour clusters in defining the skill level, otherwise, left as they are, the nation is likely to be misled on the quality of employment.

Table 5: Employment in the Oil and Gas Sector (Case Study) %

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Gender</th>
<th>Expatriate</th>
<th>National</th>
<th>TOTAL</th>
<th>Female</th>
<th>Male</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directors</td>
<td>66.7</td>
<td>33.3</td>
<td>0.1</td>
<td>0</td>
<td>100.0</td>
<td>0.1</td>
<td></td>
</tr>
<tr>
<td>Management</td>
<td>69.7</td>
<td>30.3</td>
<td>5.5</td>
<td>11.4</td>
<td>88.6</td>
<td>2.6</td>
<td></td>
</tr>
<tr>
<td>Semi-Skilled</td>
<td>25.3</td>
<td>74.7</td>
<td>48.5</td>
<td>3.8</td>
<td>96.2</td>
<td>19.8</td>
<td></td>
</tr>
<tr>
<td>Skilled</td>
<td>3.4</td>
<td>96.6</td>
<td>19.1</td>
<td>6.2</td>
<td>93.8</td>
<td>26.5</td>
<td></td>
</tr>
<tr>
<td>Unskilled</td>
<td>2.4</td>
<td>97.6</td>
<td>26.7</td>
<td>13.1</td>
<td>86.9</td>
<td>51.1</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>17.5</td>
<td>82.5</td>
<td>100.0</td>
<td>9.4</td>
<td>90.6</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

When the national extractive sector employment data is disaggregated by gender, female participation in the sector is even more discouraging, as only 9.4% of those employed in this sector are female. The majority of the women are unskilled, with most being employed as housekeepers, waitresses, tent cleaners, and labourers. These activities also reflect the societal norms that have assigned women activities that are related to care giving. It follows that in employment, they are assigned in areas that are aligned to these societal norms and even the women themselves are resigned to looking for employment opportunities aligned to their gender roles.

There are exceptional cases in this survey where unskilled women are drivers and road marshals. The women in management hold positions such as programme co-ordinators and valuers. Clearly, such women have high level of education for them to be able to occupy such positions; this supports the finding that increased years of schooling increase the probability of participating in the labour force.
CHALLENGES, RISKS AND OPPORTUNITIES

Challenges
- Societal norms have defined women’s role as care giving, which affects the types of jobs that they get in the labour market.
- The care-giving role of women is not captured in the system of national accounts; this largely reduces the true value of women’s participation in the labour market.
- Women’s participation in the extractive sector is much lower than in other sectors of the economy.
- The quality of employment in the extractive sector remains low and if no standard classification of skill levels is obtained, both males and females will not gain.
- Information on services procured by extractive sector firms are not easily available, making it difficult to establish local content of these firms.
- The definition of local content is likely to misleading if the focus is on number of locals employed only.

Risks
- Women are unlikely to benefit from extractive sector operations given the low participation rates in the sector.
- Information on services procured by extractive sector firms are not easily available, making it difficult to establish local content of these firms.
- The definition of local content is likely to misleading if the focus is on number of locals employed only.

Opportunities
- There are several cross-cutting activities in the value chain such as ICT and transport where women can participate.
- Gender norms (though unwritten) still remain a major determinant of women’s choice of participating in the labour force and the type of activity to engage in.
- While there are employment opportunities in the extractive sector, the quality of jobs being created may be a poverty-coping mechanism rather than the “big push” out of poverty.
- There are several cross-cutting activities in the value chain such as ICT and transport where women can participate.
- Gender norms (though unwritten) still remain a major determinant of women’s choice of participating in the labour force and the type of activity to engage in.

POLICY: THE GENDER IMBALANCE

CHALLENGES, RISKS AND OPPORTUNITIES

Challenges
- Societal norms have largely defined women’s role as care giving, which affects the types of jobs that they get in the labour market.
- The care-giving role of women is not captured in the system of national accounts; this largely reduces the true value of women’s participation in the labour market.
- Women’s participation in the extractive sector is much lower than in other sectors of the economy.
- The quality of employment in the extractive sector remains low and if no standard classification of skill levels is obtained, both males and females will not gain.
- Information on services procured by extractive sector firms are not easily available, making it difficult to establish local content of these firms.
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CONCLUSIONS AND POLICY RECOMMENDATIONS

Women are unlikely to gain from the extractive sector operations within the current labour market structure unless the following policy recommendations are implemented:

- The Mining Bill must include specific provisions on gender equality and equity that will empower women in the extractive sector.
- The government must introduce communication and sensitisation programmes whose main objective is to remove cultural norms that inhibit women from actively participating in and contributing to the extractive sector.
- The government must put in place capacity building implementation plans targeting women and girls; these plans must be accompanied by monitoring and evaluation plans for tracking outcomes.
- The government must develop an extractive sector development plan that defines a framework through which micro, small and medium enterprises can engage in the extractive sector as service providers.
- The government must put in place a partnership/technology transfer plan and framework for each foreign company engaged in this sector; foreign companies must have local partners and a technology transfer strategy and plan.
- The government must develop a comprehensive skill level cluster from the government should be mandatorily used to classify employees in the extractive sector.
- The government must develop a comprehensive skill level cluster from the government should be mandatorily used to classify employees in the extractive sector.

Implementer
Although the Ministry of Energy and Petroleum had a mandate to develop the extractive sector development plan, the Ministry of Mining was mandated to implement the Mining Bill. Therefore, the Ministry of Mining must implement the Mining Bill and the extractive sector development plan.

Implementer
The Ministry of Mining must implement the Mining Bill and the extractive sector development plan.
Gaaga Gidom, a 60-year-old fisherman and father of eight, looks at the spilled crude oil floating on the waters of the Niger.

ENVIRONMENTAL POLICY:

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negative externalities that span the whole extractive industry. Transportation pose a serious environmental threat. Water produced by oil exploration and transportation can displace lead and zinc that can seep into water supplies with dire consequences for both animals and humans.

The emerging extractive sector is likely to have huge negative externalities that span the whole extractive industry value chain. Oil pipeline ruptures during exploration and transportation pose a serious environmental threat. Water produced by oil drilling contains dangerous levels of mercury, lead and zinc that can seep into water supplies with dire consequences for both animals and humans. Waste management from exploration activities can degrade the environment if not well managed.

Meanwhile, vegetation clearing for oil exploration and transportation can displace communities and destroy cultural resources as well as biosystems, while there are also health and safety implications for community members taking part in the oil drilling. It is not clear to what extent the current environmental management and conservation laws in Kenya can adequately address the new issues emerging with the growth of the extractive sector.

Thus far, gaps in the regulatory framework are being filled with a clause in the 1999 Environmental Management and Co-ordination Act, which stipulates that international regulation will be observed in instances that are not covered by national laws. Beyond NEMA regulations, the existing extractive companies are observing Performance Standards as stipulated by the International Finance Corporation and Equator Principles for oil and gas. But the gaps in the law are not the only, or most serious, problem affecting the government’s ability to effectively regulate the coming extractives boom.

This is the conclusion of a review of Kenya’s environmental regulations conducted by the Institute of Development Studies.

To begin with, while the Environmental Management and Co-ordination Act was considered a big step forward when it was passed in 1999, the co-ordinating body that it created, the National Environmental Management Authority (NEMA), is considered by many to be ineffective at implementing environmental regulation. The agency is seen to place more emphasis on the review of Environmental Impact Assessment documents for project approval than on regulating the impacts associated with licensed projects. Furthermore, existing oil companies in Kenya agree that NEMA lacks the capacity to understand the oil and gas industry. Even if NEMA were to receive a boost to its resources commensurate with the coming challenges, it would still face the challenges associated with the fragmentation of environmental laws and overlapping institutional mandates.

Even if NEMA were to address its weaknesses by receiving a boost to its resources commensurate with the coming challenges, it would still face the challenges associated with the fragmentation of environmental laws and overlapping institutional mandates.

This overlap in policy and legislation is evident where, for instance, the 2002 Water Act confers on the Water Resources Management Authority powers such as regulating and protecting water resources quality from adverse impacts and managing and protecting water catchments without any reference to NEMA.

And there are many other issues in the framework that have the potential to pose problems. The Mining Act, 1940 is the principal law regulating the extractive sector in Kenya. However, this legislation does not apply to petroleum and hydrocarbons, which are covered under the Energy Bill, 2014. The Environmental Management and Co-ordination Act has generic requirements on issues to be considered in Environmental Impact Assessments and guidelines for carrying relevant studies under the Second and Third Schedules respectively. To augment these schedules, the Mining Act ought to have a specific schedule listing of issues requiring Environmental Impact Assessments that are specific to extractive industry. The Energy Bill, 2014 has provisions for oil/petroleum/coal, but the legislation needs to develop regulations on management of operational discharges, management, collection and treatment of waste, and procedures for notification of oil spills.

Furthermore, there are many legal gaps that cannot be filled by following international best standards. The failure to enact the Community Land and Energy Bill, for example, is further impacting the ability of county-level structures to participate in the environmental management of extractive industry.
Environmental policy should domesticate international conventions/treaties/initiatives that have relevance to the extractive industry. Further to this it is important to strengthen the capacity of the NEMA as the designated national institution responsible for general supervision and co-ordination in all matters related to the environment. It is also necessary to streamline and strengthen the capacity of environmental institutions at the national and county levels so as to make them more participatory, effective and efficient.

To that effect, the Institute of Economic Affairs study proposed the following recommendations:

### Legislative Actions

- The government should enact the pending Energy and Community Land Bills to operationalise their implementation as a matter of urgency.
- Each government sector should enact strong environmental legislation with clear environmental conservation and management structures.
- Strengthen the Environmental Management and Co-ordination Act, 1999 to comprehensively cover all aspects of environmental concerns associated with the extractive industry in Kenya, taking cognisance of the complementary roles of other arms of the government.
- Review the Act to introduce stringent guidelines on qualifications of environmental impact assessment experts that can stand the test of time, and NEMA to train needed expertise for the extractive industry.
- Align the Act with the new Constitution with reference to environmental management.
- Enact county government laws that protect, conserve and manage the environment as well as laws that recognise community rights in line with the new Constitution.
- Develop environmental bonds to manage the environment and sustain community livelihoods.
- Develop oil/petroleum complementary legislation on management of operational discharges, management, collection and treatment of waste, and procedures for notification of oil spills.
- Develop complementary oil/petroleum legislation on procedures for waste management, procedures for oil spill notification and procedures for operational discharge management.

### Policy actions

- Review and harmonise existing sectoral and cross-sectoral laws on environmental management with the new Constitution.
- Strengthen NEMA as the mandated body on environmental management to supervise and co-ordinate environmental matters.
- Strengthen policy on benefit sharing and other opportunities arising from the extractive industry at the communities and county governments level.
- Develop an institutional framework for stakeholders at national and county level to participate in environmental management under the supervision of NEMA.
- Develop a comprehensive policy on the emerging extractive industry in Kenya that includes mineral, petroleum and hydrocarbon extraction.
- Domesticate international conventions/initiatives with relevance to the extractive industry in the policy and legal framework. The most important are the Extractive Industry Transparency Initiative (EITI) and United Nations Convention on the Law of the Sea (UNCLOS).
We cannot allow resources such as grazing land, geothermal and oil discoveries to be used as an excuse to maim and kill people... These resources are supposed to benefit us as Kenyans and not be a source of conflict”

- Uhuru Kenyatta, President of Kenya