



Meeting Report

Fourth Workshop of the Extractive Sector Forum

Local Content Development In
at the County Level - Turkana

November 2016
Lodwar, Kenya



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1. Introduction

This report summarises the proceedings and outcome of the fourth Extractives Sector Forum (ESF), bringing together companies, government, civil society organisations and academia to discuss key concerns and emerging issues in the extractives sector in Kenya.

This session focused on 'County Level Local Content' and was held in Lodwar on 23 November 2016. The forum followed other national level discussions on local content, including a public debate on Kenya's Local Content Bill hosted by Strathmore Extractives Industry Centre (SEIC) and the third ESF, both in September 2016. The fourth ESF was premised on the fact that while there has been extensive discussion on local content at the national level, local voices had not had adequate opportunity to contribute to the conversation. In addition, a key recommendation of the third ESF was to take local content conversations to the grassroots in order to reach populations who are the most directly affected, or are potential beneficiaries of good local content policies.

The fourth ESF therefore aimed to provide an opportunity for local community members and stakeholders in Turkana to weigh in on discussions on how local content policies including the recently published Local Content Bill 2016 can promote or impede equitable economic participation and benefits. The discussions focused on strengthening the capacity of Turkana County to leverage local content opportunities; and assessing the extent to which the Local Content Bill 2016 aligned national priorities to local interests. The forum attracted 49 participants drawn from the local community members including local professional associations, community-based organisations, persons working in the Oil and Gas (O&G) sector, and Turkana County Government.

For purposes of these discussions, the meaning of 'local content' was taken from the Local Content Bill 2016, which is, "maximizing the level of usage of local goods and services, people, businesses and financing¹". Furthermore, local content generally has four components – (1) equity participation by local companies, (2) awarding of contracts to local suppliers and contractors, (3) increasing local procurement, and (4) jobs for local people.

2. Opening

The opening remarks by the forum organisers and county government representatives highlighted the following:

- That Turkana County is endowed with numerous natural resources such as oil, wind, forests, Lake Turkana, and numerous minerals that make it imperative to have in place effective plans on sustainable exploitation for the benefit of the people of Turkana and all Kenyans.

¹ Local Content Bill 2016, Clause 3, at http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2016/LocalContentBill_2016.pdf

- Local content policies present a significant shift in the relationships among communities in resource rich locales, the extractives industry and government at both local and national levels. Essentially, they move the relationship from dependence on acts of generosity through Corporate Social Responsibility (CSR) by companies to full participation through significant stakes along the entire O&G and mining value chain.
- Local content policies therefore provide an opportunity to avoid the so-called resource curse, which is the near universal association between high resource endowments and poverty and deprivation among local communities and citizens of resources rich locales or nations.
- A number of opportunities exist for local ownership and participation. These include enhancing local ownership and utilisation of local goods and services; development of relevant local skills across the extractives resource value chain.
- There are glaring gaps with regard to understanding and appreciating local content and the forum's aim was to attempt to answer the question of what local content means for communities, industry and other stakeholders.
- There is need for structured engagement with all stakeholders and the exchange of new ideas that can positively influence the development of the industry. Examples of such engagement are the joint working committees established between the county government and Tullow on matters such as the environment and local content.
- There is need for a framework through which county governments can assist local businesses to grow their capabilities through technology, finance, and market development.
- In addition, the country must now contend with spelling out the respective roles and obligations of each stakeholder including that of county governments.
- Forums such as the ESF have the opportunity to identify the domains for cooperation including identifying the opportunities, gaps and priorities for urgent action.

3. Session I: Setting the Agenda on Local Content

This session discussed what Turkana County government can do with regard to policy, planning and budgetary allocations in order to promote local content at the county and community level. Key issues from the session were as follows:

Opportunities in the County Integrated Development Plans and Annual Budgets

There are significant opportunities for Turkana County Government to promote local content through County Integrated Development Plans (CIDP) and County annual budgets. The CIDP details the strategic midterm priorities of a county government, and contains specific goals and objectives, costed implementation plans, provisions for monitoring and evaluation and clear reporting mechanisms. It contains information on investments, projects, development initiatives, maps, statistics, and a resource mobilization framework.

Importantly, the CIDP development process presupposes meaningful engagement of citizens and is thus expected to reflect their priorities. Turkana County Government should take advantage of the CIDP to include initiatives that promote local content. These can include planning for capacity building for local enterprises, educating the public on how to take advantage of local content opportunities; initiating entrepreneurship training in vocational training centres; offering soft loans and other business incentives to local enterprises etc.

Community Rights vis a vis Obligations

There is a burgeoning appreciation of community rights such as the right to information, the right to a clean and healthy environment and in the context of natural resources, the right to share benefits from the exploitation of natural resources such as O&G. However, increased rights-awareness has not been sufficiently matched with the uptake of individual or community responsibilities. For instance, voluntary participation in policy, planning, budget and other governance processes is still sparse. Few people from the local community take time to read draft laws, policies, budgets etc. to enable them to participate in these processes from an informed position. More often than not, it is only through encouragement by civil society and government that community members attend public forums and give input in governance processes, which ought to change.

Defining 'Local'

Defining the term 'local' has been a difficult issue in almost all conversations about benefit sharing in the extractive sector in Kenya. In this forum, participants representing the local community were particularly apprehensive that 'local' has largely been associated with 'national' or Kenyan goods and services at large which they feel will disadvantage them as they may not be able to compete on equal footing with well-developed and resourced businesses from other sections of the country. They maintained that 'local' must be narrowed down to county and then to community levels. In fact, some participants suggested having four levels of local – national, county, sub-county and community.

Capacity Enhancement

The need for awareness raising in the host community to broaden the understanding that local content has a much wider scope than just employment or scholarship to include knowledge on the goods and services required by the oil and gas industry, available markets outside the industry, business skills including marketing etc. was highlighted. Participants also expressed the need for capacity enhancement in oversight of implementation of local content plans. Without effective oversight, even the best of plans can be undermined by misallocation, misappropriation, mis-prioritisation or incompetence of the implementers. It was generally agreed that Turkana County Government should do more to build its own capacities and those of communities, local business and other local stakeholders.

Need for an Integrated Local Content Policy

Although having a local content law is a step in the right direction, there are several glaring gaps. One is the fact that Kenya does not have an overarching local content policy upon which such a law can be anchored. As a result, there is a risk of multiple sectorial legislations, policies and regulations coming up to address local content each from narrowly defined objectives. Indeed, this is already the case with the Local Content Bill 2016 that although by name focuses on extractives, emphasises oil and gas in particular. There are also draft Mining (Local Goods and Services) Regulations as well as draft Mining (Employment and Training) Regulations both under the Mining Act 2016. Moreover, participants expressed the need to have local content objectives integrated into other sectors of the economy rather than putting all the focus on extractives.

Community Engagement

Current practice has seen outreach to communities only when decisions have already been made, hence engagement has been more to inform them than to seek their opinions. There should be established modalities for community and broader stakeholder engagement that are also known to all stakeholders including places where concerns can be logged. Moreover, companies should have memoranda of understanding (MOU) with communities concerning issues such as community development projects and these should be public for increased accountability.

4. Session II: Investing In Local Private Sector

This session discussed the capacity of Turkana County to engage with the oil and gas sector with particular emphasis on opportunities for and constraints faced by local private sector actors in participating in local content prospects. The key issues from the session included:

Capacity Building

A number of initiatives have been taken to address capacity gaps in Turkana including:

- Establishment of a ministry handling capacity building within the Turkana County Government;
- Scholarship opportunities, where Tullow is partnering with UK universities to offer training for Kenyans in oil and gas related studies. However, despite the training, few beneficiaries are absorbed into the local job market;
- County level training, where solar technicians have been trained in partnership with GIZ;
- Expansion of county polytechnics in partnership with Tullow to train artisans;

- Financial support for the local business community through the 'biashara fund', an initiative of the county government. The challenge here is that a small number of people have applied for the funds. In this regard, there is need to sensitise and encourage the youth to enter into businesses that can service the sector.

Equal Opportunities

The importance of promoting inclusive and equitable participation in local content opportunities was stressed. This can be achieved in part through open and transparent mechanisms for advertising and sharing information on any tenders and other business opportunities arising in the oil & gas and mining industry.

Mutual Understanding

There is a need for both communities and companies to understand one another's interests in order to avoid unnecessary conflicts. For instance, communities need to understand that the bedrock of any business is to make profit and that philanthropy can only be a secondary issue to businesses. Some participants suggested that reversing this order is purely against business principles. On the other hand, companies should understand that extractives is a unique business sector due to its enormous impacts on the environment, finite nature of the resources, the fact that it involves displacement, the huge capital and profits involved etc. As a result of these unique characteristics, it is only fair that oil and gas companies invest and give back to the communities where they work through opportunities for employment, training, and participation through business in addition to CSR.

5. Session III: Investing in Human Capital

In this session, representatives from the key oil and gas stakeholder groups in Turkana shared how they are collaborating and cooperating with each other to build the human capital needed to harness local content opportunities. The following issues were discussed:

The Role of Professionals

The conversation in the oil and gas sector in Turkana has largely involved industry, civil society, and government. Professionals and professional bodies like those of teachers have largely been absent. It was noted, however, that teachers, among other professional groups, have an important role in preparing and shaping the thinking of future generations to participate in community affairs as leaders, workers or even

entrepreneurs. Thus, it was stressed that there is a need for teachers and other professionals to take a keen interest in what is going on in the sector and to get involved in policy dialogues around the sector.

The Role of the Catholic Church in Lodwar

The Catholic Church has been a partner of the Turkana people for many decades offering spiritual, socio-economic and humanitarian support.

Caritas Lodwar oversees all the charitable, social and development activities that the Catholic Church is involved in. The organisation's interventions comprise empowerment of women, promoting human rights and the fight for justice, support to vulnerable groups, and peace building. At the core of this work is the church's belief that whatever God created is meant to serve humanity and the church's work should actualise this belief. The church stresses that the natural resource endowments in Turkana including oil should be used to generate more wealth for all. Moreover, it also holds that disregarding the locals in the development processes involving Turkana's wealth is not only wrong in law but also against the will of God. In this context, some participants asked whether it is inclusive to have just one Turkana representative in the Africa Oil Board.

The Role of Civil Society

Civil society organisations have a very important role to play to ensure that local communities are better able to harness local content opportunities. This can be achieved through advocacy, influencing policy, awareness creation etc.

Lack of Data

Participants acknowledged and lauded the various interventions aimed at improving local content participation. However, some decried the lack of data and questioned the basis for some interventions. For instance, a question was raised on whether any new courses offered in local polytechnics, or graduate scholarships, or capacity building on business and entrepreneurship skills were based on skills gap assessments.

Duplicating Efforts

In their different interventions to address local content and other emerging issues in the extractive sector, county government, national government, civil society, church, industry, academia and all other stakeholders to embrace dialogue, exchange information, and where possible collaborate to avoid wastage of resources and duplication of efforts.

6. Session IV: The Relationship with the National Government and the Oil and Gas Sector

This session comprised a general overview of constitutional and legal imperatives for the extractives sector in Kenya as well as a brief assessment of the suitability of the Local Content Bill 2016 to meet the goals and aspirations of resource rich communities. Key issues discussed in the presentation and plenary included:

Strong Constitutional and Legal Foundation

There is a strong constitutional and legal foundation for sustainable exploitation of natural resources. The Constitution of Kenya 2010 among other things obligates the national government to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources. It also prescribes strict procedures including ratification by parliament of natural resources agreements. In addition, the Constitution of Kenya 2010 brought in a new system of governance – devolution – whose centre piece is the participation of the people in matters that directly affect them. The Constitution also required a legislative overhaul to align existing laws to it. Indeed, a number of laws including those that touch on natural resources have been developed, reviewed or are in the process of review or development.

Is Kenya Over-Legislating?

While efforts to develop laws, and align existing ones to the Constitution have been praised, questions are now emerging on whether Kenya is developing more laws than are really necessary, and whether the country is concentrating on law making at the expense of implementing good existing regulations. Some commentators suggest that Kenya is unwisely developing new legislation for every challenge it meets in the extractives sector - e.g. sovereign wealth, benefit sharing, local content etc. - many of which could be dealt with within regulations. However, it should be remembered that Kenya is not unique in taking this approach and many resource rich countries have a raft of laws to regulate and guide the development of the extractives industry.

Be Realistic in Expectations of the Law

While recognising that the Local Content Bill 2016 is still work in progress, participants felt that a lot of work needs to be done to make it inclusive and better suited to achieve its objectives. For instance, its scope should be broadened to cover mining and to include communities in the institutions it creates. On the other hand, there is a need to temper expectations of the Bill. For example, it may not be practical to force companies to source for goods and services and employment locally if these are not practically available in the short term. A more practical approach would be to leave room for companies to get these goods and services elsewhere on commitments and time frames for developing local capacities to supply the same.

7. Conclusion and Way Forward

The efforts to enact a local content law to guide Kenya's extractives sector has brought into sharp focus the differences in the understanding of the term 'local' as it relates to potential economic benefits. Notwithstanding, clearly evident from the discussion is the need for a further exchange of ideas within host communities and county level institutions as well as the creation of linkages and platforms to consider these inputs at national level. With regard to the proposed Local Content Bill 2016, the forum concluded that Turkana County as the host community that stands to be impacted most from these developments should conduct a thorough review of the Bill and address those aspects that are most important to them and seek to influence the direction of future policies and regulations in this area.

Annex 1: Agenda

8.00-8.30	REGISTRATION
8.30-9.00	WELCOME, OPENING REMARKS
9.00-10.40	TURKANA COUNTY GOVERNMENT SETTING THE AGENDA ON LOCAL CONTENT (PLANNING AND BUDGETARY RESOURCES TO STRENGTHEN THE CAPACITY TO LEVERAGE ON LOCAL CONTENT)
	In this session, we will hear about ways in which the County can influence local content policies and realize 'developmental' linkages (linkages that create jobs, develop skills and upgrade capabilities in the local economy).
10.40- 11.00	TEA
11. -11.45	INVESTING IN LOCAL PRIVATE SECTOR TO TAP INTO LOCAL CONTENT OPPORTUNITIES: OPPORTUNITIES AND CONSTRAINTS
	The extent to which Turkana County can actually benefit from the changes brought about by local content interventions will largely depend on its capacity to take up the opportunities and its level of dependency on the extractive sector. This session will focus on the capacity of the local private sector to participate in local content opportunities.
11.45-1.00	THE ROLE OF DIFFERENT STAKEHOLDERS IN INVESTING IN HUMAN CAPITAL TO HARNESS LOCAL CONTENT OPPORTUNITIES
	(National Government, County Government, International Oil Companies, Civil Society organizations and Donors). This session will bring together the key stakeholders in the County to share how they are collaborating and cooperating with each other to build the human capital to harness local content opportunities
1.00-2.00	LUNCH
2.00 – 3.00	CURRENT APPROACHES TO LEVERAGING AND MANAGING THE RELATIONSHIP WITH THE NATIONAL GOVERNMENT AND THE OIL SECTOR; POLICIES AND LEGISLATION
	This session will assess the recently published LC Senate Bill to ascertain whether it meets the goals and aspirations of resource rich communities in the extractives sector.
3.00-3.15	WRAP UP
3.15	TEA AND NETWORKING

Annex 2: List of Participants

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|---|--|
| 1 Douglas Irungu Mwai , Tullow | 26 Lomodo Samuel, Opinion Leader, Turkana Central |
| 2 Peter Nabuin, Lima, Loima | 27 Jackie Okanga, Aga Khan University |
| 3 Kevin Akaale, Lima, Lokori | 28 Alexander E. Lama, Hub |
| 4 Stella Longor, Lima Loki | 29 Lopeyen Ricardo, FOLT |
| 5 Dominic Emase, Saplone | 30 Jackson Nakusa, Tullow |
| 6 Lochipo Richard Iko, APaD | 31 Angeline Lochipo, Business Representative |
| 7 Samuel E. Engo’r, NADO | 32 Abraham Akoru, Asegis |
| 8 Robinson Ekai Lochuol, Hub Member, Lokori | 33 Etelej Korea Moses, TPA |
| 9 Geoffrey A. Ibuya, Asegis/Hub Lokori | 34 Kiyonga Lopole Gideon |
| 10 Muthoni Koinange, K-Expro | 35 Lolibo Amos Esuru, Turkana Translink |
| 11 Philip Ekolong, Tera | 36 Duncan Okowa, Ileg |
| 12 Doris Okenwa, LSE | 37 Ashioya Biko, Advocate |
| 13 Johnstone Moru, APEI | 38 Mohamed Ruwange, SEIC |
| 14 Patrick Ekai Lokurom, Youth Leader, Turkana Central | 39 Rose Kimotho, IHRB |
| 15 Lorien E. Dismus, Hob-(Akidein) | 40 Sally Chemely, KRCS |
| 16 Epem Mark, KRCS | 41 Ikal Angelei, FOLT |
| 17 Joyce Lokuiya, FOLT | 42 Ekalale Gabriel, Hub Coordinator |
| 18 Orina Andrew, FOLT | 43 Danson Erupe, Lokichar |
| 19 Thomas E. Kiyonge, Kapese | 44 Jessy Owino, Kenya Forest Research Institute |
| 20 Francis Anoo, Turkana Pastoralist Development Organization | 45 Boniface Lokuka, Faith Based Organizations Representative |
| 21 Kenyamann Eriong’oa, Turkana Natural Resource Hub | 46 Elimlim Benson , TCJC |
| 22 Lokut Loter, Community Representative | 47 Aling’a Jairus, Dol-Cjpc |
| 23 Joseph Lotokos, Paralegal | 49 Ngasine B. Sylvia, Twado |
| 24 Birgen Kennedy, Turkana County Government | 49 Phoebe Wikilango, APaD |
| 25 Sarah Adan, Kenya Land Alliance | |