INCREASING KENYA'S OIL AND MINERAL WEALTH:
Avoiding the resource curse

From the African Community of Practice on Managing for Development Results at the African Capacity Building Foundation (ACBF)

Case Study N° 18

SYNOPSIS

Over the last decade, Kenya has discovered and is now exploiting huge oil deposits. But can it avoid the "resource curse"? This is the paradox of huge natural resource wealth underground that, when exploited, leaves citizens as poor as ever, if not worse off than before the discovery.

This paper proposes some steps for Kenya to keep the oil curse at bay. It reviews the gains and pitfalls, globally and in Africa, of extracting this wealth. It then maps-out the oil and other mineral discoveries in Kenya, before analyzing emerging challenges and the government's responses to them, and touching on some lessons that other countries have already learned. It outlines a framework of six main avenues as a guide for fairer and more balanced exploitation of oil and mineral resources.

The study finds that Kenya could become a major exporter of oil and minerals if current exploration is a pointer. Discoveries such as Tullow Oil's find in Turkana County are bound to transform the economy.

To avoid the resource curse, the study makes three important recommendations: First, that Companies work with communities directly to keep abreast of local challenges and devise local interventions, prioritizing protection of local land and water resources, and direct investment in local community infrastructure, settlements, health, and education. Any future land expansion or access to community water resources must be negotiated in advance.

Secondly, communities should seek to engage with companies so that they become one of its members, and make it in their interest for the company to operate smoothly. Each community must articulate its development agenda and communicate it to mining companies. Communities should be represented on boards of mining companies, to articulate the local challenges and to ensure companies' compliance with the law.

Thirdly, the national government must accept transparency and work with county governments and local communities to secure commensurate mining deals, rather than arm-twisting them to accept these types of deals. The enactment of the Geology, Mining, and Mineral Law, the Community Land Use Law, the Evictions and Resettlement Law, and revenue-sharing bills must be accelerated.

Mineral exploitation: Benefits and challenges

"Oil creates an illusion of a completely changed life, life without work, life for free…. The concept of oil expresses perfectly the external dream of wealth achieved through lucky accident…. In this sense oil is a fairy tale and like every fairy tale a bit of a lie" (Kapuściński 2003). This quote gives a clue to "the paradox of plenty"—after the discovery of minerals, gas, and oil, an overreliance in one sector while others collapse (Halakhe 2014). That Africa is a continent with this paradox of being so rich yet very poor, so endowed with human and material potential yet underdeveloped economically (Adusei 2015), is puzzling, and comes at enormous human cost.

The paradox prompted Kofi Annan (2014) to insist that African governments, the private sector, and the international community ensure that Africa is the prime beneficiary of its own resources. The Africa Progress Panel (APP 2013) has listed Angola, Central African Republic, Democratic Republic of Congo (DRC), Equatorial Guinea, Liberia, and Nigeria as countries experiencing the resource curse. The APP states that in theory, natural resource wealth should strengthen economic growth, provide governments with an opportunity to support human development, and create employment. But in practice, it has often led to poverty, inequality, and violent conflicts—symptoms widely associated with a "resource curse" or "mineral-based poverty traps."

Kumah-Abiwu and others (2015) assert that Norway's success in translating its oil wealth into high economic growth underscores the argument that nature's gift of resources is not necessarily the problem, but that the management and the political setting are the key determinants. The Norwegian model is built to underwrite transparency and high performance in managing oil wealth, overseen by three government agencies: The National Oil Company (involved in oil operations), the Ministry of Petroleum and Energy (dealing with policy issues and coordinating with politicians in setting goals and strategies), and the Norwegian Petroleum Directorate (a regulatory, technical, and advisory unit). These demonstrate that democratic institutions matter.

Canada, Indonesia, Qatar, Saudi Arabia, and the United Arab Emirates have also been cited as good examples of how natural resources can transform a nation, improving living standards and infrastructure (Ganther 2012). In Africa, Botswana stands perhaps alone, reinforcing the view that strong political institutions and good governance not only matter, but constitute preconditions for managing natural resources well (Kumah-Abiwu and others 2015). In Nigeria, Opeyemi (2012) contends that high-level corruption, poor implementation of technology policy, infrastructure underdevelopment, oil price volatility, "Dutch disease," underinvestment in education, weak institutions, and lack of transparency are culprits. The African Development Bank (AfDB 2007) attributes such failure to most of these plus labor, product, and market inflexibility; and to tensions between oil and non-oil regions.

Likewise, an attempt by the US Congress House Sub-committee on Africa (Lentfer 2013), to answer the question "To what extent is the resource curse or the 'paradox of plenty' occurring across the African continent" yielded these and other responses (box 1).

Box 1. Oxfam Ambassador responses

"…just a few years ago the people of Sabodala [Senegal] farmed their land and rarely worried about whether they would have enough food to feed their families… all that changed when their land was sold out to a large mining company"….

"…the community sees little benefit from the enormous mine in what was once their backyard. No percentage of the revenue from the mine ever makes its way back to the community…."

> ... "the negotiations leading to rapid allocation of oil blocks and swift oil production in Equatorial Guinea were all executed in secret. The contracts remain undisclosed and this secrecy extends to all state institutions..."
>
> Source: Oxfam Ambassador Anquan Boldin (2013).

Strong institutions are needed to avoid the resource curse in Africa (Ologunla and others 2014), an imperative that gave impetus to the Africa Mining Vision (AMV). The AMV is premised on "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development" (AU 2009: 6). It envisions a vibrant African mining sector that is knowledge driven with cross-sectoral linkages and partnerships; that is well governed and diversified with competitive infrastructure platforms; that harnesses the potential of artisanal and small-scale mining (ASM) to stimulate local and national entrepreneurship; and that is a major player in economies. Simply put, the AMV urges Africa to invest in three areas: human capital development, mining sector capacity, and the business environment (figure 1).

Likewise, the African Development Bank (AfDB and AU 2009) recommends a raft of measures to boost Africa's mineral wealth at regional and national (country) levels (figure 2).

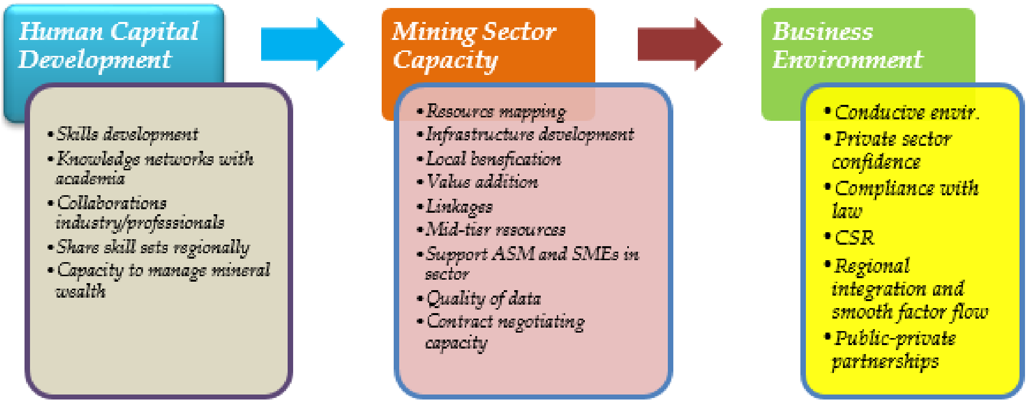


Figure 1. The AMV remedy for Africa's resource curse

Source: Author's synthesis based on AMV (AU 2009).

Cheru (2014) proposes some rebalancing of hitherto unbalanced "rules," including developing bargaining capacity; assuring transparent systems for awarding contracts; moving further to beneficiation, diversification, and industrialization; providing transparency in collecting and using resource rents; adopting environmental practices and standards; and strengthening institutions that govern land rights and access to land.

Ethiopia's Mines Minister and the Secretary General of the United Nations Conference on Trade and Development asserted that Africa needs policies driven by governments (AfDB 2012). Nigeria has, for example, introduced a stability fund for future generations to benefit from its oil wealth; and

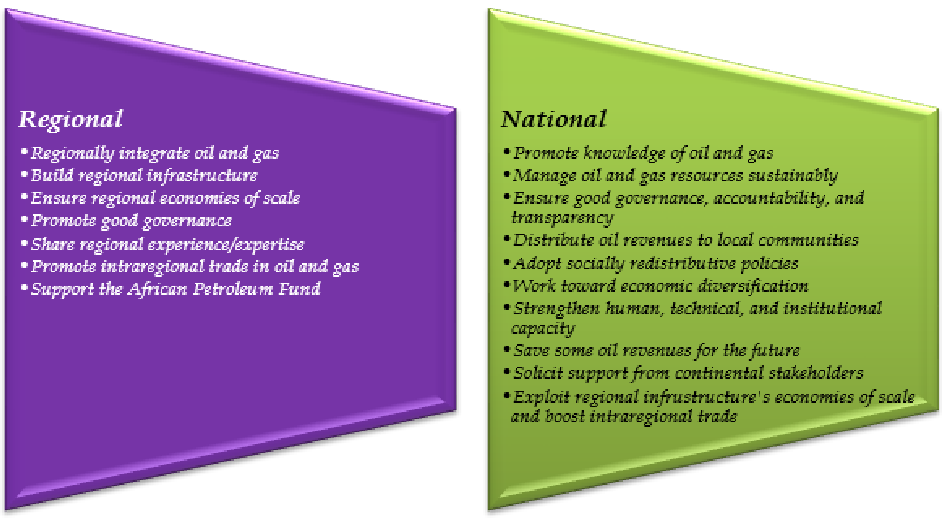


Figure 2. The AfDB approach to mineral exploitation in Africa

Source: AfDB and AU (2009: 34–38).

Ethiopia has partnered with artisanal miners to develop its mineral sector (Cheru 2014).

Africa seems to have entered an era of greater transparency with potential to bring greater accountability in managing natural resource revenue. Twenty-four Sub-Saharan Africa countries are now following the Extractive Industry Transparency Initiative (EITI), and other programs, to lift the veil of secrecy. African governments, extractive companies, and civil society must ensure that natural resource revenue is harnessed for economic development and poverty reduction (Ganther 2012).

Mapping and managing oil and other mineral discoveries in Kenya

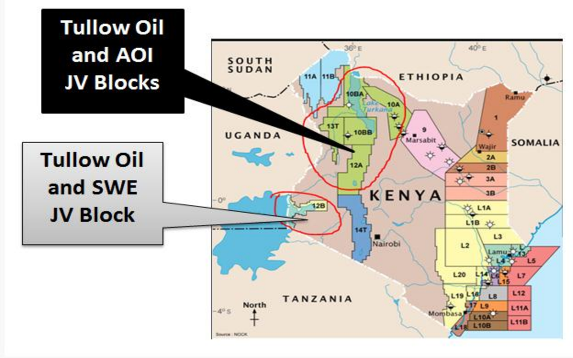
Kenya could become a major exporter of oil and minerals if current exploration is a pointer. Discoveries such as Tullow Oil's find in Turkana County are bound to transform the economy.

Discoveries

Eastern Africa is one of the hottest exploration spots in the world and wildcat explorers are trooping in to one of the "last frontiers" for oil and gas (Manson 2013). Mozambique and Tanzania have large quantities of gas and Uganda is readying itself to start production.

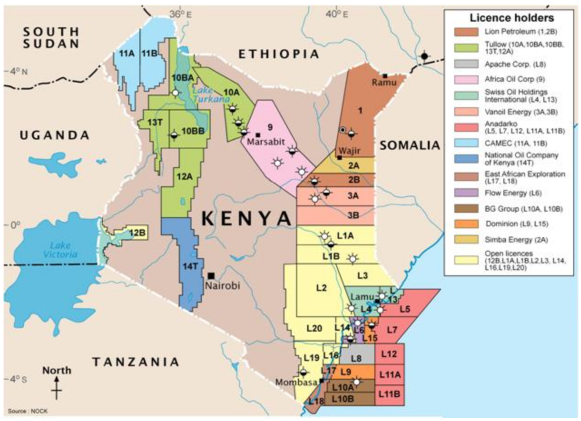
Kenya's nascent resource prospects are promising, with drillers estimating that the Rift Valley could yield 10 billion barrels of oil, as explorers accelerate activities. Kenya's oil concessions are parceled out in more than 50 blocks over three main areas—offshore, along the coast, and in the northwestern areas (figures 3 and 4). Besides Tullow Oil, other operators include Anadarko, Afren, BG Group, Ophir, and Statoil (Manson 2013).

Figure 3. Mineral exploration activities in Kenya



Source: National Oil Corporation of Kenya.

Figure 4. Oil exploration in Kenya



Source: National Oil Corporation of Kenya.

Managing emerging challenges

The oil and gas discoveries in Turkana have the potential to be drivers of development if well managed, but Kenya still faces eight main obstacles that stand in the way of effective resource exploitation (Omiti and Kieyah 2013).

Weak legislation. The legal framework requires considerable revision to equip and expand Kenya's mining into a thriving sector (Manson 2013). Kenya has recently enacted new land laws but the environmental law needs to be strengthened, as in Ghana and Uganda. Enacting the much-anticipated mining and revenue-sharing laws should be prioritized.

Water scarcity. All of Kenya's discoveries of minerals have been in marginal areas in semi- to arid conditions, where water is scarce and its shared use poses potential conflict. Although Turkana has large underground water reservoirs, Tullow Oil must create community water reserves there to avoid clashes with local communities, and in Kitui/Kwale (Kakonge 2015).

Insecurity. Partly owing to poverty and age-old practices like cattle rustling and infighting over grazing land and water, inter-community clashes will persist unless addressed. These disputes are a source of insecurity. Still, the county governments of Turkana, Baringo, and West Pokot are investing in agriculture and local infrastructure (Awiti 2014).

Long-standing marginalization. As the North Rift Valley and Northern Kenya—where oil has been discovered—are two areas neglected by successive governments, oil companies in Turkana have to navigate the history of historical marginalization and local demands for benefits. Any signs of "exploitation" will be seen as perpetuating earlier disenfranchising policies (Okoth 2015). Consequently, national and county governments, with oil companies, must address bad development, cross-border conflicts, cattle rustling, and the proliferation of illicit arms sales. They need to ensure that locals claim their share of the wealth flowing from the oil discoveries in Turkana, otherwise....

Stakeholder concerns. Whether in Turkana or Kitui, local communities are grumbling over resource inequity (Ngasike 2013; Gikundi and Mosoba 2012). Such disputes and disruptions should be handled speedily to ensure that oil companies are not exposed to unnecessary financial risk. Land allocations to mining companies and water use must first get community consent.

Environmental challenges. Given the oil discoveries in Turkana, the national and county governments should address potential environmental issues by guarding against pollution or oil spills feeding into water aquifers. Worryingly, Obiero (2013) argues that Kenya has no guidelines on safety and contamination of water resources from oil drilling, or for separation in case of oil spills. Kenya should draw on Norway's experience to enact such a law.

Rising unemployment and disrupted livelihoods. While oil discoveries have created some local jobs, those that come with mining are highly technical and Turkanas have protested against employment of "foreigners" (non-locals). Kakonge (2015) fears that the oil industry will create fewer jobs for Turkanas, disrupt their natural way of life, and destroy their livelihoods, grazing lands, and ancestral shrines—all in return for meager compensation. Tension is rising, and governments and Tullow Oil must address local community unemployment.

Ambiguity in the tax structure. Investors have been worried since the Jubilee Coalition came to power in 2013 and cancelled some licenses and proposed higher royalties and a bigger state share as part of a draft policy for the sector. Such demands are potentially injurious to the economy, may scare away investors and must be avoided (Manson 2013).

Government interventions

Awiti (2014) contends that Kenya has a window of opportunity to lay out institutional mechanisms to leverage its hydrocarbon wealth and avoid the resource curse, and suggests that the government is beginning to address these emerging issues through the following interventions.

Reviewing legal, regulatory, and fiscal frameworks. With the support of the World Bank, the government is committed to reviewing these frameworks for inclusive and transparent management of hydrocarbon resources. But Kenya is neither compliant with nor a candidate country for the EITI, and should consider registering. The Business Daily (2012) warned that "if you see the government shying away from joining EITI, then be afraid they don't want accountability because they want to steal oil money."

Social investment. Social investment by extractive industries is also critical to avoiding the resource curse. Tullow Oil's Sh125 million scholarship system is a model for thousands of young Turkana boys and girls (Awiti 2014).

Benchmark with best practices. Kenya is learning from best practices in the sector. Civil servants have conducted several benchmarking visits to Brazil, Ghana, and Norway. Norway's management of its oil sector is particularly admired because it balances environmental protection with managing revenue (Mwathane 2013).

Enactment of land laws. Kenya recently enacted several land laws: The Land Act 2012, the Environment and Land Court Act 2011, the Land Registration Act 2012, and the National Land Commission Act 2012. These laws demonstrate Kenya's attempt to improve the legislative environment and allow for smooth exploration and extraction of mineral resources. Drafting of the Community Land Law and the Evictions and Resettlement Law, currently under way, must be accelerated to provide a roadmap for community land ownership, and to protect the rights of people affected by public projects.

Competing uses for community land and water resources

Attempts have been made to address the challenges of the varying claims to land and water use, although they fall short of expectations. In the Rift Valley, traditional competition for scarce natural resources has brewed conflicts between neighboring communities: Pokots and Turkanas. These conflicts are bound to escalate with oil and gas discoveries. The county governments of Turkana and West Pokot are investing in conflict resolution to resolve hundreds of land local disputes. These governments must ensure that the communities share in the oil wealth and participate in its management. Tullow Oil has already sunk boreholes to ease these communities' water shortages (Okoth 2015).

Yet subsequent tense community relations have scared away investors (at times bringing Tullow Oil's operations to a halt). The national and county governments, with Tullow Oil, must invest heavily in conflict resolution. By ensuring that locals share in the oil wealth, including development and jobs, they can minimize tension and create a better investment environment (Halakhe 2014).

Lessons to be learned

Kenya stands to learn several lessons, one on lenient taxes generally, and others from individual countries.

Excessive tax concessions

APP (2013) argues that, since 2000, some African governments have been slow to realign their tax systems with the realities of buoyant world markets that have increased the profits of petroleum companies. Factors it found hindering tax collection included complexity of tax regimes; and the variable weights attached to corporate taxes, royalties, export levies, withholding taxes, and other dues. These are pitfalls Kenya must avoid. It is not clear how much tax Tullow Oil pays, but with mounting pressure for transparency, low taxes or rebates will be renegotiated to reflect the reality of the oil market today.

APP has gathered evidence of systemic undertaxation in some African countries. Liberia stands out as violating its own revenue code by continuing to provide extensive tax concessions to foreign investors in ore projects that exceed limits set out in the code.

Indonesia—revenue sharing

No matter how high oil prices go over the long term or how strong the temptation facing politicians is to set price ceilings or generalized energy subsidies, these are losing strategies that Kenya must avoid. Most of Indonesia's oil and gas is extracted in remote regions of Papua New Guinea which, like Turkana, has a huge land mass with few inhabitants. A new revenue-sharing mechanism has been established that affords special autonomy to Papua New Guinea, which receives 70 percent of revenue from hydrocarbons produced on its territory. Kenya desperately needs such a mechanism (Ganther 2012).

Nigeria—neglect of non-oil sectors

When oil revenue poured into Nigeria the government totally neglected other non-oil sectors, and political participation shifted from serving people to grabbing state control to command oil revenues. Corruption and ethnic royalties increased at federal and state levels. Oil production led to environmental degradation through oil spills, blowouts, and hydrocarbon releases (Olugunla and others 2014). Kenya should internalize these lessons, and prioritize economic diversification.

Norway—Sovereign Wealth Fund

Norwegians make their money from oil in a structured modern economy through shipping, banking, and timber. Norway has developed a Sovereign Wealth Fund with a high degree of transparency where its managers are accountable to democratic institutions. Success is underpinned by political will, rule of law, and democratic institutions, offering a model for Kenya (Kumah-Abiwu and others 2015).

Ghana—solid legal framework

Ghana is managing its oil wealth quite well and has passed the Ghana Revenue Management Act, which guides collection and investment of petroleum revenue to support development of hydrocarbon infrastructure and of agriculture. Vigilant media and civil society continue to demand accountability in the use of oil revenue, which is what Kenya desperately needs.

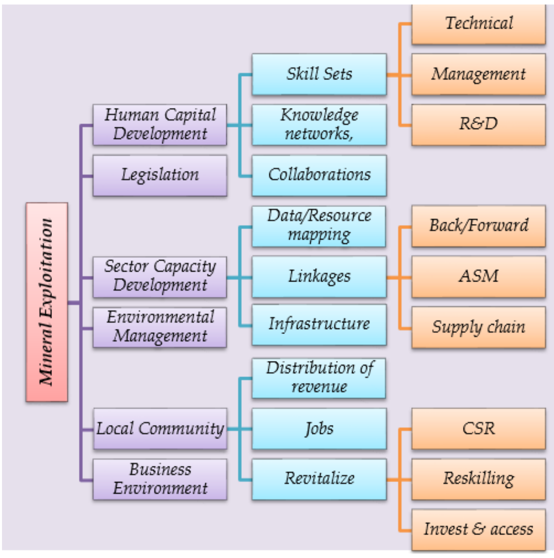
Botswana—one-stop guide

Botswana has produced a one-stop mining guide to woo investors (KPMG 2014). Kenya should produce one.

A framework to guide balanced exploitation of oil and other minerals

Drawing on AU (2009), AfDB and AU (2009), Kenya's experience, and lessons from other countries, a framework of six main avenues is proposed for Kenya (figure 3).

Figure 5. A framework for mineral exploration in Kenya



Source: Author's compilation.

Human capital development

Kenya must prioritize investment in mining skill sets. Two Kenyan universities (Dedan Kimathi and the University of Nairobi), with sector players, are running degree courses (a Master's of Science in Geospatial Information and Remote Sensing; and a Bachelor's in Petroleum Engineering, respectively). Nonetheless, a national policy to raise skill sets through university research and knowledge networks between the sector and academia must be forged. Through its Ministry of East Africa and Mining, Kenya should tap the experiences of its neighbors—South Sudan, Tanzania, and Uganda—which are extracting minerals. Kenya has continentally reputable business schools that are training leaders and managers for the sector through private sponsorship, and such individuals' investments should be encouraged through tax concessions. Alternatively, Kenya could finance mining sector training through proceeds from a transparently managed sovereign fund.

Legislation

Although Kenya has enacted several land laws (2011–2014), the key Geology, Mining, and Mineral Law; the Community Land Use Law; and the Evictions and Resettlement Law, have not been enacted, and need to be so to provide a roadmap. Considering that revenue-sharing conflicts are not new, it would be prudent to anchor any revenue-sharing programs in law (akin to Ghana's GRM Act). Kenya should be persuaded to sign up to EITI to promote accountability and transparency in its oil revenue use.

Mining contracts should be an all-inclusive process with stakeholder representation. AfDB has a special unit to support member countries in writing transparent contracts (AfDB 2013) and Kenya should tap into this expertise. Mining contracts should be at arm's length, giving value to communities in return for value taken. Community and civil society groups should be encouraged to get involved to guarantee transparency, secure community interests, and cushion national and county governments from undertaxation, which is seen in Liberia.

The creation of a sovereign fund with community, county government, national assembly, and senate representation will guarantee representation of resource use. (The Nordic countries, Ghana, and Indonesia serve as models for Kenya here.) In Ghana, part of the Petroleum revenue is invested in building road infrastructure, repaying loans, and strengthening agriculture. Kenya could direct some of its oil revenue to redress historical marginalization.

Mining capacity development

Promoting ASM as a strategy for putting the sector in national hands (as in Ethiopia) must be a priority, with an eye on Botswana's and Ghana's experiences, where local cultures have been integrated into local mining (Kobena and others 2014). Reserves from a sovereign fund could support cottage industries and the informal "Jua-Kali" sector through R&D by academia, creating backward and forward linkages, value addition, and beneficiation. Tapping into regional resources and joint regional infrastructure investments (Opalo 2013) is important, such as the standard gauge railway to Uganda and Rwanda, the proposed Kenya–Uganda oil pipeline, and the project linking Lamu–Southern Sudan–Ethiopia.

Environmental management

This must be central to mining contracts in Kenya. All such contracts must be environmentally compliant, to protect communities from poor waste disposal, to gradually rehabilitate wasteland, and to transfer reclaimed land back to communities. The National Environmental Management Authority (NEMA) Act 107 of 1998 should be reviewed in light of Kenya's mineral exploration and extraction experiences in the Chalbi desert (Marsabit), Turkana, Kwale, Kitui, and other countries to ensure that emerging environmental issues are factored in a revamped act. Mining companies must provide environmental degradation plans upfront during licensing, and NEMA must closely monitor the entire mining process to ensure compliance.

Local community and civil society involvement

Local stakeholder involvement in managing mineral resource extraction is vital for promoting transparency and accountability. Mineral extraction deals in Kenya have been shrouded in secrecy and often disadvantage host communities. Community voice, through community or advocacy groups, should be entrenched to inform local mining development.

Managing the interests of key stakeholder groups should be tempered with an overriding community quest for economic renewal and development, especially in marginalized counties. In Turkana, the long-standing community grievances fueled by suspicion of national government intent, coupled with ready access to weapons, is a poisonous mix that could undermine further oil exploration and exploitation. Vigilance by local media and civil societies could serve as a voice of reason in championing community rights and ensuring that the national government and mining companies abide by international best practices. And because "sunlight is the best antiseptic," transparency must be the most powerful lever for accountability. When Kenyans know exactly how much oil is being produced or how much in royalties oil companies are paying, this will improve transparency. Likewise, Kenya's strong creative industries, especially its information and communications technology sector, should also be coopted to help monitor oil revenue.

The business environment

A conducive business environment is critical. While Kenya has steadily improved to rank 108 on the World Bank's 2016 Ease of Doing Business Report, it still ranks 11 in Africa and 10 in Sub-Saharan Africa. (Rwanda is top.) It should therefore prioritize free national and regional factor flows; use public–private partnerships more, particularly in infrastructure development; fortify the rule of law; enhance democracy; bolster security; promote Kenyan participation in trade; and invest more in infrastructure.

Policy and management implications

Successful application of the framework requires inclusive engagement of the three main stakeholder groups.

Oil production companies

These should promote community harmony and tranquility while appreciating their newcomer status to communities. Some of them are perceived as land grabbers who have stolen ancestral lands or paid too little to acquire them. Thus the appreciation of "community loss" and the "attachment thereto to community land" must always inform mining companies' decisions. While communities may appreciate companies' providing water and employment to them, their perceived loss may far outweigh the benefits, calling for some pacification measures like jobs for those considering themselves robbed of ancestral lands.

Companies must work with communities directly to keep abreast of local challenges and devise local interventions, prioritizing protection of local land and water resources, and direct investment in local community infrastructure, settlements, health, and education. Any future land expansion or access to community water resources must be negotiated in advance.

Local communities

From a community's perspective, any mineral wealth found in its territory is theirs and therefore it must share in that wealth. Communities should be represented on boards of mining companies, to articulate the local challenges and to ensure companies' compliance with the law. Experiences of countries like Canada, Indonesia, and Norway strongly suggest that the best custodians of the community's interests are local people themselves. Thus communities should seek to engage with companies so that they become one of its members, and make it in their interest for the company to operate smoothly. Each community must articulate its development agenda and communicate it to the mining company. Ultimately, the success of mineral extraction will be judged by the number of communities it lifts from abject poverty.

National and county governments

Key here is the need to build the legistilative/legal capacity. With the 2010 Constitution that created county governments, the era of the national government operating in solo and cutting secret deals with mining companies is long gone. The national government must accept transparency and work with county governments and local communities to secure commensurate mining deals, rather than arm-twisting them to accept these types of deals. The enactment of the Geology, Mining, and Mineral Law, the Community Land Use Law, the Evictions and Resettlement Law, and revenue-sharing bills must be accelerated. Similarly, county governments should legislate on their involvement in monitoring and protecting communities in their jurisdiction, and urge the national government to join the EITI.

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This knowledge series intends to summarize good practices and key policy findings on managing for development results (MfDR). African Community of Practice (AfCoP) knowledge products are widely disseminated and are available on the website of the Africa for Results initiative, at: www.afrik4r.org/page/resources.

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