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Extractives Industries for Sustainable Development in Kenya



Progress Report
January – June 2015
(with support from DFID)

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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
MoIED	-	Ministry of Industrialization and Enterprise Development
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. It is worth noting that the DFID funds were for one year only (2014); and by the close of the year, a total of USD 285,263.00 out the total amounted of USD 310,260.00 granted had been utilized.

This report provides the status of activities carried for the six (6) month period between January 1, 2015 and June 30, 2015. It reports on the activities that were planned for the GoK FY 2014/2015 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 (GoK) 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 (GoK & UN) 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 the Second Medium Term Plan (MTP II). The overall objective of the project is to support the priorities set in the Kenya Vision 2030 and the Second Medium Term Plan (MTP II, 2013-2018); specifically the Economic Pillar on “enhancing economic growth and reducing poverty”. 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 MTP II timeframe. During the first half of the FY 2014/2015 the Government of Kenya focused its work on updating relevant legislation and policies.

The project contributes to the United Nation’s Development Assistance Framework (UNDAF) Strategic Result 3 on ECONOMY, which states “By 2030, Kenya is an industrialized middle income country with a modern, inclusive, diversified and 24-hour economy: growth is inclusive and achieves sustainable development; trade is modernized, balanced, competitive, and regionally integrated; and employment matches the demand, is stable, private sector and SME-driven, decent, equitably accessible particularly to youth, women and vulnerable groups, and human rights compliant”. Specifically, the project has been directly contributing to UNDAF Outcome 3.2 on Productive Sectors and Trade, which states that “By 2018, the Productive Sectors (agriculture, manufacturing, extractives industry, trade and their value chains are private and SME driven, sustainable, diversified, technologically innovative, commercially oriented and competitive on national, regional and global markets”. 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 by its own nature and includes a number of different stakeholders. Development partners meet monthly through a Donor Technical Working Group to ensure activities are well 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 (ICES) in Kenya 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 (MoM) is the primary Implementing Partner (IP), several other government bodies are involved in the implementation of the project as responsible partners or collaborating parties. These include the Ministry of Energy and Petroleum (MoEP); the Ministry of Devolution and Planning (MoDP); the Ministry of Industrialization and Enterprise Development (MoIED); the Ministry of Interior and Coordination of National Government (MoICNG); the National Environmental Management Authority (NEMA) and the Office of the Attorney General. The project has also worked with County Governments of Kitui, Kwale, Taita Taveta and Turkana.

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 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 above mentioned County Governments.

Progress towards Project Activities Supported by DFID (Jan – June 2015)

Indicator(s)	Milestone	Activity	Partners	Progress	Forward Plan	Budgeted Amount			
						Total	Spent	Balance	
Capacity, legal and policy frameworks enhanced for sustainable management of extractives sector.	Support the Ministry of Mining to effectively and efficiently implement the project (ICT equipment, training of staff at SEAMIC)	Purchase of equipment for the MoM, consultancies to support MoM, travel and related costs	MoM	Equipment purchased, training of MoM staff planned.	Further support required at MoM especially with gemstone centre in Voi, gold processing plant in Vihiga and training of staff at the SEAMIC centre for enhanced capacities. Train gold artisanal miners in Western Kenya on safety of mining and use of mercury.	\$23,260	\$19,918	\$3,342	
Capacities of communities in Extractive Industries developed	Participatory decision-making fora established to institutionalize participation and inclusion of communities in decisions on extractive industries, to safeguard rights and promote collaborative engagement between communities, government and private sector.	County level 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.	MoM, C.Govts, Community, Civil Society, Private Sector	A stakeholders' forum for the Civil Society Organizations (CSOs), Community Leaders, County and National Government officials was held at the Parkside Villa Hotel in Kitui from 15 th – 19 th June 2015. A detailed report from the 2 experts is attached in the annexes.	An expert report highlighting the emerging issues highlighted during the workshop and best practices shared from other countries has been developed and will be shared to the stakeholders and capacities of stakeholders developed to raise awareness and enhancing their participation in decision making. Further engagement with community structures needed.	\$220,000	\$34,932	(\$23,427)	
				A stakeholders' forum for the Civil Society Organizations (CSOs), Community Leaders, County and National Government officials was held at the St. Teresa's Centre in Lodwar from 25 th – 26 th June 2015. This was planned together with the Turkana County Government. An appreciation note for this workshop is attached in the annexes.					\$14,697
				A stakeholders' forum for the Civil Society Organizations (CSOs), Community Leaders, County and National Government officials was planned for counties neighbouring Kitui in Machakos from 22 nd – 26 th June 2015. Due to some logistical challenges, the workshop was rescheduled to the first week of July. A detailed report from the experts will be submitted at a later date.					\$33,701.00

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	Develop information dissemination mechanisms to population in general, as well as targeting the communities in counties with oil, gas and mineral resources, over the extraction life-cycle, using traditional and non-conventional systems of communication.	MoM, MoEP, KOGA, MCK, Private Sector	<ol style="list-style-type: none"> Studies done in 2014 published <ul style="list-style-type: none"> Artisanal mining in Taita Taveta Review of community investment funds in Kenya Supply chain analysis (local content) in Kitui, Kwale and nationally Value chain analysis of Duruma slates and silica sands in Kwale Legal and policy framework for EI management in Kenya Incidence of conflicts in extractives industry Media awards by MCK given to exemplary media practitioners for EI reporting Industry players committed to making information readily available to both local and national journalists to reduce the existing information gap. 	<p>There is need to conduct further training for the media. Plans are underway to fundraise for more resources for this activity.</p> <p>With the MCK, develop a guidebook for media on reporting on extractives in Kenya</p>		\$29,459	
Best practices learned. CSR activities improved.	Building on Corporate Social Investment initiatives of extractive companies, facilitate public-private dialogues and training workshops for building supply linkages with local small- and middle-sized.	Technical Assistance (TA) on extractives best practices	MoM, KCM, C.Govts, Private Sector	Technical Assistance (TA) on extractives best practices	The needs for enhanced learning on EIs, drawing lessons from other countries, is still a big challenge for Kenya's emerging extractives sector.		\$130,638	
Monitoring and evaluation to be conducted at the end 2015						\$67,000	\$21,918	\$45,082
Total						\$310,260	\$285,263	\$24,997

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 / Challenge	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. Future, need more time for programme implementation.
Changes at the Ministry of Mining in early 2015 – the PS was suspended, a new acting one in place.	This initially slowed down work, but implementation is on course.
Scanty and inadequate access to information by journalists on extractives in Kenya and lack of specialized knowledge in extractive industry by journalists in Kenya	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 Industries. An Information Centre for the Extractive Sector (ICES) was set up by UNDP and AfDB and should continue to be supported.
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 Centre for the Extractive Sector (ICES), UNDP recruited an ICES coordinator who then resigned after four (4) months when he was appointed to diplomatic services. Under the new AWP 2015/2016, we hope to have adequate resources to support this position.
Scanty documented information about artisanal mining in the Taita Taveta County.	UNDP undertook a study on artisanal mining in Taita Taveta, the report is being published. With UNDP support, the artisanal miners in Taita Taveta were capacitated to form an umbrella organization to champion their issues and engage with policy makers at both County and National level.

Political interference in the gemstones industry	All stakeholders are being engaged in all forums to ensure equitable participation in decision making. The umbrella organization referred to above will facilitate dialogue and conflict resolution.
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. The study on legal and policy framework on EIs addressed this issue.
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. The CSO and other stakeholders' workshops held in Kitui, Kwale, Turkana and Machakos have enhanced the consultative process and dialogue with all stakeholders.
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:

- 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 of Kenya (MCK), Kenya Chambers of Mines among others.
- 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.
- The Work Plan was revised to ensure that the identified activities are in line with the Ministry of Mining priorities as the IP.

Way Forward and Conclusion

- Implementation of the activities is ongoing and the Ministry of Mining is on board. A new work plan has been developed in collaboration between UNDP and the Ministry of Mining; which includes institutional Capacity Building for the Ministry
- Legal, policy and institutional capacity development – support the sensitization of the Mining Bill (Summarized Version);
- Information dissemination mechanisms – Recognize journalists reporting on extractives, print 1,000 copies of the report on status of media reporting on extractives and launch during the World's Press Freedom Day to be commemorated on 4th May, 2015 at KICC and is supported by Media Council;
- Establishing dispute resolution mechanisms between communities over the extractives; conduct review of experiences with Community Investment Funds – Conduct an all-inclusive stakeholder forum to report on SME survey done in Kitui, engage all stakeholders in discussing the proposed coal mining in Kitui County
- Facilitate community engagement to ensure participatory decision making, collaborative engagement between communities, government and private sector through supporting workshops and forums between stakeholders to discuss emerging issues in the extractives and agree on a way forward;
- Providing capacity building to the Ministry of Mining and National Environment Management Authority (NEMA) to in monitoring and enforcement of environmental standards(including environmental depository Bonds) and developing policy and frameworks for decommissioning mines
- UNDP (both HQ and Kenya CO) are at advanced stages in drafting a new EU Funded project on Low Value Minerals (LVM) in Kenya.
- UNDP is also supporting the Kenya's Country Mining Vision (CMV) High Level Round Table (HLRT) scheduled for 11th August 2015.

DFID remains an important and valued partner for UNDP in achieving the objectives of this EI project. UNDP is committed to strengthening the communication and reporting to foster this important relationship.

ANNEXES

Annex 1: DfID - Letter of No-Cost Extension



Extension%20of%20DfID%20Funds.pdf

Annex 2: Annual Work Plan 2014/2015



Annual%20Work%20Plan%20July%202014%20-%20June%202015.pdf

Annex 3: Kitui CSO's Workshop Report



Workshop%20Report%20-%20Kitui%20CSOs.pdf

Annex 4: Appreciation Note, Turkana County



Appreciation%20Note%20-%20TOAGC.pdf

Annex 5: Summary of Project Implementation



Summary%20for%20the%20Project%20Implementation.pdf