

Report of the 7th Extractive Sector Forum (ESF)

EARLY OIL PILOT SCHEME: WHAT DOES IT MEAN?



The Cradle Tented Camp, Lodwar

16th April, 2018

ABOUT THE 7TH ESF

The 7th Extractive Sector Forum (ESF) held in Lodwar, Turkana County, was organized by the Institute for Law and Environmental Governance (ILEG), under the theme: 'Early Oil Pilot Scheme (EOPS): What Does It Mean?'. ESF is 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. The ESF provides a safe space where the different players can discuss key social, economic and environmental concerns and challenges faced by the extractive sector in Kenya. For more information about ESF please visit <http://esf.ilegkenya.org>. This particular ESF is the 2nd in Turkana and the 7th overall. The forum attracted 40 participants drawn from the Ministry of Lands of the County Government of Turkana, Ministry of Petroleum and Mining from the National Government, representatives of Tullow Oil, representatives of Civil Society Organizations and community leaders from Turkana. The main objective of the workshop was to: clarify what the EOPS means and entails; understand the general community perspectives on the opportunities and challenges presented by the EOPS; foster learning through peer-to-peer and information exchange; learn about key development issues and concerns created by the EOPS; explore how sticking issues and concerns around the scheme can be addressed, and how such issues can inform future ESF dialogues and feed into on-going policy processes.

OPENING REMARKS

Delivering the opening remarks, ILEG Executive Director Benson Ochieng underscored the importance of continuous and constructive stakeholder and dialogue on critical issues in the extractive sector in Kenya. He noted that it is on this basis that the 7th ESF sought to discuss, share information and concerns and foster understanding around the Early Oil Pilot Scheme (EOPS). He also stressed the importance of the participation of all stakeholders in policy, planning and development processes such as the EOPS, noting that public participation is at the heart of Kenya's governance structure. Public participation at the local level is particularly important because it is an opportunity to give voices to everyone including grassroots organizations and community members on important policy and development processes. Benson reiterated that such is the reason ILEG and its partners under the ESF are striving to take the ESF discussions to counties. He also appreciated the good mix of representation in the forum, noting the presence of government officials, private sector, civil society organizations and community leaders.

On her remarks on behalf of the ESF Steering Committee, Ms Jacqueline Okanga from Aga Khan University reiterated ESF's commitment to promote dialogue on critical issues around

the extractive sector both nationally and at the local level. She called on the local community and stakeholders to commit to promote accountable and responsible mining. She also reminded the stakeholders including local communities not only to be cognizant of their rights with regard to the extractive industry, but also to always strive to live up to their duties and obligations with regard to the same. Mr Tom Onyango from the Kenya Extractive Programme (KEXPRO) told participants that the main aim of KEXPRO which funded the forum is to contribute to poverty reduction in Kenya through inclusive and sustainable economic development within the extractive industries. Specifically, the programme seeks to address the social, political, and environmental challenges associated with the extractive sector in Kenya and ensure that the benefits from extractive industries are used to directly and indirectly improve the lives of Kenyans. He noted that other than ILEG, KEXPRO is supporting work by a number of other partners. He encouraged participants to use the 1-day event to engage in a robust conversation around the topic of the day with the aim of ensuring that any project around the oil exploration and development in Turkana benefits not only the country and companies but even more importantly the host communities and the people of Kenya.

KEY ISSUES, CONCERNS AND RECOMMENDATIONS

1. The EOPS Process

Participants generally had an idea on what the EOPS but were not clear what exactly the scheme entails, the quantities of oil involved, the time it will start and and take and the reasons for the EOPS rather than just wait for the full field development. The two panel discussions clarified that the Early Oil Pilot Scheme (EOPS) involves trucking of the crude oil from South Lokichar Sub-Basin in Turkana County using insulated and heated tank-tainers to the Kenya Petroleum Refineries (KPRL) storage facility before export to international markets. The scheme targets production of approximately 2000 barrels of oil equivalent per day from Amosing and Ngamia Fields in South Lokichar. During production, crude oil will be trucked from the three Ngamia well pads to the Amosing-1 well pad. The oil will then be trucked by road from Amosing-1 through Lokichar to Mombasa using tanktainers. While in Mombasa, the oil will be transferred into large storage tanks at the Kenya Petroleum Refineries Limited then exported to the international market.

It was noted that the scheme was meant to allow small quantities to be delivered to the international market. The scheme is an intermediate to full field development and seeks to among other things, establish logistical infrastructure; provide well data; enhance technical experience and capability of the country; introduce Kenya as a crude oil exporter and provide information on Kenyan oil in the international market.

2. Current Status of the EOPS

Some participants complained that whereas there was a lot of talk about the EOPS, they did not know the current status of the project, particularly whether the project has kicked off or not, or on when exactly it will kick-off. In fact, they said they were tired of hearing timelines for the project which kept changing. Some participants also claimed that they had seen trucks leaving Lokichar with oil, and that this heightened their confusion about the project's timelines. It was clarified that the EOPS had not started, and that no oil has so far left Lokichar. It was further explained that the government of Kenya is the main overall EOPS sponsor, and thus has the ultimate control of the project, including when it will start.

3. Transparency in the EOPS implementation

Some participants decried lack of UpToDate information or secrecy in the implementation of the EOPS. They for instance complained that they were not involved in making the decision to implement the EOPS. They were also not aware when the EOPS will start, the quantities of oil involved, its potential benefits and environmental and other impacts, land requirement for the scheme, etc. The workshop thus underscored the need for transparency in the implementation of the EOPS. All key stakeholders including local communities need to be kept informed on all relevant issues and at all critical stages of the process, in order to reduce misunderstanding that can result in conflict.

4. EOPS Infrastructure

It was noted that the EOPS requires significant transport and other infrastructural improvements, notably roads and storage facilities. The Kenya National Highways Authority (KeNHA) which is responsible for upgrading the A1 and C46 roads, is currently upgrading the Eldoret-Kitale-Lokichar-Amosing roads. The road will be used by trucks moving the crude oil from the oil fields of Turkana to Mombasa for export. Although the construction works are underway, some participants questioned the quality of the work on the road, as well as the hurry to implement the EOPS before the roads are properly completed. and associated permits.

Work on the Early Product Facility (EPF), a temporary equipment which will enable Tullow Oil connect all the 40 wells it has dug and thus achieve the targets of extracting 2,000 barrels of crude per day in line with the EOPS projections is also underway. It was explained that the EPF will not require any more land and instead will reduce the land requirement as only one or fewer outlets will be used to retrieve the oil from all the wells once they are connected. Work to connect Mombasa's onshore storage tanks to the ship-loading facility in the Indian Ocean is also ongoing. Other infrastructural requirements include a tank loading facility at Amosing 1 well pad boundary.

5. Role of the County Government in the EOPS and the wider oil exploration and development activities.

The forum noted that although mining and oil & gas exploration fall in the domain of the national government, county governments also have very important roles to play in the EOPS. These include roles in spatial planning, promoting and facilitating public participation, waste management, agriculture and livestock and county development planning. The role of Turkana County government as a critical player in the process of implementing the EOPS however seem not to be adequately appreciated by the national government and the investor. This has seen critical investment decisions such as land access made without properly involving the county government. It was recommended that efforts should be made aimed at achieving better coordination between both the national and the county governments and their three arms- executive, judiciary and the legislature- respectively.

But the contempt and disregard for Turkana County government is not limited to the national government and the investors. Some civil society organizations were also accused of disregarding the Turkana County government while implementing their programmes and projects in the county. The workshop recommended the need to have the county government and all other important voices such as the Community, Non-Governmental Organizations (NGOs) and Civil Society Organizations (CBOs) be involved in making critical decisions in the EOPS implementation process. It was also noted that civil society organizations should approach the county government, explain what they intend to do, their strategies and approaches, timelines, etc. Where possible they should explore opportunities for synergies with county government so that together their projects are implemented harmoniously and for the common good.

6. Benefit-sharing and revenue capping.

Participants also raised the question on whether Tullow or the government of Kenya will make any money from the EOPS, and whether this would be part of the revenue to be shared with Turkana County Government and local communities. Further, participants especially civil society representatives and community leaders stressed the need to keep the county share of oil benefits to 30% i.e. 20% for the county government and 10% for community. It is important to note that a version of the Petroleum (Exploration, Development & Production) Bill, 2017 suggests lowering the community benefit from the 10% to 5%. The civil society and community leaders at the forum were adamant that they will not accept anything less than 10% as the community share of the oil revenue.

Further some participants vowed to resist capping of the amount of revenue that the county will receive from oil proceeds. Revenue capping refers to the provision of the Petroleum

(Exploration, Development & Production) Bill, 2017 (Sec 85 (2)), that the county government's share of oil revenue shall not exceed the amount allocated to the county government by parliament in the financial year under consideration. The participants insisted that Turkana County has a capacity to absorb the funds from oil revenue share and questioned why the national government share was not a subject of capping, yet it's usually dogged with massive corruption, misuse, and misallocation of funds. They said that introducing capping was an insult and contemptuous to Turkana people, who incidentally see the oil revenue as their opportunity to develop after years of neglect.

7. Environmental Social and Impact Assessment (ESIA) and Environmental Concerns

Concerns were raised on whether and when Environmental Social and Impact Assessment (ESIA) for the EOPS were done, as well as on the mitigation strategies for potential impacts. Participants also asked who did the ESIA and the people that were involved in the process. It was clarified that the ESIA for EOPS and that the consultants have sought to maximize public participation in the process. The Scoping and the Baseline phases of the ESIA process are complete, while the impact analysis and mitigation phase in process. Participants raised a number of key environmental issues that the ESIA process should watch out for. These include waste management, with some participants noting that waste from the oil wells/pads portends serious negative impacts on surrounding communities. The need for a more effective and safe waste handling was emphasised. It was established that the National Environmental Management Authority (NEMA) was in the process of carrying out feasibility studies to establish transfer stations for waste were almost complete.

8. Learn from Good Practices in the Oil Industry

The workshop noted that a number of countries have made reasonable progress towards sustainable, transparent and accountable oil exploration and development, and that Kenya can learn from such. In Ghana where Tullow Oil also has operations in for instance, some participants noted that there is a fairly good and established structure for community-company-government engagement that Kenya can learn from. Such allows key issues to be put forth and discussed openly and rights and entitlements negotiated on behalf of the community by chiefs. It was recommended that dialogue amongst key stakeholders in the extractives sector using existing platforms be encouraged and promoted.

9. Land Rights and Related Land Issues

Land is an extremely important issue in the extractives sector, being the anchor of almost all other extractive sector activities such as exploration, well drilling, transport, office site, waste disposal etc. land is also extremely critical as the most important factor for production away

from the extractive sector, such as pastoralism, fishing, livestock and crop production, settlements and other non-extractive sector infrastructure. The forum noted that much of the land in Turkana is communally owned, and that Turkana elders have traditionally been key in negotiations on behalf of communities. Some participants however noted that the manner in which land has been or is being acquired for oil exploration and development and related activities has not been cognizant of neither the existing traditional structures nor the Community Land Act, 2016. They stated that the national government and investors continue to treat land in Turkana County as though it is vacant. According to locals, the county's vast lands may appear vacant given its sparsely populated nature in terms of human settlements. However, the land has its owners (the Turkanas), and is their only or most important resource. It provides pasture for their livestock, fishing bays for their fisherfolk, agricultural lands, settlement sites etc. Failing to follow procedures, or to recognize existing community structures and the county government therefore continues to disenfranchise local communities and portends serious risk of conflicts that can sabotage development projects such as the EOPS.

It was noted that land rights matters were exacerbated by some civil society organizations whose work although may be well intended, ended up inciting communities against one another, leading to conflicts and even death of some community members. The forum therefore recommended approaching and working together with the Ministry of Lands at the County Government of Turkana when rolling out projects that touch on matters Land. It was further recommended that approaches to dealing with land should not only follow established procedure including the Community Land Act and other land laws in Kenya, but also tailor traditional and existing land acquisition methods in a holistic approach that creates a win-win for all parties.

NEXT STEPS

The 7th ESF concluded by reaffirming the need to engage all stakeholders while rolling out and implementing the Early Oil Pilot Scheme (EOPS). The forum also recommended follow-up actions on the key issues discussed, including organising the next ESF in Lodwar. Among the possible topics proposed for the next forum, land rights and acquisition for oil exploration and development activities stood out. ILEG committed to organize the next ESF in Lodwar as soon as possible, tentatively on the topic of land rights and acquisition for oil exploration and development activities.

ANNEX: LIST OF PARTICIPANTS

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