

11th Extractive Sector Forum (ESF) on Extractives in County-Level Development
Planning

ILEG Siaya Community Resource Centre

April 4th 2019 from 9.00am to 4.30pm.

**11th Extractive Sector Forum (ESF) on Extractives in County-Level Development
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Organized by:

The Institute for Law and Environmental Governance (ILEG)

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Held at:

ILEG Siaya Community Resource Centre, Siaya County

i. Background of Kenya's Extractives Sector

Within the East African Community (EAC), natural resources are recognized as the drivers of national and regional economic development. In Kenya, natural resources play a critical role in sustaining livelihoods and supporting socio-economic wellbeing. Kenya has been witnessing growth in interest from investors across the world for its oil and gas and mineral resources. According to Tullow Oil, Kenya's estimated recoverable oil reserves in Turkana County stand at more than 750 million barrels with further exploration potential supporting an upside of 1 billion barrels. Oil and gas exploration have also been actively on-going in different parts of the country including Lamu, Elgeyo Marakwet and Kisumu, with immense positive reviews in terms of prospects.

Moreover, following discovery of large deposits of coal in Kitui, Kenya plans to set up a 960-megawatt coal-fired power plant in Kitui. If implemented, the project will be Kenya's second coal project after the one in Lamu, which is expected to go live in 2021. Kenya is also home to the Kwale Mineral Sands project which commenced production in late 2013. According to project's operator, Base Titanium, it is expected to produce rutile, ilmenite and zircon in quantities good enough to make Kenya a globally significant producer of mineral sands products. The country has also made discoveries of niobium in the gazetted traditional forest of Mrima hills in coastal Kenya, in addition to having significant deposits of other key minerals including gold. Other than the large-scale, more formal mining projects, Kenya also has active artisanal and small-scale mining projects involving mainly gold in places like Migori, Kakamega, Siaya and Taita Taveta.

These developments portend great prospects for improved socio-economic development in the country. Indeed, the government is keen to position the extractive industry as a key driver not only of national economic growth but also of improvement of local livelihoods and living standards. Development is anticipated not only from the direct revenues from oil & gas and minerals export, but also from associated infrastructural developments and businesses – such as colleges, hotels, petrol stations, bars, retail shops and modern residential housing – that continue to come up around oil & gas and mining sites.

In Kenya, the extractives sector is constitutionally a function of the national government. However, county governments, being an important link between National Government, Investors and Communities, have an important role to play to play in extractive industry activities. According to Kenya's draft extractives policy, these roles include: supporting coordination of public participation on extractives at county level; implementing national policies and regulations on extractives; supporting the development and implementation of the Community Development Agreements/Corporate Social Responsibility Action Plans; and participating in monitoring and evaluation.

Experiences from past Extractive Sector Forum (ESF)- a quarterly multi-stakeholder convening of companies, communities, national and county governments, civil society and academia that are actively involved in the extractives sector in Kenya- and other engagements however

suggest that the role county governments as a critical player in the extractive industry is neither clearly understood nor adequately appreciated by all stakeholders. This has seen critical investment decisions such as land access made without properly involving the county government, and in some instances suspicion, animosity and conflict between the different levels of government and/or between county governments and investors. Moreover, the lack of clarity and appreciation of county government roles hinders effective integration of the extractive sector-related actions into county development planning and implementation.

ii. Objectives of the Extractives Sector Forum

This Extractives Sector Forum was the 11th overall and 5th at the county-level; It was convened under the theme '*Extractives in County-Level Development Planning.*' Its main objective was to provide an opportunity to discuss the role of county governments in facilitating sustainable and responsible oil & gas exploration and mining. Specifically, the forum examined strategies for integrating extractives in county development planning and implementation and also provided a safe space where the different players addressed key concerns in the extractive sector. It also provided an opportunity to share findings of an inventory of impacts of oil & gas and minerals extraction on the environment and local communities.

iii. Opening Remarks

The forum attracted about 36 participants drawn from representatives from the national government, county governments, oil and gas and mining companies, civil society organizations, academia and host communities especially from Western Kenya. The meeting commenced at 9.30 am with a word of prayer from Ms from the Siaya County Assembly.

Mr. Obondo welcomed the participants and introduced the objectives of the forum. While most of the participants expected to understand the role of a County government in a country where the management of the extractives sector is vested in the National government; others sought to voice key issues affecting the industry that never get to the media or even the legislators at both levels of government.

While the County Executive was represented by the County Environmental Officer, County Assembly was represented by the county legal officer, the clerk and members of the Water and natural resources Committee. The forum in this case established that mining has been going on in Siaya County at small scale and artisanal level for a very long time; thus, the county has focused more on agriculture had not taken any steps to develop any laws or policy to govern the extractives sector. With the recent discovery of minerals in different parts of the county, however, this forum for them provided an opportunity to start a conversation about the extractives industry at the county level.

iv. Key Findings

Siaya County Needs to Start having Conversations about the Extractives Sector

Siaya County has mined gold of various quality for a very long time; but this has been done on subsistence basis in shallow excavations in Bondo, Siaya, Rarieda, Ugunja and Gem sub-

counties. Other minerals include fluorite which occurs as a thin vein near Rata within the larger Asembo; granite and black sand from Yala valley which has weak radioactive quality, mining in Kogello; and sand harvesting along the beaches and river Nzoia. Recently, iron ore has been discovered in West Sakwa sub county; copper and lead in Asembo and quarrying for building stones continues to be carried out across the county.

In the mining sector, counties are charged with receiving and approving policies; reviewing laws and making any where necessary; managing funds from national government and deciding where to utilize for natural resources; implementing policies developed at the national government locally; carrying out planning and development; and ensuring public participation within large scale, artisanal and small-scale mining.

For a while, Siaya County extractives sector has been operating without proper guidelines. But there has been a rise in the price of mineral resources and also earning a living from agriculture and other rural activities has become hard primarily due to climate change. Consequently, people have been turning to artisanal and small-scale mining in the recent years to earn a living. Moreover, it has increasingly become a source of employment to Kenyans and has contributed to development and alleviation of poverty in many rural areas in Kenya.

The forum noted that artisanal activities at the mines are not licenced; it is a traditional form of livelihood. The artisanal miners use rudimentary means to extract the minerals. Consequently, they are exposed to health hazards such as mercury poisoning, deafening noise and respiratory diseases because they do not have protective gear. Moreover, these artisanal miners also do not understand their rights and are thus exploited by middlemen. Thus, the sector is experiencing massive growth.

The forum noted that Siaya has the highest number of small-scale miners. This means that it has potential and needs to be explored farther. Thus, there is need for Siaya County to take advantage of this growth to enrich itself. This can be done by setting up structures such as platforms for artisanal miners and the Artisanal Mining Committee to strengthen them; investing in protective wear and other safety measures to prevent the disasters that occur in the mines and addressing environmental issues.

The forum also noted that Siaya County has over 12 cyanide leaching plants; therefore, there is need to develop legal framework at county level, and regulate them indirectly.

Additionally, the Siaya County Integrated Development Plan (CIDP) does not list all minerals found in the county. The county government has also not done a mapping of its mineral resources; does not have a structure for negotiation with hence the presence of cartels within the sector; it has and has not entrenched mineral resources into its planning processes and it does not budget for the extractives sector. The Therefore, there is need for succeeding CIDPs to address issues of planning for sustainable mining and how to invest resources accruing from extractive sector.

Lastly, Acacia mining, a private sector mining company noted that once the company got into Siaya county to explore for gold, it looked through the county's Finance Act but could not identify where a company in the mining sector could give back to the community. The company later explained to the county government that they felt an obligation to give back

to community, but this had to be entrenched in law, which the county doesn't have to date. This can be attributed to the fact that many believe that Siaya County does not have potential to reap huge benefits from mining. The county assembly representatives thus noted that they would petition the county on issues raised; develop a report and draw recommendations for the county government.

Women, Youth and Children too have a voice in the Extractives Sector

There has been a growing focus on the understanding the impact of the extractive sector and such associated challenges on groups such as women, local businesses, and local communities in general. However, these discussions often lack tangible connections to children, especially in the most vulnerable contexts. Yet, women and children are among the most vulnerable to extractives sector-associated impacts.

The forum noted that in Siaya County, women, children and youth are not well integrated in the management and utilization of natural resources. Women, youth and children do not have any prominent roles, nor voice in their operations, yet they make decisions that have enormous impacts on these groups of people. Children are the most affected; some of them are dropping out of school to engage in small-scale and artisanal mining including, quarrying, sand harvesting sand. They are also exposed to serious health risks from chemicals such as mercury which is commonly used especially in gold mining.

The Public needs to Engage in Public participation exercises

Public participation in Kenya can be traced to the constitution, which clearly asserts that sovereign power is vested in the people of Kenya. County governments were created upon this premise; to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. The role of public participation in governance stands out through article 10 of the Constitution, which identifies and sets out a set of national values and principles of governance.

Within the context of natural resource management, participation can take the form of consultations, such as those required during an Environmental Impact Assessment study, under the Environmental Management and Coordination Act (EMCA). However, although exploration for oil, gas and other minerals has been going on for a very long time in Kenya, there still remains acute knowledge and information gap on extractives in the public arena. This may be one of the reasons why the public does not engage in public participation exercises for management of the extractives sector. Most of the meetings are attended by experts, some of those who have some information about the sector, and politicians, whom most people listen to yet usually end up leading them astray.

The forum noted that Siaya county often gazettes, and used other media to bring to the attention of residents of public participation meetings as required by law. However, most do not attend these meetings whenever they are called. Thus, when budgets are made at county

level, people's needs are not addressed and not budgeted for, thus conflicts between the government and the community ensue.

v. Entry Points

The forum identified a number of entry points for Siaya County Government and Other Interest Groups. These include:

- a) The forum noted the need for the county to take up the responsibility to engage directly with investors but at the same time collaborate with the national government.
- b) There is need to domesticate the Africa Mining Vision for Siaya County. This will ensure that disasters that often occur at mine fields are prevented and key issues addressed effectively
- c) There is need for government to work with communities to get rid of cartels. This will ensure that the county government benefits from the taxes that are paid to these cartels.
- d) There is need for the county government to develop an investment plan so that the proceeds from mining can benefit the community
- e) There is need to align county fiscal strategy papers with the growing extractives sector
- f) There is need for the county to develop single business permits so that it can benefit from fees from the licences.
- g) There is also need for the county to collaborate with national government to attract investors since exploration is capital intensive, with no guarantee in returns; since, the national and county governments do not have enough resources to invest in such ventures by themselves.
- h) There is also need for the county government protect citizens so that they are not exploited by investors and eliminate cartels in the extractives sector so the community can benefit.
- i) There is therefore need to sensitize leaders and the community in general about the rights of women and children as envisaged in the Constitution, and encourage them to embrace change and even become champions for women's rights especially in relation to land and natural resources