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Extractive Industries for Sustainable Development in Kenya



Progress Report

January 2014- December 2014

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Acronyms

AfDB	– African Development Bank
ADR	– Alternative Dispute Resolution
CIDP	– County Integrated Development Plan
CPD	– Country Programme Document
DGU	– UNDP Democratic Governance Unit
DFID	– UK Department for International Development
EECCU	– UNDP Energy, Environment and Climate Change Unit
GoK	– Government of Kenya
ICES	– Information Centre for the Extractive Sector in Kenya
IEG	– UNDP Inclusive Economic Growth
KCM	– Kenya Chamber of Mines
KOGA	– Upstream Oil and Gas Association of Kenya
MoDP	– Ministry of Devolution and Planning
MoM	– Ministry of Mining
MTPII	– Medium Term Plan II
PBCP	– UNDP Peace Building and Conflict Prevention Unit
TSC	– Technical Steering Committee
UNDAF	– United Nations Development Assistance Framework
UNDP	– United Nations Development Programme

Introduction

In 2013, under the auspices of the UNDP Global Programme for Extractive Industries and the UNDP Regional Africa Programme for Extractive Industries, UNDP Kenya developed the “Extractive Industries for Sustainable Human Development” project. The project aims to improve the lives of people living in areas endowed with natural resources by improving governance, economic empowerment, promoting peace and environmental sustainability.

The two-year project (2014-2015) was signed by the National Treasury in November 2013 and implementation began in January 2014. The project’s estimated budget is USD 2.8 Million for the two years. The first year of activities is fully funded with USD 1.35 Million provided by the UK Department for International Development (DFID) and UNDP. The contribution agreement was signed in November 2013 but DFID did not release the funds until late February 2014.

This report provides the status of activities beginning January 1, 2014 through the period of December 30, 2014. It reports only on the activities that were planned for this period and assesses whether progress has been realized. This report is meant to inform various stakeholders including Donors (both internal and external), the Government of Kenya and other relevant partners in the project implementation.

The overall expected outcome of this project is to ensure that the extractive sectors in Kenya are governed in a more participatory, equitable and sustainable way to ensure that they contribute to peace and sustainable human development. The outputs are:

1. Participatory decision making fora established to institute representation of communities in decisions on extractive industries and safeguard their rights and mitigate against growing tension between communities and investors.
2. Public institutions, the private sector and civil society have systems to ensure transparent, accountable and inclusive management of revenue from extractive industries.
3. Legal, policy framework and institutional capacity is in place to effectively support sustainable management of the extractive sector.

Country Context

The Government of Kenya (GoK), recognizing the importance of the new discoveries and the economic potential of natural resources, has prioritized Oil and Other Minerals in its Vision 2030 and Medium Term Plan II (MTP II). Under the Economic Pillar in the MTP II, the seventh priority includes Oil and other Minerals and lists over 20 projects that the Government of Kenya will implement during the 2013-2017 timeframe. During the first half of 2014 the Government of Kenya focused its work on updating relevant legislation and policies.

The United Nations (UN) System in Kenya has aligned its programming with Government of Kenya's development priorities articulated in the MTP II through the new United Nations Development Framework (UNDAF) 2014-2018. Under Strategic Result Area 3 which focuses on Inclusive and Sustainable Economic Growth, UN Agencies agreed to support the extractive sector. The expected output under this area is an extractive sector that is technically strengthened to apply measures that protect the environment, generate employment opportunities particularly for women, youth and marginalized groups, and invest in community development and social services. Emanating from the UNDAF, the UNDP Country Programme Document (CPD) for 2014-2018 has similarly prioritized activities to ensure sustainable human development for communities endowed with natural resources.

The extractive sector is complex and includes a number of different stakeholders. Development partners meet monthly through a Donor Technical Working Group to ensure activities are coordinated and aligned. The Private Sector is also working to harmonize Corporate Social Responsibility efforts through the Upstream Kenya Oil and Gas Association (KOGA) and the Kenya Chamber of Mines (KCM). A number of think tanks, academic institutions, civil society organizations and media are also involved in activities aimed at improving human development in the extractive sector. For this reason the African Development Bank (AfDB) launched the Information Centre for the Extractive Sector in Kenya (ICES) in December 2013. The UNDP Kenya project began in January 2014 within this complex, yet potential-filled environment. By achieving the project outcomes, the project hopes to improve livelihoods in affected communities.

Collaboration with the Government of Kenya

The project was signed by the National Treasury in November 2013, as per the guidelines set out by the Government of Kenya regarding development assistance. However, in March 2014 the National Treasury issued a letter to the Ministry of Mining requesting that it becomes the primary implementing partner for the project. According to UNDP rules and procedures, the implementing partner is entrusted with the implementation of all agreed upon project activities defined in the project document in consultation with UNDP and other key actors associated with the project.

While the Ministry of Mining is the primary implementing partner, several other government bodies are involved in the implementation of the project as responsible partners or collaborating parties. These include the Ministry of Petroleum and Energy; the Ministry of Devolution and Planning; the Ministry of Industrialization and Enterprise Development; the National Environmental Management Authority (NEMA); the Ministry of Interior and the Office of the Attorney General. These institutions were identified on the basis of their constitutional mandates and specialized skills in extractive industries. During the first year of project implementation, the planned activities were to be effected in four Counties selected according to human development criteria, geographical and natural resource diversity. The project was designed to work closely with the County Governments of Turkana, Kitui, Kwale and Taita Taveta. The Ministry of Mining shall coordinate all the government stakeholders for implementation of the project. This is to be done through the Extractive Industry-National Project Steering Committee (EI-SC) and the Extractive Industries National Technical Committee (EI-TC). The EI-SC is comprised of Principal Secretaries from the Ministry of Petroleum and Energy; the State Department of Environment; the State Department of Water and Natural Resources and UNDP. The EI-SC is the highest-level, decision-making and strategic group for the project. These Ministries were identified by the Ministry of Mining as the most proximate actors in the project. The EI-TC will comprise representatives from the Ministries of Mining; Petroleum and Energy; Environment; Water and Natural Resources; Industrialization; Devolution and Planning; Interior; as well as the County Governments of Kwale, Kitui, Turkana, Taita Taveta, and UNDP.

Progress towards Project Activities Supported by DFID

Indicator(s)	Milestone	Activity	Partners	Progress	Forward Plan	Budgeted Amount	
						Total Spent	Balance
Capacities of communities in Extractive Industries developed	Support the development of capacities of communities, including rights organizations, women's advocacy organizations and minority groups by raising awareness and enhancing their participation in decision making	A national consultation workshop on extractive industries to engage participants in dialogue to deliberate on current and emerging issues with a view to seek and find sustainable solutions to ensure that the industry contributes to the development of the nation.	Ministry of Mining, County Governments Community, Civil Society, Private Sector UN Women	Workshop conducted from 3 rd to 7 th November, 2014. The workshop brought together various stakeholders in the Extractive Industry including National and County Government, International Development Agencies, Local Development Organizations, Academia, Members of the Civil Society, Investors in the sector and community members.		\$ 20,000 (DFID) \$ 25,000 (BCPR) Total \$ 45,000	\$47,000 (BCPR)
Information dissemination mechanisms of communication in Counties with oil, gas and mineral resources developed	Develop information dissemination mechanism to the population in general, using traditional and non-conventional systems of communication	<ol style="list-style-type: none"> Three County level trainings for local journalists on the extractives sector in Kwale, Turkana, and Kitui Training of key media houses, targeting editors to ensure those reporting on extractive industries understand the extractive process and can accurately report on issues concerning communities and 	Ministry of Mining, Ministry of Energy and Petroleum, Kenya Upstream Oil and Gas Association, Media Council of Kenya, companies working in the extractives sector	<ol style="list-style-type: none"> Four trainings of journalists and editors concluded in Kwale, Kitui, Lodwar and Naivasha. A total of 120 journalists and editors have been trained with an average of 25 per region representing all media houses and sections (print, radio and TV) attending. Trained journalists committed to upholding ethical principles in reporting on extractive industry. Site visits by journalists to Kwale titanium sites to enable them gain understanding of operations and running of mines. Communication officers from the selected Counties took part 	There is need to conduct further training for the media. Plans are underway to fundraise for more resources for this activity.	\$ 34,000 (DFID)	0

		human development		<p>in the training with representation and participation from relevant Ministries from the County Governments.</p> <p>6. Instant impact resulting from the trainings as the journalist generated stories on the extractive industry in different local media platforms. Below are links to select stories; Daily Nation Link Link The Standard Link The Star Link and KNA Link</p> <p>7. Commitment from NTV to produce and screen a high level extractive industry feature and conduct an exclusive interview with the Minister for Energy and Petroleum David Chirchir.</p> <p>8. The Business Daily Newspaper has offered a weekly opinion piece on the extractive industry in Kenya. Dr. Odote, one of the facilitators, will initially make regular contributions to this column.</p> <p>9. Industry players committed to making information readily available to both local and national journalists to reduce the existing information gap.</p>			
Regulations of artisanal and small scale mining reviewed and or developed	Support capacity building for regulation of artisanal mining and small scale mining at national and local level	Recommendations from the Study on Artisanal and Small-Scale Mining in Taita-Taveta shall be discussed with the key stakeholders and government and review of regulations and laws initiated	Ministry of Mining, County Government, Kenya Chamber of Mines (KCM)			0	\$ 30,000 (DFID)

Leadership Training for Leaders from Arid and Semi-Arid lands on conflict sensitive approaches conducted	Support capacity development for leadership from ASAL areas on conflict sensitive approaches	Training conducted in Turkana, Kwale and Kitui on conflict sensitive approaches	Ministry of Mining; Amkeni; County government	Initial Visits conducted in the identified counties		\$ 2,225 (TRAC)	\$ 90,000 (BCPR)
Dispute Resolution Mechanisms in Extractive Industry established	Support the establishment of dispute resolution mechanisms, including ADRs, to address conflicts between communities and companies or within communities over extraction activities	Stakeholder's consultative forum on application of ADR in Extractives Dispute Resolution	Interior and Coordination, CSOs, Judiciary, Parliament	Initial consultations held with the Judiciary and Commission on Implementation of the Constitution (CIC) with a view to anchor the activity in the larger framework of developing and institutionalizing the ADR mechanism in the Kenya justice system in line with the spirit of Article 159(2) and (3) of the Constitution.	This activity is to be implemented this year	0	\$ 70,000 (DFID)
CSI initiatives aligned to national and county plan meeting human rights	Organize dialogue with companies and communities to ensure community consultations, strengthening capacities of business practices, align their corporate Social Investment (CSI) activities with national and local development plans, meet human rights and labor rights standards	Consultative meetings held with all stakeholders and initiatives for CSI identified and aligned to the national and county plans	Ministry of Mining; CSOs, Private investors; Community		To be implemented in 2015	0	\$ 70,000 (BCPR) \$ 50,000 (DFID)

Experiences with Community Investment Funds assessed	Conduct review of experiences with Community Investment Funds	Undertake a study on Community Investment Funds to identify lessons learnt and make recommendations for best practices	Ministry of Mining		To be implemented this year	0	\$ 30,000 (DFID)
Enhanced capacities of institutions, companies and CSOs in the management of extractive industries	Extractive Industry Partnerships developed and maintained by organizing Private-Public-Dialogue (PPD)	Public-private dialogues and training workshops for building supply linkages with small and middle-sized enterprises in promotion of Corporate Social Investment	Ministry of Mining, County Government, Private Sector, Community, civil Society	<p>A detailed profile of CSO's in Kwale County was finalized (See the attached report Annex 2)</p> <p>The CSOs, Community Leaders and County Government of Kwale formed a 7 member steering committee to spearhead engagement with mining companies in Kwale.</p> <p>A capacity building workshop was held in Kwale County in September 2014 which trained 122 participants drawn from CSO's Community Representative and County Government of Kwale.</p> <p>Through this engagement, CSOs, Community Leaders and Government Officials are now actively engaged in the mining activities in Kwale County to ensure sustainable community development, peacebuilding, Corporate Social Responsibility and Private Public Dialogue (PPD)</p>	More funding needed to support the initiative and document success stories	\$ 100,000 (DFID)	0
Inclusive management systems for extractive	Supply chain analysis to inform the development of small- and medium-size	Carry out supply chain analysis at National level and in Kwale and Kitui Counties to inform the	Ministry of Mining, UNDP, Kenya Chamber of Mines,	This activity was split into two separate but related studies as follows:	A stakeholder's workshop to interrogate and validate the findings of these two studies is	\$ 44,000 (DFID)	\$36,000

industries developed	enterprises as suppliers to the extractive industry, drawing on lessons from countries with more mature extractive sectors.	development of small- and medium-size enterprises as suppliers to the extractive industry, drawing on lessons from countries with more mature extractive sectors.	Community , CSOs County governments of Kitui and Kwale	A Value Chain Analysis for Selected Minerals in Kwale County with a special focus on Silica Sands and Duruma slates (Mazeras). The draft report is out and being reviewed. A Supply Chain Analysis for SMEs as suppliers to the EI in Kenya, the case of Kitui and Kwale Counties. The draft report is out and being reviewed.	scheduled on 3rd and 4th February 2015.		
Legal and policy frameworks for management of the extractive sector reviewed	Enhanced knowledge on existing legislation, policy and formal and informal mechanisms for community participation and environmental sustainability	Carry out study on existing legislation, policy and formal and informal mechanisms for community participation and environmental sustainability	Ministry of Mining	Draft report reviewed and submitted for the final comments before it is presented to the stakeholders in a validation workshop proposed for the first quota of 2015.	A validation workshop to be held so that the report is presented to the stakeholders	\$ 15,000 (DFID)	\$ 20,000 (DFID)
Various Policies in the Mining sector finalized	Policies such as Minerals and Mining ; management of quarrying Rocks and Industrial mineral; Explosives; Mines, Health, safety and Environment developed	Provide technical assistance to the development and finalization of various policies in the mining sector	Ministry of mining		Initial planning workshop held and the other activities to be implemented in 2015	\$ 16,000 (TRAC)	\$ 30,000 (TRAC)
		Undertake socio-economic studies and assessments to inform evidence based policy formulation and	UNDP and Ministry of Mining		To be undertaken in 2015	0	20,000 (TRAC)

		implementation in the extractive sector. These studies will also analyse the impact of extractive sector development on women, in particular on land rights and tenure security, gender-based violence, income-earning opportunities.					
Drivers of conflict in the extractive sectors identified	Conflict risk analysis to identify drivers of conflict and peace capacities including traditional dispute resolution mechanisms undertaken	Carry out a conflict risk analysis study to identify drivers of conflict, peace capacities, traditional and non-traditional dispute resolution mechanisms to inform pre-extraction decisions of government and companies as well as linkages between the extractive industry and marginalized groups (i.e. women, specific ethnic groups, communities etc.)	County Governments	The study is nearly finalized awaiting presentation to the stakeholders in 2015.	A validation workshop to be held for the report to be presented to the stakeholders and report to be published after	\$ 30,000 (DFID)	\$ 20,000 (DFID)
Efficiency at the Ministry of Mining enhanced	A communication Strategy Developed; Capacity building for the Liaison Unit enhanced	Institutional development for the Ministry of Mining	Ministry of Mining		To be undertaken in 2015		\$ 50,000 (DFID)

		Support the capacity of the Ministry of Environment, Water and Natural Resources and the National Environmental Management Authority (NEMA) in monitoring and enforcement of environmental standards (including environmental deposit bonds), laws and regulations.	Ministry of Mining; NEMA		To be undertaken in 2015	0	\$ 50,000 (BCPR) \$ 40,000 (DFID)
		Capacity Development of NEMA to develop policy and frameworks on the decommissioning of mines.	Ministry of Mining; NEMA		To be undertaken in 2015	0	\$ 50,000 (TRAC)
Project Costs						\$ 63,000 (TRAC)	
						\$165,000 (BCPR)	
						Total \$228,000	
Monitoring and evaluation to be conducted at the end 2015							\$ 50,000 (BCPR)
GRAND TOTAL						\$ 514,225	\$753,000

Project Management systems established for effective project implementation.

Risk Management

There are a number of potential risks that are identified as challenges during the implementation of the project. The table below identifies some of the challenges and the suggested mitigation.

Risk	Mitigation
Slow buy in by the Ministry of Mining as a result of it not being involved in the initial stages of implementation. This was because at the beginning of the implementation the Ministry had not been formed.	Several meetings held between the Ministry of Mining and UNDP to review the activities to be implemented and align them to the identified priorities and also to ensure that the Ministry is involved in implementation of all activities.
Scanty and inadequate access to information by journalists on extractives in Kenya and lack of	Training conducted under this project for media personnel gave rise to provision of space in the print media for experts to be writing on Extractive

specialized knowledge in extractive industry by journalists in Kenya	Industries. An Information Center for the extractive Sector was set up by UNDP and AfDB.
Inadequate funding for the project to carry out dissemination of extractive Industries information through print and electronic media	Continued resource mobilization is being carried out by UNDP
Lack of a centralized location/resource Centre on extractives in Kenya.	The UNDP and AfDB have set up an Information Center for the Extractive Sector. UNDP has recruited a coordinator for this.
Scanty documented information about artisanal mining in the Taita Taveta County.	The consultant hired for the artisanal mining study shall collect secondary data / information from the fieldwork to boost information. The study is already conducted awaiting a validation workshop.
Political interference in the gemstones industry	All stakeholders are being engaged in all forums to ensure equitable participation in decision making.
Heated debate on the New Mining Laws and Regulations	Some controversial clauses including the Benefits Sharing Agreements (BSA) between Counties, the National Government and local communities; issues of land and compensation for compulsorily acquired land and the powers granted to the Commissioner of Mines identified and discussions underway on reviewing the Mining Act.
Scanty documented information about ADR mechanism in the Country.	Part of the Judicial Transformation Framework has ADR as part of judicial reforms. There will be close working relationship with the Judiciary on the issue of ADR in the Extractive Industries.
Slow consultative processes among the institutional stakeholders.	The project initiates meetings with the key stakeholders and also tries to bring them together for engagement and discussions on issues of extractive.
Reluctance by some mining companies to engage with other stakeholders and public opinion is mostly against the mining companies hence poor relations	All stakeholders are being engaged in all forums to ensure equitable participation in decision making. In Kwale County, a 7-member steering committee made up of community leaders (2), CSOs (2) and Government (3) has been formed to engage mining companies in a more organized and participatory way.

The Ministry of Mining is a new Ministry and some capacity gaps exist.

UNDP is seeking to address this by offering support to capacity building in order to ensure effective and efficient delivery of their mandate. This in turn will ensure successful implementation of the EI project.

Lessons Learned and Way Forward

During this phase of the project a number of lessons have been learnt, namely:

- i. Internally to UNDP, since the project is being implemented by several different teams, it is important that the Project Coordinator regularly inform the teams of the various activities being undertaken. This calls for a more integrated approach during the implementation from all the stakeholders who include other UN agencies such as UN women; other Ministries such as Ministry of Energy and Petroleum; NEMA; Judiciary; Attorney General's Office; Media Council, Kenya Chambers of Mines among others.
- ii. Implementation of the activities had a slow start because at the initial stages of implementation the Ministry of Mining were not on board as they had not been appointed as Implementing Partner but official communication on this was received by UNDP from the Government. Measures have been put in place to ensure the Ministry and all the other stakeholders are now effectively involved to ensure faster progress in implementation.
- iii. The Work Plan was revised to ensure that the identified activities are in line with the Ministry of Mining priorities since it is the key implementer.

Way Forward

- i. Implementation of the activities is ongoing and the Ministry of Mining is on board. There is collaboration between UNDP and the Ministry of Mining in developing the 2015 work plan.
- ii. The Ministry of Mining identified a focal person from government to collaborate with UNDP in implementation of the activities.
- iii. UNDP is working closely with the Ministry of Mining and providing capacity support to ensure progress remains on course.
- iv. UNDP is also supporting efforts to enhance coordination and communication with all stakeholders under the Project.
- v. While the key activities under the Media component of the project have been finalized, UNDP aims to produce a short documentary on the Extractive Industry in Kenya and also publish a manual for journalist using the content derived from the trainings. These can be used for reference and as resource materials. UNDP will also support the Ministry of Mining to develop a Communications Strategy to ensure more efficient dissemination of information. Lack of information was a major complaint from journalist during the trainings.