Annex 1. Research Methodology

Sampling and Sample Size

The information for this Report was obtained through one of four methods: in-depth interviews, focus group discussions (FGD), field observations, and desk research. A purposive sampling technique was used to select the respondents for qualitative data collection. The respondents were selected based on their basic understanding of the extractive industry and the associated human rights issues as well as their direct experiences with the extractive industry. Respondents were selected across three major stakeholder groups – government, business, and civil society organisations, which comprise members from non-governmental organisations, church leaders, relevant ministries, public oversight bodies, licensing & regulatory authorities, KNCHR, religious representatives and community-based organisations as well as community members who were identified to give accounts of human rights issues observed from the resident extractive industries.

The field research was carried out by an experienced Kenyan researcher.

Table 4: Key Respondent Manifest

<table>
<thead>
<tr>
<th></th>
<th>Government</th>
<th>Mining</th>
<th>Oil &amp; Gas</th>
<th>Civil Society Organisation</th>
<th>Focus Group Discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Interviewed</td>
<td>36</td>
<td>7</td>
<td>2</td>
<td>13</td>
<td>195</td>
</tr>
<tr>
<td>County Level:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>All Women: 84</td>
</tr>
<tr>
<td>National Level:</td>
<td>32</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Int’l:</td>
<td></td>
<td></td>
<td>Int’l:</td>
<td>FBO: 3</td>
<td>All Men: 100</td>
</tr>
<tr>
<td>Nat’l:</td>
<td>0</td>
<td></td>
<td>1</td>
<td></td>
<td>Mixed Gender: 11</td>
</tr>
<tr>
<td>Large:</td>
<td>1</td>
<td></td>
<td>Large:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small:</td>
<td>0</td>
<td></td>
<td>Small:</td>
<td>CBO: 2</td>
<td></td>
</tr>
<tr>
<td>Artisanal:</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Data Collection Methods

Each respondent was asked to respond to a series of survey questions in one of two methods – (1) the one-on-one interview or (2) focus group discussion.

In-depth interviews

In the one-on-one interview, the researcher interviewed each respondent using the questions contained in the survey. In-depth interviews were held with a total of fifty-eight (58) key informants who come from different backgrounds but have an interest in the extractive industry. These included national government ministries officials, county government officials, oversight body representatives, extractive companies, religious leaders, village leaders, and civil society.

Focus Group Discussion (FGD)

Representative case studies were selected to undertake FGDs in communities where oil and gas exploration and mining exploration and exploitation are taking place, with a view to highlight the overall challenges and opportunities for government, business, and civil society stakeholders – as well as KNCHR – to ensure greater human rights accountability and protecting the rights of communities from adverse impacts linked to the extractives sector. At least two FGDs were sampled in every county and these emanated from the communities found near the extractive industry operations. In the FGD interviews, the researcher worked with a local organizer to gather groups of approximately eight to ten respondents comprised of members from CSOs and CBOs. The FGDs were mainly carried out separately for women and men. It is noted, however, that there were no female FGD respondents in Lamu, and this is partly due to the nature of the extractive industry in Lamu – offshore oil & gas exploration – and the focus in this context was to find the experiences of the fishermen who may be affected by the offshore oil and gas explorations.

Field Observations

Observation was used to capture the nature of human rights abuses on the ground as well as the activities being undertaken by communities to promote their rights. Observations were presented as anecdotes and used to supplement the analysis of data collected in the other forms.

Desktop Review

A thorough desktop review of literature on the extractive sector, Kenya and East Africa was carried out.
A Brief Description of the Extractive Sector Areas Covered

Figure 2: Research Study Counties in Kenya

Turkana

Turkana is the northernmost County in Kenya and it is one of the poorest counties.\textsuperscript{365} This county is largely arid with very little arable potential. It is a vast county that borders Lake Turkana which is the world’s largest permanent desert lake and the world’s largest alkaline lake and some of the major archaeological finds of early man have been made near the lake. This fact has led Turkana to be christened ‘the Cradle of Mankind’\textsuperscript{366} and it is a UNESCO World Heritage Site. Despite these accolades, the region has historically been marginalised on socio-economic development. Most residents in this county live below the poverty line and the literacy levels here are very low, which exacerbates many of the human rights challenges associated with the development of the extractives sector. One of the economic lifelines of the county has been the tourism industry, which in the recent past has suffered a recession due to insecurity in the coastal region. There are several sites in the county undergoing oil exploration and in 2012 there was a discovery in Lokichar basin (Block 12BB), making it the only site in Kenya with confirmed finds of commercially viable oil deposits.\textsuperscript{367}
Baringo

Baringo County, found in the former Rift Valley Province, is a largely semi-arid area that includes three fresh water lakes and is known to contain a number of unexploited mineral resources. Most of the residents in this county depend on livestock farming and small scale crop farming for their livelihoods. Accordingly, access to land and potable water are incredibly important resources for the people who live here. This is further evidenced by the number of interethnic clashes that have transpired over the control of natural resources in this county. Further, the literacy levels are relatively low and the majority of Baringo residents live below the poverty line. In 2013, Tullow Oil Company commenced exploration in the Kerio Valley area of the county (Block 12A) and since has made initial discoveries of oil with continual appraisals of the reserves.

Kajiado

Kajiado County, which is largely semi-arid, borders Nairobi County to the South and is one of the host counties of the Maasai community. Due to this county’s proximity to the capital, there has been a good deal of development near the border areas. However, the development is concentrated in several commercial centres so as one moves away from the Nairobi border and towards the sparsely populated interior the level of poverty increases. Oil exploration activities by National Oil Corporation of Kenya (NOCK) commenced in early 2014 at the Magadi area (Block 14T). This exploration area happens to be one of the poorest and driest areas in the county, placing an additional strain on access to land and water for people who are less equipped to advocate for their human and environmental rights. Further, the presence of the Maasi community, which is accustomed to the open use and movement on the land presents particular challenges for oil exploration in this county.

Migori

Migori is located in western Kenya in the former Nyanza province. It borders Tanzania to the south and is a relatively arable and fertile county with a thriving agricultural sector, comprised of subsistence farming and commercial sugar cane farming. The prominent industry in Migori, however, is artisanal and small scale gold mining, which has a deep seeded history in Migori, dating back to the 1930s. To date, no medium or large scale mining companies are stationed here, but the industry continues to attract new residents, placing a strain on access to, and reliance on, land. This is particularly true because artisanal mining is less mechanized, and often illegal, and it occurs in many land clusters, owned either by individuals or communities. The socio-economic conditions in Migori have created a group of fairly educated residents with average literacy levels.

Kitui

Kitui County, found in the former Eastern Province of Kenya, is a vast county bordering seven different counties and is home to two major towns: Kitui and Mwingi. The County is topographically diverse with some areas consisting of semi-arid land while others are arable allowing for active farming. Livelihoods in Kitui depend on crop farming, fish farming, livestock farming, and micro trading. However, literacy levels in Kitui are quite
low. Kitui boasts a range of mineral resources such as gemstones, limestone, iron ore and coal, which is expected to attract more EI activities in the future. While most of the gemstone mining is carried out by artisanal miners, the majority of the limestone mining is done by medium-sized companies. In 2010, coal was discovered around the Mui Basin and since then a concession was given to Fenxi Corporation to exploit the mineral. Most other minerals in the County remain unexploited.

**Lamu**

The Lamu County is home to Kenya’s oldest continually inhabited town (Lamu Town), which is on an island and part of the larger Lamu Archipelago. It is one of the original Swahili settlements along coastal East Africa and it was founded in 1370. UNESCO recognised the Lamu Old Town as a World Heritage Site, resulting in efforts to preserve the architecture of the island town. The main economic activities in Lamu are fishing, agriculture, and tourism. There have been several oil exploration activities off the coast of the Lamu archipelago carried out by a number of oil exploration companies such as Anadarko and Pancontinental Plc. Literacy levels in Lamu remain low.

**Taita Taveta**

Taita Taveta County, one of the counties found in the former Coast Province, shares a border with Tanzania to the south and six other counties in Kenya, including Kwale. This County hosts fertile highlands, and a lower grassland, which is not very arable. However, the County is geologically located within the Mozambique Belt and is endowed with one of the richest minerals deposits in Kenya and the Eastern Africa region. The mineral resources include industrial minerals and gemstones, both of which have been studied, prospected and commercialized for several years generating considerable wealth to various mining prospectors and investors. Gemstones are mainly mined by small scale players and a few medium scale companies such as Rockland Company Limited and Chawia Minerals Association. Iron ore is also being mined by Wanjala Mining Company. Despite the influx of mineral resource exploitation, a sizeable section of the County remains quite poor and the literacy levels are low.

**Kwale**

Kwale County, found in the former Coast Province, is considered to be one of the poorest counties in Kenya. In fact, 29% of Kwale residents live below the poverty line and according to the Kenya National Bureau of Statistics, Kwale has one of the lowest literacy levels in the country. Although the land in Kwale County is fertile, not much agricultural activity takes place here. One of the economic lifelines of the county is the tourism industry which in the recent past has suffered a recession due to insecurity-related reasons in the coastal region. The mineral sands project in Msambweni – undertaken by Base Resources Limited – is the only major mining project in the County and the project has created a range of challenges within the community when exploration started several years ago. Also, rare earth minerals, worth billions of dollars, were discovered in the County, but these have yet to be exploited.
Annex 2. Oil & Gas and Mining Companies Operating in Kenya

Table 5: Mining Exploration Blocks by Company

<table>
<thead>
<tr>
<th>Mineral</th>
<th>Mining Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Titanium</td>
<td>Base Titanium Kenya</td>
</tr>
<tr>
<td>Gold</td>
<td>ASM, Africa Barrick Gold, Acacia Mining Plc</td>
</tr>
<tr>
<td>Soda Ash</td>
<td>Tata Chemicals</td>
</tr>
<tr>
<td>Limestone</td>
<td>Athi River Mining &amp; other cement companies</td>
</tr>
<tr>
<td>Iron Ore</td>
<td>Wanjala Mining Company</td>
</tr>
<tr>
<td>Flourspar</td>
<td>Flourspar Mining Company</td>
</tr>
<tr>
<td>Ruby</td>
<td>Rockland Kenya</td>
</tr>
<tr>
<td>Diatomite</td>
<td>Africa Diatomite Industries</td>
</tr>
<tr>
<td>Carbondioxide</td>
<td>Carbacid Investments</td>
</tr>
<tr>
<td>Gypsum</td>
<td>Delta Mining Company, Kenjoro Enterprises</td>
</tr>
<tr>
<td>Copper</td>
<td>Macalder Gold and Copper Mines</td>
</tr>
</tbody>
</table>

Table 6: Oil Exploration Blocks by Company

<table>
<thead>
<tr>
<th>Operating Company</th>
<th>Block Number</th>
<th>Operating Company</th>
<th>Block Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damantine Energy</td>
<td>11B, L-18</td>
<td>Imara Energy</td>
<td>L-2</td>
</tr>
<tr>
<td>Afren Oil</td>
<td>L-17, 1</td>
<td>Nock</td>
<td>14T</td>
</tr>
<tr>
<td>Africa Oil</td>
<td>9</td>
<td>Ophir Energy</td>
<td>L-9, L-15</td>
</tr>
<tr>
<td>Anadarko</td>
<td>L-11B, L-12, L-11A, L-7, L-5</td>
<td>Pacific Seaboard</td>
<td>L-20</td>
</tr>
<tr>
<td>Apache</td>
<td>L-8</td>
<td>Rift Energy Corp</td>
<td>L-19</td>
</tr>
<tr>
<td>A-Z Petroleum</td>
<td>L-1A, L-3</td>
<td>Simba Energy</td>
<td>2A</td>
</tr>
<tr>
<td>BG Group</td>
<td>L-10B, L-10A</td>
<td>Swiss Oil Company</td>
<td>L-4, L-13</td>
</tr>
<tr>
<td>Camac Energy</td>
<td>L-16, L-1B, L-27, L-28</td>
<td>Taipan Resources</td>
<td>2B</td>
</tr>
<tr>
<td>Edgo Group</td>
<td>L-14</td>
<td>Total</td>
<td>L-22</td>
</tr>
</tbody>
</table>
Annex 2. Oil & Gas and Mining Companies Operating in Kenya

<table>
<thead>
<tr>
<th>Company</th>
<th>Blocks</th>
<th>Company</th>
<th>Blocks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eni</td>
<td>L-21, L-23, L-24</td>
<td>Tullow Oil</td>
<td>10BA, 10A, 10BB, 13T, 12B, 12A</td>
</tr>
<tr>
<td>Erhe Energy</td>
<td>11A</td>
<td>Vangold</td>
<td>3B, 3A</td>
</tr>
<tr>
<td>Far Limited</td>
<td>L-6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Ministry of Energy and Petroleum website (www.energy.go.ke)

Figure 3: Oil Exploration Blocks in Kenya

Source: Researcher’s illustration derived from Ministry of Energy and Petroleum website www.energy.go.ke

**Table 7: Mineral Occurrences in Kenya**

<table>
<thead>
<tr>
<th>Region</th>
<th>County</th>
<th>Minerals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rift Valley</td>
<td>Kajiado</td>
<td>Soda Ash, Feldspar, Limestone Gypsum, Gemstones, Marble &amp; Granite (dimension stone)</td>
</tr>
<tr>
<td></td>
<td>Elgeyo Marakwet</td>
<td>Fluorspar</td>
</tr>
<tr>
<td></td>
<td>Baringo</td>
<td>Gemstones (Baringo Ruby), Diatomite</td>
</tr>
<tr>
<td></td>
<td>Nakuru</td>
<td>Diatomite</td>
</tr>
<tr>
<td></td>
<td>Turkana</td>
<td>Gold, Gemstones, Gypsum</td>
</tr>
<tr>
<td></td>
<td>West Pokot</td>
<td>Gold, Gemstones, Chromite</td>
</tr>
<tr>
<td></td>
<td>Samburu</td>
<td>Gold, Gemstones, Manganese, Chromite, Vermiculite</td>
</tr>
<tr>
<td></td>
<td>Narok (Trans Mara)</td>
<td>Gold</td>
</tr>
<tr>
<td></td>
<td>Nandi (Kibigori)</td>
<td>Gold</td>
</tr>
<tr>
<td>Western</td>
<td>Kakamega</td>
<td>Gold, Dimension stone</td>
</tr>
<tr>
<td>Nyanza</td>
<td>Siaya</td>
<td>Gold, Iron Ore</td>
</tr>
<tr>
<td></td>
<td>Migori</td>
<td>Gold, Copper</td>
</tr>
<tr>
<td>Central</td>
<td>Homa Bay</td>
<td>Iron Ore, Gold</td>
</tr>
<tr>
<td>Eastern</td>
<td>Kiambu</td>
<td>Carbon Dioxide, Diatomite</td>
</tr>
<tr>
<td></td>
<td>Machakos</td>
<td>Gypsum, Pozzolana,</td>
</tr>
<tr>
<td></td>
<td>Kitui</td>
<td>Coal, Iron Ore, Copper, Gemstones, Limestone, Magnetite</td>
</tr>
<tr>
<td></td>
<td>Makueni</td>
<td>Vermiculite, Gemstones</td>
</tr>
<tr>
<td></td>
<td>Tharaka Nithi</td>
<td>Iron Ore, Gemstones</td>
</tr>
<tr>
<td></td>
<td>Isiolo</td>
<td>Gemstones</td>
</tr>
</tbody>
</table>
### Annex 3. Mineral Occurrences in Kenya

<table>
<thead>
<tr>
<th>Coastal Kenya</th>
<th>Taita Taveta</th>
<th>Iron Ore, Gemstones, Manganese, Graphite</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Kwale</td>
<td>Gemstones, Heavy Mineral sands (titanium minerals), Silica Sand, Rare Earth Elements, Niobium</td>
</tr>
<tr>
<td>North Eastern</td>
<td>Kilifi</td>
<td>Titanium Minerals, Manganese, Barytes, Gypsum, Gemstones</td>
</tr>
<tr>
<td></td>
<td>Tana River</td>
<td>Gypsum</td>
</tr>
<tr>
<td></td>
<td>Garissa</td>
<td>Gypsum</td>
</tr>
<tr>
<td></td>
<td>Mandera</td>
<td>Gypsum</td>
</tr>
<tr>
<td></td>
<td>Marsabit</td>
<td>Gypsum</td>
</tr>
<tr>
<td></td>
<td>Wajir</td>
<td>Gold, Gemstones, Manganese, Chromite</td>
</tr>
</tbody>
</table>

*Source: Researcher’s compilation from Ministry of Mining*
Bibliography


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Kenya Open Data, County Data Sheet. Available at: https://opendata.go.ke/facet/counties


END NOTES

8. The counties visited are: Kajiado, Baringo, Kutui, Migori, Kwale, Turkana, Lamu and Taita Taveta.
15. EITI CSO Protocol, available at: https://eiti.org/node/4865
17. See: http://www.opengovpartnership.org/how-its-works/response-policy
18. [ADD NAME AND IF AVAILABLE WEBLINK TO Tanzania REPORT]
19. [ADD NAME AND IF AVAILABLE WEBLINK TO Tanzania REPORT]
20. [ADD NAME AND IF AVAILABLE WEBLINK TO Tanzania REPORT]
End Notes

34. The six sectors are: (1) manufacturing, (2) trade, (3) agriculture, (4) tourism, (5) information and communication technology, and (6) financial services.
42. Ibid.
43. Ibid. (recognizing that the Kenyan mining sector is dominated by non-metallic commodities since metal was not Kenya’s historic economic focus).
49. Information Centre for the Extractives Sector, “Oil and Gas”. Available at: http://ices.or.ke/sectors/oil-gas/.
50. Ibid.
52. Information Centre for the Extractives Sector, “Oil and Gas”. Available at: http://ices.or.ke/sectors/oil-gas/.
53. Ibid.
54. Ibid.
55. At the time of writing this report, Brent Crude was selling at $33 per barrel.
62. Ibid.
63. See: http://www.kenyahobmines.com/
65. IHRB, Focus Areas: Kenya. Available at: http://www.ihrb.org/focus-areas/kenya/.
67. Kenya Oil and Gas Working Group, Brochure. Available at: http://ices.or.ke/729/.
68 Kenya Civil Society Platform on Oil and Gas. Available at: http://kcspog.org/.
69 Haki Madini. Available at: http://hakimadini.org/.
71 Information Centre for the Extractives Sector, About Us. Available at: http://ices.or.ke/about-us/.
73 Ibid, Guiding Principle 23.
78 2010 Kenya Constitution, Art. 163.
80 2010 Kenya Constitution, Art. 27(1).
81 2010 Kenya Constitution, Art. 27(3).
82 2010 Kenya Constitution, Art. 27(4).
83 2010 Kenya Constitution, Art. 60(1)(f).
89 C.K. et al. v. Commissioner of Police et al., Petition 8 of 2012 (High Court of Kenya at Meru, 2013).
92 Civil Case No.86 of 2012 (High Court at Kitale).
103 2010 Kenya Constitution, Art. 55(c).
106 Ibid. (“According to a Handicap International survey, 85% of persons with disabilities experienced verbal abuse as a result of their disability and 17% experienced gender-based violence,” with almost half neither reporting the incident to authorities nor seeking medical help or counselling).
107 Ibid. (“KNCHR estimated that 67% of persons with disabilities obtained a primary education, 19% attained secondary education, and 2% reached university level”).
108. Ibid. (Surveying persons with disabilities in certain counties in 2012, “the KNCHR found most
government buildings in these counties inaccessible to persons with disabilities and that the lack of sign
language interpretation or braille texts at public places prevented persons with disabilities from meaningful
public participation”).
111. 2010 Kenya Constitution, Art. 54(1)(b).
112. 2010 Kenya Constitution, Art. 54(1)(c).
113. 2010 Kenya Constitution, Art. 54(1)(e).
http://www.state.gov/documents/organisation/236582.pdf (noting eight major ethnic communities
identified in the 2009 Census: Kikuyu, 6.6 million; Luhyia, 5.3 million; Kalenjin, five million; Luo, four million;
Kamba, 3.9 million; Kenyan Somali, 2.3 million; Kisii, 2.2 million; and Mijikenda, 1.9 million).
115. 2010 Kenya Constitution, Art. 56(b).
117. 2010 Kenya Constitution, Art. 56(d).
118. 2010 Kenya Constitution, Art. 56(e).
121. 2010 Kenya Constitution, Art. 56(1)(c).
122. 2010 Kenya Constitution, Art. 57(a).
123. 2010 Kenya Constitution, Art. 57(b).
126. See Awuor, Linda, (Kenya Law), “Emerging jurisprudence on public participation and the link to
Human Rights and Business.
127. Musyoka et al. v. Permanent Secretary Ministry of Energy et al., Constitutional Petition No. 305 of 2012
(High Court of Kenya, 2014).
128. See Awuor, Linda, (Kenya Law), “Emerging jurisprudence on public participation and the link to
Petition No. 621 of 2014 (High Court of Kenya at Nairobi, 2015); Munkasio et al. v. Kedong Ranch Limited et
131. 2010 Kenya Constitution, Art. 35(2).
http://www.state.gov/documents/organisation/236582.pdf
141. Ibid, p.64.
142. The new land law regime resulted in the repealing of 7 statutes and the enactment of the Land Act
143. Created under Article 67 of the Constitution, the NLC is mandated amongst other duties to manage
public land on behalf of the national and county governments and to advise the national government on a
comprehensive programme for the registration and titling of land throughout the country.
144. The Act aims to give effect to Articles 67(2)(c) and 68(c)(i) of the Constitution and to provide procedures
for eviction from land. See: http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2016/LandLaws_Amendment_Act_28of
2016.pdf
155 2010 Kenya Constitution, Art. 63(1).
159 2010 Kenya Constitution, Art. 64(a).
160 2010 Kenya Constitution, Art. 64(b).
161 2010 Kenya Constitution, Art. 64(c).
170 Satrose Ayuma v. Registered Trustees of the Kenya Railways et al., Petition No. 65 of 2010 (High Court of Kenya at Nairobi, 2013).
172 2010 Kenya Constitution, Art. 60(1).
175 2010 Kenya Constitution, Art. 60(1)(e).
178 2010 Kenya Constitution, Art. 69(1)(g).
179 2010 Kenya Constitution, Art. 69(1)(h).
182 2010 Kenya Constitution, Art. 29(c).
183 2010 Kenya Constitution, Art. 29(d).
184 2010 Kenya Constitution, Art. 29(e).
190 U.S. Department of State, “Kenya 2014 Human Rights Report”, (2014), p.60. Available at: http://www.state.gov/documents/organisation/236582.pdf (noting eight major ethnic communities identified in the 2009 Census: Kikuyu, 6.6 million; Luhyaa, 5.3 million; Kalenjin, five million; Luo, four million; Kamba, 3.9 million; Kenyan Somali, 2.3 million; Kisii, 2.2 million; and Mijikenda, 1.9 million).
195 http://www.achpr.org/mechanisms/indigenous-populations/about/
Ibid., p. 10.


202 Ibid, para. 31-36.

203 Available at: http://www.kenyachambermines.com/publications/documents#9


205 For a further analysis of the human rights related provisions of the draft Mining Bill 2014, see: http://www.ihrb.org/focus-areas/commodities/submission-kenya-mining-bill-2014

206 The Mining Act, 2016, Article 35.

207 The Mining Act, 2016.

208 The Mining Act, 2016.

209 The Mining Act, 2016.

210 The Mining Act, 2016.

211 The Mining Act, 2016.

212 The Mining Act, 2016, Section 34(4).

213 The Mining Act, 2016, Section 37.

214 The Mining Act, 2016, Section 40.

215 The Mining Act, 2016, Section 179(a).

216 The Mining Act, 2016, Section 179(d).

217 The Mining Act, 2016, Section 179(b).

218 The Mining Act, 2016, Section 179(c).

219 The Mining Act, 2016, Section 140(g).

220 The Mining Act, 2016, Section 180(1).

221 The Mining Act, 2016, Section 124.

222 The Mining Act, 2016, Section 46.

223 The Mining Act, 2016, Section 50.

224 See: http://www.mining.go.ke/downloads.html


229 Petroleum (Exploration and Production) Act, Art. 4(2).

230 Petroleum (Exploration and Production) Act, Art. 10(1).

231 Petroleum (Exploration, Development and Production) Bill, Art. 3.

232 Petroleum (Exploration and Production) Act, Art. 86, 93, and 94.

233 Petroleum (Exploration and Production) Act, Art. 85.

234 Petroleum (Exploration and Production) Act, Art. 85(4).

235 Petroleum (Exploration and Production) Act, Art. 108(3).


237 Petroleum (Exploration and Production) Act, Art. 100(2)(b).

238 Petroleum (Exploration and Production) Act, Art. 100(2)(b).

239 Petroleum (Exploration and Production) Act, Art. 108.

240 Community Land Bill 2015, Clause 37.

241 Community Land Bill 2015 Clause 23.

242 Petroleum (Exploration and Production) Act, Art. 111.

End Notes

246 Petroluem (Exploration and Production) Act, Art. 102(1)(b).
247 Petroleum (Explotation and Production) Act, Art. 117(d).
248 Petroleum (Exploration and Production) Act, Art. 117(e).
249 Energy Bill 2015, Art. 146(2).
250 Energy Bill 2015, Art. 146(4).
251 Energy Bill 2015, Art. 236.
252 Petroleum (Exploration and Production) Act, 238.
254 Energy Bill 2015, Art. 112(I)(a) and 156(a).
255 Energy Bill 2015, Art. 112(I)(b) and 156(b).
256 Energy Bill 2015, Art. 112(I)(c) and 156(c).
258 EMCA, Cap 387, Section 57A.
259 EMCA, Cap 387, Section 59(3).


263 For a further explanation of the responsibilities vis-à-vis business relationships, see European Commission – Oil & Gas Sector Guide on Implementing the Corporate Responsibility to Respect (2014) Available at: https://www.ihrb.org/uploads/reports/EC-Guide_OG.pdf and see other sources in the bibliography.
272 Account by Taita Taveta, County Deputy Governor.
275 U.S. Department of State, Ibid., p.51.
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262 Cyanide is used to dissolve and separate gold from ore and is considered to be a much safer alternative to extraction with liquid mercury.


264 Ibid., p.6.


271 ICoca, Members by Country (reflecting that KK Security is the only Kenyan private sector company that is a member). Available at: http://iocca.ch/en/membership/private_security_companies%5BCompanies%5D=companies&area_of_operation=all&headquarter_country=ID&keywords=&op=Search&view_type=list&form_build_id=form-neWFoZ-UvJeJgW7bUg26ydd2WMZl-ABOUkXdmUt p_M&form_id=_search_for_members_filter_form#search_for_members_list.


283 The IHRB Nairobi Process is a member of the SESA technical advisory group.


315. 2010 Kenya Constitution, Article 164.
323. The Paris Principles are a set of international standards which frame and guide the work of National Human Rights Institutions (NHRIs). They were adopted by the United Nations General Assembly in 1993.
340. Article 6 (d) of the Treaty: good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights
341. Interestingly, the Court notes that “The jurisdiction of the Court may be extended to human rights at a suitable date to be determined by the Council.(see: http://eaic.org/?page_id=27.). see also: http://eaic.huruweb.org/wp-content/uploads/2013/09/Overview-of-the-EACJ.pdf
342. See: http://eaic.org/?p=2221
343. OECD Guidelines for Multinational Enterprises, National Contact Points. Available at: http://mneguidelines.oecd.org/ncps/ (containing a current list of countries adhering to the Guidelines).
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356 This is a multi-stakeholder initiative that aims to set principles and standards based on international human rights and humanitarian law, for the private security industry operating in complex environments, as well as to improve oversight and accountability for these companies. The International Code of Conduct Association. Available at: http://icoca.ch/en/coc-association.


359 ICoCA, Members by Country (reflecting that KK Security is the only Kenyan private sector company that is a member). Available at: http://icoca.ch/en/membership/private_security_companies%5Bcompanies%5D=companies&area_of_operation=all&headquarter_country=121&keywords=&op=Search&view_type=list&form_build_id=form-nEWFoZ-uEvjW7bUGz5ydy2WZI=-A8OUfXdMu7_pM&form_id= search_for_members_filter_form#search_for_members_list.


357 See: http://www.iffc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD =AJPERES
See: http://www.ihrb.org/focus-areas/kenya/


361 During the one-on-one interview process with businesses, often the business being interviewed would send 2-4 representatives to the interview. For purposes of this survey, these are considered to be part of the one-on-one interview process.


374 Note: Block ownership changes from time to time and may have been updated but not reflected in the ministry of Energy and Petroleum website.
Human Rights in Kenya’s Extractive Sector
Exploring the Terrain

Background

Kenya is a resource rich developing democracy, and while it maintains a consistently low score on the transparency and corruption index, it has a newly implemented and progressive Constitution (2010) that has dramatically changed the structure of the country’s government and judicial system. In 2012, large oil reserves estimated to be worth USD 62.4 billion were discovered, causing a heightened interested in foreign direct investment and extractive sector exploration and development.

Message

This report is the product of desk-based and on-the-ground interviews to assess the existing human rights and environmental impacts attributed to Kenya’s increasing extractive sector activities.

Recognising that the policy and legal framework plays an important role in setting the conditions to reinforce the corporate responsibility to respect human rights in the extractive sector, the Report includes an in-depth analysis of the policy and legal framework from a human rights perspective. Where these frameworks leave gaps or contradict international human rights standards, they present a challenge to a level playing field among companies, as the gaps can be filled by good – and bad – practices.

This can result in significant adverse impacts for local communities, as the field research highlights. The field-based, on-the-ground interviews provide perspectives from local communities, businesses and local governments on challenges and the impacts across a range of human rights.

The report highlights a number of concerns across a range of human rights, but chief among them were those related to land. Communities hosting extractives operations were concerned about inadequate consultation prior to companies accessing land, inadequate compensation for land and land improvements, inadequate protection of land rights due to lack of ownership title both for individual owners or communities that hold community title. Related to this were threats to livelihoods as a result of deprivation of land, as well as possible environmental degradation by the extraction activities.

Implementation gaps, in particular by government regulators, present a further critical driver of human rights challenges in the context of Kenya’s extractive sector. This is compounded by information asymmetry between communities and business, diminishing the chances of successful advocacy on behalf of impacted communities.

Implications

All stakeholders in Kenya’s extractive sector – the Kenyan Government, oil, gas, mining companies, investors, home governments, and civil society organisations – are encouraged to explore the terrain of human rights in Kenya’s extractive sector. This Report serves as a tool to better understand where the gaps exist and use the stakeholder-specific recommendations to effectively prioritise and advocate to close these gaps, providing a solid basis for the further expansion of Kenya’s extractive sector in line with sustainable development.