Institute for
Human Rights and Business
Shaping Policy ▪ Advancing Practice ▪ Strengthening Accountability

HUMAN RIGHTS RISKS AND RESPONSIBILITIES: OIL AND GAS EXPLORATION COMPANIES IN KENYA

Background Paper
2013

1. INTRODUCTION

By 2020, Kenya will be an oil producer[1]. Quite how significant a producer is unknown but whether in a trickle or a torrent, oil will flow. This gives the country several years to prepare. Several years to develop the policies, the institutions and the practice, which underpin successful natural resource management. Several years, in other words, in which to buck the trend of some other African oil producers, avoid the conflict, corruption and inequality still plaguing the continent's western coastline and offer a different model - one based on financial integrity, environmental sustainability, shared prosperity and respect for human rights.

For a country with high rates of poverty, inadequate infrastructure and unequal provision of health and education, several years may seem like a long time. In reality, it is a blessing. Sudden and large injections of revenue have done little to address those same problems elsewhere. Quite the reverse. At least in the African context, oil has been seen as a problem not a solution, with the exception perhaps of Ghana. For many, it has become a dirty byword for waste, degradation, mismanagement and even violence: 'curse' its depressingly familiar epithet.

For Kenya, the wait can make all the difference. There is real hope that the country is emerging out of a destructive political crisis. The process of reforming institutions, strengthening democracy and overhauling the legislative and regulatory framework is underway. Civil society and community groups are also mobilising, energised as much by the possibilities oil production represents as by the dangers it poses. The international community is already beginning to provide technical support, financial assistance and policy advice and there is hardly a shortage of lessons on what not to do.

Yet nobody is under any illusions about the challenges which lie ahead. While the relatively peaceful elections in the early part of this year seem to indicate a society hungry to embrace an inclusive future, many fundamental issues remain. And if the grievances, historical injustices enumerated in the Truth Justice and Reconciliation Report[2], including the rivalries and hatreds which sparked vicious fighting in the aftermath of the 2007-08 elections are not properly addressed, what chance is there that oil will do anything but deepen the malaise?

Oil is contributory not causal. It makes bad systems worse and good systems richer. The secret to successful exploitation is no secret at all. The pillars underpinning natural resource management have long been understood. They are the same basic principles of good governance: budget transparency (income and expenditure), accountable institutions, effective legislation, broad-based economic development, respect for the environment, international human rights standards and wide participation in policy and decision-making.

In other words, oil is about society, not just government. It requires the engagement and involvement of all: a rigorous and balanced media, an engaged civil society, empowered local communities, an independent judiciary and well-resourced and impartial security forces. Handled well, oil has a unifying potential, fuelling economic growth and prosperity and supporting the social contract which binds societies together. Handled badly, it entrenches divisions between different groups, widens the gap between government and people and drives inequality.

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[1] International Monetary Fund Country Report No 13/107, April 2013
[2] http://www.tjrckenya.org/index.php?option=com_content&view=article&id=573&Itemid=238

If oil is about society, then it must also be about the companies which extract it. In most countries, the private sector has an important role to play: first and foremost in creating jobs and generating wealth but also in protecting the environment, respecting individual and collective rights and nurturing a sustainable model of development. In respect of oil - or indeed any significant natural resource – this role is accentuated. The scale and duration of exploration and production, the impact on people and place of operations, the value of the product and the consequent potential for its misuse all point to a heightened responsibility on oil companies to prioritise the social as much as economic dimensions of their operations.

This has not always been recognised in the past. Where oil has been mismanaged, companies have been partly responsible, for two reasons: first, companies have failed to acknowledge, or chosen to ignore, the many ways in which their own actions can contribute to popular anger and discontent and; second, the sheer difficulty of operating responsibly in situations of poverty, violence, social tension and instability. In too many cases, companies have lowered their standards in accordance with the prevailing political environment rather than looking to impose higher standards on that environment.

The direction taken by oil companies in Kenya will be an important determinant of the overall impact of oil and gas production in the country. If companies do adhere to good practice and if they do acknowledge and address the wider impacts of their operations, they will do much to avoid many of the problems encountered elsewhere and also help to shape positively the behaviour of others.

This is no simple matter. New legislation is emerging around energy, petroleum, mining which offers a critical opportunity for Kenya to incorporate into the legal framework international standards of transparency, anti-corruption, due diligence, respect for human rights and the environment[3]. Where legal and governance gaps currently exist in Kenya, so responsible companies should be adhering to international standards

Just as the broader lessons of natural resource management have been learned over the years, so the principles, guidelines and frameworks which shape companies' responsibilities have also evolved considerably. Prominent amongst these are the UN Guiding Principles on Business and Human Rights unanimously endorsed by the UN Human Rights Council in 2011.[4] The Guiding Principles affirm the duty of all states to protect against human rights abuses, the responsibility of all companies to respect human rights, and where gaps exist, the need to ensure access to effective remedies.

The Nairobi Process: a pact for responsible investment

Within this challenging context rife with opportunity and risk, the Institute for Human Rights and Business (IHRB) and the Kenya National Commission on Human Rights (KNCHR) have launched the 'Nairobi Process: a pact for responsible investment'. It aims to embed human rights standards and due diligence through the application of the UN Guiding Principles in the emerging oil and gas sector in Kenya. The 'Nairobi Process' brings together a group of oil and gas 'majors' (multinationals) and 'juniors (smaller exploration companies), which have been granted exploration licenses in Kenya to address collaboratively key areas of human rights concern as this nascent sector develops over the coming years.

Focusing on government advocacy, company engagement and civil society capacity-building, the Nairobi Process is promoting international standards of responsible business practice, based on global frameworks such as the UN Guiding Principles on business and human rights and the Voluntary Principles on Security and Human Rights[5]. It is creating a much-needed space not only for confidential debate around dilemmas, but also an opportunity to build trust and understanding of the needs, expectations, rights and responsibilities of different stakeholders involved in this emerging sector. This process is important and timely because even in this exploration stage, there are already human rights-related tensions between communities and companies that have to be addressed by the government through the laws and policies being put in place and by the companies by way of community engagement.

This purpose of this paper is to explore the key challenges oil and gas companies are likely to face in Kenya and offers practical ideas on how they might be overcome.

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[3] Some of the proposed legislation and policy include the Energy Bill, National Energy Policy, Mining Bill, and the National Environmental Policy. It is also expected that there will be an Exploration and Production law.

[4] http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[5] http://www.voluntaryprinciples.org/

2. A CHALLENGING ENVIRONMENT

Politics and ethnicity

On January 1st 2008, close to the town of Eldoret in the west of Kenya, as many as thirty people, including women and children, were burnt to death while hiding in a church. The victims had been fleeing the ethnic conflict which had erupted in the aftermath of the disputed elections a few weeks previously[6].

The massacre was perhaps the most notorious incident in a wave of violence which swept through large parts of the country in late December 2007 and early 2008 plunging Kenya into its worst crisis since independence and threatening to trigger an all out civil war. In total, some 1,500 people were killed with hundreds of thousands internally displaced[7].

The immediate cause of the violence was the disputed election results[8]. With the crisis escalating, it eventually took the intervention of former UN Secretary-General, Kofi Annan to coax the opposing parties back from the brink. Under his oversight, a power-sharing compromise was negotiated within the framework of the Kenyan National Dialogue and Reconciliation Agreements (known as the National Accords[9]).

The deal also included the establishment of two commissions – one, the Independent Review Commission, to investigate all aspects of the 2007 elections – the second, the Commission of Enquiry into Post-Election Violence (also known as the Waki Commission) to explore the causes of the fighting which followed the vote. Together with the National Accords themselves, these documents provided the foundations around which Kenya's reform process has subsequently been shaped.

Most importantly, perhaps, they paved the way for a new Constitution resoundingly endorsed in a referendum and promulgated in 2010. The 2010 Constitution is a profoundly important document. It not only provides checks on Presidential power and devolves greater authority to the 47 counties but also sets out an unequivocal and enviably comprehensive assurance of Kenyans' individual and community rights. It gives strength and voice to the ordinary citizen and articulates an elegant and compelling vision of Kenya's future.

Perhaps the best illustration of the value of the political changes Kenya has undergone in recent years came with the 2013 elections. Many feared the worst while hoping for the best. In the end, optimism triumphed and the elections passed off peacefully with the Kenyatta ticket winning on the first round (albeit by a wafer-thin margin). An apparent combination of determination amongst both people and politicians not to repeat 2007-8, the electoral reforms introduced since then, media self-censorship and a heightened security presence in select areas seems to have contained the threat of further unrest[10].

At least for the moment. Kenya remains vulnerable to repeat outbreaks of violence, especially given the scheduled appearances of both the President and Vice-President before the International Criminal Court[11]. The trials, if they happen, will surely dominate Kenya's politics in the coming months. Government paralysis is one obvious risk and tensions will inevitably run high as the evidence, in defence and prosecution, is made public.

In the longer-term, the country's stability will depend on how it manages to address the structural fault lines which still criss-cross the country today. Hatreds and rivalries have not entirely disappeared even if internet and social media have replaced countryside and city as the forum for clashes and weapons have been exchanged for words[12].

The Waki Commission and indeed the National Accords themselves identified many of these challenges, notably; ethnic-based politics, youth unemployment and broader economic inequality, impunity and the legacy of decades of land mismanagement.

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[6] http://www.time.com/time/world/article/0,8599,1699181,00.html.
[7] http://inside.org.au/philip-wakis-ticking-bombshell/.
[8] 'Kenya in crisis' Africa report No 137, International Crisis Group, February 2008.
[9] The National Accords and Reconciliation Bill 2008; http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalAccordandReconciliationAct_No4of2008.pdf
[10] International Crisis Group 'Kenya after the elections', Africa Briefing No 94, May 2013
[11] http://www.bbc.co.uk/news/world-africa-22985456
[12] http://www.ctvnews.ca/world/kenya-sees-tribal-words-of-war-erupt-online-after-peaceful-election-1.1195752

Meeting these challenges must be the responsibility of all. Since 2007, Kenya has taken huge strides in establishing the kind of legal and constitutional framework which can prove to be the envy of the region. The new Constitution in particular offers all citizens, and indeed all foreign investing companies, the key to a future characterised by State accountability, individual rights, economic fairness and corporate responsibility. What matters now is implementation.

Kenya is a strikingly diverse country with some 42 communities speaking in excess of 60 languages[13]. The difficulty is that diversity does not lend itself to national identity and forging a national identity is perhaps Kenya's most pressing need. Without a shared identity, national politics risks becoming a dangerous game of shoring up bases and tying up temporary alliances. In the absence of genuine political parties competing on ideology and ideas, ethnic or tribal identities determine allegiance and form the basis for political competition[14].

Moving away from this zero-sum game is hugely challenging, not least because it has become the only game most people really know. Manipulating the politics of census[15] (in which voting patterns reflect ethnicity) is the surest route to power. While Kenya's new Constitution attempts to address the issue by ensuring that a president needs wide geographical support to win, it really only changes the tactics not the rules.

The old politics need to change. If not, the peaceful 2013 elections will likely be seen as an anomaly rather than a new beginning. The new Government needs to shape an inclusive identity – one nation, different tribes[16]. This demands vision, courage and time and can only happen by ensuring all people have an equal stake in the development of the country.

Land & Resources

Kenya is a large country but a relatively small proportion, perhaps 20%[17], is arable land, mostly concentrated in the highlands of the central Rift, Central and Western Kenya, and parts of the coastal areas. The country's main economic base to date has been agricultural, hence the importance of access to productive land. Since independence, injustices around land, specifically land-grabbing and dispossession by well-connected Kenyans, have been rife[18].

The most striking example is around Lamu where the arrival of Kenyans from outside the region has altered the political balance of power[19]. In recent years, this process seems to have accelerated again in part because of the displacements following the 2007-8 violence, in part because the proposed development of a deep water port in Lamu is encouraging investors to snap up potentially valuable parcels of land[20].

As a result, resentment amongst indigenous communities has long been running high. Around 80% of the indigenous coastal populations lack titles to the lands on which they live[21], leaving them vulnerable to appropriation and increasingly sympathetic to a recently revitalised separatist group, the Mombasa Republican Council[22].

The problem may be most acute around the coastal regions and Rift Valley but it highlights a tension which exists across the whole country. Conflict between indigenous peoples and 'outsiders' is an ever present threat and one which is only likely to increase as the prospect of oil and gas discoveries tempt more people to migrate in search of jobs, business opportunities and quick profit.

The issue is not simply one of appropriation but also of access and usage. This has frequently caused unrest in the past as different groups compete for the same resource[23] and, again, is likely to become an even more

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[13] https://en.wikipedia.org/wiki/Kenya
[14] http://www.bbc.co.uk/news/world-africa-20465752
[15] http://www.economist.com/node/21556601
[16] http://pinpointpolitics.co.uk/kenyas-upcoming-elections-will-tribal-loyalties-shatter-a-delicate-peace/
[17] National Council for Population and Development: 'Facts and Figures on Population and Development 2011.'
[18] Human Rights Watch: 'Kenya: Human Rights Priorities for the New Administration', April 2013.
[19] International Crisis Group: 'Kenya's 2013 Elections', Africa Report No 197, January 2013.
[20] Ibid.
[21] http://www.irinnews.org/report/96630/briefing-kenya-s-coastal-separatists-menace-or-martyrs
[22] http://www.aljazeera.com/category/organisation/mombasa-republican-council
[23] See for example the Tana River Delta conflict between Oromo farmers and Pokomo Pastoralists which resulted in some 150 deaths in 2012 - http://www.globalpost.com/dispatch/news/regions/africa/kenya/120910/kenya-dozens-killed-latest-ethnic-clashes-tana-river-district

contentious issue as oil exploration increases. After decades of mismanagement and neglect, the task of land reform is enormous and, in the short-term, likely to provoke further conflict. Nevertheless, it remains an absolute necessity.

Importantly, land rights are well covered in the 2010 Constitution and a series of bills have been introduced in recent years which build on its provisions, notably on Land Registration and the establishment of the National Land Commission (NLC). But no document, however comprehensive can regulate for all eventualities nor guarantee compliance.

Kenya ranks 139th in Transparency International's Corruption Perceptions Index for 2012[24] and corruption and fair resource allocation do not make for natural partners. The greatest risk derives not so much from disappearing money rather from the corrosive effect on inequality and the wider political dynamic. Any system based on exploiting divisions needs to be sustained by patronage and favouritism. But for some groups to win, others must lose – a recipe for conflict.

In Africa at least, oil has rarely been associated with financial integrity but in Kenya's case, the prospect of significant revenues in the future may provide an additional spur to existing efforts to combat corruption. Clearly, the role of the oil and gas companies themselves will be critical to this. Transparency is any responsible company's best defence against the demands and solicitations of dishonest officials and also one of the keys to ensuring revenues are used to narrow rather than widen existing cracks in the society. Companies will feel the benefits of transparent and equitable resource distribution on multiple levels.

Inequality

Kenya's economy is growing – by an anticipated 5.7 % in 2013 and a forecast 6% in 2014[25]and poverty is falling – by an estimated one percent a year since 2005[26]. No-one doubts that Kenyans are, on average, better educated, better fed and in better health than a decade ago, spurred on in part by a substantial increase in government spending over the last 10 years[27].

Averages matter but so do the people who fall on the wrong side of them. While the talk is of peaceful elections and oil booms, the priority for many Kenyans is more basic. For the poorest, the daily reality is no electricity, poor sanitation and crowded living space. Around 17 million people live below the poverty line [28]with unemployment hovering around 40%[29], higher amongst women[30]. Kenya ranks 143rd out of 187 countries on the Human Development Index[31].

The problem is most acute – and most dangerous – amongst the young. Kenya has a youth unemployment crisis. The majority of people out of work are between 18-35[32] and in a country where some 50% of the population is under 15[33], the crisis is set to deepen unless urgently addressed.

Increased violence is one potential consequence. Frustration, boredom and resentment are easily manipulated through ethnic links and hard cash. But it is not inevitable. There is a much more optimistic scenario. In a world where populations are ageing, Kenya's demographic trends present a huge opportunity as well. The country's young can drive its economic growth - if jobs can be created and if they can be evenly distributed.

Equality matters as much as quantity. The top 10% of Kenyans earn 44% of national income while the bottom 10% account for less than 1%[34]. Wealth is concentrated in and around the large urban areas in Kenya's fertile

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[24] http://www.transparency.org/whatwedo/publications. It should be noted this is a significant improvement on the country's 2010 ranking of 154th
[25] http://www.worldbank.org/en/news/press-release/2013/06/17/time-for-kenya-to-shift-gears-to-accelerate-growth-and-reduce-poverty.
[26] World Bank: 'Kenya Economic Update'; June 2013
[27] op cit, ICG Africa Report No 197
[28] op cit World Bank
[29] http://www.tradingeconomics.com/kenya/unemployment-rate
[30] http://economics.uonbi.ac.ke/node/2140
[31] UNDP: '2011 Annual Report'.
[32] Ibid.
[33] http://www.unicef.org/kenya/overview_4616.html
[34] op cit, Unicef.

South. Poverty rates are highest in the more arid North although the highest concentration of the poor is to be found in the big city slums reflecting urban migration.

More than poverty, inequality is a major driver of conflict. Geography, gender, age and ethnicity remain too important as determinants of Kenyans' access to employment and services[35]. Neglect in the North and appropriation in the South have bred mistrust of the State while political disputes, ethnic divisions and an angry youth population have combined to destructive effect in the past. Kenya's economic growth – how much and how – will have an enormous influence over the country's political and social trajectory.

This is well understood by the Government. Kenya's development blueprint - Vision 2030[36] - explicitly identifies 'social cohesion' as a priority, including equitable social development. Additionally, the National Accords emphasized the importance of tackling youth unemployment. Since 2008, the Government has pursued a number of projects designed to support youth groups and address the historic marginalisation of some communities. Nevertheless, there is much still to do. In part, the Government's ability to meet its commitments will depend on realising Vision 2030's aspiration of an annual growth rate of 10%. This ambitious target remains elusive leaving the Government short of the funds it badly needs.

Insecurity

In late October 2011, Kenya invaded Somalia[37]. The invasion was precipitated by a series of incursions onto Kenyan territory by an Al-Qaeda affiliate - al Shabab - which included the kidnappings and murders of foreign tourists and aid workers in Northern Kenya. Supposedly part of a coordinated international campaign involving the Ethiopian army and with support from the Americans and the French[38], the underlying reason for the invasion was reflected in the codename for the operation – Linda Nchi 'Protect the country'.

If security was the aim, insecurity was the result, at least in the immediate aftermath. In the year which followed the invasion, Kenya suffered some 30 attacks involving grenades and other explosives. Dozens were killed and hundreds injured[39]. The attacks, many in Nairobi, triggered a wave of populist anger against Somali refugees and indeed ethnic Somalis with Kenyan citizenship.

A campaign to expel the refugees from Nairobi and send them to the vast refugee camps near the Kenya-Somali border allegedly included police brutality targeting the capital's refugee population[40]. Over a period of two months in late 2012/early 2013, victims claimed to have suffered beatings, rape, torture, extortion and unlawful detention at the hands of several police units[41].

The apparent attacks against Somalis raise a number of wider concerns, highlighting not only the long-standing problem of lawlessness in the border regions[42] but also drawing renewed attention to the issue of abuse by, and impunity for, security forces in Kenya.

Disappearances, extra-judicial killings and involvement in the 2007-8 post election violence are only the most serious of the accusations levelled at Kenya's police. The tiny number of people investigated, let alone convicted of these crimes further indicates serious weaknesses at all stages of the criminal justice system[43]. In a country where violence and the threat of future violence are real and diverse in their causes, the importance of accountable and reliable security forces cannot be over-estimated.

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[35] op cit, World Bank
[36] http://www.vision2030.go.ke/
[37] ACCORD; 'Kenya's Military Intervention in Somalia'; Policy and Practice Brief 19. November 2012
[38] http://www.economist.com/node/21534828.
[39] Human Rights Watch: 'You Are All Terrorists', May 2013.
[40] http://www.economist.com/blogs/baobab/2013/05/somalis-kenya
[41] op cit, HRW May 2013
[42] http://www.irinnews.org/report/90505/kenya-somalia-insecurity-without-borders
[43] op cit, HRW, April 2013

3. OPERATIONAL RISKS

The problems of ethnic divisions, unemployment, inequality, impunity and access to land and water all have important implications for oil companies in Kenya. In broad terms, these manifest themselves in two ways: first, how they impact on companies and their ability to operate in a responsible way and, second; how the company impacts on these structural fault lines through their own operations.

These impacts can create significant risks for companies: financial – in terms of higher payments for security and insurance and lower asset value; operational – threats to staff and infrastructure and delays or disruptions to projects and; reputational – potential protests and international campaigns.

To some degree, these risks are common to all foreign investing companies (indeed to many domestic ones as well) but they are more numerous, more diverse and more serious in the case of oil companies. This is simply because of the scale and nature of impacts, the strategic and financial value of the resource and the scope for its misuse. The national and international attention on oil production is therefore correspondingly higher, the expectations greater and, in the event of problems, the anger more pronounced.

Except in extreme circumstances, individual oil companies themselves, especially foreign ones, have very little or no control over a country's macro environment. The government at all levels, the security agencies, the media, civil society and the population at large have that responsibility. Nevertheless, oil companies are inevitably *held* responsible, partially at least, for the wider impacts of oil production, locally and nationally.

There are numerous reasons for this. Companies might find themselves caught in the middle between communities or between local populations and the government and embroiled in existing disputes with long histories. They may also be considered proxies for the State, a vehicle for removing a valuable resource for the benefit of the elite and perhaps a platform for exercising greater control in areas where government authority is weak or disputed. In this sense, they can be perceived as a threat. They are also a far better target, often more responsive and vulnerable than governments and certainly more accessible and easily influenced through protests and disruptions.

It is partly because so many of the risks which companies face lie outside their control that they need to focus even more intensively on what they can affect. Just as the political and social environment poses risk to companies, so companies themselves can pose risks to others, most especially the communities affected by their operations. A failure to understand, avoid or mitigate harmful impacts not only puts companies in breach of their responsibilities under the Guiding Principles on Business and Human Rights but also increases the likelihood of local, national and international opposition.

In countries where violence, political instability, social tension, poverty and corruption form part of the landscape, these two-way risks – to and by the company – are that much more acute. Responsible investment, including sincere engagement with local communities, respect for human rights and sensitivity to environmental concerns, is therefore of even greater importance than elsewhere and will demand closer attention and more careful application[44].

In Kenya, the most pressing issues for companies include:

i) Expectations

Little is known, and less is understood, about oil and gas exploration in Kenya amongst large sections of the population. This is particularly so in many of the areas where the surveys and drilling are actually taking place. Ignorance, uncertainty and rumours are commonplace. Ironically, this is partly due to a conscious effort to limit expectations. Few outside the media wish to talk up the prospects for oil production while confirmed discoveries remain few and far between.

In reality, the information vacuum is creating problems. While the population as a whole is impatient to see the revenues and the benefits flow, this is doubly true of the most affected communities, many of whom, especially

[44] For a more detailed examination of this issue, see Institute for Human Rights and Business: 'From Red to Green Flags; the responsibility to respect human rights in high-risk countries'. 2011

in the North and North-East, have been historically neglected and marginalised. Inevitably, expectations run high. A foreign oil company is seen as bringing jobs, public services and real prosperity. These are expectations which no oil company, even the largest in full production, can altogether satisfy and certainly not juniors in the exploration phase.

Frustrated expectations bring risks. Individual and communities who feel cheated or mistreated (rightly or wrongly) will respond accordingly creating a cycle of protest and opposition which is hard to break. While expectations themselves are not a human rights issue, they can easily become one if mishandled.

Managing expectations is therefore important. It is best achieved through widespread awareness-raising, education and consultation. Even at a basic level, the technical challenges and processes of moving from exploration to construction and on to production are not well appreciated. Nor indeed is the very real possibility that there may be no oil or gas at all in any given block. Companies need to work collectively to ensure that they do not create opposition simply through a failure to communicate.

ii) Livelihoods, land and environment

Despite substantial migration from countryside to city in recent years, Kenya remains a largely rural society with some 75% of people living off the land[45]. Its long coastline also supports numerous fishing communities. For many, these livelihoods have barely changed for hundreds, perhaps thousands, of years.

Oil and gas production is a genuine threat to this way of life. Off the coast of Lamu, gas exploration is already limiting access to some fishing grounds. In the North, drilling and seismic surveys are disrupting traditional grazing patterns. If significant discoveries are confirmed, these impacts will multiply. Over the long-term, the outcome may well prove overwhelmingly positive: subsistence living gradually replaced, or supplemented, by higher income generating livelihoods; easier access to better education and health services and greater provision of water and electricity.

This will take time and is not guaranteed. In the meantime, the changes will be painful for many. Much will depend on whether and how companies respect and accommodate existing traditions while nurturing sustainable, long-term alternatives. Land matters in Kenya, as it does in many other parts of the world. It is not so much a commodity to be traded as a memory of the past, survival in the present and insurance for the future. If people are stripped of their land, or stripped of access to the land, then much more is lost than a physical space.

In the North, where land is largely held in trust by the communities, the issue is less about ownership than it is about access. This is at once much simpler and yet more complex: simpler in mostly avoiding the need for compulsory land acquisition; more complex in requiring agreements be reached with multiple - and scattered - communities.

It also entails an important role for both national and local governments in ensuring protection of community rights whilst opening up the region to further oil exploration and, ultimately, production with its attendant infrastructure needs. A combination of an untried regulatory framework, weak local governance systems and historic mistrust of the State amongst local communities places a particular responsibility on companies to engage fully in negotiating and maintaining agreements with communities. Leaving the issue too much in the hands of a government with limited capacity could easily backfire.

If land is a delicate issue, water is even more of one. Long a source of conflict in the region, water scarcity is a major concern. Exploration is a thirsty business, to say nothing of construction and production. It is not difficult to see the potential human rights impacts of an additional and significant drain on a resource which is already the object of much competition.

If companies do not take into account the human rights impacts of their activities, they could further destabilise the imperfect balance which currently exists between water-users in the region, triggering conflict not only with, but also between, the indigenous populations. A proper understanding is required of how much, when and by

[45] op cit, Unicef

whom water is used. Careful planning is needed to ensure no-one loses out through the arrival of a company and that there is agreement between company and community over access to and use of the water source[46].

Of course, scarcity can be an opportunity too. Water exists beneath the surface, albeit in unknown quantities. Companies already drill for water to meet at least some of their needs and wells have also been drilled for use by local communities. If and when discoveries are made, increasing the availability of water in ways which address the needs of the whole region could prove to be an important and very tangible contribution. The 2013 discovery of two significant aquifers in the dry northern region of Turkana is clearly very important, but in no way relieves companies of their responsibilities to ensure they do not infringe on the right to water for local communities. [47]

In the South, the situation is different, almost reversed. Water is more abundant, land more keenly contested. Pollution, environmental damage and loss of traditional livelihoods are perhaps the greatest threats with communities heavily reliant on farming and fishing. Nevertheless, competing uses of water can be a source of conflict even in situations of relative plenty.

Land is, if anything, an even more sensitive problem. Decades of in-migration, land appropriation and acquisition coupled with poor or non-existent registration have left a legacy of resentment and uncertainty amongst the indigenous coastal populations. Establishing who owns land (and indeed whether they have the right to own the land) adds layers of complication. The risk is not only of alienating individuals or individual communities but compounding the wider sense of injustice already felt by many living along the coast.

In North and South, how companies manage the broader environmental impacts of their operations will be critical in determining strength of opposition or support. Environmental Impact Assessments (EIAs) are necessary but are unlikely to prove sufficient. It is not only the environment which is threatened but the basic rights of individuals and communities to land, water and livelihood. Understanding existing patterns of usage of land and water, identifying how company operations may disrupt those patterns (and the livelihoods which depend on the resources) and addressing the impacts is a core part of a company's responsibilities. Human rights need to be properly integrated into companies' assessment processes.

iii) Employment

The oil and gas industry creates comparatively few local jobs given its requirement for high levels of technical skills. Any short-term manual labour tends to be restricted to construction. Yet in countries of high unemployment, jobs are what everyone wants. For local communities, they can make all the difference in terms of their perceptions of a company.

Companies do not have a specific responsibility to provide jobs (although they do have responsibilities in terms of treatment, recruitment and remuneration of staff). Nevertheless, the risks of not offering employment locally are such that most companies explicitly commit to prioritising local people in their hiring policies.

This is laudable but is easier said than done. There are three important considerations when it comes to employment: quantity, type and distribution. Quantity and type are largely determined by need and of course fluctuate considerably according to project development. Distribution – who gets the jobs – is often as much a political and social question as it is a logistical one.

The difficulty is that there are never enough jobs, the ones that are available locally are often the most low-skilled and temporary and competition can be fierce. These three things add up to a real dilemma for companies. Jobs hold one of the keys to strong local relations yet it is all but impossible to satisfy demand. In Kenya, it is easy enough to see how the combination of inequality, high youth unemployment and community and ethnic divisions make this dilemma a very pressing one.

Part of the answer lies in managing expectations, as discussed previously: part lies in framing a coherent and long-term strategy to increase local employment; and part lies in reaching agreement with affected communities

[46] For more information on companies human rights responsibilities in respect of water, see Institute for Human Rights and Business (IHRB); 'More than a Resource: water, business and human rights'. 2011

[47] http://www.bbc.co.uk/news/science-environment-24049800

on the distribution of jobs. In practice, this means transparency from an early stage about how many jobs are likely to be available and at what stage in the project cycle. It also means identifying, communicating and supporting business opportunities which are likely to result from the project as well as providing skills training to reduce, as far as possible, the number of 'outside' recruits. Finally, it means developing a proper understanding of community needs and dynamics in the project area in order to help navigate the delicate task of 'sharing out' available jobs in a way which does not lead to friction.

Ideally, this would all happen as part of a collective effort by companies operating in the same region together with local Government. A wider economic development strategy is needed not only to maximise opportunities but also to manage the in-migration which inevitably accompanies oil and gas projects. A large influx of outsiders - some with jobs on-site, others looking to take advantage of a new market and others still simply hoping for the best – can easily overwhelm infrastructure and create conflict with indigenous communities.

iv) Security

Kenya faces multiple and diverse security risks: lawlessness in the sparsely populated and poorly guarded border regions of the North; emerging separatist sentiments in the Coast; political violence; destructive ethnic divisions; competition for resources; increasing criminality; easy availability of guns.

These are not risks oil companies can do much to address. All the more important, therefore, to do everything possible to avoid adding to them. Partly, this is a matter of how companies manage their operations and partly a matter of how they protect them. Abusive security forces (whether public or private) have proved to be a major problem for companies in many parts of the world.

Individuals are the real victims of beatings, harassment, arbitrary arrests and even killings and torture by State security agencies. But companies too can be severely damaged, reputationally and operationally. This can be true even if the company itself was not directly involved. Resentment rises, the threat of further disruption increases and the company can become the focus of national and international campaigns, even potential litigation.

Companies ought to be able to manage their private security in ways which are effective but at the same time sensitive to the local environment. This means developing a proper understanding of local dynamics, including ethnic and community divisions. Private security can easily become a liability if guards are recruited without consideration of how they will be perceived by neighbouring populations. It is also a matter of proper training: in the use of force, in international human rights standards but also in appropriate behaviour. Security is separate from community relations in function but the two have overlapping objectives and need to work closely together. The best form of security will always be positive relations with local people.

The more complex problem lies in managing public security forces. In Kenya, the internal security mandate lies with the police rather than the army as it does in certain places elsewhere. The police have a decidedly mixed reputation in the country, especially the Administration Police which was traditionally a separate paramilitary unit with responsibilities including border security and protection of strategic government installations[48].

The numerous allegations of abusive behaviour directed against the police in Kenya (see previous section) raise serious issues for companies. The police lie outside company control but responsibility for their actions in relation to a project is shared, if not necessarily legally then almost always in the minds of those affected. While the most serious abuses are unlikely, they carry such damaging consequences that companies need to be aware of the dangers and work closely with the authorities to ensure that security provision does not in itself become a security risk.

v) Government capacity

The flaws in the criminal justice system are symptomatic of a wider lack of capacity within the Government. State institutions already struggle with the country's existing economic and social challenges and the prospect of oil and gas revenues adds further urgency to the task of reform. New legislation is being drafted, as referenced above. Transparency around contracts and Production Sharing Agreements (PSAs) is essential, along with proper

[48] http://en.wikipedia.org/wiki/Administration_Police. Under current reforms, the entire police service is being merged under a single command: see for example http://sabahionline.com/en_GB/articles/hoa/articles/features/2013/06/07/feature-02

consultation around plans at national and county level to harness the wider economic benefits which can flow from oil production.

Of paramount importance is the need to put in place the appropriate policy and regulatory framework to save Kenya from the fate of some of its West African counterparts. Kenya has the time and, seemingly, the will to institute the necessary policy measures and develop relevant expertise within the Government. Just as importantly, the Government has the chance to initiate a national discussion on oil and gas issues. Silence and secrecy will only feed suspicions that revenues are destined for pockets not people.

In this regard, commitment to the Extractive Industry Transparency Initiative (EITI)[49] would be a strong statement of the Government's positive intent. Engaging the host community, media and civil society from across the country in a debate about revenue management and use could act as a vehicle for promoting greater national unity and also as a spur to local Government to engage in similar discussions at a county level. Community engagement from the outset is paramount.

In the end, companies benefit from a proactive government which establishes and enforces sound regulations and which recognises its responsibilities and obligations. The same is true in reverse. Governments benefit from companies which adhere to high standards, build strong local relationships, avoid harmful impacts and contribute to wider development goals. For some companies, this is a natural part of their business model. For others, it is not. Ensuring the current review of the regulatory framework includes international standards on community engagement, human rights and environmental and social impact assessments would ensure consistency across all companies, create a level playing field and support the emergence of a national consensus around the positive benefits of oil and gas production.

Perhaps Kenya's great opportunity lies in the strong legal foundations provided by the new Constitution. This sets the country apart from its neighbours and provides all citizens with guarantees relating to their human rights. In many places, the law is a fickle guide for companies. It is often unfit for purpose from a human rights perspective and can be easily circumvented, ignored or abused by those in positions of authority or wealth. In Kenya, this is far less the case although of course remains a threat. For companies, the Constitution provides the legal platform on which to develop their policies as well as a vital backstop in instances where officials may seek to shortcut the proper procedures. It is an opportunity to be seized.

vi) Benefit-sharing

It is this issue on which both government and companies will ultimately be judged by the people of Kenya. Has oil and gas production delivered tangible improvements to the lives of the population? Beyond the potential to drive economic growth for the country as a whole, there are two more specific considerations: first, are benefits flowing back to the producing regions and; second, are the benefits addressing inequality?

A failure to ensure local communities enjoy the full benefits of oil and gas is a common cause of resentment. Government mismanagement, corruption or over-centralisation often mean that revenues are wasted, diverted or never distributed back. Weak capacity at local government level also obstructs much needed investment in infrastructure, jobs and economic development.

The importance of prioritising production areas for development needs to be balanced against the risks of replacing one form of inequality with another. Kenya suffers from multiple fissures already. Adding another would significantly increase the threat of conflict. If communities local to a project feel neglected, they will become angry. If other regions or groups feel they are being excluded or losing out, they too will become resentful.

It is a delicate tightrope to walk. For example, a great deal of the exploration in the North of the country is concentrated in Turkana. So far, little or none is being carried out in neighbouring West Pokot County. The two eponymous ethnic groups have a long history of conflict over natural resources and oil is already an additional factor in intensifying rivalries[50].

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[49] http://www.eiti.org/

[50] http://www.acted.org/en/kenya-conflict-management-between-turkana-and-pokot-populations-northern-kenya.

The difficulty for companies is that while they are not responsible for how the Government manages and distributes revenues, they can easily become a target of discontent or find themselves caught up in the midst of an old dispute indirectly given added life by their presence. This emphasises the importance of understanding the full extent of the impact of operations, not merely the most immediate. Clearly, companies do have a significant role in facilitating and promoting very localised development but they also have a clear interest in doing what they can – through partnership, lobbying and capacity-building – to bring about wide and fair benefit-sharing. In doing so, they would also be directly supporting one of the Constitution's most important provisions:

'*ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits*'[51].

[51] Article 69 Constitution of Kenya.

4. MOVING FORWARD

Oil production offers Kenya many opportunities: faster economic growth and development, job creation, better public services and, equally importantly, the potential to help heal the rifts in society driven by inequality and a recent history of conflict and violence.

It poses risks too: an imbalanced economy, more political instability, a widening gap between the haves and have-nots, environmental degradation, higher levels of corruption and the destruction of traditional livelihoods.

The Government has the primary responsibility for determining how successfully the country grasps the opportunities while avoiding the risks but companies have an important role also. General thinking around the nature and extent of this role has evolved considerably in the last decade, informed as much by companies themselves as by others.

International standards

This thinking has led to the development of a plethora of guidance, including, but far from restricted to, the International Finance Corporation's (IFC) Performance Standards[52], the Guidelines for Multinational Enterprises produced by the Organisation for Economic Co-operation and Development (OECD)[53], as well as good practice multi-stakeholder initiatives such as Global Compact[54], the Voluntary Principles on Security and Human Rights (VPs)[55] and EITI.

It has also resulted in a much clearer agreement around companies' responsibilities. The UN Guiding Principles on Business and Human Rights, developed after six years of intensive consultations with businesses, civil society groups, and governments, offer a comprehensive framework to shape responsible business conduct. In addition to reaffirming existing state obligations, the UN Guiding Principles make clear that all companies bear an independent
responsibility to respect human rights.

The Principles stress the need to avoid actions that may infringe the rights of others while mitigating any adverse impacts. This applies to a company's business relationships as well as its own operations. Implementation requires a number of steps, including the development of a clear policy commitment, proper due diligence (informed by extensive stakeholder engagement) and monitoring and communication of progress[56].

The real value of the Guiding Principles lies in their clarity and simplicity, their breadth and their depth. By focusing on impacts and on the full range of human rights, they encourage companies to consider a spectrum of issues ranging from land to labour, security to suppliers, livelihoods to law whilst recognising that these will be different for different companies. By emphasising the individual over the collective, they also promote engagement with vulnerable and marginalised groups. Rather than an externally imposed standard, they are increasingly becoming an important internal driver of change offering a means to improve social performance.

Application is not easy, particularly in relatively high-risk countries such as Kenya. Companies can have the most positive impact in situations where the Rule of Law is strong, where society is united and where the Government is both able and willing to fulfil its own obligations. In the absence of some or all of those elements, company responsibilities become more complicated and the line between company and government often more blurred. Implementation therefore needs to be seen as an iterative and collaborative process, adjusted to specific constraints and adapted to particular priorities.

Company constraints

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[52] http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+Standards+and+Guidance+Notes+2012/.
[53] http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm.
[54] www.unglobalcompact.org
[55] www.voluntaryprinciples.org.
[56] For specific guidance, see IHRB and Shift: 'Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights'. European Commission 2013.

Nature presents the most obvious constraint in Kenya. No-one knows how much oil or gas there is or even whether what does exist will prove commercially viable. Recent drilling in Turkana[57] suggests the presence of enough oil to justify some optimism but this remains very early days and it will be some time before there is real clarity over the extent of Kenya's deposits.

Uncertainty inevitably inhibits company options. It is difficult enough to secure resources for localised social programmes when there is no guarantee that exploration will yield results. It is even more difficult to argue for an expansive role for companies in shaping policy, promoting transparency, strengthening institutions and encouraging the growth of domestic industries when their long-term presence in the country is not secured.

This primary constraint is reinforced by the unusual landscape of investing companies. Kenya is hardly the first country to explore for oil but it may be unique in the sheer number and diversity of exploration companies. Out of 46 Blocks made available by the Minister for Energy, some 45 have been licensed to 23 international oil companies[58]. More are looking[59].

The sheer number of companies is striking enough but equally significant is that the vast majority of these are juniors[60]. In mining, juniors are a well established, if occasionally unloved, feature of the industry. In oil and gas, they have been a less common phenomenon. And indeed, it may even be an exaggeration to label some of them as juniors. While many are genuine prospectors, a few are little more than speculative investment vehicles whose main aspiration is to do as little as possible in the hope of being bought out.

Again, this has important implications for the kind of role such companies can play, can be expected to play and perhaps ought to play. There is a world of difference in terms of capacity and expertise between the exploration arms of major companies and their junior counterparts. At the same time, of course, even the lightest touch has an impact, if only in raising expectations or indeed concerns. This cannot be overemphasised. That the exploration may not yield anything is no excuse to do nothing. Exploration must also be responsible, it is part of the chain and it is a risk that a company chooses to engage in. Exploration costs should include the costs of doing business responsibly, for example in terms of proper community consultation, addressing issues of security, land rights, water rights and so on. If one company does nothing or does something badly, it can have knock-on effects on the whole industry as experience has shown repeatedly elsewhere.

None of this is to excuse companies of their responsibilities. Kenya faces substantial challenges and constructive company engagement across a range of issues is crucial to meeting them. This is well understood by many of those currently operating in the country but any discussion of what that engagement entails needs to be informed by the realities of the current state of the industry, namely the phase companies are in and available resources and capacity, but most importantly the dynamics of the operating environment.

Priorities

The challenges suggest action is required at two levels: project and national. At the national level, the emphasis will need to be on a collective approach. At the project level, individual companies will need to tailor their engagement according to the stages of project development ensuring a basic minimum and scaling up (or down) in line with their operations. At all levels, partnership and collaboration will be crucial.

(a) **Project**

Impact lies at the heart of the Guiding Principles on Business and Human Rights. A company's responsibilities are shaped by its impacts – no more, no less. The fewer the impacts, the fewer the responsibilities. This is important because it means the level of expectations on companies in terms of their engagement with human rights issues will be shaped by many factors, including size, sector and stage of investment. Much less is required of juniors in the exploration phase than majors in the production phase.

At the same time, the emphasis is on avoidance of negative impacts. Companies need to anticipate rather than retrospectively address (although that too is inevitable to some extent). In other words, understanding impacts is a process which needs to run ahead of project development not in parallel. For example, determining the

[57] http://www.nation.co.ke/business/news/Tullow-strikes-oil-in-Kenya/-/1006/1903200/-/9ecv76z/-/index.html
[58] IMF op cit
[59] http://www.businessdailyafrica.com/Another-UK-firm-joins-the-oil--gas-search-in-Turkana/-/539546/1899852/-/76npmy/-/index.html
[60] Total is an exception and Tullow Oil is rapidly transforming itself into a significant producer.

impacts of the project construction phase during actual construction would make it almost impossible to prevent or avoid any harm from occurring. A company would find itself constantly fighting fires and trying to repair rather than strengthen community relationships.

From a company perspective, the Guiding Principles are therefore a risk management tool. They offer a framework which enables them to build and sustain a Social License to Operate over the lifetime of the project, however short or long that might prove. Even companies which have yet to start drilling still require some measure of acceptance from the community – and the community itself deserves some measure of recognition from the company. Impact begins even before the purchase of a license. Due diligence therefore begins earlier still.

Prospecting/early exploration

The legal, financial and technical requirements of a project traditionally form the backbone of a due diligence process. Social, environmental and human rights issues tend to receive far less attention, although this has begun to change significantly over the last decade particularly amongst larger companies.

While the size of the company and the scale of the proposed investment will dictate the breadth and depth of due diligence, the rationale for incorporating social issues remains the same. Companies benefit from a full picture of the context they are investing into. This means developing a basic but nevertheless rounded understanding of the situation within the country and the proposed project area.

The arrival of geologists and other technical staff on the ground significantly changes the dynamics. Expectations will be raised and concerns may be voiced. It is an opportunity for the company to initiate a two-way discussion in which both company and community can better understand and prepare for the likely impacts. The common problem is not a failure to communicate *per se* – geologists know perhaps better than anyone the importance of engaging with local people – the problem lies in not acknowledging that engagement as part of a long-term and continuous process. The first company staff in the field view interaction with communities as a means to a short-term end, not as the first step in a longer journey.

This is a matter of approach, not resources. Ideally, the first boots on the ground will include those of a community relations liaison (as is increasingly the case with larger companies) but even if this unrealistic, technical staff should be aware of the importance of consultation and explanation. And appreciate that it is an ongoing process which others will need to assume responsibility for if and as the project moves ahead into full exploration.

These early consultations serve multiple functions: as the basis for trust-building, as a means to manage expectations, as a way of providing information about the project and; finally, in order to gain a better understanding of the project area and the communities living around it. All these things have enormous long-term value. Neglecting them (or mishandling them) can prove a costly mistake. It would be wrong to assume that if nothing is happening for long periods of time in terms of project development, nothing needs to be done in terms of community engagement. Companies need to maintain their interaction on a regular basis. Lack of resources is a poor excuse for something which costs very little.

Exploration and beyond

The decision to move ahead with more advanced exploration signals a commitment from the company to invest substantial resources in a project, both in terms of the purchase of a license and in terms of equipment and infrastructure. This investment needs to be shadowed by a similar increase in social engagement, including the deployment of dedicated staff if this has not already been done.

Impacts become more tangible: land and water is needed; camps may be constructed requiring both infrastructure and security; livelihoods may be disrupted, even if only temporarily. The less tangible impacts – expectations, impatience, worry, hope – will also grow.

All these things need to be planned and planned through consultation. Impact assessments, are the most effective mechanism for this. While environmental issues are likely to be the most urgent, human rights issues should be incorporated also. This is not the complicated addition it may appear. Environmental Impact Assessments (EIAs) consider impacts on place.

A human rights lens is designed to ensure consideration of people. How will the project change the condition of those living nearby? How can it be developed in ways which limit those changes? And how might it be planned in a way which both reassures and generates support? Given the limited scale of the project at this stage, these are not ambitious demands, rather the most effective means to build community support with few resources.

The fact that exploration is inherently uncertain is sometimes understood as a reason for limiting community engagement until discoveries have been made. The opposite may be closer to the truth. Communities need to be prepared for early closure also and companies may pay a price for their initial neglect if the project does go ahead.

On the other hand, the uncertainty of exploration is a reason for caution over the benefits a company might promise or even provide. The short-term advantages of offering services or even cash need to be weighed against the possible longer-term consequences. It is difficult to break the pattern of a transactional relationship and too often benefits offered in haste, even with the best intentions, prove unsustainable.

Undoubtedly, companies can come under some pressure from communities - or community leaders – and this can create dilemmas. Bribes may even be demanded as the price for 'support'. There are no simple answers to this but the more genuine and sustained the engagement with the community, the easier it will be to avoid responding to each specific request. Identifying joint projects, small but useful, through discussion offers a more sustainable model.

The principle of determining company responsibilities on the basis of impact clearly offers a manageable framework for companies regardless of their footprint. The extent of impact assessment and community engagement evolves and grows in line with the decision-making process. At the exploration phase, this remains relatively limited. But scale is no indicator of importance. If anything, exploration is the most critical phase in terms of building community support and this reaps dividends which far outstrip the financial cost. Indeed, over the long-term, it can add considerable value to the project whether through reducing the risk of delays and disruptions or even through the sale price of the asset.

(b) **National**

Not all the risks companies face can be addressed at the project level. Some require engagement at a higher level. Companies cannot be expected to resolve, or even involve themselves in, many of the political and social challenges which confront Kenya but there are a number of areas directly relevant to their own interests where they do have an important contribution to make. These include:

Information-sharing:

Poor knowledge amongst the population as a whole is at once driving up expectations and encouraging suspicion. Together with the Government, companies could organise a series of events – in Nairobi but also outside, including in the three main exploration regions of the North East, West and the Coast – to provide a clearer overview of the status of exploration, the processes involved and the timeframe envisaged. These events could be complemented by commissioning balanced and factual radio and TV programmes and newspaper features.

Government capacity-building:

The limited understanding amongst the population is also reflected in Government departments. Donor and financial institutions, notably the World Bank, IMF and African Development Bank are increasingly involved in providing support and advice to the Government and a discussion between oil companies and those institutions could help to identify areas in which companies could add additional value. This might specifically be at the local Government level where support with infrastructure planning and cooperation on provision of basic services is needed.

Multi-stakeholder initiatives:

Support for **EITI** and the **Voluntary Principles** – the first focusing on transparency and accountability around revenues, the second on responsible private and public security – would send strong signals about the desire of both Government and companies to make Kenya an international model of best practice. Both are tri-partite - Government, company and civil society – and both address issues of real relevance to the Kenyan context. Their

value is tangible: improving the benefits and reducing some of the risks associated with oil and gas production and intangible: creating an atmosphere of cooperation and collaboration.

Local content:

IPIECA[61] defines 'local content' as the added value brought to a host nation (or region or locality) through: (i) workforce development, namely employment and training of local workforce; (ii) investments in supplier development, namely developing and procuring supplies and services locally.[62]

A coherent and joined-up approach to promoting local content could prove hugely beneficial in the long run. Companies often face a dilemma in relation to domestic suppliers. There are many advantages to sourcing locally, both economic and reputational, but there are often real concerns around quality, capacity and ethical standards. A joint needs assessment would be helpful in defining the kinds of products and services which are and will be needed. This would help to inform a Government strategy as well as alert local businesses to the opportunities. It could be complemented by the establishment of an oil industry training centre which could be used to explain the tender process and requirements and provide support to develop knowledge and capacity on a range of issues, including environmental, labour and human rights standards. The oil industry itself does not generate many jobs directly but can be a significant source of indirect employment through domestic businesses.

Clearly, the resources and capacity of companies, as well as their responsibilities, will grow as exploration activities develop and particularly as the prospect of moving to production increases. For some, this moment is closer than for others but for all the priority is to ensure the basics are right and the foundations in place. Kenya has an opportunity: an opportunity few have been granted and even fewer have embraced; an opportunity to drive the country's economic growth and, in so doing, consolidate its democracy and help heal the wounds of its violent past . This will require vision and commitment from all stakeholders; imaginative partnership with Government; innovative collaboration with national and international civil society; support from the international community and patience from the population at large. It can be done.

[61] International Petroleum Industry Environmental Conservation Association (IPIECA) – the global oil and gas industry association for environmental and social issues.

[62] http://www.ipieca.org/publication/local-content-strategy-guidance-document-oil-and-gas-industry

ANNEX 1

Source: National Oil Company of Kenya. http://nationaloil.co.ke/upstream/index.php?flag=upstream&ust=11