Workshop Report

COMMUNITY AND CSOs SEMINAR AND EXPERIENCE-SHARING WORKSHOP ON IMPACTS OF OIL EXPLORATION IN NYAKACH ON LOCAL COMMUNITIES
18th-19th September, 2015. Papyrus, Katito

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October 2015
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1. BACKGROUND AND OBJECTIVES OF THE WORKSHOP

1.1. Background

Kenya continues to experience hydrocarbon exploration boom after recent discoveries of oil, natural gas and coal in different parts of the country. These discoveries and ongoing exploration have brought a new significance to the country’s socio-economic and political discourse. Central to the discourse is a near complete agreement that the potential hydrocarbon boom present both challenges and opportunities for the country. On the one hand, the discoveries and ongoing exploration bear enormous economic growth potential if approached carefully. On the other, there exists potential for irreparable negative social and environmental impacts if the exploration and development of the resources are not handled well. ILEG through its Extractive Sector Governance Initiative has been working to promote responsible, accountable and inclusive governance of the extractive sector in Kenya and the East African region. In Kenya, the initiative has focused on promoting improvements in the overall national regulatory environment; conducting trainings for lawyers and other key national stakeholders; and promoting participatory and inclusive management and utilization of extractive resources in Kenya. Working on the national arena and with communities in Turkana has helped ILEG to appreciate enormous community concerns regarding potential impacts of oil and mineral exploration and development. There is also a generally low level of awareness of community rights and obligations in relation to management and utilization of natural resources.

While ILEG’s and most organizations’ focus has been in Turkana1, active hydrocarbon and other mineral exploration is going on in other parts of the country including Lamu, Elgeyo Marakwet, Kitui and Kisumu. Being a fairly new industry in Kenya and a highly technical one, the upstream oil and gas industry found the host communities ill prepared to handle the intricacies of the industry. The communities continue to grapple with issues of effective community participation; free, prior and informed consent; compensation; social and environmental impacts; land rights; economic opportunities etc. A number of initiatives have been taken to empower communities to better handle these challenges and harness the opportunities associated with hydrocarbon exploration and development. For instance, in Kitui, a community liaison committee successfully bargained for enhanced community benefits in an addendum to the contract signed between the government and Fenxi Industry Mining Company. Although Kisumu has not had long experience with hydrocarbon exploration, the area, particularly Nyakach sub-county where Tullow Oil conducted exploration activities in 2014, is not new to large-scale natural resource investment projects. The area is home to the Sondu-Miriu hydro-power project whose initial stages were marked with myriad challenges and community concerns. A technical committee complete with three sub-committees (Land Compensation and Resettlement; Employment and Economic Opportunities; and Environment) was formed to look into and recommend solutions for community concerns. These initiatives have had varying levels of success and challenges across the regions.

In 2014, Tullow Oil carried out exploration activities in Nyakach. While the results have not yet been publicly communicated, there is expectation on the ground that there may be oil deposits in Nyakach. These expectations have led to excitement and fear in equal measure among the local community.

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1 Turkana was the first county to discover oil in Kenya, and is so far the most successful in terms of oil exploration and discovery.
Among the causes of the fear is a lack of clarity regarding each stakeholder’s role in the oil exploration and development process, and procedures that have often excluded local community members from the decision and policy making processes. It is therefore imperative that discussions and preparations commence for structured and sustainable framework for community engagement. These discussions should draw experiences of the local communications during the initial exploration, how the company entered the community, what the community expectations were, whether these were met and general lessons from that process.

1.2. Objectives of the Workshop

The workshop is a follow-up to ILEG’s visits and consultations with Nyakach community members in July 2015. During those consultations the community members raised a number of concerns and issues that they needed to be addressed. Among these were issues of free, prior and informed consent, access to information, community involvement in the making of policies and decisions that impact on their lives and environmental degradation. ILEG then promised to plan and hold a more comprehensive and more inclusive meeting to help the communities to dialogue and learn on how the issues can be addressed. ILEG also promised to bring to the meeting industry representatives as well as community representatives from other counties where exploration for oil and other extractive resources are going on to share their experiences with the people of Nyakach. Seeking to deliver on that promise, the workshop brought together participants from the local community in Nyakach; local Civil society working on land, environment and natural resources in Kisumu; select community representatives from Turkana, Kitui, Kwale and Elgeyo Marakwet; and representatives of Tullow Oil B.V., the license holder for exploration block 12B in which Nyakach falls.

The overall goal of the workshop is to empower the local community in Nyakach to be better prepared to harness opportunities and face challenges created by oil exploration and development. The specific objectives are to:

- To increase awareness & knowledge on general oil exploration and production issues by local communities in Nyakach
- To learn and share community experiences from other counties on challenges and opportunities of petroleum exploration and other large-scale natural resource investments in Kenya
- To develop a framework for a structured and sustainable community engagement around the extractive industry in Nyakach /Kisumu.
- To develop linkages with communities from other Counties for structured and continuous lessons sharing and solidarity

2. OFFICIAL OPENING AND INTRODUCTIONS

2.1. Introductions and participants’ expectations

The workshop opened with Dr. Collins Odote giving a brief background and workshop objectives. This was followed by self-introductions in which participants also introduced their organizations and outlined

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2 The report of that consultative meeting is available on ILEG website www.ilegkenya.org.
their main expectations from the workshop. Among the organizations represented at the workshop were Kisumu/Nyakach-based CCAFS, CREAP Programme, Eco-Finder Kenya, Local Initiatives Development Agency (LIDA), Magunga Footstep, Nyando District Centre for Environmental Conservation (NYADEC), Nyakach Council of Elders (NCE), Sustainability Watch-Kenya, Uhai Lake Forum, and Nyakach Community Development Association (NYACODA). Others were Centre for Human Rights and Civic Education and Centre for Advocacy from Kitui; Friends of Lake Turkana (FoLT) from Turkana; Kimarer Sugutek Fluospar Community Trust from Elgeyo Marakwet; Kwale County Natural Resources Network (KCNRN) from Kwale.

Participants follow proceedings during the workshop

Participants had varied expectations ranging from getting answers to various questions on Tullow Oil’s exploration in the area, including outcome of the exploration process; learning about public participation and community engagement processes; learning about general oil exploration issues; knowing the status of development projects promised by Tullow Oil; learning how Nyakach community can work harmoniously with Tullow for mutual benefits; knowing more about Tullow Oil’s compensation strategies; knowing how oil exploration will impact special interest groups including women, youth, and small-scale farmers; and getting clarity on access to information from oil companies. Other community participants’ expectations were to learn the challenges that Tullow Oil faced with the community and how those can be addressed; and learning about the link between oil exploration and opportunities such as wealth and employment, as well as to challenges such as worsening poverty, environmental
degradation etc. On their part, representatives of Tullow Oil at the workshop stated that their expectations were to learn together; address some of the community expectations; and become better friends. They also hoped to develop a big group of ambassadors who will take the message to other community members. Other participants hoped that the workshop would contribute to making the oil conversation national as opposed to being conducted in several small spaces.

2.2. **Official Opening Remarks. Benson Ochieng, Executive Director, ILEG**

The Institute for law and Environmental Governance (ILEG) is honored to hold this workshop in Nyakach. ILEG is a non-profit public interest policy research and advocacy organization based in Nairobi. We are experts in law and policy, with a bias in environment and development law. We focus on promoting sustainable governance of natural resources through policy research; education and training; and advocacy. Thus we act as vanguards in protecting rights of local communities with respect to the environment and natural resources. ILEG also offers technical advice and support to county and national government agencies and take part in negotiations of multilateral treaties etc. The Nyakach community’s good turn-out for this workshop shows the community’s thirst to learn and move the community forward. We appreciate the community for good organizing skills and for the support to help us put this workshop together. Truth be told, this region like the rest of Luo-Nyanza is characterized by very high poverty levels. Possible oil discovery in this area thus promises a great potential to lift the region’s economic fortunes. But as you probably already know, oil discovery can also portend negative social, economic and environmental outcomes. I call upon all participants to pay keen attention to the proceedings in order to learn as much as possible. I also urge everyone to participate fully and make the workshop interactive.
2.2. Opening Remarks. Mary Gathegu, Open Society Initiative for Eastern Africa (OSIEA)

The Open Society Initiative for Eastern Africa (OSIEA) is part of the Open Society Foundations which has global offices in New York, United States. The Open Society Foundations are a family of offices and foundations spread throughout the world, and work to build vibrant and tolerant democracies whose governments are accountable to their citizens. In Africa, apart from OSIEA, there are other regional offices i.e. the Open Society Initiative for West Africa (OSIWA), the Open Society Initiative for Southern Africa (OSISA), and the Open Society Foundation for South Africa (OSFSA). OSIEA works with communities and civil society to promote democracy and human rights. Specifically, we work in areas of women and youth empowerment, palliative care, climate change, and disability rights etc. At the centre of all this are the communities. We are therefore very happy not only to support ILEG in this project but also to participate in this workshop because we are happy to support community engagement in public affairs.

Ms Mary Gathegu from the Open Society Initiative for eastern Africa (OSIEA) giving her opening remarks

3. SETTING THE STAGE: AN OVERVIEW OF OIL EXPLORATION ISSUES IN KENYA. Collins Odote, Director, ILEG

Kenya is endowed with vast mineral wealth in various parts of the country – from metallic minerals such as titanium, gold and iron ore, through rare earth elements in the coastal region, to niobium and coal. In 2012, then President Mwai Kibaki and Energy Minister Kiraitu Murungi announced the discovery of substantial deposits of oil in the Turkana basin. Subsequent exploration has resulted in a current estimate of over 600 million barrels of oil. These mineral deposits and discoveries have sparked conversations on the role of oil and mineral resources in driving economic growth and lifting Kenyans out of poverty. But stakeholders are also cognizant of the fact that oil and mineral wealth have the potential of leading to negative outcomes including worsening poverty, environmental degradation,
corruption and other negative social and health impacts. Indeed, the debate on whether the oil and mineral wealth in Kenya is a curse or a blessing has been going on for some time now, and there seem to be agreement that it is in fact a blessing if managed well. But whose responsibility is it to manage the oil and extractive sector well? Is it companies, national government, county government or communities? Or better still, what are the responsibilities of each of these stakeholders?

Dr Collins Odote giving an overview of the oil and extractive sector in Kenya in relation to community engagement

The Constitution of Kenya 2010 provides a good foundation for good governance of the country's natural resources. For instance, it underpins the concept of sustainable development by including it as one of the national values and principles of governance. The Constitution clearly defines the tenure of mineral resources in the country by clearly stating that they form part of public land. The Constitution also recognizes and protects the right of citizens to participate particularly in respect to the environment and natural resources matters. Article 69(1) (d) obligates the state to encourage public participation in the management, protection and conservation of the environment. The Constitution further mandates parliament to enact legislation ensuring that investments in property benefit local communities and their economies. It also requires the people, through their elected representatives, to ratify any grant of a right or concession for the exploitation of any natural resource of Kenya. The Constitution also brought about another significant milestone in relation to community engagement and public

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4 Article 62(1)(f), The Constitution of Kenya, 2010
5 Article 66(2), The Constitution of Kenya, 2010
participation – the devolved government structure comprising the national government and 47 county
governments. Among the objects\textsuperscript{7} of the devolution of government is to enhance the participation of
the people in the exercise of the powers of the State and in making decisions affecting them; and to
recognize the right of communities to manage their own affairs and to further their development.

That said, exploiting oil and minerals requires experts and resources. Like many developing countries
with oil and mineral wealth, Kenya lacks the expertise and capital to develop her oil and mineral
resources. The country therefore contracts international companies such as Tullow Oil to provide the
requisite finance and technical skills in order to explore and produce oil, gas or other minerals. Such
contracts are governed by a Production Sharing Contracts (PSCs) signed between the affected company
and the government, as well as by other relevant national laws, policies and regulations. Therefore for
the impending oil and mineral boom to bring about meaningful sustainable benefit to the people, the
legal and policy framework has to right, as should the relevant institutional arrangements. These are
some of the issues that communities should engage around. For instance, to date Kenya does not have a
mining policy yet mining is going on in many parts of the country. The energy policy in place does not
address issues of oil and gas, yet exploration for oil and gas is actively taking place. There are on-going
processes to develop a new Petroleum (Exploration, Development and Production) Act, Natural
Resources (Benefit Sharing) Act, Community Land Bill etc. The Mining Bill was passed by Parliament just
last week. Are communities engaged enough on these processes?

In summary, whether Kenya’s vast natural resources, including oil here in Nyakach brings good fortune
or misery to the people will depend on whether each stakeholder plays their part in ensuring that good
governance. The government needs to set up and implement the enabling policies and law. We need the
investors to put in their resources and expertise. But the investors also need to recognize and protect
human and socio-economic and environmental rights of host communities. And communities need to
engage in the oil and mineral development processes and understand their rights and obligations on the
same. In order to achieve this, there is need for continuous conversation – to know what’s happening,
the roles of different stakeholders, the challenges faced, and how to overcome them. That’s why we are
here.

4. SESSION II: COMMUNITY LESSONS AND EXPERIENCES

This session focused on learning and experience-sharing by communities from the different counties
represented.

4.1. Experiences from Nyakach

Members of Nyakach community gave elaborate presentations of their experiences with the Tullow Oil’s
exploration process, their hopes and their expectations. They said that entry of Tullow into their area
has sparked mixed expectations among the locals. For some a possible discovery of oil will turn around
the area, region and country’s economy. Some affected land owners were told they are going to be
super-rich. The locals also think any discoveries will lead to numerous jobs, scholarships, development

\textsuperscript{7} Article 174, The Constitution of Kenya, 2010
and other widespread economic benefits in the area. But others are also wary of possible environmental degradation, negative social impacts, insecurity etc. The local community members decried lack of adequate and early consultations with the community prior to commencement of the oil exploration process. They also blamed the strategy used by Tullow to enter the community. For instance the company relied on national government administration officials and local politicians as their main point of contact. Although the company has a Community Liaison Officer (CLO) for the area, some community members claimed that the CLO ignored their advice to call all the affected land owners to discuss in detail the exploration process and its implication to land owners and locals. Instead the CLO preferred to deal with administrative officers and local politicians. These officials were rather manipulative in their approach to dealing with the community members. They implored them to accord the explorers maximum corporation because they had brought development to the area.

Ms Monica Ong’or sharing her thoughts on community engagement around oil exploration in Nyakach

Community members from Nyakach were also concerned about the issue of compensation. Whereas the affected individuals were compensated for any crops or property damaged during the seismic surveys, many wondered how the rates were determined and whether they were fair. The other concern for the people of Nyakach is availability of information regarding the exploration activities in the area by Tullow oil. They say since the company finished the seismic surveys there has been little to no information about the results and next steps. In fact the company even removed the satellite office they set up in area during the seismic surveys, making the community to rely on administration officials and politicians for information. Yet, according to some community members these officials are themselves either clueless or are unwilling to pass them any information. The community members appreciated Tullow Oil’s Corporate Social Responsibility (CSR) efforts, mainly the provision of scholarships and bursary to needy students. However, they stressed the need for such efforts to be
consistent and sustainable. For instance, they said that some of the local beneficiaries of Tullow Oil’s initial scholarship funds had been sent home from school for lack of school fees. Moreover, the company was yet to deliver on its other CSR promises such as development of water projects in the area.

Mr John Odingo, Nyakach Council of Elders Chairman giving his perspectives during the workshop

4.2. Experiences from Turkana

In Turkana, communities had great expectations when oil exploration started in the area and after the announcement in 2012 that oil had been discovered there. Indeed, community representatives stated that oil exploration and development projects had brought some benefits particularly in the form of infrastructure development, scholarships and employment. However these expectations could have been overstretched and unrealistic. For instance, while communities thought that the exploration and discoveries would soon sort out the perennial hunger problem in the area, the communities are experiencing even more hunger now. This was blamed on lack of a structured and sustainable way of community involvement in the oil exploration process in the area, as well as due to poor information sharing by the company. In addition, the community members said that youthful and learned people from amongst them had done little to rally them together and educate them on the oil exploration and production issues early enough. According to the community representatives, lack of a structured and sustainable way of community involvement in the oil exploration process in Turkana has led to frosty relationship between local community and Tullow Oil, the main company exploring for oil in the area. The community representatives at the workshop, said community engagement was at best ad hoc. The company engaged the community only when it suits it and turned to local administration officials to push their agenda in most occasions.

Land is one critical concern for the communities in Turkana. Much of the land in Turkana is community land and has always been used as such for grazing livestock for pastoralists or as fishing bays for the fisher folks. The advent of oil exploration in the area has meant the same land is now oil blocks for the oil companies. This has led to simmering tension among the communities over use of the land. This has
not been helped by lack of community agreements on natural resources in the area. The other concern is the impacts of the oil exploration process on local lifestyles. Pastoralism has been negatively impacted as grazing grounds are set aside for oil exploration activities. The communities also fear losing their cultural identity and lifestyle as many people move into Turkana from other parts of the country as well as other countries to work in the oil industry in the area.

In terms of opportunities, the company has offered a number of employment opportunities to the locals especially for the low skill jobs. These could however be terminated any time depending on the intensity of operations in the company at any given time. Moreover the communities decry salary discrimination in favour of individuals from other counties/countries at the expense of people from Turkana for similar job scales. In addition there have been cases where politicians, company or government officials solicited sexual favours from locals in exchange for jobs in the company.

Ms Apitha Lokwang’ from Turkana sharing her community experiences with other participants

**4.3. Experiences from Kitui**

The next round of presentations came from Kitui where Fenxi mining company from China has been exploring for coal. The presentations focused on community involvement and role of the Mui Coal Block C and D liaison committee. Coal was discovered in the Mui basin in 1935 although it was not developed until 2003 when the NARC government took over power. Much of the coal is located in block C and D.
While communities were not properly involved at the beginning, their advocacy efforts led to the formation of the liaison committee whose work involved advocacy, education and analysis of matters pertaining to coal business and main-streaming the energy resource projects into community initiatives. The committee eventually negotiated for quite progressive community benefits from the coal mining project. However, while civic education was a key component of the committee’s work, the government did not release money in good time for the same according to the community representatives at the workshop. Only in 2014 some civil society jumped in to do some civic education in the area.

Mr Daniel Muoti from the Centre for Human Rights and Civic Education in Kitui explaining a point to the participants

Another key concern for the people of Mui was that despite coal being a very dirty business in terms of greenhouse gas emissions, an Environmental Impact Assessment was not done before the commencement of the exploration process. In addition, nothing has come in the way of the communities in the form of scholarships from Fenxi Mining despite the company’s promises of the same. Community representatives from Kitui also reported rise in mass selling of land in the area to people from other parts of the country. Upon selling their land, the locals resort to buying motor-cycles for the boda boda business. In terms of compensation, the communities are unsatisfied with the rates that are being offered by government/companies. Nevertheless, relocation is going on well.

4.4. Experiences from Kwale

Kwale County is the home of the Kwale Mineral Sands Project which is one of the largest titanium mines in Kenya. The project represents the first major foreign direct investment in Kenya’s mining industry. In terms of community engagement, experiences from Kwale were no different from the other counties. There was no structured and sustainable community engagement framework. In fact, in some instances, the communities were approached through the provincial administration in the morning and told not to go to the beach. We felt this was the wrong approach. There have been considerable impacts on local communities. These include ocean pollution that has led to reduced fish stock. This is of very great concern considering that many of the locals rely on fisheries for their livelihoods. Locking out the
communities from fishing during the exploration process also meant that the communities lost their daily livelihoods and in other circumstances, suffered destruction of their fishing gears due to non-attendance.

Nevertheless, the companies offered some compensation to affected individuals. The compensation was done door-to-door with each beneficiary having no clue of the rates offered to others. These challenges are partly attributable to the fact that during the initial exploration periods, the community lacked organized advocacy strategy. This led to representatives of community organizations in the county coming together to form the Kwale County Natural Resources Network (KCNRN) with support from ILEG and other organizations. The community, through KCNRN has since made enormous progress with their advocacy campaigns to promote inclusive management and utilization of natural resources in the county.

4.5. Experiences from Elgeyo Marakwet

The main extractive activity in Elgeyo Marakwet is Fluospar mining although Tullow Oil has recently started seismic surveys for oil in the area. The main concerns in the area relate to environmental degradation and compensation. According to community representatives from the area, there is
widespread pollution of land, water and air due to fluorspar mining activities. This has had enormous impacts on health of both humans and wildlife. They also shared their predicaments about unresolved land compensation for the nearly 10,000 acres of land where the mining of fluorspar ore is ongoing. This is exacerbated by lack of proper valuation of crops and other property. Land and compensation is also a major concern for Elgeyo Marakwet. The government apparently used the law to acquire land compulsorily from the locals, but failed to follow the same law with regard to compensation. Moreover, majority of the locals lack title deeds making it difficult for them to access any compensation. But even when they get compensation, often times the money confuses them and they fail to invest the money wisely. Moreover, the money is often not enough to secure another reasonable piece of land. For instance, one may be relocated from a 10 acre piece only to secure half an acre in another place owing to the varying prices of land in different places.

The issue of community engagement is also of concern. Participants from the area felt that the companies were not inclusive in their approach of engaging the community. On the contrary, the companies with help of government even tried to gag the community. The community representatives narrated how former senior people in government from the area used their positions to gag the community through threats and sometimes even death. Water pollution is rampant in the area. For instance, the company discharges industrial effluent into River Kerio which serves a big section of the community. Other issues include noise and vibration due to blasting of rocks, as well as dangers of falling stones. There are also cultural and social impacts such as destruction of human graves by the company as they dig in search of Fluorspar.

As a result of these challenges, the community wrote a memorandum to the Ndung’u Commission detailing their concerns. However, to their dismay, the final Ndung’u Commission report did not contain any thing they addressed in their memorandum. The community eventually got an appointment with the Cabinet Secretary for Mining Najib Balala who later formed a task force to look into the issues of concern. The task force is yet to complete its work. Some of the community’s demands through the task...
force are: compensation (land for land or at least sufficient money); property compensation; alternative land for resettlement; houses; compensation for historical injustices; participatory Corporate Social Responsibility (CSR).

Despite the challenges, the locals have benefited from fluorspar mining through scholarships and employment although concerns abound over the criteria for awarding the scholarships and selecting potential employees.

5. SESSION III: INDUSTRY AND EXPERT PERSPECTIVES ON COMMUNITY ENGAGEMENT AROUND OIL AND EXTRACTIVE SECTOR.

5.1. Overview of Tullow Oil’s operation in Kenya and in Block 12B. Anne Kabugi & Rose Kihungi

Tullow Oil works in many countries including in Ghana which has been ranked number 3 in terms of best managed oil sectors. In Kenya the company has five licenses held together with partners such as Africa Oil in Turkana and Swala Energy in block 12B that covers Nyakach. The company is at well appraisal stage in the Turkana basin and in very preliminary stages in other blocks in the country. Achievements in Kenya include material discoveries in Ngamia 1, 31 drills including 16 exploration and 15 appraisals. It is important to note that the oil blocks are not defined by administrative boundaries. For instance, block 12B where Nyakach sits covers six other counties namely Kericho, Nandi, Siaya, Busia and Homa-Bay. The seismic surveys conducted in the block so far touched on the three counties of Kisumu, Kericho and Nandi. Kisumu was the company’s initial area of interest but it will move to the other areas as well, and the results of the seismic surveys could turn positive in any of the counties falling under the block. In fact subsequent community meetings of this nature should not focus on Nyakach/Kisumu but should include these other counties.

Ms Anne Kabugi, Senior Public Affairs Advisor at Tullow Oil giving her presentation.
The seismic surveys covered 350Km in total. The results gave lines which when superimposed fall on Nyakack, Muhoroni etc. After identifying the areas, the company embarked on stakeholder analysis. We first approached the leaders (political and administrative) then started general consultations with the help of 5 Community Liaison Officers (CLOs). One of the challenges we experienced is that Kisumu is so expansive but we tried our best to get maximum reach. This was followed by acquisition of temporary access rights from the affected land owners, with the help of the chiefs and community elders. In total 7650 individuals were identified for the entire programme, out of which 7598 gave us permission. The company had to offset the 52 lines whose land owners refused us access. This was a huge success rate nevertheless. Even though the lines covered only 3m, we were compensating up to 5m wide. The assessments of damage to crops or property were done after line clearance.

In accordance with the law, we worked with registered values, Legend Valuers that even did secondary assessments to capture any extra damage done. Through Legend, we asked Agricultural Extension officers to give us the rates for crop compensation. We then embarked on crop compensation after clearing any damages. Note that the compensation covered only any damaged property, not land. Out of the 7650 farms, 3888 had crops and each of these was compensated 100%. In addition, all further grievances were addressed 100%. We also paid land levies as set by the county. After that we sat with the community and then later contacted the individuals to receive their compensations. We also ensured land owners came with their spouses for transparency. That’s the bit about Nyakach.

In general, Tullow Oil appreciates the need to obtain the social license to operate (SLO)\(^9\) from the communities where it works. Indeed the company makes every effort to acquire the SLO. It must be noted however that obtaining SLO is not a one off but rather a continuous process. A recent Earnest and Young poll ranked SLO as number three among the top concerns for investors. This is due to the fact that there are rising risks and costs associated with ignoring the SLO, the SLO is increasingly tied to funding and financing, and there are also reputational risks tied with SLO. In fact due to the SLO, companies are increasingly more responsible than they were before.

In Turkana, Tullow oil has started an open tendering process and has embarked on efforts to manage expectations. Without a doubt, there is need for community empowerment if the oil wealth is to bring long-term benefits to all stakeholders. There is need for increased investments in education, health, enterprise development and environmental conservation and protection. Tullow has initiated a scholarship programme, the Tullow Group Scholarship to benefit needy students from the countries where we work. In addition, the company has invested Ksh15 million in 3 community water projects in Nyakach. The company has also supported the First Lady’s Beyond Zero campaign\(^10\) by donating mobile clinics to the course. In terms of employment, Tullow employs expatriates, nationals (Kenya-wide) and local (from the county) staff. At one point Tullow employed 3000 people in its various operations around Kenya.

\(^9\) The social license to operate (SLO) refers to the level of acceptance or approval by local communities and stakeholders of mining companies and their operations.

\(^10\) The Beyond Zero Campaign aims to reduce Kenya’s high rates of maternal and child mortality.
Tullow’s operations have not been without challenges. One of the biggest ones is expectation management given the very high hopes that the news of oil in Kenya has brought, especially to the local communities. This has for instance led to so many grievances. To manage this we have touch points from the top all the way to the bottom of the pyramid to try to address these concerns. Another challenge has been the operating context notably historical grievances including marginalization and poverty, which are to a great extent beyond our control. The expectations from the communities are so high that sometimes companies feel like the communities expect them to become government. We need to get the communities to understand what companies should and can do and what is the role of governments.

5.2. Approaches to community engagement around the extractive industry in Kenya: Why community preparedness and involvement in oil and gas industry is important. Dr Connie Mumma-Martinon

Total E&P Kenya BV (TEPK) opened its office in Nairobi in 2012 and was given a license to operate Block L22 in offshore Lamu. Immediately TEPK set foot in Kenya, we started consultations with stakeholders. Missions were carried out at the national (Nairobi) and county levels and among the communities (Lamu, Kilifi and Tana River). During the national level consultations conducted in February 2013, we met with government, Civil Society Organizations (CSOs), media, academia, business leaders and religious groups. Between April and June the same year, we did county level consultations in Mombasa, Lamu, Kilifi and Tana River, where we met county government officials, women and youth groups, religious leaders, CSOs, fishermen and elders. This was followed by feedback to stakeholders in June and July 2013.

Dr Connie Mumma-Martinon engaging the audience during her presentation
In June, TEPK joined the Acorn/Terrcon SBS and Environmental and Social Assessment (ESIA) team both at the national and county levels. The SBS/ESIA report was presented to NEMA on 5th August 2013. A non-technical report was also prepared for the stakeholders in September 2013, after which the company embarked on pre-identification of the local development projects. Importantly, our consultations with stakeholders were guided by the following questions: is the process open to public scrutiny?; are stakeholders given a chance to participate?; are stakeholders given right information?; can stakeholders express their views?; is the TEPK Team accountable for all its activities?; and, what is the approach for dealing with concerns, questions and complaints?

Map of TEPK operations areas

TEPK employed a number of unskilled workers in its operations. The company ensured that selection of the unskilled workers was conducted in a transparent and fair manner through a rigorous procedure involving contractor requisition form, casual job application form, casual job
monitoring form etc. The chief, woman representative, youth, elders, religious leaders had to sign these forms to confirm that these workers came from their communities.

Despite these efforts, our operations in Lamu were not without challenges. So “why is it that conflicts between extractive industries and their host communities are increasing as never before and yet, today extractive industries make major efforts to make sure they have a good relationship with communities where they operate?” (Spears & Laplante, 2008). There are four main causes of conflicts between extractive companies and host communities. The first is when the companies enter a community immediately after being granted a license by government, without seeking and being granted ‘permission’ by the community. Someone from Peru once said: ‘These natural resources are ours … If I enter your house, I knock first. When have they asked our permission to enter our community?’ The second reason is that often times, the companies don’t endeavor to continuously inform the communities about all relevant aspects of their operations. The company thus ‘leaves us feeling empty. We see people, but we do not really know who they are or what they are doing’. Thirdly, many a times, at the end of operations, little of the profits actually flow back into local communities, only destruction of the environment. Once profits begin to flow, sad faces are more than happy ones – why?

Effective participation of the community at all stages of the oil development chain is the key to solving these challenges. First and foremost, the community needs to develop a shared understanding of community participation (individuals will have varied interests, understanding, expectations etc.) Secondly, the community should establish its baseline position (e.g. beginners, knowledgeable and conversant, not aware etc.). Based on that, they should decide the questions to ask, issues to prioritize and be realistic in demands. The community should then identify common issues and needs to be addressed (e.g. displacement, benefit sharing, local development projects, Rules and regulations, environment etc.) It should then agree on an action plan (e.g. what exactly to do once we start engaging with the companies and who are our representatives?). After each consultation and engagement they should review the progress (e.g. is engaging with oil companies better or worse than before and what needs to be changed and improved?)

In summary, community members must dialogue, discuss and make important decisions together. Community meetings must be in a place where as many people as possible can participate. Attempts should be made to involve the wider community. Another important thing is commitment. There must be commitment from key stakeholders. They must create time, share views, discuss and debate concerns. Creativity is needed to ensure that people stay engaged because issues keep changing. Regular evaluation of engagement will help people identify what they feel about certain issues. In their advocacy efforts, the community should identify where real power and influence lie. In some areas political leaders are the most dominant force, in others it will be key professionals, or members of local communities. There is need to map the
different communities that exist to ensure that participation allow for local diversity, and to educate them to better understand the oil and gas value chain and community advocacy strategies. But communities should also understand that they need the companies to develop the resources. They should create conducive atmosphere for the companies to operate and raise concerns and questions as they arise. Lastly, it is important for communities to embrace patience because the oil and gas business takes very long before returns can be realized.

For companies, they should engage in active and earlier dialogue, consultation and engagement at all times i.e. they should obtain free, prior and informed consent. Companies should be accountable and transparent in their activities. For government, they should understand companies’ perspectives and support them in their operations by among other things, creating applicable laws. Government should also educate and update the population on laws and policies.

6. PLENARY Ikal Ang’elei (Facilitator)

A number of issues came up during the plenary as discussed below.

i. Community development agreements

Some participants felt that there is need for community development agreements (CDAs) considering that environmental and social costs of oil and gas operations will more often than not be borne by communities while project benefits will accrue to government and the oil companies. Such agreements would enable the impacted communities to articulate, and have addressed their development goals and aspirations.

ii. Corporate Social Responsibility (CSR) programmes

Related to CDAs was the issue of Tullow Oil’s corporate social responsibility programmes. Participants felt that the company needs to be more open and transparent on its CSR projects such as water projects, employment and scholarships. They should keep the public informed on the availability, criteria for selection and sustainability of scholarships and other CSR programmes. Efforts should be made to ensure that such information reaches even the people at the lowest level of society. More importantly, they should involve the public in deciding priority projects and in designing such projects in a way that they can deliver long term benefits to the people.

iii. Participation and inclusivity

Another key issue which featured at the plenary was participation and inclusivity. Participants felt that companies, government and communities need to embrace inclusiveness in their consultations around oil development not just in Kisumu but in all other parts of Kenya. This requires a careful stakeholder mapping so that all affected people can be brought on the table and all interest groups are represented. Participants also encouraged oil and gas and other mining companies to embrace the principle of Free, Prior and Informed Consent (FPIC) in their dealings with the community. Communities need to be
informed at every stage rather than being kept always guessing. The participation framework must also include women, youth and other minority groups among the community.

iv. The role of local national government administration

This too came into sharp focus at the plenary. Community members lamented that these officials were being used by the national government and companies to manipulate and gag them, so they don’t ask questions and hold the companies to account for their actions especially those that affect them – such as access to land, compensation etc.

v. Communities, CSOs should be objective

Some participants urged the communities to be objective by not paying all the attention to only the negative vibes of the oil industry. While it is healthy to raise concerns and questions as they arise, communities should also strive to create conducive atmosphere for the companies to operate because if the industry succeeds, it is for the benefit of all citizens. On the same vein, Civil Society Organizations (CSOs) were asked to be honest and objective in their work by giving truthful information and not pushing own agenda or those of government, companies, politicians or even communities. CSOs need to pick, interpret and present truthful and accurate information in a language that all can understand.

vi. Need for Nyakach people to dialogue among themselves, agree on their priorities

“We eat beef every day because cows don’t talk among themselves. If we don’t talk among ourselves, we will be eaten as well”
7. **NEXT STEPS**

i. ILEG will plan follow up community empowerment workshop which will bring together more people from the affected areas (oil exploration) as well as wider representation of stakeholders.

ii. ILEG will also explore opportunities for more exchange visits including possibly in other East African countries where oil and gas exploration is on-going.

iii. ILEG will strive to obtain and provide Nyakach communities with relevant information/documents in the form of laws, policies, draft bills and other materials to further strengthen the community empowerment efforts. These will be provided through community structures such as the Nyakach Elders Resource Centre and women and Youth groups.

iv. The Nyakach community leaders will explore ways to organize dialogue and agree on their issues and priorities in relation to oil exploration in the region.
## ANNEXES

### Annex 1: Programme

**Day 1 September 18th 2015**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
<th>Lead</th>
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<tbody>
<tr>
<td>9.00-9.30AM</td>
<td>Registration of participants</td>
<td>ILEG</td>
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<tr>
<td>9.30-9.45AM</td>
<td>Welcome and Introductions</td>
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**Session I: Opening**

Chairperson: Benson Ochieng  
*Executive Director, ILEG*

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<tbody>
<tr>
<td>9.45-11.00AM</td>
<td>About the workshop</td>
<td>Dr Collins Odote</td>
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<td><em>Director ILEG, and Senior Lecturer, University of Nairobi</em></td>
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**SETTING THE SCENE**

Overview of oil and gas and extractive sector in Kenya: Opportunities and Challenges

Clarifications, Comments, Questions and Answers

Group photo

**11.00-11.20AM**  
**Health Break**

**Session II: Community Engagement with the Extractive Sector: County Experiences**  
Chairperson: Dr Collins Odote

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
<th>Lead</th>
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<tbody>
<tr>
<td>11.20AM-1.20PM</td>
<td>Nyakach’s community expectations, challenges and experiences with petroleum exploration</td>
<td>Representative, Nyakach community</td>
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<td></td>
<td>Lessons from Mui Coal Basin in Kitui County</td>
<td>Representative, Kitui community</td>
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<tr>
<td></td>
<td>Community experiences with oil exploration and development: lessons from Turkana</td>
<td>Ikal Ang’elei/Representative, Turkana Community</td>
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Plenary

**1.20-2.30PM**  
**Lunch**

**Session II Cont’d**

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<th>Time</th>
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<tr>
<td>2.30-3.40PM</td>
<td>Stakeholder management in large-scale natural resource projects: Lessons from Sondu-Miriu Technical Committee</td>
<td>Prof Raphael Kapiyo, Maseno University</td>
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<td>Lessons from Fluorspar mining in Kerio Valley</td>
<td>Representative, Kerio Valley Community</td>
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**3.40-4.00PM**  
**Health Break**

**4.00-5.00PM**  
**Community engagement with extractive industries: Lessons from Kwale**

Plenary

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**Day 2 September 19th 2015**
<table>
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<th>Time</th>
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<tr>
<td>9.00-9.40AM</td>
<td>Industry Approaches to Community Engagement: Tullow Oil’s Perspective</td>
<td>Anne N. Kabugi, Senior Public Affairs Advisor, Tullow Oil B.V.</td>
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<td><strong>Session III: Industry perspectives on extractive sector issues</strong></td>
<td><strong>Chairperson: Benson Ochieng</strong></td>
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<tr>
<td>9.40-11.00AM</td>
<td>Legal and Policy Context for community engagement around extractive sector and other natural resources in Kenya</td>
<td>Benson Ochieng, Director ILEG</td>
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<td>Approaches to community engagement around the extractive industry in Kenya</td>
<td>Dr Connie Mumma, University of Nairobi</td>
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<td>Examples of community and civil society engagement with the extractive sector in Turkana</td>
<td>Ikal Ang’elei</td>
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<td>11.00-11.20AM</td>
<td>Health Break</td>
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<tr>
<td>11.20-12.00PM</td>
<td>Linkages between land, extractives and community livelihoods</td>
<td>Mr Odenda Lumumba, Coordinator, Kenya Land Alliance</td>
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<td>12.00-1.30PM</td>
<td>Brainstorm: Options for community and Civil Society engagement in petroleum exploration and development in Nyakach area and Kisumu County</td>
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<td>Next steps</td>
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<td>1.30PM</td>
<td>Lunch</td>
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<td><strong>CLOSE OF WORKSHOP</strong></td>
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</table>
Annex 2: List of participants

1. Mzee Augustine Mumma
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<tr>
<th></th>
<th>Name</th>
<th>Position</th>
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<tr>
<td>48.</td>
<td>Dr. Collins Odote</td>
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