

NATURAL RESOURCE GOVERNANCE AND MANAGEMENT OF EMERGING CONFLICTS ARISING FROM EXTRACTIVE INDUSTRIES:

A CASE OF KITUI, KWALE AND
TURKANA COUNTIES

JUNE 2018



**NATIONAL STEERING COMMITTEE
ON PEACE BUILDING & CONFLICT MANAGEMENT**
Ministry of Interior and Coordination of National Government



REPUBLIC OF KENYA



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This publication is a product of Security Research and Information Centre (SRIC), New Waumini House, 2nd Floor, Waiyaki Way, Westlands, Nairobi – Kenya.

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P.O. Box 66019-00800, Nairobi - Kenya

Activities that led to this publication were funded by UNDP – Kenya, Sweden and European Union (EU) through National Steering Committee on Peace Building and Conflict Management (NSC/PBCM).

Published: 2018

ACKNOWLEDGEMENTS

Security Research and Information Centre (SRIC) would like to acknowledge a number of individuals and institutions for their contribution and support that made this research a success. We wish to commend the Government of Kenya through the National Steering Committee on Peace Building and Conflict Management (NSC) and the Kenya National Focal Point on Small Arms and Light Weapons (KNFP) for providing administrative and organizational support during the entire study exercise. We would also like to specially acknowledge United Nations Development Programme (UNDP Kenya), Sweden and European Union (EU) for providing the technical and financial support that made this study a success.

Our sincere gratitude also goes to the membership of the Reference Group (RG) comprising KNFP, NSC, UNDP, NDMA, NPS, ACT! and PfPS. Their peer review and insights greatly enriched the content and substance of this report.

This study would not have been possible without the invaluable contribution of all SRIC staff, to whom we extend our sincere gratitude. In particular, we wish to acknowledge the able stewardship provided by the Director of SRIC, Col. (Rtd.) Jerry Kitiku. We are sincerely grateful to Singo Mwachofi, Luchetu Likaka and Samuel Maina for their leadership in fieldwork exercises. We are also indebted to Zipporah Nabwire Wepundi, Carolyn Samoei, Everlyn Mbaika Lumbi, Antony Nzioka Maneno and Cynthia Martin for their commitment in data collection, entry and analysis. We also appreciate the administrative support team comprising of Anne Warui and Philip Munyasia for their office work relating to this report. The peer review, input and editorial work done by Dickson Magotsi regarding this report is sincerely acknowledged.

Last but not least, the research and compilation of this report would not have been realised without the involvement and participation of all those respondents who devoted their time and information to inform the report. We sincerely laud your co-operation. A big thank you to you all!

ACRONYMS AND ABBREVIATIONS

ACT! - Act Change Transform	LRF - Legal Resources Foundation
ASALs - Arid and Semi-Arid Lands	MCAs - Members of Community Assembly
BSA - Benefit Sharing Agreement	MPs - Members of Parliament
CBOs - Community Based Organizations	NDMA - National Drought Management Authority
CDA - Community Development Agreement	NEMA - National Environmental Management Authority
CIA - Conflict Impact Assessment	NGAOs - National Government Administrative Officers
CLO - Community Liaison Officers	NGOs - Non-Governmental Organizations
CMK - Cortec Mining Kenya	NPS - National Police Service
CRA - Commission on Revenue Allocation	NSC - National Steering Committee on Peace building and Conflict Management
CSOs - Civil Society Organizations	PAW - Pacific Wildcat Resources Corps
CSR - Corporate Social Responsibility	PfPS - Partnership for Peace and Security
DDG - Danish Demining Group	RoK - Republic of Kenya
EIA - Environmental Impact Assessment	SRIC - Security Research and Information Centre
EU - European Union	UNDP - United Nations Development Programme
FBO - Faith based Organization	VSO - Village Socialization Officers
FGD - Focus Group Discussions	WRMA - Water Resources Management Authority
FIMC - Fenxi Industry Mining Company	
FOLT - Friends of Lake Turkana	
IDK - I Don't Know	
KEFRI - Kenya Forestry Research Institute	
KII - Key Informant Interview	
KISCOL - Kwale International Sugar Company Limited	
KLA - Kenya Land Alliance	
KNCHR - Kenya National Commission on Human Rights	
KNFP - Kenya National Focal Point on Small Arm and Light Weapons	

EXECUTIVE SUMMARY

Kenya is endowed with massive natural resources including minerals, forests, wildlife, water, dry lands, hydropower and wetlands among others. Most of these resources remain unexploited while in cases where attempts at exploitation have been made, they are actually under-exploited. Kenya's minerals and oil discoveries present an excellent opportunity for boosting of the economy. This will ensure diversification of revenue generation. It is anticipated that the extractive industry, which is quickly emerging, will largely contribute to the realization of Kenya's Vision 2030 that seeks to transform Kenya into a newly industrialising middle income country by the year 2030. However, as a lesson learnt from the rest of Africa, rather than stimulating broad-based economic development, resource extraction has tended to concentrate wealth and power in the hands of a few, exacerbate corruption and inequalities, lead to environmental degradation and pollution, while doing little to reduce poverty, economic disparities and generate employment. Worse still, in many countries extractive resources have fuelled violent conflicts. Kenya is no exception. In spite of the challenges presented by exploitation of oil and minerals, a number of countries have managed their extractive industries successfully, diversifying their economies, managing governance deficits and conflicts, and investing in human development and infrastructure for the betterment of the people and the nation at large.

Extractives in Kenya: Since the discovery of oil and minerals in Kenya, there are major concerns over the nature and extent of benefits that will accrue to the local communities. There has been a serious discourse as to whether the extraction of these natural resources will be a blessing or a curse to the Kenyan population, particularly those that host the excavations. This is due to the fact that control over the extraction of natural resources such as oil and minerals is not a devolved function. Instead, it falls under the National Government as per the provisions of the Constitution of Kenya 2010. Indeed, since the discoveries were made in various parts of the country, there have been tensions, confrontations and conflicts whose effects have been felt far and wide. If this state of affairs continues unmitigated, it will contribute to instability and fragility that will not only adversely affect the realization of Vision 2030 but Kenya's economic development as a whole.

Why this Research: To be able to provide information that would enable Governments and other actors effectively manage the natural resources, prevent and respond to recurrent and emerging new frontiers of conflict, SRIC with financial support of UNDP, Sweden and the European Union, conducted a research on the natural resource governance and management of conflicts within the context of the extractive industry in Kenya. The study was conducted between January and August 2018 in targeted parts of Kitui (Mui Basin, Kabati, Ngaie, Migwani and Mbondoni), Kwale (Msambweni, Ukunda, Mrima, Kwale and Matuga) and Turkana (Lodwar and Lokichar) Counties. This comparative study aimed at understanding the different types of natural resources exploited, the contexts within which the operations are being conducted and the response mechanisms to concerns regarding the resource exploitation. The focus on these 3 Counties was also based on the considerable national and international attention and level of investments that these Counties have attracted with regard to the extraction industry. It was also based on the historical and geographic positioning that they wield and their implications on peace and security.

The objectives of this study were (i) to determine the drivers of conflict around extractive industries in Kitui, Turkana and Kwale Counties; **(ii)** to map stakeholder's involvement in extractive industries in Kitui, Turkana and Kwale Counties; **(iii)** to examine dispute resolution mechanisms around extractive industries in Kitui, Turkana and Kwale Counties; **(iii)** to assess the legal, policy frameworks and institutional capacity gaps in extractive industries in Kenya; and **(iv)** make recommendations on effective and sustainable management of the extractive industry in Kenya.

Findings: The study established that there was a lot of excitement and hope in the discoveries, explorations and ongoing extractions across the three counties that stands at 67.2%. Most people expect that the extractions will contribute to better standards of living in the long term through employment and increased circulation of capital, improved infrastructure and social amenities, development of CSR projects in terms of scholarships, hospitals, and bursaries among others. It was further noted that the relations between national government and the

respective County Governments had improved from confrontation to cooperation.

However, there remains a number of issues that provide fodder for conflict. These include the loss of land by community members to mining companies and the government. This is coupled with displacements; unfinished resettlement and inadequate compensation schemes. Further, there are increased cases of pollution, environmental degradation, health hazards and destruction of archaeological sites. While the industry is expected to address the raging unemployment challenge in the 3 counties, thus still remains an eye-sore. There are allegations of discrimination in employment especially by the local population who feel left out of specialised and high level positions. They allege that most of them are absorbed in menial jobs that remain insecure and obscure. It is also interesting to note that issues around award of tenders and contracts for supply of goods and services are another source of conflict. Further, lack of information among the general population with regard to the extractive industry stifles their participation in decision making. While efforts have been made in Kitui, Kwale and Turkana to have Liaison Committees, the communities seem unable to access a lot of information thereby finding themselves continually agitating and at loggerheads with mining companies or by extension, the national government. With regard to policy and legislation, there are grey areas especially with the Mining Act, The Land Act among others. This calls for concerted efforts to ensure that clear, coherent and harmonised policies are developed to guide the exploitation of oil and minerals. Where such policies, legislation and strategies exist, they need to be reviewed.

Finally, it is notable that dispute resolution and conflict management mechanisms and initiatives with regard to the challenges in the extractive industry in the 3 counties are ineffective.

Conclusion: This study concludes by noting that the extractive industry in Kenya is promising and lucrative. It is anticipated to contribute to Kenya's economic development and attract immense international attention and investment. However, the unresolved land disputes, unabated unemployment levels, low literacy levels, political incitement, and overall resource-based conflicts that are transboundary in nature, are feeding into inter-county and intra-county conflicts.

Recommendations: There is no single actor, policy, law or process that can effectively address the challenges and issues brought to the fore by this study with regard to natural resource governance and management of the existing and emerging conflicts arising from the extractive industry in Kenya. A multi-prong, multi-sectoral, multi-stakeholder, multi-dimensional approach should be embraced. People should be put right at the centre of the extractive industry in Kenya for it to accrue the desired benefits. The national government, county governments and mining companies should embrace democratic principles that will allow for wider community involvement to minimise on escalation of conflicts and possibilities of emergence of new frontiers for confrontation. Efforts should be made towards inclusion, collaboration and cooperation.

National Government	County Governments	Mining Companies	National and International Non-State Actors including CSOs, CBOs , NGOs and host communities
Strengthen coordination, co-operation and consultation with County Governments	Improve access to information by communities on extractive sector operations	Promote transparency and accountability	Enhance civic education
Establishment of intergovernmental sectoral forums, committees, inter-agency platforms, standing committees and working groups	Develop and implement policies, legislation and strategies on natural resource and environmental management.	Enhance community participation, community sensitization on mining	Enhance training and sensitization

Review the Mining Act 2016 to provide for the involvement of the county government in the mining	Enhance presence, visibility and responsiveness	Engage with the local community to identify practices and opportunities that can positively impact on the livelihood of communities	Enhance collaboration between CSOs working in the counties to improve service delivery and avoid duplication. Consider a programmes approach to development.
National government and parliament to accelerate enactment of the land and petroleum bills into law with consideration of community demands on revenue sharing.	Strengthen coordination, co-operation and consultation with the national government	Proactively engage county governments to ensure a supportive operating environment:	Local community needs to be proactive in participating in decision-making
Train and enhance capacities of community mediators to address emerging conflicts	Collaborate with the national government in the implementation of the Inter-Governmental Relations Act 2012 and operationalize relevant intergovernmental sectoral forums, committees, inter-agency platforms, standing committees and working groups	Develop and share with the community members successful mine closure and land reclamation programmes	Host community needs to be proactive in participating in decision-making regarding the CSR activities carried out by mining companies
Step up issuance of title deeds to the locals	Promote conflict sensitive programming infused with Conflict Impact Assessments		host communities are expected to provide an enabling environment and conducive atmosphere for investment
Develop a comprehensive land compensation plan	Position peacebuilding and conflict prevention, management and resolution (CPMR) at the centre of development policies, strategies and legislation with deliberate efforts to integrate peacebuilding in CIDPs.		Development Partners to deepen support in building capacity for dialogue, negotiation and mediation. They should also sustain funding beyond political and electoral processes so as to institutionalize peacebuilding programmes.
NEMA should improve its accessibility to communities and address community complaints concerning environmental impacts	Strengthen and sustain civic education		Media to promote and enhance conflict sensitive reporting, guard against sensationalism, incitements and working-up emotions of the local population. The media should serve to inform and educate the public on the extractive industry
Promote conflict sensitive programming			

CHAPTER ONE

INTRODUCTION TO THE RESEARCH



1.1 Background

Over the past two and a half decades, extractive resources have played a direct role in more than a dozen intra-state violent conflicts¹. These conflicts may centre around control over the natural resource and the revenues it generates; various social groups may use the resource as a source of funding for generating other types of conflicts (i.e. social, political, ethnic, etc.); or these conflicts may be a manifestation of a larger political struggle between County and National government, and may include issues relating to identity, religion,

race, control of territory, or even a separatist agenda. Indeed, management of extractive industries is one of the most critical challenges facing many resource-dependent developing countries today.

Rather than stimulating broad-based economic development, reliance on resource extraction has tended to concentrate wealth and power in the hands of a few, exacerbate corruption and inequalities, lead to environmental degradation and pollution, while doing little to reduce poverty, economic disparities and generate employment. Worse still, in many countries extractive resources have fuelled violent conflicts.²

A number of countries have managed their extractive industries successfully in recent

decades, diversifying their economies, managing governance deficits and conflicts, and investing in human development and infrastructure for the betterment of the people and the nation at large.³ As Kenya undergoes political, economic and social transition underpinned by a progressive Constitution, it has great opportunity to learn from mistakes of others, harnessing the benefits and avoiding the resource curse and negative impacts of extractive industries. However, given the importance of context and nuance in understanding how conflict triggers are embedded within the wider political economy of extractive industry investment, it can be argued that there is a pressing need for a more refined and situated understanding of the governance agenda.

Resource governance norms have evolved at multiple scales to counter the potential negative socio-economic, environmental and institutional impacts of the extractive industries. Advocates of these 'good governance' initiatives have sought to mainstream transparency throughout the extractive industries value chain and implement pro-poor projects at the site level. However, these types of resource governance interventions often fall short of their promised development benefits. Poorly understood is how the process of resource extraction and the expectation of supposed revenue windfalls affect the governance dynamics of host countries and localities⁴. It therefore borders on existing legislation, policy and formal and informal mechanisms for community participation; undertaking a detailed study on county and community engagement and governance to inform nationwide community engagement frameworks and guidelines; understanding the impact of extractive sector development on women, in particular on land rights and tenure security, gender-based violence, income-earning opportunities. Besides, there is need to appreciate conflict risk analyses 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 for instance women, specific ethnic groups, communities among others in the selected regions where extractive industries are taking root.

Conflicts emanating from extractive industries are disagreements and disputes over access to, and control and use of, natural resources. These conflicts often emerge because people have different uses for resources such as forests, water, pastures and land, or want to manage them in different ways. Indeed, disagreements arise when these interests and needs are incompatible, or when the priorities of some user groups are not considered in policies, programmes and projects. Such conflicts of interest are an inevitable feature of all societies. In recent years, the scope and magnitude of natural resource conflicts have increased and intensified. These conflicts, if not addressed, can escalate into violence, cause environmental degradation, disrupt projects and undermine livelihoods. Acknowledging that conflict is a common feature in extractive industries in Kenya is a prerequisite for sustainable management that is participatory and equitable.

1.2 Statement of the Research Problem

The emergence of extractive industries in Kenya has come with both challenges and opportunities. First, the selected counties of Kwale, Kitui, and Turkana are ranked among the most unequal Counties in Kenya by the Commission on Revenue Allocation's (CRA)⁵ and therefore have an opportunity to harness these resources to improve the welfare of the residents. There are however challenges. The challenges include high levels of rural poverty in rural areas, insecurity and conflicts and social tensions between communities. Climate change and its impact on ecosystem services is another challenge. Additionally, infrastructure and poor flow of information on the processes which has led to speculation about the fate of communities has also posed problems. Clashes over the terms of

¹ Including Nigeria, Sierra Leone, Burma/Myanmar, Peru, Indonesia/Aceh, Indonesia/Papua, Papua New Guinea, Angola, Angola/Cabinda, Congo Brazzaville, DRC, Niger, Pakistan/Baluchistan, Cambodia, Central African Republic, Zimbabwe, Sudan/South Sudan, and possibly others, depending on definition and perspective. See UNEP. 2009. *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*. UNEP: Geneva. http://postconflict.unep.ch/publications/pcdmb_policy_01.pdf

² Nicholas Shaxson (2007) *Poisoned Wells: The Dirty Politics of African Oil*

³ See UNDP (2013) *Extractive Industries for Sustainable Development in Kenya*

⁴ Matiru V (2000). *Conflict and Natural Resource Management*. Retrieved on July 23, 2018 from: <http://www.fao.org/forestry/21572-0d9d4b43a56ac49880557f4ebaa3534e3.pdf>

⁵ See more at: CRA (2018). Retrieved from: <http://www.crakenya.org/information/downloads/> on July 23, 2018

mineral contracts have become a political lightning rod in many resource-rich counties. Indeed, a series of conflicts in recent past some ending in lengthy litigation, project cancellation or unsettled investors and bitter local communities have been witnessed in selected research sites.

1.3 Objectives of the Research

1.3.1 Overall Objective

The overall objective of this study was to assess the natural resource governance and management of conflicts within the context of the extractive industry in Kenya.

1.3.2: Specific Objectives.

The study had the following specific objectives:

- a) To determine the drivers of conflict around extractive industries in Kitui, Turkana and Kwale Counties.
- b) To map stakeholder's involvement in extractive industries in Kitui, Turkana and Kwale Counties.
- c) To examine dispute resolution mechanisms around extractive industries in Kitui, Turkana and Kwale Counties.
- d) To assess the legal, policy frameworks and institutional capacity gaps in extractive industries in Kenya.
- e) To make recommendations on effective and sustainable management of the extractive industry in Kenya.

1.4: Justification of the Study

The rationale behind this study is anchored on the need to provide policy advice and guidance to stakeholders at the national, regional and international level. In particular, it is envisaged that findings of this study will provide information with regard to how natural resources are exploited and management within the 3 Counties under reference. It will provide useful information that will inform conflict-sensitive planning and programming; development of policies, legislations, strategies, regulations and guidelines; development and implementation of interventions not only in the 3 counties under study, but across the rest of the

country. It is further envisaged that the findings of this study will inform other areas of study with a view to adding new knowledge to that which already exists. Overall, it is anticipated that the study will find favour among policy makers, governments, development partners, investors and speculators, civil society, peace and security practitioners, community members, academicians among others.

CHAPTER TWO REVIEW OF LITERATURE



2.1 Introduction

This Chapter provides an in-depth analysis of literature relevant to this study. The literature analyzed comprised of reports and publications by the national government and the Turkana County Government, Development Partners, Investment companies, civil society organizations, faith based organizations and the media, among others.

2.2: The Extractive Industry

Resource-based conflict is one of several destabilizing phenomena commonly cited as defining many of the extractive economies of the globe. The proliferation of global initiatives to oversee a transparent management of natural resources came about at the turn of the century as a donor effort to tackle development problems associated with the "resource curse": corruption, institutional erosion, civil conflicts,

and economic crowding-out effects (Ross 1999, Collier 2007, Karl 1997)⁶. Dependence on extractive resources, however, may also increase the likelihood of underdevelopment, fragility and conflict. There is a shared recognition of the conflict risks associated with natural resource over-dependence and the so called “resource curse”, as well as of the transformational potential of oil, gas, and mineral revenues for reducing poverty, boosting prosperity, and supporting economic diversification.

The inability to unlock natural resource wealth for the benefit of developing countries’ local populations, a phenomenon popularly known as the “resource curse” or the “paradox of plenty”—has spawned extensive debate among researchers and policy makers in recent years.⁷ There is now a well-established body of literature exploring the links between natural resources and conflict, with some sources estimating that over the past 60 years, 40% of civil wars have been associated with natural resources (UN, 2012a). The West African sub region is no stranger to the resource curse, with numerous resource-rich states having strong links to instability and conflict (for example, Sierra Leone, Liberia, Guinea, Côte d’Ivoire, Nigeria, Mali, and Niger). In a number of recent conflicts, warring factions have been able to access “lootable” resources (that is, resources such as alluvial diamonds and gemstones that have a high value-to-weight ratio, and can be easily appropriated and transported by unskilled workers) through artisanal extraction,

which some scholars have suggested has been particularly amenable to fuelling and prolonging “greed-based” insurgency.⁸

2.3: The Extractive Industry in Kenya

Kenya is endowed with a wealth of natural resources including minerals, forests, wildlife, water, dry lands, hydropower and wetlands among others. Mineral resources found in Kenya include titanium that is available in commercially viable quantities in Kwale County at Mrima Hill. Substantial deposits of gold are believed to exist in Western Kenya at Macalder mines in Migori County and Ikolomani in Kakamega County, while huge deposits of coal have been established at the Mui Basin in Kitui County. Commercially viable mineral oil deposits are in Turkana County and suspected to be also in Baringo and Elgeyo Marakwet County (RoK, 2016). Other minerals found in Kenya include Soda Ash and Trona mined in Lake Magadi. Gemstones extraction potential exists at Mrima hill and some parts of Taita Taveta County, while Diatomite harvesting is possible at Kariandusi and Elmentaita in the Rift Valley. Kenya is also endowed with steam (geothermal energy) in the Rift Valley at Kapedo and Suguta Valley in Baringo County, Solai in Nakuru County, the Mui basin of Kitui and Homa Hills of Homa Bay County (Republic of Kenya, 1969). Gypsum availability has been confirmed in Wajir County, Mandera County at Rahmu and Konza in Machakos County. Gypsum in commercial quantities is available at Isinya in Kajiado County (RoK, 2016).

Based on this availability, Kenya has in the recent past witnessed increased investment in the mining sector, with new Multi-national mining companies coming on board. This has led to intensification and expansion of mining

activities across the counties culminating in the discovery of oil deposits in Turkana County in 2012 and, the first shipment for export of twenty-five tons of Titanium mined in Kwale County in February 2014. The trend is expected to continue because the Constitution of Kenya 2010 (Articles 69 and 72) and the Kenya Vision 2030 encourage the sustainable exploitation of natural resources for national development (RoK, 2007; RoK, 2010). The exploitation of mineral resources is however, prone to environmental and socio-economic impacts whose net effect could accelerate or slow down economic growth. Even though mining is regarded as a vital economic activity, it tends to have significant negative impacts on the environment.⁹

Kenya’s oil and gas reserves are located in areas that have been historically prone to conflict over scarce resources, such as land and water. Competition for these has always existed in what is commonly known as Northern Kenya, which encompasses almost 80% of the country’s land mass, and consists mostly of arid and semi-arid Lands (ASALs). Frequent droughts, intensified in recent years by climate change, have stressed rivalries over water and land in the ASALs. By some estimates, only 17% of the land in Kenya is fertile and over 80% of Kenyans depend on it for subsistence (Kanyinga, 2004), which explains the intense competition for land and the deep-rooted grievances that exist around it.

The ASALs have historically been neglected and lag behind other rapidly growing areas (Okoth-Ogendo, 1991; Mwathane, 2010; Syagga, 2011). For that reason, the economic development policy of the ASALs to reduce regional inequalities and risks of conflict has become one of Kenya’s top priorities. Kenya has a National Policy for the Sustainable Development of ASALs. Its attendant Sessional paper No.12 of 2012 for the National Policy for the Sustainable Development of ASALs is also in place. In addition to these, several strategies have been developed specifically geared towards addressing the particularities of these areas: a unique geography; dispersed populations; unique pastoral livelihood; low levels of education; and unskilled labour, among others

(Republic of Kenya, 2012). The implementation of the policy and strategies has been received with mixed results.

Speculation by members of the political elite over the future value of oil lands, which added to the migration of population to future producing areas in search of jobs has already started to deepen competition over land. According to some estimates, at least 100’000 hectares of land were bought in recent years in Lamu by people from outside the region known locally as *speculators*, in expectation of an increase in its value following oil and gas discoveries (Nunow, 2012). In some cases, non-residents bought land in Lamu and received titles for their purchase, creating much friction with the local population that consistently failed to secure legal rights to the plots where they have always lived. In Kenya in general, local authorities have been publicly accused of illegally allocating government plots in urban areas, or of misusing trust lands, which the 2010 Constitution describes as native reserves where communities live collectively and with no formal ownership (Republic of Kenya, 2004). The areas where oil has now been found are no exception to this history of land irregularities.

While catchment populations in resource-rich areas are often the hardest hit by the negative externalities of extractive projects, an important point of departure for any assessment of governance and conflict in extractive industries rests on the recognition that “communities” are not bounded, homogenous entities especially if you examine Turkana, Baringo and Lamu. Rather, they are defined by social differentiation and micro politics. As argued by Leach, Mearns, and Scoones (1997), in trying to come to grips with how community-level actors respond to development outcomes, an alternative perspective “starts from the politics of resource access and control among diverse social actors, and sees patterns of environmental change as the outcomes of negotiation, or contestation, between social actors who may have very different priorities” (p. 4). In some cases, images of consensual, harmonious communities have been strategically constructed by local actors themselves to present a contextually unified counter-position to powerful external players such as mining companies (Ahluwalia, 1997).

Although extractive industry investments

⁶ Guliyev, Farid, *Unpacking the Political Resource Curse: How Oil Fuels Personalism and Undermines Democratization* (December 17, 2014). Available at SSRN: <https://ssrn.com/abstract=2759011>

⁷ For example, the appropriation and mismanagement of high-value natural resources has been frequently cited as a key factor in triggering, escalating, or prolonging conflicts in all corners of sub-Saharan Africa (see for example, Collier and Hoeffler, 2001; Elbadawi and Sambanis, 2002; Ross, 2003; Bannon and Collier, 2003; Fearon, 2004). However, there continues to be considerable disagreement over the causal factors of conflict in resource-rich countries, with some scholars attributing conflict to resource politics (“grievance”) and others basing their analysis on exploitative economic interests (“greed”). For a more complete overview of the “greed vs. grievance” thesis, see Berdal and Malone (2001) or Collier and Hoeffler (2004).

⁸ Many scholars have explored the links between lootable resources and civil violence, drawing different conclusions from compiled datasets on wars and intermittent conflicts (for example, see Berdal, 2005; Collier and Hoeffler, 2004; Korf, 2005; Regan and Norton, 2005). Humphreys (2005), for example, notes that diamonds tend to shorten civil wars by facilitating military victories rather than negotiated settlements. Ross (2004a, 2004b), on the other hand, observes that lootable resources could make conflict so profitable that one or more combatants lose their incentive to reach a peace settlement, a view that is reinforced by le Billon (2001, 2006).

⁹ *Governance of Extractive Industries collaboration platform: www.goxi.org*

can potentially provide important economic benefits for catchment communities, the significant amount of land and other livelihood resources they appropriate can also cause severe community dislocation and hinder local development. In many rural stretches of West Africa, communities are often guided by a strong sense of indigenous rights over natural resources, which may be deeply connected to identity and characterized by a firm sense of local entitlement, all of which can lead to a resentment of outsiders who exploit local resources for profit (Fanthorpe and Maconachie, 2010).

Further shaping questions around local access to resources within communities, unequal power relationships are a pervasive feature of social dynamics, and diverse and conflicting resource priorities between local actors can transform into contests of struggle or negotiation (Leach, Mearns, and Scoones, 1997). Unequal access to resources and competing visions of rural capitalism can therefore exacerbate tensions within communities, as well as between communities, governments, and extractive companies. Conflict at the community level may ensue over “the control of space, the governance of territory, access to land and water resources, the defence of human and citizenship rights, and dissatisfaction over the distribution of mineral rents” (Bebbington et al., 2008b, p. 893). In short, land confrontation may result between different stakeholders (for example, communities, governments, and companies) simply because each place fundamentally differs on socioeconomic values on land (Hilson, 2002).

As noted by Hilson (2012), few industrial activities leave as great an environmental footprint or are as capable of having as much influence on the wellbeing of a society as a large-scale mine or oil and gas project” (p. 133). Since rural economies in Kenya are inextricably linked to the health of natural resources such as forests, soil, rivers, wildlife, and fish, a threat to the ecosystem is simultaneously a threat to the subsistence and income of local populations (Horowitz, 2011), placing concerns on “the security and integrity of livelihoods” (Bebbington et al., 2008a, p. 2890). Indeed, the environmental degradation caused by extractive industry projects can increase the vulnerability of the poor, exacerbate tensions, and trigger conflict.

Furthermore, it is frequently the case that conflict within catchment communities can result from grievances that stem from insufficient compensation for loss of resources, or inadequate consultation with companies and governments. Although many countries have now adopted community development agreements (CDAs) or similar arrangements in their mining laws, companies still often deal directly with national government agencies, bypassing local stakeholders’ altogether. In some cases, where limited community consultation does take place, extractive companies may privilege relations with elites or traditional leaders, whose interests can diverge considerably from those of the community. In such situations, elites may capture supplier contracts, employment opportunities, and other benefits.

In the context of Kenya’s current extractive industry boom, it remains an ongoing challenge to convert resource rents into sustainable development trajectories that provide space for meaningful citizen engagement and accommodate the needs of all segments of society. While vast new discoveries of valuable and increasingly accessible resources such as gas and coal have propelled counties to positions of unprecedented economic growth, history has shown that if such resources are badly managed, mounting tension and conflict are inevitable.

It is also clear, however, that the conflict triggers associated with resource-related grievances are most often connected to, and reinforced by, deeper structural drivers of change. In this respect, operational interventions to mitigate conflict and yield more sustainable and equitable development outcomes must be informed by a richer and more textured understanding of complex country contexts. Indeed, it is not possible to engage with the broader issues of governance and development without a more nuanced understanding of the political economy of extraction (Barman et al., 2012), or an appreciation of how this is connected to wider patterns of accumulation and distribution. Any attempt to reduce levels of conflict will therefore not only require attention to “better” resource management, but also to local contextual political struggles and how they are embedded within broader causal factors.

From the foregoing, it is incumbent that significant conflict potential is true at each stage

in the natural resource governance and extractive industries. These are well seen at the exploration and discovery; definition and allocation of tenures or concessions; construction of access and operational infrastructure; operations and decommissioning; revenue collection, management and allocation; and, revenue investment into development programmes and projects. Further, the key causes for conflict during each of these development stages include inadequate engagement of communities and stakeholders in the development process; unfair distribution of the benefits, costs, risks and responsibilities associated with the development; impact of the development on the environment, communities, and the local and national economies; corruption and diversion of funds to satisfy individual gains at the expense of national and community interests; and, inadequate institutional and legal framework to govern the extractive industries development and management of funds.

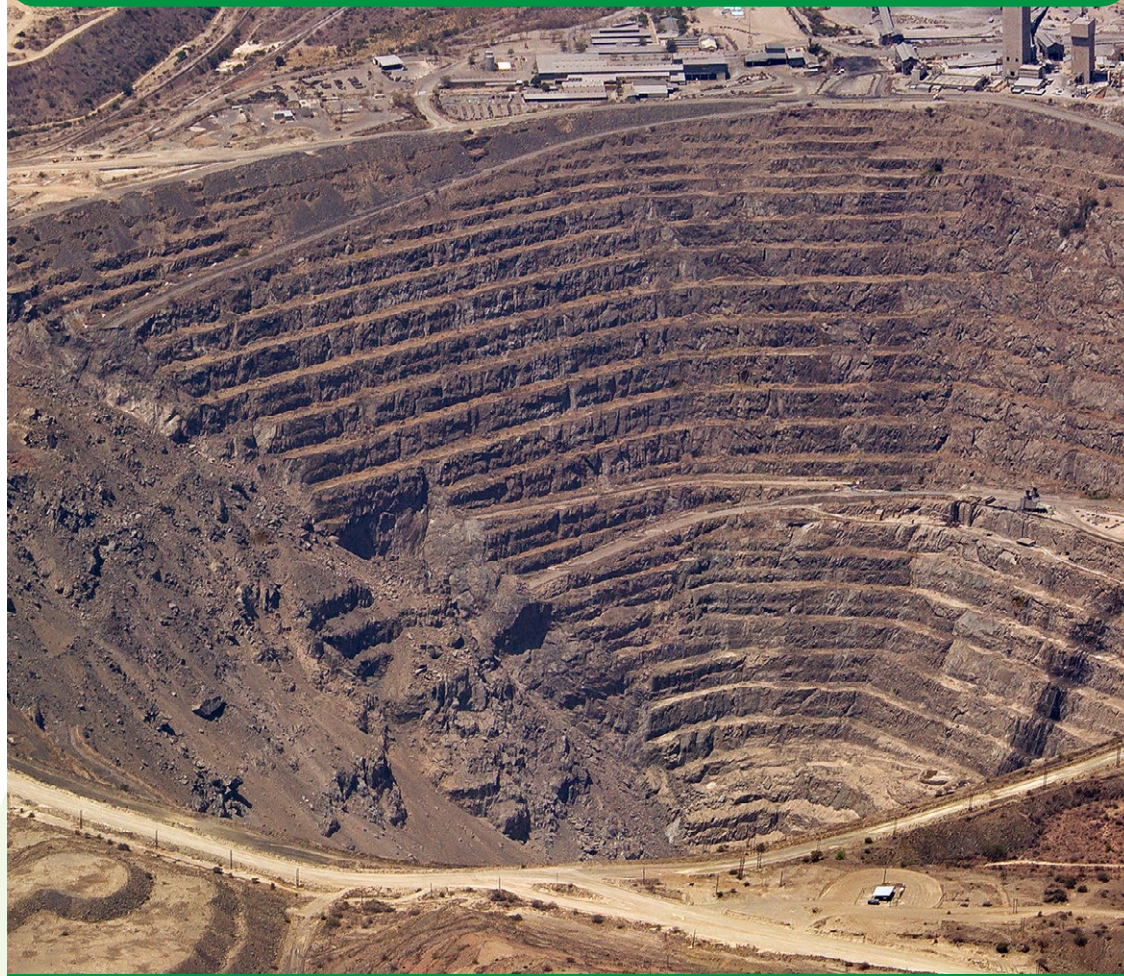
From the analysis of the selected literature, a number of gaps have been identified that can be sorted into three main fields resource governance; conflicts drivers, rebellion resources; and the position and participation of local populations in resource governance across all sectors of extractive industries. Literature has revealed that there is limited consensus on how to approach and conceptualize resource-related issues in conflict-affected areas. In addition, dominant concepts lack empirical testing. In particular, there is little evidence on how conflict impacts frameworks of resource governance, how these frameworks define people’s access to and control over resources, and how in return populations deal with these frameworks. Most studies start from the assumption that these actors are driven by predatory ambition and pay limited attention to their attempts to create or support local governance processes. The main challenge, therefore, will be the development of a comprehensive micro-perspective on fusion resource governance arrangements and to integrate resource-related issues into research on conflict, security, and post-conflict reconstruction.

2.4: Conclusion

The literature review shows considerable variation in the evidence base for the different claims being made. Much attention has been paid to claims that resource abundance increases

the risk of bad governance and conflict, and that economic incentives are the explanatory factor of armed groups’ strategies. While these claims have a significant impact on policy and have had the effect of narrowing down the attention to resource control in conflict settings, the evidence in support of these claims is largely macro-level orientated and tends to overlook the complexities of armed actors’ motivations and incentive structures. The same literature tends to overlook the local level and the position and role of populations. Valuable local-level empirical data on aspects of resource control in conflict areas are presented in policy-oriented reports, but most of these studies do not question their assumptions regarding the connections between resources and conflict, and fail to move beyond normative perspectives.

CHAPTER THREE RESEARCH METHODOLOGY



3.1 Methodology

This research made use of both secondary and primary means of data collection. In secondary data collection, previous reports of extractives and emerging conflicts in areas where extractive resources have been discovered were reviewed. Literature from other stakeholders like government agencies, NGOs, both print and digital media and individual researchers was also reviewed to enrich this research. Additionally, primary data was collected from the three study areas. The study made use of the following methods in collecting primary data to meet the study objectives:

3.2 Key Informant Interviews

Purposive sampling was applied to ensure that specific key informants are reached for the relevant information. The samples were mainly from officials of national government, officials from the county governments of Kitui, Kwale and Turkana, local community, exploration/ excavation companies in those localities, community based organisations, and civil society organisations. Key informants were identified based on their role and level of knowledge in extractive industries. The study also used in-depth interview schedules and focus group discussions. In total, 10 key informants' interviews were conducted in each of the three Counties of study.

3.3 Focus Group Discussions

The research conducted 6 focus group discussions, one in each selected study area. The FGDs targeted members of the civil society, business people or investors, women and youth groups.

3.4 Questionnaires

A total of 662 questionnaires were administered to members of the public in the selected

locations. Respondents were randomly selected from a sample population of those aged 18 years and above. Further, in the letter and spirit of the Constitution of Kenya 2010, gender balance and sensitivity were considered during the administration of the questionnaires.

3.5 Targeted Areas

The table below shows distribution of target areas.

Table 1: Targeted Areas

County	Constituency	Study Areas	HH Interviews	KIIs	FGD
Kwale	Msambweni	Msambweni	47	2	1
		Ukunda	93	2	1
		Mrima	33	2	0
	Matuga	Kw ale	47	2	0
		Matuga	20	2	0
Kitui	Mwingi Central	Mui Basin	59	2	1
	Kitui West	Kabati	38	1	1
	Mwingi North	Ngaie	31	0	0
	Mwingi West	Migwani	15	2	0
	Mwingi South	Mbondoni	5	2	0
Turkana	Turkana South	Lokichar	174	4	1
	Turkana Central	Lodwar	100	9	1
Totals			662	30	6

3.6 Limitations of the Study

Generalization of findings could be limited by the scope of the study: Although the identification of the sample counties and areas was informed by extraction/ exploration processes ongoing in those specific areas and also the conflicts reported, there are more other counties in which the extraction processes have been ongoing for decades. A wider scope would have improved the quality of the findings.

This study sought to conduct a comparative analysis of Kitui, Kwale and Turkana counties

owing to the recent discoveries and ongoing extraction of minerals and other resources in the three counties. Use of independent cases studies for the three counties could give a different overview and more enriching content on management of natural resources and conflicts arising from extraction of resources in each of the three counties.

CHAPTER FOUR STUDY FINDINGS AND DISCUSSIONS



4.1 Introduction

This Chapter discusses the findings of the study. It provides a discussion of the cross-cutting issues within the 3 Counties in line with the objectives of the study.

4.2: Study Population

The study anticipated to interview a total of 750

respondents but owing to logistical challenges, a total of 662 respondents were realized which translates to a response rate of 88.3%. The distribution of the population is as shown in Table 2 below.

Table 2: Number of people interviewed per county

County	Frequency	Percent
Turkana	275	41.5
Kitui	148	22.4
Kwale	239	36.1
Total	662	100.0

4.3 Respondents' Profile

The profile of the respondents was a major consideration in this study. Consideration was given to gender, age bracket, level of education, occupation, length of stay with a view to elicit information relevant for the study.

4.3.1 Gender Distribution

The study anticipated to interview the same number of males and females. This was however

not possible given the cultural dynamics, leadership positions held, availability and other practical considerations. In some areas, it appeared women were not allowed to make some responses leaving the researchers with no alternative but to interview only men. Overall, 55.9% of the respondents were male while 44.1% were female. The KII and FGD's were not affected by this disparity since the selection of participants was gender- sensitive. The interviewers also ensured equal participation.

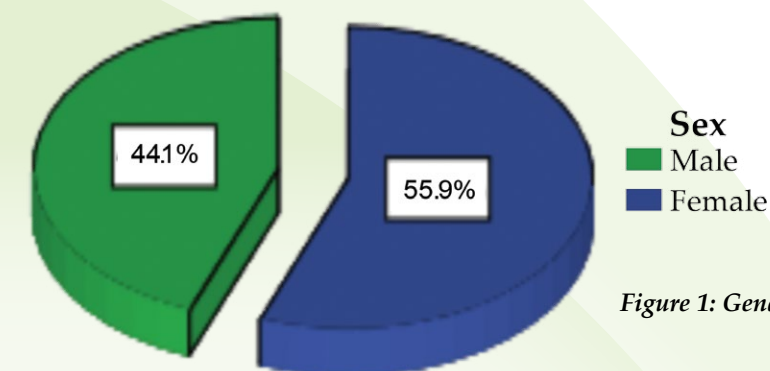


Figure 1: Gender Distribution

4.3.2 Age Distribution

The study targeted respondents aged above 18 years. This was achieved as majority of the respondents were aged between 26 and 45 years comprising of 54.6% of the sampled population. This was closely followed by youth aged between 18 and 25 years, who formed 25.1% of the sample. Other age groups that took part in the study included 46 – 55 years that constituted 14.2% and finally those 56 years and above who constituted 6%.

between 18 and 45 years constitute the majority (Owiti & Scott, 2016)¹⁰. According to Owiti & Scott, Kenya is a very youthful country with about 80% of the population being youth aged below 35 years.

The age distribution could also be attributed to the fact that most of the people working, looking for employment or with high expectations on the ongoing or anticipated excavations are youth below 45 years of age.

The age distribution reflects the general Kenyan population structure where the youth or people

Table 3: Age distribution

Age bracket	Frequency	Percent
18-25	166	25.1
26-35	181	27.3
36-45	181	27.3
46-55	94	14.2
56+	40	6.0
Total	662	100.0

¹⁰ Owiti, A. & Scott, B. (2016). *The Agha Khan University: The Kenya Youth Survey Report*. See more at: <https://www.aku.edu/eai/Documents/kenya-youth-survey-report-executive-summary-2016.pdf>

4.3.3 Levels of Education

The levels of education varied across the three counties. Turkana had the highest level of respondents with both no formal education and informal education as shown in Figure 2. Of all the respondents who reported that they had no form of education, the majority were from Turkana County at 77% followed by Kwale County at 15% and Kitui County at 7%. Similarly, 72% of people with informal education were from Turkana, 22% from Kitui and 7% from Kwale.

Kwale County had the highest percentage of people with secondary and post-secondary levels of education. As shown in the Figure 2, 52% and 43% of people with both secondary and post-secondary levels of education were from Kwale, followed by Turkana with 33% for both and finally Kitui where majority of the residents had primary level of education. This means that levels of exposure and involvement on the extractives varies across the three counties based on the levels of education.

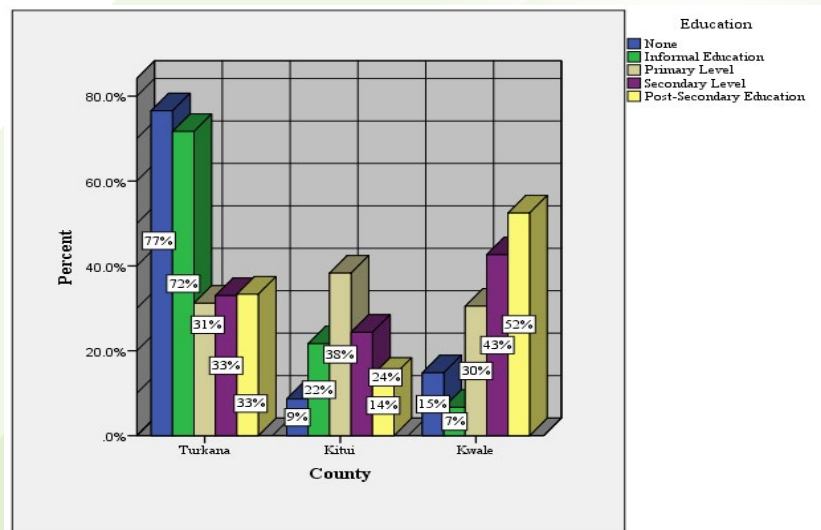


Figure 2: Levels of education

4.3.4 Occupation

In regard to occupation, majority of the respondents across the three counties were small scale business people who represented 22.5%, followed closely by the unemployed at 22.4%. Other groups of respondents included civil servants who constituted 11.6%, casual workers (11.5%), professionals (9.8%), farmers (8.9%) and students (7.9%). The study also interviewed housewives who accounted for 2.3%, pastoralists (2.0%) and religious leaders (1.2%).

The status of occupation shows that majority of the people living in the vicinities of the ongoing or anticipated excavations were unemployed. Going by the already established finding that majority of people in these areas were youth aged below 45 years of age then it implies that majority of youth across the three counties were either unemployed or engaged in small businesses to eke a living. This is illustrated in Table 4.

Table 4: Occupation

Occupation	Frequency	Percent
Professionals	65	9.8
Casuals	76	11.5
Unemployed	148	22.4
Business persons	149	22.5

Farmers	59	8.9
Pastoralists	13	2.0
Civil servants	77	11.6
Housewives	15	2.3
Religious leaders	8	1.2
Students	52	7.9
Total	662	100.0

4.3.5 Length of Stay

The study sought to establish how long the residents had lived in the vicinities to the extraction sites and as shown in Figure 3, factors of rural and urban settlements and also prospective or speculative behaviour of better opportunities in the near future were at play. In Kitui and Turkana, majority of the residents had

lived in those sites for over 6 years or all their lives. This compared to Kwale where majority of the respondents had only lived in areas surrounding the excavation sites for less than 5 years speaks to the rural-urban migration and the perceived better employment opportunities in the cities and satellite towns.

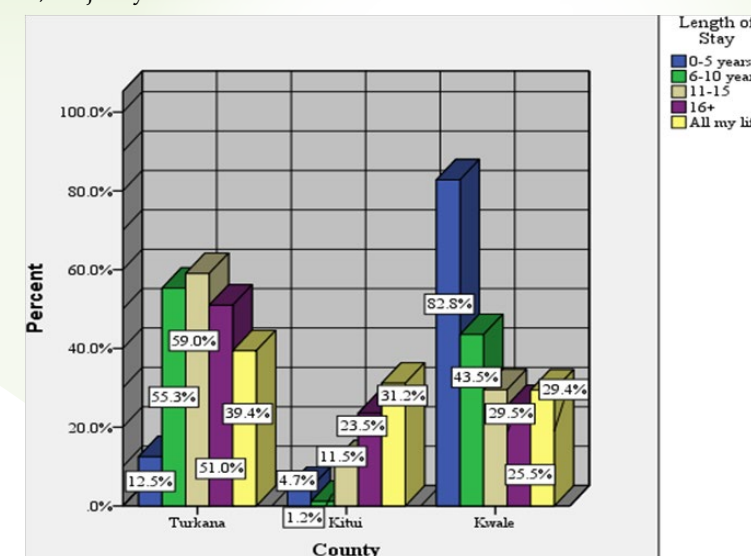


Figure 3: Length of Stay

4.4 General Findings

The study analysed crosscutting themes touching on all the 3 counties combined. This was followed by the County-based analysis.

4.4.1 People's Perceptions on the Discoveries

The study sought to establish people's perceptions on discoveries, explorations and ongoing extractions across the three counties. As shown in Figure 4, a majority of 67.2% indicated that they were excited about the discoveries,

23% posited that they were indifferent about the discoveries and ongoing processes while the remaining 10% reported that they had not thought about the discoveries.

This could be an issue of limited knowledge on the ongoing processes or simply diminishing expectations on the discoveries considering that the processes of awarding contracts, moving and compensating residents and finally beginning the processes of extraction took too long to an extent that some community members were beginning to doubt whether their expectation would ever be met.

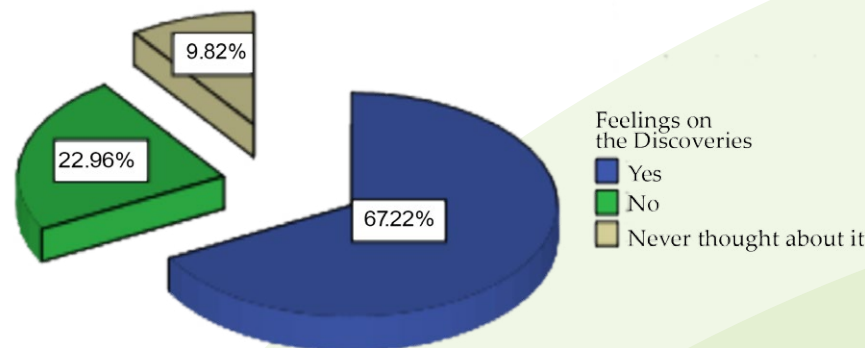


Figure 4: Peoples' Feeling on Discoveries

4.4.2 Expectations of Locals on Discoveries

On the expectations of the locals from the discoveries, it was clear that communities across the three counties were vouching for personal gains. This ranged from better living standards as mentioned by 45.5%, job opportunities indicated by 39.7% to business opportunities as mentioned by 11.9%. It was interesting to also note that some community members had no expectations as indicated by 2.9% of the respondents.

This was confirmed by key informant and focus group discussants who reported that community members living around areas where the extractions were ongoing had very high expectations. Majority noted that there is always a wave of excitement when extraction equipment are sited because to many it signals commencement of the processes which to many means job opportunities, better living standards for the locals and more business opportunities for the locals. A key informant in Msambweni noted that:

“.....locals here expect more than just the casual jobs which have been given over the last few months Base Titanium Company has been in operation.....we expect to be given first priority in employment opportunities, because there is definitely enough manpower and skills in this locality. We have so far noted that most of high profile jobs are being given to outsiders and I assure you that the locals are not happy...”¹¹

Key informants also noted that the extraction of titanium would herald an era of better social facilities, better infrastructure and better living standards. Community members also expect investors to support construction and rehabilitation of schools, mosques, hospitals, roads, scholarships among other benefits which according to them signals improved living standards. Others reported that with the improvement of infrastructure, there will be more connection roads which will open-up the interior part of Kwale County and therefore enable businesses to flourish and ultimately improve the local economy.

Table 5: Expectations of locals on discoveries

Expectations	Frequency	Percent
Better living standards	301	45.5
Job Opportunities	263	39.7
Business Opportunities	79	11.9
None	19	2.9
Total	662	100.0

¹¹ A key informant in Msambweni commenting about expectations of the locals from the ongoing operations of the Base Titanium in Kwale County.

4.4.3 Marginalization

According to Katindi (2015), a large percentage of the population living in these prospective mineral producing regions in the three counties in the study live below the poverty line. These communities have also been historically marginalized by successive policies such as the Northern Frontier Districts Policy and Sessional Paper No. 10 of 1965 on African Socialism¹². Based on this, the study sought to establish perceptions of the locals on the marginalization issue and as depicted in Figure 5, views on the subject were split in an almost 50:50 parity.

This showed that the locals were beginning to see possibilities of doing away with the once deep rooted perceptions of marginalization through the opportunities created by the discoveries.

When asked the context of marginalization, majority mentioned lack or poor road networks in the areas, lack of social amenities, and failure by successive governments to involve local communities in key decisions about the region, fewer or no job opportunities for the locals and high illiteracy levels which the locals attributed to poor infrastructure and neglect of the regions by post-independence governments.

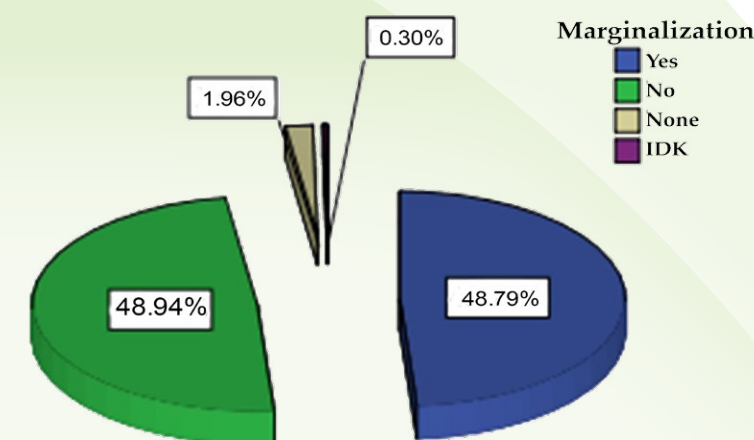


Figure 5: People's perception on marginalization

4.4.4 Benefits to Community Members

In terms of benefits accruing to community members, a majority of 43.2% mentioned employment opportunities, scholarships and education opportunities for the locals especially in Turkana County as mentioned by 19.5%, others noted the numerous CSR projects such as schools and churches supported by the extraction companies – this was indicated by 15.7% of the respondents and finally training opportunities for the locals as posited by 9.8% of the respondents.

It was also clear that some community members had never bothered with the ongoing processes

or the investor – community interactions as shown by 10.6% and 1.2% of the respondents who left the question unanswered and indicated that they did not know respectively. This shows that they were either ignorant of the ongoing processes or were simply disinterested in community developments.

In Kitui County, majority of the discussants mentioned that some of the CSR projects initiated by the investors were helping improve living standards of the locals. Athi River Mining Company was mentioned to have bought chairs for some schools in Zombe and Mbungi area.

¹² Katindi Sivi-Njonjo (2015). LOCAL COMMUNITIES IN KENYA'S EXTRACTIVE SECTOR: From Paternalism to Partnership. Retrieved from: https://www.kirkensnodhjelp.no/contentassets/2a28ebbac27d47e1bf647844633586d4/local-communities-in-kenya_s-extractive-sector-from-paternalism-to-partnership-0.pdf

Others mentioned that Erdemann Gypsum Limited had renovated facilities in a hospital in Mwingi Sub County.

One key informant in Kitui summarized the contribution of investors in the county by mentioning that:

“Investors here in Kitui have tried to solve some community problems...some of these companies have renovated health clinics, created some employment opportunities to some locals, and bought school chairs for some schools in areas where they have set up their offices. There has also been good

and welcome improvement of infrastructure such as: construction of roads and sinking of boreholes in Zombe-Mbungu by Kenya Coal. The local community in Ngaie has also benefitted from a community managed trust fund initiated by Athi River Mining”¹³

In Turkana County, majority of the key informants and focus group discussants mentioned education scholarship opportunities, sinking of boreholes and provision of water storage tanks advanced by Tullow Oil Company as some of the benefits received by community members.

Table 6: Community members’ benefits

Community Benefits	Frequency	Percent
Employment Opportunities	286	43.2
CSR Projects such as schools, churches	104	15.7
Trainings	65	9.8
Scholarships and education opportunities	129	19.5
No response	70	10.6
IDK	8	1.2
Total	662	100.0

4.4.5 Means of Addressing Emerging Conflicts

In addressing emerging conflicts, a majority of residents in the vicinities of extractive sites in the three counties indicated that clarity in benefit sharing agreements is critical so as not lead to suspicion and simmering tensions among community members. This was indicated by 38.4% of the residents. Residents also pointed out that there was need to ensure a quota system in employment is established to ensure locals benefited more from available and emerging job opportunities as indicated by 16.5% of the respondents. Other means of addressing emerging conflicts mentioned included intensification of sensitization meetings on explorations especially in ensuring transparency and accountability, 23.3%, enactment of community land ownership laws by the county

governments, 18.4% and ensuring proper compensation of the locals on land, 2.4%.

Generally, community members seemed unhappy with the way extractives have been or are being managed in the three counties. Indeed, more than 58% of residents from across the three counties noted that community members have been deprived of critical information on the ongoing processes and do not feel sufficiently involved in the extraction of resources. A majority of residents consulted for this study expressed concerns with the top secret kind of management of resources which seems to have been adopted by most of the companies or investors in the counties. This position was confirmed by key informants who mentioned that residents were not aware of the processes and in most of the times they relied on newspapers and other media platforms on news

of the progress made in extraction of resources within their localities.

A key informant in Kitui County mentioned that:

“...people have been coming here to ask questions on the resources and others on our concerns but nothing happens...we rely majorly on rumours and media to know what is happening and we are increasingly getting tired of giving these information... there have been rumours that we shall

be moved from here to pave way for excavation of coal but no one bothers to explain to the community members what that entails”¹⁴

In Turkana County, there seemed to be a good level of awareness on the ongoing processes which could be attributed to efforts of Tullow Oil Company especially in hiring VSOs, CLOs to sensitize community members on the importance of the ongoing processes and also deal with some of the concerns raised by community members.

Table 7: Means of addressing emerging conflicts

Means of Addressing Emerging Conflicts	Frequency	Percent
Clarity in benefit sharing	254	38.4
Quota system in employment to ensure locals benefit	109	16.5
Community land ownership laws by the county governments	122	18.4
Intensify sensitization meetings on importance of the explorations	154	23.3
Proper compensation	16	2.4
No response	7	1.1
Total	662	100.0

4.4.6 Efforts on winning support of local communities.

In winning the support of the locals, the study identified a number of recommendations from members of the communities across the three counties. Top of those recommendations included the need to reach out to community members through sensitization and training meetings as mentioned by 29.3% of the residents with the view to ensure proper consultations between the investor and community members, ensure locals are given priority when job opportunities arise as opposed to non-locals, 10.7% and craft proper legislations meant to

ensure that community members were properly compensated and also on benefit sharing as indicated by 8.8% of the respondents.

Other recommendations advanced included the need to ensure sufficient compensation for effects of environmental hazards to the locals and proper involvement of the county government as mentioned by 3% apiece, the need to ensure proper management of toxic waste from the extraction sites and also setting up of refining factories within the localities as opposed to other towns and cities as mentioned by 1.7% and 1.5% respectively.

¹³ Key informant comments on benefits accrued from investors and other companies prospecting coal in Kitui County.

¹⁴ A key informant in Kitui commenting on lack of information on the ongoing prospecting of coal in the county. Interview held in February, 2018

Table 8: Means of winning community support

Recommendations on winning support of the communities	Frequency	Percent
Organize sensitization and training meetings	124	29.3
Compensation for effects of environmental hazards	20	3.0
Proper management of toxic waste	11	1.7
Proper involvement of the county government	20	3.0
More employment opportunities for locals than non-locals	71	10.7
Proper legislation on compensation and benefit sharing	58	8.8
Factory for refining oil to be within the locality	10	1.5

4.4.7 Legal, Policy Institutional Frameworks

The mining sector is regulated by the Mining Act, Cap 306 which is an adaptation of the Mining Ordinance of 1933. The Act was revised in 1972 and 1987. It states that all minerals are vested in the government and may only be issued to any other person subject to processes established under the Act. There is a proposed mining bill that creates a sharing formula, where revenues obtained from the sector are to be shared between the national and county governments, as well as communities affected by the mining project. The revenue is to be apportioned with the national government getting 75% of the total government revenue, the county government getting 20% while the local community gets 5%.

The fundamental challenge with the policy and legislative framework is its inability to promote coherence and a clear mechanism by which the governance of natural resources is to be done. First, the laws have been developed without any robust policy framework to guide the formulation of laws. This is a dangerous process that may undermine the coherence of the laws and their ability to provide a clear responsibility guideline on management of natural resources in the sector. Further, the laws on the extractive sector seem to assume the role of the National Land Commission (NLC) as the overall body tasked with oversight of land use which

inevitably includes the management of natural resources found on any land.

At the local level, the community simply understood 'policy' as a county plan to exploit the mines and ensure that as many people as possible benefited from the natural resources; others understood policy to mean the right of the artisanal miners to exploit the natural resources; while others considered policy to refer to clear county strategy for managing natural resources. This variation in interpretation of the term 'policy' is a clear indication of the knowledge gap among the residents of these three counties and the need to incorporate them in the policy dialogue and policy formulation processes. There is an outcry over land adjudication processes; disagreement emerging from difference in approach by companies interested in extractives and locals about the use of hectares and acres.

Based on this, a majority of 86.3% were not aware of any legal instrument put in place to ensure proper management of resources. Only a paltry, 3.8% were affirmative on this issue. On further probing, community members seemed to be aware of only the constitution and the mining bill of 2014 but were mostly not aware of the contents.

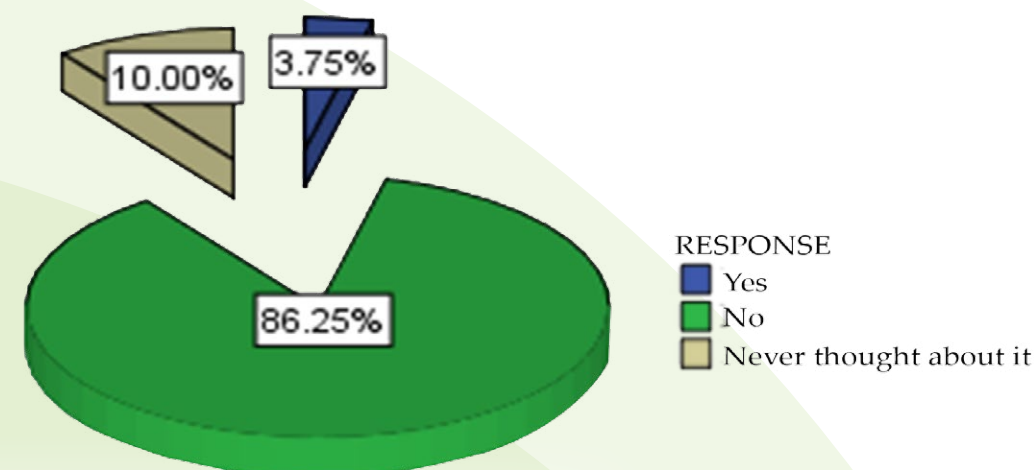


Figure 6: Awareness on legal, Policy institutional frameworks

4.4.8 Legal, Policy and Institutional Capacity Gaps

The research established that although a mining Act 2016 (Article 183, 5), exists, its full implementation is still lacking. The Act stipulates that 70% of the mining royalties go to the national treasury, 20% goes to the county government and 10% should go to the local people where the mining is happening¹⁵. There is no clear definition of who "these local people where the mining is happening are". This is a problem because in most cases, the people who were occupying the land before mining started were relocated and compensated. There seemed to be different understanding and interpretation on the definition of the community mentioned in the benefit sharing formulae across and within the three counties. In Kwale, for example, residents interviewed in Msambweni felt that this 10% should go to the original people who were relocated from the land. National and county government representatives and some other key informants felt that the money should benefit the people from the immediate locality of the mining area. A county ward administrator in Kwale argued thus:

“The cash should go towards development projects in the localities where the mineral is being mined”¹⁶.

The other legal framework is the Land Act 2013. Both the Mining Act 2016 and the Land Act 2013 are seen as inadequate because they 'do not clearly stipulate the role of the National Land Commission', which has been contested with regard to land lease renewals and cancellations. Key informants across the three counties noted that there was need for parliament to review the two frameworks because they seemed inadequate.

The study also established that there was no law or policy to guide the mining sector in the three counties. The research established that the Kwale county ministry of Environment and Natural Resources was in the process of drafting a county legislation act on mining to provide guidance on the steps to be followed from the initial stages of the mining process, so that they can develop a working relationship and be fully involved with all the stakeholders. In Turkana, the county government had prepared

¹⁵ Kenya Gazette Supplement No. 71 (ACTS No, 12); ACTS 2016. Nairobi, May 2016. Retrieved from: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Minin-gAct_No12of2016.pdf.

¹⁶ A county ward administrator while commenting on how the 5% mentioned in the agreed benefit sharing formulae should be shared. Interview held in February, 2018.

several bills to regulate the extraction of oil and gas including the Natural Resources Bill, Land Bill, Environment Bill and Water Bills but none of these county bills had been presented to the assembly. In Kitui, there was no extractive industry policy yet some respondents were of the view that the county had a policy governing the sector. This shows that there was little community participation on issues regarding operations of extractive companies in the county such as environmental impact and CSR activities yet they were the most affected.

Based on key informant interviews and focus group discussions, there is need to fast-track enactment of Land Bill and Petroleum Bill which were still pending. The county governments were also reported to have prepared several bills to regulate the extraction of resources including the Mining Act, Natural Resources Bill, Land Bill, Environment Bill and Water Bills which were yet

to be presented in the county assemblies. There is need to sensitize and involve community members in preparation of these bills so as to ensure community participation and ownership when they are finally enacted into laws and implemented.

4.4.9 Issues for Sensitization

The study sought to identify gaps in sensitization or areas which community members needed to be sensitized on as a way of ensuring that they felt part of the ongoing projects. As shown in Table 9, a majority of 37% indicated issues of benefit sharing as the top sensitization issue, followed by issues on how the community is likely to be affected by the ongoing extractions, 32.2%, issues of environmental degradation and conservation, 14% and finally the issue of conflict management which was indicated by 13.4% of the respondents sampled for this study.

Table 9: Issues for Sensitization

Issues for Sensitization	Frequency	Percent
Issues of benefit sharing	245	37.0
How the community is likely to be affected	213	32.2
Issues of environmental degradation and conservation	93	14.0
Conflict management	89	13.4
No response	18	3.4
Total	662	100.0

CHAPTER FIVE COUNTY BASED FINDINGS AND ANALYSIS



5.1 Introduction

The study analysed most of the findings based on the counties so as to generate County based perceptions on natural resources and the ongoing explorations/ excavations on extractives. The analysis takes into account the unique contexts of each county, the extractives and dynamics in each case study.

This Chapter provides an analysis of the extractive industry, drivers of conflicts around extractive industries, stakeholders’ involvement, dispute resolution mechanisms in place and residents’ knowledge on legal, policy frameworks and institutional capacity gaps in Kwale, Kitui and Turkana counties.

5.2 Kitui County

Kitui County is located in Eastern Region. It is largely an ASAL county and in the local

language simply means “a place where iron goods are made”. The County has a population of 1,012,709 people and covers 24,385.1 km² (2009 census). The population is largely made of the Kamba people though there is a growing population of Tharaka, Ameru and Somalis. The County has Eight Sub-Counties; Kitui West, Kitui Central, Kitui Rural, Kitui South, Kitui East, Mwingi North, Mwingi West and Mwingi Central. The vast majority of the economy is based on subsistence farming, despite the fact that agriculture is an extremely challenging endeavor given the sporadic rainfall. Nonetheless, the county has large deposits of coal and limestone in Mui Basin. Interestingly, the name Kitui in the local language simply means “a place where iron goods are made”.

5.2.1 Extractive Resources in Kitui

Literature reviewed indicate that Kitui County has numerous mineral deposits namely

coal, limestone, vanadium, pyrite, diatomite, graphite, asbestos, sand, tourmaline, copper, wollastonite, epidote, silica, gypsum, amethyst, magnesite, gold, silimanite, iron ore, vermiculite, and ilmenite, and gemstones.

Deposits of copper are found in Mithikwani while gemstones are found in Endau Malalani. Iron ore is found in Timboni whereas Blue and red sapphires are found in Kanondo-Mwingi and Endau Malalani. Limestone deposits are found in Mutomo and Ikutha South of Kitui. These two locations lie in the limestone belt that specifically covers Mathima, Kanziku and Simisi locations. Limestones is also found in Kanziku, Ngaie and Simiti/Mathima. However, asked about the extractive resources available in

Kitui, respondents mentioned Coal, Limestone and copper as shown in the table below. Indeed a majority of 50% mentioned Coal, followed by 32.4% who mentioned limestone and finally 17.6% who identified copper as the leading extractive mineral in the county.

The study further established that excavation of gemstone was ongoing in Tharaka and Tseikuru, limestone in Mui, Mutomo, Mutito and Kyuso, and gypsum is mined in Mwingi South. Artisanal miners were also engaging in sand harvesting and gemstone mining. Generally, of all the minerals mentioned and believed to be found in Kitui County, coal was identified as the only one in large commercially viable quantities and has attracted the attention of international investors.

Table 10: Extractive resources available in Kitui

Resources	Frequency	Percent
Coal	74	50.0
Limestone	48	32.4
Copper	26	17.6
Total	148	100.0

According to a senior county official in the County Government of Kitui, coal deposits are found in Mui Basin that stretches across four blocks namely; Block A, B, C and D. The blocks run through Zombe, Yoonye, Kathonzweni, Mui, Mathuki, Isekele and Karung’a. The coal deposits in block C and D are estimated at 400 million tonnes and valued at Ksh. 3.4 trillion (\$40 billion). The explored coal deposits range from lignite to sub-bituminous with calorific values of 16 to 27 MJ/kg. The mining company which has been exploring and prospecting minerals in the county is Fenxi Industry Mining Company from China.

5.2.2 Support for Coal Mining

The concession agreement for Blocks C and D of Mui Basin was signed on 23rd December 2013

between Fenxi limited, Great Lakes Ltd and Ministry of Energy, Ministry of Mining, The National Treasury and County Government of Kitui. The Great Lakes Ltd is a local consortium partner in the mining arrangement. The agreement however did not stipulate how the communities were to benefit at the time leading to development of an Addendum. Even with the Addendum, the agreement brought divisions within the community members with some supporting the exploration while others were against it. This situation of discontent was evident at the time of carrying out this study. Asked about the support for coal mining, community members seemed sharply divided, with 48% in support while about 46% expressed a contrary position. A further 6.1% indicated that they had never thought about the discovery of coal in the county.

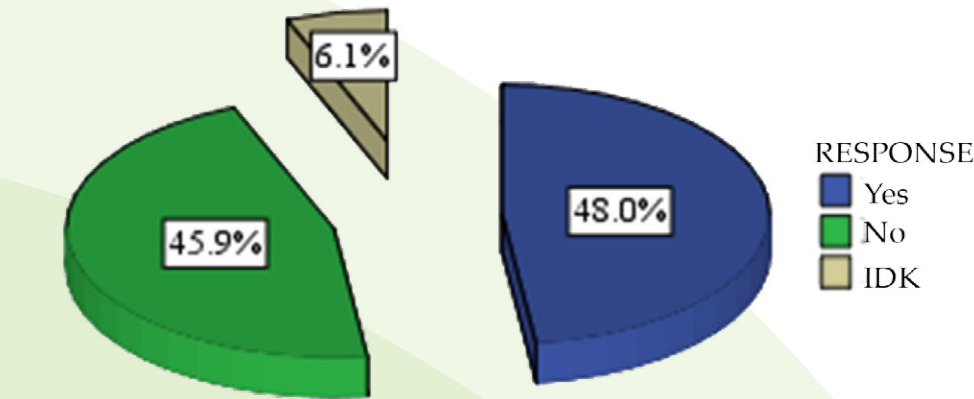


Figure 7: Support on the on-going exploration

Those who supported the exploration mentioned creation of job opportunities as the main reason for their support. Others mentioned improved standards of living, business opportunities, improved infrastructure and increased tourism. There were others too who felt that the exploration would lead to environmental pollution, destruction of archaeological sites and community displacement. The fears were believed to emanate from lack of sufficient information on Benefit Sharing Agreement (BSA). This could be attributed to information gap that was visible from interactions with

community members. There appeared to be confusion in terms of what the coal discovery represents to the community. According to a report by Wasunna *et. al.* (2017), there exists a significant gap between the information seekers (community/CSOs) and those perceived to be information holders (national government, companies). The report further mentioned that the lack of adequate, quality and relevant information has created room for speculation and rumours and this has created suspicion and mistrust between the government, investors and the community¹⁷.

Table 11: Reasons as to why community members are for or against the on-going exploration

Reasons for the on-going exploration	Reasons against the on-going exploration
Creation of job opportunities	Pollutes the environment
Business opportunities	Destruction of archaeological sites
Improved infrastructure	Not benefiting the community
Improved standards of living	Community displacement/ conflicts
Increased tourism	Unwillingness by the government to compensate community members as per the market value

¹⁷ Wasunna, M. K., Okanga, J. & Kerecha, G. O (2017). LISTENING PROJECT: Mui Basin, Kitui County. Capturing Community Voices-A First Step towards Informed Dialogue in Kenya's Extractives Sector. Retrieved on 2nd July, 2018 from: [http://extractivesbaraza.com/assets/content/PDF/Publications:%20CSO%20Engagement / THE%20PILOT%20LISTENING%20PROJECT%20REPORT.pdf](http://extractivesbaraza.com/assets/content/PDF/Publications:%20CSO%20Engagement%20PILOT%20LISTENING%20PROJECT%20REPORT.pdf)

5.2.3 Conflicts around Extractive industries

The study sought to understand conflict issues around the extractive industries. As shown in Table 12, land is a major conflict issue in Kitui. Indeed of all conflicts issues mentioned, land related conflicts/ issues or misunderstandings accounted for 94.6%. These include compensation related issues accounting for 37.8%, land disputes accounting for 30.4%, landlessness which was mentioned by 16.2%, resettlement issues with 6.8% and reduction in farming and grazing land as indicated by 3.4% of the respondents.

This was further buttressed by comments from key informants and focus group discussants. Discussants were of the view that Kitui County experiences minimal ethnic conflicts in relation to presence of extractives. Instances of ethnic tensions between the indigenous communities and “foreigners” in the coal mines was minimal. However, there seemed to be growing concerns on land related issues especially among family members. A local leader from Yumbu sub-location intimated that:

“...land is a serious problem here in Kitui.....some residents of Yenziu in Mui basin were issued fake title deeds.....family land disputes as a result of the presence of the extractive industry have nowadays become common. This is especially on whether ancestral land with mineral deposits can be sold to enterprises in mining sector. There are also issues of misuse of compensation funds among family members which sometimes lead to tensions between family members and the mining companies....”¹⁸

This corroborates report findings from a study funded by UNDP and authored by Obiri in 2014 which identified a total of ten areas of conflict in the County. Conflicts resulting from poor or lack of land compensation for communities were identified by 67% of the respondents as the leading conflict areas in the county. This was followed by conflicts resulting from poor resettlement of people, which was mentioned by 58% of community members and then conflicts emanating from community and mining

company relations as mentioned by 50% of the stakeholders consulted for the study¹⁹.

Based on discussions held with focus group members and also key informants, community members from Zombe and Kalitini expressed concerns over open-cast mining method used in coal extraction. They pointed out that this method of extraction had detrimental environmental impacts such as soil erosion, loss of biodiversity, formation of sink holes, and contamination of underground water. This technique also leads to land wastage since land that has been dug out can no longer be productive for farming. The study was also informed that the community was not adequately represented during validation of impact assessment report by NEMA. Additionally, their concern on dumping of asbestos in Ngai Ndethye, a situation that necessitated community protests and media advocacy for their intervention had not been addressed.

Other sources of land conflict mentioned by focus group discussants included the internal and external prospectors who purchase land from Kitui residents at relatively cheap prices and sell at a later date, accruing profits and compensation from coal exploration and mining enterprises. This has led to tension between the original land owners who feel cheated and the prospectors.

Other conflict issues mentioned revolved around environmental degradation that accounted for 0.7% and disputes on benefit sharing between the county and national government as indicated by 2.7% of the respondents. Generally, this could be attributed to the fact that mining of coal had not commenced and therefore most of the issues relates to land as opposed to benefit sharing which seemed to be a common issue in Turkana and Kwale counties.

¹⁹ Obiri, J. (2014). *An assessment report by UNDP on extractive industries for sustainable development in Kenya*. Retrieved on 12th June, 2018 from: <http://www.ke.undp.org/content/dam/kenya/docs/Poverty%20Reduction/Extractive%20Industries%20for%20Sustainable%20Development%20in%20Kenya%20%20Assessment%20Report%20.pdf?download>

¹⁸ Key informant remark on the issue of land related conflicts in Kitui County. Interview conducted in February, 2018 in Yumbu sub location in Kitui.

Table 12: Types of conflicts

Type of Conflict	Frequency	Percent
Land Disputes	45	30.4
Reduction in grazing land	5	3.4
National Vs. County Government	4	2.7
Landlessness	24	16.2
Compensation	56	37.8
Resettlement	10	6.8
Environmental degradation	1	.7
No response	3	2.0
Total	148	100.0

5.2.4 Drivers of Conflicts

In terms of conflict drivers in the county, community members expressed concerns over poor or non-existent engagement by the mining company. Indeed, this was the feeling of majority 56.1% of respondents. The study observes that poor community engagement has led to inadequate information on issues the communities hold dear. Other conflict drivers identified included the inadequate or unclear benefit sharing plan as mentioned by 13.5% of the respondents, lack of land ownership documents as indicated by 12.2%, unfulfilled promises by the mining company and the government as mentioned by 11.5% and finally environmental destruction which was mentioned by 2.7% of the respondents. These responses are illustrated in Table 13.

Community members emphasized on the need to be sensitized on a number of issues pertaining the mining of coal in the county. Major issues identified included compensation, resettlement, land valuation, health hazards, shareholding, corporate responsibility and benefit sharing.

²⁰ Ibid

The study noted that due to lack of adequate information on issues held pertinent by the communities, the locals felt that the project may not benefit them rather impoverish them as “outsiders” and few accomplices benefit.

This narrative agrees with findings from a previous study funded by UNDP and conducted by Obiri in 2014 which identified lack of proper compensation for the displaced communities as the main driver of conflicts followed by none or poor involvement of community members and poor land adjudication and lack of title deeds. Other drivers of conflict identified during that study included the unclear benefit sharing formula, lack of proper communication with communities, poor sensitization including politics and differences among various interests in the County²⁰. This is a clear indication that there has been very little change from 2014 when the UNDP study was conducted and the time of conducting this study in 2018.

Table 13: Drivers of conflicts

Drivers of Conflicts	Frequency	Percent
Poor or non-existent engagement of communities and other stakeholders	83	56.1
Inadequate/ unclear benefit sharing plan	20	13.5
Environmental destruction	4	2.7
Mismanagement of funds	1	.7
Influx of non-locals	2	1.4
No land ownership documents	18	12.2
Unfulfilled promises	17	11.5
No response	3	2.0
Total	148	100.0

5.2.5 Stakeholder Involvement

Communities in Kitui County seemed divided over the adequacy of stakeholders' involvement in coal mining conversations. Despite 46.6% indicating that the communities were not involved, the study learnt that local communities in Mui basin elected liaison committees to represent the community in matters relating to coal project. However, the project had not taken off due to community resistance. With support from the Kenya National Commission on Human Rights (KNCHR), local residents have participated in organised public forums and conducted civic education on the extractive sector as they advocate for information on the status of the project. About 51.4% of respondents seemed satisfied with measures put in place to ensure community members are involved in coal extraction processes. Figure 8 illustrates these responses.

According to a study by Wasunna, *et. al.* (2017), stakeholder engagement on Mui Coal Basin has largely been undertaken by the national

government with very little influence from the county government. The study further reported that other government agents and agencies like agricultural extension workers, Kenya Water Resource Management Authority (WRMA) and Kenya Forestry Research Institute (KEFRI) seemed less aware of and did not link the impacts of coal mining to their work.

Those interviewed intimated that mining remained a national government function that has not been devolved and therefore the County Government had no express role to play in the whole process²¹. This shows some level of disconnect between the national government and county government in terms fronting a common position in regards to the coal mining in Kitui. There is need for both the national and county government to cooperate and consult within the spirit of the Constitution of Kenya to make this resource a blessing. There is further need to involve all stakeholders in the process to ensure a united front in sensitizing community members and also dispel rumours and other community fears/ concerns.

²¹ Wasunna, M. K., Okanga, J. & Kerecha, G. O (2017). LISTENING PROJECT: Mui Basin, Kitui County. Capturing Community Voices-A First Step towards Informed Dialogue in Kenya's Extractives Sector. Retrieved on 2nd July, 2018 from: [http://extractives-baraza.com/assets/content/PDF/Publications:%20CSO%20Engagement / THE%20PILOT%20LISTENING%20PROJECT%20REPORT.pdf](http://extractives-baraza.com/assets/content/PDF/Publications:%20CSO%20Engagement%20PILOT%20LISTENING%20PROJECT%20REPORT.pdf)

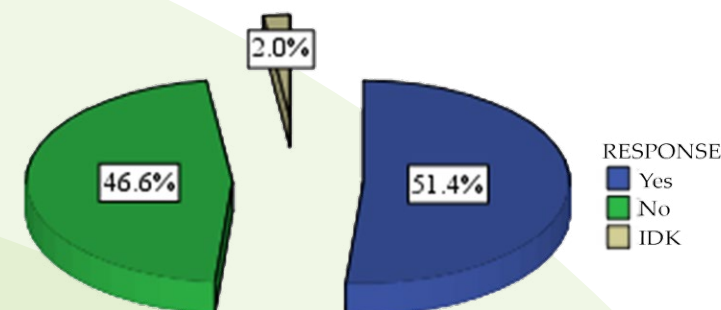


Figure 8: Community members' involvement in extraction

5.2.6 Community Members Involvement

When asked on the levels of community involvement, 41.2% of respondents said that their involvement was not policy based but engagement in casual jobs. A further 6.8% indicated that community members were engaged as Liaison officers between the community and the mining company. This could be interpreted to mean that very little has happened since the mining company was awarded the extraction contract and therefore engagements have been through third parties.

5.2.7 Organizations Spearheading Exploration, Community Sensitization and Conversations on Benefit Sharing

The study also sought to identify organizations

spearheading exploration, community sensitization and conversations on benefit sharing which are as shown in Table 14. From the table, it is clear that Fenxi, Athi River Mining and Xhenhua were engaged in exploration of different minerals in the county. Community sensitization appeared to be spearheaded by CSOs/ CBOs and FBOs who according to Kitui residents joined hands with County government officials to promote community awareness on the ongoing explorations processes. According to the residents, county government and other local leaders have been engaging them on issues of benefit sharing though there seemed to be some confusion in terms of what the community was entitled to.

Table 14: Organizations involved in exploration, community sensitization and conversations on benefit sharing

Exploration	Community Sensitization	Conversations on Benefit Sharing
Fenxi	County Government	County Government
Athi River Mining	Caritas	Local leaders
Xhenhua	Ministry of Mining	
	CSOs/ CBOs	

5.2.8 Barriers to Effective Community Participation

The study noted there were barriers to effective community participation in mining as tabulated in Table 15 below. A majority of 29.7% mentioned

illiteracy levels as a hindrance to community participation in the mining processes. This was followed by lack of sufficient skills and know-how which was indicated by 22.3% of the respondents and is closely linked to literacy

levels. Others mentioned poor negotiation skills on involvement and poor leadership among community members as indicated by 16.9% apiece and finally 13.5% who mentioned political patronage.

According to the 2014 report by Diakonia, on Coal exploration and mining in Mui basin, the population of persons with primary school education in Kitui County was mentioned as 74.8 percent which was considered to be above the national average of 66.6 percent. However, transition rates were found to be low with only about 10 percent of the population having secondary education while the national average

is at 12.7 percent²². This translates to also low literacy levels and also lack of sufficient or necessary skills and know-how to be absorbed in the ongoing mining processes in Kitui County.

The issue of political patronage has been a barrier to not only community participation as leaders – especially political leaders – engaged with one another on different issues touching on mining but also to the commencement of coal mining in Kitui County. According to Ngoolo Lydia's article published in *The Star* newspaper on 15, May, 2018, issues of non-involvement of some political leaders by both the national and county governments in decision making on mining in the county seemed to be delaying mining processes in the county²³.

Table 15: Barriers to effective community participation in the extractive

Barriers to Effective Community Participation	Frequency	Percent
Illiteracy Levels	44	29.7
Lack of sufficient skills and know-how	33	22.3
Poor negotiation skills on involvement	25	16.9
Poor leadership among the community members	25	16.9
Elite of political patronage	20	13.5
No response	1	.7
Total	148	100.0

5.2.9 Dispute Settlement and Conflict Resolution Initiatives

In regards to conflict resolution mechanisms, discussants highlighted that the County Government of Kitui has been attempting to address extractive industry related conflicts through the Ward Administrators, Members of the County Assembly (MCAs) and Liaison Committee. However, it was established that contracts of the liaison committee members had

expired and thus there was need to appoint a new team. Community members observed that the committee safeguarded the interests of few members of society rather than representing community interests. Moreover, 83.1% of respondents felt there were no intervention mechanisms put in place to manage conflicts while only 15.5% believed such mechanism existed as illustrated in Figure 9.

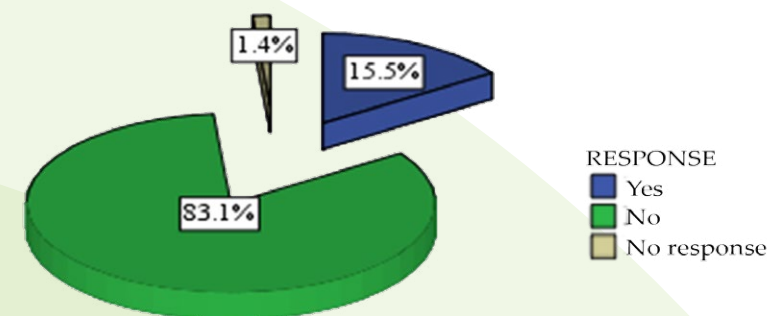


Figure 9: Whether there are interventions put in place to manage or prevent conflicts

Nonetheless, organisations such as CARITAS, Haki Madini, and Centre for Human Rights and Civic Education were found to be actively engaged in community training and sensitization. Additionally, the chiefs and elders were commended for their availability to assist local members in resolving issues arising from the planned mining. Other stakeholders such as the police and community activists were also identified to be actively engaged in conflict resolution in the county.

Some leaders who were consulted for this study also acknowledged the Kamba Council of Elders for providing leadership to the community on mining. According to Diakonia, the entity has been gaining prominence in the county and is being seen by many as a fair arbiter in dispute resolution matters involving the community²⁴. The entity comprises of retired politicians, clergy, civil servants and other prominent leaders from the community.

5.2.10 Actors Bearing the Biggest Responsibility in coal related conflicts

In order to propose targeted recommendations, the study sought to identify actors who bore the biggest responsibility for conflicts in the county. As shown in Figure 10, political leaders were to blame for the stalemate in mining of coal in Kitui as indicated by 33.8% of the residents sampled for the study. This was closely followed by

companies involved in the exploration of coal in the county which was mentioned by 26.4% of the residents and then county government leadership as indicated by 21.6% of the respondents.

Based on the findings, it can be deduced that, conflicts related to coal mining in Kitui are closely tied to politics, and non-disclosure of information by all the parties involved in the exploration of the mineral in Mui basin. Indeed according to Mwaniki, in an article published by the *Daily Nation* on December 1, 2017, political intrigues seemed to have stood on the way for the mining of coal in Kitui. The article reported that there seemed to be a conflict between the national government and county government of Kitui on the sharing of wealth from the coal mining²⁵.

In a different article published in the *Standard Digital* and authored by Muasya in 2016, it was obvious that politics were to blame for the state of confusion in terms of coal mining in the county. The article reported that the Chinese firm called Fenxi Industry Mining Company (FIMC) went quiet after the signing of a concession agreement to mine coal in the County's Mui basin, leaving residents and their leaders baffled and left to speculate on reasons for the delay in commencement of the processes. The Deputy President, while speaking in Mutomo town during an event to commission works on the

²² Diakonia (2014). *Rapid assessment of the extractive industry sector in Kitui County: the case of coal exploration and mining in the Mui Basin*. Retrieved from: <https://www.diakonia.se/globalassets/documents/diakonia/where-we-work/africa/kenya-2014-rapid-assesment-coal-mining-kitui.pdf> on 2nd July, 2018

²³ Ngoolo Lydia (The Star, May 15th, 2018). Ngilu proposal for Coal mining queried. Retrieved from: https://www.the-star.co.ke/news/2018/05/15/ngilu-proposal-for-coal-mining-queried_c1758190 on 2nd July, 2018

²⁴ Diakonia (2014). *Rapid assessment of the extractive industry sector in Kitui County: the case of coal exploration and mining in the Mui Basin*. Retrieved from: <https://www.diakonia.se/globalassets/documents/diakonia/where-we-work/africa/kenya-2014-rapid-assesment-coal-mining-kitui.pdf> on 2nd July, 2018

²⁵ Mwaniki, B. (The Daily Nation, December, 2017). Coal mining in Kitui yet to start 5 years after the deal was signed. Retrieved from: <https://www.nation.co.ke/counties/kitui/coal-mining-Kitui-Mui-basin/3444936-4210812-haptq4/index.html>. Retrieved on 2nd July, 2018.

tarmacking of Kibwezi–Mutomo–Kitui Road in December, 2016, blamed the county government

for impeding the start of coal mining in the mineral-rich county²⁶.

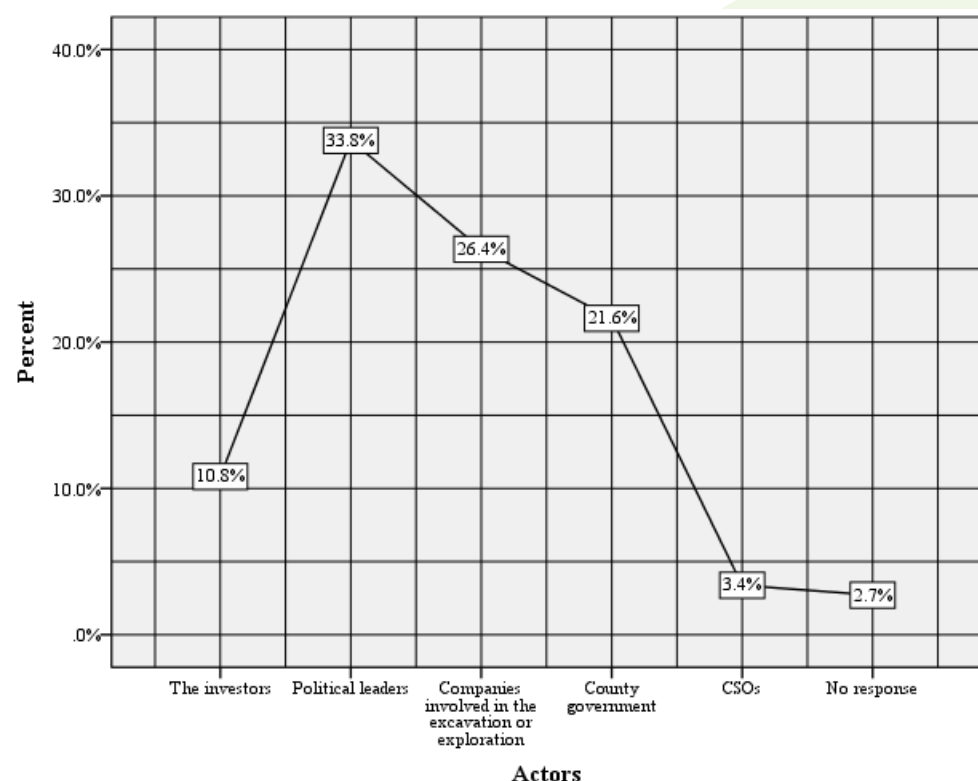


Figure 10: Actors bearing the biggest blame on simmering conflicts

5.2.11 Actors Best suited to spearhead Peace and Conflict Management Initiatives

The study went further to inquire on the best suited actor in facilitating peacebuilding and conflict management initiatives around mining in the county. As shown in Figure 11, respondents identified local community leaders (29.7%), county government (28.4%) and national government (20.3%) as the preferred actors to help in championing peace and conflict management initiatives in the county. Other actors mentioned included the CSOs/ FBOs as indicated by 8.8% and politicians who were mentioned by 7.4% of the respondents.

This is a clear indication that community members trusted their county leadership more than any other entity in dispelling rumors which in most cases seemed to breed tensions among community members, mining company and the national government and also in addressing issues which seemed to threaten their peaceful coexistence in the county.

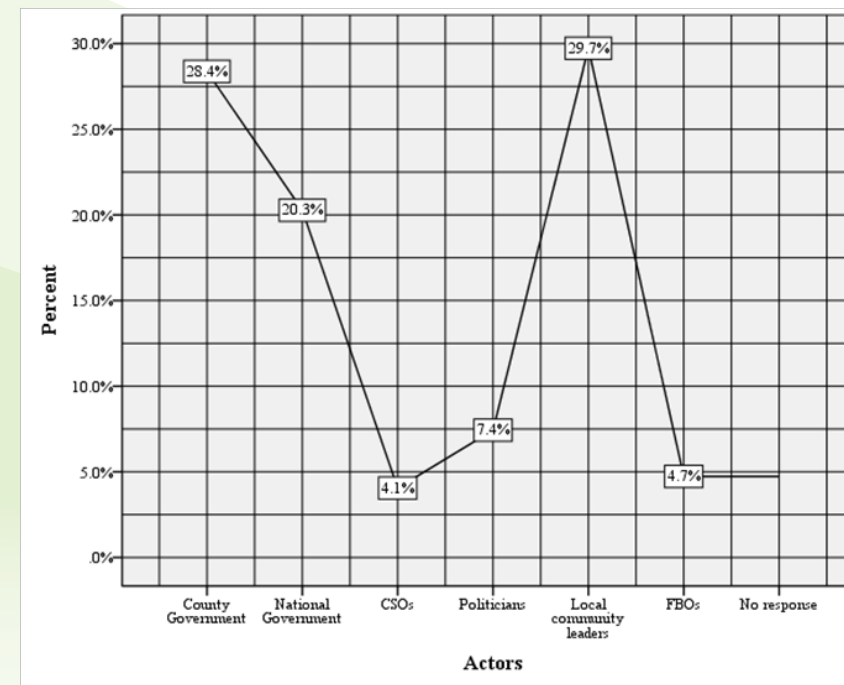


Figure 11: Actors best suited to spearhead peace and conflict initiatives

5.2.12 Future or Emerging Conflicts

On conflicts likely to be experienced in the near future, a majority of more than three-quarters of the population indicated community displacement. Considering that this remains as one of the current conflict issue, there is need to put mechanisms in place to ensure that when

mining of coal and other minerals commence, the residents will be contented with the resettlement and compensation plans. Other respondents identified pollution (for both air and water) as indicated by 9.5%, environmental degradation (5.4%) and increased armament of community members (2.1%).

Table 16: Future/ Emerging conflicts

Future/ Emerging Conflicts	Frequency	Percent
Community Displacement	118	79.7
Reduced grazing land	5	3.4
Pollution (Air and Water)	14	9.5
Environmental degradation	8	5.4
Increased armament of community members	3	2.1
Total	148	100.0

²⁶ Muasya P. (The Standard Digital, December, 2016). Political intrigues stall coal mining project in Kitui County. Read more at: <https://www.standardmedia.co.ke/business/article/2000227177/political-intrigues-stall-coal-mining-project-in-kitui-county>. Retrieved on July, 2018.

5.3 Kwale County

Kwale County is mainly an inland County in Coast Region. The County is considered to be majorly ASAL. It has an estimated population of 649,931 people and covers 8,270.3 km² (2009 census). The main ethnic communities in the county include the Digo and Duruma clans of the larger Mijikenda tribe and also a significant presence of the Kamba community. The County has four sub-counties; Kinango, Matunga, Msambweni, and Lunga Lunga. The County has several on-going activities such as exploration of limestone at Waa and Titaium at Nguluku and Mrima areas.

The study covered Kombani, Tiwi, Diani, Ukunda, Msambweni, Mrima, Kwale town and Matuga all located in Matuga and Msambweni Constituencies. This was based on the premise that most of the County administrative offices, and to some extent, Base Titanium are found in Matuga while most of the extractions are in Msambweni constituency. In the areas mentioned, the study targeted people who had knowledge on the minerals in the area and its effects on the community. The team also targeted people who were directly affected by

the activities of the Base Titanium Company. Senior National Government officials such as the County Commissioner and the Police County Commander were key people the research team targeted as respondents. The team also interviewed other senior national government officials, senior County Government officials as well as Civil Society representatives, and local community leaders to enrich the study.

5.3.1 Extractive Resources in Kwale County

Titanium is the leading mineral found in Kwale County. This was mentioned by 92.1% of the respondents who added that mining of titanium by Base Titanium Limited was on-going at Nguluku and Mrima. Two other Companies, namely Pacific Wildcat Resources Corps (PAW)-a Canadian firm and its partner, Cortec Mining Kenya (CMK) have been prospecting for niobium at Mrima Hills.²⁷ Respondents also identified other minerals, some artisanal and others mere speculations. These included Gemstones in Kuranze, Coal in Kinango and Vuga in Kinango Sub-County; Diamonds in Perani, and Uranium in Mrima in Lunga Lunga Sub County.

Table 17: Extractive Resources in Kwale

Extractive Resources	Frequency	Percent
Coal	2	.8
Titanium	221	92.1
Oil and Gas	3	2.5
Niobium	12	3.8
Fluorspar	2	.8
Total	240	100.0

5.3.2 Community Support on Titanium Mining

The study established that more than half (50.8%) of the communities in Kwale support the on-going mining of titanium, while 47.1% held a contrary opinion. The support could be

linked to the expectation that Base Titanium Limited will provide more job opportunities leading to improved standards of living. The mining company is also expected to provide scholarships and bursaries to students as well as create business opportunities.

Based on the key informant interviews and focus group discussions, it was also apparent that Base Titanium Company had a very elaborate stakeholder engagement programme that is increasingly winning the support of the locals. This was well corroborated by a report on Base Titanium website which indicates that the company enjoys some good level of trust and support from the locals which could be attributed to a systematic multi-stakeholder engagement programme employed by the Company before commencing any exploration drilling²⁸.

According to senior managers in the company, this is done to ensure that Kwale County Government, the local administration, the political leadership and affected communities are well informed to eliminate misunderstandings and misconceptions around exploration and to seek support and informed consent. The stakeholder programme also seeks to explain the purpose of undertaking exploration, what the exploration involves, and the impact it will have on communities and highlight the mutual benefits arising out of the exploration programme itself and later in extending the life of the mine²⁹.

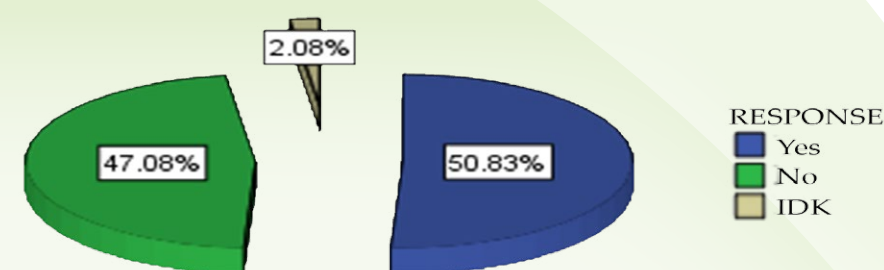


Figure 12: whether community members support the excavation of extractives

On reasons for and against the ongoing exploration and as shown in Table 18, there was an overwhelming support for the exploration. Majority of people consulted for this study indicated that the exploration will lead to more job and business opportunities, improved infrastructure which according to them will spur economic growth in the county. Other reasons given for supporting the excavation included improved living standards, provision of social amenities and finally improved education standards for the locals through provision of scholarships and bursaries for the bright and less fortunate students.

On reasons for not supporting the on-going exploration, majority of respondents mentioned

environmental degradation in the sense that the dust and management of waste from the company pollutes the environment, it will lead to destruction of archaeological sites, it has led to community displacements and also the fact that community members were yet to witness any direct benefits from the titanium proceeds. This position on pollution and the fact that locals were yet to experience any impact from the exploration of titanium in the county, agrees with a protest captured by The Star newspaper on the 27th of December 2017. During the protest, the locals expressed opposition to the on-going mining. They demanded more jobs from Base Titanium Limited in addition to an environmental impact assessment report.³⁰

²⁷ Mining Sector- Kwale County. Available at: http://www.kwalecounty.gov.com/index.php?option=com_content&view=featured&Itemid=937. Retrieved on 11th June 2018.

²⁸ Base Titanium, Kwale Project: Exploration – Stakeholder engagement. Retrieved from: <http://basetitanium.com/kwale-project/exploration> on 6th June, 2018.

²⁹ Base Titanium, Kwale Project: Exploration – Stakeholder engagement. Retrieved from: <http://basetitanium.com/kwale-project/exploration> on 6th June, 2018.

³⁰ The Star Newspaper; No Jobs no mining, Kwale Residents tell Base Titanium. https://www.thestar.co.ke/news/2017/12/27/no-jobs-no-mining-kwale-residents-tell-base-titanium_c1689847. Retrieved on 11th June 2018

Table 18: Reasons as to why community members are for or against the on-going exploration

Reasons For	Reasons against the on-going exploration
Creation of job opportunities	Pollutes the environment
Provision business opportunities	Destruction of archaeological sites
Improved infrastructure	Not benefiting the community
Improved standards of living	Loss of grazing land
Provides scholarships and bursaries	Community displacement/
Provision of social amenities	Causes and drives conflicts
	Health hazards

5.3.3 Conflicts around Extractive industries

Studies show that mine related conflicts revolves around six issues; land ownership, unfair compensation, inequitable resource distribution, environmental degradation, mine induced poverty and human rights abuses³¹. The conflict issues emanate from community expectations related to compensation and Corporate Social Responsibility (CSR).

In terms of priority, the main conflict issue in Kwale was identified as land disputes. A majority 42.5% of the correspondents felt disputes related to land especially resettlement of people in different places was not sitting well with community members. The study was informed that most of the people who were directly resettled, or who were evicted from their pieces of land abhor bitterness with how the process of resettlement was handled. One KII observed thus:

“We have experienced hostile environment in the areas we were resettled in. The pieces of land are barren or water logged and can barely produce anything. It is almost like we were not compensated”³².

Nonetheless, the study established that most small scale farmers did not have title deeds and that majority were squatters who lived in fear

that one day they may be evicted. The study observed that the squatter status was limiting the farmer's capacity to use land for sustainable development. Further, the lack of title deeds limited farmers' ability to access credit facilities as they could not use the land as collateral. The issue of landlessness, resettlement and compensation was mentioned by 12.5%, 10.8% and 9.2% of the respondents respectively. This shows how emotive the issue of land is to the locals.

As shown in Table 19, other conflict issues mentioned included environmental degradation as mentioned by 12.5% of the respondents, reduction in grazing land and national vs. county government misunderstandings as mentioned by 5.8% of the respondents. These findings are in tandem with those in a UNDP report by Obiri (2014), which identified eleven conflict issues in Kwale County. In the report, environmental related issues were the dominant conflict areas in the county. This could be attributed to the time differences in the sense that at the time of the study, Base Titanium Company had not made any shipment from Kenya and there was excitement and anxiety with regard to resettlements and compensations. The expectations were therefore different as

opposed to 2018 when a lot of activities had taken place. For instance in 2014, water pollution, loss of landscape (sense of place), environmental degradation, extra county government levy and the delays by the Government to provide the export permit to Base Titanium Company to ship out their produce were the dominant conflict issues³³.

The study also established that there existed some level of animosity between community members relocated to new areas, and the

residents they found in those areas. The newcomers were viewed suspiciously with social, economic, cultural and political undertones. They were seen as strangers infringing on other peoples' land and resources yet they had been legitimately relocated. Politically, they were also perceived to affect voting patterns in their new areas of abode. The relocated communities therefore intimated that they felt unwelcome and were concerned at the hostility directed to them by their new neighbours.

Table 19: Types of conflicts

Types of Conflicts	Frequency	Percent
Land Disputes	102	42.5
Reduction in grazing land	14	5.8
National Vs. County Government	14	5.8
Landlessness	26	10.8
Compensation	22	9.2
Resettlement	30	12.5
Environmental degradation	30	12.5
IDK	2	0.8
Total	240	100.0

5.3.4: Drivers of Conflict

The study found that conflicts were driven majorly by environmental degradation and poor or non-existent engagement of communities and other stakeholders as indicated by 27.6% and 24.3% of respondents in Figure 13. This implies that communities lacked forum to express themselves or were not adequately represented in discussions around conflicting issues. This agrees with the UNDP report on extractive industries for sustainable development in Kenya published in 2014 which identified improper engagement of the community by the investor company and the Government and also poor implementation of the environmental impact assessment.³⁴

Other conflict drivers mentioned included inadequate/ unclear benefit sharing plan mentioned by 12.9%, lack of land ownership documents as indicated by 10.5%, unfulfilled promises which was mentioned by 10% and finally perceived mismanagement of funds mainly by politicians and other leaders and influx of non-locals as mentioned by 8.8% and 5.4% of the respondents respectively.

³¹ Willis Abuya (2016), *the extractive industries and society*, Moi University

³² A key informant assertions on resettlement of people who were directed affected by the mining business in Kwale.

³³ Obiri, J. (2014). *An assessment report by UNDP on extractive industries for sustainable development in Kenya*. Retrieved on 12th June, 2018 from: <http://www.ke.undp.org/content/dam/kenya/docs/Poverty%20Reduction/Extractive%20Industries%20for%20Sustainable%20Development%20in%20Kenya%20%20Assessment%20Report%20.pdf?download>

³⁴ Ibid

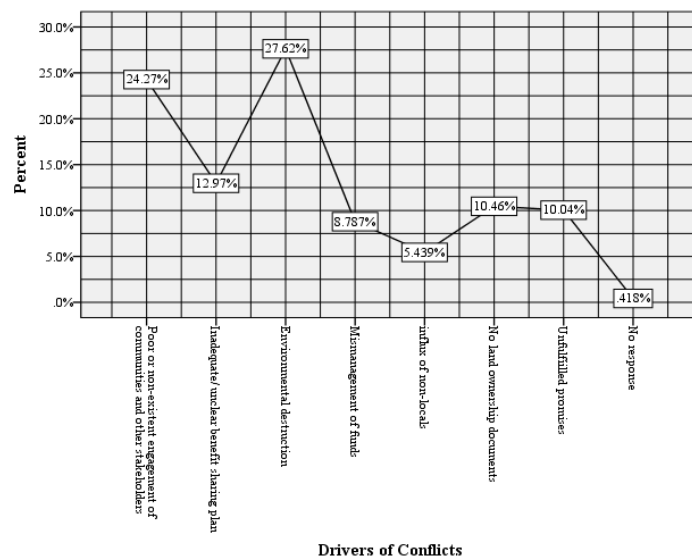


Figure 13: Drivers of Conflict

5.3.5 Stakeholders' Involvement

One of the objectives of the research was to establish the levels of community and other stakeholders' involvement on matters related to extraction of minerals in Kwale County. The study observed that Base Titanium Limited constituted 14 committees among them; the Mining project Liaison Committee which acts as the primary channel of communication for affected stakeholders in Msambweni and Lunga Lunga Sub-counties, the Likoni Liaison Committee and Kwale Liaison Committee. The committees provide for direct two-way engagement with communities in the vicinity of the Project. One of the senior managers within the Base Titanium Company mentioned that:

“The process of establishing meaningful community engagement is essential to our commitment to realising a balanced flow of mutual benefits. The relationships we build with stakeholders are nurtured through open and frank dialogue”³⁵

In spite of this commitment, a majority of community members, 53.3% opined that there was hardly any involvement of the community in the entire process of extraction of titanium.

³⁵ Base Titanium Limited approach to community engagement <http://basetitanium.com/community/engagement>

They expressed desire to be adequately involved especially in conflict resolution channels and employment opportunities. Only 41.3% of community members believed that there was adequate engagement of community members, confirming the mining company's commitment to “open and frank dialogue”. This could be understood to mean that either the committees are more inclined to the company because of the direct benefits or community expectations on involvement are way too high than the company can afford or allow.

These findings illustrated in Figure 14 give credence to assertions by Haki Jamii in their study on “Titanium Benefit Sharing in Kwale County” conducted in 2017. The study indicated that public participation in decision making had not been substantive and determinative, especially in relation to the choice of development projects by Base Titanium. More than 70% of the respondents in Nguluku and Bwiti during that study were of the view that the projects had not met the needs and aspirations of the local people³⁶. The failure to adequately involve the local population in decision-

³⁶ HAKI JAMII (2017). Titanium mining benefit sharing in Kwale County: A comprehensive analysis of the law and practice in the context of Nguluku and Bwiti. Retrieved from: <http://www.hakijamii.com/wp-content/uploads/2017/10/Titanium-mining-benefit-sharing1.pdf> on 2nd July, 2018.

making, makes it difficult for the Company to acquire the necessary goodwill to continue or expand its operations. This is bound to generate tensions which if not checked could degenerate to conflicts and ultimately create operational and production risks for Base Titanium. According to Haki Jamii, the Company has already experienced resistance from the locals in accessing new land for titanium exploration, with local communities refusing to allow further explorations in their land³⁷.

On their part however, the Base Titanium Company senior officials consulted during the study indicated that through their extensive stakeholder involvement programme, the company had established liaison committees (LCs) in various areas: Lungalunga L.C (comprising residents from Maumba and

Nguluku locations whose residents were relocated and compensated by the government and Base Titanium Company), Msambweni L.C, Matuga L.C or Kwale L.C, Likoni L.C. According to them, the membership of the liaison committees includes local political leadership such as the area MPs, MCAs (from specific areas affected), community representatives (every village is represented by two people, preferably a male and a female), youth leaders, women representatives, religious leaders and CSO representatives.

This is a clear indication that community expectation on involvement goes beyond information sharing to probably a holistic involvement ranging from decision making, proper land compensation to even issues of job allocations to the affected locals.

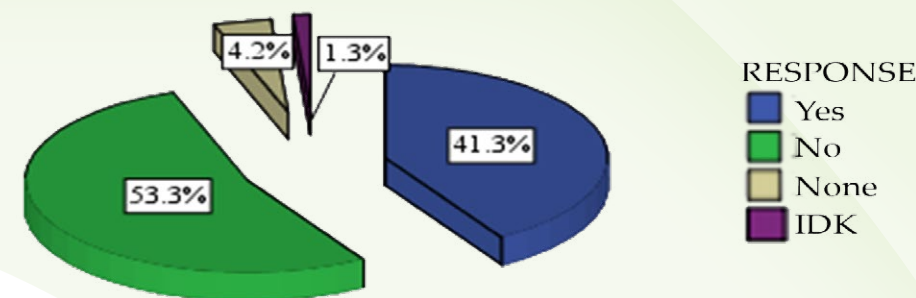


Figure 14: Community Involvement in Extraction of discoveries in the county

5.3.6 Role and Nature of Community Involvement

A further question on the nature of community involvement revealed mixed reactions as tabulated in Table 20. Majority of respondents alleging that the community only provided cheap labour mostly as casual workers and security guards as indicated by 34.9% of the respondents. The local community claim that labour for the extraction of titanium has been imported from other areas outside of Msambweni thereby denying them opportunity for employment.

On its part, the titanium company holds that it has created over 1,300 job opportunities specifically

for the locals and that 65% of its employees were from Kwale County.³⁸ The company added that available jobs require skills and expertise that most local job seekers lack, and therefore the company resorts to filling such vacancies with skilled personnel through a competitive process that is open to the rest of the Counties. This corroborates assertions by Laichena in an article published in 2015 by *The Star* newspaper which indicated that the shortage of relevant education and skills significantly hindered Base Titanium Company from employing locals³⁹. The article further noted that one percent of locals residing near the titanium mines had a diploma or certificate, less than 10 percent had secondary

³⁷ Ibid

³⁸ Base Titanium Website <http://basetitanium.com/careers/employment>

³⁹ Laichena, J. (*The Star*, 24th February, 2015). Kenya: Why Kwale Locals Are Not Reaping From Titanium

school qualifications and more than 40 percent lacked formal education.

The local community on their part contend that they should be facilitated to learn on the job but are never afforded the opportunity to do so. They say that they are only given casual work, which lasts 3-6 months. The local community feels that it is unfair for Base Titanium Company to give jobs to non-locals, who then enrich themselves

and plough back capital to the counties of origin or away from Kwale. It is alleged that this state of affairs leaves the local people wallowing in poverty and yet they have a big mining project underway in their backyard. The continued perceptions or imaginations that “non-locals” were benefitting more than the “locals” could present a potential area of future conflicts if not addressed.

Table 20: Role of community members in the extraction

Community Role	Frequency	Percent
Not applicable	87	36.3
Casual Jobs	79	32.9
Community development welfare	3	1.3
Village socialization officers	1	.4
Liaison officers	2	.8
Security officers	4	1.7
No response	63	26.3
IDK	1	.4
Total	240	100.0

5.3.7 Community Concerns on Exploration and Operations

Concerns by members of the community on the impact of the extractions is illustrated in Table 21. The fear of losing land ranked highest with 37.1% of the community admitting that this concerned them the most. It was noted that affected residents were concerned about the pieces of land allocated to them saying that the land was not fertile and therefore cannot sustain their farming activities. Many of those relocated to other areas complained of the lack of title deeds to the new pieces of land. Others only had letters and receipts as evidence of ownership of the land. They were worried that “outsiders” might come in with title deeds and claim the land thereby rendering them landless.

There were also concerns over health hazards and environmental degradation which were mentioned by 26.7% and 18.8% of respondents respectively. Residents expressed fears that pollution of the air by dust from the mining fields and the pollution of water was likely to cause the community health problems. In the

process of extraction, the experts often used explosives to make huge holes in the ground. This causes a lot of noise and a lot of dust flares in the air, affecting nearby residents. Secondly, the explosives caused cracks on the walls of nearby houses, hence, residents are aggrieved by such destruction of their property. This could even pose more serious problems as locals feared that one day the houses might collapse and harm them or lead to lose of property.

With extraction comes cutting down of trees and flattening of hills, this is closely tied to loss of landscape or nature of place as mentioned by 5.4% of the residents. The community expressed concerns with the destruction of known archaeological sites such as mountains, sacred forests and so on. Community members also foresees a future of very little or no rain if the water catchment areas continue to get destroyed. While officials from the Base Titanium Company confirmed that the company was involved in extensive rehabilitation of the areas where mining had been concluded, local people interviewed for the study felt they were

not too sure about the extent and effectiveness of such rehabilitation measures.

Findings also revealed deep-rooted perceptions that with the ongoing extraction of minerals in the area, the soil will be spoiled and all the fertility lost, making their land worthless for farming. In Mrima, which is a fertile agricultural area, the community had already received rumours of a possible mining project there in the near future. Residents were therefore worried about the future impact on the farming activities if a mining project starts in the area.

Community members also expressed concerns over the sharing of resources. This was mentioned by 6.3% of the residents. Since the inception of the mining base, the community had high expectations of the great economic value that the Mining Company would bring to the community, and the county at large. Over the years however, residents say they have barely seen any significant benefits that can be attributable to the extraction of minerals by the mining company. Majority expressed concerns that the extractive resources may not be of

any benefit to them in the end. This was well summarised by a resident who pointed out that:-

“....we are really disappointed by the Titanium Company...over the years they have been promising all manner of things but we are all worried that we may never witness any direct benefit.....since 2014 when the first shipment was done we are yet to receive or see any benefits from this project...we really feel short changed.”⁴⁰

Another concern expressed by the locals included the loss or degradation of social and cultural values as mentioned by 3.8% of the respondents. Community members felt that with land being taken away from them and even talks of phase II of prospecting underway, there is a growing concern that they will lose their sacred forests (Kayas), which are their places of worship. There is concern that relocation of residents to pave way for mining activities is eroding the local people’s cultural values through desecration of their worship sites, cutting of sacred trees among other activities.

Table 21: Community concerns on exploration and operations

Community Concerns	Frequency	Percent
Fear of losing land	91	37.9
Environmental degradation	45	18.8
Health related issues	64	26.7
Conflicts on sharing resources	15	6.3
Loss of Landscape (Sense of place)	13	5.4
Degradation of social and cultural values	9	3.8
No response	3	1.3
Total	240	100.0

5.3.8 Dispute Resolution Mechanisms around Extractive Industries

Despite the existence of 14 liaison committees to enhance community engagement, 67.5% of the locals were not aware of any dispute resolution mechanism put in place for conflict management

and resolution. Only 25% were affirmative that there were mechanisms in place including local leadership, peace committees, Community Liaison Officers, Mining projects Liaison officers and village socialization officers.

⁴⁰ A key informant remark on the issue of community benefits from the Base Titanium Company. Interview conducted in February, 2018.

According to key informants and focus group discussions, there is no known or clear dispute settlement and conflict resolution structure in the county. The Base Titanium Company set up a Community Engagement Department (CED), which of the conflict management function.

According to senior officers from the company, any emerging conflict on issues of extraction is addressed at the committee level. However, according to other community leaders, there was need for the committee to be more proactive in its interventions.

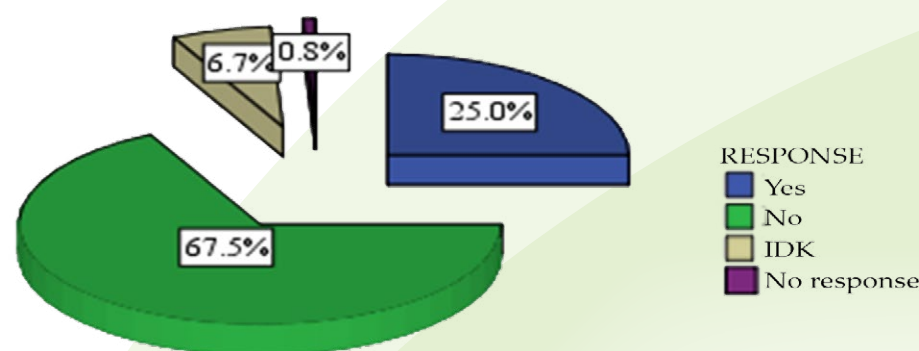


Figure 15: Dispute Resolution Mechanisms

5.3.9 Barriers to effective Community Participation

The study observed that there were barriers to community engagement that were hindering sufficient community participation in the mining of titanium in the county. As shown in Table 22, illiteracy levels, poor leadership, and lack of sufficient skills and know-how were identified as the biggest factors hindering community participation. These were mentioned by 27.1%, 25% and 23.8% of the respondents respectively. The study noted that most respondents had secondary education, with more than 6% having no formal education. The situation was worse for women and girls who constituted more than 72% of the respondents who indicated that they lacked formal education. The rural parts of the county were the most affected by illiteracy levels with residents from Mrima recording the lowest levels of education. Illiteracy was therefore causing breakdown in communication. This was especially where the mining company used internet as the medium of communication for job advertisements and other information while majority of Kwale residents do not have access to the internet hence missing out on opportunities.

Similar study findings show that most families living in Kwale County earn less than 10,000Kshs per month, and view early child education as a

waste of money due to their hand-to-mouth lifestyles. This is one of the highest leading causes of the low literacy levels in this county. Parents who have limited education forego many social and economic options thereby restricting a family's opportunity for upward social mobility.⁴¹ This situation leaves the communities dependant on their leaders to communicate their grievances, which more often than not, do not represent the community well, but instead only push for their own selfish interests. This is closely tied to poor negotiation skills on involvement of community members as indicated by 8.8% of the respondents.

Other barriers mentioned included greed by some community members and political patronage by the elite as mentioned by 10.8% and 2.9% respectively. This could be understood to refer to leaders or people in positions of influence who use the platform given to enrich themselves or reward groups of people they consider loyal to them

⁴¹ International Journal of Education and Research; Literature Review; Early Childhood Education from a global perspective and Kenya. Retrieved from: <http://www.ijern.com/journal/July-2013/15.pdf> on 8th June 2018.

According to key informants, issues related to gender and culture were also barriers to effective community participation. Women seemed restricted by the local culture to take part in decision-making processes compared to men. This by extension means that the needs and interests of women were most of the times not met. This is worsened by the huge gap in male-female literacy levels where most girls drop out of school at the primary school level.

Another barrier mentioned from key informant interviews and focus group discussions was politics. It emerged that some of the political leaders trash most initiatives made by the mining company and other investors especially those that do not benefit them directly. Some politicians also incite villagers against the investors by peddling lies and painting the investors as only out to exploit the community.

Table 22: Barriers to effective community participation in extractive industry

Barriers	Frequency	Percent
Illiteracy Levels	65	27.1
Lack of sufficient skills and know-how	57	23.8
Poor negotiation skills on involvement	21	8.8
Poor leadership among the community members	60	25.0
Greed by some of the community members	26	10.8
Political patronage	7	2.9
No response	4	1.7
Total	240	100.0

5.3.10 Actors Bearing the Biggest Responsibility in Titanium related conflicts

In order to propose targeted recommendations aimed at peacebuilding and conflict management, the study sought to identify individuals or groups bearing the biggest responsibility in the already witnessed conflicts and misunderstandings between the locals and the mining company.

As shown in Figure 16, 50.8% of the local community members felt that political leaders bore the largest responsibility on the already witnessed conflicts. This assertion is corroborated by an article published by "The Star" newspaper where a politician is blamed for causing havoc at the Base Titanium alleging that the company was not giving opportunities for employment to the locals, assertions which the company refuted.⁴² Another actor identified was the county government as indicated by

21.7% of the respondents and a further 14.6% who mentioned the investors.

On further probing as to how county government was involved in causing tensions and misunderstandings between the locals and the mining company, a majority of the people mentioned the misunderstanding on the issue of cess taxation and also benefit sharing formulae which is still unclear to majority of the residents.

⁴² See more at: https://www.the-star.co.ke/news/2017/12/27/no-jobs-no-mining-kwale-residents-tellbasetitanium_1689847. Retrieved on 12th June 2018

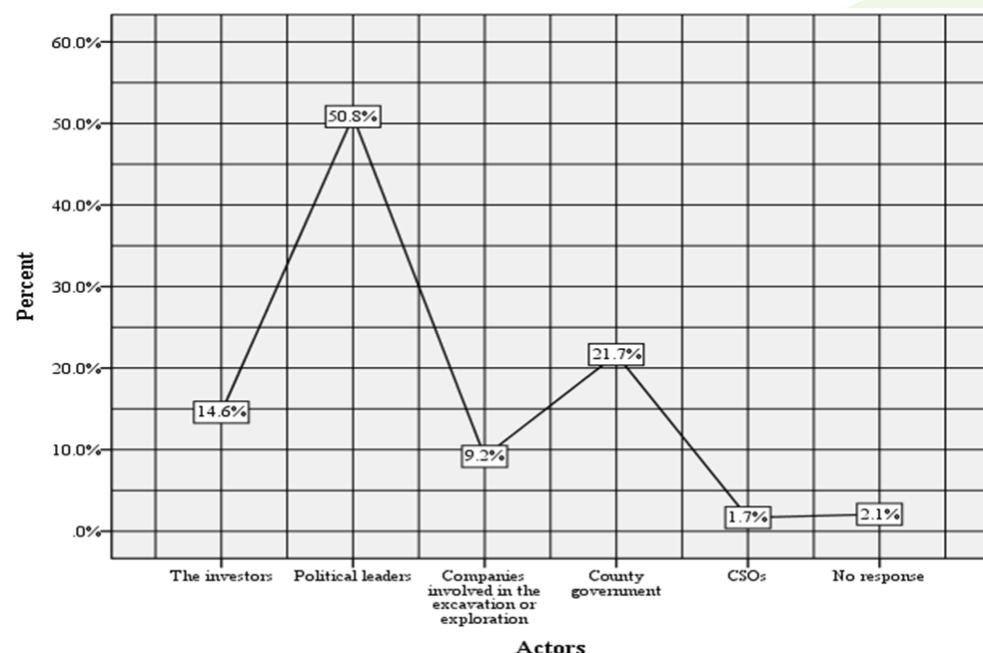


Figure 16: Actors involved in Conflicts

5.3.11 Best Suited Actors in Spearheading Peace Initiatives in the County

To many people interviewed, it appeared as if the County Government of Kwale was simply not doing enough to ensure that locals benefit from the ongoing explorations in the county. One of the key informant noted that: -

“....we have seen minerals being transported from here, but nothing seems to come back to us....the county government keeps assuring that we'll still benefit but we are beginning to feel like they are not doing enough to ensure that we benefit from these explorations....”⁴³

Tied to this, the locals still gave a vote of confidence to the county government when asked about the best suited actor to spearhead peace initiatives in the county and especially on issues around the ongoing explorations. As shown in

Figure 17, a majority of 50.4% of the community indicated the county government as the best placed institution to spearhead peace initiatives in the county. A further 13.3% mentioned the local community leaders while 12.5% posited that the national government representatives were best placed in peacebuilding and conflict resolution.

Other actors mentioned included the CSOs and FBOs indicated by a combined percentage of 12% and finally the politicians mentioned by 9.6% of the respondents.

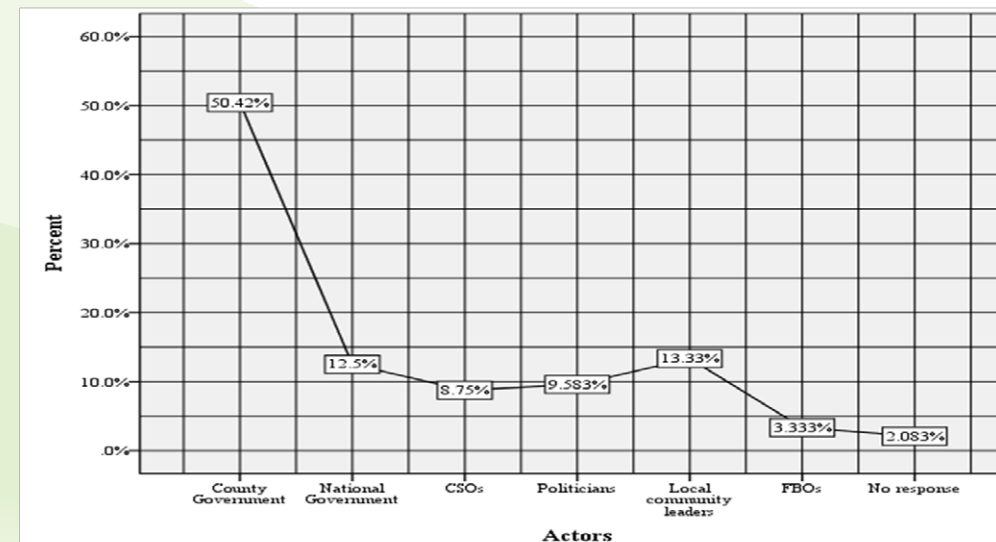


Figure 17: Best suited actors to spearhead peace initiatives

5.3.12 Emerging Conflicts

The onset of Titanium mining in Kwale has occasioned conflicts pitting the local communities with the Base Titanium Company, the national government and the county government as well as between the communities themselves. Based on key informant interviews, focus group discussions held and also from the household questionnaires, the following were identified as emerging conflict issues in Kwale County.

Land was identified as both a current and also a factor in future conflicts in the county. This study identified five different ways through which land is either causing or likely to cause conflicts in the county. The first one revolves around the dissatisfaction of the people displaced from their ancestral land to give way for extraction of titanium by Base Titanium Company. These people contend that the new areas to which they were relocated are either too waterlogged or too dry, hence have little economic value compared to the land they previously owned, that was taken away from them. Complaints have therefore continued. There is bitterness amongst some of the local people who feel short changed and cheated.

The second conflict revolves around ownership of land that was leased some years ago to Kwale International Sugar Company Limited (KISCOL)

by the government for sugar production. Some squatters moved into that land and later KISCOL evacuated them without relocation nor compensation since they had no legal claim to the land. When Base Titanium Company relocated and compensated affected communities from Msambweni to Bwiti location on the border between Msambweni and Lunga Lunga constituencies, those evacuated by KISCOL began complaining that they had been evacuated from their ancestral land without compensation or relocation by KISCOL. It is said that minerals have recently been discovered in the land around this area and now those squatters want to sale the land to Base Titanium Company. Base titanium says it cannot buy the land since it is leased to KISCOL. On its part, KISCOL wants the squatters to vacate the land. According to an official from Base Titanium, the government leased the land on the basis of blocks but minerals overlap such blocks such that they are found in land owned by Base Titanium and that owned by KISCOL. In Nguluku, Pingirika, Dzimbwage and Vumbu areas, people now want compensation in the same way Base Titanium compensated others. Unless the matter is handled carefully, it is likely to lead to a serious conflicts in the near future.

A third emerging conflict around land ownership relates to recent happenings where there have been cases of strangers mainly from 'upcountry' coming to the region with newly acquired title

⁴³ A key informant remark on the role of county government on benefit sharing. Interview held in Msambweni in February, 2018.

deeds, claiming ownership of land and yet some of the local people have title deeds to the very pieces of land being claimed by 'outsiders'. In a recent case, a confrontation occurred between local residents and bus ferrying people alleged to come from Kiambu and Murang'a counties who were claiming ownership of a large piece of land in the area. Local residents almost turned violent as they chased away the 'strangers'. The matter is yet to be resolved.

A fourth emerging conflict relates to compensation for land acquired to pave way for extraction of titanium. Many of those interviewed for the study argued that the compensation given to those who were relocated to pave way for the mining company to start operations was not enough and does not match up to the value of the land they previously owned. According to the information given by an official from the Environment and Community Affairs Department at the Base Titanium, those affected were paid Ksh. 80,000/- per acre, and another amount equivalent to the property they had on the land. The people affected insist that the compensation was not enough, arguing that relocation denied them the benefits of their mango and coconut trees which took many years to mature and have been a source of livelihood for generations.

Finally, with reports emerging that the titanium mining company is set to start mining in new areas in Msambweni Sub County, those interviewed for this research strongly expressed their opposition to relocation. They argued that they will not accept to be relocated from their ancestral land owing to the experiences of the last round of relocations. The most affected areas are: Kinondo, Mwaka, Zigira, Mazaoni and Maweche.

Another issue identified was lack of community involvement. Community members feel that since the mineral is in their locality, they deserved to be involved in all the processes leading up to the extraction of the minerals right from the initial stages. They say this was not done. When the discovery was made, they were not adequately involved. The community believes that the residents should have been told of what had been discovered on their land, how it would benefit them, and every other plan thereafter. Instead, none of this happened. They were not prepared for what was to come and all they saw was the experts prospecting the land and later

on they were told to vacate. Some respondents claim that the ones who were hesitant to leave their homes were removed by force, even though they were compensated. They also feel that the lack of involvement of the community is the main source of misunderstanding and misinformation that has characterized their relations with the national government and the Base Titanium Company exacerbating conflicts within the community. This however is not the same information that the Base officials gave. What the community wants is for them to be involved but the Base Titanium officials argued that there has been sufficient involvement. They accuse the local people of having too high and unrealistic expectations.

Ineffective communication was also identified as providing fodder for current and future conflict issues. This is coupled with ignorance and lack of information. From key informant interviews, it emerged that majority of community members did not understand that once they had been compensated and relocated, they did not have any claim to the ancestral land and so upon discovering that - this was the case, some tried to reclaim and repossess their land but they could not be allowed. From conversations with some of the affected people, the concepts of relocation, compensation and the rights to access of their land after relocation was not properly understood by the affected communities.

Health concerns were also raised as a conflict issue. It emerged that communities feared that the minerals extracted by Base Titanium were radioactive. Frequent sicknesses have been blamed on the extraction of Titanium, thereby breeding conflict. There are murmurs that a good number of local people working for the mining company cannot bear children. Infertility is therefore associated with the extractive activities, thereby breeding conflict between the local people and the management of Base Titanium Limited.

Another current and future conflict issue is high community expectations. Community members had very high expectations in terms of infrastructural improvement by the base titanium company such as building of schools, hospitals, roads, better housing, scholarships and bursaries to students. They claim that the process required for earning these bursaries and scholarships are too complicated and almost designed to ensure that the students do not earn

them. Gaps in the community expectation and the reality of what has so far been offered to them have caused a lot of friction.

The issue of labour still remains a conflict issue in Kwale. The local community claim that labour for the extraction of titanium has been imported from other areas outside Msambweni thereby denying them opportunity for employment. On its part, the titanium company holds that available jobs require skills and expertise that most local job seekers lack, and therefore the company has no choice but to fill vacancies with skilled personnel through a competitive process. This is a recipe for conflict. .

Environmental concerns have been a conflict issue since the project began in the county. A number of environmental related issues were identified as being responsible for emerging conflicts around the extraction of Titanium in Kwale. The first one relates to dust. Many respondents noted the Base Titanium plant was emitting a lot of dust during excavation of the mineral and this was negatively affecting the health of those living near-by. For instance, residents argued that rising cases of respiratory diseases were related to the dust being emitted by the Base Titanium plant. Secondly, due to the high demand for water in the mineral extraction process, (an official from the Base Titanium Mining company observed that 80% of the extraction process requires use of high amounts of water), the mining company has therefore dug dams in many areas, limiting the water going to the sea. Residents contend that this has robbed them conducive environment to nurture prawns and other types of fish, thereby affecting the local economy and robbing people of their livelihoods.

Respondents also complained that Base Titanium Company had sunk many boreholes and collected the water for use in their mining activities. Existing boreholes were drying up. Residents accused the mining company of draining the area of water. People complain that the low water levels have led to withering of vegetation along the coastline, and dams have robbed the area of crocodiles whose river habitats have been destroyed. According to the residents, crocodiles were concentrated in one area, and had become a danger to the local community. Residents seemed to question the process involved in conducting an Environmental Impact Assessment (EIA) before the mining plant started operations. Further, residents complained that during the dry season, the water in the area changes colour and turns green due to what they claim are chemicals from the mining plant that are contaminating the water, rendering it harmful to their health.

Community members also feared that there is a likelihood of increased armament of community members to protect their interests in the future and also continued transformation of their cultural values as a result of infiltration of 'non-locals' into their communities.

Based on this, there is need to closely monitor and follow up on issues raised so as to adequately sensitize the locals on some of the fears raised, dispel rumours where possible and also address some of these emerging conflicts in order to ensure that future conflicts are averted or managed. Table 23 illustrates responses regarding future or emerging conflicts identified from the household data.

Table 23: Future or emerging conflicts in Kwale

Conflict Issue	Frequency	Percent
Community Displacement	111	46.3
Reduced grazing land	21	8.8
Pollution (Air and Water)	47	19.6
Environmental degradation	37	15.4
Increased armament of community members	8	3.4
Infiltration of non-locals and culture change	6	2.5
IDK	10	4.2
Total	240	100.0

5.4. Turkana County

Turkana County is situated in the North Western part of Kenya. The County is administratively divided into 7 sub-counties, 30 wards, 56 locations that are further sub-divided into 156 sub-locations. The county population during the Kenya Population and Housing Census of 2009 stood at 855,399. The county is endowed with many natural resources including sun, oil and minerals like gold. It is deemed to have the largest gold deposits in the country because even from a closer look, there are many areas within the county that people practise mining of gold but on small scales.

For the purpose of this study, a lot of focus was on Lodwar and Lokichar towns. This was informed by the concentration of oil around Lokichar (and location of Tullow Oil Kenya’s operations headquarters) and the presence of key government institutions (and concentration of diverse populations) in Lodwar. Lokichar was the main sample area given that a total of 21 appraisal wells have been drilled in South Lokichar by Tullow Oil Company. Furthermore, starting with success at Ngamia 1, where Tullow discovered over 200 metres of net oil pay, the operation has been concentrated in the South Lokichar Basin with success recorded at the Amosing, Twiga, Etuko, Ekales-1, Agete, Ewoi, Ekunyuk, Etom, Erut and Emekuya oil accumulations.

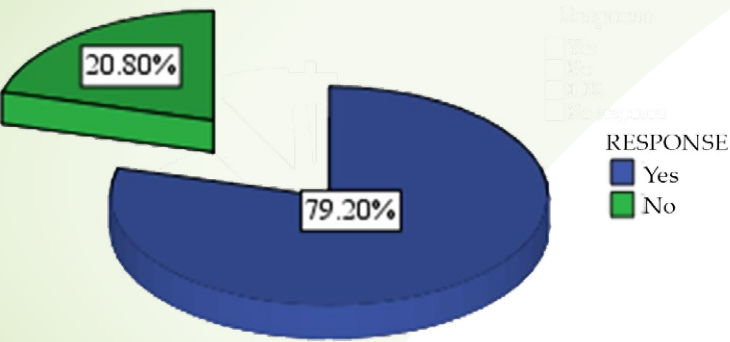


Figure 18: Support on the ongoing excavation

⁴⁴ A report by Bashir Mbuthia for Citizen Digital. Historic moment as Uhuru flags off Kenya’s first crude oil exports. See more at: <https://citizentv.co.ke/news/historic-moment-uhuru-flags-off-kenyas-first-crude-oil-exports-202685/> retrieved on 8th June, 2018.

⁴⁵ A report by Letting Joan (June, 2018). Jeers and cheers as Uhuru, Nanok agree on oil revenue share plan. Retrieved from: <https://www.standardmedia.co.ke/business/article/2001282584/jeers-and-cheers-over-oil-revenue-share-plan> on 8th June, 2018

5.4.1 Extractive Resources in Turkana

The main extractive resource available in the region is oil and gas but according to the residents, there are other minerals in the region such as gold, gypsum, silver and geothermal energy. Only oil and gas have seen major investment in the county, as gold mining remains at artisanal levels. The first consignment of crude oil from Turkana destined for export from Kenya was flagged off by President Uhuru Kenyatta in June, 2018⁴⁴

5.4.2 Support for the On-going Excavation

The study sought to gauge residents’ support on the ongoing excavation and as shown in Figure 18, majority of the respondents (79.2%) were in support of the extraction while 20.8% were against the extraction. The overwhelming support for the extraction could be attributed to the repeated promises by the country’s leadership that all the community concerns will be addressed and also the agreed formula of sharing the oil proceeds between the national, county and the community members. In the agreed share plan, the County Government of Turkana will get 20% of the revenues, community will get 5% while the national government will retain 75%⁴⁵.

Some of the reasons given by the respondents for supporting the ongoing excavation included the opportunity for job creation as indicated by 31% of the respondents, the expected improvement of communities’ living standards as indicated by 24.6%, increased business opportunities as mentioned by 8% of the respondents and expected improvement of infrastructure mentioned by 1.8% of the respondents.

The reasons given against the excavation included the fear that the oil proceeds will not benefit the community members, fear of pollution to the environment and the accompanying health hazards and finally destruction of archaeological sites.

Table 24: Reasons as to why community members are for or against the ongoing exploration

Reasons for the ongoing exploration		Reasons against the ongoing exploration	
Creation of job opportunities	31%	Pollutes the environment	3.3%
Business opportunities	8%	Destruction of archaeological sites	0.4%
Improved infrastructure	1.8%	Not benefiting the community	6.9%
Improved living standards	24.6%	Health hazards	2.6%
Scholarships and bursaries	4.7%	Loss of grazing land	1.4%
		Community Displacement/ conflicts	1.8%
Provision of social amenities	4.4%	Unwillingness by the government to compensate community members as per the market value	0.4%

5.4.3 Conflicts around Oil and Minerals Mining

In order to propose better ways of dealing with conflict and promoting peaceful coexistence, the study sought to identify the most common types of conflicts around oil mining in the county. As shown in Table 25, land related conflicts seemed to be the most common as mentioned by 25.9% of the respondents. A further 15% of the respondents mentioned loss of grazing land as a source of conflict. This was buttressed by key informants who mentioned that land and other

land related factors were increasingly becoming major sources of conflicts in the county.

A key informant mentioned that

“...some community members bordering the area where oil has been found during prospection have been attempting to expand their territory and move their boundaries into areas where there is oil so that they too can be beneficiaries of the KShs. 7 million land access fee...”⁴⁶

⁴⁶ A key informant remarks during an interview held in Lokichar in February, 2018 while responding to a question on the most common types of conflicts in Turkana County.

Additionally, Turkana residents, most of who are pastoralist, could be fearing that their grazing land will diminish over time as the oil was discovered in areas where they normally graze their animals during the dry seasons and long dry spells. These lands, seemingly unoccupied, are also paths to the rivers and traditional migratory routes of the nomadic communities.

According to the residents, the affected communities were also displaced without compensation for the loss of access to these lands. This was mentioned by 15.3% of the respondents who indicated that displacements without compensation was a major conflict area which needed to be addressed. In addition, the land is owned by community and not individuals thus making it difficult for the residents to negotiate access.

Another major conflict area mentioned was the fluid inter-governmental relations between the National Government and Turkana County Government. This was mentioned by 20.8% of the respondents interviewed for this study. For the longest time in Turkana, there seemed to exist some misunderstanding on revenue sharing as the county government negotiated for a bigger share than the national government was willing to give.

Initially, the community members through their leaders were clamouring for 10% of revenue allocation while the county government was insisting on 20% but the national government through the parliament bill sought to allocate community members 5%, county government 15% and retain 80% at the national level. This was therefore, a major conflict area which has since been resolved. The stand-off was intense during the first phase of Devolution 2012-2017 but was later resolved when the national government ceded ground. However, it resurfaced in mid-2018 when residents staged demonstrations and blocked Tullow Oil trucks from transporting crude oil to Mombasa demanding improved

security, opportunities for employment, tenders and contracts for supply of goods and services as well as direct benefits accruing from the oil-mining. This resulted in huge losses estimated to be over KSh400million⁴⁷. A series of meetings involving the local community leaders, County Government, National Government and the Investors were held to resolve this impasse. There is therefore need to reach out and sensitize community members on the agreed revenue sharing formulae, the long-term impact of the mining so as to win their support.

Other conflict areas mentioned included issues of resettlement as mentioned by 6.6% of the respondents and environmental degradation (5.1%) as a result of the ongoing excavations which according to the residents has resulted in destruction of archaeological sites especially along Kerio River.

Discrimination in employment and job groups/cadres was also mentioned as a conflict area by the key informants. According to the residents, there existed some sort of imbalance on how recruitments and promotions were being done by the different investors in the county. This was well surmised by one of the key informant who noted that:

“.....expatriates and non-locals are given high ranking jobs even where similar qualifications exist within the local work force. Also the residents of Lokichar are not happy on the company's criteria of employment....”⁴⁸

This could be a major conflict area if not properly addressed by the investor and government administrators in those localities. There is need to establish a balance or a criteria such that locals are given priority when opportunities arise and especially in-cases where locals meet the minimum qualifications requirements.

Table 25: Types of conflicts

Type of Conflict	Frequency	Percent
Land Disputes	71	25.9
Reduction in grazing land	41	15.0
National Vs. County Government	57	20.8
Landlessness	31	11.3
Compensation	42	15.3
Resettlement	18	6.6
Environmental degradation	14	5.1
Total	274	100.0

5.4.4 Drivers of Conflicts

Drivers of conflicts identified in the study are as shown in Table 26. Majority of the respondents (33.8%) identified poor or non-existent engagement of communities and other stakeholders in the ongoing processes. Based on key informant assertions and discussions held with focus groups, there seemed to be an existing perception that there was improper or insufficient involvement of communities in the oil and gas discussions.

The residents felt that they were not fully involved in discussions on alienation of oil-pads, drilling plans, processes and also during the exploration period. Other incidences where there was little or no consultation included the designation of unsuccessful exploration sites as toxic waste dumping sites. This was also highlighted in a report by Cordaid in 2015 which mentioned that there is inadequate involvement of local communities in the decision-making of ongoing projects especially on oil exploration. The report further mentioned that apart from occasional visits by Members of Parliament (MPs) and other county-level politicians, most local communities in Turkana had not yet had meaningful interaction with national and county level decision-makers on oil exploration and extraction⁴⁹.

This was followed by inadequate or unclear benefit sharing plan as mentioned by 29.8% and environmental destructions as posited by 21.9% of the respondents. Other drivers of conflicts mentioned included the influx of ‘non-locals’ as indicated by 4.4% of respondents, lack of land ownership documents as narrated by 7.3% of the respondents which makes engagement with the oil investors on compensation difficult and unfulfilled promises by the investor and government which accounted for 2.9%, majorly in terms of job opportunities and revenues.

On the influx of ‘non-locals’, residents complained of biases in recruitment by the investor. According to the residents, the biases manifested in the employment of ‘nationals’ from outside the county and expatriates in higher positions in the company while the ‘locals’ are limited to menial blue-collar jobs. The community believes that there is enough capacity within their ranks to take up higher positions, but their upward mobility and progression is unfairly throttled.

Through key informant and focus group discussions held, lack of cooperation between the national government and county government was also identified as a driver of conflicts in the area: Based on the discussions, it was clear that there existed some disquiet between the two levels of government with the county demanding more than the national was willing to give. There was also a political angle into this uneasiness with the county government being allied to opposition politics as opposed to the ruling party. This has since been addressed through building consensus on the revenue

⁴⁷ See article by Mathews Ndanyi in The Star newspaper, 24 September 2018: Sh400 million lost in Turkana's Tullow oil protest.

⁴⁸ Key informant comments on discrimination in job groups for the locals. Interview conducted in February, 2018 in Lokichar, Turkana County.

⁴⁹ Oil exploration in Kenya: success requires consultation. An assessment of community perceptions of oil exploration in Turkana County, Kenya. Retrieved on 8th June, 2018 from: https://www.cordaid.org/media/media-library/2015/09/Turkana_Baseline_Report_DEF-LR_Cordaid.pdf

sharing agreement for the oil. In addition, the building bridges initiative that resulted from the famous “handshake” between H.E President Uhuru Kenyatt and Rt.Hon. Raila Amaolo Odinga on 9 March 2018 has since contributed to improved relations between Turkana County Government and the national government.

Other conflict drivers identified by respondents included communication barriers due to high level of illiteracy which seemed to lead to misunderstanding between the community and the investor. This also seemed to limit the community’s understanding of legal, industrial and estate context leading to unreasonable demands; perceived biases in allocation of tenders and contracts for supplies. Community members expressed concerns that they had been left out of major tenders and contracts for supplies as the company seemed to be inclined to allocate most of the contracts to non-locals and

influential local leaders. According to residents, tenders for supply of materials, transportation services and general goods are controlled by ‘outsiders’ and local powerhouses.

These claims give credence to findings by a study done by Ekai Kao on how the discovery of oil in Turkana County has affected Kenyans which reported claims by the locals that Tullow Oil Company was allocating jobs to people from other areas in Kenya and side-lining those from the Turkana community. The report further claims that that job advertisements were being done in Nairobi away from vicinity of the locals and therefore disabling them from applying. It further alleges that the same case applies for tender allocation in Tullow Oil Company in which the company is accused of awarding tenders of supplying meat, charcoal and vegetables to the people of Kitale town and Nairobi city in Kenya⁵⁰.

Table 26: Drivers of conflicts

Drivers of Conflict	Frequency	Percent
Poor or non-existent engagement of communities and other stakeholders	78	33.8
Inadequate/ unclear benefit sharing plan	67	29.8
Environmental destruction	60	21.9
Influx of non-locals	12	4.4
No land ownership documents	20	7.3
Unfulfilled promises	8	2.9
Total	274	100.0

5.4.5 Stakeholders’ Involvement in Extractive Industries

In order to understand major conflict areas in the county, the study sought to also gauge the stakeholders’ involvement in the ongoing extraction of oil and gas. As shown in *Figure 19*, a majority of the respondents in Turkana County felt that there was some good level of involvement in the ongoing oil and gas processes as indicated by 54.4% of the respondents. Those who were of a contrary opinion stood at 45.6%. This could be interpreted to mean that the issue of

community involvement was either at different levels such that some forms of involvement were not recognized by some people or community members were simply not aware of the ongoing processes. There is therefore need to sensitize community members on the ongoing processes to ensure that they are aware and also win their support and willingness to be involved in the processes.

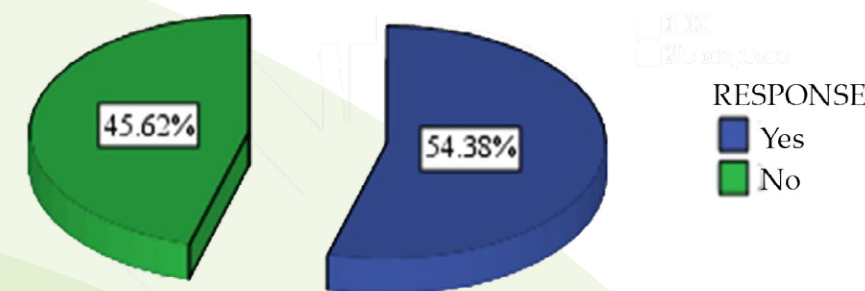


Figure 19: Community members involved in extraction

5.4.6 Level of community members involvement

The study further sought to gauge the level of community involvement in the extractive industry in Turkana County. As illustrated in *Table 27*, majority were casuals as indicated by 20.1%, followed by liaison officers as posited by 14.2% and village socialization officers as mentioned by 12% of the respondents. Other levels of involvement mentioned included security officers at 3.6% and finally community development welfare as mentioned by 0.7% of the respondents.

It is clear that level of involvement is at middle to lower levels of operation. This contrasts findings by Cordaid on Oil exploration in Kenya which relying on data from Tullow Oil and CEPISA reported that the two companies as well as their subcontractors sourced the majority of their employees from the local population, primarily for semi- and unskilled jobs. According to the report, in 2014, Tullow Oil had just over 100 permanent staff in Kenya out of which 70% were from Kenya⁵¹.

Table 27: Community members’ involvement

Community members’ involvement	Frequency	Percent
Not applicable	120	43.8
Casual Jobs	55	20.1
Community development welfare	2	.7
Village socialization officers	33	12.0
Liaison officers	39	14.2
Security officers	10	3.6
No response	15	5.5
Total	274	100.0

5.4.7 Organizations Spearheading Exploration, Community Sensitization and Conversations on Benefit Sharing

The study also sought to identify organizations spearheading exploration, community sensitization and conversations on benefit sharing which are as shown in *Table 28* below. It was evident that community sensitization

initiatives were majorly driven by NGOs, CSOs and CBOs operating in Turkana County while conversations on benefit sharing were driven by the county government and community leaders. The main organization investing in oil exploration is Tullow Oil Company. Tullow operates as a set of affiliate companies including Tullow itself, Africa Oil and Centric Energy. A number of CSOs are involved in community

⁵⁰ See more at: <http://www.zakenya.com/jobs/how-discovery-of-oil-in-turkana-county-has-affected-kenyans.html>. How Discovery of Oil in Turkana County has affected Kenyans. Retrieved on 8th June, 2018

⁵¹ Oil exploration in Kenya: success requires consultation. An assessment of community perceptions of oil exploration in Turkana County, Kenya. Retrieved on 8th June, 2018 from: https://www.cordaid.org/media/medialibrary/2015/09/Turkana_Baseline_Report_DEF-LR_Cordaid.pdf

sensitization and in convening forums for benefit sharing dialogues. Friends of Lake Turkana (FOLT) and DDG are key in sensitizing the community on benefit sharing, rights and legal framework. Key informants and focus group discussion discussants, singled out Tullow Oil Company for their attempts in sensitizing community members through employing numerous Community Liaison Officers (CLOs) and Village Socialization Officers (VSOs). These officers who either have strong connections to, or are from, the local communities in close vicinity to the operations of the oil companies. This was mentioned as both negative and positive especially in-terms of their value addition. One of the key informant consulted in this study summarised this by positing that: -

“.....the hiring of CLOs and VSOs by Tullow Oil Company and the subsequent opening of offices in several communities

in general has helped in dissemination especially on its activities and also made it possible for community members to request information and submit grievances..... but sometimes we feel as if these officers are a barrier to meaningful consultations between us and the company because most of the time they are ill-informed or they just lacked any authority to do anything.....”⁵²

Majority of community members as mentioned by key informants and focus group discussants, still considered Tullow Oil Company as a ‘closed’ organization and were not satisfied with the methods and content of information shared. There were feelings that Tullow was not disclosing all the information. Community members also felt that VSOs and CLOs had become agents of Tullow, who spied for the company within the community, instead of defending community rights.

Table 28: Organizations involved in exploration, community sensitization and conversations on benefit sharing

Exploration	Community Sensitization	Conversations on Benefit Sharing
Tullow Oil Company	County Government	Turkana County Government
Africa Oil and Gas Cooperation	Friends of Lake Turkana (FOLT)	Local leaders
	Legal Resources Foundation (LRF)	National Government
	CSOs/ CBOs	FOLT
	Turkana Natural Resources Group	NEMA
	Kituo cha Sheria	LRF
	Kenya Land Alliance	

5.4.8 Community Concerns

On the community concerns, a majority of the residents, (33.2%) indicated concerns on sharing of resources, followed by fear of losing land as indicated by 26.3% and health related concerns as mentioned by 17.5% of the respondents. Other concerns mentioned included environmental degradation (10.9%), loss of landscape or sense of place (7.3%) and finally degradation of social

and cultural values as mentioned by 4.7% of the respondents.

According to key informants and focus group discussants, the issue of land is a serious concern among the locals. One of the key informant interviewed noted that:

“...many investors in the county are buying land close to oil wells claiming the land

will be used as the nature conservancy yet the community is aware that it a strategy to acquire land for business purposes. Powerful people are also grabbing land.... this is slowly becoming an emotive issue....”⁵³

On health hazards respondents noted that there were concerns with how some of the chemicals used were being disposed. A key informant reported that: -

“...during open Gas flaring in 2014 in Twiga 2, Kapese area, many people are reported to have gone blind, high number of livestock died, children were born with disabilities and a lot of miscarriages were reported. Also poor disposal of chemicals used in extraction has posed a serious health hazard to community members...”⁵⁴

Key informants also identified loss of known local culture due to trooping of other

communities into the county as a key concern. Majority of people interviewed mentioned that Turkana community who are the dominant tribe in the County is known for certain values which are likely to be eroded with influx of people from other community to the county.

Other concerns mentioned included the fear of external conflicts with neighbouring countries and increase in insecurity as it has been the case in Syria, Libya and Nigeria as a result of oil discoveries, high crime rate in major towns in the county, immorality and drug abuse. They also cited change of lifestyle, that is, their pastoralism might be eliminated, and the fear that at some point the government might use force to deprive them of their rights and entitlement. Oil being a non-renewable resource the community also fears that the community might be left with many damages than benefits after they are done with extraction.

Table 29: Community concerns on the ongoing excavation

Community Concerns	Frequency	Percent
Fear of losing land	72	26.3
Environmental degradation	30	10.9
Health related issues	48	17.5
Conflicts on sharing resources	91	33.2
Loss of Landscape (Sense of place)	20	7.3
Degradation of social and cultural values	13	4.7
Total	274	100.0

5.4.9 Barriers to Effective Community Participation

Based on continuous accusations by the locals that they were being side-lined in certain specialised job opportunities and tenders which sometimes even resulted in conflicts with the investors, the study sought to identify barriers to effective community participation on the ongoing processes. As shown in Table 30, a majority of the respondents (32.5%) identified

high levels of illiteracy in the county as the major barrier to community involvement. This confirms an earlier finding that majority of the respondents who indicated that they had no formal education, more than 77% were from Turkana. Considering that the respondents were randomly sampled, this can easily be inferred to mean that literacy levels were higher in Kitui than in the 2 other counties selected for this study.

⁵² A key informant comment on community sensitization by the Tullow Oil Company. Interview held in June, 2018.

⁵³ Key informant remarks on community concerns of losing land. Interview held in February, 2018.

⁵⁴ Key informant remarks while explaining the health hazards posed by management of wastes from the extractives.

Lack of sufficient skills and knowhow on issues of oil and gas was also highlighted as a barrier to effective community involvement in extraction processes. This was indicated by 19.7% of the respondents. The factor is closely tied to illiteracy in the county. Other factors mentioned included lack of platforms by the locals to directly negotiate involvement with the investor as indicated by 15.3%, poor leadership among the community members which was mentioned by 14.6% of the respondents and finally greed by some of the community members and elite of political patronage as indicated by 13.5% and 4.4% respectively.

Issues of poor leadership, greed by some of the community members and elite political

patronage featured prominently among the key informants and focus group discussants. The groups narrated a case where some Turkana leaders used to fund demonstrations against Tullow Oil Company as they demanded tenders and other benefits from the company. This corroborates findings by an investigative piece which featured on *The Standard* Newspaper on January 14, 2014 which alleged that some Turkana leaders actively organized and funded protests against Tullow Oil Company.

In the report, the writer indicated that some locals confessed to having been paid a down payment of Ksh. 100 and promised a similar balance to take part in the protest⁵⁵

Table 30: Barriers to community participation in excavation processes

Barriers to effective community participation	Frequency	Percent
Illiteracy Levels	89	32.5
Lack of sufficient skills and know-how	54	19.7
Poor negotiation skills on involvement	42	15.3
Poor leadership among the community members	40	14.6
Greed by some of the community members	37	13.5
Elite of political patronage	12	4.4
Total	274	100.0

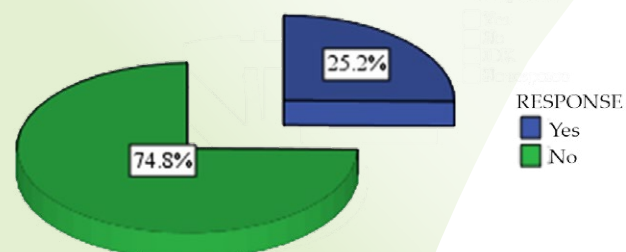
5.4.10 Dispute Resolution Mechanisms in the Extractive Industry

The study sought to establish various mechanisms put in place to deal with disputes arising from extractives in the county.

As shown in Figure 20, majority of the respondents were of the opinion that there were no known

strategies put in place to manage conflicts. This is as indicated by 74.8% of the respondents interviewed for this study. The remaining 25.2% of the respondents held a contrary opinion and affirmed that there were indeed some strategies put in place to manage conflicts arising from extractives in the county.

Figure 20: whether there are strategies put in place to manage conflicts



⁵⁵ Ngetich Jacob, (Tue, January 14th, 2014). *The Standard*. How Turkana leaders paid for protests. Available at: <https://www.standardmedia.co.ke/article/2000102259/how-turkana-leaders-paid-for-protests>. Retrieved on 8th June, 2018.

When asked to name some of the known strategies, a few interventions which bordered on the pursuit of transparency, rights and revenue sharing were mentioned. Civil society organizations were identified to spearhead community sensitization on rights while Tullow Oil Company, by setting up community liaison positions and recruiting from the community for these positions (Community Liaison Officers -VSO and Village Sensitization Officers CLO), were trying to address information sharing with a view to addressing transparency related conflicts.

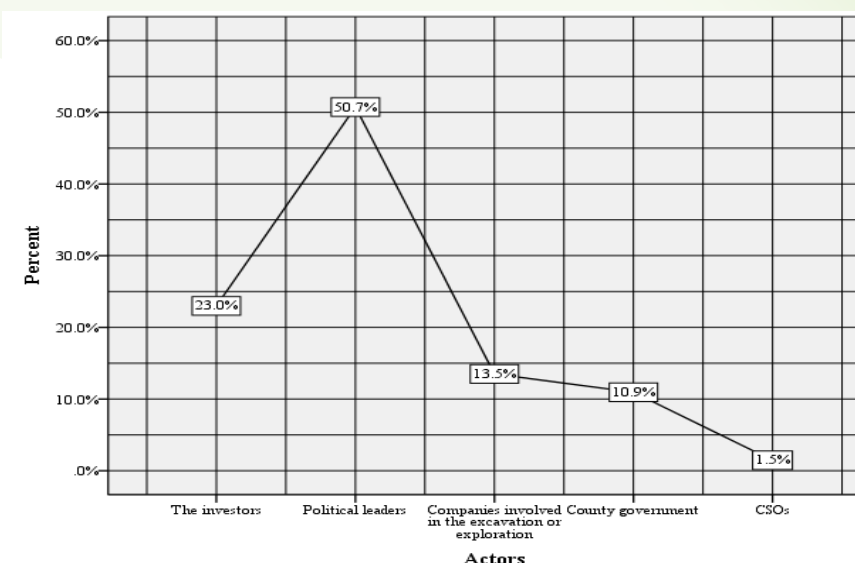
Community members mentioned National Government Administrative Officers (NGAOs) as actively involved in conflict prevention and management. According to the residents, oil and gas was always a regular topic during monthly chief's *barazas* for instance; Deputy and Assistant County Commissioners convened *ad-hoc* leaders' meeting where community elders, CSOs and Tullow Oil Company sit together to dialogue on emerging conflicts and their management.

5.4.11 Actors bearing the biggest responsibility for conflicts in Turkana

In order to propose targeted recommendations, the study sought to identify actors who bore the biggest responsibility for conflicts in the county. As shown in Figure 21, political leaders were identified to bear the biggest responsibility for the conflicts or misunderstandings already noted in the county as indicated by 50.7% of the respondents. Investors were ranked second by 23% of the respondents while companies involved in the extraction of oil and gas were ranked third by the respondents. Other actors mentioned included the county government of Turkana as indicated by 10.9% and finally CSOs by 1.5% of the respondents.

The findings corroborate reports by *The Standard* Newspaper in 2014 which reported that some politicians were sponsoring protests as a way of negotiating for tenders and other benefits from the Tullow Oil Company⁵⁶. Investors could be causing tensions through their endeavours to acquire land on speculative grounds and adopting a different way of land utilization as opposed to the traditional use by the locals.

Figure 21: Actors bearing the biggest responsibility for conflicts in Turkana



5.4.12 Actors best suited to spearhead peace and conflict management initiatives

The study further posed questions on the best placed actors to spearhead peace and conflict

initiatives in the county and as shown in Figure 22, majority mentioned the County Government of Turkana as indicated by 34.3% of the respondents, followed by CSOs mentioned by

⁵⁶ See more at: <https://www.standardmedia.co.ke/article/2000102259/how-turkana-leaders-paid-for-protests>. How Turkana leaders paid for protests. Report by Jacob Ngetich in January 13th, 2014.

20.4% of the respondents and then the national government through the NGAOs as indicated by 16.1%.

Politicians, local community leaders and finally FBOs were mentioned by 15.3%, 11.7% and 1.8% respectively.

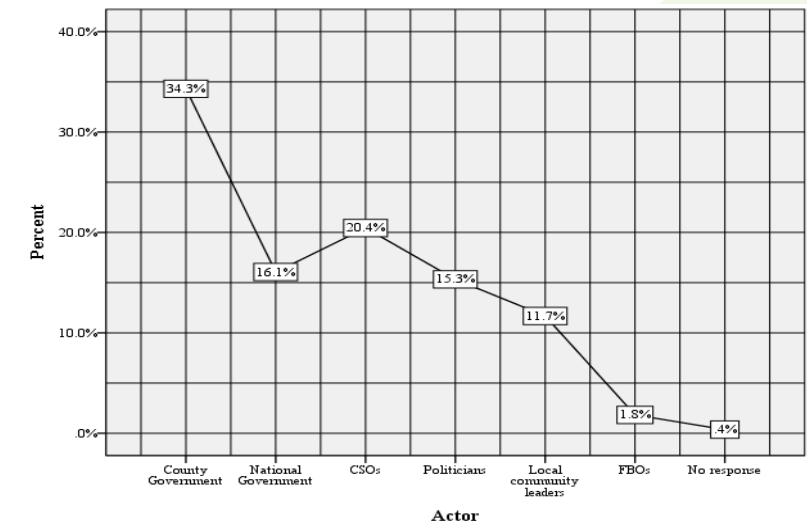


Figure 22: Best suited actor in spearheading peace and conflict initiatives

5.4.13 Emerging / Future Conflicts

On emerging conflicts, the study identified community displacement as a major future conflict area. This was mentioned by 31% of the respondents, followed by environmental degradation as future concern for the residents as indicated by 16.4%. More than 14% of the respondents mentioned pollution (for both air and water), reduced grazing land, 12%, infiltration of non-locals and culture change, 9.5% and finally emergence of oil cartels and increased armament of community leaders as

mentioned by 9.1% and 7.3% of the respondents respectively.

These findings give credence to a report on future conflicts in Turkana by Obiri in 2014 which identified conflicts such as land and resource distribution, displacement of the Turkana community with space scarcity and degraded pastoral-cultural norms, pollution, armed oil cartels, intra-Turkana class issues, environmental degradation and also terrorism as some of the likely future conflicts in the county⁵⁷.

Table 31: Future/ emerging conflicts

Conflict	Frequency	Percent
Displacement of persons	85	31.0
Reduced grazing land	33	12.0
Pollution (air and water)	39	14.2
Environmental degradation	45	16.4
Increased armament of community members	20	7.3
Emergence of oil cartels	25	9.1
Infiltration of non-locals and culture change	26	9.5
Total	274	100.0

⁵⁷ Obiri, J. (2014). An assessment report by UNDP on extractive industries for sustainable development in Kenya. Retrieved on 12th June, 2018 from: <http://www.ke.undp.org/content/dam/kenya/docs/Poverty%20Reducti on/ Extractive%20Industries%20for%20Sustainable%20Development%20in%20Kenya%20%20Assessment%20Re port%20.pdf?download>

CHAPTER SIX
COUNTY BASED FINDINGS AND ANALYSIS



6.1 Conclusion

Based on the study findings, the study concludes that community members across the three counties were highly excited about the discoveries and hold high expectations on how commercialization of the extractives will change the way of life through creation of job opportunities, business opportunities, improved infrastructure which they envisage will open up the counties to the rest of the world and also through provision of social amenities.

The study also established that land disputes were cross-cutting issues in the three counties. In Turkana, the issue was identified as the most common type of conflict followed by sticky inter-governmental relations between the National government and the 3 County Governments and then loss of grazing land. In Kitui, compensation of those displaced by the mining projects was identified as the most common conflict issue followed by land disputes and landlessness

while in Kwale, land disputes were the most common followed by resettlement dynamics and environmental degradation. Based on the study findings, the study concludes that these conflicts were majorly driven by poor on non-existent engagement/ involvement of communities and other stakeholders by the investors and also poor communication on benefit sharing plans by the extraction companies.

It was also apparent that community members across the three counties feared losing land, harboured concerns on the impact of the extraction processes on communities’ health and also future conflicts which could easily be driven by disputes on sharing of revenues and resources.

In regards to settlement of disputes and conflict resolution mechanisms, the study concludes that there were insufficient mechanisms put in place

to address existing or future emerging conflicts. Based on the study findings, there were a few members of the local communities trained and empowered to resolve conflicts that arise as a result of operations of extractive companies in the counties. Indeed majority of the respondents did not believe in the systems or procedures put in place to ensure transparency and accountability and therefore viewed information given by both the investors and government representatives as suspicious or as meant to hoodwink them into agreeing to a biased benefit sharing formulae.

Finally on legal, policy and institutional frameworks, the study concludes that majority of community members from the three counties were unaware of existing legislations and were generally unhappy with the way extractives were being managed. Peace and conflict management should be centred on information sharing so that both the community and the investor are at the same level of awareness regarding oil exploration, benefit sharing and community expectations.

Generally, the study noted a glaring gap in terms of civic education that needed to be filled. Interventions should prioritize civic education of the residents of these three counties especially on issues related to land adjudication, benefit sharing, definition of community in the proposed benefit sharing formulae, project durations and aftermaths and also on timelines necessary before experiencing or witnessing direct benefits. To avoid conflicting messaging and discordance, there is need for different stakeholders involved to work closely with the Liaison Committees and authorities to develop manuals that can then be used to conduct proper civic education.

6.2 Recommendations

There is no single actor, policy, law or process that can effectively address the challenges and issues unravelled by this study with regard to natural resource governance and management of the existing and emerging conflicts arising from the extractive industry in Kenya. A multi-prong, multi-sectoral, multi-stakeholder, multi-dimensional approach is required to do so. Overall, the people should be at the centre of the extractive industry in Kenya for it to accrue the desired benefits. The national government,

county governments and mining companies should embrace democratic principles that will allow for wider community involvement to minimise on escalation of conflicts and possibilities of emergence of new frontiers for confrontation. Efforts should be made towards inclusion, collaboration and cooperation. It is against this backdrop and the findings of this study that the following recommendations are made. The recommendations are tailored for specific actors.

6.2.1 For the National Government

1. Strengthen coordination, co-operation and consultation with County Governments. This will further open up communication channels for ease of information sharing.
2. Collaborate with County Governments in the implementation of the Inter-Governmental Relations Act 2012. The Act seeks to improve intergovernmental relations through establishment of intergovernmental sectoral forums, committees, inter-agency platforms, standing committees and working groups. Among these would be the establishment of a joint national and county government organ at the county levels and especially in counties where extractive resources have been discovered in order to harmonize both government efforts in peacebuilding and conflict prevention.
3. There is need to involve county governments in conflict prevention on issues around extractives: The new Mining Act 2016 has not been implemented yet as a policy. It does not however clearly stipulate the involvement of the county government in the whole process of mining and all that comes with. The only clear thing is the percentages and to who they go. Even then, there is no clarity regarding the real beneficiary of the 5% (or 10%) earmarked to benefit the 'local people'. Until it is implemented and in full effect, it is not clear how the county government is to get involved.
4. National government and parliament to accelerate enactment of the land

and petroleum bills into law with consideration of community demands on revenue sharing.

5. Train and enhance capacities of community mediators to address emerging conflicts: The National Steering Committees on Peace-building and Conflict Management (NSC) and National Cohesion and Integration Commission (NCIC) need to put proper mechanisms in place aimed at enhancing the capacity of the locals to address emerging conflicts. Some of these locals could be council of elders, youth and women who command respect from other community members. Another key area for training include advocacy on environmental protection.
6. Step up issuance of title deeds to the locals: This study identified landlessness, land adjudication, land ownership disputes and other land related issues as the leading conflict issues in the three counties. The National Lands Commission (NLC) and the ministry of lands needs to step their efforts in land adjudication in areas neighboring or earmarked for mining so as to streamline issues of land ownership and also sensitize community members on land usage and other planned and rehabilitation plans.
7. Develop a comprehensive land compensation plan: Some local residents in Kitui have been forcefully displaced, which has had significant adverse impact on them since they are forced to abandon their ancestral homes, lose their assets and subsistence agricultural production systems. As a result, the community is aggrieved due to lack or poor compensation.
8. NEMA should improve its accessibility to communities and address community complaints concerning environmental impacts by extractive operations in the county and work towards environmental protection and ensure that the audits of the Environmental Impact Assessment (EIA) report from

all areas with minerals are validated through public participation.

9. Promote conflict sensitive programming that ensures conflict impact assessments alongside Environmental Impact Assessments prior to initiation of projects and programmes. In the same vein, ensure inclusive planning and budgeting.

6.2.2 For County Governments of Kitui, Kwale and Turkana

1. Improve access to information by communities on extractive sector operations: This will ensure that local community members can access credible information regarding operations in extractive sector, lessen suspicion and mistrust towards government and companies, reduce rumors and confusion among community members.
2. Develop and implement policies, legislation and strategies on natural resource and environmental management. Fast-track development of proposed legal frameworks including the land, environment, natural resources and water bills to govern land access; environmental protection (particularly to manage and mitigate environmental degradation and pollution); pasture and water utilization; and natural resource extraction, access and use.
3. Enhance presence, visibility and responsiveness. This could be through deployment of Administrators who would facilitate dissemination of the County policy and agenda. Sustained engagement with the political leadership, opinion leaders, and other influential persons will ensure a supportive environment and a united front in sharing information with members of the public. Strengthen coordination, co-operation and consultation with the national government. This will further open up communication channels for ease of information sharing and dispel rumors, perceptions and misunderstanding.
4. Collaborate with the national

government in the implementation of the Inter-Governmental Relations Act 2012. The Act seeks to improve intergovernmental relations through establishment of intergovernmental sectoral forums, committees, inter-agency platforms, standing committees and working groups. For instance, establish a liaison committee – drawn from community members – that mobilizes public participation in activities relating to minerals prospecting, mining and utilization of other natural resources.

5. Promote conflict sensitive programming that ensures Conflict Impact Assessments (CIA) alongside Environmental Impact Assessments (EIA) prior to initiation of projects and programmes. In the same vein, ensure inclusive planning and budgeting.
6. Position peacebuilding and conflict prevention, management and resolution (CPMR) at the center of development policies, strategies and legislation. Deliberate efforts should be made to integrate peacebuilding in CIDPs. This would go along with establishment of well-resourced offices that deal with the peacebuilding function.
7. Strengthen and sustain civic education with regard to the extractives industry to enable members of the public have increased knowledge on what this entails, their roles, and expectations among other considerations.

6.2.4 For Mining Companies

1. Promote transparency and accountability. There is need to sustainably provide information regarding contracts, revenues, land access agreements & payments, and employment policies & quotas publicly available:
2. There is need to increase community participation, community sensitization on mining activities, improved corporate social responsibility by mining companies and setting up a community investment fund.
3. Engage with the local community to identify practices and opportunities that can positively impact on the livelihood of communities. It is through the

Community Development Agreements (CDA) that the CSR activities will help the companies build trust with the local community as well as contribute to their sustainable future.

4. Proactively engage county governments to ensure a supportive operating environment: This study noted some good level of misunderstanding between the county governments and the mining companies especially on CESS taxation and other issues on land use, county government involvement in CSR and other development projects initiated by the companies. There is need to for the companies to constantly engage the county government to win their buy-in and also ensure a supportive environment for their operations.
5. There is an urgent need to develop and share with the community members successful mine closure and land reclamation programmes such as tree planting. This will help in either improving or restoring the nature of the extraction sites and contribute to environmental conservation.

6.2.5 For National and International Non-State Actors including CSOs, CBOs, NGOs Development Partners and host communities.

1. Enhance civic education. CSOs and NGOs should collaborate with other stakeholders' to educate communities about their constitutional rights related to extractive sector and how to place claims when those rights are violated. This education should be based on reliable sources of information for the community to get reliable information.
2. Enhance training and sensitization: The key level of misunderstanding between the community and the investors was generally on access to information. The gap that therefore needs to be filled is that of accessing information from the companies and making it available to the community. Legal frameworks can also be simplified for the community

and, to augment what other CSOs are already doing, expand the reach of sensitization activities to the grassroots and the unreached specifically in county and country border areas and locations where there is potential for conflicts. This is because sensitization meetings and forums are currently concentrated in local towns and county headquarters.

3. Enhance collaboration between CSOs working in the counties to improve service delivery and avoid duplication of sensitization activities with the overall effect of reaching the unreached. The study noted that there existed different levels of awareness across and within the counties and also conflicting information in terms of benefit sharing, land use and reclamation mechanisms and so on. There is therefore need to ensure a coordinated approach in sensitization to avoid over-sensitizing some groups while leaving out other segments of the populace.
4. Local community needs to be proactive in participating in decision-making regarding the CSR activities carried out by mining companies. This will ensure that their needs are in tandem with company programmes. This study established that even at times when mining companies call out community members for discussions on ongoing processes, some community members do not turn up and therefore are locked out of critical discussions.
5. The local/ host communities are expected to provide an enabling environment and conducive atmosphere for investment. However, this does not mean that they sit back and watch things go wrong. They need to reach out to other stakeholders and make the extractive industry sustainable.
6. Development Partners to deepen support in building capacity for dialogue, negotiation and mediation. They should also sustain funding beyond political and electoral processes so as to institutionalize peacebuilding programmes.

7. Media to promote and enhance conflict sensitive reporting, guard against sensationalism, incitements and working-up emotions of the local population. The media should serve to inform and educate the public on the extractive industry.

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