

**Promoting Human Rights Due Diligence in Kenya's Oil and Gas Exploration Phase:
The Role of Juniors and Majors**

**Institute for Human Rights and Business (IHRB) and the
Kenya National Commission on Human Rights (KNCHR)**

Hosted by the High Commission of Canada, Nairobi, 7 May 2013

Summary Report

Executive Summary

The Institute for Human Rights and Business (IHRB), in collaboration with the Kenya National Commission on Human Rights (KNCHR) organized on 7 May, a multi-stakeholder roundtable on “Promoting Human Rights Due Diligence in Kenya’s Oil and Gas Exploration Phase: The Role of Juniors and Majors”, hosted by the High Commission of Canada, Nairobi, Kenya. The event brought together industry representatives, and senior government officials to discuss the roles and responsibilities of junior exploration companies in Kenya’s emerging oil and gas sector in order to build its ‘social license to operate’.

The meeting follows a convening, organized by IHRB and KNCHR, in Nairobi on ‘Responsible Investment in the Oil and Gas Sector in Kenya’ in November 2012, where major potential human rights impacts associated with junior oil and gas exploration companies were identified along with a greater need for sharing good practice and strengthening transparency and accountability.

To this end, IHRB has established the “Nairobi Process: A Pact for Responsible Business” (<http://www.ihrb.org/about/programmes/nairobi-process.html>), in partnership with the KNCHR, to embed human rights due diligence in the oil and gas exploration phase in Kenya, through the application of the UN Guiding Principles on Business and Human Rights. This convening began a long-term process of exploring and addressing challenges faced by juniors and majors during this critical development phase of the emerging oil and gas sector in Kenya. The roundtable discussions resulted in the mapping and identification of key themes and human rights issues related to this particular sector.

Opening Address

The meeting began with an opening address by the Director of Legal Affairs (on behalf of the Permanent Secretary) from the Kenya Ministry of Justice, Constitutional Affairs and National Cohesion, welcoming the discussions as timely and important. It was stated that this was the opportune time to put legal and institutional policies in place in order to avoid the resource curse. Any extraction activity has huge development potential but human rights must be respected if sustainable social and economic development is to be realized. It was also recognized that all stakeholders (including business, government and civil society) have key roles to play in managing national expectations.

Industry standards: UN Guiding Principles and beyond

UN Guiding Principles on Business and Human Rights

Participants received an introduction to the Nairobi Process and an overview of existing industry standards and international frameworks which promote responsible business – specifically the UN ‘Protect, Respect, Remedy’ Framework and the Guiding Principles on Business and Human Rights, as well as the emergent European Commission guidance for the oil and gas sector. The Frameworks set out clear expectations of states and business and provides guidance on how to respect human rights.

Kenya’s Legal and Institutional Framework

KNCHR gave a brief overview of Kenya’s institutional and legal frameworks, and highlighted the Commission’s mandate as an independent National Human Rights Institution (NHRI) entrenched in the Constitution of Kenya (2010) to protect and promote human rights. The existing land, environmental and labour regimes guide the business and human rights work at the Commission.

Through the promotion of human rights, oil and gas exploration companies were urged to:

- Ensure that communities are not adversely affected by human rights violations as the industry braces for takeoff; and
- Work to enhance community-company relations to ensure that projects are mutually beneficial.

To debunk the myths and misunderstandings of the sector, the Commission will thus act as a depository for objective information for use by communities on the sector.

Expectations of Home Governments

Home governments had high expectations for companies operating abroad. They expected companies to be good corporate citizens by respecting all applicable laws, international standards and reflect their values and international commitments.

- The Canadian Government, in particular, supports and encourages the business community to develop and implement CSR standards, tools and best practices. It was clarified that CSR is not philanthropy - it is a business decision that gives companies the 'social license to operate' while increasing profits.
- There is a limit to what companies can provide to support the social, health, environment and education concerns of the communities within which they operate.
- Canada is a supporting country for the OECD Guidelines for Multinational Enterprises, Extractive Industries Transparency Initiative, Voluntary Principles on Security and Human Rights and other standards.

Mapping the key business and human rights challenges arising from exploration activity in the oil and gas sector in Kenya/ East Africa

This session was a facilitated discussion, which focused on mapping and identifying key themes and human rights issues related to the emerging oil and gas sector in Kenya.

A Company Perspective

- Engaging the community is vital to creating a sustainable partnership. For the community to become partners they must see what benefits they will derive from the programme. The challenge is to balance expectations of the community. It is important to explain the differences between production and exploration?
- Seismic activity during the exploration phase will inevitably affect the community's environment. Sustainable environmental policies must be effective if both the community and company address the environmental concerns that will not adversely affect economic development.
- Priority for various goods and services are always given to the local community. However, conflict occurs when the company procures goods and services from outside as the local community do not meet the required standards. For example, many local vehicles required do not meet required safety standards.

- Extensive consultation with the affected communities is necessary to reduce company/community conflict. However, conflicts between villages/communities tend to escalate during the exploration phase. Communities must be allowed to participate in order to establish how the short-term seismic program benefits will be shared.
- Youth unemployment and opportunity is a major challenge. The youth often appear in work stoppages during the program but encouraging dialogue between community leaders and youth will help to mitigate the impacts.

Companies identified the following human rights risks associated with the oil and gas sector in Kenya

- Abuses by public security forces
- Lack of public awareness and understanding of the oil and gas sector
- Heightened expectations regarding revenue management and benefit sharing
- Dealing with grievances
- Land acquisition/ use and dealing with historical injustices
- Inter/ intra communal conflict
- Inadequate community engagement: consultation, dialogue and consent
- Lack of engagement with minorities and marginalized groups: youth and women
- Challenges around implementation of the oil and gas legal framework
- Little or no knowledge of how human rights frameworks can be applied in the oil and gas sector
- Conflict between local and national government

Conclusion:

There is a clear need for more capacity building for all stakeholders in order to develop a better understanding of all the human rights issues which arose from the discussions. Companies agreed that focusing on the issues above should be done collaboratively and that business, government and civil society should work together in a constructive manner. The forum gave all participants the opportunity to discuss experiences openly and companies expressed that they wanted to see tangible outcomes from the Nairobi Process.

Next steps: The Nairobi Process

- IHRB will convene the first advisory group meeting on 9 May which will bring together a small expert group of government officials, oil and gas exploration and production companies, and civil society organisations to provide strategic advice, guidance and insights to the various activities that IHRB and KNCHR plan to run over the next two years. The advisory group will draft the terms of reference for the Nairobi Process. The TOR will determine the vision,

mission, operating principles and the list of human rights issue areas put forth by participating companies at the meeting on 7 May.

- IHRB will use the above list of potential human rights issues/ impacts identified by the companies to provide the basis for level of engagement, awareness raising and capacity building with a variety of stakeholders. The issues will provide the themes for future multi-stakeholder dilemma forums.

Participants

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Companies / Private Sector

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Africa Oil
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Anjarwalla & Khanna
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Anjarwalla & Khanna
Anadarko
A-Z Petroleum
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Simba Energy
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Vanoil
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Governmental and Non-Governmental Organisations

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