Africa Programme
Meeting Summary

Kenya's Emerging Oil and Gas Sector: Fostering Policy Frameworks for Effective Governance

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Introduction

This event marked the UK launch of the Kenyan Civil Society Platform on Oil and Gas's (KCSPOG) recent report, *Setting the Agenda for the Development of Kenya's Oil and Gas Resources*. The report was written in response to the 2012 discovery of oil and gas in Turkana, northwest Kenya. The meeting heard from two authors of the report, and from representatives of civil society and the oil industry in Kenya.

The meeting and the question-and-answer session were held on the record, and the views expressed are those of the participants. The following summary is intended to serve as an aide-memoire for those who took part and provide a general summary of discussions for those who did not.

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John Ochola

The speaker first described Turkana, the area of Kenya where oil and gas were discovered in 2012. He explained how the area has been marginalized and neglected historically, and has been plagued by conflict. Illiteracy rates average around 90 per cent overall, with the rate being higher for women. The land is held in trust by Turkana County Council for the local people, giving the community very little legal control over grazing land and water points in an area affected by drought. The speaker went on to describe how the discovery of oil and gas two years ago gave rise to serious development challenges for Turkana. Local people's expectations of what the discovery would bring to the area were extremely high.

Ochola discussed how civil society organizations (CSOs) need to manage and temper these expectations by facilitating dialogue between local communities, government and the private sector. However, local CSOs lack understanding of the oil and gas discovery, having never dealt with such issues before. Ochola argued that CSOs must engage fully with the government and the private sector so that they can represent the needs of local people, as well as ensuring a structured engagement with local people as a means of understanding their needs. The KCSPOG was launched in 2013 to facilitate these discussions, and incorporates groups concerned with the environment, human rights, gender, trade, and economic and tax justice.

The speaker explained that the existing resource legislation is inadequate and that KCSPOG is engaging in dialogue with the Kenyan government in an effort to see legislation updated. This allows the organization to represent the needs of local people, ensuring that legislation is implemented to ensure that revenues from oil and gas discoveries are spent appropriately and will benefit communities within the country. The new KCSPOG report discusses five key areas that are particularly important in this respect: petroleum revenue management and distribution; local content issues; transparency and accountability; community and environment; and policy and legislation.

Charles Wanguhu

Charles Wanguhu outlined the five key areas covered in the KCSPOG report. Concerning the management of petroleum revenues, he argued that a framework should be created with comprehensive policy on the spending, investment and saving associated with petroleum revenues. Revenues should be divided into a budget fund, a stabilization fund and a sovereign wealth fund, with clear rules for withdrawals and transfers. He explained how Kenya's recent devolution process necessitates a revenue-sharing model between national government, county government and communities. Additionally, county governments should receive capacity building and technical assistance to prepare them for oil and gas revenues, so as to avoid waste and allow them effectively to give input into discussions on oilfield development and environmental impact assessment processes.

In respect of local content issues, the speaker argued that the government needed to develop standalone comprehensive legislation with specific targets around segmentation, preventing fronting and bid-rigging.

Wanguhu described how there are currently no provisions for contract disclosure, competitive bidding for licences or disclosure of petroleum revenue and expenditure. Legislation needs to be updated to include these provisions, to bring it in line with the constitutional right of access to information. Within this, there must be a transparent process of licensing, with laws to ensure that bidding is competitive.

The speaker detailed how many issues remain with regard to the impacts of oil and gas discovery on the local community and the environment. Essential pieces of land rights legislation, such as the Community Land Bill, have not yet been implemented. As a result, communities are rarely involved in discussions concerning how oil revenues are spent, and they are unable to advocate for No Exploration Zones to defend vital water bodies and grazing land. Where these discussions do exist, Turkana's patriarchal society means that women and young people are rarely involved in conversations on important issues such as compensation for land or resettlement. This alienation has historically led to protests led by women and young people. As such, the speaker argued that it is crucial to consider issues around gender and youth. With respect to the environment, the framework must be amended to include provisions for exclusive liability. Particularly damning is the fact that the regulator is implementing environmental legislation that is far behind the standards that many of the oil companies are using.

Finally, the speaker discussed the main issue with the existing institutional framework in Kenya: the lack of demarcation of roles between regulation, policy and commercial operations. He explained how the cabinet secretary has responsibility across all of these areas, which is problematic, and how the national oil company currently acts both as competitor and regulator to other oil companies. He advocated for the national oil company to focus on commercial operations and the ministry on policy-making, and for the creation of a regulatory body separate from both entities.

Ndanga Kamau

The first of the discussants, Kamau provided Oxfam's perspective on the discovery of oil and gas in Turkana. She explained how Oxfam wants to see the development of the oil and gas sector primarily to benefit all Kenyans. To achieve this, the organization is engaging with policy-makers at both the national and county level, seeking to input into processes of updating existing legislation. However, its actions are stifled by the lack of information available on the needs of the people and the size of the oil and gas resource. Planning for infrastructure is similarly undermined, and government capacity to provide this information is fundamentally lacking. New information should be disseminated on an ongoing basis.

A desire for transparency and accountability in licensing and contract disclosure does exist. In particular, there is a commitment to join the Extractive Industries Transparency Initiative (EITI), which Kamau sees as a positive development. Furthermore, the Production Sharing Contracts (PSCs) are public documents; as such, existing confidentiality is removed. This is supported by the fact that many of the companies operating in Kenya are based outside the country, with several domiciled in the US or the EU. As such, their transparency standards meet those of their home country, which are often more stringent than those in Kenya.

Despite this, the speaker emphasized how stakeholders must do more to share information with local communities, as a lack of information serves to generate speculation and fear. This is particularly salient considering the level of marginalization that Turkana has historically experienced. Kamau explained how Oxfam will seek to act as a conduit of information for local communities through the creation of civil society forums.

Simon Thompson

Simon Thompson discussed Tullow Oil's plans for oil exploitation in Kenya. He responded to many of the points raised in the previous sessions, agreeing that it is critical for the government to implement a legal, fiscal and regulatory framework that is fair, properly administered and sustainable, in order to ensure a positive investment environment. He highlighted how this is made even more urgent by new competition for investment in energy from shale gas in the United States.

Thompson addressed the issue of transparency, arguing that Tullow is voluntarily implementing practices not yet necessitated by law. He described how the company has begun publishing details of all payments made to all governments on a project-by-project basis within each country. This, he explained, serves to build trust and enable fact-based discussions, but warned that the information that is released must be translated into a form that is both useful and accessible to local communities worldwide.

The speaker referred to the issues associated with oil exploration in Turkana, where more than 80 per cent of the population has no formal education whatsoever. The area is currently experiencing widespread drought, poverty is entrenched, and a history of violence in the region has meant that there is a ready supply of guns. The discovery of oil served to exacerbate underlying tensions and create huge expectations, and created inequality in a community that was previously universally poor. Thompson called on CSOs to help the private sector address some of the issues affecting Turkana, as well as to communicate between businesses and local people.

Referring to Kamau's point, the speaker argued that while Kenya's commitment to subscribe to the EITI is commendable, the initiative should not be considered as a universal panacea. Thompson made the case that local content is clearly of benefit to businesses as it allows short supply lines. It also helps to ensure that local people view Tullow more positively, making the companies' investments more secure. However, he argued that legislating for local content targets would be protectionist, and that countries should instead look to regionalization to create larger markets that are attractive to oil companies. This, he argued, would help to ensure that countries can become self-sufficient in oil and gas production, which would be of a greater benefit to citizens.

Summary of questions and comments

In response to a question on the role of civil society in supporting the removal of confidentiality agreements from oil contracts, it was argued that this would happen naturally over time. As more agreements are made public, governments will be more comfortable releasing their agreements and so the process will continue. As yet, however, very few contracts are publicly available, and these have been disclosed only through the US Securities and Exchange Commission (SEC) and the Toronto Stock Exchange. Tullow mentioned that it will publish its agreements and contracts on its website when it is given permission to do so by the Kenyan government.

On the issue of how to ensure that the benefits from oil and gas resources reach local people, it was argued that legislation should be implemented to ensure that the community, county government and national government each receives an appropriate portion of the proceeds. However, it was also highlighted that within communities, some people may be excluded from the benefits. Additionally, the process of government devolution and the unclear nature of the structure of oil and gas revenue spending – whether proposals for a sovereign wealth fund will be accepted, for example – have made it difficult for CSOs to plan effectively and communicate clear messages to local people.

On questions regarding legislation and infrastructure, it was answered that the new Energy Bill is still being drafted, and as such has not yet been presented to parliament. The pipeline from Turkana was described as crucial, but feasibility studies are yet to take place and no contracts have been issued apart from those for preliminary design work.

It was proposed that Oxfam could play a valuable role in advising which companies the Kenyan government should engage with, to ensure that local communities benefit from the oil and gas resources. However, Oxfam does not see its role as being to vet companies; it will instead ensure that the government has strict guidelines on selecting companies for major contracts, and will hold the government to account on these guidelines.

Concerns were raised on the issue of managing local expectations of oil exploration. It was argued that local people often have little awareness of the time periods taken for oil extraction to produce any profit, after so many years of investment in exploration and extraction by the oil companies, and that CSOs should lead on managing local expectations around this. It was agreed that links between CSOs, business and government should be extended to facilitate this, and that a structured dialogue between these groups and local communities is essential. However, the context of the oil finds also must be considered, as in a marginalized area with high poverty levels, local community relationships with local and national government may be strained.

It was asserted that companies should do more to ensure that communities benefit from oil through, for example, building schools in partnership with local government, providing apprenticeships and improving skill levels and aspirations within the community. However, it was argued that oil companies should not take the place of government in these communities, as they are neither democratically elected nor accountable, and do not have the requisite skills. Tullow explained how it is providing scholarships for local people to study at universities throughout Africa and in Europe, and agreed that it could become involved in school curriculum design, enabling schools better to train pupils for available jobs, as well as providing internships. The company once again emphasized that these efforts should be in partnership with CSOs and local government.

There was some debate over the issue of mandatory targets for local content. KCSPOG's report advocates for these mandatory targets, but it was warned that these should be considered as market interventions, and so must be applied only with due attention to the specific context and industry.

It was highlighted that the county level can sometimes be neglected, particularly when considering the potential conflictual issues associated with oil and gas exploitation. Oxfam agreed, and described how it is currently undertaking conflict analysis in five counties to investigate the effects of exploration.

Finally, a question was asked on the tax framework in Kenya, and whether it is sufficient to ensure that Kenya is able to collect tax revenues from the oil and gas discovery. The need was highlighted for capacity building to enable the government to collect tax. Additionally, it was argued that civil society groups must engage with the government and the private sector to ensure that accountability standards are upheld, and to discourage the use of tax havens by companies seeking to work in Kenya.