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# Workshop Report

## EXPLORATION AND DEVELOPMENT OF OIL AND OTHER NATURAL RESOURCES IN TURKANA COUNTY

**Consultative Meeting with Turkana County Leaders**

## Ann Nanjala Hall, Lodwar

**24th-25th July 2014**

**Organised by:**

**FRIENDS OF LAKE TURKANA (FOLT)**

**And**

**INSTITUTE FOR LAW AND ENVIRONMENTAL GOVERNANCE (ILEG)**

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## EXECUTIVE SUMMARRY

In March 2012, Kenya announced the discovery of commercially viable oil deposits in its Turkana basin in the Northern part of the country, by the British company Tullow Oil. Since then Tullow has discovered more oil deposits with the company's current estimates of estimated reserves standing at 600 million barrels. The oil exploration and extraction and the accompanying infrastructural development no doubt holds a promise for economic liberation and development of the hitherto marginalized county as well as the country. But there are also justifiable fears that the discoveries could be a source of conflict and lead to increased poverty among the host communities.

The Institute for Law and Environmental Governance (ILEG) in partnership with Friends of Lake Turkana (FoLT) and the leadership of Turkana County Government are implementing a project aimed at promoting sustainable and transparent governance of the extractive sector in Kenya. The project, which is part of a wider project involving six organizations, and supported by the MacArthur Foundation, involves research, policy advocacy and capacity building for communities, Civil Society Organizations and government officials. As part of the project, FoLT and ILEG have been holding a series of meetings and engagements with Turkana County stakeholders. This report captures the highlights of a Consultative Meeting with key Turkana County stakeholders on the 24th and 25th July 2014.

The broad objective of the meeting was to empower local leaders in Turkana to promote equitable and sustainable management of oil and other natural resources in the county for long-term benefit of the local people and the country as a whole. The meeting attracted a total of 40 participants drawn from the Turkana County Government executive, Turkana County assembly and representatives of community based organisations based in Turkana. Speakers included the Executive Directors of FoLT and ILEG, Ikal Angelei and Benson Ochieng; the Deputy Governor of Turkana County Hon. Peter Lokoel; Dr Collins Odote from University of Nairobi; and the Executive Director of the African Centre for Energy Policy (ACEP), Dr Mohammed Amin Adam.

The meeting was opened with opening remarks from Ms Angelei, Mr Ochieng and Hon. Lokoel. Mr Ochieng also reviewed the status of the legal and policy framework governing

natural resources in Kenya, and the country's options for policy reforms. He reiterated the need for the country to fast-track formulation or review of all legislations as required by the constitution, particularly those that relate to natural resources. Turkana leaders should also facilitate effective citizen participation in the development of these legislations. Dr Adam gave an overview of the petroleum exploration and production issues. The overview covered a variety of issues including mineral rights contracting; the oil development value chain from the acquisition of mineral right to decommissioning; and local content development. He also gave a review of the Draft petroleum (exploration, development and production) Bill, 2014.

Dr Collins Odote spoke on the Role of County Government and Parliament in Natural Resources Management, with emphasis on Turkana County. He stressed the huge responsibility that Turkana County has – to be a good example not only for the rest of the country but also for other countries in the region. The presentation covered County Government's role in representation, legislation; local development planning; keeping communities informed and facilitating public participation etc.

The participants came up with a number of recommendations for effective management of natural resources in Turkana County. The recommendations include that:

1. There should be strategic improvement in collaborations among the Executive and the Legislative arms of Turkana County government, the Senator and Members of the National Assembly from Turkana County. They should seek ways to speak with one voice and work together towards ensuring that the county and particularly its natural resources are managed in an accountable and sustainable way. Together they should decide the county's agenda and priorities and how to take them forward.
2. Each stakeholder group from the county should know what their roles are in relation to management of natural resources and the county's development in general, and perform it effectively.
3. FoLT and ILEG commit to continue working with the Turkana leadership especially in terms of sharing ideas and technical expertise on how to go about these enormous responsibilities and move the county forward. This include working together to identify all legislations required to be enacted at the county level, and to summarise what the legislations are about.
4. The Turkana County assembly should fast-track enactment of legislations that will guide effective governance of the County and its natural resources.

5. The Turkana County Government in collaboration with the assembly and civil society organizations should step up public sensitization campaigns aimed at passing information about the policy processes, and ensuring effective citizen participation
6. All leaders from Turkana County should work with the national government and oil companies in the area to promote skills development among local youth.
7. There should be a good follow-up on the implementation of these recommendations so that it does not appear as an endless conversation that is not achieving any objectives.

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## LIST OF ABBREVIATIONS

| | |
|---|---|
| ACEP | African Centre for Energy Policy |
| CA | County Assembly |
| CFA | Community Forest Associations |
| CS | Cabinet Secretary |
| CSO | Civil Society Organization |
| CSR | Corporate Social Responsibility |
| FoLT | Friends of Lake Turkana |
| ILEG | Institute for Law and Environmental Governance |
| LAPSSET | Lamu Port South Sudan Ethiopia Transport project |
| MCA | Members of the County assembly |
| MP | Member of Parliament |
| NA | National Assembly |
| NOC | National Oil Company |
| PSA | Production Sharing Agreements |
| PSC | Production Sharing Contract |
| R&D | Research and Development |
| TCA | Turkana County Assembly |
| UPA | Upstream Petroleum Authority |

# 1. INTRODUCTION

## 1.1. Background Information

The recent discovery of oil in Turkana basin and other mineral deposits in various parts of Kenya has triggered intense interest in Kenya's oil and extractive sector. The government is keen to use the oil and mineral industry as a key driver of the country's economic growth as envisaged in the official national development blueprint, Vision 2030. The host communities on their part hope that these discoveries will offer them a better life. But the discoveries have brought to the fore a number of critical social, economic and environmental concerns including irregular land transactions; irregular allocation of prospecting and mining licenses; conflicts over ownership of oil and mineral resources; and lack of clear regulations for the sector. These concerns are exacerbated by the fact that land and natural resources are central to the lives of people living in the areas where these resources have been discovered. Reduced access to these resources, as well as perceived development needs by state and foreign actors which ignore the community needs, coupled with declining environmental quality portend an increased risk of social and economic destabilization in these areas.

Turkana County (formerly Turkana District) occupies a land surface area estimated to be between 68,680km$^2$ and 77,000km$^2$. The population of Turkana is about 850,000 according to the 2009 population and housing census. This indigenous population comprises of fisherfolk and predominantly nomadic pastoralists whose wealth is mainly in the form of livestock and in some very limited cases, trade and farming. There are other settler communities engaged in business and formal employment residing mainly in urban locations. The literacy rates in the county are very low due to factors such as inadequate infrastructure for education, mobility due to nomadism, economic marginalization and cultural beliefs and practices. The literacy level among women is even lower relative to the male counterparts and hence their position and access to land in the modern and rapidly urbanizing parts of the county is worrisome. The historical and modern economic marginalization means that land in Turkana remains largely un-adjudicated and delinked from economic development.

Since the first announcement of oil discovery in Kenya in March 2012, Tullow Oil has continued the exploration campaign, striking commercially viable quantities of oil in different parts of the Lake Turkana Basin. The latest discoveries at the Amosing-1, Ewoi-1, Ekales-1 and Agete-1 exploration wells put the company estimates to over 600 million barrels of oil equivalent. The oil discovery in Turkana County was greeted with considerable excitement by Kenyans and rightly so by the local residents of Turkana. The oil exploration and extraction and the accompanying infrastructural development no doubt holds a promise for economic liberation and development of the hitherto marginalized county as well as the country.

However, pundits foresee a possibility of conflicts likely to be triggered by possible exclusion of local communities from oil revenue sharing arrangements, environmental degradation and negative social and cultural impacts. If these critical concerns are not addressed, the projects may have many adverse and unintended consequences. Of particular concern is that exploration and development of the resources without a sound legal framework could lead to infringing on local people's land, environmental and cultural rights; conflicts; corruption; and wastage of public funds. The government has initiated review and formulation of relevant laws and policies including the Energy policy, the Energy Bill, the Community Land Bill and the Natural Resources (County Royalties) Bill. However, the process has been painstakingly slow and there are also fears that the current draft bills have not adequately addressed some of the most critical issues.

Concerns have also been raised by some stakeholders and community members of lack of access to information necessary to facilitate their active participation in the management and utilization of oil and other natural resources. There is also the issue of false expectations which if not managed carefully, may lead to disappointment; undesired resentment for the oil companies and the government; and conflicts such as those witnessed recently in Turkana. Moreover, given the nascent nature of both the upstream oil sector and the devolved governance system in Kenya, there are capacity challenges within the Turkana County Government to effectively plan, manage and oversee oil exploration and development in the County.

It is against this backdrop that the Institute for Law and Environmental Governance (ILEG) in partnership with Friends of Lake Turkana (FoLT), with support of the MacArthur Foundation held a Consultative Meeting with key Turkana County stakeholders to discuss and share ideas on how to address some of these critical concerns. The meeting built on earlier meetings and continuous engagements with various natural resources management stakeholders from the county.

### 1.2. Objectives of the Meeting and Expected Results

The broad objective of the meeting was to empower local leaders in Turkana to promote equitable and sustainable management of oil and other natural resources in the county for long-term benefit of the local people and the country as a whole. The specific objectives were:

i. To share knowledge and information with Turkana County leaders on their various roles in relation to accountable and sustainable governance of oil and other natural resources in the County
ii. To discuss the status of the review and formulation process of the energy sector-related bills and policies.
iii. To critique the draft Energy Bill 2014 and equip Turkana County leaders with the requisite knowledge and information on its strengths and weaknesses.
iv. To cement partnership and collaboration with Turkana County leaders on accountable and sustainable governance of oil and other natural resources within the county.

The following were the expected results:

i. Knowledge and information shared with Turkana County leaders on their various roles in relation to accountable and sustainable governance of oil and other natural resources in the County.
ii. Strengths and weaknesses of the Energy Bill 2014 identified
iii. High level commitment by the members of parliament to push for the prioritization, completion and adoption of the Energy Bill and other oil and natural resources-related bills.

### 1.3. Opening Remarks, *Benson Ochieng*

I am very happy to welcome you all to this meeting on behalf of the Institute for Law and Environmental Governance (ILEG). ILEG is a non-profit organisation that seeks to foster sustainable management of natural resources in Kenya and the East African region through policy research, advocacy and training on issues linking environment, governance and development. Over the years, ILEG has curved a niche in defining the development-governance nexus, and established formidable networks and partnerships for environment and natural resources legal and policy reforms.[1] We are particularly very excited to partner with

[1] Visit www.ilegkenya.org for more on ILEG's work.

Friends of Lake Turkana (FoLT) and the leadership of Turkana County government in organising this meeting. Our partnership with FoLT started three years ago and was born out of our shared concerns about environmental and social justice issues facing our country.

One of the ways in which we work is by organising meetings with various natural resources stakeholder groups and communities. We share ideas, information, skills and experiences on how to sustainably manage our natural resources and promote social justice. But for our partnership to succeed, we need support from the organizations and communities with which we work. Indeed, the Constitution of Kenya, 2010 requires communities to be involved in the management of their natural resources. Times when decisions on natural resource use were imposed by the government have long gone. If we can learn today how to do that – get actively and effectively involved in decision making regarding our natural resources, then we shall have made a big stride. Finally, I am happy to see a mix of representation from Turkana County leadership, and we appreciate you for making time to participate in this meeting.

### 1.4. Remarks from the Deputy Governor - Turkana County, *Peter Lokoel*

The Turkana County government is very grateful for FoLT and ILEG for organising this workshop. It is not the first one I am attending and I know they are very informative and helpful. In fact our Development Plan has greatly been informed by ideas shared on these meetings. I suggest that future meetings include members of the National Assembly (NA) and those of the Senate from this county because it is in Parliament that important laws regarding the use of natural resources are passed, manipulated or killed. Some of our Members of Parliament (MPs) even sit in parliamentary committees dealing with natural resources.

We have a duty as leaders to scrutinize bills touching on our resources and on the lives of citizens. But how many of us get to see these bills before they are passed? The Turkana County Assembly (TCA) should demand for these bills and avail them to members of the community to discuss and deliberate on the issues raised. Of course the County Government has requested for these bills but it gets more impetus when the request comes from the assembly. We also count on Civil Society Organisations (CSOs) to help us analyse and understand these bills to help us give informed comments. As a county, we are ready to work together with CSOs particularly ILEG and FoLT to avail these bills to the people and help in discussing and ventilating on them.

We are aware of the high expectations created among our people by the oil discoveries and on-going exploration activities, and the risks those expectations entail. We definitely need to manage our expectations. I am sad to note that our herdsmen have almost abandoned that that have sustained them historically – pastoralism in the wake of oil exploration in our County. We need to capitalise on opportunities created by oil exploration and development in our county, but it is also our duty to inform our people that life has to go on with or without oil otherwise we risk ending up with a desperate populace when they finally realise that oil will not be the solution to all their problems.

Another important issue relates to the access to information regarding the utilization and management of natural resources in the county. A lot of us here today are hearing a lot of things including these Bills for the first time. The Turkana County government will see to it that all necessary information is rolled out to the communities at the lowest level and translated to local languages where need be. I would also like to talk about Corporate Social Responsibility (CSR). CSR in this area is currently constituted as tokenism rather than what it is supposed to be. I will be glad to see a more robust CSR informed by community needs and not projects decided elsewhere and imposed on communities.

Finally, we all know that the environment is fragile, and that the one we live in is even more fragile. We all should work together as Turkanas to ensure oil and our other natural resources are a blessing for us rather than a curse.

## *2.* STATUS OF THE LEGAL AND POLICY FRAMEWORK GOVERNING NATURAL RESOURCES IN KENYA, AND OPTIONS FOR POLICY REFORMS, *Benson Ochieng.*

### *Highlights from the Presentation and Plenary*

Laws and policies are very important in ensuring a country's natural resources are managed appropriately. That is why we should all be concerned about the laws and policies that govern our natural resources, and there are very many of these – over 100. The oil and gas sector is currently governed by the Petroleum (Exploration and Production) Act 1986[2] and the Energy

[2] Cap 308 laws of Kenya

Act[3]. These two laws are however outdated and not in tune with the Constitution of Kenya 2010 and other latest developments in the energy sector including oil discovery in the country. The government is cognisant of this fact and has initiated formulation of new bills to govern the energy sector. Already there is a draft Petroleum (Exploration, Development and Production) Bill, 2014 and Energy Bill, 2014. These bills once passed into law will directly influence how the oil here in Turkana is extracted, developed and used. But how much are the people in Turkana aware of these bills and to what extent have they taken part in their development? How do we address once and for all the notion that laws and other important decisions are being made in Kenya then imposed on Turkanas?[4] These are the critical questions that we should answer.

The other important laws are those related to Access to information as well as public participation. A lot of decisions involving natural resources in Turkana including oil and water have been done with limited knowledge and involvement of the local communities. Participation of the people is one of the values and principles of good governance under the Constitution of Kenya, 2010.[5] In fact, one of the objectives of bringing government closer to the people through devolution was to secure more public participation in governance. It is unfortunate therefore that a lot of counties are also falling victims of lack of adequate public participation. The Constitution further requires parliament to enact Public Participation Act, yet this has not been done.

It is the responsibility of leaders to make sure that all the important information regarding the use of natural resources reach the public. But this can only happen if the leaders themselves have the information. The Members of parliament from this county, the County Assembly (CA) and the Members of the County assembly (MCA) have a duty to seek all such information and pass it to the public. The media particularly local media should also deliver on their role to inform the public. There have been concerns that media often focus too much on the politics of the issues rather than passing impartial information to the public.

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[3] Act No. 12 of 2006.

[4] This notion stems from the fact that Turkana and other far flung areas in the arid and semi-arid parts of Kenya have been marginalised for so long that their communities feel cut off from the rest of Kenya.

[5] Article 10

The land laws are also very critical. The law governing community land is particularly very critical given that much of the areas where oil has been discovered in Turkana fall under community land. Unfortunately, exploration of oil is going on yet there is no substantial law on community land. The Constitution of Kenya 2010 requires a law on community land to be enacted within five years of its (the Constitution) promulgation. This period expires in August 2015. Although there is a draft Community land Bill, 2014, the process of drafting the law has been painstakingly slow given the urgency with which it is needed. As it stands, any unregistered community land is vested in the County governments. There is need for Turkana County government to map all land that is still held by it. This is because there is a lot of land grabbing in the area for speculation purposes.

There are also concerns on the laws governing benefit-sharing of the revenue generated from the oil industry. These includes the allocation between the government and oil companies as well as among the various levels of government and communities. The rules governing these allocations are not clear to the public. The Constitution defines the tenure of minerals including oil to be part of public land, meaning that they are to be held by the national government on behalf of the Kenyan public. Never the less, it is common knowledge that host communities usually pay higher costs in terms of environmental and social impacts when these resources are extracted. The design of benefit sharing arrangements is therefore very important to host communities. There are proposals to enact a law to guide benefit sharing in the country. Again this has not been enacted.

The oil and mining industry in general come with a lot of proposed infrastructural developments. The Lamu Port South Suda Ethiopia (LAPSSET) project is already underway. Oil refineries to process Kenya's crude oil will also be built. The laws governing infrastructural developments are therefore also very critical.

A host of other sectoral laws also impact on the oil and natural resources. For instance, the Forest Act of 2007 governs how forest resources are managed and utilised. To ensure community participation, the Act requires Community Forest Associations (CFAs) to be established. However most Turkana forests have no established CFAs and this has hindered effective community involvement in forest management in the county. Last but not least, oil and other natural resources development cannot prosper in an environment void of peace and security. As such, laws governing security are very important. Skirmishes, conflicts and killings such as those that occurred recently in Turkana and Lamu will indeed scare investors and bring any mining or exploration to a halt.

In concluding, the Constitution of Kenya, 2010 requires that several legislations be enacted to operationalise it. A lot of these legislations touch on the management of natural resources, particularly at the county level. Perhaps one action area would for ILEG, working with FoLT and the Turkana County government, to make a list of all these legislations, summarise what each is about, and track their various stages of development. After that we can see how the people of Turkana can get more involved in their development. In this regard, it is important that as communities, we know how to engage with the County government since working together with the county government would give us a bigger voice for bargaining with the national government and national assembly for instance in demanding access to the bills.

## 3. GENERAL INTRODUCTION TO THE PETROLEUM EXPLORATION AND PRODUCTION ISSUES, *Dr Mohamed Amin Adam*

### *Highlights from the Presentation and Plenary*

This is the third time that I am coming here in Turkana. I am always happy to interact with you on how to turn your God given natural resources into well-being for your country and people. It should not always be the case that God-given natural resources turn into a curse. Most countries' Constitutions vest oil and other minerals in the state. However, most governments more so in developing countries do not have the required capacity to develop these resources partly due to the expensive nature of investments in mineral or oil production. For instance, Ghana, currently producing 100,000 barrels of oil per day[6], spent over $4billion before production began. Therefore, governments often give part of its rights to oil companies. The arrangement is usually such that the investor puts their money in developing the resources then shares the profits with the government. Apart from the profits, the mining company also pays taxes to the government. Generally, the investor gets more money than they put in, so the government is happy and the investor is happy as well.[7]

[6] The rate of production depends on technology used as well as host government's conservation policies.

[7] The big question is, are the communities from the areas where the resources are extracted happy?

The Mineral right given to the oil company by the government simply grants the contractor the right to explore for, develop and produce the reserves. The national government retains ownership of the reserves. This legal rights are acquired by entering into agreement with the mineral rights owner in the form of: concession; Production Sharing Contracts (PSC) as is the case in Kenya; risk Service agreement; or a hybrid system as is the case in Ghana.

Upon acquisition of the mineral rights, oil development chain goes through five distinct stages: exploration, appraisal, development, production and closure (or decommissioning). Exploration involves geophysical prospecting and/or exploratory drilling to determine whether hydrocarbons are present beneath the Earth's surface. Although seismic tests can tell that a structure is present, drilling a well is the only way to find out whether hydrocarbons are actually present in that structure. Drilling can be vertical, horizontal or a multilateral type involving drilling both vertical and horizontal wells. Generally, multilateral wells maximise recovery and minimise the environmental impact of the drilling. Upon discovery, the next stage, appraisal involves additional drilling to determine the size of the recoverable reserves; dimension of the fields; development cost and economic viability or commerciality of the project. When an appraisal is successful, commerciality is declared. It is also during appraisal that the type of oil present is determined. There are several classes of oil including light oil (has less impurities) and heavy oil (has more impurities).[8]

Once commerciality is established, the fields can now head to development phase. But first a decision has to be made as to whether or not to develop the field. Remember that the outcome of exploration is to find "oil in place". So even after oil is found, uncertainty remains on the amount of oil in place and the recovery factor. Development is essentially an investment decision – whether to develop it or not, when to develop and how to develop? When a decision to develop is made, development usually starts with a plan of Development. It involves drilling of development wells, constructing of platform, constructing of treatment plant, equipment and facilities for jetting, storing and processing, constructing pipelines and waste disposal System. The host Country can exercise its right to participate up 51%.

[8] Fortunately for Kenya, the oil discovered in Turkana is light oil which means its production cost will be less compared for instance to Nigeria whose oil is heavy.

Once all these systems are put in place, production begins. Production usually goes through three stages. The first stage is the development phase (or primary Recovery phase) and involves a steady increase in the rate of production until the point where the rate of production remains almost constant. This point, where production rate is constant is the second phase, also called the plateau phase (or secondary recovery phase). The third stage begins when production rate starts declining. It is also called the tertiary recovery phase. The last phase in the oil development chain is the Closure or Decommissioning phase which involves the restoration of the site to its pre-existing condition. It includes plugging of wells, abandoning of wells, removal of equipment and facilities and rehabilitation and restoring the operational site. At this point (under most Contract e.g. PSC) the ownership of the facility passes to the host country. Decommissioned fields can come back to production because usually not all the oil in these fields are exploited before commissioning. In Nigeria for instance, the law provides for local companies to develop marginal fields.[9]

One very important aspect of oil exploration and production is Local Content Solutions which refer to the value contributed to the national economy through the oil industry's expenditure on goods and services. The most successful countries with regard to local content are those that have focussed on creation of opportunities around the oil industry rather than on employment. Nigeria and Ghana both seem to have learned from this. Both countries' definition of local content focus on the creation of opportunities for the local economy, rather than narrowly focusing employment. Nigeria has even went further to develop a local content policy targeting three sectors – fabrication; construction; and engineering and installation. This has made Nigeria one of the moderate counties in terms of local content. Developing a good local content policy and monitoring it well is a sure way of ensuring that revenue from oil benefits the local people. The National as well as County Governments should also endeavour to create and enhance opportunities for skills development.

A press release by Tullow Oil in November 2013, the company "reaffirmed its commitment to local employment, local opportunities and transparency in its operation in Northern Kenya". The government at both levels as well as communities should make sure that Tullow is held accountable in line with its own commitment on local content. May be it would be good at

[9] Marginal fields refer to decommissioned fields which are brought back to production.

some stage to invite Tullow to the County Assembly to explain their employment figures to determine if they are living up to their own local content promise. It would also be a good opportunity to ask them to explain their plan to upgrade more local people to skilled and management levels within the company. In addition, the company's employment data should capture more data/statistics – gender, earnings etc.

It is also important to have a common and accepted definition of 'local people'. For instance, in defining Turkanas, whether that definition includes people of Turkana origin who are now living elsewhere, that is for the locals perhaps through the county Assembly or national assembly to decide.

## *4.* THE ROLE OF COUNTY GOVERNMENT AND PARLIAMENT IN NATURAL RESOURCES MANAGEMENT: THE CASE OF TURKANA, *Dr Collins Odote*

***Highlights from Presentation and Plenary***

The recent discoveries of oil and underground aquifers has heightened national and global interest in Turkana County. As such Turkana occupies a unique position in the country and region because the rest of the country and even other countries are waiting to learn from how you go about extracting and managing these resources. Therefore, the leadership of Turkana County has a huge responsibility because what happens in Turkana will affect not only the rest of the country but also other countries in the region. From the onset, it is important that the entire spectrum of the county's leadership – members of the national Assembly, Senator, County Executive, Civil Society etc., work together for the County's good rather than focus on superiority battles. Remember that not working together will give the oil companies and national government space to manipulate you.

Laws and policies are very instrumental in ensuring that natural resources are managed in the correct way. As leaders, we should focus on ensuring that the right laws, policies and regulations are in place to govern the management and utilization of natural resources found within the county. This will pay more dividends rather than for instance focusing on how many of 'our people have been employed by the oil companies'. There is so much going on in the legal and policy front at the national level, that as people of Turkana we should all be part of. The country is in the process of formulating a new Energy Bill as well as a new Petroleum

(Exploration, Development and Production) Bill. For upstream oil our focus should be on the Petroleum (Exploration, Development and Production) Bill, and I am glad that an expert, Dr Amin will be talking to you shortly on the current draft Bill. You should especially be very interested on the Bill's provisions on the role of County government in the management and utilization of oil resources. It would be very difficult to secure the Counties' interests if the Bill ignores county governments. So my advice is that if you don't do anything else, fix the role of county governments in the management and utilization of oil.

There is a common misconception on the tenure of oil and minerals in Kenya. The Constitution specifies that minerals are part of public land meaning that they are to be held in trust for the people by the National Government. But a lot of people misconceive this to mean that the minerals belong to the National government. The County Government including the assembly has a duty to explain to the people that these minerals belong to them, and that they should seek information and become more involved in their management. The Energy Bill, petroleum Bill and other natural resources related bills, including the Community Land Bill also touch on access to land and compensation, which are very critical issues for host communities. The county Government should help the communities to explore what the bills means for land with regard to access and compensation, and give their recommendations before the bills are passed.

There is an emerging trend in Kenya with the ongoing review and/or formulation of legislations, that of making the Cabinet Secretary as powerful as possible. This trend has many flaws but the most notable one is that the interest of communities is lost because the role of their elected representatives is ignored. As such, there is need for elected leaders – senators, members of the national Assembly and Members of the County Assembly (MCA) to assert their role in management of natural resources by giving appropriate recommendations on the bills. MCAs are also mandated by law to craft legislations at the county level. They should use this role to make laws that foster sustainable management of natural resources at their counties.

In terms of Benefit sharing (BS), once the BS formula has been crafted, it is the people's duty directly and through their elected leaders, to monitor that the same is being honoured, not only between the National Government and Mining Companies but also between national government and counties as well as communities. The County government also have a duty to seek and pass all relevant information to the people. Remember that it is usually in the interest of oil companies and sometimes even governments, to disclose as little information as possible.

As such if left for the oil companies and/or governments to give information, very little may be achieved. The County Governments Act gives Counties power to enact access to info legislations. This should be done to enable communities to access information.

The County Government also need to take leadership in skills development. What the oil companies usually tell local communities is that the industry requires very technical skills which you don't have so we have to get the skills from elsewhere. But remember that whereas you may not as host communities or country have the skills now, it takes for instance only five years to train an engineer. So if you start now, you will have the engineers in five years, yet production of oil in Turkana is projected to last minimum 25 years.

The challenge relates to high public expectations. It is important that the county leadership start the conversations with communities regarding these expectations. This will help to dispel expectations that are false and help negotiate ton make the genuine expectations even better. This will also go a long way in avoiding unnecessary conflicts and interruption of the operations of oil companies. The other equally important duty of the County Government, particularly County Assembly is to monitor and oversight over the implementation of laws, policies, regulations and development plans touching on the county. In this regard, the County should also take a very keen interest on the local content requirements and monitor its implementation. In summary, it is possible to turn the oil and water discoveries as well as Turkana's other natural resources into a blessing but for this to happen, each one of us must know what to do, then do it consistently.

## *5.* REVIEW OF THE PETROLEUM EXPLORATION AND PRODUCTION BILL, 2014, *Dr Mohamed Amin Adam*

The analysis entails consideration of the appropriateness of the provisions of the bill for Kenya, international best practices and current trends in frontier countries that have similar features to Kenya's oil and gas sector. It focuses on what can work for Kenya, what can be improved upon in the Bill and how Kenya can attract investments to develop the upstream sub-sector. *The full review is attached as annex III.*

The Bill proposes an institutional framework comprising the Cabinet Secretary (CS) responsible for Petroleum operations, an Upstream Petroleum Authority (UPA) and the National Oil Company (NOC). The CS is responsible for formulating policy as well as negotiating and signing Production Sharing Agreements (PSAs). The Upstream Petroleum Authority regulates all petroleum operations while NOC is charged with commercial operations and holding the government's interest in the operations.

The Bill gives the CS power to: negotiate petroleum agreements; sign petroleum agreements and to terminate the same; appoint and dismiss Director General + Board of the Petroleum Authority; and appoint members of the Upstream Advisory Committee. The bill also gives the CS regulatory functions such as to: supervise petroleum operations; review and approve any proposed exploration activity contained in the annual work programme, appraisal programme and production forecasts submitted by a Contractor; and review and approve budgets submitted by a Contractor. Upstream Advisory Committee also performs regulatory functions such as: participate in the evaluation of the bids and applications for awarding petroleum blocks; conduct all due diligence and investigate all the affairs of contractors prior to entering into petroleum agreements. It is therefore clear that the role of the Cabinet Secretary & Advisory Committee conflicts with the Petroleum Authority's regulatory role in licensing blocks. The Bill therefore limits the role of the Authority to post licensing operations. Furthermore, there are no checks and balances in the licensing process. The CS has absolute power in this process which is not consistent with best practice.

It is therefore important to protect the operational independence of the Authority – Some good examples. For instance, appointment of the Director General and the Board should not be made by the Cabinet Secretary, rather by a higher appointing authority like the president as is the practice in Ghana and Sierra Leone. The Authority should present an annual report on all petroleum activities to Parliament and publish it, to ensure transparency and accountability.

The Bill gives the CS powers to zone oil blocks. While this is standard practice, it is important to recognize the right of communities to prior and informed consent at this stage.

Another key issue in the Bill relates to the way petroleum rights are awarded. Generally, there are two ways this can happen: Exploration license or, Petroleum Agreement. Exploration license has a unique objective of promoting investment in data acquisition. A significant advantage of exploration license is that, once significant data is acquired, the state can negotiate better terms; undertake open and competitive public tender; or raise financing to develop the blocks on its own exploration. Petroleum Agreement is awarded by Public tender or direct negotiation. The takes the route of Petroleum Agreement.

With regard to Development and Production, the bill has elaborate provisions including those of field development plans. However, a critical look reveals glaring omission of contents that have implications for communities. These include security plan; health and safety assessment report; emergency preparedness plan; and local content plan. Contents that have financial implications for the state are also not included: description of fiscal metering; a financial plan; decommissioning plan; and transfer of technology plan.

With regard to use of infrastructure, the Bill provides for Third party Access. However, in view of the land situation in areas where exploration is active in Kenya, open access to infrastructure is relevant to prevent overlapping infrastructure facilities.

As is the standard practice, the Bill provides for decommissioning and also proposes a Decommissioning Fund. It provides that contributions to the Fund starts when 50% of the recoverable reserves has been recovered; and when it is left with 10 years before the expiry of the production permit. While this is an improvement as many countries allow contributions from the commencement of production. However, the success of the model in the Bill depends on the size of the contributions to the Fund. It is also a standard practice for contributions to the Fund to be a recoverable cost, and the bill does this. Further, it provides that management of the Fund shall be by a committee of representatives from the country and the contractor. This is good for transparency.

The Bill has provisions for Local Content requirements. Its uniqueness is its recognition of the importance of "local local content". It gives first consideration to the Counties in the use of services, but generalizes the use of goods to the country. Still on local content, the bill proposes a Training Fund whose financing is based on annual training fees to be paid by the oil companies. This is to be negotiated between the state and the companies. However, use of the Fund is limited to training and capacity building. It should be expanded to cover Research and Development (R&D) and financing local county initiatives such as small – medium scale firms.

In terms of the distribution of Petroleum Revenues, the Bill has two provisions which communities must hail. First, it provides that the petroleum revenue allocated to counties must not be a substitute for revenues allocated to the counties by Commission for Revenue Allocation in the financial year. Secondly, the Bill requires each county government to legislate on the prudent utilisation of the funds received for the benefit of present and future generations.

The Bill also proposes a Sovereign Wealth Fund modelled on the Norwegian model in which all revenues are put in a pool and applied to different uses. However, the Bill does not provide clear rules on petroleum receipts and withdrawals, and does not also provided investment and savings rules. In most jurisdiction, there different funds with specific uses such as Budget Support; Stabilization Fund; and Future Generations Fund. Generally the provisions on revenue management are not adequate.

The Bill mandates the Cabinet Secretary to develop a framework for transparency and accountability, including the annual publication of all relevant records, accounts, and reports. It is highly encouraging that the Bill proposed sub-national reporting covering counties and communities as only a few countries undertake this type of public reporting. However, the provisions on transparency and accountability emphasize revenue transparency, ignoring the new standards of the Extractive Industries Transparency Initiative which include mandatory disclosure of petroleum agreements, permits and authorizations through a public register; explanation of how licenses are awarded or transferred; mandatory disclosure of beneficial ownership information; and reporting on expenditure from petroleum revenues at national, county and community level to facilitate budget tracking.

The Bill has a comprehensive treatment of community rights. However often times the problem arises with enforcement. This has resulted in some jurisdictions providing mechanism by law to ensure compliance and minimize community resentment which are likely to disrupt oil operations. Two mechanisms are common: establishment of a Fund for community compensations; and/ or Community Development Agreement. In some jurisdictions, these agreements are admissible in court when there are breaches.

## *6.* **WAY FORWARD,** *Facilitator – Ikal Ang'elei*

This workshop has been part of a series of meetings and engagements with the leadership of Turkana to promote equitable and sustainable management of the County's natural resources. We have been sharing ideas and giving our recommendations to various leaders of this county on how to move the county forward in the wake of the discovery of these resources which include oil and underground aquifers. The County Government, especially the county assembly have taken a lot of these ideas and recommendations into account, and are committed to our continued partnership. Further to deliberations at the workshop, the participants made up of representatives of the Turkana County Government executive, Turkana County assembly, Civil Society, and Resource Persons, came up with the following recommendations. It is believed that implementation of these recommendations would go a long way in helping the leadership of Turkana County to manage, utilize and provide oversight over the county's abundant natural resources. This would then ensure that the natural resources benefit the people and nation rather than being a curse.

These recommendations include that:

1. There should be strategic improvement in collaborations among the Executive and the Legislative arms of Turkana County government, the Senator and Members of the National Assembly from Turkana County. They should seek ways to speak with one voice and work together towards ensuring that the county and particularly its natural resources are managed in an accountable and sustainable way. Together they should decide the county's agenda and priorities and how to take them forward.

2. Each stakeholder group from the county from the executive to County assembly to civil societies and communities should know what their roles are in relation to management of natural resources and the county's development in general. This is in view of the fact that before devolution, communities used to point accusing fingers at the national government in Nairobi for lack of development. But with devolution, fingers will just go round and round and ultimately end here with the local leadership and communities themselves. The Constitution and the County Government Act, 2012 put huge responsibilities on the county government and on communities in relation to natural resources within the county. For instance, the Constitution empowers county assemblies to receive and approve plans and policies for the management and exploitation of the county's resources; and for the development and management of county infrastructure and institutions. The County government Act requires county spatial plans to be developed by the county executive committee and approved by the

respective county assemblies. These among many responsibilities should be taken up and performed effectively and consistently.

3. FoLT and ILEG commit to continue working with the Turkana leadership especially in terms of sharing ideas and technical expertise on how to go about these enormous responsibilities and move the county forward.

4. FoLT and ILEG will work together with the County Government and Assembly to identify all legislations required to be enacted at the county level, and summarise what they are about.

5. The Turkana County assembly should aggressively make use of its legislative role, to enact legislations that will guide effective governance of the County. The required Bills include those on citizen participation, revenue management etc.

6. The Turkana County Government in collaboration with the assembly and civil society organizations should step up public sensitization campaigns. This should be aimed not only at passing information about the policy processes but also at ensuring that everyone takes up their Constitution-given right to participate in and inform those processes. The information should be broken down into language that is understandable. The media should also be part of this sensitization campaign.

7. The county government executive, county assembly and all leaders from Turkana should work with the national government and oil companies in the area to promote skills development among local youth. This should include negotiation for scholarships and exploring possibilities of establishing technical colleges in the county to train youth on the skills required in the oil and allied industries. But more importantly, they should encourage local youth to look for and take up such training opportunities in order to build a local pool of skilled workers. Those who already have an opportunity to work in the sector should do their best not only to secure their carrier advancement but also to inspire upcoming youth.

8. There should be a good follow-up on the implementation of these recommendations so that it does not appear as an endless conversation that is not achieving any objectives.

**Annex I: Programme**

Day One: 24th July 2014

| Time | Activity | | *Responsibility* |
|---|---|---|---|
| 07.45 – 08.30 | Arrival and Registration of Participants | | *ILEG/FoLT* |
| 08.30 – 09.30 | Introductions and Welcome<br>Welcome Remarks<br>Welcome Remarks | Ikal Ang'elei – *Executive Director, FoLT*<br>Benson Ochieng – *Exec. Director, ILEG*<br>Hon. Rhoda Loyor – *County Executive, Energy, Natural Resources & Envt.* | |
| 09.30 – 10.45 | Opportunities and challenges facing Turkana County Government in management and oversight of County natural resources<br><br>*Questions/Discussions* | | *Rep of County Executive*<br><br>*Rep of County Assembly* |
| **10.45 – 11.00** | **Health Break** | | |
| 11.00 – 12.15 | Opportunities and challenges facing Members of parliament from Turkana County in relation to management and oversight of County natural resources<br><br>*Questions/Discussions* | | *Rep of National Assembly*<br><br>*Rep of Senate* |
| 12.15 – 13.00 | Status of the legal and policy framework governing natural resources in Kenya, and Options for Policy Reforms.<br><br>*Questions/Discussions* | | *Benson Ochieng* |
| **13.00 – 14.00** | **Lunch Break** | | |
| 14.00 – 15.30 | General Introduction to Petroleum Exploration and Production Issues | | *Amin Mohammed* |
| **15.30 – 15.45** | **Health Break** | | |
| 15.45 – 17.00 | Community Rights and Obligations in relation to natural resources management and development in Turkana County | | *Ikal Ang'elei* |

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|---|---|---|
| | *Questions/Discussions* | |

**Day Two: 25th July 2014**

| Time | Activity | Responsibility |
|---|---|---|
| 09.00 – 10.15 | The role of County Government and Parliament in natural resources management. The case of Turkana.<br><br>*Questions/Discussions* | *Dr Collins Odote* |
| **10.15 – 10.30** | **Health Break** | |
| 10.30 – 12.00 | Review of the Petroleum Exploration and Production Bill<br><br>*Questions/Discussions – End of day One* | *Amin Mohammed* |
| 12.00 – 13.00 | Way Forward<br><br>*CLOSING* | All participants<br>*Facilitator: Ikal Ang'elei* |

## Annex II: List of participants

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