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THE EARLY OIL PILOT SCHEME: The Sticking Issues

This paper examines Kenya's Early Oil Pilot Scheme, with focus on the sticking or unresolved issues around the project. It was written to provide background for the county-level Extractive Sector Forum (ESF) in Turkana County in April 2018. The analysis in this report is based on publicly available information, as well as on insights from a reconnaissance visit by ILEG and some ESF Steering Committee members in Lokichar, Nakukulas and Lodwar in February 2018. 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, contact Duncan Okowa on +254202349141 or email: d.okowa@ilegkenya.org.

INSIDE:

I. BACKGROUND

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 EOPS Agreement between the Joint Venture Partners and the Government of Kenya was signed on 14 March 2017 (Tullow Kenya, 2018). Proponents of the scheme, principally the Kenya government and the investor – Tullow Kenya B.V. (Tullow Oil) - see it as an interim measure that would enable the country to achieve first oil exports, maintain project momentum, and generate some useful technical information. According to public statements attributed to the government and Tullow Oil, the decision to proceed with a truck/train export scheme rather than focus on developing pipelines for the exports is premised on several factors. First, both government and Tullow Oil are of the opinion that an independent pipeline will take too long to complete and thus will result in too much delay for the Kenya oil exports and to Tullow to recoup the investment it has made in the project. Other reasons cited in support of the EOPS are that the scheme would: be a valuable precursor to full field development; establish commercial, infrastructure and logistical arrangements; provide important oil reservoir information; establish an international market place for Kenya's crude oil; test management of community concerns and issues; and stimulate critical infrastructure development in Turkana County (KCSPOG, 2016).

Pundits have however argued that several glaring facts point to the need to halt the early oil scheme until the path is clear for the scheme to go ahead. These include doubts on the cost-effectiveness of the project (see for example KCSPOG (2016)); non-passage of the Petroleum (Exploration, Development and Production) Bill, 2017; non-completion of the key Kitale-Turkana road, which is to be used to ferry the oil; and anxiety and tensions between the local community and Tullow Oil. Despite these challenges, Kenya government is determined that the project will proceed. Indeed, reports attributed to the Petroleum and mining Cabinet Secretary (CS) Mr John Munyes indicate the pilot scheme will commence as soon as end of May 2018. To fast-track the process, the Ministry of Petroleum and Mining has recently asked the Dubai based El Mansoura Petroleum Company to accelerate the installation of 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. In addition, the government through Kenya Pipeline Corporation (KPC) has recently invited tenders for the upgrade of the existing pipeline that connects Mombasa's onshore storage tanks to the ship-loading facility in the Indian Ocean. Meanwhile, Tullow Oil announced in its Trading Statement and Operational Update (Tullow Oil, 2018) released in January 2018 that "the recent phase of exploration and appraisal drilling in the South Lokichar Basin has been concluded and the focus is now on the Early Oil Pilot Scheme (EOPS) and the overall development plan for the discovered resources". The update further states that initial injectivity testing has started at Ngamia-11 and oil production and water injection facilities are being constructed in the field.

II. EOPS: OUTSTANDING ISSUES

i. Project Viability

According to the KCSPOG (2016) report, an economic analysis taking into account production volumes, project costs, oil price and fiscal terms suggests that in the absence of very optimistic assumptions, the EOPS project costs exceed gross project revenue. Thus, while the EOPS might seem like an obvious stepping-stone to full field development, its principal rationale cannot be revenue. In fact, some stakeholders have called on the government to shelve the EOPS and instead address the issues raised around it first. KCSPOG for instance recently called on the government to shelve the project as the issues raised in their report - such as the profitability lack of requisite infrastructure – had not been addressed (Oil News Kenya, 2017).

ii. Civic Education on the Early Oil Pilot Scheme

Although exploration for oil has been going on for almost six years in Turkana, there still remains acute knowledge and information gap among the local community and county leadership. According to some community members met during the reconnaissance visit, oil exploration and development remains a fairly new concept. Most Turkana residents, especially the local community have not really fully understood its social, economic and political implications and potential impacts. More specifically, the community has so far received vey scanty information regarding the Early Oil Pilot Scheme. They are thus relying on local chiefs and politicians most of whom, according to them, are equally ignorant or are not trusted to give balanced information as they are also serving their political interests. In fact, some locals think that some politicians are working in cahoots with oil and other related companies to reap the benefits at the expense of impacted communities. In this case, they are not capable of representing the interests of the Turkana Community, especially where the issues of rights and benefit sharing crop up.Even the county government seem to lack adequate information on the EOPS leading to inability to engage with other key sector stakeholders from an informed/evidence basis.

iii. Benefit Sharing & Petroleum (Exploration, Development and Production) Bill, 2017

There is simmering tension around the sharing of the government share of oil revenue. Local community members seem to be willing to take nothing less than the 10% as allocated for host communities in the earlier version of the Petroleum (Exploration, Development and Production) Bill, 2017. The Bill was returned to parliament last year by President Uhuru Kenyatta with a proposal to slash the revenue to counties. Consequently, the revised version of the Bill gives the local community a share of five per cent of the Government's share. This amount shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community. The county government's share of the revenue is 20 percent while the national government takes 75 percent up from 70 percent proposed in the earlier version. But this has not gone down well with the community in Turkana, with a section of them threatening to scuttle the EOPS. A media report (Standard Newspaper, 2018) has for instance quoted Turkana Professionals' Association (TPA) official David Ekiru stating that the earlier proposal to give the community 10 per cent of proceeds from the sale of crude oil would ensure that the lives of the hitherto marginalised Turkana community get to a level contemplated by the constitution in terms of roads infrastructure, education, insecurity within and across the borders. Mr Ekiru added that TPA cautiously advices the National Assembly, to in the interest of empowering communities and devolution, to refuse any attempt to alter the 10 per cent originally entitled to the community and 20 per cent share to the County. He further said that TPA would oppose any plans to move ahead and develop the Lokichar Basin fields including the planned Early Oil Pilot should the Government not reconsider increasing the community's share of the oil revenues.

Another critical issue with regard to benefit sharing is that beyond the numbers, there seems to be very limited understanding of what the proposed percentages mean. For instance, a chat with most locals indicate they don't understand that the proposed percentages are actually percentages of the national government's share of the royalties after sharing with the investor in accordance with the production sharing agreement. There is also limited understanding of what the absolute amounts would look like. In addition, only few understand that beyond the direct revenues, there are other indirect benefits such as business opportunities, employment and training. But beyond the revenue sharing, very limited discussions are going on on the wider important Petroleum (Exploration, Development and Production) Bill, 2017. The discussions seem to have been reduced to only one issue in the Bill i.e. the benefit sharing formula, yet there are extremely important issues in the Bill including issues around information and reporting; local content and training; and environment, health and safety.

iv. Waste Management

Although NEMA and Tullow, through various laboratory tests, state that there have not been any deaths or diseases caused by waste at oil fields, some locals in Turkana have associated livestock deaths and some human illnesses to silicate waste from the oil fields. Some have also complained that a pungent smell that emanates from the oil field has caused a number of respiratory diseases. Secondly, the proposed site for dumping oil waste, according to respondents, is a critical ecosystem characterised by springs, vegetation, water bodies and endemic bird species. This has caused tensions amongst the waste management service provider, Tullow and the community. This tension in turn poses a significant threat to the EOPS.

v. Synergies Between the National Government and the County Government

Management of natural resources such as oil is constitutionally a function of the national government. However, the same Constitution gives county government important roles that can ensure sustainable, participatory and equitable use of those resources. These functions include integrated county development planning and promoting and facilitating effective public participation in policy and decision making. However, it has emerged that the roles of the county government in extractives are clearly not understood both by the community and the county leadership itself. Moreover, there exists a lack of effective coordination and cooperation between both levels of government.

RECOMMENDATIONS

i. Civic Education on the Early Oil Pilot Scheme

There is need to conduct civic education to sensitize community members especially on the oil life cycle so they fully understand the process, the opportunities involved and the potential impacts. It would also help them appreciate the long-time lags involved before direct monetary returns accrue. The community also need to be sensitized on what the EOPS involves. This would serve not only to gain support from the community but also to manage expectations as some already think that revenue will start flowing into Turkana as soon as the oil trucks leave the County.

ii. Benefit Sharing

The discussions around benefit sharing should be finalised and whatever final percentages agreed on should be made known to the community and county government. The next task should then be to roll out a campaign especially for local community to explain what the percentages mean, how they were arrived at and how they will be managed. A buy-in by the community is very critical. In addition, a campaign to sensitize locals on the other potential benefits or opportunities brought about by the oil and gas sector should be prioritized.

iii. Waste Management

An effective waste management should be put in place in consultation with affected communities, and in accordance with National Environmental Management authority (NEMA) standards and international best practice. An effective grievance mechanism should also be put in place by Tullow, and their waste management service providers. The same should be effectively communicated to the locals complete with the procedure for lodging and following up on complaints.

v. Synergies Between the National Government and the County Government

Both the national and Turkana County Government need to work to improve synergies and coordination between them to promote harmony and sustainability in the sector while reducing chances for tensions, conflicts and unnecessary delays.

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