

**COUNTY LEVEL EXTRACTIVES SECTOR FORUM**  
**LAND ACCESS AND ACQUISITION FOR EXTRACTIVES PROJECTS AND**  
**ASSOCIATED DEVELOPMENTS**

**The Cradle Tented Camp and Lodge, Lodwar**

**31<sup>st</sup> May, 2018**

## **ABOUT THE 8<sup>TH</sup> EXTRACTIVES SECTOR FORUM (ESF)**

The 8<sup>th</sup> ESF was held on 31<sup>st</sup> May 2018 at the Cradle Tented Camp, Lodwar, Turkana County; it is the third to be held in Turkana county but the 8<sup>th</sup> overall. The 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 forum, which brought together approximately 38 stakeholders in the oil and gas industry was organized by the Institute for Law and Environmental Governance (ILEG) under the theme: *County Level Extractives Sector Forum: Land Access and Acquisition for Extractives Projects and Associated Developments*. These stakeholders were drawn from different Non-Governmental Organizations, Community Based Organizations, National Land Commission, religious groups, council of elders, academic institutions and the larger Turkana community members.

This ESF sought to bring key stakeholders in the oil and gas and land sub-sectors to discuss issues in land acquisition, access, compensation and relocation. Specifically, the forum intended to clarify existing laws, institutional roles and the rights and responsibilities of community and other key stakeholders.

### **OPENING REMARKS**

The forum participants expected to understand key issues amongst them land governance and conservation, land rights, access and use, laws and policies on land, policy and gaps in the extractives sector, community benefits, impacts and results of oil exploration, land and environmental issues, level of engagement, legal procedures for land acquisition, environmental conservation- impacts on land, challenges of land governance and who speaks for the community when land is owned by community.

In their opening remarks, the speakers from Institute for Law and Environmental Governance (ILEG), Kenya Oil and Gas Working Group (KOGWG) and Kenya Extractives Programme (KEXPRO) reiterated the importance of engaging policy makers and bringing forth key concerns in land access and acquisition, understanding expectations vs reality especially during this phase of oil testing, understanding how to access platforms where these matters are shared

and how they are addressed. There was also need to understand what to expect during the relocation and compensation phases.

## **KEY ISSUES, CONCERNS AND RECOMMENDATIONS**

Five key issues came up during the discussions:

### **Definition of the term Marginalised community**

The definition of the term community with respect to land ownership and governance determine just how much power a community has to access, dispose off or lease land. Some participants noted that the current definition of the term *Marginalised community* as in the constitution and the various policy documents does not completely reflect the idea of a marginalised community. It was noted that the term marginalised community is currently, under the constitution defined as:

*(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;*

*(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;*

*(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or*

*(d) pastoral persons and communities, whether they are--*

*(i) nomadic; or*

*(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;*

Some participants felt that this definition disempowers the community especially over control of land and other natural resources therein. The current definition limits their role in land governance. Therefore, the forum suggested the revision of the definition of the term community, to recognize such aspects as traditional institutions that will give them control over these resources.

### **Relocation and Compensation**

The forum noted that Turkana land is community land; this land is fundamental for the pastoralist community. However, the discovery of oil resource complicated issues in the area. It was noted that at the moment, some migration routes have been closed off and grazing grounds reduced. Communities can therefore no longer reap benefits such as watering points

and grazing grounds from each other especially in the form of grazing grounds like they did before. This has caused them to lose rights such as grazing rights, which they were entitled to before the land was acquired.

In order to prevent any future conflicts, the forum suggested a model for compensation. The forum suggested that compensation, that actually represents the true value of the land, should be done twofold:

i. To Original Owners of the Land

These are the people, of a particular *ere* who have jurisdiction over certain land. In the Turkana Land system, they are the ones that have the right to dispose off the land. These are the people from whom pastoral groups accrue benefits such as grazing.

ii. To those that reaped socio-economic benefits from the land acquired

These are the people, of a particular *ere* who in the Turkana Land system have a right to benefits such as grazing in other territories especially during dry seasons.

### **Land Valuation Systems**

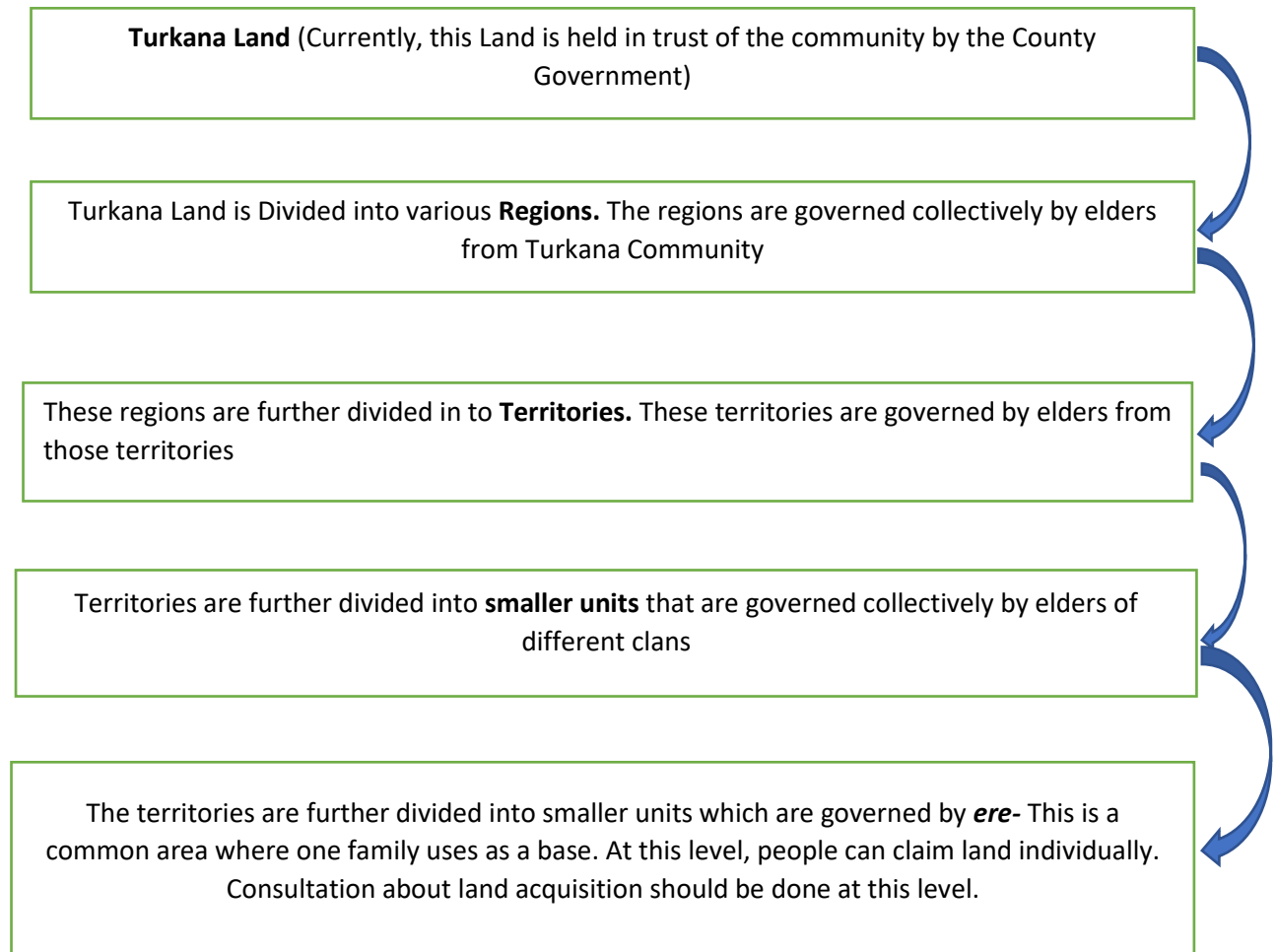
The forum noted that Tullow oil compensates the land acquired; Compensation is often in the form of cash. i.e. for every land acquired and crops destroyed, the community is paid some amount of money, which the locals stated that it does not reflect the true value of the benefits they acquire from that land.

Some participants noted that as it is at the moment, the mode of compensation does not reflect the true value of land. The current system is said to have been adopted from the colonial master and has always been applied without contextualizing it to the affected community- it does not put into consideration the intangible benefits that accrue to the communities. The forum noted that the Turkana community has not been compensated the true value of their land. It therefore suggested the need to review the current mode of compensation to include the intangible benefits that pastoralist communities such as the Turkana community accrues from land that are omitted from the current mode of land valuation.

### **Community Land Ownership in Turkana County**

Currently, land is owned communally and has not been registered; at the moment, it is held in trust by the County government on behalf of the people. It was noted that the county and national government have not made any attempts to marry the traditional and conventional systems of land governance.

The forum learnt that since the county Government holds the land in trust of the community, it believes that it has a right to sell off any piece of land it so wishes without even consulting the ere- the family level- which have authority over land at the community level and should therefore be consulted before the land is sold off. The structure of land ownership is explained in the chart below:



The forum recommended the need to incorporate traditional institutions of land access and acquisition into conventional methods of land access especially at policy and law level. Inclusion at policy level will ensure that land issues are addressed adequately.

### **Environmental Degradation**

The forum raised issues of waste management and general environmental degradation. With regards to waste management, it was noted that the Twiga one oil wells have remained inaccessible to the locals and even workers of Tullow due to the tonnes of waste that lie there undisposed. There have been worries that during the past rainy season, some of that waste might have been swept into the nearby water bodies. It was noted that all waste from oil is hazardous waste and should be disposed off by qualified people who have licences.

The forum was informed that death of animals coincided with the flaring phase. Communities that reside around the sites are said to have also suffered respiratory and other health problems. The forum also noted that laboratory experiments done by Tullow and NEMA show that health issues have not occurred as a result of the waste. However, the communities believe that the results of these tests were doctored.

Additionally, it was noted that the Environmental and Combustion Consultants Limited (ECCL) had been contracted by Tullow to dispose off waste from the sites. The forum was informed that there are job opportunities in the waste management sector in the county. As a consequence, communities had refused to cooperate with ECCL, which has been contracted to manage wastes at oil fields so that they could take up the waste management jobs. Hence the resultant health issues as in the case of Twiga 1 oil fields. There were also complains about degraded hill tops. It was noted that rocks from hills have been used to build roads but these hill tops are never rehabilitated.

The forum suggested that the community should document environmental degradation and other events so that they could build a case. They were also urged to use the media and use the Human Rights Approach when the relevant authorities do not listened to them.

### **Information Access**

Although exploration for oil has been going on for almost six years in Turkana, there still remains low levels of knowledge and information gap on oil resources among the local community. Very few local community members take initiatives to ask for the relevant information, follow-up on issues or participate in public decision-making forums.

However, the forum was informed that despite the fact that information on the oil cycle and land access and acquisition had not reached everybody, there was a progress in information dissemination and access at community level albeit at a slower pace. It was noted that people at the community level had begun to agitate for their rights and have dialogues and most could now understand and debate on issues of extractives. It was also noted that political interference, coupled with the lack of knowledge has contributed greatly to conflicts within the county. The Youth were therefore charged with the responsibility to ensure access to information at community level. This they suggested would be done by sharing the relevant information through youth groups and other community-based groups and organizations.

The forum recommended that residents begin to actively engage their Senator and other politicians, whose mandate is to address issues that affect them. Also, if the issues were not

dealt with to their satisfaction, they would engage human rights activists and also the media to bring key issues to the fore.

## **LAW RELATING TO COMMUNITY LAND AND PROPERTY RIGHTS IN KENYA**

The forum noted that all people are entitled to own property. If it has to be acquired compulsorily, one has to be compensated in full and at the shortest time possible. The current system of valuation is faulty and therefore there is need to determine the actual values of the benefits accrued from the land during valuation so that the affected party should be fully compensated.

The Community Land Act acknowledges that land can be owned communally. However, there are gaps in the definition of term *community*–Turkana community does not fit into the current definition. There is need to revise the term so as to ensure that the needs of all kinds of communities in different parts of Kenya are addressed. Also, the forum learnt that in the case of mining, licences should not be given unless by the consent of the community but this has not been the case, especially at the moment when Turkana land is in the trust of the County Government.

## **NEXT STEPS**

The forum suggested the need for subsequent forums to address the following pressing issues:

- i. Community Engagement- access to information, issues of licencing, how to manage expectations and public participation
- ii. Benefit sharing
- iii. Local content

## **Appendix 1: Programme**

### **LAND ACCESS AND ACQUISITION FOR EXTRACTIVES PROJECTS**

#### **PROGRAMME: THURSDAY 31<sup>ST</sup> MAY 2018**

8.30 – 9.30am	Registration
9.30 – 10.00am	Welcome and Opening Remarks <ul style="list-style-type: none"><li>▪ Benson Ochieng, <i>Executive Director, ILEG</i></li><li>▪ Teddy Muturi, Coordinator, Kenya Oil and Gas Working Group, Member ESF Steering Committee.</li><li>▪ Tom Onyango, Kenya Extractives Programme (KEXPRO) Official Opening – Turkana County Government</li></ul>

10.00 – 10.45am	Overview of the Legal and Policy Framework for Land and Mineral Resources Tenure in Kenya <i>Duncan Okowa</i> , Programme Manager – Institute for Law and environmental Governance  Plenary Discussions (Questions, Comments, Clarifications)
10.45 - 11.00am	Tea Break
11.15 – 1.00	Panel Discussion: <b>ISSUES IN SECURING ACCESS TO LAND AND PROPERTY RIGHTS IN THE EXTRACTIVE SECTOR</b>
Moderator	Mohamed Ruwange
Panel	National Land Commission (NLC)  Gabriel Naspaan, Chairman, The Hub  Father Paul Areman, Diocese of Lodwar  Jackson Nakusa, Turkana Professionals Association (TPA)  Tullow oil  Plenary Discussions (Questions, Comments, Clarifications)
1.00 – 2.00pm	Lunch
	<b>SECURING COMMUNITY LAND AND PROPERTY RIGHTS IN THE ERA OF EXTRACTIVES</b>
2.00 – 3.15	
Moderator	Duncan Okowa  Presentation: <b>UNPACKING THE LAW RELATING TO COMMUNITY LAND AND PROPERTY RIGHTS IN KENYA</b>  <i>Benson Ochieng - Executive Director, ILEG</i>  Plenary Discussions (Questions, Comments, Clarifications)
3.15-3.30pm	<i>Recommendations and Way Forward</i>

## Annex 2: List of Participants

Name	Institution
Raphael Nakorot	Truth and CJRC
Japheth Eyanae	TCYC
Lokeya Joseph	NEDO
Job Mwaura	LRF
Esibitar Konyen	LRF
Muturi Kamau	Kenya Oil and Gas Working Group



Lotiir Ewale Jackson	
Alexander E. Lama	HUB/PDN
Gabriel Naspaan	HUB/TUDOF
Dalma Auma	Institute for Law and Environmental Governance
Benjamin Ebenyo	Council of Elders
Emoni M. Dickson	Representative
Rev. Grace Edou	L.P.F Treasurer
Simon Asuroi	APEI
Lokwawi Samuel	NODO
Elisheba Eunice	FOLT
Philip Ekolong	TERA
Iddi Kiyong	TERA
Tom Onyango	K-EXPRO
Nakure Meshack	NEDO- REP
Mohamed Ramadhan Ruwange	Strathmore University
Ekuam Ewoi	Community Representative
Joseph Ekuwam	Trocaire
Elimlim Josephat	Rep
Lopeyok Ricardo	Friends of Lake Turkana (FOLT)
Amos Lolibo	Translinic Film
Edwin Lumumba	Institute for Law and Environmental Governance
Ewoton Daniel	MMN
Ahing'a Jairus	CJPC-DOL
Gabriel Ekalale	Asegis Org.
Valentine Opanga	Institute for Law and Environmental Governance
Ikal Angeli	Friends of Lake Turkana
Benson Ochieng	Institute for Law and Environmental Governance
Eric Ndeda	National Land Commission
Sarah Erot	TERA
Muthoni Koinange	K-EXPRO

Duncan Okowa	Institute for Law and Environmental Governance
Jackson Nakusa	TDA
Doris Ekaram	Life and Peace Institute