Policy Brief

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The Early Oil Pilot Scheme

Institute for Law and Environmental Governance (ILEG) in collaboration with the Kenya Extractives Programme (KEXPRO) successfully convened the 7th Extractive Sector Forum (ESF) in Lodwar, Kenya on April 16th, 2018 to deliberate on the theme, "Kenya 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 discuss key social, economic and environmental concerns and challenges faced by the extractive sector in Kenya. This particular ESF was the 2nd in Turkana and the 7th overall. The forum attracted a total of 43 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 subject matter of Kenya Early Oil Pilot Scheme (EOPS) couldn't have come at a better time. While plans are well underway to roll out the EOPS, there seems to be lack of clarity and adequate understanding among stakeholders of what the EOPS project means and what it involves. In fact, majority of the 7th ESF participants were not clear what exactly the scheme entails, the quantities of oil involved, the time it will start and take and justifications for the scheme. Such lack of clarity not only portends conflict and investment risks, but also fuels false or exaggerated expectations, in addition to leaving out some stakeholders in terms of inclusive and participatory decision making. The 7th ESF thus sought to provide an opportunity to unpack the EOPS, clarify sticking issues around it, and bring stakeholders to a common understanding. This Policy Brief summarises the key points and recommendations from the forum.

WHAT IS EARLY OIL PILOT SCHEME?

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. According to Tullow Oil Kenya, EOPS 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. 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 and an intermediate to full field development. Among other things, the proponents believe the EOPS will help Kenya establish logistical infrastructure; enhance the country's technical experience and capability; maintain project momentum; generate useful technical information including oil reservoir information; achieve first oil exports and introduce Kenya as a crude oil exporter. Moreover, the government and Tullow Oil believe 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. The EOPS is also seen as a mechanism to test management of community concerns and issues (KCSPOG, 2016).

CONCERNS OVER EOPS VIABILITY

While the government of Kenya and Tullow Oil seem determined to proceed with the EOPS, some pundits argue that glaring facts point to the need to halt the scheme until the path is clear for the it to go ahead. These include economic viability of the project; non-completion of requisite legal reforms; transparency in the EOPS implementation; transport and other EOPS logistical infrastructure; alienation of Turkana County Government; and environmental Social and Impact Assessment (ESIA).

- **Economic Viability of EOPS**

According to a report by Kenya Civil Society Platform on Oil and Gas (KCSPOG 2016), 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).

- **Legal Reforms**

Great progress has been made on reforming the legal regime of the oil & gas and mining sector in Kenya. These include passage of the Mining Act 2016, the Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016, the Access to Information Act, 2016, and the Community Land Act 2016. However, some critical Bills particularly the Petroleum (Exploration, Development and Production) Bill, 2017 are yet to be passed into law. This portends a great challenge to the EOPS as the Bill is supposed to address important issues relevant to the EOPS and the subsequent full field development, such as upstream petroleum policy and master plan; petroleum institutions; local content; information and reporting; environmental management; and revenue and benefit sharing. Rolling out the EOPS without all the requisite laws in place portends a big challenge, especially because it will be very difficult to make any meaning reforms once the windfall revenue from the oil start to flow.

Revenue sharing is particularly emotive and remains the subject of anxiety and tensions in Turkana. In fact, one of the main contentious issues in the Petroleum (Exploration, Development and Production) Bill, 2017 is the revenue sharing arrangements between national government and the county governments. The Turkana county government has been pushing for a 30% (20% for County Government and 10% for local community) share of the government's share of oil revenues, while the government has been advocating for 25% (20% for County Government and 5% for local community). A further contention is on the capping of county and local community allocation. The Bill proposes that the amount allocated to the county government should not exceed the county's annual budget allocation from national government, and the community allocation should not exceed one-quarter of the county's allocation from national government during the financial year under consideration.

The revenue capping, which the county government and local community opposes, is supported by the national government which argues that the counties do not have the absorptive capacity to manage such funds. The national government further argues that the resources, although discovered in specific counties, are essentially national resources. Meanwhile, Turkana and other counties and local communities argue that while this is a national resource, they deserve more of the share as they are likely to be disproportionately impacted in terms of land rights and other social disruptions. In fact, civil society and community leaders at the forum vowed to resist any capping of oil revenue due to the county, insisting that the Turkana has a capacity to absorb the funds.

- **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.

- **Transport and other EOPS logistical infrastructure**

The EOPS requires significant transport and other infrastructural improvements, notably roads and storage facilities. Yet, key roads such as the Eldoret- Kitale- Lokichar-Amosing road is yet to be completed. The road will be used by trucks moving the crude oil from the oil fields of Turkana to Mombasa for export. It was noted that although the Kenya National Highways Authority (KeNHA) which is responsible for upgrading the A1 and C46 roads is currently upgrading the road, only sections of it may be complete by June 2018. Moreover, some stakeholders have decried poor quality of the work on the road, attributing it to a hurry to implement the EOPS. Work is also still underway 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. Tullow has however indicated that contrary to some suggestions, the EPF will not require any additional land and that in any case it 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.

- **Alienation of Turkana County Government**

Although mining and oil & gas exploration fall in the domain of the national government as per the Fourth Schedule of the Constitution, county governments also have very important roles to play in the oil and gas and mining sector and hence 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. This has seen critical investment decisions such as land access and the EOPS made without properly involving the county government.

- **Environmental Social and Impact Assessment (ESIA)**

Questions have been raised on whether the Environmental and Social Impact Assessment (ESIA) for the EOPS has been done or completed and whether the same has been carried out in a widely consultative and participatory manner. A further concern is that while many ESIA studies in Kenya give good recommendations with regard to mitigation measures, these are rarely followed through, rendering such studies almost useless. The Early Oil Pilot Scheme should follow a thorough Environmental and Social Impact Assessment (ESIA) covering production facilities and activities, traffic movement, road infrastructure and all associated upgrades. According to Tullow Oil Kenya, the ESIA for EOPS is underway, with the Scoping and Baseline phases complete, and the impact analysis and mitigation phase in process.

STATUS OF EOPS IMPLEMENTATION

Despite the active ongoing discussions about the EOPS, many stakeholders do not know the exact status of the project, particularly whether the project has kicked off or not, or when exactly it will kick-off. Some Turkana community members even claim to have seen trucks leaving Lokichar with oil, heightening their confusion about the project's timelines. However, Tullow has clarified that the EOPS has not started, and that no oil has so far left Lokichar. Tullow has further explained that the government of Kenya is the overall EOPS sponsor, and thus has the ultimate control of the project, including its timelines. Indeed, the Kenya government is determined to push through with the project going by public statements and background work. Reports attributed to the Petroleum and Mining Cabinet Secretary (CS) Mr John Munyes indicate the EOPS may commence as soon as end of May 2018. To fast-track the process, the Ministry has recently asked the Dubai based El Mansoura Petroleum Company to accelerate the installation of the Early Product Facility (EPF). 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.

KEY LESSONS AND POLICY OPTIONS

i. The roll-out of EOPS should be contingent on clarity around the oil & gas governance framework. It is therefore important to finalize discussions around important bills such the Petroleum (Exploration, Development and Production) Bill, 2017 before the EOPS can be rolled out.
ii. The debate around the sharing of the government share of oil revenue among the national government, county government and community should be settled through a consultative process that ensures that any potential conflicts are staved off before they manifest.
iii. The planning, rolling out and implementation of the EOPS should be done in a fully transparent manner. All key stakeholders including local communities should 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.

iv. The development and upgrade of the transport and other EOPS logistical infrastructure should be prioritized, and commencement of the EOPS should be pegged on assurance that all the necessary infrastructure is in place.

v. Deliberate efforts should be made by all parties to involve Turkana County Government in the EOPS and general oil development, and to achieve better coordination, consultations and understanding, among the national government, Turkana County Government and Tullow Oil and its partners.

vi. The ESIA process should be widely consultative and conducted in a manner that is consistent with the ethos of public participation, and all proposed mitigations measures should be strictly followed through.

vii. The government should proceed with the EOPS only when all the sticking issues including the once raised in this Policy Brief have been addressed to avoid conflicts and risks to the project.