

# Envisioning Incentives for Inclusivity in Natural Resource Management: A Case Study of Oil Extraction in Northwest Kenya

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## Abstract

In Kenya, oil was discovered in a region that was historically marginalized. It was the nation's first time development experience. At the time, the country did not have a policy on inclusivity, particularly regarding natural resource management and governance. In a context characterized by historical inequalities and exclusion; this study seeks to pursue strategies for mitigating natural resource related conflict, promote inclusivity and improve local governance. The study explores the following questions: (1) What factors are likely to contribute to natural resource related conflict in Northwest Kenya? (2) What potential impact do these factors have on the society? (3) What strategies can be used to mitigate natural resource related conflict and improve local governance in Northwest Kenya? This is a qualitative case study based on Social Justice Interpretive Framework. The study recommends among other things the design of good governance principles that integrate universal norms and indigenous knowledge.

## Keywords

Inclusivity, Oil, Good Governance, Natural Resource Management, Kenya

## 1. Introduction

Natural Resources Management can be defined as: 'the norms, rules and institutions that regulate the decisions, actions and interactions of governments, civil society and the private sector in relation to the use of natural resources' [1]. Land is the cornerstone of all other natural resources [2]. Therefore, land rights are critical to realizing resource related peace, stability, equality and economic growth [3]. Resource scarcity [4] or abundance [5] can fuel conflict if benefit sharing is in dispute. Good policies and governance practices can help mitigate such conflict for example public spending and public service delivery [6]. Other relevant measures include; checks, accountability mechanisms, penalties, and mechanisms to resolve disputes [7]. This is why the management of natural resources has become a critical component of development sustainability [8]. Sustainable practices are not only meant to conserve the environment but

also to ensure that local communities adequately benefit from the resources. When this does not occur, communities feel marginalized. Exclusion from natural resource benefits can lead to uprising for instance the case of the Maoist movement in India [9] or even armed conflict for instance in Angola, Congo, Colombia, Malaysia, Philippines, Iraq, Argentina and South Africa [10].

Sometimes, natural resource conflict can escalate [10] especially when it is related to rights issues such as land tenure or conflict between socio-cultural rights of one group and mechanization of agriculture by the other group [11]. If the conflict is politicized it can escalate into civil war [12]. In the past, failures to address such issues have been attributed to among other things lack of a comprehensive understanding of natural resource conflict [13]. Lack of comprehensive solution to natural resource conflict often leads to cycles of grievances [14]. This does not only influence new cycles of conflict, but also community participation in natural resource management [15].

Natural resource management is a dynamic initiative [16] making it difficult to influence regulatory compliance [17] because of the complexity of actors, circumstances, or weak institutions [18]. High demand for resource extraction [19], inadequate incentives [20], and failure to match policies with realities on the ground hinder resource management effectiveness [21]. Other challenges in natural resource management include: lack of access to information [22]; misinformation and uncertainties [23]; limited government attention [24]; tendencies by government to respond to natural resource management issues with complacency [25]; oppressive and exploitative policies [26]; and ignoring local resources such as knowledge, beliefs, practices, and organizational mechanisms in the community [27].

In 2012, Kenya discovered oil in the Northwest Kenya region [28], one of the most marginalized areas of the country [29]. The region is home to the Turkana people (*Ng'iturkana*) who have for centuries practiced livestock keeping, fishing, and seasonal agriculture. Since ancient times, this community has lived on this land, managed resources on it, and protected it from invaders such as the British colonial and Italian governments during the 20<sup>th</sup> century. Today, the Turkana people find themselves in unique socio-economic and political circumstances. Kenya's history of governance is stained by forceful acquisition of community land and evictions of the original owners. At first, this practice was legitimated by colonial government policy in London, hundreds of miles away from Kenya. Local people were not even aware that their land had been taken away from them by the powers of the crown. Later on, the post-colonial government perfected the practice in Nairobi.

Both the colonial and post-colonial governments had inconsistent land policies some of which were unjust to minority communities, especially those that practiced communal land ownership, most of them indigenous communities such as Turkana and Maasai. In fact, before the 2010 constitution, most land policies were legislated in the interest of and in favor of private sector owners and developers without intent to protect minority communities from losing their land. The most basic example is that the land Title deed which legally proves that a party owns a particular parcel of land is theoretically designed to be awarded to an individual, or a registered company or a firm. Therefore, land title deeds are awarded to an individual or a few individuals in the name of a person, family, or company. Kenya has never had a community land title deed. It has remained a legally contentious issue as to whether such a title deed should exist, what should it will look like, whose name should be on it and so on. To protect community land, the law authorizes government to be the custodian. However, it is the same government that has presided over land policies that saw huge sums of community land privatized, without the knowledge of the community. This problem has formed the core of historical land injustices, some of which have culminated into ethnic conflict.

With all these unresolved, the initial oil exploration was conducted. Commercial viability of the oil was confirmed.

Tullow Oil Company was awarded the oil and gas mining rights to drill oil in the region. The first stock of Kenyan oil is expected to be shipped from the region in the year 2016/17.

Despite of these developments, Kenya still does not have a have a consistent and comprehensive agricultural, environmental, and mining policy. Since: (1) the community is aware its rights under the new constitution; and (2) it has resiliently fought against unfair community land acquisition practices and protected this land for years; unfair oil resource management sets a recipe for possible future conflict. Therefore, this study explores the following questions: (1) What factors are likely to contribute to natural resource related conflict in Northwest Kenya? (2) How do these factors impact the society? (3) What strategies can be used to mitigate natural resource related conflict and improve local governance in Northwest Kenya?

## 2. Methodology

This is a qualitative case study design based on Social Justice Interpretive Framework. A case study is an empirical inquiry which seeks to study a contemporary phenomenon in depth and within its real life context [30]. Case study inquiry takes into account the study of the context as an integral part of the phenomena under study [31]. A case study means that the researcher concentrates on one thing, looking at it in detail, in depth, without seeking to generalize the findings since the uniqueness of a case studied is prioritized [32]. Everything encountered in the research experience amounts to the understanding of the phenomena under study.

Case studies require that the researcher collect data from different sources using different techniques [33]. Therefore, the following methods of data collection were used.

(1) *Archival records*- We conducted documentary research covering reports by different international, national, and community organizations, reviewed academic journals, books, documentaries, newspapers and magazines.

(2) *Key Informant Interviews*- Key informants are individuals who hold valuable information drawn from their social, administrative, leadership, and political positions which enable them to access unique set of information [34]. Good key informants are those individuals the researcher can easily talk to, and who are willing to provide information or help the researcher get such information when they don't have it. The researcher chooses Key Informants through prior informal relationships or snow-ball networks, while in turn the Key informants choose to participate in the study because they are willing to [35]. Key Informants were ten Kenyan experts from the Turkana community with a range of expertise including law, social science, history, culture, education, politics and civic engagement. We combined email interviews, Skype interviews, and face-to face interviews to reach out to different informants.

(3) *Participant Observation*- David is from Turkana community. He is a solid insider who joined a Turkana online community forum that discusses social, cultural, economic,

and political issues affecting Turkana County. On a daily basis, he participated in the forum, interacted with participants, asked questions, and collected data from the discussion. Some of the Key informants in this study were identified through this forum. Field trips were also conducted to examine various issues related to indigenous knowledge around issues of governance. Online blogs for example have been used in studies such as social-psychology. The difference between online research and field research is that in field research, you go to the field while in online research; the online platform becomes the field [36].

To analyze the data: we transcribed the data; read the transcripts repeatedly in order to make sense of it; conducted discussions; deduced themes from the transcripts; and wrote a description of the issues that emerged from the data. As indicated earlier, we interpreted the data in light of the Social Justice Interpretive Framework. Social Justice Interpretive Framework allows the researcher to understand specific issues or topics which characterize the conditions that disadvantage a particular group in society for example, exclusion, socio-political structures, ethnicity, race, inequalities or unequal power relations. The goal is to expose these issues and conditions with an advocacy agenda [37].

### **3. The Findings**

#### **3.1. The Setting**

Kenya's oil is mined in the southern zone of Turkana County, specifically around the Lokichar Basin of Turkana South Constituency. Before the oil discovery, the Turkana community was predominantly a pastoralist population. Even in the aftermath of the oil drilling, the community remains strongly attached to livestock keeping as a source of wealth. Therefore, it is imperative to note that pastoralism remains the main economic activity in the region despite oil discovery and resultant socio economic activities.

One would assume, as it has happened in some cases that oil discovery will or ought to replace livestock keeping. However, despite of the great economic potential oil represents, it does not undervalue the socio-economic activities that existed before especially livestock keeping, fishing and agriculture. This is because the Turkana people do not view natural resources as economic assets that can be merely monetized. On the contrary, these resources have value beyond economics. These resources do not only represent socio-economic value but also define the identity of the people. "They are nomadic pastoralists, farmers, as well as small scale traders." Concepts for example pastoralists and traders are not just economic concepts but moral ones as well. They denote relational aspects of the people to others, nature, and most of all land and livestock. This means that as pastoralists or traders they do what they do not just for money but because that is who they are. These relational and moral aspects of the people in relation to natural resource management are often skewed when conceptualizing natural resource management. The Turkana people do not just

protect the land and other resources in it because of money or climate change; but because that is who they are. They exist to protect it. Beyond livelihood, their meaning of existence is rooted into what they do to protect the land. No economic transaction can fully transfer this sense of ownership to any other entity hence selling and purchasing community land remains unrecognized and unacceptable even when money and title deeds have exchanged hands. The community never sells this land so it is never sold.

When oil was discovered in the area, the community expectations rose higher [29]. An informant describing the community's expectations said "Oil will bring government's presence near the people and this will in turn lead to accelerated development both at individual and community levels." Members of the community were expecting increase in job opportunities for the locals. Local traders also expected availability of tenders for meat, food stuffs and greens. Oil discovery did not only influence positive expectations, but fear as well. "It (oil) may affect pastoralism, (perhaps) due to take over of land resources by oil firms for purposes of oil exploration." Said a participant. The fear of losing land and other related natural resources represents the heart of the community's resistance to the existing framework for natural resource management.

#### **3.2. Turkana Customary Practices and Natural Resource Management**

##### **3.2.1. The Constitution is Meant to Protect Marginalized Communities' Right to Resources**

The new constitution was meant to promote equal development in all 47 County governments of Kenya. As a result, the national government paid much attention to formally marginalized regions such as Turkana County by increasing revenue allocation to the County. In 2014 for example, Turkana County received the second largest national revenue allocation of Ksh. 7.894 billion after the Nairobi County [38]. The rationale for this allocation is to try to address existing inequalities. However, political rhetoric around this allocation advances the argument that since the County receives relatively higher allocation of national revenue; then that is in response to the current oil and gas resources mined from the region. This is not true since national revenue allocation as traditionally constituted is in response to poverty and development levels. The idea of national revenue allocation proportional to the revenue each County contributes to total national income remains a hotly contested issue and has not been translated into policy. These politics however, are used to evade the debate around the role of the national government and County government in the development of Northwest Kenya; under the guise that the County already receives relatively higher national resource allocation compared to other counties in Kenya. These politics are part of a scheme to avoid meaningful debate on how Turkana County will benefit from oil resources mined in Northwest Kenya, and how these resources will be managed to ensure maximum benefit of the Turkana people.

### 3.2.2. Addressing Inequalities and Exclusion Requires More Beyond Redistribution of Revenue

There is a cloud of ambiguity around the process of linking national resources to development in the context of oil mining in Northwest Kenya. Development in Northwest Kenya means more than just allocating relatively higher resources to Turkana County. Meaningful policy issues must embrace an understanding beyond the traditional annual increase in national revenue allocation. Therefore, the question is, does increase of revenue allocation translate to equity and success? The answer is not always. Better system of good governance mainly accountability and community involvement is what determines the success of resource management [39]. While this is a critical component of good governance, the voice of the community is often missing in the development discourse in the County. The political elite, far removed from the realities of the people plan and execute policies and rank their own success based on the elite conceptualized indicators, most of which hardly resonate with the critical needs in the community.

When politics of natural resources dominate the discourse, the values, spirituality, and meaning the Turkana people attach to land is often ignored. This leads to cycles of political solutions that often don't work, because they do not reflect the values of the community which is expected to honor, recognize, or comply with such solutions. Political invention of natural resource management solutions without listening to the voice of the community and examining the beliefs and practices of the community is a recipe for failure. Policy implementation experience teaches us that government alone cannot succeed in executing policies that require compliance from the community, especially when the people feel left out, ignored, marginalized, or robbed by the government [40]. The wisdom of governance demands that government listens to and learns from the people in exchange for participation, compliance, and success. Therefore, engaging with, and working with the marginalized people as development partners in policy design and implementation is essential for policy sustainability.

### 3.2.3. Turkana Customary Practices Provide Resources for Natural Resource Management

Turkana community locally referred to as *Ng'it Turkana* is made up of the two main groups, *Ng'irisae* "Leopard" group or *Ng'imor* "Mountains" group. Children belong to the group where they were born in but with an exception of daughters who get married to the other group. This means that the daughter becomes a member of the group she is married to. The two main groups (*Ng'irisae* and *Ng'imor*) have distinct identification especially when it comes to what they wear. The men of the Mountain (*Ng'imor*) group normally put on hats with black feathers from a male Ostrich and their wives put-on silver (or black) metal rods around the neck, legs and hands. On other hand, men of the Leopard (*Ng'irisae*) group put on hats with white (brown) feathers from a female

Ostrich while their wives put on a copper rods (light-coloured metal) ornaments around the necks, legs and hands.



Source: Google Photos

Figure 1. Turkana Elders.

Likewise, socio-cultural rituals of the *Ng'it Turkana* community are deeply rooted in the interrelationships between people (living and the living dead) and nature. This relationship therefore embroils both visible and invisible things. The essence of being a Turkana is therefore imaged socio-cognitively in the interrelationships between people and nature symbolized in the natural resources. These interrelationships therefore become the theoretical framework within which natural resource management is understood and practiced. The value of natural resources cannot be conceptualized in isolation, but in relation to the complex interrelationship such resources have with the people. Unlike in the western philosophy where property is something like an asset detached from the being of the owner; natural resources are part of the being of the owner in Turkana. Being in this case is social, cultural, relational, and

spiritual. It is not just a biological phenomenon that is limited to breathing and, living or geographical phenomenon existing to the exclusion of human nature.

The Turkana community highly value water as one attribute of peace and blessings. Whenever there is a traditional function to be performed in the community, the Turkana elders use water in a dish referred to as *Itubwa* to sprinkle around as a sign of cleansing and peace (commonly known as *Apiaro* meaning being *blessed*). Peace and tranquility upon which life and development is based on begins with value for the role of water in relationships. Water is a major component of the ritual of life, one that brings peace and blessings- the most essential things that characterize a productive environment for development.

The Turkana also believe that when a person dies, his or her spirit does not die. Instead the spirit of the dead is alive and is keeping watch over the living. Sometimes the spirit of the dead can visit the living in form of a snake or even as an animal. Therefore in nature, the Turkana find part of their invisible being embedded in different types of animals. Life is a network of living and non-living things, visible and invisible entities that transcend the bodies of human beings, geographical features, and those of animals. Nothing exists exclusively in itself and for itself without being in relation to another.

During marriage which is referred to as *Akuuta*, there are rituals performed which are binding the woman to the man. However, the consequences of this binding if the covenant is broken transcend human relations and affect nature. In case of any act of unfaithfulness or infidelity for example, it is believed that the animals or even the children of that family will start becoming sickly and even die. Faithfulness required in and upon which honoring covenants depend is highly cherished among the Turkana. Any form of dishonesty is envisioned to bring harm to nature as well. Rituals that protect faithfulness as a virtue therefore form part of the socio-cultural tools the community uses to cultivate integrity which is meant to protect not only family values and life, but also nature.

The spirituality of land as a sacred realm is exemplified in the sacred beliefs or values about natural resources like water, trees, stones, places, land, and connections between spirits and land. When describing Turkana spirituality in relation to resources, a participant observed;

The understanding of life among the Turkana people revolves around livestock. Livestock is principally supported by land resources – that is, water, pastures etc. During cultural rites, livestock features as the “acceptable offering”. So from this standpoint, it is clear that sacred beliefs, spirits and land occupy a special place within the Turkana people’s social makeup. There exists a solid connection among them.

The Turkana people have beliefs in special natural resources, for example, near Mountains you can get a heap of stones known as *Ngasenon* (literary meaning putting something on top). Every person that passes near there has to throw something there like, tobacco, food stuff, stones or money as one way of appeasing the spirits, so that they will

not haunt or cause a bad omen to passersby. Appeasing spirits existing in nature is a form of recognizing the authority of that particular territory. By providing an appeasing offertory, one recognizes the sovereignty of the spirit of the Turkana people, the spirit not just manifest in the spirits inhabiting nature, but also the spirit that constitutes the Turkana as a people. This is why monetizing natural resources does not represent the complex nature of the value of these resources. This is why the economic concepts used to translate natural resources into assets owned by a particular designated entity and do not capture the complex realities especially the transcendent nature of land and other natural resource ownership.

In conclusion, it is important to observe that the value Turkana people assign to natural resources transcend economic and political value generally assigned to natural resources. This complex value which is spiritual, relational, economic, as well as political underlie the protectionist approach the Turkana people have applied to protect their land and natural resources from invaders. It is also the same philosophy that guide the way the community shares its resources with those who use it. While this understanding has not been envisaged in the current conceptualization of natural resource management; it is a critical component that will foster sustainability in natural resource management. Taking for granted the community’s value for natural resources will often lead to a dysfunctional natural resource management system, exploitation, exclusion and conflict.

### 3.3. Community Land Use

Land tenure and management in the nomadic communities living in the northwest parts of Kenya is not clear since everything is considered to be belonging to the community where it is found. Land tenure is the affiliation, whether defined legally or customarily, among people with respect to land [41]. This presents one of the most crucial challenges in natural resources management in Kenya. This study indicates that the management of oil and gas resources, in light of other resources like water, livestock, fishery, wildlife, agriculture and emerging entrepreneurial sector is much of a natural resource management in crisis. The management is in crisis because it is driven by post oil discovery needs characterized by socio-cultural, economic, and political interests which are complex and dynamic. This situation represents a potential conflict given that: (1) Natural resource management has begun without first determining who owns what, when, and how? (2) How can that be legally determined? And (3) whether such legal determination can be legitimated by the community on the grounds that it most accurately represents the tacit truth in the custody of the community. Anything else done in the name of public policy will be treated by the community as a scandal.

Despite of the socio-economic changes in Northwest Kenya, three prevailing issues for the Turkana people are that: (1) the community cannot lose the right to own the land; (2) the community must maintain influence and control over the way natural resources are managed; and (3) the

community must adequately benefit from its resources. Land is a major social, spiritual, economic, and political factor in the life of the Turkana people. The right to land for the Turkana people is not something given by the state, but something that is rooted in their ancestry. Land is important to the Turkana because it is ancestral land. Historically, they have resisted many tribes from living in or taking it away from them. "While border disputes have been there, the rate of conflict has not been as intense as it currently appears." Said a participant. The value of land is therefore evidenced in the way: the community resisted colonization; engages in historical border disputes; and protects its socio-economic activities. An informant for example observes:

Land, according to the Turkana people is inseparable from pastures and water resources. Being a nomadic community, there is that inherent tendency to resist any form of restricted movement. For generations, these people have known one way of life – unrestricted exploitation of their land resources.

At the time of the study, one of the dominant issues in community activism in Northwest Kenya was that the national government was issuing land title deeds to individuals or companies without consulting the community. Part of the land in question was community land. The pattern of land allocation reflected the trends in oil discovery. This suggested that most of the community land in oil mined areas, as well as areas where oil discovery experiments were being conducted was vulnerable to fraud. The secrecy with which land was acquired and allocated to private entities and the failure of government authorities to provide for transparent process for land allocation was of critical concern. The way government was handling the land issue in the area showed that it negated the community's right to the ownership of the land. This can in the future halt the development process since in the past, irregular allocation of community or public land in Kenya has often resulted in title deed revocation sometimes when the development projects have begun. Avoiding such irregularities can improve the development process.

In Turkana land is owned by clans referred to as *Ekwar* or *ere*. These are chunks of land whereby one clan can occupy in season and out of season. During drought the young men will migrate with their animals to other far land in search of pasture and water for their animals (locally known as *Akigel Abor*) while they leave behind children, the old men and women in their ancestral land to take care of it until when they return, usually during the rainy season. This type of communal ownership of land is informal hence it is not reflected in land records under the custody of the national government. While the law recognizes community land ownership, it did not envisage a situation where oil will be discovered in this area and as a result fuel the scramble for community land. Therefore, the law lacks a basic guide on how to determine the way community land ownership can be actualized in a real land transaction where an investor wants to lease community land for oil or gas mining. Furthermore, it is not clear how bureaucratic adjudication works out this process leading to issuance of land title deeds to individuals

and firms in the affected areas.

Out of interviews and observations, we discovered that there exists in the community, an alternative mechanism for land allocation and regulation which if utilized can: (1) promote transparency, accountability and good governance; (2) improve community participation; (3) reduce land disputes; (4) boost investor confidence; (5) reduce public spending on unnecessary administrative adjudication of land cases; (6) conserve the environment; and (7) protect community resources. All these are essential for sustainable natural resource management. For government to determine who owns a particular piece of community land, whether or not to allocate it to a private entity, and how; there should be a process that obligates authorities to consult the community. Such a process can tap into the community land allocation process. It important to note that circumstances surrounding land allocation can vary depending on among other things the purpose of use. The following factors are essential in determining community land allocation to an individual user among the Turkana.

- 1) Since community land is ancestral land passed on from one generation to another; community land allocation to an individual does not mean that the individual now absolutely owns the allocated land. It does not also mean that during the period the individual will be using that particular land, the community surrenders its right to monitor the use of the land and to protect it in case the individual is misusing it.
- 2) Major community land decisions are made by the council of elders referred to as *Ekito-e-Angikiliok*. The Council of Elders has several roles it performs for example: it control matters related with; land, animals pasture, water, discipline, marriage, and teaching about culture. Elders also regulate and negotiate with other communities surrounding their territory to access water and pasture (Grah, 2005).
- 3) In order to allocate community land to an individual, the individual presents the matter to the council of elders requesting for the land and explaining what he/she intends to use the land for.
- 4) A council of elders receives a request; studies it; if need be, calls a public forum to notify the general public of the matter; and after receiving the views of the members of the public, retreats to make its decision. Its decision is final.
- 5) When determining whether to allocate the land to the individual, the council considers other factors like how that allocation (of land) will affect grazing areas and what activities will be undertaken (in that land).
- 6) The deliberation upon the request and the allocation is an open, critical, and deliberative process that is reached at by consensus.
- 7) Due diligence to safeguard of community interests is considered priority in the process of allocating the land as after the land has been allocated.
- 8) The decision reached is meant seek to balance between the interest of the user and the community for example



when someone wants to live in the grazing land, then he is prohibited by the elders because that is a common grazing land for all the community members.

- 9) The user enjoys unlimited rights over the land (belonging to him/her) to the extent that these rights do not impede the general public from accessing land resources (water and pastures).
- 10) The user is not allowed to prevent the community from accessing other shared community resources for example blocking communal routes and/or restricting access to communal grazing areas and watering points/boreholes.
- 11) The user cannot bring in another beneficiary who was not part of the initial request for community land allocation for example; the user has the right to graze livestock or live in specific area allocated by the council of elders. However, the user is not allowed to bring in another new comer to stay or live there if the elders have not been informed and have not vetted the new user.
- 12) The user has no right to sell that land.
- 13) The community retains certain rights for instance the right to access essential shared resources such as water, pathways, grazing, and the right to reverse its decision and terminate the user's land grant incase the user turns out to harm the community later.
- 14) The council of elders retains the mediatory role between the user and the community. Any case pertaining land is solved by the council of elders, where the complainant and the plaintiff are asked to bring their witnesses and the case is heard and determined under a tree.
- 15) Land use cases are solved in local tribunals established by the council of elders BY bringing together all concerned parties and by conducting the case in an open place – preferably under a tree, so as to accommodate the views of the members of the public.
- 16) Among sanctions and other deterrent measures the council of elders administer to the offender include revocation of land ownership rights and/or an order to pay fines – in the form of livestock and other ways as the council of elders will find. The fines are imposed to the offenders according to the crime committed. Sometimes they are asked to bring a cow or 20 goats for the elders.
- 17) To ensure that these customary tribunal decisions are implemented in the community; the community applies different strategies for instance: the community has already built a cohesive compliance force which applies public pressure to those who try not to comply; daily monitoring and application of the concept of public shame; and community action such as forcing compliance by sanctions if the offender remains nonresponsive.
- 18) Whenever a decision of the community is made, there is a serious fine imposed on those who breach the customary decisions, they can be summoned by the

council of elders and can even be expelled from the community.

- 19) It is a communal responsibility to monitor the way community land is used and mobilize responsive action when it is misused. All the council of elders and all the members of the community monitor how the land users are using the land

In conclusion, land use in Northwest Kenya is not only affected by land tenure problem, but also irregular land allocation by both the National and County government. While this problem is partly caused by existing loopholes in the legal framework, the secrecy with which land allocation is conducted is worth public concern. A better mechanism to provide sustainable natural resource management should take into account integrating indigenous participatory, deliberative, monitoring, sanctions and rights issues that already exist in the Turkana community into natural resource management policy and practices.

### 3.4. Key Areas of Concern

There are a number of areas of critical concern as regards to natural resource management in Northwest Kenya. These concerns represent a range of issues identified during the study among them: (1) dispute resolution mechanism; (2) inconsistencies in the application of land policies; (3) administration of mining and exploration license; (4) lack of a comprehensive understanding of natural resource management; (5) developing a multi-sectorial approach to economic development in Turkana County; (6) politicization of oil and gas mining; (7) compensating the community; (8) lack of participation; (9) environmental risks; (10) land rights; (11) corruption; (12) safeguarding community ownership of the land; and (13) unclear oil and gas resource allocation formula.

1) *Dispute resolution mechanisms.* While the current legal framework sought to empower local communities in natural resource management, the creation of land courts by the Constitution of Kenya, 2010 has shifted focus away from customary courts. The disconnect between the customary courts the land courts is that land courts are designed to operate like other conventional courts. In this case, they are not integrated with the customary courts, hence they do not benefit from the indigenous resources that exists in these courts for instance history of some of the disputes which is critical in interpretation of some of the land cases. Unlike land courts, customary courts operate from the very places where the dispute occurs. As a result, the judges are more enriched by the context and the experiences more than land courts that are far removed from the reality. Customary courts are also attended by more local people hence they carry with them the restorative and reconciliatory role for example since the community is more involved in the justice process, this involvement brings healing and satisfaction in the community.

2) *Inconsistencies in the application of land policies.* An

informant observed that precedence set by the courts concerning application of land laws was inconsistent in the sense that at times the courts upheld customary practices in cases of land ownership while in others it upheld the title deed. "Besides, laws applied in these conventional courts sometimes conflict with the customary understanding of land matters." Said the informant. While this problem is partly due to the gaps in the legal framework as observed earlier, the courts have not been clear whether customary practices are equal to title deeds in matters of land ownership. The courts have not also set a clear criterion that determines whether, how and when customary practices assume the value of title deeds. As a result, the fate of land disputes of this nature is at the discretion of the judge to consider the evidences and circumstances of the case and make a ruling.

- 3) *Administration of mining and exploration license.* The government offers the drilling licenses before contacting the community for local license that's generally acceptable by the local community and their leaders. This practice often leads to corruption. It also risks the loss of community land.
- 4) *Lack of a comprehensive understanding of natural resource management.* While there are natural resources in the region such as water, precious stones, sand, land and wildlife; government did not consider these resources worth policy attention until the discovery of oil and gas. Furthermore, the policy discourse around natural resource management focuses largely on oil and gas, giving less attention to the other natural resources. Such a skewed discourse is likely to influence a skewed natural resource management framework that does not envision how to protect and grow grass, how to drill and utilize water; and how to equally invest in the management of all these resources so that the livestock, fishery, oil and gas sectors can be maximized for the development of the region. In this case, oil and gas industry will not be the sector replacing other sectors that existed previously, but will be an alternative sector.
- 5) *Developing a multi-sectorial approach to economic development in Turkana County.* The goal to develop a multi-sectorial approach to economic development is related to the previous concern to have a comprehensive understanding of natural resource management. At the moment, two crucial sectors need attention namely oil and gas sector and the livestock sector. "How to accommodate the Turkana pastoral understanding of land matters vis-à-vis commercial exploitation of land for purposes of oil and gas mining is a matter of priority." Said a participant.
- 6) *Politicization of oil and gas mining.* There is entirely lack of information on what is going on in the oil and gas mining sector. Government has chosen to advance the policy of secrecy. Tokenism is used to bring cheap people and passively involve them in making decisions. When passed, coercion is used to execute the decisions. Nairobi is controlling all these issues. There is rush to

grab resources by the political class. All tenders are also given to the political elite.

- 7) *Compensating the community.* The oil and gas mining sector continues to dislocate other economic sectors especially the livestock sector which is the major source of income for the majority of the population in Northwest Kenya. As the oil industry continues to alter the socio-economic organization of the region; more resources will be needed to develop ranches fully supplied with water and to increase the production of grass for livestock. Such an organized economic system requires stable and adequate sources of development financing. One way to do so is to use revenues from the oil and gas sector to develop livestock, water, and fishery sectors. This will also have a linkage effect on the entrepreneurial sector which is essential for job creation. The concern however, is that the distribution formula for oil revenue and the policy on how oil revenues will be used in the County remains vague.
- 8) *Lack of participation.* Lack of participation of local communities in oil natural resource management remains a great challenge. Oil companies prefer government officials and the political class as opposed to adopting a collective process – carrying all on board. That is, elites plus community members. This closes opportunities for local people to give input and shape the perspective of management of natural resources. It is important to note that government and political class do not necessarily represent the interests, perspectives and needs of ordinary people.
- 9) *Environmental risks.* Currently, potential environmental risks in the region are the fears that oil spills could flood the grazing zones and water catchment areas if preventive measures aren't put in place. Other risks are soil erosion and deforestation. Another challenge is that most ordinary Turkana are illiterate to understand land laws. As a result, leaders take advantage of the illiteracy and ignorance to influence the people to make decisions which favor the interests of the leaders. In such circumstances, critical questions such environmental risks are taken for granted. Therefore, lack of knowledge is an impediment in the efforts required to ensure environmental safety.
- 10) *Land rights.* Protection of the grazing zones for the community in the wake of demarcating land for oil and gas has not been prioritized in the current policy. In the past, grazing land has been fenced by firms conducting oil and gas mining without consulting the community. The fencing of communal grazing land for purposes of oil exploration and influx of populations in the oil zone is likely to create suspicion between the Turkana people, the firms and migrants to the region.
- 11) *Corruption.* There is lack of transparency and dishonesty among leaders who have been involved in the oil and gas mining engagements with the government and the private sector. Corruption among leaders is the worst enemy of the poor. Most people in



these areas are poor, hence when leaders take the benefits that the poor ought to get just because they intent to use such resources to finance their political campaigns; they weaken the relationship between the community, the government and oil firms. Oil and gas mining succeeds most when local communities are adequately benefiting from the oil resources.

12) *Safeguarding community ownership of land.* The greatest challenge in Turkana is that the community does not have title deeds yet title deeds are the legal documents used in transacting business with oil and gas firms. This is because they show legal ownership this land. Even in cases of compensation, title deeds are required.

13) *Unclear oil resource allocation formula.* Oil and gas resource allocation formula remains unclear. In Kenya something can be said but things change because some of the government announcements are basically populist and meant for political rhetoric rather than actual policy. Since the discovery of oil and gas, the government has offered many contradictory announcements regarding the formula but has not published any of such a formula as a bill or as the government gazette notice. There is no law yet on oil and gas resource sharing.

#### 4. Implications for Practice

The following strategies can be used to mitigate natural resource related conflict and improve local governance in Northwest Kenya.

1. In order to solve or minimize resource related conflicts there is need to strengthen local governance structures, utilizing community based approaches and putting the Council of Elders at the vanguard of managing and solving natural resources based conflicts [42].
2. Key areas to focus on when seeking to achieve sustainable conflict-free resource are:
  - Incorporation of customary and legitimate institutions of good governance by identifying and supporting implementation of the customary regulations
  - Improvement of the attendance and capacity of the state and community security and justice systems.
  - Ensuring that all conflict resolution interventions in pastoral areas are prearranged and conducted in a manner that is sensitive to local values and priorities
  - Provide social amenities such schools, health facilities, water and better accessibilities
  - Embracing local community participation in matters related to resource extraction in their land
  - Mainstreaming of communal land tenure in the national land policy

#### 5. Conclusion

For the first time, Kenya has discovered oil and gas in

Northwest Kenya, one of the most historically marginalized regions in the country. The region is home to the Turkana community, a minority ethnic nation that has lived in the area for hundreds of years. This occurred at a time Kenya did not have a comprehensive policy on inclusivity, particularly regarding natural resource management and governance. In the context characterized by exclusion and inequalities, this would be a recipe for conflict. Therefore, this study explores the following questions: (1) What factors are likely to contribute to natural resource related conflict in Northwest Kenya? (2) What potential impact do these factors have on the society? (3) What strategies can be used to mitigate natural resource related conflict and improve local governance in Northwest Kenya? This is a qualitative case study design based on Social Justice Interpretive Framework.

The findings of this study show that: (1) Both colonial and post-colonial states excluded the Turkana from land policy decision making. This has made them vulnerable to natural resource exploitation. (2) Oil mining may interfere with prior socio-economic activities such as tourism, agriculture and livestock keeping; even though it will boost local trade. (3) These sectors are likely to be dislocated since there are no mechanisms to develop the oil mining industry along agriculture, livestock keeping, and tourism. (4) Given that there is no clear oil benefit sharing formula; conflict would arise from the community's legitimate expectation for example employment, business opportunities, welfare and social development. It would also lead to the exploitation of the community resources by the state and the private sector. (5) Kenya's land policy has not resolved complex issues such land tenure problem which is largely affecting minority groups like the Turkana, because they practice communal land ownership. Allocation of land title deeds to oil exploring firms, individuals and private companies is likely to displace these communities. It may also lead to environmental degradation whose consequences will affect local communities most, while they may have little or no control over holding these firms accountable.

This paper proposes that a more inclusive approach is required if the management and governance of oil and gas resources is intended to promote sustainable development. To achieve this, there is need to reform the policy and practice in the management of environmental and oil enterprise sector. As a result, this paper identifies indigenous resources that can be incorporated in the natural resource and management sector in order to promote inclusivity required for effective public participation in natural resource management and governance. Among these indigenous resources are principles such as: communal land use and regulatory practices; environmental spirituality, values and norms; community property allocation practices; accountability practices; decision making and dispute resolution mechanisms.

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