

Annex 1. Research Methodology

Sampling and Sample Size

The information for this Report was obtained through one of four methods: in-depth interviews, focus group discussions (FGD), field observations, and desk research. A purposive sampling technique was used to select the respondents for qualitative data collection. The respondents were selected based on their basic understanding of the extractive industry and the associated human rights issues as well as their direct experiences with the extractive industry. Respondents were selected across three major stakeholder groups – government, business, and civil society organisations, which comprise members from non-governmental organisations, church leaders, relevant ministries, public oversight bodies, licensing & regulatory authorities, KNCHR, religious representatives and community-based organisations as well as community members who were identified to give accounts of human rights issues observed from the resident extractive industries.

The field research was carried out by an experienced Kenyan researcher.

Table 4: Key Respondent Manifest

	Government	Mining	Oil & Gas	Civil Society Organisation	Focus Group Discussion
Total Interviewed	36	7	2	13	195
Composition of the Interviewees	County Level: 32	Int'l: 3	Int'l: 1	FBO: 3	All Women: 84
	National Level: 4	Nat'l: 0	Nat'l: 1	NGO: 8	All Men: 100
		Large: 1	Large: 0	CBO: 2	Mixed Gender: 11
		Small: 0 Artisanal: 3	Small: 0		

Data Collection Methods

Each respondent was asked to respond to a series of survey questions in one of two methods – (1) the one-on-one interview or (2) focus group discussion.

In-depth interviews

In the one-on-one interview, the researcher interviewed each respondent using the questions contained in the survey.³⁶⁴ In-depth interviews were held with a total of fifty-eight (58) key informants who come from different backgrounds but have an interest in the extractive industry. These included national government ministries officials, county government officials, oversight body representatives, extractive companies, religious leaders, village leaders, and civil society.

Focus Group Discussion (FGD)

Representative case studies were selected to undertake FGDs in communities where oil and gas exploration and mining exploration and exploitation are taking place, with a view to highlight the overall challenges and opportunities for government, business, and civil society stakeholders – as well as KNCHR – to ensure greater human rights accountability and protecting the rights of communities from adverse impacts linked to the extractives sector. At least two FGDs were sampled in every county and these emanated from the communities found near the extractive industry operations. In the FGD interviews, the researcher worked with a local organizer to gather groups of approximately eight to ten respondents comprised of members from CSOs and CBOs. The FGDs were mainly carried out separately for women and men. It is noted, however, that there were no female FGD respondents in Lamu, and this is partly due to the nature of the extractive industry in Lamu – offshore oil & gas exploration – and the focus in this context was to find the experiences of the fishermen who may be affected by the offshore oil and gas explorations.

Field Observations

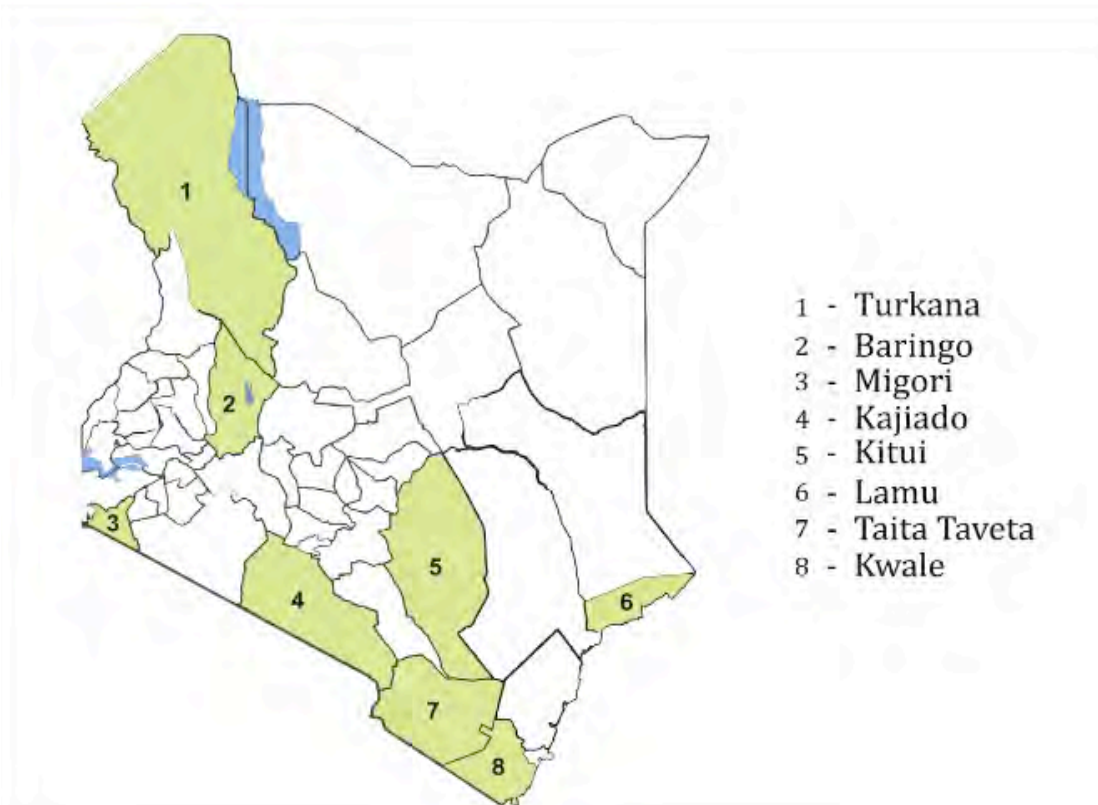
Observation was used to capture the nature of human rights abuses on the ground as well as the activities being undertaken by communities to promote their rights. Observations were presented as anecdotes and used to supplement the analysis of data collected in the other forms.

Desktop Review

A thorough desktop review of literature on the extractive sector, Kenya and East Africa was carried out.

A Brief Description of the Extractive Sector Areas Covered

Figure 2: Research Study Counties in Kenya



Source: Researcher's compilation

Turkana

Turkana is the northernmost County in Kenya and it is one of the poorest counties.³⁶⁵ This county is largely arid with very little arable potential. It is a vast county that borders Lake Turkana which is the world's largest permanent desert lake and the world's largest alkaline lake and some of the major archaeological finds of early man have been made near the lake. This fact has led Turkana to be christened 'the Cradle of Mankind'³⁶⁶ and it is a UNESCO World Heritage Site. Despite these accolades, the region has historically been marginalised on socio-economic development. Most residents in this county live below the poverty line and the literacy levels here are very low, which exacerbates many of the human rights challenges associated with the development of the extractives sector. One of the economic lifelines of the county has been the tourism industry, which in the recent past has suffered a recession due to insecurity in the coastal region. There are several sites in the county undergoing oil exploration and in 2012 there was a discovery in Lokichar basin (Block 12BB), making it the only site in Kenya with confirmed finds of commercially viable oil deposits.³⁶⁷

Baringo

Baringo County, found in the former Rift Valley Province, is a largely semi-arid area that includes three fresh water lakes and is known to contain a number of unexploited mineral resources. Most of the residents in this county depend on livestock farming and small scale crop farming for their livelihoods. Accordingly, access to land and potable water are incredibly important resources for the people who live here. This is further evidenced by the number of interethnic clashes that have transpired over the control of natural resources in this county. Further, the literacy levels are relatively low and the majority of Baringo residents live below the poverty line. In 2013, Tullow Oil Company commenced exploration in the Kerio Valley area of the county (Block 12A) and since has made initial discoveries of oil with continual appraisals of the reserves.

Kajiado

Kajiado County, which is largely semi-arid, borders Nairobi County to the South and is one of the host counties of the Maasai community. Due to this county's proximity to the capital, there has been a good deal of development near the border areas. However, the development is concentrated in several commercial centres so as one moves away from the Nairobi border and towards the sparsely populated interior the level of poverty increases. Oil exploration activities by National Oil Corporation of Kenya (NOCK) commenced in early 2014 at the Magadi area (Block 14T). This exploration area happens to be one of the poorest and driest areas in the county, placing an additional strain on access to land and water for people who are less equipped to advocate for their human and environmental rights. Further, the presence of the Maasi community, which is accustomed to the open use and movement on the land presents particular challenges for oil exploration in this county.

Migori

Migori is located in western Kenya in the former Nyanza province. It borders Tanzania to the south and is a relatively arable and fertile county with a thriving agricultural sector, comprised of subsistence farming and commercial sugar cane farming. The prominent industry in Migori, however, is artisanal and small scale gold mining, which has a deep seeded history in Migori, dating back to the 1930s. To date, no medium or large scale mining companies are stationed here, but the industry continues to attract new residents, placing a strain on access to, and reliance on, land. This is particularly true because artisanal mining is less mechanized, and often illegal, and it occurs in many land clusters, owned either by individuals or communities. The socio-economic conditions in Migori have created a group of fairly educated residents with average literacy levels.

Kitui

Kitui County, found in the former Eastern Province of Kenya, is a vast county bordering seven different counties and is home to two major towns: Kitui and Mwingi.³⁶⁸ The County is topographically diverse with some areas consisting of semi-arid land while others are arable allowing for active farming. Livelihoods in Kitui depend on crop farming, fish farming, livestock farming, and micro trading. However, literacy levels in Kitui are quite

low. Kitui boasts a range of mineral resources such as gemstones, limestone, iron ore and coal, which is expected to attract more EI activities in the future. While most of the gemstone mining is carried out by artisanal miners, the majority of the limestone mining is done by medium-sized companies. In 2010, coal was discovered around the Mui Basin and since then a concession was given to Fenxi Corporation to exploit the mineral. Most other minerals in the County remain unexploited.

Lamu

The Lamu County is home to Kenya's oldest continually inhabited town (Lamu Town), which is on an island and part of the larger Lamu Archipelago. It is one of the original Swahili settlements along coastal East Africa and it was founded in 1370. UNESCO recognised the Lamu Old Town as a World Heritage Site, resulting in efforts to preserve the architecture of the island town. The main economic activities in Lamu are fishing, agriculture, and tourism.³⁶⁹ There have been several oil exploration activities off the coast of the Lamu archipelago carried out by a number of oil exploration companies such as Anadarko and Pancontinental Plc. Literacy levels in Lamu remain low.

Taita Taveta

Taita Taveta County, one of the counties found in the former Coast Province, shares a border with Tanzania to the south and six other counties in Kenya, including Kwale.³⁷⁰ This County hosts fertile highlands, and a lower grassland, which is not very arable. However, the County is geologically located within the Mozambique Belt,³⁷¹ and is endowed with one of the richest minerals deposits in Kenya and the Eastern Africa region. The mineral resources include industrial minerals and gemstones, both of which have been studied, prospected and commercialized for several years generating considerable wealth to various mining prospectors and investors. Gemstones are mainly mined by small scale players and a few medium scale companies such as Rockland Company Limited and Chawia Minerals Association. Iron ore is also being mined by Wanjala Mining Company. Despite the influx of mineral resource exploitation, a sizeable section of the County remains quite poor and the literacy levels are low.

Kwale

Kwale County, found in the former Coast Province, is considered to be one of the poorest³⁷² counties in Kenya. In fact, 29% of Kwale residents live below the poverty line³⁷³ and according to the Kenya National Bureau of Statistics, Kwale has one of the lowest literacy levels in the country. Although the land in Kwale County is fertile, not much agricultural activity takes place here. One of the economic lifelines of the county is the tourism industry which in the recent past has suffered a recession due to insecurity-related reasons in the coastal region. The mineral sands project in Msambweni – undertaken by Base Resources Limited – is the only major mining project in the County and the project has created a range of challenges within the community when exploration started several years ago. Also, rare earth minerals, worth billions of dollars, were discovered in the County, but these have yet to be exploited.

Annex 2. Oil & Gas and Mining Companies Operating in Kenya

Table 5: Mining Exploration Blocks by Company

Mineral	Mining Company
Titanium	Base Titanium Kenya
Gold	ASM, Africa Barrick Gold, Acacia Mining Plc
Soda Ash	Tata Chemicals
Limestone	Athi River Mining & other cement companies
Iron Ore	Wanjala Mining Company
Flourspar	Flourspar Mining Company
Ruby	Rockland Kenya
Diatomite	Africa Diatomite Industries
Carbondioxide	Carbacid Investments
Gypsum	Delta Mining Company, Kenjoro Enterprises
Copper	Macalder Gold and Copper Mines

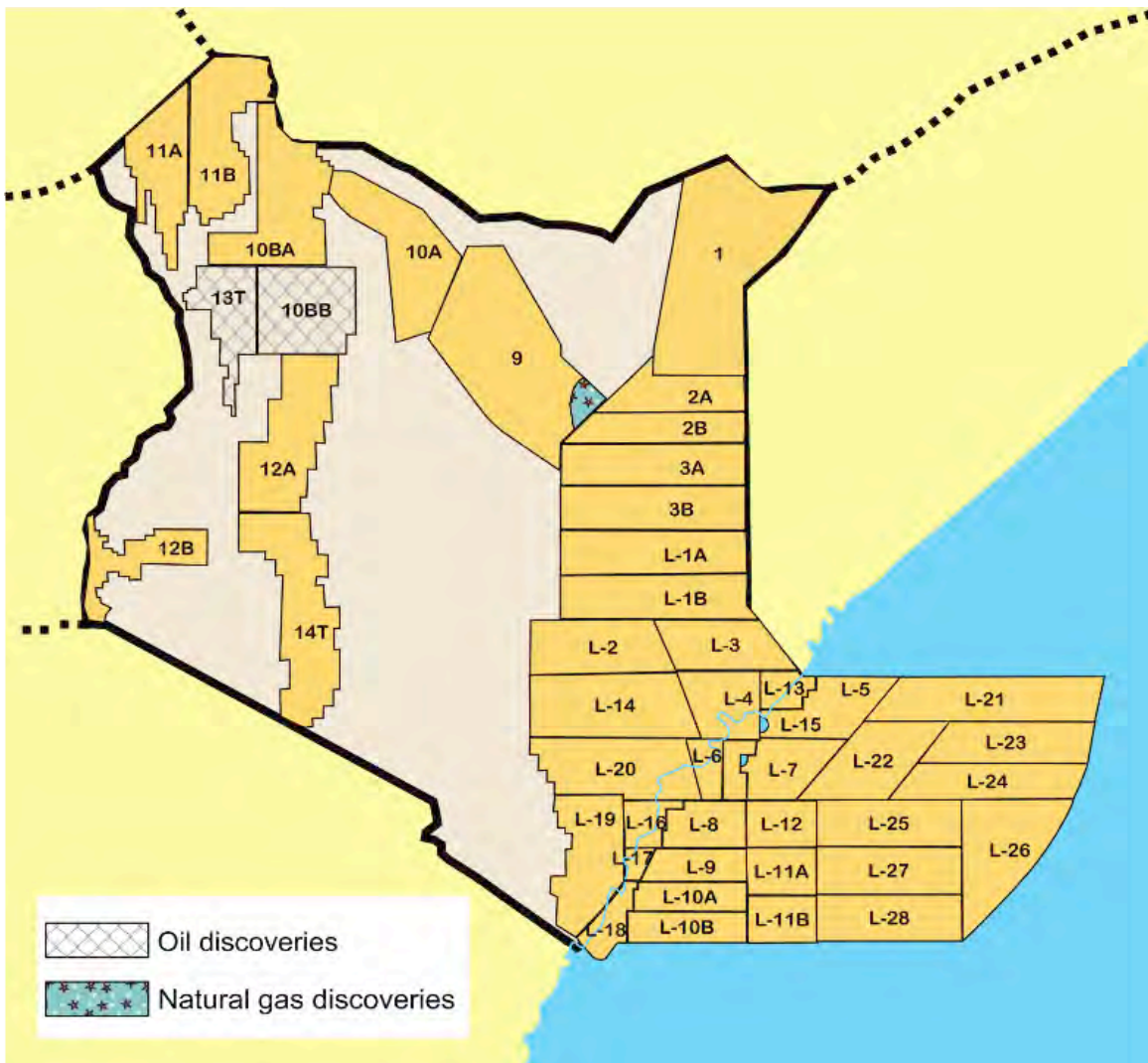
Table 6: Oil Exploration Blocks by Company

Operating Company	Block Number	Operating Company	Block Number
Damantine Energy	11B, L-18	Imara Energy	L-2
Afren Oil	L-17, 1	Nock	14T
Africa Oil	9	Ophir Energy	L-9, L-15
Anadarko	L-11B, L-12, L-11A, L-7, L-5	Pacific Seaboard	L-20
Apache	L-8	Rift Energy Corp	L-19
A-Z Petroleum	L-1A, L-3	Simba Energy	2A
BG Group	L-10B, L-10A	Swiss Oil Company	L-4, L-13
Camac Energy	L-16, L-1B, L-27, L-28	Taipan Resources	2B
Edgo Group	L-14	Total	L-22

Eni	L-21, L-23, L-24	Tullow Oil	10BA, 10A, 10BB, 13T, 12B, 12A
Erhc Energy	11A	Vangold	3B, 3A
Far Limited	L-6		

Source: Ministry of Energy and Petroleum website (www.energy.go.ke)³⁷⁴

Figure 3: Oil Exploration Blocks in Kenya



Source: Researcher's illustration derived from Ministry of Energy and Petroleum website www.energy.go.ke

Annex 3. Mineral Occurrences in Kenya

Table 7: Mineral Occurrences in Kenya

Region	County	Minerals
Rift Valley	Kajiado	Soda Ash, Feldspar, Limestone Gypsum, Gemstones, Marble & Granite (dimension stone)
	Elgeyo Marakwet	Fluorspar
	Baringo	Gemstones (Baringo Ruby), Diatomite
	Nakuru	Diatomite
	Turkana	Gold, Gemstones, Gypsum
	West Pokot	Gold, Gemstones, Chromite
	Samburu	Gold, Gemstones, Manganese, Chromite, Vermiculite
	Narok (Trans Mara)	Gold
	Nandi (Kibigori)	Gold
	Western	Kakamega
Nyanza	Siaya	Gold, Iron Ore
	Migori	Gold, Copper
	Homa Bay	Iron Ore, Gold
Central	Kiambu	Carbon Dioxide, Diatomite
Eastern	Machakos	Gypsum, Pozzolana,
	Kitui	Coal, Iron Ore, Copper, Gemstones, Limestone, Magnetite
	Makueni	Vermiculite, Gemstones
	Tharaka Nithi	Iron Ore, Gemstones
	Isiolo	Gemstones

Coastal Kenya	Taita Taveta	Iron Ore, Gemstones, Manganese, Graphite
	Kwale	Gemstones, Heavy Mineral sands (titanium minerals), Silica Sand, Rare Earth Elements, Niobium
	Kilifi	Titanium Minerals, Manganese, Barytes, Gypsum, Gemstones
	Tana River	Gypsum
North Eastern	Garissa	Gypsum
	Mandera Marsabit	Gypsum Gold, Gemstones, Manganese, Chromite
	Wajir	

Source: Researcher's compilation from Ministry of Mining

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¹⁴² The new land law regime resulted in the repealing of 7 statutes and the enactment of the Land Act (2012), Land Registration Act (2012) and the National Land Commission Act (2012)

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Human Rights in Kenya's Extractive Sector

Exploring the Terrain

Background

Kenya is a resource rich developing democracy, and while it maintains a consistently low score on the transparency and corruption index, it has a newly implemented and progressive Constitution (2010) that has dramatically changed the structure of the country's government and judicial system. In 2012, large oil reserves estimated to be worth USD 62.4 billion were discovered, causing a heightened interest in foreign direct investment and extractive sector exploration and development.

Message

This report is the product of desk-based and on-the-ground interviews to assess the existing human rights and environmental impacts attributed to Kenya's increasing extractive sector activities.

Recognising that the policy and legal framework plays an important role in setting the conditions to reinforce the corporate responsibility to respect human rights in the extractive sector, the Report includes an in-depth analysis of the policy and legal framework from a human rights perspective. Where these frameworks leave gaps or contradict international human rights standards, they present a challenge to a level playing field among companies, as the gaps can be filled by good – and bad – practices.

This can result in significant adverse impacts for local communities, as the field research highlights. The field-based, on-the-ground interviews provide perspectives from local communities, businesses and local governments on challenges and the impacts across a range of human rights.

The report highlights a number of concerns across a range of human rights, but chief among them were those related to land. Communities hosting extractives operations were concerned about inadequate consultation prior to companies accessing land, inadequate compensation for land and land improvements, inadequate protection of land rights due to lack of ownership title both for individual owners or communities that hold community title. Related to this were threats to livelihoods as a result of deprivation of land, as well as possible environmental degradation by the extraction activities.

Implementation gaps, in particular by government regulators, present a further critical driver of human rights challenges in the context of Kenya's extractive sector. This is compounded by information asymmetry between communities and business, diminishing the chances of successful advocacy on behalf of impacted communities.

Implications

All stakeholders in Kenya's extractive sector – the Kenyan Government, oil, gas, mining companies, investors, home governments, and civil society organisations – are encouraged to explore the terrain of human rights in Kenya's extractive sector. This Report serves as a tool to better understand where the gaps exist and use the stakeholder-specific recommendations to effectively prioritise and advocate to close these gaps, providing a solid basis for the further expansion of Kenya's extractive sector in line with sustainable development.