POLITICAL ECONOMY OF OIL AND
PUBLIC REVENUE MANAGEMENT
IN KENYA

Evidence From Turkana & Nairobi Counties
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<thead>
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<th>Description</th>
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<tbody>
<tr>
<td>AfDB</td>
<td>African Development Bank</td>
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<tr>
<td>CARA</td>
<td>County Allocation Revenue Act</td>
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<tr>
<td>CEC</td>
<td>County Executive Committee</td>
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<tr>
<td>CoB</td>
<td>Controller of Budget</td>
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<tr>
<td>CoG</td>
<td>Council of Governors</td>
</tr>
<tr>
<td>CRA</td>
<td>Commission on Revenue Collection</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>DAC</td>
<td>District Advisory Committee</td>
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<tr>
<td>DRM</td>
<td>Domestic Resource Mobilization</td>
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<tr>
<td>EAC</td>
<td>East African Community</td>
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<tr>
<td>EPRA</td>
<td>Energy and Petroleum Regulatory Authority</td>
</tr>
<tr>
<td>FBO</td>
<td>Faith Based Organisation</td>
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<tr>
<td>FID</td>
<td>Final Investment Decision</td>
</tr>
<tr>
<td>IBEC</td>
<td>Intergovernmental Budget and Economic Council</td>
</tr>
<tr>
<td>IBP</td>
<td>International Budget Partnership</td>
</tr>
<tr>
<td>ICPAK</td>
<td>Institute of Certified Public Accountants of Kenya</td>
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<tr>
<td>IEA</td>
<td>Institute of Economic Affairs</td>
</tr>
<tr>
<td>IFMS</td>
<td>Integrated Financial Management System</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>INGO</td>
<td>International Non-Governmental Organisation</td>
</tr>
<tr>
<td>KAM</td>
<td>Kenya Association of Manufactures</td>
</tr>
<tr>
<td>KCSPOG</td>
<td>Kenya Civil Society Platform on Oil and Gas</td>
</tr>
<tr>
<td>KENRA</td>
<td>Natural Resources Alliance of Kenya</td>
</tr>
<tr>
<td>KEPTAP</td>
<td>Kenya Petroleum Technical Assistance Project</td>
</tr>
<tr>
<td>KHW</td>
<td>Knowledge Harvesting Workshops</td>
</tr>
<tr>
<td>KNBS</td>
<td>Kenya National Bureau of Statistics</td>
</tr>
<tr>
<td>KOGA</td>
<td>Kenya Oil &amp; Gas Association</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
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<tr>
<td>KPMG:</td>
<td>Klynveld Peat Marwick Goerdeler</td>
</tr>
<tr>
<td>KRA:</td>
<td>Kenya Revenue Authority</td>
</tr>
<tr>
<td>MAYW:</td>
<td>Maendeleo Ya Wanawake</td>
</tr>
<tr>
<td>MCA:</td>
<td>Member of County Assembly</td>
</tr>
<tr>
<td>MDA:</td>
<td>Ministries, Departments and Agencies</td>
</tr>
<tr>
<td>MP:</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>NEITI:</td>
<td>Nigeria Extractive Industries Transparency Initiatives</td>
</tr>
<tr>
<td>NORAD:</td>
<td>Norwegian Agency for Development</td>
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<tr>
<td>NTA:</td>
<td>National Taxpayers Association</td>
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<tr>
<td>NUPAC:</td>
<td>National Upstream Petroleum Advisory Committee</td>
</tr>
<tr>
<td>OAG:</td>
<td>Office of the Auditor General</td>
</tr>
<tr>
<td>OCOB:</td>
<td>Office of The Controller of Budget</td>
</tr>
<tr>
<td>OREA:</td>
<td>Ontario Real Estate Association</td>
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<tr>
<td>OSR:</td>
<td>Own-source Revenue</td>
</tr>
<tr>
<td>PEA:</td>
<td>Political Economy Analysis</td>
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<tr>
<td>PFM:</td>
<td>Public Finance Management</td>
</tr>
<tr>
<td>SAI:</td>
<td>Supreme Audit Institutions</td>
</tr>
<tr>
<td>SWF:</td>
<td>Sovereign Wealth Fund</td>
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<tr>
<td>TI:</td>
<td>Transparency International</td>
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<tr>
<td>TISA:</td>
<td>The Institute for Social Accountability</td>
</tr>
<tr>
<td>TUDOF:</td>
<td>Turkana Development Organization Forum</td>
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<tr>
<td>TWADO:</td>
<td>Turkana Women Advocacy and Development Organization</td>
</tr>
<tr>
<td>UNDP:</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNICEF:</td>
<td>United Nations Children’s Fund</td>
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1.0 INTRODUCTION

1.1 BACKGROUND TO THE PROJECT
Oxfam in Kenya in partnership with the National Taxpayers Association (NTA) and the Diocese of Lodwar are implementing a two-year project with financial support from the Norwegian Agency for Development Cooperation (NORAD) on fiscal justice and the extractives sector. The project is entitled “Civil Society Capacity Building for Improved Fiscal Justice in East Africa-Kenya”. The overall objective of the project is “Transparent and accountable revenue generation and public financial management in Turkana, Nairobi and the national government of Kenya, for improved social service provision.” In doing this, the project seeks to tackle inequality and poverty by promoting accountable, transparent and gender responsive policies on resource mobilization, allocation and spending.

1.2 PURPOSE AND SCOPE OF THE POLITICAL ECONOMY ANALYSIS
The purpose of the PEA was to provide Oxfam and partners with a political economy analysis on the Kenyan context vis-a-vis oil and public revenue management from a structural and systems approach. Specifically, the PEA aims;

1. To identify the key power relations, dynamics and trends in governance systems, structures and processes related to Kenya’s oil sector and public revenue management. This included overt and covert power brokers, values and norms for decision making, as well as enabling institutions both formal and informal for oil and public revenue management.

2. To undertake a stakeholder mapping and power analysis for oil revenue and public financial management with a view of identifying overt and covert power brokers, structures and systems that enable these power brokers, incentives and rewards for the power brokers and the formal and informal institutions enabling perpetuation of the perceived or real power of these power brokers.

3. To establish the current roles of women in decisions and actions related to the governance of oil and public revenue management

4. To identify key obstacles that prevent active and influential advocacy for transparent, accountable and inclusive oil and public revenue management;

5. To provide recommendations on both immediate and long-term approaches/strategies that Oxfam and other stakeholders such as governments, companies, investors and civil society can use to ensure transformative governance in oil and public revenue management.

1.3 SCOPE OF THE POLITICAL ECONOMY ANALYSIS
The PEA focused on identifying the critical actors and institutions that facilitate or block fiscal reforms. The study thus unpacked the visible, invisible or hidden relationships between these actors and institutions that exercise significant control over oil and public revenue management. Emphasis was put on context, power, institutions, actors, relationships and processes. The review tested the explicit and implicit assumptions about the influence and interests of stakeholders and the way that power is exerted in a specific institutional and individual context that underlies policy orientation and implementation as well as attitudes and behaviours. The table below illustrates a summary of the key questions that the PEA sought to answer that shaped the collection of data, analysis and reporting.
<table>
<thead>
<tr>
<th>PEA task</th>
<th>Task</th>
</tr>
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</table>
| **Power Mapping of key actors** | Identify the major actors in Kenya’s oil and public revenue management, who controls access to resources, information and decision-making and those who influence attitudes, norms and practices in the sector.  
Address each type of power (visible, hidden and invisible), explain over what and whom each has control or power, to whom or what incentives each responds, and in whose interest, each works;  
Analyse who among these actors represents obstacles to inclusive and citizen led reforms to oil and public revenue management  
Identify examples of good practice where these exist and make pertinent recommendations drawn on lessons for contextual application or propose good practice. |
| **Analysis of Policies and Normative Frameworks** | Identify the major forces at play within Kenya’s oil and public finance management—laws and policies, explain the effect of these polices and normative frameworks and how they reflect and shape power relationships, the views and behaviours of communities including women, men, religious leaders, social influencers and political leaders;  
Analyse obstacles to and openings for change that could enable communities increase participation in oil and public revenue management.  
Identifying examples of good practice where these exist and make pertinent recommendations drawn on lessons for contextual application or propose good practice. |
| **Interrogating Processes** | Identify the power dimensions of the main processes, procedures, practices (formal and informal), norms, attitudes and beliefs of oil sector governance and public revenue management—this could include decisions on the use of both national and local revenues, negotiating terms of revenues both from county and national government;  
Explain where or from whom the process is initiated, who sets the rules, who leads, by whom or how is it decided who participates, who is informed;  
Analyse obstacles to and opportunities/spaces for communities increased participation in oil and public financial revenue management processes.  
Identifying examples of good practice where these exist and make pertinent recommendations drawn on lessons for contextual application or propose good practice. |
| **Analysing Risk** | Identify the specific interests that would pose a threat to the implementation of the project based on reflections of increased transparency, accountability and community participation  
Identify possible retaliatory action by power brokers to partners and Oxfam based on the exposure of power networks and relationships, as well as those interested in safeguarding status quo.  
Identify some possible risk mitigation strategies for Oxfam and Partners which can be undertaken based on the specific threats identified. |
2.0 METHODOLOGY

2.1 CONCEPTUAL/ANALYTICAL FRAMEWORK

The PEA was anchored on the World Bank’s Problem Driven Political Economy Analysis framework developed by Fritz, Kaiser, and Levy (2009). The framework sought to provide answers to why development progress happens in some places and fails to take place in others despite the existence of financial resources or of knowledge about the right technical solution. It sought to develop understanding on how incentives and constraints shape the willingness and ability of people affected by a problem/issue to act in pursuit of development goals desired progress (Fritz and Levy, 2009).

Figure 1: Layers and Key Aspects of Problem–driven Political Analysis

2.2 COLLECTING DATA FOR THE PEA

This PEA adopted an overall exploratory research approach mainly relying on qualitative primary research methodologies augmented with information from secondary sources. To collect relevant data, the PEA pursued a participatory, three-pronged mixed method data collection approach employing: i) desk review, ii) policy analysis and iii) participatory primary data collection methods – including Key Informant Interviews, Knowledge Harvesting Forums [using largely qualitative tools]. These allowed and facilitated broad consultations with key stakeholders [as discussed under scope]. The PEA strived to
ensured adherence to high standards of evidence quality that include: i) Voice and Inclusion, ii) Appropriateness, iii) Triangulation, iv) Contribution, and v) Transparency. The grid below provides further details on the preferred approaches employed:

**Table 2: Research Approach**

<table>
<thead>
<tr>
<th>Methodology</th>
<th>Rationale</th>
<th>Approach</th>
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<tbody>
<tr>
<td>Desk research</td>
<td>This served to review relevant literature to enrich the design of the PEA, tools, analysis and drafting.</td>
<td>Review of relevant literature pertaining to the subject of the PEA. These included public domain documentation comprising of government data, policies, legislation, data from International Institutions, intervention reports by CSOs, surveys and other relevant information/data.</td>
</tr>
<tr>
<td>Qualitative Primary data collection</td>
<td>This served to capture opinions and experiences of targeted respondents in Nairobi, Turkana and national level Ministries Departments and Agencies.</td>
<td>Knowledge Harvesting Forums. These are one-day events organized in workshop style in selected project implementation locations. They included multiple stakeholders recruited from across all sectors – media, academia, civil society, and government.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Key Informant Interviews (KIIs). These involved semi structured key informant interviews with stakeholders drawn from: government officers [national and county levels], civil society, private sector, media, academia, political leaders [including Women reps and other female MPs], clan elders and religious leaders.</td>
</tr>
<tr>
<td>Policy Analysis</td>
<td>This served to facilitate interrogation of how formal institutions impact the conduct of revenue generation and public financial management in Nairobi, Turkana and national level MDAs.</td>
<td>Policy, legislative and institutional regime related to revenue generation and public financial management. This was used to understand the conduct of legislation, policy, planning, regulatory frameworks, and institutional development relevant to revenue generation and public financial management in Nairobi, Turkana and national level MDAs.</td>
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### 2.3 SAMPLING FOR THE PEA

In selecting target respondents to be consulted in the end of project PEA, a combination of purposive and convenience sampling methods was employed. Purposive because the intention was to get specific and relevant data from respondents with the required knowledge and expertise. This involved purposively selecting target respondents from stakeholders based on their mandates, expertise and engagements in the different project locations. Convenience sampling was employed based on respondents reach, availability and time constraints. The sample included respondents grouped in the three main categories: one2one key informants with whom in-depth face to face conversations were held, knowledge harvesting forums which were half-day workshop style events with participants drawn from the targeted respondents, and electronic key informants with whom remote consultations were done via phone, email and Skype.

#### 2.3.1 Targeted respondents

The PEA targeted a range of respondents as already indicated in the description of the sampling methods and techniques. These included key informants, participants in the knowledge harvesting forums and electronic interview respondents. The sample size was agreed upon based on the existing category of stakeholders relevant to the PEA with the aim of maintaining a balance across all stakeholders and the study areas. The table below illustrates the portfolio of respondents and the eventual scope of respondents included in the sample.
2.4 DATA PROCESSING AND ANALYSIS

Since the PEA involved largely qualitative data, the main approach used in the analysis of the data was content analysis. Once interviews were done, the audios recorded were used to develop text transcripts. The transcripts formed the core portfolio of qualitative data. They were analysed through thematic/content analysis driven and guided by the objectives of the project and the key questions drawn from the scope of the PEA. A combination of both manual content/thematic analysis and NVivo were employed in analysing the qualitative data obtained.

2.5 MAINSTREAMING GENDER, ENVIRONMENTAL AND CONFLICT SENSITIVITY IN THE STUDY

Regarding gender mainstreaming; the study worked to ensure that women’s and men’s ideas, concerns and experiences were an integral dimension in the overall design: data collection, analysis and reporting. The study endeavored to ensure that methodologies applied captured the different and unequal situations of women and men in constitution of the sample, in the conduct of data collection, analysis and presentation. Regarding mainstreaming of environmental sensitivity, the study identified and took into consideration the contextual issues around the climate change and impacts of natural resource exploitation. It considered such issues as implications of natural resource conflicts on the political economy of revenue generation and management. Regarding mainstreaming of conflict sensitivity; the study took into consideration the inherent conflict implications related to revenue generation (especially from oil).

2.6 ETHICAL CONSIDERATIONS

The PEA adhered to a specific set of codes of conduct for the consultants as well as ethical obligations to respondents (especially in relation to the handling of anonymity) in relation to data collection, data management, storage and
usage. On one hand, the ethical obligations of the consultants included independence thus free of bias; impartiality at all stages of the PEA; credibility thus based on reliable data and observations; avoidance of conflict of interest to ensure that the credibility of the PEA and output was not undermined; honesty and integrity; and accountability. On the other hand, obligations to the respondents included respect for dignity and diversity; acknowledgement of rights of respondents; confidentiality; and avoidance of harm. Lastly, during data processing and reporting, the obligations of the consultants included ensuring accuracy, completeness and reliability of the data processed; transparency as far as all the PEA was concerned; ensuring accessibility of the PEA report to all formal parties.

2.7 LIMITATIONS OF THE STUDY

- **Ambition (scope):** The scope of the PEA was significantly wide. Covering two themes – upstream petroleum sector development and public finance management; and targeting to interrogate these issues at national and county levels [with in depth analysis in Turkana and Nairobi]. This may have stretched the analysis and limited ability to focus the discussion. It may have also had implications on the length of the report and challenges in terms of presentation.

- **Level of detail vs capacity of PEA as an analytical approach:** A PEA provides an analysis framework for interrogating the formal an informal institution, processes, norms and that shape the conduct of an issue. whilst it can provide detail about the nature and form of institution and how they relate with one another, there are limitation to the level of detail it can go. There are thus limitations as to the level of differentiation in terms of identification and naming of actors and their roles and relations with others.

- **Evidencing the PEA:** PEAs are essentially qualitative research processes, reliant on qualitative data and methods for collection and analysis. There remains debate on how to evidence claims made in PEAs. This is because some nuances and below the surface issues that are useful to highlight most often emerge from few [non-statistical responses] and thus begging the question of how to gauge their strength and how to attribute them.

- **Limitations to the validity of information based on stakeholder perceptions:** this problem is related to the general issue of shortcomings in individual and group perceptual data. The risk of strategic responses, manipulation, or advocacy by stakeholders can influence validity of data collection and analysis.

2.8 STRUCTURE OF THE REPORT

This report consists of nine sections with the first section being an introduction capturing the scope and purpose of the study. Section two discusses the analytical framework employed, data sources, data processing, and analysis methods. It is followed by a discussion of the foundational issues [contextual Issues] impacting generation and management of public finances in Kenya. In the fourth section, the report examines the rules of the game – interrogating the formal policy and institutional framework for Oil and Public Revenue Management. Section five covers the norms and power dynamics [games within the rules] impacting Oil and Public Revenue Management and critically interrogates how these norms and dynamics affect the effectiveness of policies and institutions aiming to promote prudent Oil and Public Revenue Management in the country. In section six the report presents an analysis of the different stakeholders and their configuration around Oil and Public Revenue Management in Kenya – at national and county levels (in Turkana and Nairobi). Section seven of the report presents a summary of the key findings of the study. This is followed by an analysis of risks related to implementation of the Oxfam Project in section eight. The report concludes with a reflection of the key issues and outlines recommendations for Oxfam and Partners.
3.0 CONTEXTUAL ISSUES REGARDING OIL AND PUBLIC REVENUE MANAGEMENT

This section of the political analysis of oil and public revenue management in Turkana and Nairobi counties focuses on identifying and analysing why the issues of concern to Oxfam exist. This is largely an exploration and interrogation of the political economy drivers; what are referred to as the structural issues or foundational factors that influence and shape the current status of oil and public revenue management. This is because structural factors shape stakeholder incentives and opportunities.

3.1 STRUCTURAL ISSUES

**Government Transparency and Accountability:**
Poor accountability mechanisms create room for circumventing processes for personal and/or political gain. There have been reports by the Auditor General pointing to lack of transparency at national level and county government with some arguing that national level tendencies may have been transferred or trickled down to local levels of government. In Turkana and Nairobi counties as has been the case in other counties over the past four years there have been revenue shortfalls sometimes attributed to sleaze and mismanagement. Weak reinforcement of rules has created loopholes resulting in the county losing millions in revenue thus not meeting its set targets. Corruption is further exacerbated by inefficient systems and secrecy around information that should otherwise be public. This is exacerbated by the lack of Government Transparency and Accountability. There is the tendency of government to conceal and withhold crucial information from the public that would otherwise be useful in interrogating processes and functions to government to account. There is increasingly the use of laws like the official secrecy act and data protection laws to limit information on dealings in the petroleum sector, public debt contraction processes, as well as execution of budget. This is despite the enactment of freedom of information law in Kenya.

**Poverty, inequality and marginalization:** There remains marked inequalities, chronic and extreme poverty in the county that has been exacerbated by continued marginalisation despite substantive effort in terms of the country’s constitutional framework and government policy in the recent past that have improved engagement and resource allocation to the county. According to the Kenya National Bureau of Statistics [KNBS 2018], Turkana remains one of the poorest counties in Kenya. The county has the highest poverty rate [headcount index] in Kenya at 87.5% compared to the national average of 45.2% [KNBS, 2018]. It also reports some of the lowest indices in terms of access to crucial public goods like water, education, energy and housing. Years of government neglect and marginalization of some counties like Turkana, meant that delivery of public goods and services like infrastructure, security, health and education among others was hampered. This limited development of crucial sector for economic growth and as such limited their ability generated revenues and also to contribute to the national GDP [economy]. These issues have significant implications for Own Source Revenues for instance which is hampered by lack of diversification and development of key sector like the fishing and livestock industries in Turkana county that could otherwise be significant contributors to the county governments revenues.

**Culture and traditions:** There are prevailing cultural beliefs and practices that continue to contribute to marginalisation of women and impinge on the abilities of citizens in the country to organise and engage duty bearers on pertinent issues regarding...
their welfare and livelihoods including resource mobilisation, planning and budgeting by the county government. Such practices include nomadic pastoralism, female genital mutilation and early marriages. These contribute to disempowerment of women affecting their contribution in the economy and their voice and inclusion in debates and negotiations around the affairs of the county. Culture also has significant implications on such issues as land tenure inheritance and ownership of assets by women. Turkana county for example is almost all communal land held in trust by the county for pastoralist communities. There is a customary land tenure system in which access is mainly through inheritance, with no formal documentation. Those who want to access community land for investment or any other business have to negotiate with the elders, in consultation with the chief and relevant government officials.

**Conflict and insecurity:** Pastoralists in Turkana county are both nomadic and sedentary and keep cattle, sheep, goats and camels. Access to pasture during the dry season is a key source of conflict between the pastoralists with the neighboring communities. Resource-based conflicts are mainly over grazing areas, water points, boundaries, urban expansion, and the fencing of livestock passage routes, conservancies, and refugee camps. There has been violent inter-communal conflict over water, pasture and livestock resources in the north, between the Dassenech/Merille from Ethiopia [and also from Ilerat in Marsabit, Kenya] involving raiding of livestock and fishing conflicts on Lake Turkana. Besides livestock, ethnocentrism and proliferation of illicit arms represent the other major causes and drivers of conflict in the county (Mkutu & Wandera, 2016). This has been a major cause of insecurity as such arms normally end up in highway banditry and cattle rustling. Insecurity has been a major drawback to economic development in the county. Most of the cases of insecurity and conflict lead to destruction of social amenities, loss of economic opportunities and lives.

**Urbanization and population explosion:** Population explosion in Nairobi over the years has been brought about by a huge influx of people migrating into the city posing a great challenge to the existing public goods and services. According to KNBS, the population of Nairobi county rose by 29.5% from 3.1 million in 2009 to 4.4 million in 2019 (KNBS, 2019). The steady increase of population has put a strain on county resources due to the growth of demand for quality services. In the financial year 2018/2019, the Nairobi city county generated a total of 10.25 billion from own revenue resources which is a 1.37% increase from the 2017/2018 financial year (OCOB, 2019). This is a negligible growth in revenue generation and it is not commensurate with the population growth of the capital city. This presents a challenge to the government in revenue management to ensure that stagnating revenue streams cater for needed services especially for such sectors like the informal economy that is increasingly integral to the economy of the city and demands more services.

**Devolution tradeoffs:** Devolution empowers county governments and gives them full authority to plan for and allocate funds to sectors of importance to them such as health and agriculture, among others. Devolution facilitates participatory decision making by Kenyans and holds the local government more responsible for effective service delivery in their areas of jurisdiction. As such counties ought to be allocated more resources, policy space and technical support to enable them generate more own source revenue and better manage financial transfers from the national government. This is because they are closer to the people at the grassroots and are better placed to understand their needs and serve them efficiently. However, given devolution is new and structural frameworks are not yet well defined, it has come with challenges that continue to limit effectiveness of government. For instance, devolution of the health function in Kenya has been only partial, leading to challenges of coordination between the national and county governments and ambiguity over responsibility for service delivery; both factors...
which continue to undermine the opportunities that devolution creates.\textsuperscript{2} It has also led to squabbles between the national government and county government attributable to the hungover of the centralized system of government by national government officers. Critical questions and tradeoffs have to be contended with in terms of balancing between clawing back on the prerogatives conferred to county governments by the constitution and necessary adjustments to provide for intervention by the national government where there are visible challenges or gaps in administration like has been witnessed in Nairobi, Makueni, and Kwale Counties in the recent past.

**Ethnicity and Partisan political party politics:** The framework for political competition in Kenya has shaped so much towards binary division that has meant that almost in all issues, there are always partisan views that are driven by positions taken by the two major political formations (built along ethnic lines) in the country. These are recently Jubilee Party and its affiliate political parties and ODM Party and its affiliates. The two major political parties shape conversations around the conduct of government including on matters related to public finance management. This plays out mainly in national conversations around corruption and efforts to deal with graft. It is also observable at sub-national levels with county assemblies - MCAs taking positions aligned with those taken by MPs in the National Assembly and by their national party structures. As such, there are matters that despite evidence and cogence of arguments still end up attracting division due to already established positions or directions shaped by the political parties pursue partisan interests.

**Role and influence of international actors:** Throughout the epochs of Kenya’s history, international actors have played a significant role in shaping the political economy of the country. They have supported reforms, capacity and institutional development towards better public financial management. Also, due to their investments and economic interests in the country’s economy, they have significantly influenced decisions taken by the country’s leadership on macro-economic matters. Such institutions as the World bank, IMF and IFC have been impactful in shaping policy, laws and the overall conduct of government in the area of public finance management. As such, their role is a critical contributor and determinant of the shape and form of processes related to the management of oil and public revenues in Kenya that must be accounted for or taken in consideration when discussion political economy of the country.

**Bureaucratic Politics:** Policy outcomes result from a game of bargaining among a small, highly placed group of governmental actors. In Kenya, like in almost every other polity, there remain competition and haggling between departments of government (MDAs) that substantively impacts the effectiveness of government including in areas of public finance management. There are perceived hierarchies in government – with some MDAs viewing themselves as more powerful, influential and with more authority than others. This plays out sometimes in the development of policy. Some of this is also reinforced by the style and philosophy of government assumed by an administration. This is reflected in the shape of government in terms of configurations of ministries, departments and agencies. Some ministries and merged with others while other isolated and offered more power and prerogative. For instance, the department of planning, previously ministry of Devolution and Planning is now part of Treasury to underscore the intentioned government to consolidate some functions or distinguish others based on their understanding of their importance and effectiveness and efficiency of operations. This sometimes impacts the willingness and flexibility of bureaucrats and other government officials in executing their duties.

\textsuperscript{2} https://epress.lib.uts.edu.au/journals/index.php/cjlg/article/view/6085
3.2 Scope for Revenue Generation

3.2.1 Scope for Revenue Generation in Turkana County

The existing scope of economic activities and revenue sources from which the county government can tap into for increased own revenue generation remains slim when compared to other counties in the country. The county relies on just a few sectors that drive the economy and from which it can tap to obtain its public finances. These include livestock production, property tax; revenue charged on transport vehicles; trade licenses; CESS collection; as well as revenue collected from service provision. Agriculture remains largely untapped as a result of climatic conditions and underinvestment in infrastructure and other agricultural production inputs. Livestock production that is currently one of the largest contributors to the economy contends with adverse climatic conditions and poor organisation of the market. However, the county still does not draw substantive revenues from its urban centres [mainly Lokichoggio, Kakuma, Lodwar, Kalokol and Lokichar]. Due to underdeveloped nature of the economy in Turkana, majority of traders and others involved in private sector enterprise find plans to increase taxes and levies untenable as a result low economic growth and low business turnover. The county has substantive potential for own revenue generation which it has thus far not exploited fully. The production and commercialization of oil discovered in the county portends a significant addition to the resource base for the county. The development of a productive and profitable petroleum sector can provide a new source of tax revenues that could augment the other non-mineral revenue sources. This will be significantly affected by the regime for resource sharing that has been settled on between the national government, the county government and communities as outlined in the Petroleum Act [2019].

Nonetheless, the county government has developed a resource mapping document that outlines some of the key natural resources that it aims to tap into to increase own revenue mobilization in the future. These are clustered into five major resource sectors: i) water, ii) minerals, iii) forests, iv) wildlife, and v) renewable energy [mainly geothermal, solar and wind]. The county government sees this document as a guide to investors and to the county government’s investment plans to ensure sustainable exploitation of these resources for increased revenue generation. It is also worth noting that some of these resources are by law within the purview of the national government. As such, prospecting own revenues from them will require tough negotiations with the national government and investors on the best most feasible ways to share the revenues. A lot of this depends on the local content legislations developed by the national government and regulations assumed by the Ministry of Energy and Natural Resources and the National Treasury. The implication of this is that any interventions targeting to promote improvement in management of such revenues in Turkana county must be cognisant of: i) the coordination and collaboration needed between the county government and national government, ii) the legal and institutional frameworks necessary to facilitate the process, especially regarding legislation and regulations, iii) the public education and consultation necessary to inform and enlighten citizens in Turkana county on the scope of revenues they can expect from each stream of resources in order to manage expectations.

3.2.2 Scope for Revenue Generation in Nairobi County

The onset of devolution brought with it an urgency to streamline and boost revenue collection in the county. Over the past 6 years, new revenue sources have been identified. There have also been some significant changes and upgrade of systems within

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the county government to aid and improve the efficiency of revenue collection. Nairobi county government has identified about 136 sources of revenue. While they all contribute to the collective revenue generated by the county, most of these sources combine for roughly a quarter of all the revenue collected. The key revenue streams for the county – land rates, parking fees, building permits, single business permits, and, billboards and advertisements – contribute to a bulk of the generated revenue. Cumulatively, these key revenue sources contributed to 76.1%, 72.9%, 74.92% and 69.19% of the total revenue collected for the 2013/2014 – 2016/2017 financial years respectively. Land rates have been the biggest contributor to local revenue though market rent, liquor licensing, fire services, house rents and health services. Widespread corruption in the county has been blamed for its failure to meet revenue targets. The move by the county to establish an online payment platform is a great idea, but not all revenue streams have been incorporated into this platform. The manual handling of cash provides leaking points for revenue. Also, the high number of defaulters, including the national government, limits the county’s effort to maximize its revenue collection. Nonetheless, there were reports that Nairobi City county was expected to report significant improvements in revenue generation some of which attributed to improvements in the systems for collection.

3.2.3 Opportunities for improving Revenue Generation (National Level)

The Kenya Revenue Authority is currently integrating a wide range of electronic services its tax management system including Integrated tax management system (ITMS). The integrated tax management system (ITMS) will help with electronic filing and registration, electronic payment, electronic taxpayer accounts, core internal modules covering compliance, audit, debt and refund and electronic tax register data transmission. The system will enable large and medium taxpayers to make online filing of their returns as well as online payments. It will also reduce the frequency of payments made in a year thereby improving Kenya’s ranking as a preferred investment destination. This system will also help in tracking corruption given that Kenyan does not meet its revenue targets because of inherent challenges of corruption. Strengthening and revamping tax enforcement mechanism – In an effort to enhance tax enforcement and compliance KRA should enhance measures to address cybercrimes and other information technology related frauds. The measures include implementation of automated risk-based audit across all tax heads with automated selection and flagging of compliance risks; Overhaul of the electronic tax register (ETR) system. The focus is on electronic linkage between the ETRs and the ITMS to allow for automated population of taxpayers’ accounts and electronic monitoring of non-compliant taxpayers; Expanding mandatory reporting requirements for business, professionals, barter exchange income, broker transactions, non-employee compensation, real estate transactions, rent and sale of securities. KRA has also strengthened the capacity of county governments to collect and remit taxes at the county level by positioning itself for the expanded role of assisting county governments in collection and remitting revenues. This has not only widened the tax base but also increased the amount revenue collected. Nonetheless, there remain inherent challenges inhibiting the collection of optimal taxes by the revenue collection authority. These include:

- Taxation of the informal sector. There is a large informal sector in Kenya that is not within the tax net, yet all must contribute to raising the resources to finance government expenditure and thus ensure equity in taxation.

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8 https://nairobinews.nation.co.ke/news/history-nairobi-collects-sh120-million-day
High incidence of tax evasion coupled with the inherent challenge of corruption

Lack of or poor awareness of the tax laws. Most taxpayers in Kenya lack basic knowledge of the revenue acts. Proper knowledge of these acts enables one to make a more rational decision on whether to meet their tax obligations.

Transfer pricing problems. Taxing multinational corporations is difficult due to their size, they usually adopt transfer pricing mechanisms to reduce their tax liabilities and shift profits to countries with lower tax burdens hence complicating tax collection.

Taxation of e-commerce transactions. Currently, the technologies underlying e-commerce provide unique opportunities for improved taxpayer services. However, e-commerce has the potential to make more difficult transfer pricing problems. This has the potential of limiting the amount of tax collected from such business.

3.3 REVENUE GENERATION PERFORMANCE

3.3.1 National Government Revenue Analysis

Kenya has consistently missed its revenue targets in the last half of the decade. Though revenue collection has marginally improved year on year, mismatch between the revenue collected and government’s annual budget occasioned by huge expenditure across the government departments often leads to constant budget deficits. Poor enforcement of revenue collection standards, sluggish economic growth, unemployment, corruption, tax avoidance and tax evasion often lead to poor collection of revenue which results in austerity measures including freezing of various development projects both ongoing and in the pipeline.

The country is currently facing huge challenges with debt sustainability, as the debt levels rises significantly towards the red. There are serious concerns as to whether the country can sustain its debt levels given the dismal revenue collected annually. Kenya’s revenue resource envelope at the moment is composed of tax revenues, loans both domestic and foreign and grant support from donors. Taxes collected by the national government include income tax, Value Added Tax, excise duty, custom duty and corporate tax. In 2018/19 financial year, tax revenues supported over half (55.4%) of the country’s annual budget while the remaining was mostly supported by domestic borrowing (18.7%) and commercial loans (13.9%). Budget support in form of programme loans and grant support from foreign governments and international organisations also form a significant proportion of the annual revenues collected and used for funding the country’s budget (See figure 1)

![Figure 1 Composition of the national government revenue resources envelope in 2018/19 FY](image)
Kenya’s revenue performance has increased slightly in the last five years. In the financial year 2018/19 key tax heads including PAYE, Value added tax, excise duty, corporation tax and oil revenues grew by at least 5%. PAYE grew by 7.9% prompted by growth of the public sector which recorded an 8.9% cumulative growth driven by upscaling of salaries in the education sector. VAT on the other hand improved by 12.3%, growth driven by increase in VAT turnover and growth in withholding VAT particularly in the public sector. Domestic excise tax grew by a similar percentage as VAT. The growth was attributed to expansion of cigarette output which grew by 4.9%. Oil revenues and corporation taxes grew by 16.3% and 5.5% respectively. Growth was occasioned by additional tax policies including 8% VAT on petroleum taxes and a turnaround in the bank performance for corporation taxes.\textsuperscript{ii}

Though none of the ambitious revenue targets have been met, the deviation between the targets and the actual revenue has decreased in 2018/19 financial year. The deviation which has averaged 112 billion Kshs between 2014/15 and 2018/19 financial years, increased in 2015/16 then dropped significantly to 64.6 billion before a sharp increase to 153.7 billion Kshs. In 2018/19 FY the revenue deviation reduced to 138.7 billion Kshs. Actual revenues collected improved by 49% in the period under revenue from 1.1 trillion in 2014/15 to 1.7 trillion Kshs in 2018/19.\textsuperscript{iii} This was facilitated by a range of revenue enhancement activities initiated by the collection agency which include data driven compliance, enhancement of scanning to detect concealed products, roll out of ICMS and implementation of regional electronic cargo tracking system to tackle transit diversion. It will be important for the revenue collection agency - KRA to improve the country’s tax base by identifying and bringing into the tax net, Kenyans who are engaged in gainful businesses who ought to be paying tax but are not.

\textbf{Figure 2 National revenue performance between 2014/15 and 2018/19}

![Figure 2 National revenue performance between 2014/15 and 2018/19](image)

Source: ACEPIS based on BROP 2014/15 and 2018/19

\textbf{3.3.2 Nairobi County Revenue Generation performance}

Nairobi County receives 5% (about Ksh17 billion in FY2019/20) of the total equitable share of revenue from the national government annually. It has the highest own source revenue collections annually despite problems emanating from weak enforcement and corruption. The county boasts of low levels of fiscal dependence on the national government and has more control over resources used for planning and implementation of the county budgets. Apart from the national government and donor funding, county own source revenue streams are mainly tied to rates, parking fees, business and building permits, and, billboards and advertisements. These form the bulk of locally generated revenues for the past
five fiscal years. However, the county government has consistently failed to achieve actual targets of the revenue projections since the inception of fiscal decentralisation. This has seen cutbacks on budget implementation to pro poor sectors such as education, health and water and sanitation.

Nairobi county government in 2017 had opted for automation of its revenue streams to ensure optimal revenue collection, however it has not succeeded in automating all the streams, by March 2018 the county government had automated only 97 of its 136 revenue streams\(^9\). Even with automation, the county government must make deliberate efforts to create awareness amongst the public on the importance of revenue for service delivery. This may reduce the culture of tax evasion which partly emanates from public dissatisfaction of the government’s service delivery and perceptions by taxpayers that the regime is unfavorable [oppressive and stifling to business]. Challenges of operationalizing the county legal revenue framework and lack of adequate skills in revenue mobilisation impede the county government from achieving its revenue targets. However, with the passing of the County Revenue Administration Bill 2019 which establishes county revenue boards responsible for; administration, raising, enactment and efficient collection of revenues within the county, the county is looking to achieve higher revenue targets.

Total county revenue for budget implementation has been on the rise increasing by 14.5% from Ksh.22.9 billion in 2014/15 to Ksh.26.2 billion in 2018/19. This has been informed by increases in allocation of equitable share of revenue from the national government and conditional grants under the same period. Equitable share of revenue has been increasing year on year attributed to the augmented developmental needs and economic optimisation of the county. The volume of conditional grants similarly has increased exponentially from Ksh.24.9 million in 2014/15 to Khs.817.4 million in 2017/18 before dropping to Ksh.173 million in 2018/19. Increased automation of Own Source Revenue (OSR) streams and institution of stronger legal and administrative policies to govern OSR collection in the county has also seen the county’s OSR collection increase by 139 million between 2017/18 and 2018/19 FY\(^10\). Analysis shows that equitable share of revenue from the

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Figure 2: Nairobi county revenue streams for the period 2014/15 to 2018/19

![Graph showing Nairobi county revenue streams for the period 2014/15 to 2018/19](image)

Source: ACEPIS based on Controller of Budget reports

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\(^9\) https://nairobiboomnews.nation.co.ke/news/history-nairobi-collects-sh120-million-day

\(^10\) https://cob.go.ke/reports/consolidated-county-budget-implementation-review-reports/
The government has increased by 38.9% from 11.4 billion in 2014/15 financial year to Ksh.15.8 billion in 2018/19. However, the own source revenue envelope has been fluctuating. It increased by Ksh.210 million in 2015/16 and decreasing by Ksh.780.2 million in 2016/17. OSR further decreased by Ksh.820.4 million in 2017/18 before increasing to Ksh.10.2 billion in 2018/19.

Even with automation, the county government still face serious administrative and enforcement challenges in OSR collection. These have denied the county an opportunity to meet its revenue targets coming close in 2014/15 when the actual revenue collected was 86.3% of the revenues projected. The actual revenues collected vis a vis projection have since dropped to 76.6% in 2015/16, 55.9% in 2016/17 and 58.7% in 2017/18. Collected revenues however increased in 2018/19 with increased automation and stringent enforcement laws. The revenues collected versus the projected increased to 66.1%.

Figure 3: Comparison of the performance of OSR in Nairobi county, 2014/15 –2018/19

Despite challenges in revenue collection, Nairobi County’s own source revenue has consistently been the highest of all the 47 counties in Kenya. As illustrated on Figure 5 below, OSR envelope in the county is mainly collected from rates [26.6%], parking fees [17.4%], single business permits [15.3%], building permits [10%], billboards and advertisements [5.7%] and other incomes [8.4%].

Figure 4: Composition of Nairobi County OSR envelope (2015/16)
3.3.3 Turkana County Revenue Generation performance

Turkana County receives the highest amount of equitable share of revenue from the national government after Nairobi. In FY2019/20, the county received about Sh11.2 billion – second highest after Nairobi city county receiving Sh16.9 billion. However, it has high dependency of revenue from the national government to implement its projects. Turkana collects minimal amounts of OSR in relation to the equitable share of revenue. Just like Nairobi, it has not instituted strong mechanisms to administer collection of revenue and constantly suffers from revenue loss through manual collection and lack of capacity for enforcement of revenue laws. Awareness creation of the importance of revenue collection to the government has not been sufficiently done and this coupled with poor mobilisation of resources from other areas have made collection of own sources revenue very poor within Turkana county. As such, transfers from the national government (equitable share) contributes the largest proportion of the total revenue available for budget implementation in all the financial years under review followed by conditional grants and lastly own source revenue. The total amount of revenue available for budget implementation has however been increasing since 2014/15. It expanded by 24% from 9.3 billion in 2014/15 to 11.5 billion in 2018/19.\(^1\)

Figure 5: Total revenue in Turkana County for the period, 2014/15 to 2018/19

Source: ACEPIS based on COB reports

The size of the equitable share of revenue from the national government for Turkana County increased from Ksh.9.1 billion in 2014/15 to Ksh.11.3 billion in 2016/17. After 2016/17 there was a considerable drop of 11% to Ksh.10.0 billion then rose to Ksh.10.7 billion in 2018/19. Conditional grants which mainly come from donors and national government of Kenya has also been increasing year on year from 2014/15 to 2017/18. These funds increased from Ksh.31.8 million in 2014/15 to Ksh.888.3 million in 2017/18. The funds then dipped by 33.8% in 2018/19 to Ksh.588.4 million. A bulk of this funding comes mainly from fuel maintenance levy and free maternal healthcare. Though the county has surpassed its OSR targets in two financial years [2014/15 and 2016/17] in the period under review, current performance [between 2017/18 and 2018/19] of the actual revenue against projections have been below 73%. Actual collected revenues have averaged at Ksh.153.16 million annually. Collection increased from Ksh.126.5 million in 2014/15 to Ksh.186.3 million in 2016/17 financial year. Collection then dipped to Ksh.143.9 million in 2017/18 before increasing to Ksh.175.0 million in 2018/19.

11 https://cob.go.ke/reports/consolidated-county-budget-implementation-review-reports/
Despite the vast majority of the population being pastoralist, the county receives very little from animal auction fees. It ranks the lowest in terms of actual revenue collected vis a vis the projections. This points to the diversification of revenue sources in the future as the county moves to boost its revenue streams. Currently, the revenue streams are limited and mainly centered around vehicle parking fees, business permits and animal auction fees.

Figure 6: Comparison of the performance of OSR in Turkana county, 2014/15–2018/19

Source: ACEPIS based on COB reports

Figure 7: Composition of Turkana OSR (2015/16)

Source: ACEPIS based on COB reports
3.4 REVENUE MANAGEMENT PERFORMANCE (BASED ON AUDITOR GENERAL’S REPORTS)

The 2017/2018 financial year report by the Auditor General’s office provides a good sample representation of how Nairobi County utilizes its budgetary allocations. The National Treasury provides guidelines for budget preparation that should facilitate allocative efficiency and alignment of resource allocation with medium to long-term development goals while maintaining smooth administrative and service delivery. The guidelines include requirements for budgeting and revenue management to consider among other things alignment with the Big Four Agenda and the county’s annual development strategy. They also include requirements for counties to adopt programme-based budgeting and some thresholds to be adhered to. For instance, the wage bill should not be more than 35% of the budget and at least 30% of the annual county budget should be spent on development projects. For accountability, effective monitoring and record-keeping necessary for economic analysis, counties are required to conduct all their transactions through the Integrated Financial Management and Information System in compliance with the Public Finance Management Act.

3.4.1 Budget Utilization in Nairobi County

Nairobi County has made significant strides towards ensuring efficiency in its budgeting and utilization of monetary resources. There is also a lot being done to incorporate technology into the system to minimize revenue leakages, automate revenue collection and handling, revenue mapping and review of the revenue structure to ensure all gaps are identified and filled. These include:

1. Establishment of a County Integrated Development Plan 2018-2022 which is used, together with other national plans, to guide the government’s expenditures.

2. Upscaling of fiscal discipline by directing resources towards high-impact programmes,

improved revenue collection, debt restructuring, wage bill management and streamlining of the county’s procurement process.

3. Incorporating technology into their operations, including the National Treasury - directed Integrated Financial Management System,

4. Enactment of a County Oversight and Accountability Bill 2018 that establishes guidelines for the management of public revenue in the county and creates room for public engagement and participation in scrutinizing the budget and its implementation.

However, there remain gaps and challenges in the management of public revenues in the county. These have been pointed out annually through the Office of the Auditor General that highlights some of the areas where the county government has failed, for example, to comply with the PFM Act, guidelines provided by Treasury and other policy statements. These include:

1. Under absorption of revenues transferred from the Treasury and/or own revenues. In FY 2017/18 for instance, there was a 29% underutilization of the county budget. A particularly outstanding budget allocation that was underutilized was the Ksh.1.6 billion in the health sector of which only Ksh.347.2 million was utilized. It is however important to take into account delays in disbursement of funds (by National Treasury) when considering the issue of absorption.

2. Undocumented transactions: The Auditor General indicated in his report that there are a lot of challenges in validating certain expenditures made by the county. During the 2017/2018 financial year, Ksh.561.8 million was spent on asset acquisition, Ksh.421.3 million for scholarships, Ksh.381.8 million spent on paying suppliers had no supporting documentation. There was also a query raised on a documented but confidential expenditure by the governor’s office amounting to Ksh.14.4 million.

3. Failure to use the Integrated Financial Management Systems: Some transactions were done by the county and not captured in the
Integrated Financial Management Systems. Payments amounting Ksh.12 million were made but the records of the transaction not captured in the system.

4. **Failure to adhere to caps set by the law:**
   Notably, the county did not comply with the legal requirement to spend at least 30% of revenues on development. Only about 6% of the budget was spent on development. Also, the wage bill went far beyond the 35% threshold required. 49.4% of Nairobi City County’s budget in FY 2017/2018 went to managing the wage bill. Some expenses on wages and compensation also lacked their accompanying documentation for justification.

### 3.4.2 Budget Utilization in Turkana County

Turkana County has also put up solid frameworks to guide the utilization of the county’s budget. This is important considering this county enjoys comparatively high revenue allocation from the national government. Some of the key milestones management of budget include:

1. Establishment of a County Budget Implementation circular by the Chief Officer for Finance in Turkana County and an annual county fiscal strategy.

2. Establishment of laws like the Turkana County Village Administration Bill 2019 that is meant to facilitate effective service delivery and utilization of resources dispensed to the county.

3. Increased involvement of the public in policymaking and establishment of development plans.

However, the budget and resource utilization has not been devoid of challenges and gaps. These gaps can be clearly seen from the FY 2016/2017 Auditor General’s report and the Turkana County Budget Implementation Review for the first quarter of the FY 2018/2019. They include:

1. **Budget under absorption.** Of the Ksh.14.4 billion budget that was approved by the county during the FY 2016/2017, only 79% was absorbed.

Like Nairobi City County, the Turkana county also spent more money than budgeted for compensation of employees. It spent Ksh.467.4 million beyond the approved amount. The continued debate between county and national government regarding slow absorption (by counties) and late disbursement (by National Treasury) however needs to be taken into account when considering the issue of absorption.

2. **Unsupported and unjustified expenditure.** The county spent Ksh.247.4 million on domestic travel during the FY 2016/2017 with no justification. This is just one in the list of other unjustified expenditure during that financial year.

3. **Delayed implementation of projects.** Up to Ksh.100 million was paid to various contractors for projects that had stalled and their contract period expired. This goes contrary to the Public Procurement and Asset Disposal Act, 2015.

4. **Lack of proper county government frameworks to ensure accountability within the government.** By the end of the 2016/2017 financial year, Turkana County had not established an Audit Committee or an Independent Internal Audit Function as per Section 155(2) of the Public Financial Management (county governments) Regulations, 2015.

### 3.5 BACKGROUND ON DEVELOPMENT OF KENYA’S UPSTREAM PETROLEUM SECTOR

Former President Mwai Kibaki officially announced the discovery of oil in Turkana on 26th March 2012. The announcement meant that Kenya joined the list of countries with commercially viable oil reserves and there was potential for a new revenue stream for the country and the county. The exploration of oil in Turkana is being led by a British firm – Tullow Oil. After the discovery of the first well at Ngamia-1, Block 10BB, subsequent discoveries of other wells followed. Block 13T at Twiga South-1 well was made in October 2012 and that of Block 10BB at Etuko-1 well in July 2013. Other areas where exploration proved successful in the broader South Lokichar...
Basin as detailed by Tullow Oil include Ekales-1, Agete, Amosing, Ewoi, Ekunyuk, Etom, Erut and Emekuya. Initially, it had been estimated that the oil reserves in the region amount to about 600 million barrels. The estimates were further revised upwards to 1 billion barrels after more wells and oil deposits were discovered.

**Arising Expectations:** The legacy of underdevelopment in Turkana has meant that the discovery of oil in the county has elicited huge expectations. For the local communities in Turkana county, the initial upstream processes have led to creation of jobs and establishment of small and medium-sized enterprises that have impacted the livelihoods of locals in Turkana. The establishment of infrastructure to aid the oil exploration process has also improved circumstances in the county. According to the Kenya Civil Society Platform on Oil and Gas, oil production should peak between 2025 and 2030 with the revenues also peaking during that phase. The government is projected to earn between USD 650 million and 2.7 Billion annually if the oil will be sold between $45/bbl. and $85/bbl. Cumulatively, the Kenyan government is projected to raise up to 6.4 trillion in 23 years.

**Sharing of Revenues:** The national government will retain not all the revenue generated from the exploitation of oil in Turkana. The Petroleum Act 2019, stipulates that the national government will take 75% of the revenue earned with 20% going to the county government and 5% to the local community. The amount allocated to the local community will be payable to a board of trustees-led Trust Fund established by an Act of the County Assembly. The Petroleum Act has a provision that requires this revenue allocation ratio to be reviewed within 10 years. Currently, the negotiated agreement between the government and Tullow Oil stipulates that 60% - 80% of the generated revenue will go into repaying the production costs and recovery of the initial investment. Revenue from the remaining ‘profit oil’ will be shared between the government and the company (Wasunna, 2018).

**Revenue Delays:** The government is looking forward to earning up to Ksh150 billion annually from oil revenues. However, it still has to wait up to 2024 before it starts to receive oil revenues. This is because it is yet to sign a Final Investment Agreement (FID) that formalizes commitments by financiers to fund the drilling and infrastructure to support exploration. The delay has also been attributed to environmental and social impact consultations that have not been concluded. Further, it has been argued by Tullow and other players that it will take at least 36 months to set up the necessary infrastructure. Nonetheless, through the Early Oil Pilot Scheme the government has already shipped an initial consignment of oil - 200,000 barrels worth Ksh1.2 billion. The Early Oil Pilot Scheme is meant to test the global market in preparation for when large scale commercial production will commence. Though shrouded in a lot of secrecy, Kenya’s first oil shale was sold to a Chinese petroleum multinational (ChemChina Limited, the oil buying arm of the Beijing-based ChemChina Petrochemicals) at Ksh1.2 billion ($12 million) through auction in London. It is notable that the first sale was at a price higher than Brent Crude, which may not be a realistic demonstration of the true value of Kenyan oil and may be a misleading metric if used to estimate or project volumes of expected revenues. There have also been concerns especially by communities and county government as to whether proceeds from the EOPS would be shared. This is highly unlikely considering reports of the costs of the EOPS outstripping the proceeds and may be a point of future contention between the national government, county government and communities in Turkana.
4.0 RULES OF THE GAME: INSTITUTIONAL FRAMEWORK FOR OIL AND PUBLIC REVENUE MANAGEMENT

In order to develop a good understanding of the institutional frameworks and dynamics that influence the conduct of oil and public revenue management, it is prudent to interrogate the configuration of key agencies that have mandates and roles that impact the processes and also the laws and policies that buttress and shape them. Here under is a discussion first of the agencies of government – ministries, Departments and Agencies (MDAs) involved in both oil and public revenue management – describing their mandates and succinctly reviewing their conduct and capabilities. This is followed by a discussion of the legislative regime that governs, guides and shapes the activities around generation and management of public revenues and the ongoing processes for exploration, development and commercialization of oil in Kenya.

4.1 AGENCIES RESPONSIBLE FOR OIL AND PUBLIC REVENUE MANAGEMENT

The study noted that there is an able configuration of public institutions responsible for oil and public revenue management that could use more synergies and capacity development in order to provide technical and institutional support. There is a multiplicity of public institutions, anchored on the constitution and various subordinate legislations that function to support and regulate oil and public revenue management. These institutions exist and operate both at national and county levels. They include the Commission on Revenue Allocation (CRA), Treasury, National Assembly, Senate, County Assemblies, County Executive, Office of the Auditor General, and Office of the Controller of budget.

- **The Commission on Revenue Allocation (CRA):** This is a national agency tasked with the responsibility to ensure equitable distribution of national resources between the county and national governments and between county governments. The CRA coordinates preparation, implementation and monitoring of benefit sharing agreements; determines royalties payable by investors engaged in natural resource exploitation and oversees administration of designated funds for community projects from benefit sharing agreements. The commission also has the responsibility to build capacity of local communities to negotiate better benefit sharing agreements and promote local content initiatives and value addition in natural resource exploitation in the country. Beyond extractives revenues, CRA is mandated to determine the sharing of national revenues set aside for county governments.

- **Ministry of Petroleum:** The ministry provides leadership in the management of the extractive sector in the country as guided by the executive order No. 1 of 2018. This includes development of Petroleum and Mining policies, creating a favorable legal and regulatory environment for investments, and building capacity for effective management of programs and projects. The State Department of Petroleum in the Ministry spearheads all petroleum operation programmes in the country including policy formulation, fiscal review, legal and regulatory framework, monitoring and supervision of oil and gas exploration, development and production activities. Through a joint programme with the World Bank – Kenya Petroleum technical Assistance Project (KEPTAP), the ministry has worked to develop capacities of Ministries, Departments and Agencies (MDAs) and county government to handle revenues from oil and to
regulate, manage and monitor compliance in the sector. KEPTAP has facilitated the development of various policy, legal and regulatory frameworks that include: i) Petroleum Act 2019 and new Model Production Sharing Agreement (MPSA), ii) Energy and Petroleum Policy 2019, iii) a stand-alone Petroleum Policy, iv) Upstream petroleum regulations, and v) a Draft Sovereign Wealth Fund (SWF) Policy\textsuperscript{16}. The programme has also conducted a dedicated gender assessment identifying potential gender-specific impacts of the sector and developed capacities of public agencies and other non-state actors on transparency monitoring across the extractive sector value chain. It has also facilitated the development of a draft Local Content policy and local content regulations.

\textbf{The National Treasury:} Among other functions the National Treasury oversees administration and transfer of revenues from the national coffers to county governments. It essentially regulates and facilitates movement and management of money between the two levels of government. It also provides guidelines that shape the handling of public revenues. The National Treasury also regulates resources mobilised by the county governments through credit, especially loans obtained from development partners. When oil revenues begin to trickle in, it is anticipated that the National Treasury would be the custodian of the proceeds and determine the modalities for disbursing the portions of the oil revenues to the county government and those set aside for the local communities.

\textbf{The Office of the Controller of Budget [CoB]:} This national level agency oversees the county budget processes across the annual cycle with involvement ranging from determination of budget ceilings to ensuring budgets are developed within the legal provisions. The CoB has indirect implications on the management of revenues by county governments as it gives incentives for compliance with regulations, for example for ensuring that budgets are based on plans as required by law and that they are borne out of substantive public participation. The Controller of Budget approves allocations to counties within the legal threshold provided for under the current County Allocation of Revenue Act [2019] CARA ceilings.

\textbf{The Office of the Auditor General [OAG]:} Supreme Audit Institutions [SAIs] like the Auditor General’s office are essentially custodians of public funds and have constitutional mandate to ensure that public funds are judiciously applied. The OAG is therefore critical to effective, efficient and accountable expenditure of oil and public revenues in both counties. The office subjects reports of expenditures of public finances (that will include oil revenues) by the county governments to procedural audits that examine their legality, prudence and accountability. Also, it was notable that the office of the auditor general now has a section [Extractives Office] dedicated to dealing with matters related to extractives and other natural resource revenues. Many respondents argued that the office would be critical to ensuring that revenues obtained from oil are prudently applied and invested in the best interest of the citizens and communities especially where oil is produced like in Turkana.

\textbf{Kenya Revenue Authority [KRA]:} Statutorily, KRA retains the mandate for overseeing collection of government revenues in the country. As such, regarding revenues that shall come from oil, it shall by design function to ensure that agencies involved in the exploitation of oil comply with tax obligations. There were also suggestions from many respondents in this study for the KRA to support county governments in revenue administration and overall systems and modalities for collecting revenues in order to ensure efficiency. It was however apparent that this would not be

popular with many county governments that favor to collect revenues on their own. There is however a policy in the process of development that aims to support county governments to improve own source revenue generation. It aims among other things at: i) strengthening legal and institutional frameworks for County OSR, ii) identifying opportunities for optimizing Counties’ OSR potential, iii) clarifying revenue-raising powers between the two levels of Government and among Counties, and iv) improving Counties’ capacities for revenue collection and administration.17

County Executive – Finance and Planning: According to the Public Finance Management Act (2012), the department functions on behalf of the county government to oversee planning and establishing financial and economic priorities, estimation of the county government’s revenues and expenditures. It prepares and facilitates approval of budget estimates, accounting for and evaluating, the county government’s budgeted revenues and expenditures. This agency plays a crucial role in overall identification, generation and management of all public revenues including those that shall be obtained from oil production.

The County Assembly: This is the legislative and oversight branch of government at the county level. Among other roles, it debates and enacts legislation at the county level that lay the foundations for own revenue generation and management – for example in the area of local taxes, levies and other charges that form the bulk of own revenues generated by the counties. The assembly also scrutinises and approves distribution and application of resources allocated to various functions and areas in the county. Through various committees linked directly or indirectly to oil and public revenue management, MCAs perform various functions that endeavor to ensure prudent generation and management of revenues, auditing and accountability for expenditures of public revenues among others.

Parliament [National Assembly and Senate] committees: 18 Parliament plays an important role in reviewing appropriate legal frameworks for revenue management, overseeing mandated institutions, and providing a mechanism for transparency and accountability in applying resources to achieve development goals. Some of the committees relevant to oil and public revenue management include: The Standing Committee on Energy and Natural Resources of the Senate, Environment and Natural Resources committee of the National Assembly (NA), Finance and national planning committee of the NA, Commerce and Economic affairs committee of the NA, Budgets and Appropriations Committee of the NA, Trade, Industry and Cooperatives committee, and Public Accounts committee of the NA. These institutions affect the processes, policy, laws and regulations that impact the conduct of business in public revenue and management. Some of the like the Budgets and Appropriations and Public accounts committee deal directly in scrutinizing and auditing government accounts and interrogating the allocation, appropriation and expenditures of public revenues. They also take part in keeping the government to account of agreements, contracts and deals, like in the petroleum sector. For instance, the Budget and Appropriations Committee and other departmental committees provide inputs on budgetary or monetary issues on behalf of the National Assembly. It is responsible for most public financial matters, and receives inputs from other departmental committees on various budget documents tabled in the committees before they are submitted to the house for debate and approval.19 And the Senate’s

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Finance and Budget Committee presents proposals for the basis of allocating revenue among the counties and to consider any bills dealing with county financial matters. It also reviews the County Allocation of Revenue Bill (CARB) and the Division of Revenue Bill (DORB) which affect resources available to counties for development.  

**Energy and Petroleum Regulatory Authority (EPRA):** Established by the Energy Act, 2019, it functions to regulate, monitor and supervise upstream petroleum operations in Kenya. It is also mandated to collect and manage data/information relating to upstream petroleum operations in Kenya. Regarding the management of revenues prospected from production and commercialization of oil, EPRA will continue to be an important player with authority and influence over the making of policy, determination of proceeds from oil and engagement of key players in the sub-sector. 

**National Upstream Petroleum Advisory Committee:** Established by the Petroleum Act (2019), NUPAC functions to advise the ministry of petroleum (CS) on upstream petroleum operations and on petroleum agreements to be entered into between contractors and the government. The Advisory Committee consists of representatives from relevant Government Ministries and Departments, as well as a representative from each of the Upstream Petroleum Regulatory Authority and the Council of Governors. 

**Presidential Delivery Unit (PDU):** The PEA noted that there is considerable interest and contribution of the Office of The President (OP) in shaping the policy, institutional and legal framework for development of Kenya’s upstream petroleum sector. This has been actualized through the Presidential delivery Unit (PDU). For instance, there was anecdotal evidence indicating that the OP was crucial in getting the consensus on the revenue sharing formula with the county Government of Turkana. The PEA noted that there is an advisor to the President on extractives at the PDU. The increased interest by the OP was attributed to its view of the petroleum sector as an important mechanism for future fiscal stability in Kenya. 

## 4.2 Dynamics of Interactions Among Institutions in Oil and Public Revenue Management

**Horizontal relations across MDAs:** The PEA noted that as they discharge their mandates related to the management of oil and public revenues in Kenya, both at national and county levels, these institutions interacted in various ways horizontally. This includes in cross-sector meetings, multi-sectoral forums and also in sector working groups. Notably, there were indications that coordination between MDAs remains ad hoc, poorly organized lacking consistent structure. Some respondents argued that this led to sometimes just a few MDAs hijacking or taking over processes and limiting contribution of others. This also led sometimes to alienation and or ‘laziness’ of some MDAs. For instance, in areas of revenue generation – such MDAs as those responsible for trade, licensing, security, infrastructure and transportation needed to substantively engage and coordinate in order to promote development of trade in Turkana county especially in areas where there is cross-border trade with Uganda and South Sudan. The lack of this was blamed, by some respondents for the failure of the county to maximize on its potential to increase own source revenues in such areas as the Lake Turkana fishing industry, livestock production among others. In some cases, like in the petroleum sector, overlapping of mandates has led to sleaze, undermined accountability and limited effectiveness of some institutions. For instance, relations between the Ministry of Petroleum, National Treasury and the Office of the President was cited as sometimes creating circumstances that have slowed progress. The lag in in the process towards getting fiscal changes to the development contract for the Lokichar reserves has been contributed by coordination lapses between National Treasury and Ministry of Petroleum. This was reportedly...
because National Treasury Cabinet Secretary - Ukur Yattani was reportedly unhappy with being excluded from tax negotiations with Tullow Oil by the Ministry of Petroleum. Such horizontal relations are replicated at county levels, as different departments appeared not to sufficiently coordinate. For instance in Nairobi county, in the area of promoting informal sector trade, lack of such departments as inspectorate, licensing, infrastructure development has meant that a lot of traders continue to operate without license, or are limited by lack of crucial infrastructure especially in formal settlements where trade is hampered by lack of proper lighting, poor drainage among other things.

**Vertical relations between National MDAs and County level institutions:** Besides horizontal relations, institutions in this sector also engage and relate vertically. The PEA noted that tussles between levels of government persist that limit effectiveness. This spans across policy making, implementation of policy as well accountability for programmes and policy. For instance, regarding revenue generation and management, closer engagement and coordination between county executive and national level MDAs like Treasury, Senate, CRA, CoB and Auditor General among of the national level institutions is crucial. This is especially in the areas of transfer of budget, policy decisions around revenue mobilization like taxation, and revenue sharing among others. However, power tussles between the two levels of government have frustrated smooth engagements and sometimes threatened to undermine the running of government. In such areas a transfer of budget – the National Treasury has been accused by Governors to delay disbursement of funding that limits effectiveness and efficiency of implementations of programmes. Also, in accountability for resources, sometimes Governors have argued that the Auditor General and Controller of Budget have appeared somewhat high handed and unreasonable in understanding the intricacies of implementation of budget that sometimes lead to audit queries.

In revenue sharing, there have been perennial tussles between county governments and treasury and office of the president on what proportions of national revenues are set aside for counties – which have led to stalemates that sometimes have threatened delivery of services like in the health sector. Related to the petroleum sector, there were protracted tussles between the national government (Treasury and Office of the President regarding the formula for sharing of revenues from proceeds of oil. The PEA noted that most of such challenges in intergovernmental relation have been occasioned by poor communication between the two levels of government, sometimes fueled by partisan party politics but also power struggles with the national government seeking to retain control over processes in the county levels despite the changes brought about but devolution. It was notable that there exist institutions like the IBEC, Senate and Council of Governors among others meant to promote smooth relations between the two levels of government that have so far not delivered on this mandate. This impairs meaningful engagements that can facilitate mutual understanding on the challenges that county governments face in handling/managing public revenues and share ideas on how best to address them.

**Interrelations between arms of government:** Prudent management of oil and public revenues requires effective coordination and working relations between the three arms of government – executive, legislature and the judiciary. This is in terms ensuring that they function smoothly without encroaching on one another’s mandates but also allowing space for communication and relations where its necessary. The legislature for instance, cannot effectively discharge their oversight and law- making responsibilities without working in concerto with the executive that implements policy or with the judiciary that interprets the law and adjudicates on matters where disputes or disagreements emerge. The PEA noted that relations between the three arms
of government, in Kenya, have deteriorated in the recent past and limited coordination and accountability for public resources both at national and county governments. The weakness and capture of parliament by the national executive has meant that oversight role of such institutions as the BAC and the PAC have been diminished hence allowing widespread corruption, mismanagement and overall lack of accountability in public finance in Kenya. This has been exacerbated by the prominence of party politics that has allowed the ruling party to in many occasions get away with serious questions around mismanagement of public resources. The PEA also noted tussles between the Judiciary and the executive and some national independent bodies like the EACC, DPP and the DCI in pursuit of investigations and prosecution of corruption cases involving Governors (and county officials) and some high-ranking national government officers [like Treasury CS am0ng others]. There was feedback indicating that breakdown of communication, coordination and relations in the justice system was contributing to collapse of court cases, controversial judgments seen as undermining the fight against graft. At county level, the capture of County Assemblies by the executive (Governors) has grossly undermined accountability and management of public resources. For instance, in Nairobi County, many respondents argued that for a long time, the Governor, being from the same party with the Majority Leader of the Assembly and also using patron-client relations, managed to evade serious questions about corruption and mismanagement. It was argued however that when the Governor fell out with the Majority leader - pursuit of the corruption cases intensified. Some respondents pointed to this capture of the Assembly as the cause of the failure of government and some of the problems that led to the takeover of major of the county by the National Government in February 2020. Regarding the processes for management of the country petroleum sector – the PEA noted that there have equally been tussles between parliament and the executive that sometimes slowed progress for example in the conclusion of the formula for sharing of oil revenues; in scrutiny of contracts and deals signed by the Ministry of Petroleum and in overall oversight and accountability for prudent management of the processes for exploration, production and commercialization of the oil finds in Kenya.

4.3 CHALLENGES FACED BY KEY INSTITUTIONS IN OIL AND PUBLIC REVENUE MANAGEMENT

The study established that there is a multiplicity of agencies of government (formal institutions) that operate with mandates within the realm of oil and public revenue management in Kenya. A lot of such organizations and institutions carry out activities and initiatives that in one way or another aim to facilitate identification, generation and management of revenues. Most of them obtain authority from specific legislation or policy of government, mostly buttressed on acts of parliament. They appeared sufficiently empowered with human resources and finances to discharge their mandates. As such, they appeared capable of fostering a policy-making environment that is able to ensure inclusion of ideas and inputs from stakeholders from different sectors. However, in practice, the study understood through conversations with key informants and secondary literature that there remain challenges that ensure that these institutions (MDAs) don’t function effectively in ensuring prudent management of public revenues. These include:

- **Capacity challenges:** The study noted that there remain capacity limitations amongst staffs of many of the institutions of government to effectively promote inclusiveness and prudence in management of pubic revenues. Capacity limitations were largely linked to understanding of the statutes and technical issues around public finance and the extractives sector. For instance, it was argued by many respondents that members of the legislature - especially at county levels remain uninterested and with limited capacities to deeply scrutinize the critical issues about sources of revenue, revenue performance and auditing of plans and
budgets for expenditure of revenues. There also remain capacity challenges regarding understanding of the intricacies of managing and overseeing activities in the oil sector, especially for subnational players like in the county of Turkana. It was notable however that there were capacity development activities that have been initiated by the Ministry of Petroleum (through a programme with the World Bank) and other development partners.

“The structures do not exist, at least especially for the community level. We can’t see the county or national government trying to help the community forming structures now before the money is disbursed. We are engaging the county level to see how they can strengthen capacities and structures that exist for revenue management to absorb the extractive revenues. There’s no county in Kenya that has specific structures on extractive revenue management including Kwale county that should already be receiving extractives revenues.” – KII, CSO

Low levels of inclusiveness, openness and access to information: there was a general understanding that a lot of the agencies and processes that discharge mandates for managing public revenues remain substantively closed. The processes for identification of county revenues and budgeting for them for example, was reportedly a reserve of officers within the county executive’s finance and planning department where proposals originate and are significantly influenced by the ideas, suggestions and demands of the governor. Also, the policy processes and activities around exploration, production and commercialization of oil in Kenya remains largely consolidated in the Ministry of Energy, Department of Petroleum. Most respondents conceded that there are efforts to open up the policy-making spaces to more contribution from key stakeholders and the public. However, as things are, they remain not as inclusive, open and accountable as is necessary. The striking difference however was that whilst other public finance processes like planning and budgeting are subjected to days of public participation that attract contribution from the public, the processes around managing proceeds or prospected revenues from oil remain substantively closed and eclipsed by key stakeholders at the ministry of petroleum, treasury and office of the president.

Poor intergovernmental relations: There still remain challenges with intergovernmental relations especially for matters that require input and policy decisions at national and county levels of government. For instance, regarding revenue generation and management, closer engagement and coordination between county executive and national level MDAs like Treasury, senate, CRA, CoB and auditor general remains a challenge. This impairs meaningful engagements that can facilitate mutual understanding on the challenges that county governments face in handling/managing public revenues and share ideas on how best to address them. A lot of times, the two levels of government appear to be in contention and out of sync. This limits effective audits and/or smooth transfers of revenues from treasury to counties. Likewise, on the matter of oil revenues, there remains a disconnect between the key policy makers at national level (especially ministry of petroleum and treasury) and county level policy makers (both in the executive and assembly). This was demonstrated in the protracted conversation regarding modalities for sharing revenues from oil. Such disconnects frustrate effective conveyance of perspectives, demands and aspirations of local communities to national level and effective inclusion of such issues that emanate at local levels into policy making processes regarding the exploration, production and commercialization of oil.

“From my experience, the key actors would be, for policy, not so much the County government because it’s the national government policy given down to them. Especially for the Sovereign Wealth Fund bill, it’s Treasury that’s driving the process. They have a committee formed for it and they are pushing on that.” – KII, CSO
Weak enforcement of policy positions, regulations and recommendations: There was also feedback to the effect that sometimes poor/non-enforcement of policy positions, regulations or recommendations also impact effectiveness of some of the listed institutions despite efforts they make towards improvement of public revenue management. For instance, many respondents argued that whilst the auditor general’s office has made significant progress in scrutinizing records of management of public revenues/finances and recommending remedial action, often their recommendations are not followed through. As such they don’t contribute to better management of public revenues beyond raising the red flag or providing information that is utilised by investigative and anti-corruption agencies. There were claims that some of the recommendations are thwarted or undermined by private as well as political interests that intervene in the processes.

Weakness of legislative structures and processes (both at county and national assembly): There were also sentiments indicating that existing legislative structures appear weak in their ability to discuss, interrogate and engage effectively on matters regarding oil and public revenue management. This was argued by some stakeholders to impair the quality of legislation and the effectiveness of bargaining and debating over various resource mobilization and administration policies pursued by the county government. Some respondents indicated that, despite investments in capacity development for the assemblies for example, there remains a small proportion of MCAs that are capable of constructively arguing and discussing how the county government identifies sources of revenues, collects revenues, and plans and appropriates such revenues for public good. Also, regarding the extractives sector, many respondents felt that the legislative structures were not playing an effective role in scrutinizing the policies and decisions made in the process of engaging stakeholders in the exploration, production and commercialization of oil. They argued that despite the oversight role of parliament, many contracts and deals in the oil sector continue to be undertaken without sufficient openness, scrutiny and accountability by the MDAs responsible.

4.4 LEGAL AND POLICY FRAMEWORK FOR OIL AND PUBLIC REVENUE MANAGEMENT AT COUNTY LEVEL

The existing legislative and policy framework on oil and public revenue management can be leveraged to support advocacy for effective and accountable revenue generation and management. There however remain gaps – in terms of capacity, intergovernmental relations, suitability and implementation among others – that limit the effectiveness of the laws to promote prudent revenue generation and management. Some of the key laws are discussed succinctly below:

The Constitution of Kenya (2010): provides substantive backing for fair mobilisation and equitable distribution of resources. Article 209 (3) gives the counties express authority to impose property, entertainment and any other authorised tax by an act of parliament. Additionally, it gives counties the liberty to impose taxes on services provided by the county governments and spells out conditions for counties to implement tax different tax regimes. County tax systems should be implemented in accordance with national policies, economic activities across the country borders and mobility of factors of production. Regarding oil revenues - Article 69 (1) requires the State to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and to ensure that the accruing benefits are shared equitably, ensuring the resources are utilized for the benefit of the people of Kenya. Article 201 also states that the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations. The Constitution clearly provides the basis and mandate for the government to ensure equitable and sustainable allocation and distribution of natural resource revenue.
The Public Finance Management [PFM] Act 2012: provides a strong basis for improvement in the mobilization, administration and distribution of national resources and also own revenues generated by the county government. The PFM Act and the constitutional provisions on public finance and devolution together proffer a progressive environment that allows the county government to explore and pursue diverse sources of own revenue whilst also prospecting proceeds from revenues generated by the national government from oil production which is produced from resources within Turkana County. The Public Finance Management Act [2012] in article 109 provides guidelines for establishment of county revenue funds banking process for the revenue collected and allocates responsibility to the county treasury for management of this fund. Also included in the act are financial controls including procedure of auditing of the county revenue fund.

County Government Act [2012]: Article 108(4) allows county governments to develop resource mobilisation frameworks through which they can find ways of increasing their revenue base in order to achieve their development objectives. According to section 120(1) of the County Governments Act 2012, counties are required to develop tariffs and pricing policy to guide imposition of fees and charges for public services. In addition, county governments may enact laws and regulations to facilitate implementation of tariff policies. These tariff and pricing policies are expected to promote equity in the application of fees and charges, enhance access to basic services among vulnerable groups through measures such as special tariffs and ensure financial sustainability of public services and use of resources. However, county government are yet to develop and operationalise tariff and pricing policies that provide an objective basis for setting fees and charges for the services they provide. In the absence of effective policies, county fees and charges may be raised in ways that penalise the poor or raise inadequate revenue. The proposals under the Own Source revenue bill and Policy however seek to address some of these gaps, for example by proposing mandatory submission of tax proposals to the treasury months in advance of it coming into law for vetting. However, on the flipside, this may also undermine the relative autonomy of counties to determine their revenue streams. Additionally, the County government enacts legislation annually that stipulates the manner in which resources are mobilised, distributed and managed across different devolved functions and across different sub-counties and sub-sectors. These include the County Revenue Administration Acts and County Finance Acts. These may also include any other legislation that is enacted by the county assembly for purposes of increasing revenues.

Petroleum Act 2019: The Act revised Kenya’s petroleum fiscal terms including sources of government revenues and fiscal rules. It provides that the proceeds raised from the exploitation of petroleum resources shall be shared out between the National Government, County government and local communities. In effect, the National Government’s share of the profits will be apportioned as follows: (i) 75% to National Government; (ii) 20% to the County Government; and (iii) 5% to the local community, payable to a trust fund managed by a board of trustees established by the County Government in consultation with the local community. The Petroleum Act includes a Model Production Sharing Contract (“Model PSC”) to be used by the CS when entering into a petroleum agreement. The Act also includes provisions for local content requirements on petroleum operations [at Section 50]. This provision is aimed at ensuring petroleum operations carried out in Kenya add value to the economy by creating jobs and requiring the procurement of locally available goods and services. The Act provides for sharing of revenue from upstream petroleum operations to ensure that the County Governments and local communities benefit directly from exploitation of petroleum resources located in their counties and sub-counties. The Act also mandates Parliament to review these percentages within ten years.
Natural Resources (Benefit Sharing) Bill 2018: This establishes a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities; for connected purposes. It empowers the CRA to among other things: coordinate the preparation, implementation and monitoring of benefit sharing agreements; review, and where appropriate, determine the royalties payable by an affected entity engaged in natural resource exploitation; oversee the administration of funds set aside for community projects to be implemented under a benefit sharing agreement; build the capacity of local communities in negotiations for benefit sharing and implementation of related projects; ensure and promote value addition in natural resources; and promote local content initiatives.

Public Participation Bill 2018: Section 87 and 88 of the County Governments Act provides a framework for citizen participation in government decision-making process. County governments are required by law to make legislation providing for this. Section 87 outlines the principles for citizen participation in county government decision-making process. According to this article, citizen participation can only be carried out based on timely data, reasonable access to the process of formulation, implementation and legislation, protection and promotion of rights and interests of the minority groups. In the Public Finance Management Act, citizen participation has been underscored as an important process during the preparation of any legislation. County governments are required by law in this act to develop public forums where consultation can be carried out to allow unconditional opportunity and space to engage, contribute and influence governance matters and decisions on all matters that concern legislation. It also allows taxpayers the opportunity to internalize the tax measure or regimes being fronted by the government so that compliance is maintained across the county. Both Turkana and Nairobi counties have put in place elaborate mechanisms to allow public participation within the counties. These counties have developed communication channels, Public Participation Acts and County offices to deal with public participation within the county. Though these two counties have a dedicated public participation process, not all counties have developed policy frameworks for operationalization of public participation resulting to poor involvement of county residents, which has an overall negative effect on county own resource mobilisation. The formulation of public participation policy bill 2019, which gives effect to public participation, provides parameters for public participation and defines the obligations of state organs and public offices in conducting public participation and for connected purposes. More and more counties are likely to follow precedence and formulate their own policies. This process will help integrate the public in formulation of county revenue policies that will help in increasing compliance and overall revenues in the county.

The study thus noted that there was a substantive framework of laws (others not yet passed) that sustain a regime of laws that can be leveraged to improve oil and public revenue management. Some of them provide the benchmarks for openness and transparency like the public participation statutes. Others provide the framework for participation of actors at county level in determining the identification and administration of revenue generation modalities, and planning and management of such resources. Others, like the Petroleum Act 2019, stipulate modalities for sharing of revenues between the national government, county government and local communities and also provide guidelines for ensuring that investments in the revenue generation processes like exploration and development during oil production benefit the communities around which the oil is exploited.

Nonetheless, it was notable that there was need to develop capacities of key stakeholders – especially at county level [including MCAs, civil society and media] to understand these laws in order to put pressure on the executive and other
national government MDAs to ensure that they are implemented and utilized to benefit oil and public revenue management. Likewise, there remain capacity gaps in terms of effective delivery of mandates amongst the county governments. As such, some national government institutions and development partners have worked to develop capacities of county government agencies in charge of revenue generation and management. Even so, there remain gaps for instance in allocative efficiency, conducting proper public consultations, revenue administration among others that impact the ability of both counties to raise and effectively manage resources mobilized.

Many respondents argued for the need to review and re-enact some of the existing laws to adjust and fit current circumstances. The PFM Act (2012), modalities for public participation, and local content policies and regulations were some of the legal provisions that many respondents indicated require review. For example, it was notable that the public participation provisions in the constitution and other subordinate laws were not providing sufficient backing for effective and meaningful involvement and contribution of ordinary citizens in the process of revenue generation and management.
5.0 GAMES WITHIN THE RULES

5.1 POWER DIMENSIONS IN OIL AND PUBLIC REVENUE MANAGEMENT PROCESSES

**Dynamics of clan politics:** In Turkana, alongside other factors, clan politics play an important role in determining bargains and political settlements including for resource mobilization and distribution like in revenue generation and management. Political capital and support is organised and sought by politicians based on the demographics and allegiances held by the various clans that comprise the ethnic fabric of the county. Political bargaining and horse-trading on issues such as representation [in the county assembly and allocation of county executive positions], resource mobilisation and distribution, and policymaking is as such conditioned by the dynamics of clan politics. For instance, clan politics have significant bearing on the morphology of the political landscape in Turkana County to the extent that it determines distribution of political positions [MPs, Senator, and Governor among others]. It is notable that the size and influence of the clan influences who occupies big positions in government and by extension who makes critical decisions about the management of revenues. Whilst there exist political parties and interest groups, development politics tends to be driven and determined by clan-based negotiations and may not necessarily be driven by ideology, strong political positions, religion or grievance as is observable in other contexts. Policymaking, therefore, must endeavour to pay attention to the intra and inter-clan configurations. The size of the clan plays a big part on how politics is practiced as political seats have a bearing of size and influence of clans. Such clans as Ngipucho and Ngiponga are considered some of the largest and as such powerful and contribute some of the most influential leaders in the county. However, there is an aspect of negotiated democracy which ensures that all the major clans are represented.

> “Clans in Turkana are very strong and influential to the extent that elected leaders [MPs, MCAs] come from the strongest clans. The strength of a clan is determined by how much land they own and that is how they identify themselves.” – KII, Turkana County

**Political Party politics:** Although more pronounced in Nairobi City County, the study noted that political parties play a significant role in shaping the spaces and conversations around public finance that impact engagement by citizens on oil and public revenue management. It was notable that in Nairobi County, for instance, the County Assembly is divided (about 50-50) along party lines [Mainly Jubilee Party and ODM] that have significant leverage on how they vote on bills, motions and debates. Whipped by various representatives of their respective parties, MCAs tend to toe the line and assume political positions conditioned by their political parties. This has meant that sometimes, despite significant queries regarding the management of public revenues, the Governor’s Office can bypass scrutiny and accountability through working with party structures to whip MCAs to do its bidding. There was feedback from some respondents indicating that such political party leaders as the Majority Leader in the County Assembly Hon

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The Turkana community have several clans which include: Yapakuno, Nalukumong, Ngiduya, Ngiponga, Ngipucho, Ngimeturuana, Sonyoka, Ngije, Ngidocha, Ngimecharimukata and Kwatela.
– Abdi Guyo was one of the most influential in the county through which party politics and power was channeled. There was however a major political shift within the assembly influenced by Jubilee Party politics that saw the ouster of Hon Guyo and has left the House divided into two groups; those allied to Speaker Elachi and those behind Majority Leader Abdi Guyo. It was notable however, that in Turkana County, despite still being a factor, party politics do not elicit division or strong divergent views. This is because most of the MCAs are largely from one political party/leaning – leaning towards ODM and allied political parties (opposition parties). However, it is worth noting that clan politics, as discussed in the previous point, substantively influences the dynamics of party politics. As such, the issue of party politics remains relevant to increasing citizen participation and shaping the effectiveness of oversight institutions like the Assembly that are crucial on matters to do with public finance.

“Influence of political parties is significant. This is in most cases in the national government when the President want to move something but due to political interest, they think they’ll get a bullet by passing a certain law. The same applies to the county government. MCAs are persuaded along party lines to support or oppose bills or policies many times.” – KII, CSO

“The Nairobi County Assembly is to a great extent influenced by The National Government, given that a majority of its members are from the ruling party.” – KII, MCA, Nairobi County.

More importantly, for the management of oil revenues, the influence of national party politics has been seen, in the past, to influence processes and mechanisms for bargaining the sharing of revenues between local communities in Turkana and the national government. An issue that draw a lot of connection and for some time stalled progress in development of Kenya’s upstream petroleum sector. For instance, seeking to resolve the petroleum sector debacle, President Uhuru in 2018, pushed for the appointment of John Munyes as Cabinet Secretary of the newly created Ministry of Mining and Petroleum. Munyes was a former Turkana Senator, a Jubilee Party loyalist and a recognized power broker in the region. Analysts have argued that his appointment was aimed at facilitating appeasement of the local community to come to an agreement with the national government, especially by fast tracking negotiation of a deal with the region’s leaders, especially Governor Nanok who was considered, at that point, the greatest challenger [Oil News, 2018]. It is reported that Governor Nanok and Hon Munyes had a series of meetings, which led to a deal in May 2018 between the president, deputy president and Turkana leaders, led by Nanok [Africa Energy Intelligence, 2018; Alert Kenya, 2018; Kamau, 2018; Letting, 2018]. At the same press conference where the president made the announcement, Nanok said the “leadership and the people of Turkana are now fully in support of the exploration and production of oil after the disagreements were resolved.”

“Munyes’ appointment was likely motivated by Kenyatta’s desire to expedite development of the Turkana oil field while reducing the share of revenue earmarked for the local community. He may provide a counter-balance to opposition coordinated by Council of Governors Chairman Josephat Nanok.” [Oil News, 2018]

**Consolidation of power within County Executive:**

The County Executive – especially the Office of the Governor and the Economic Planning department retain significant power and leverage over policy making and implementation on revenue generation and management. It generates the policy proposals that are put

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22https://nmbu.brage.unit.no/nmbu-xmlui/bitstream/handle/11250/2584584/Ndungu2018.pdf?sequence=1&isAllowed=y
through public participation and scrutiny by the assembly and other parties before enactment. As will be discussed in the last section on stakeholder analysis, this means that the interests, whims and preferences of the Governor have significant influence on the shape and form of modalities for revenue management at both counties. Although the law provides for a role for the assemblies to scrutinize budget, a lot of power remains with the governor in both Turkana and Nairobi that immensely affects how policy making on these matters is done. This is further reinforced by the ability of the executive to whip and influence members of the assembly, through coercion, allegiance buying, party affiliation among other mechanisms. As such, the power of the executive remains substantive in public finance management.

“The counties are managed by the Governor. The Governor has a lot of influence in Nairobi. The Governor is so powerful that whatever he says whatever advice he gives to the CEC has to be followed.” – KII, County Government

“My view is the biggest player is the executive, the governor’s office (Governor Nanok and the chief officers). They sit and decide how much they need and how much more can we do. [...] The executive is still very dominant.” – KII, CSO

“On paper its so structured. So, you have the finance and economic planning and the technical team coming up with financial proposals for the county based on evidence. The executive through the governor is very powerful; economic planning gives advice to the governor like on productive policy options for raising revenue, but the governor will succumb to pressure because of the other issues.

As for me the governor has the last word in terms of how we raise revenue.” – KII, CSO

“Whilst the Assembly has mandate to scrutinize and contribute to proposals, assenting to these proposals is for the governor at the county level and the president at national level. If the governor feels that the proposals that have been passed by the county assembly are not welcoming, he returns it to the assembly. If they do not agree with him, they subject it to voting. The votes should exceed 2/3 for it to go through which still is not easy.” – KII, National Assembly

Weak oversight and public participation framework eclipsed by the executive: Whilst the executive retains prerogatives to organise and ensure public participation especially in matters around public finance, it appears to eclipse the processes of public participation, which impairs the quality of participation: There is a perceived primacy of the executive (both at national and county levels) in public participation with a lot of the processes and modalities of participation largely top-down rather than consultative. Participation involves selection of stakeholders perceived to be friendly to the proposals or positions of government on issues presented for debate or bargaining. There is also some level of active endeavours to exclude criticism and unpopular opinions. Such tactics include exclusion of pressure groups and civil society organizations from public participation forums. There are also perceptions that public participation forums are rather cosmetic and that genuine concerns and inputs of the public are collected as formality but not necessarily taken into account in policies on taxation and overall revenue mobilisation.

Further, at national level, parliament, just like the county assemblies appears ill equipped to oversee the processes towards development of the petroleum sector. Notably, the upstream sector is new in Kenya and parliament has yet to master the expertise to understand the complex and technical matters involved in the sector, including scrutinizing Petroleum Agreements. This capacity challenge limits parliament’s current oversight power and gives the Cabinet Secretary and agencies of the state opportunity to determine the licensing process. The role of the Ministry of Energy and Petroleum Cabinet Secretary in granting petroleum agreements creates room for rent-seeking behavior and corruption through abuse of discretion. This might lead to conflict – and in most instances,
cabinet secretaries do not excuse themselves in case of conflict of interest. A weak framework for oversight leaves gaps that may perpetuate corruption and undermine State interest in favour of individual interest as the terms of the negotiated petroleum agreements can be used to seek personal favours from oil companies.

**Overreach by national MDAs, and weak Inter and intragovernmental relations:** Whilst the existing formal institutions appear suited to allow the county government a robust framework for revenue generation and management, there appears to be inadequacies in the attainment of synergies. The study noted that there remain challenges with intergovernmental relations regarding the identification, generation and application of public revenues. The existing legal framework still leaves a lot of power and discretionary space to officers of government in MDAs at national level that have significant implications on what the county government can do in their processes to generate and manage public revenues. For instance, there have been tussles between the county government (through the governor’s office and the national government [Treasury] in the agreed bargain for sharing of proceeds of oil production that show substantive influence still retained by the national government in terms of local resource generation. The national treasury retains immense powers in terms of determining disbursement of revenues to county governments. This affects the power balance that has sometimes been used to intimidate county governments, especially on political grounds.

“Most of the time, the National Treasury is not so consultative, you will find them pushing us to approve what sometimes has no consultations”
- KII, County Government

“Treasury has brought a bill which I think is a dangerous bill on own source revenue. There is an assumption that because the national government is interested in maximizing revenue, counties should be, which is not necessarily the case. The decision about what tax burden people should bear is a legislative decision by the MCAs. Now this formula, by insisting on will punish you for that which I think it was a wrong thing but counties will decide what is best for their people” – KII, CSO

More importantly, for management of Kenya’s upstream petroleum sector, there have been reported tussles between National Treasury and Ministry of Petroleum that have been argued to slow progress. These have been facilitated by perceived weaknesses in coordination and relations between MDAs responsible for the petroleum sector development. For instance, there have been media reports indicating that National Treasury has been unhappy with being excluded from tax negotiations with Tullow Oil by the Ministry of Petroleum. Cognizant of the fact that they would have to include Treasury in the process towards getting the fiscal changes to the development contract for the Lokichar reserves, the Ministry of Petroleum has to make adjustments to include officials from Treasury. However, some pundits also read bureaucratic politics in the tussles between Treasury and Ministry of Petroleum arguing that some of it is motivated by political and ethnic allegiances of the heads of the institutions – Ukur Yattani [Treasury] and David Munyes [Ministry of Petroleum].

**Patron-clientelism:** A nascent system of political patronage and clientelism exists in both counties and at national levels that affects the conduct of the formal institutions and has capacity to ensure exclusion of true inputs of ordinary citizens in engagements on revenue. This is exacerbated by elite capture - a form of corruption where public resources are biased for the benefit of a few individuals of superior social status in detriment to the welfare of the larger population. The study noted that in

both counties, there exist private interests [of politicians, business people and government officers] that appear to control and condition the processes of policymaking on public finance to bend to their benefit. There were indications of strong patron-client relations in the politics of development in both counties. Many respondents argued that the county executive, in some of their actions, appeared to further private interests rather than fidelity to the law and responding to the pronounced needs of the citizens. Such tag-names for patronage as ‘tenderpreneurs’ are used loosely to reflect the perceived capture of the key duty bearers. Though not sufficiently corroborated by respondents, there were arguments that there exist substantive patron-client relations in the extractives sector – especially between external players and government officers. They agreed that these affect the content of agreements.

“There know that there are some private interests/stakeholders within the business community that often lobby and influence the decisions taken by the county government during the budget process” – KII, County Government

Resource rents politics and lack of sufficient transparency in extractives sector limiting effective bargaining for a fair share of oil revenues: There remains substantive disconnect between oil corporations investing in exploration production and commercialisation of natural resources, mainly oil, and the governance structures within the county. These continue to fuel suspicion and distrust between local communities and mining companies, and, the national government that could potentially jeopardise the accrual of maximum merits from the natural resources in the county that can increase own revenues. There is a great deal of opaqueness that accompanies drafting and signing of agreements that denies the public information on the conduct of exploitation of these resources. Further, involvement of the local citizens in such negotiations and bargaining appears to be minimal, which opens the space for rent seeking, rent transfers, patronage and corruption. This is exacerbated by limited access to information. Civil society organisations working in the Turkana County continue to press for openness in contractual agreements [including disclosure of the terms of contracts and the payments due to both the locals and the state] with investors and in bargaining for sharing of proceeds from the extractives sector in the county.

5.2 ROLE AND PLACE OF WOMEN IN OIL AND PUBLIC REVENUE MANAGEMENT

Women have a lot to contribute to conversations around public finance management and often the most affected by revenue generation and management decisions made by government. Besides their rights as citizens to be accorded equal space to contribute to the making and implementation of policy [both at national and county] on revenue management – they stand to lose more because they depend on services delivered by revenues allocated and they are impacted by revenue decisions like levies and taxes as majority of producers of goods and services are women. However, there remains substantive exclusion of women in public policy processes reinforced by culture and enduring male attitudes that stifle effective public participation and involvement of women. Women have not effectively participated in financial decision making due many reasons:

1. The perception of women that public finance is a technical and complex issue and their lack of awareness on their rights to public participation in government revenue decisions and policies. Women feel like it is the most

24 The term ‘tenderpreneur’ is used loosely in the Kenyan context to refer to a new breed of opportunistic brokers who cash in on Government contracts. A tenderpreneur is “someone politically well-connected who has got rich through the government tendering system” https://www.standardmedia.co.ke/article/2001286358/the-making-of-faceless-tenderpreneurs
learned and experienced people who can influence public finance decisions since they are knowledgeable enough to inform policy decisions on public revenue management. Lack of awareness on their rights implies that the elite and other groups with varied interests fill up public participation fora, thus leaving out the women and giving them less time to air out their issues. Nonetheless, government is mandated to develop simplified versions of reports and public information that should make it easier for women with lower literacy levels to absorb. Some civil society organisations are also increasingly developing such things as citizen budgets and information, education and communication materials that aim to simplify the budget process and increase women’s participation. Overall, the issue of public finance is still regarded in society as a technical matter that is left to experts – citizens are easily fatigued and put-off by technical jargon and volume of information provided during public participation forums and as a such often find it less appealing to get involved.

2. Retrogressive culture: There remain deeply rooted cultural beliefs and practices that contribute to marginalisation of women and impinge on their abilities to organize and engage duty bearers on pertinent issues regarding their welfare and livelihoods, including public finance. Such practices include nomadic pastoralism, female genital mutilation and early marriages. These continue to contribute to disempowerment of women, limiting their contribution in the economy and their voice and inclusion in debates and bargains on public finance management. Also, customary laws have given men more power and control over resources and decision-making processes [Elisia et al 2010]. In Turkana County, this is reinforced by culture that does not allow women to share same sitting with men [affects modalities for public participation/limits women from contributing ideas]. In some cases, women are also not allowed to head households, and are, therefore, not expected to represent the household in any way whatsoever including in their participation in public forums.

3. The burden of care work borne by women: The unresolved burden of care work borne by women continues to limit their participation in public finance management issues. Women are often associated with unpaid care work and other forms of domestic work that are removed from public political debate including bargaining forums where issues as public finance are discussed. Value is not put on women’s work as family care providers and nation builders through formal and informal work, yet women spend a substantial amount of time in household management which is a very important role they play. Women tend to be reluctant to attend public participation forums due to inappropriateness of the modalities in terms of schedules and venue. Most of the women contacted indicated that for public participation to be effective, schedules for meetings need to be communicated effectively to allow them to plan accordingly. Also, they have no time to attend the fora since they are scheduled to be doing other house chores when the fora are ongoing. The choice of venues often do not favor their need to balance responsibility for care work and other entrepreneurial activities with participation in civic forums.

Statutorily, the Constitution of Kenya (2010) provides avenues for women to influence policy on public finance and effectively involve in public revenue management. Public participation, established through the Public Finance Management Act 2012, is key in enhancing transparency and accountability in financial matters. Participation in the budget process, for example, not only allows women to have their voices heard but also, allows them to shape policy proposals. However, the study noted from feedback from women respondents, that there is the tendency to view public participation as a routine exercise by officials to fulfil constitutional obligations rather than use it as an avenue for
getting input and feedback on service delivery. Some also argued that their participation is unnecessary since recommendations during prior meetings are rarely implemented.

Nonetheless, there was evidence indicating that women have evolved in their organizational capabilities. In many cases, women are now able to organize and collectively demand their rights, access to services and collectively bargain, especially with politicians or agents of government, regarding their needs and/or challenges. In Turkana county, there was feedback indicating that the Maendeleo ya Wanawake (MAYW) remains an active and respected organization that brings women together. It is largely respected by government, politicians and other outsiders. This was exemplified by claims that the organization is normally included in conversation around plans and priorities of the county government and considered a force that cannot be overlooked.

In Nairobi County, respondents spoke of several women groups that undertake interventions that seek to empower women to articulate their interest during public participation forums. Also, Civil society organizations conduct women and girls’ economic empowerment programmes that support women to organize and engage government (policy makers) to address their problems/needs.
6.0 STAKEHOLDER CONFIGURATIONS AROUND OIL AND PUBLIC REVENUE MANAGEMENT

Interrogation of configurations and constellations of categories of stakeholders often form a core component of effective Problem Driven Political Economy Analysis. This is because stakeholders play instrumental roles in shaping institutions that are integral to the problem. This section of the report explored the configuration of stakeholders in order to identify and distinguish the critical players that would influence [promote or undermine] policy change towards oil and public revenue management in the two counties. Interest drives stakeholders to take actions that have implications on the extent to which management of oil and public revenues is improved. As already discussed in previous sections, interests include – political, private partisan, business, legal and policy, community aspirations and needs. These affect in different ways how policy makers view management of resources and determine their openness to change or otherwise. Influence on the other hand regards power and authority to affect policy-making processes around management of oil and public revenues. Such power dynamics affect who controls access to resources, information and decision-making and attitudes, norms and practices that impact the sector.

6.1 INTEREST AND INFLUENCE DYNAMICS AROUND PUBLIC REVENUE MANAGEMENT (NATIONAL)

The PEA noted that there is a multiplicity of actors that are concerned about the management of oil and public revenues in Kenya. It conducted a stakeholder analysis in order to develop an understanding the interest and influence dynamics at play at the national level. The table below illustrates a categorization of some of the major stakeholders at national level that have interest and power to influence policy and institutions to improve oil and public revenue management or to thwart efforts.

<table>
<thead>
<tr>
<th>High Interest; Low Influence</th>
<th>High Interest; High Influence</th>
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<tr>
<td><strong>CSO and Networks of CSOs working on public finance:</strong> IBP, TISA, IEA; NTA, Haki Jamii, Oxfam, CSO platform on Oil and Gas(KCSPOG); TI-Kenya; KOGA; Diakonia – Kenya; KENRA Associations of Small-Scale traders Petroleum Institute of East Africa (PIEA) <strong>Academia:</strong> Prof Attiya Waris, Dr Collins Odotte, Dr Melba Wassuna; Prof Mkutu Agathe; Prof Karuti Kanyinga IDS – University of Nairobi; University of Nairobi – School of Law; Strathmore Law School Extractives Baraza <strong>Private Sector:</strong> Petroleum sector: Prime Fuels Kenya; Multiple Hauliers; Oilfield Movers; Transportation sector, Construction sector, Manufacturing among others.</td>
<td><strong>National MDAs in charge of PFM:</strong> Auditor General; Kenya National Audit Office (KENAO); Commission on Revenue Allocation; Kenya Revenue Authority; Controller of Budget (CoB); National Treasury - Public Debt Management Office (PDMO), Public Finance management reform Secretariat, State Department of Planning, Macro and Fiscal Affairs Department; Resource Mobilization Department; Public Procurement Regulatory Authority; Kenya Extractive Industries Development Programme. <strong>National Petroleum sector MDAs:</strong> Ministry of Petroleum; EPRA; NOCK; <strong>International Financial Institutions:</strong> AfDB; World Bank, IMF <strong>Legislature:</strong> National Assembly – Parliamentary Budget and Appropriation Committee (BAC), PAC, Finance and Planning; Parliamentary Budget Office (PBO); Senate: Committee on… <strong>Development Partners supporting PFM reform in Kenya:</strong> UNDP, GIZ, DFID, USAID; Canadian Development International Agency (CIDA), Embassy of Sweden, Embassy of Denmark (Danida), IDA, Norway <strong>Professional Bodies:</strong> ICPAK Private sector: Oil firms – Tullow Oil, Africa Oil, <strong>Media:</strong> National Media – Nation media Group, Standard Grip, Royal Media Services</td>
</tr>
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</table>
Political Economy of Oil and Revenue management in Kenya

Category 1 - High interest and low influence:
This category clustered stakeholders that were deemed of high interest but with low level of power to influence policy change and increase citizen involvement in the generation and management of oil and public revenues in Kenya. The PEA plotted in this category: CSOs and CSO networks working on PFM and on extractives in Kenya. Despite high interest and ongoing work on promoting prudent public finance management including in the petroleum sector, many of such CSOs are yet to meaningfully and impactfully engage the government of Kenya. It was notable that they have facilitated some changes like in development of policy and legislation, creation of institutions and capacity development that have improved things. Such CSOs included: IBP, TISA, IEA; NTA, Haki Jamii, Oxfam, CSO platform on Oil and Gas (KCSPOG); TI-Kenya; KOGA; Diakonia – Kenya; KENRA. However, they are yet to succeed in attaining impactful policy influencing positions in the country. Secondly, the PEA plotted in this category academia and experts in PFM, law and extractives research. Such institutions as IDS – University of Nairobi, University of Nairobi - School of Law, and Strathmore Law School – Extractives Baraza with such scholars as: Prof Attiya Waris, Dr Collins Odotte, Dr Melba Wassuna; Prof Mkutu Agade; Prof Karuti Kanyinga were significantly mentioned by many respondents. Nonetheless, despite their level of interest and work, they appeared poorly positioned to significantly impact policy, legislation and processes for reform towards better management of public revenues and the petroleum sector. The PEA also noted that good proportion of private sector organisations fell in this category. With a lot of interest in prudent public finance management and economic development in the country, the private sector remains highly interested but with limited capacity to significantly influence policy and government operations. It was notable however, that some of their umbrella bodies like KAM, KEPSA and chambers of commerce have some considerable power.

Category 2 – High Interest High influence: This represents stakeholders with high levels of interest and high endowment with power to influence policy change and increase citizen involvement in the generation and management of oil and public revenues. The PEA deemed National MDAs in charge of PFM of high interest and high influence in terms of shaping and impacting the conduct of policy, laws and overall processes in the sector. These actors include: the Auditor General; Kenya National Audit Office (KENAO); Commission on Revenue Allocation; Kenya Revenue Authority; Controller of Budget (CoB); National Treasury - Public Debt Management Office (PDMO), Public Finance management reform Secretariat , State Department of Planning, Macro and Fiscal Affairs Department; Resource Mobilization Department; Public Procurement Regulatory Authority; Kenya Extractive Industries Development Programme. Some significant arms of the legislature like the National Assembly’s Parliamentary Budget and

Low Interest; Low Influence
Ordinary citizens; Local media (community radio) Turkana Times and Turkana Guardian; Radio stations: Sayare Radio, Akicha, Jambo, Maata

Low Interest; High Influence
Private Sector: Private Sector Alliance; KAM; National Chamber of Commerce; Prime Fuels Kenya; Multiple Hauliers; Oilfield Movers
Council of Governors/IBEC: Chairperson Council of Governors Intergovernmental Fiscal Relations department
Members of the National Assembly (MPs)
Professional Bodies: LSK; Management Consulting firms; Accounting Firms, Law firms
Political Parties: ODM, Jubilee Party.
Political Economy of Oil and Revenue management in Kenya

Appropriation Committee (BAC), PAC, Finance and Planning; and Parliamentary Budget Office (PBO) were also categorized in this class. Most of these institutions are involved in the making of laws and policy, implementation and review/ oversight in the public finance management sector. In pursuit of more prudent generation and management of public revenues they are perhaps the most important to engage. Further, the PEA also noted that National Petroleum sector MDAs like the Ministry of Petroleum; EPRA; NOCK retain significant power and interest in the development of the country’s petroleum sector. Also, because of the prominence of International Financial Institutions in the development the country, the PEA underscored the influence and interest that IFIs like the AfDB; World Bank, IMF, and IFC have in matters to do with public finance management. This also included Development Partners supporting PFM reform in Kenya: UNDP, GIZ, DFID, USAID; Canadian Development International Agency (CIDA), Embassy of Sweden, Embassy of Denmark (Danida), IDA, and Norway. In this category, the PEA also included national media organisations in Kenya that are considered in the region more open, free and developed. It saw such organisations as the Nation media Group, Standard Grip, Royal Media Services as of high interest in informing the public and telling PFM stories and of high influence in keeping government accountable. Lastly, some professional organization like the ICPAK who were considered by some respondents as influential on PFM matters were also put in this category.

Category 3 – Low Interest; High Influence: This category of stakeholders represents those with a lot of power and are capable of influencing key duty bearers on the specific policy issue at play but are characteristically not substantively motivated or interested in pursuing or engaging on the issue. In this category, the PEA included the private sector in the country arguing that whilst they retain substantive influence over the executive [especially through their umbrella bodies like: Private Sector Alliance; KAM; National Chamber of Commerce], they remain largely uninterested in influencing and support reform towards prudent management of public finances. Specifically, for the petroleum sector, the PEA plotted such organisations like Prime Fuels Kenya; Multiple Haulers; Oilfield Movers among others that are directly involved in the development of the upstream petroleum sector in Kenya. The PEA also included other professional bodies like the LSK; management consulting firms; and Accounting Firms. This was mainly on the basis of feedback from many respondents indicating that accounting firms and law firms have generally been utilized by private sector firms to reduce their tax obligations and sometimes to beat the system in areas of taxation and disputes with government. Also, the PEA found coordinating structures of the county governments like the Council of Governors, IBEC and also the Intergovernmental Fiscal Relations department at Treasury to substantively influential in PFM matters but not significantly interested and involved in promoting reform towards prudent generation and management of public finances. In some instances, some of these bodies were cited by respondents as having frustrated or at least not support processes for keeping Governors to account for management of public money. Lastly, the PEA clustered political parties (especially the major ones – Jubilee Party and ODM) and by extension Members of Parliament (National Assembly mostly) in this category. This was on the basis of the fact that political parties have in the past whipped their MPs in the National Assembly to undermine crucial processes, reforms and laws that could have promoted better public finance management and accountability in the Extractives sector. MPs have failed in their oversight role of government in many instances intimidated or whipped or censured by their party organs.

Category 4 – Low interest; Low influence: The fourth category of stakeholders was the group who demonstrate low level of interest in the issue and equally have low power to influence the other stakeholders to effect policy change around the issue. From feedback from most of the respondents in this study, it was notable many ordinary citizens (particularly women) consider public finance management issue technical, complex and uninteresting, and the job of others. As such, they are not sufficiently motivated to engage. As such, the PEA plotted them in this
The PEA also noted that whilst local media (radio stations especially) are substantively interested and influential on PFM matters at county levels, there level of influence at national level is quite low. Such local media organisations like community radios Sayare Radio, Akicha, Jambo, Maata and also Turkana Times and Turkana Guardian whilst interested in national conversations on the petroleum sector may not have the muscle to engage and to influence processes. They were thus categorized here.

6.2 INTEREST AND INFLUENCE DYNAMICS AROUND PUBLIC REVENUE MANAGEMENT IN TURKANA

Through conversations with key stakeholders in the sector, the study noted that there is a multiplicity of actors that are concerned about the management of oil and public revenues. There was increasing interest in conversations about how to handle the revenues that are projected to come from commercialization of oil in Turkana County. This includes, sub-national actors (at county and community levels), national actors working on behalf of government and international players (private sector investors and international finance institutions). The table below illustrates a categorization of some of the major stakeholders in Turkana County that have interest and power to influence policy and institutions to improve oil and public revenue management or to thwart efforts.

<table>
<thead>
<tr>
<th>High Interest; Low Influence</th>
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<tbody>
<tr>
<td><strong>National CSOs:</strong> KOGA, KCSP0G, Oxfam, TI, IBP, TISA, Eco News, KENRA;</td>
<td>Ministry of Petroleum and Mining KEPTAP</td>
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<tr>
<td><strong>Sub-national CSOs:</strong> Friends of Lake Turkana, Turkana Development Organization Forum (TUDOF), Turkana Women Advocacy and Development Organization (TWADO), St. Peter Community Network (SAPCONE), Turkana Pastoralists Development Organisation (TUPADO)</td>
<td>State Department for Petroleum Auditor General</td>
</tr>
<tr>
<td><strong>Community groups and Associations:</strong> Turkana Professionals Association; Associations of Small- scale traders (livestock producers/sellers; retailers)</td>
<td>Commission on Revenue Allocation Kenya Revenue Authority</td>
</tr>
<tr>
<td><strong>County Assembly:</strong> MCAs; Clerk; Budget committee</td>
<td>County Executive – Finance and Planning, Governor’s Office, revenue officers</td>
</tr>
<tr>
<td>Development Partners: UNDP</td>
<td>Energy and Petroleum Regulatory Authority</td>
</tr>
<tr>
<td>**Controller of Budget (CoB) National Government (Treasury)</td>
<td>Civil Society – Diocese of Lodwar (Religious Organisation)</td>
</tr>
<tr>
<td>Senate – Standing Committee on Energy and natural Resources</td>
<td>International Financial Institutions (AfDB; World Bank, IMF; IFC)</td>
</tr>
<tr>
<td>Oil companies – Tullow, Africa Oil</td>
<td>Local Media (local radio stations): Sayare Radio, Akicha, Jambo, Maata</td>
</tr>
<tr>
<td><strong>Low Interest; Low Influence</strong></td>
<td><strong>Low Interest; High Influence</strong> Private Sector Alliance; KAM Accounting consulting firms Council of Governors</td>
</tr>
<tr>
<td>Ordinary citizens (especially women) Academia</td>
<td>Independent Boundaries and electoral Commission (IBEC)</td>
</tr>
<tr>
<td>Area Chiefs</td>
<td>National Media</td>
</tr>
<tr>
<td>Ward Administrators</td>
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</table>
Category 1 – High interest and low influence: This comprises stakeholders that were deemed of high interest but with low level of power to influence policy change and increase citizen involvement in the generation and management of oil and public revenues in Turkana County. The category includes: National CSOs involved in advocacy, public education and research on the extractives sector, social accountability and prudent public finance management like Kenya Oil and Gas Association (KOGA), Kenya Civil Society Platform on Oil and Gas (KCSPOG), Oxfam, Transparency International Kenya (TI-Kenya), International Budget Partnership (IBP), The Institute for Social Accountability (TISA), Eco News, KENRA among others. It also included other subnational CSOs (NGOs, CBOs and FBOs) that have for long continued work on empowering local communities, organizing and increasing their voice and involvement in public affairs including public finance management. These include Friends of Lake Turkana, Turkana Development Organization Forum (TUDOF), Turkana Women Advocacy and Development Organization (TWADO) among others and Community groups and Associations like Turkana Professionals Association. Although with a lot of interest and continue contribution and engagement on these matters, the study found the level of influence of CSOs considerably low. This was limited to producing and disseminating information, advocacy and public awareness that is intended to increase citizen engagement. They however remain less influential in affecting substantive policy changes. Whist considered to be with substantive mandate and power to influence policy, the study found the County Assembly (MCAs; Clerk; Budget committee) to be with low influence on matters revenue generation. This is because of already discussed issues like the weaknesses in its oversight role, low capacity on public finance mattes and capture by the county executive. As such, whilst they wield some power and influence, it was notable that on critical matters like decision on how to utilize resources from oil or expenditure of public revenues, the influence of the assembly was fairly lower than expected. This category also included associations of Small-scale traders (livestock producers/sellers; retailers). They have substantive interest as they stand to be affected by policies or legislation or programmes by the county government aimed at generating and managing revenues. However, they still remain rudimentary in their organizational capabilities and voice to be able to negotiate and affect policy. This category ought to be kept informed and engaged by anyone seeking to influence policy change in revenue generation and management. They represent a group of actors who can be empowered with more technical capacity, resources, voice and organization to be significant influencers of policy. They have the capacity to get more citizens to get interested and involved on the generation and management of revenues both from oil and from other resource streams. If well organised and educated on the merits of the change sought, they can form more formidable force for pushing for change.

Category 2 – High Interest High influence: This represents stakeholders with high levels of interest and high endowment with power to influence policy change and increase citizen involvement in the generation and management of oil and public revenues in Turkana County. The analysis found this category mostly compromising national government institutions especially on matters related to management of oil revenues. These included: the national treasury, ministry of petroleum and energy, and other national level independent commissions that have implications on resource mobilisation, distribution and application like the Commission on Revenue Allocation (CRA), Controller of Budget (CoB) and the office of the Auditor General. And because of their de facto influence on policy making at national level especially on issues related to the country’s macro-economic regime/policies, international financial institutions like the World Bank and IMF were found to fit this category by the study. The analysis also plotted Oil companies like Tullow in this category. This is because on matters to do with exploration, development and commercialization of oil, they are at the center. They retain a lot of influence over processes and are argued to be substantively influencing key policy makers [sometimes even behind the scenes] to impact the shape and form of such policies as local content regulations, taxation
and accountability. At **county level**, the study found County Executive – Finance and Planning, Governor’s Office, revenue officers fit this category. Whilst the constitution envisages cordial and supporting relations between these institutions of government at the two levels, thus far there remain tussles especially between county government and treasury, county governments and the independent commissions like CoB, CRA and Auditor general. These tussles concern the formula for distribution of mobilised resources, budget ceilings, appropriate tax policy to adopt at county levels. As such, whilst this category represents those that effective stakeholder management require to be fully engaged, brought on board and bought into the policy proposals, effort is bound to face substantive challenges. As such, managing this category of stakeholders is perhaps the most important in determining and driving policy change at the county level aimed at increasing and improving generation of own revenues.

**Category 3 – Low Interest; High Influence:** This category of stakeholders represents those with a lot of power and are capable of influencing key duty bearers on the specific policy issue at play but are characteristically not substantively motivated or interested in pursuing or engaging on the issue. This category in Turkana County comprised mainly segments of the private sector like umbrella bodies - Private Sector Alliance, Kenya Association of Manufacturers (KAM), Financial management consulting firms (like the Big 4). These normally have substantive access to policy makers and are known to do boardroom and backrooms deals and negotiations that secure their best interest. However, on matters to do with better management of public revenues, they have not been very instrumental in shaping policy and affecting change. Although it also included the Council of Governors/IBEC that whilst expected to be an important player in brokering policy negotiations and overall relations between the two levels of government appeared, according to many respondents, not to live up to the role. The study also found the media (both national and local like community radio stations) fit for this category. This was because there was general sentiment to the effect that the media can play an important role in informing, advocating for and supporting accountability in the processes for revenue generation and management for both oil and other resource streams. However, as it were, the influence of the media remained substantively dim and unable to galvanise public support for some policy proposals or effectively shed light on important revenue management issues. Conventional stakeholder management and political economy analysis encourages that this category of stakeholders be kept satisfied and pursued for engagement in the policy change process as supporters, champions or patrons of the course.

**Category 4 – Low interest; Low influence:** The fourth category of stakeholders was the group who demonstrate low level of interest in the issue and equally have low power to influence the other stakeholders to effect policy change around the issue. Here, the analysis plotted such stakeholders as academics, experts and ordinary citizens. The analysis noted that these stakeholders have interest however minimal but lack the incentives and motivations to intervene substantively in the DRM process in Turkana County directly. Academics have substantive knowledge and experience researching public finance issues including implications of extractives revenues. However, they do not appear persuaded to engage actively in conversations with important stakeholders to effect policy change to improve generation and management of public finances in the county.

### 6.3 Interest and Influence Dynamics Around Public Revenue Management in Nairobi

The study noted that, just like in Turkana County, there is a multiplicity of actors involved in the management of oil and public revenues. According to most of the respondents contacted, such stakeholders included: sub-national actors [at county and community levels], national actors working on behalf of government and international players [private sector investors and international finance institutions]. Unlike in Turkana County, there was more interest in how the county government and also the national level handle public money.
Political Economy of Oil and Revenue management in Kenya

In this category, the study plotted stakeholders understood to have high interest in management of public revenues in Nairobi County but with low level of power to influence policy change and increase citizen involvement in the processes and institutions. Through conversations with some key stakeholders in the county, the study identified national CSOs involved in advocacy, public education and research on public finance, social accountability and prudent public finance management like Oxfam, Transparency International Kenya (TI-Kenya), International Budget Partnership (IBP), The Institute for Social Accountability (TISA), IEA among others. Although with a lot of interest and continued contribution and engagement on these matters, the study found the level of influence of CSOs considerably low. This was limited to producing and disseminating information, advocacy and public awareness that is intended to increase citizen engagement. They however remain less influential in affecting substantive policy changes. The study also included neighborhood associations, self-help groups and associations of Small-Scale traders to this category. This was because they participate in activities that empower local communities, organize and increase their voice and involvement in public finance management. It was notable that they have substantive interest in public revenue management because they stand to be affected by policies or legislation or programmes by the county government aimed at generating and managing revenues. Nonetheless, the study found such stakeholders remain rudimentary in their organizational capabilities and voice to be able to negotiate and affect policy. Further, although with mandate and power to influence policy, the study found the County Assembly (this includes the MCAs, Clerk; speaker and members of Budget committee] and other related to be with

The table below illustrates a categorisation of some of the major stakeholders in Nairobi County that have interest and power to influence policy and institutions to promote or thwart efforts to improve management of public revenue management.

### Table 6: Categorization of Major Stakeholders in Nairobi County

<table>
<thead>
<tr>
<th>High Interest; Low Influence</th>
<th>High Interest; High Influence Auditor General</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSO - IBP, TISA, NTA, Haki Jamii, Oxfam</td>
<td>Commission on Revenue Allocation</td>
</tr>
<tr>
<td>Neighbourhood Associations Nairobi</td>
<td>Kenya Revenue Authority</td>
</tr>
<tr>
<td>Citizens Assembly Associations of Small-Scale traders (NBO)</td>
<td>County Executive – Finance and Planning, Governor and the</td>
</tr>
<tr>
<td>Professional Bodies – ICPAK</td>
<td>Governor’s Office, Revenue administration officers/collectors</td>
</tr>
<tr>
<td>MPs rom Constituencies in Nairobi</td>
<td>Controller of Budget (CoB)</td>
</tr>
<tr>
<td></td>
<td>International Financial Institutions (AfDB; World Bank, IMF)</td>
</tr>
<tr>
<td></td>
<td>County Assembly [MCAs – Majority and Minority leaders; Clerk; Budget committee]</td>
</tr>
<tr>
<td></td>
<td>Political Parties: ODM and Jubiliee Party county and national structures</td>
</tr>
<tr>
<td>Low Interest; Low Influence</td>
<td>Office of the President:</td>
</tr>
<tr>
<td>Ordinary citizens</td>
<td>Low Interest; High Influence</td>
</tr>
<tr>
<td></td>
<td>Private Sector Alliance; KAM; Nairobi Chamber of Commerce</td>
</tr>
<tr>
<td></td>
<td>Management Consulting firms; Council of Governors; IBEC National Media</td>
</tr>
<tr>
<td></td>
<td>Local media [community radios]</td>
</tr>
<tr>
<td></td>
<td>Ward Administrators</td>
</tr>
</tbody>
</table>

**Category 1 – High interest and low influence:** In this category, the study plotted stakeholders understood to have high interest in management of public revenues in Nairobi County but with low level of power to influence policy change and increase citizen involvement in the processes and institutions. Through conversations with some key stakeholders in the county, the study identified national CSOs involved in advocacy, public education and research on public finance, social accountability and prudent public finance management like Oxfam, Transparency International Kenya (TI-Kenya), International Budget Partnership (IBP), The Institute for Social Accountability (TISA), IEA among others. Although with a lot of interest and continued contribution and engagement on these matters, the study found the level of influence of CSOs considerably low. This was limited to producing and disseminating information, advocacy and public awareness that is intended to increase citizen engagement. They however remain less influential in affecting substantive policy changes. The study also included neighborhood associations, self-help groups and associations of Small-Scale traders to this category. This was because they participate in activities that empower local communities, organize and increase their voice and involvement in public finance management. It was notable that they have substantive interest in public revenue management because they stand to be affected by policies or legislation or programmes by the county government aimed at generating and managing revenues. Nonetheless, the study found such stakeholders remain rudimentary in their organizational capabilities and voice to be able to negotiate and affect policy. Further, although with mandate and power to influence policy, the study found the County Assembly (this includes the MCAs, Clerk; speaker and members of Budget committee] and other related to be with
low influence on revenue generation. This is because of already discussed issues like the weaknesses in its oversight role, low capacity on public finance matters and capture by the county executive – especially the office of the Governor. As such, whilst they wield some power and influence, it was notable that on matters to do with generation and utilization of public revenues, the influence of the assembly was fairly lower than expected. In many cases, it plays the role of ratifying intentions and policy positions largely determined by the county executive without substantive critique. The PEA notes that this category of stakeholders (high interests – low influence) ought to be kept informed and engaged by anyone seeking to influence policy change in the revenue generation and management. They represent a group of actors who can be empowered with more technical capacity, resources, voice and organization to be significant promoters of prudent generation and management of public revenues in Nairobi County. This is because they have the capacity to get more citizens interested and involved on the generation and management of public revenues. Through interventions that target to improve their knowledge and organizational capabilities they can be influential agents of change towards better generation and management of public revenues.

Category 2 – High Interest High influence: This category of stakeholders represents those considered to have high levels of interest in policy change and increased citizen involvement in the generation and management of public revenues in Nairobi County and endowed with substantive power to influence change. The analysis found this category mostly compromising national government institutions. These included: The National Treasury and other related national level independent with mandates linked to resource mobilisation, distribution and application like the Commission on Revenue Allocation (CRA), Controller of Budget (CoB) and the office of the Auditor General. Also, because of their de facto influence on macro-economic policy making at national level, international financial institutions like the World Bank and IMF were found to fit this category by the study. At county level, the study found the County Executive - Finance and Planning, Governor’s Office, revenue administration officers and collectors fit this category. The study noted that although the Constitution of Kenya envisages cordial and supporting relations between the County and National levels of government, there remain tussles especially between county government and treasury, county governments and the independent commissions like CoB, CRA and Auditor general that limited effective and prudent management of public revenues. These tussles were reportedly about: i) the formula for distribution of mobilised resources, ii) budget ceilings, and iii) appropriate tax policy to adopt at county levels among others. As such, whilst this category represents those that effective stakeholder management requires to be fully engaged, brought on board and bought into the policy proposals, effort is bound to face substantive challenges. Politics and power configurations exist that lead to competition and wrangling that continue to limit progress. It is therefore important that this category of stakeholders is closely managed especially because it would largely determine and drive any policy change at the county level aimed at increasing and improving generation and management of public revenues in Nairobi County.

Category 3 – Low Interest; High Influence: This category of stakeholders represents those with a lot of power and are capable of influencing key duty bearers on the specific policy issue at play but are characteristically not substantively motivated or interested in pursuing or engaging on the issue. This category comprised mainly segments of the private sector like umbrella bodies - Private Sector Alliance, Kenya Association of Manufacturers (KAM), financial management consulting firms (like the Big 4). These normally have substantive access to policy makers and are known to do boardroom and backrooms deals and negotiations that secure their best interest. Whilst they are known to act on behalf of big private sector players, especially on issues affecting their tax obligations, respondents argued that their involvement in promoting better management of public revenues remains limited. Secondly, the Council of Governors/IBEC was also plotted in this category. This is because it is
expected to be an important player in brokering policy negotiations and overall relations between the two levels of government. Nonetheless, despite that influence, it appeared, according to many respondents, not to live up to the role. Thirdly, the study also found the media (both national and local like community radio stations) fit for this category. This was because there was general sentiment to the effect that the media can play an important role in informing, advocating for and supporting accountability in the processes for revenue generation and management for both oil and other resource streams. However, as it were, the influence of the media remained substantively dim and unable to galvanise public support for some policy proposals or effectively shed light on important revenue management issues. The study is of the view that this category of stakeholders in Nairobi County should be kept satisfied and pursued for engagement in the policy change process as supporters, champions or patrons and sponsors of efforts to improve the processes of generation and management of revenues in the country.

**Category 4 – Low interest; Low influence:** This category represented the group of stakeholders that demonstrate low level of interest in the issue and equally low power endowment with power/influence to effect policy change around public revenue management. Here, the analysis plotted such stakeholders as academics, experts and ordinary citizens. The analysis noted that these stakeholders have interest, however minimal, but lack the incentives and motivations to intervene. Academics have substantive knowledge and experience researching public finance issues. However, they were not substantively engaged and did not appear interest in conversations with important stakeholders to promote prudent public revenues management.
7.0 HERE AND NOW – ISSUES AFFECTING CITIZEN PARTICIPATION IN OIL AND PUBLIC REVENUE MANAGEMENT

The study also aimed to interrogate and develop an understanding of the major issues – challenges and opportunities that impact involvement of citizens and other key stakeholders in processes and policy spaces on oil and public financial revenue management. This was meant to identify mitigating strategies and to suggest mechanisms for taking advantage of existing opportunities to promote better oil and public revenue management. The following discussion covers succinct description of the challenges and opportunities for increased citizen participation in oil and public revenue management in both counties.

7.1 CHALLENGES LIMITING CITIZEN INVOLVEMENT IN OIL AND PUBLIC REVENUE MANAGEMENT

There remains a fairly weak framework for public participation that potentially impairs citizen participation in oil and public revenue management. Whilst the constitution provides for public participation, including in resource mobilisation and application, the modalities for public participation in both counties remain weak and ineffective in so far as assuring meaningful public engagement in these processes is concerned. The study noted, through feedback from respondents, modalities of participation are often ineffective, not sufficiently open and inclusive to allow for engagement of all parties. Some of the key challenges with modalities cited by respondents included: unavailability of information in simple forms for citizens to understand and engage with, to improper timing and short notice of scheduled public participation forums. In some cases, the medium used to inform citizens of the time and location where public participation forums happen were not effective like the use of social media and internet instead of radio and other media accessible to more people. The modalities also appeared to still fail to provide sufficient mechanisms for women, informal sector traders/players and People with Disabilities. For many women respondents, they were reluctant to attend public participation forums due to inappropriateness of the modalities in terms of schedules and venue feedback. Further, for Turkana County, poor state of infrastructure (mostly road network) and mobile telephony coverage also means that mobilising the public to be included in the public engagement forums becomes daunting and contributes to the exclusion of a vast majority of the public in these processes. And there is also the perception that public participation is a routine exercise by officials to fulfil constitutional obligations rather than use it as an avenue for getting input and feedback on service delivery because recommendations during public participation forums are rarely implemented. Some respondents view public engagement process as more of forums for ratifying county government proposals rather than gathering views or critiquing proposals. Some practitioners argued that some of these challenges are attributable to the failure of authorities to define citizen participation holistically, they argue that effective citizen participation is hindered by failure of duty bearers to conduct civic education especially at sub-national level to educate citizens and other actors on the operations of counties, the processes and opportunities available for them to engage.

26 https://devolutionhub.or.ke/file/c1417fc62aa0c788ec187a2d562d84e69.pdf
27 https://devolutionhub.or.ke/file/c1417fc62aa0c788ec187a2d562d84e69.pdf
Others also argue that citizen participation is impeded by lack of sufficient financing of modalities for participation. Another limitation cited by respondents was the lack of sufficient policies to operationalize the enacted public participation legislation.

“Others also argue that citizen participation is impeded by lack of sufficient financing of modalities for participation. Another limitation cited by respondents was the lack of sufficient policies to operationalize the enacted public participation legislation. It’s not been very inclusive. I would say that because it’s now only the people who sit in Nairobi or in Lodwar who engage with it because you get the notice online or in a newspaper so you would have to read and write to do all this things, but then going to the ground to get community views that has not really happened. But as part of developing the law, there was some community engagement, but in my view, it wasn’t from an informed perspective. It wasn’t from an informed perspective because the argument was just, we had five percent or ten percent. It’s not adequate public participation.” – KII, CSO

“Public participation is a problem. It is provided for in law, and it’s a constitutional right but it has still not been effectively operationalized. Another thing is that there is no mechanism for feedback. There are no mechanisms for indicating what was picked from public participation forums and included in the budgets or programmes for example.” – KII, National Assembly

“In most scenarios, what happens in Nairobi and even other counties at the forums, the person who is in charge will come and they will bring the documents that citizens have never seen and expect them to internalize the 20 pages document and give feedback. They also have to find out if the venue suggested is suitable for the citizens to access and participate.” – KII, CSO

Poor coordination and working relationship between county and national government prevents reasonable negotiation, joint policy making and accountability in oil and public revenue management. Whilst the constitution and subordinate legislation provide for the function of the two levels of government and the scope of their authority in public finance management, there remain substantive challenges in harmonising prerogatives of the national government, independent commissions like CRA and CoB in order to achieve synergies. There continue to be tussles between the national government and the county government on the fair bargain for sharing of proceeds of oil revenues and Division of Revenue mobilized at national level. The PEA noted that there had been protracted tussles between the National Government (through Treasury and the Office of the President) and Governors on the share of revenues to set aside for counties. According to many respondents, these have been attributed to poor revenue generation performance by the KRA, perceived public finance management mishaps and failed macroeconomic policies pursued by the national government like accumulation a huge public debt portfolio that has limited resources transferred to counties. There have also been arguments around auditing of national accounts upon which the proportions of resources set aside for counties should be based. Governors and the Treasury have blamed the national Assembly, especially Public Accounts Committee, for failure to promptly provide audited accounts so that the proportion for counties can be based on more recent and up to date accounts. This has allowed Treasury to continue to use outdated audited accounts that has meant that counties receive less resources than they deserve despite applying a relatively higher percentage. Regarding oil revenue sharing, poor coordination, a sometimes-overbearing hand and intimidation by the national government have in the past frustrated efforts to arrive at an agreeable formula for sharing revenues between national government, county government of Turkana and communities. This led to appointment of John Munyes [a prominent and influential Turkana politician] as Cabinet Secretary of Ministry of Mining and Petroleum by President Uhuru in 2018 to facilitate dialogue between the two governments on the revenue sharing formula. This led to a series of meetings between Governor Nanok and Hon Munyes that led to a deal in May 2018 between the president, deputy president and Turkana leaders, led by Nanok. Equally, determining how to expand the tax base and tax rate requires consultation between the national treasury and the county governments that do not seem to be constructive enough.
“So, for the governor, his office and even him politically, his main engagement was with regards to the percentages. But regarding the structures, the nitty gritty of even county priorities, they’ve been silent. It’s not something they’re actively looking at or fighting.” – KII, CSO

Vested private and political interests seem to significantly occupy conversations around public revenue management that eclipses and locks out participation of ordinary citizens. For instance, in Turkana County, District Advisory Committees (DACs) which usually represents the community at consultation meetings constitutes among its members, MCAs who are politically biased thus have vested political interest in their representation. This creates speculation as to the extent to which the local community is represented. Some respondents in both counties also argued that due to vested interests in the resource mobilisation and public expenditure processes, some county government officers apparently condition participation in the public engagement forums in order to anticipate the outcomes, for example by only inviting particular entities that are agreeable to proposals of actively locking out critical voices. It was also notable, especially for participation in debates around oil revenue management that there is a lot of secretive meetings, negotiations and agreements that go on without public involvement. These according to many respondents were driven by private interests – some domestic and others foreign especially international investors interested in exploration, development and commercialization of oil on Kenya.

Limitations in Access to Information continue to frustrate meaningful citizen participation in discussions and forums around oil and public revenue management. Lack of transparency in terms of access to information and transactions [in the extractives sector] leaves communities vulnerable and at risk of being exploited given their lack of knowledge on the sector. Some stakeholders also feel that there remain limitations in access to information that ranges from budgets to specific functions and structures of county government and on the relevant offices/officers to engage in specific issues despite the fact that citizens largely engage the county government through office visits. Many respondents argued that there remain characteristic limitations to access to information in the extractives sector that impairs the ability of ordinary citizens, citizen’s representatives, media and civil society from keeping its key players accountable. Some information is actively concealed from the public using justifications like contractual obligations, data protection and state secrets. Some respondents also indicated that some essential information was not usually available to the public on county websites. For instance, Turkana county website shows that the last time the county updated the website with finance acts was in 2016. There were also respondents that felt that sometimes whilst information is not actively restricted, like on the budget process, it is availed in formats that are difficult to interrogate, it is incomplete and or inconsistent and not up to date. These were argued to equally affect the utility of such information in improving conversations about oil and public revenues management.

“So, policy is being influenced but the framework is also extremely disorganized and that works for government in terms of access to information, in terms of transparency, in terms of the revenue management framework it is very chaotic” – KII, CSO

Low levels of awareness and understanding of technical aspects of oil and public revenue generation and management issues continue to hamstring meaningful citizen participation. There remain perceptions amongst the general public [including politicians and government staffs] of public finance issues [revenue mobilization, planning and application] as technical and complex. This has limited interest and participation in budget processes through which proffer the best opportunity to engage. It was notable as well, that even amongst
citizen representatives like MCAs and MPs, there were substantive gaps in knowledge and awareness on public finance. Amongst women, especially for rural areas like in Turkana, it was notable that there remain perceptions that it is the most learned and experienced people who can influence public finance decisions since they are knowledgeable enough to inform policy decisions on public revenue management (ICPAK, 2018). It seemed in general that significant conversations around public revenue management were left to a few both in government and public domain who are thought to be knowledgeable about it hence limiting broader public engagement.

“There are some members of the Assemblies with capacity to discuss revenue management matters, but they are few. However, there has also been support from technical team but most of the time politics overtakes the technical support input” – KII, County Government

“Unfortunately, members of the County Assembly have insufficient grasp of matters relating to the budgetary cycle. They do have not the intellectual capacity to address the issue of tax/levies” – KII, MCA, Nairobi County.”

– KII, CSO

“Capacity is lacking. But I know that they have others from whom they will be getting advice from. They haven’t gotten to the level of capacity of committees and other technical staff that supports the assemblies and committee.” – KII, CSO

“The Assembly should be a very big player but they end up being led by the noise. It is what the executive wants and what they give they get their own share of the spending that they are often concerned about. More often they are constrained by capacity issues, in terms of being able to understand the revenue implications of whatever decisions.” – KII, CSO

Limitations to access public officers: Some stakeholders feel that there is unnecessary bureaucratic red tape including a lot of protocol that stifles access to public officers and engagement on revenue affairs. In both counties, some respondents argued that there is normally undue limitations to accessing relevant public officers that puts off citizens and reduces their interest in participation in public finance management processes.

Retrogressive cultural practices, attitudes and beliefs about gender roles further leads to exclusion of women from meaningful contribution to oil and public revenue management. Traditions and customary laws have given men more power and control over resources and decision-making processes essentially diminishing the voices of women in the realm of public affairs (Elisia et al 2010). In Turkana County, this is reinforced by culture that does not allow women to share same sitting with men (affects modalities for public participation/limits women from contributing ideas). In some cases, women are also not allowed to head households, and are therefore not expected to represent the household in any way whatsoever including in their participation in public forums.

The unresolved burden of care work borne by women continues to limit their participation in public finance management issues. Notable, women are often associated with care work and other forms of domestic chores that are removed from political debate and bargaining forums, though their input into such issues as public finance is vital. Value is not put on women’s work as family care providers and national builders through formal and informal work, yet women spend a substantial amount of time in household management which is a very important role they play. Also, they have no time to attend them since they are scheduled to be doing other house chores when the fora are ongoing. Most times, the fora venues are too far from their homes, so they find it hard to get to the venues on time for the discussion.
7.2 OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN OIL AND PUBLIC REVENUE MANAGEMENT

Leverage existing public participation legal/policy framework to increase citizen involvement in public finance management processes: Meaningful public participation remains an important prerequisite for successful policymaking. The Constitution of Kenya 2010 provides a strong legal framework for public participation under Chapter 6, Articles 1-4. This gives a strong grounding for participation and involvement of citizens in policy making. The Public Finance Management (PFM) Act, 2012 provides for public participation in public financial management in the formulation of the Budget Policy Statement, County Fiscal Strategy Paper and the Budget Estimates; the preparation of Division of Revenue Bill and County Allocation of Revenue Bill. The existing legal framework provides opportunity, that remains underutilized for expanding the space and including more people in public finance management processes. Increasing public education about rights and obligations as provided for in these laws can bolster participation. However, as argued by most of the respondents in this study, there is need for adjustments, especially in the modalities for participation (especially for women, business people in the informal sector and people living with disabilities). Some women respondents argued that for public participation to be effective, schedules for participation need to be communicated in time, venues appropriately selected and modalities for speaking carefully selected to recognize and limit the impact of cultural tendencies on participation. More advocacy is necessary to ensure that citizens can meaningfully contribute to the discussions. This includes providing for feedback mechanisms through which citizens can engage post discussions to ensure they are aware of elements of their contributions that were taken to account and those that weren’t and why. Also, there is need for mechanisms for delivering updates to citizens on programmes that have been implemented and objectives that have been achieved from previous planning and prioritization to allow them to make contributions accordingly like in the Annual development Plans of in the CIDP development processes.

“The Mandate of organizing for public participation is a function for the county government. So, we should hold the county government accountable to make sure that the public opinion counts. The public will only participate and attend meetings if they get the sense that what they are going to say at the forum will be taken into consideration.” – KII, CSO

**Conduct capacity development and public education on public finance targeting elected officials, government officers and general public:** The study has already underscored the finding that there remain low levels of understanding and enthusiasm for public finance matters. This, according to many respondents, was across the board – from elected leaders [in the Assembly] to government officers in the executive and to the general public. In order to bolster participation of the public in revenue generation and management conversations, there is need for more public education and capacity development on the intrigues of public finance management. As such, there is opportunity to carryout capacity development programmes and awareness initiatives that target key stakeholders but also the general public with both basic and technical understanding on oil and public revenue management. This could be through formal capacity development training especially for elected officials and government officers and also mass awareness drives through radio and public gatherings that target the general public.

“We’ve started work public education work with stakeholders like – Friends of Lake Turkana and were also invited to Turkana to speak about revenue management and why it’s important to start planning for this. We had the Jukwaa la Madini, Mafuta na Gesi, the National Extractives Conference, with the theme on benefit sharing and part of that was on revenue management. We talked about community development
Advocate for better intergovernmental relations between county governments and national level institutions like the National Treasury and independent commissions/institutions like CRA, CoB and OAG to open up and increase conversions on better oil and public revenue management: The PEA has reiterated the need for better working relationship between county and national government that can allow and facilitate negotiation, joint policy making and accountability in oil and public revenue management. The Constitution of Kenya has provisions for institutions tasked to promote good intergovernmental relations that can be built upon to increase involvement of both levels of government in policy making around oil and public revenues management. Institutions such as the IBEC, CoG and the Senate, among others, can be leveraged to open up avenues for more meaningful conversations around how players at both levels of government can mutually reinforce dialogue, sharing of ideas and implementation of policies and laws that promote prudent management of public resources.

Increase Access to Information on public finance: Despite existence of a freedom of information law in Kenya, access to crucial public information related to public finance like budgets, contracts and agreements remains a challenge in Kenya. This is especially for the extractives sector. Many respondents argued that there remain characteristic limitations to access to information in the extractives sector that impair the ability of ordinary citizens, citizen’s representatives, media and civil society from keeping its key players accountable. Working towards bolstering access to information – opening up more information on agreements and contacts between government and private sector (especially investors and financiers in the exploitation of oil) will be crucial for increasing citizen participation in the processes. The Turkana County Government Act 2012 speaks to access to information and modalities for effective citizen participation.

“[…] citizen participation can be enhanced by increasing access to information to give them an understanding as engagement forums for citizens can only be active if they are interacting from an informed point of view.” – KII, CSO, National.

“How we get the citizen participation is by increasing the access to information and give them the understanding and make sure you have the civic education to understand the budget cycle. Such engagements forum for citizens can only be active if they are interacting at an informed point of view.” – KII, CSO

The study noted one possible best practice in increasing access to information in the extractives sector. This was an open digital platform developed and maintained by a non-state actor that collected and published information regarding the production and commercialization of oil in Nigeria. Whilst increasing openness to information, www.extractives360.com had managed to develop good relations with the Nigerian Extractives Industries Initiative (NEITI), a government institution through which they were triangulating and balancing information published. See box below. Oxfam and partners can consider and pursue a similar approach or work with local organisations to work on publishing open source information regarding trends and events in the exploration, development and commercialization of oil in the country. This would increase awareness and access to valuable information like on contracts, agreements, volumes of oil sold, revenues generated and expenditures of proceeds of oil.

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28 Turkana County Government Act 2012, Section 87 and Section 91.
Extractive360.com is a Nigerian web-based publication, a specialised journalism/reporting platform which provides factual, reliable and up-to-date reports on issues within Nigeria’s extractive industries. It works towards supporting the deepening of implementation of the transparency and accountability principles championed by global extractive industries actors and shape conversations that could transform the management of Nigeria’s oil, gas and solid minerals sectors through enlightened information. The platform the platform provides works to promote prudent management of Nigeria’s extractive resources and ensure prudency in the utilisation of extractive resources through sustained information and advocacy. It targets to empower citizens with reports that they can easily understand and relate with, especially with the use of infographics and pictures.
8.0 AN ANALYSIS OF RISKS RELATED TO IMPLEMENTATION OF THE OXFAM PROJECT

This section explored the possibilities of things happening during implementation of the Oxfam project that may limit its ability to succeed or curtail its continuation altogether. It presents an analysis of risks related to the implementation of the intervention assessing: i) specific interests that would pose a threat to the implementation, ii) identify possible retaliatory action by power brokers to partners and Oxfam, and iii) some possible risk mitigation strategies that Oxfam and Partners can pursue. It is based on conversations with key informants, review of secondary literature and qualitative assessments by the team of consultants.

8.1 INTEREST DYNAMICS THAT MAY RISK IMPLEMENTATION

Through conversations with key informants and interrogation of the political economy environment within which the project would be implemented in Nairobi and Turkana Counties, the PEA identified specific interests that would pose a threat to the implementation of the project based on reflections of increased transparency, accountability and community participation. These are succinctly discussed below:

County Government – revenue administrators and managers: This PEA has already established that there exist patron-client relationships between key members of the executive [in both counties] and appointed officials and between private interest and county government officials. Increasing transparency, accountability and community participation in matters regarding the generation, application and management of resources is bound to elicit discomfort amongst people in quarters that benefit from such client-patron relations. In Nairobi County for example, most of the respondents indicated that there remains deep interest outside the confines of government that have pre- and post-election arrangement with government officials to protect their interests on matters regarding revenue generation and management. Some of such relationships include people loosely referred to as ‘cartels’ who seem to have strong links with county government officials and significantly influence their actions – although they don’t have any authority or legal mandate. For instance, there were respondents that alleged that some major contracts in garbage collection [in the current administration] and a revenue collection system [in the previous administration] among others have been awarded to private entities with substantive links with high ranking officers in the county government. Also, the PEA heard of allegations that some county assembly members like the Majority Leader working in concerto with the Assembly Clerk were in control all tenders and contracts at the assembly. The Governor of Nairobi City County was in 2020 under investigation by EACC for questionable contracts awarded for garbage collection to companies without experience in garbage collection.

“The environment sector, to be precise garbage collection, area has a lot of interest which are also political that is why garbage menace was still the major challenge being faced even Kidero was in office,” - NCC Assembly Speaker

Interview with Star Newspaper

As much as it will be prudent for the Nairobi County Government to disband these contracts, the DCI should also intervene. Kenyans would be shocked to see number of cartels involved in the garbage menace" Lawyer Charles Omanga

Interview with Star Newspaper

County Assembly members in support of executive – Governor: The essence of party politics and its importance in the power configurations and decision-making in the two counties is profound. As has already been discussed, in the analysis of stakeholders, whilst MCAs have a legal obligation and mandate to keep the executive in check and to account – power plays influenced by political party affiliation sometimes pushes MCAs to support the executive even on matters that require them to ask questions. In Nairobi County for instance, there is substantive influence of national politics in the way matters of the assembly are run. The Office of the President and the deputy president has been significantly influential in shaping the conduct of business in both the Assembly and the Executive. In fact, recent developments regarding the handing over of some of the County functions to the national Government have been directly linked the substantive control the Jubilee party and the Office of the president has over the leadership of the county. Some respondents indicated that there were strong links between the Majority leader with Jubilee Party official that sometimes impacted how they handled matters in the Assembly. Also, there were indications that due to support the Governor enjoyed from the Majority leader, some corruption cases/investigations didn’t gain traction as they were shielded in the Assembly. It was notable however that when the Governor fell off with some of the senior MCAs in the Assembly, there was increased advocacy for pursuit of corruption allegations in the county facing the Governor. In Nairobi County Assembly, some of the influential members to note include: Matopeni Spring valley MCA – Abdi Guyo, Minority Leader Elias Otieno, Speaker Beatrice Elachi and the Clerk of the Assembly Jacob Ngewe. Some other influential MCAs include Chairperson of the Budget Committee Hon Mbatia. In Turkana County however, the PEA noted that the prominence of one party ODM and its affiliates in the Assembly meant that there were not so many protracted differences as observed in Nairobi. Nonetheless, it was notable that the Governor was equally influential in shaping the conduct of the Assembly through party associations. Some of the influential members of the Assembly noted by the PEA included: Speaker Ekakola Lokaale, Chairperson Justice Human Rights and Legal – Zainabu Lokaale, Lokichogio MCA Paul Loreng among others.

As such, there is the possibility that party politics may play out in generating resistance or push back to any initiatives that aim to increase transparency, accountability and community participation in matters regarding the generation, application and management of resources that may put the executive in bad light.

Accounting Firms, Law firms and Professional bodies – that act on behalf of taxpayers: Professional bodies, especially accounting and audit and law firms, are normally hired by private sector players to act on their behalf. This includes to negotiate for better tax arrangements, reduce their tax obligations and deal with any policies or laws implemented by government that may negatively impact their businesses. Any work by Oxfam and partners towards increasing transparency, accountability and citizen participation in matters regarding generation, application and management of public resources may meet some resistance from such professional bodies. This is because it may limit their ability to act in the interest of their clients. There was an understanding from some respondents in the study that because they work in the best interest of companies and other corporate entities that have tax obligations, they are usually interested in more lobbying and backroom deals that may not be very effective in a more open and transparent public finance management framework.
Private sector companies involved in exploration, development and commercialization: The petroleum sector in Kenya, despite new laws and institutions created in the recent past, remains largely closed. Many of the dealings, especially between petroleum companies and others involved in the exploration, development and commercialization of oil remain guarded and shrouded in secrecy. Some of this is attributed to non-disclosure agreements and other contractual arrangement between the Kenya government and investors. Nonetheless, there was agreement amongst respondents that there needs to be more openness in the sector to promote transparency, accountability and prudent planning and utilization of revenues that are prospected to come from the sector in the near future. As has been the experience in many other countries where oil business has been done – more transparency and public involvement in such processes have yielded better returns – in terms of ensuring that the countries and localities not only achieve the best from their resources but also for ensuring that the negative impacts of oil production on the environment. This however normally faces opposition from the major companies involved in the process. Evidence shows that a lot of them normally prefer secretive dealings with government. As such, Oxfam and Partners going for active work targeted at promoting transparency and accountability in the sector may meet some challenges – especially in engaging such companies. It was notable through interviews with respondents from such companies or with knowledge about how they work – that though they have made substantive effort to make their dealings more open, there remain substantive aspects of their dealings that remain secretive and at the heart of the concerns of locals, third party players and government.

Ministry of Petroleum officials defending integrity and secrecy of contracts: The study noted, from conversations with key players in the oil and gas sector that, government officials, especially those involved in contractual arrangements with oil companies and others involved in the value chain, operate in a very closed environment. Some of this is attributed to the need to comply with some non-disclosure agreements with companies. Some of such secrecy has also been attributed to active limitation of information to prevent the public and other interested parties from weighing in on the conduct of such agreements. Whilst there is the access to information law that could be leveraged by citizens to demand openness of information – there also remain other laws and regulations that have been applied by government officers - in such ministries as petroleum and finance to actively conceal information from the public. This has prevented effective scrutiny of dealings in the petroleum sector thus far. There was agreement from many respondents that there would be substantive challenges in working with government for example to open up contracts and processes for engagement of companies in exploration, development and commercialization oil.

Local communities – managing interests and expectations: Local communities retain the greatest stake to public finances. This is because they contribute the revenues collected by government and or have stake on the land from which exploration, development and commercialization of oil is done. For the oil sector – especially Turkana County, the study noted that there remain high expectations and interests from the community regarding what the commercial activities around oil can benefit them. Fearing a potential loss of negotiating power, local communities may present obstacles to any work related to oil exploration,
development and commercialization. Expectations are high that oil will bring fast-paced economic growth and development. Managing these expectations, according to both the long timeframe for oil development and the limitations of what are still relatively small oil discoveries, is regarded as one of the main challenges facing the Kenyan government and international oil companies in relations with local communities. The national–local political divides, local competition, and the possible and perceived environmental impact of the oil industry have all fueled concerns that Turkana may take on some of the negative traits of poverty and conflict associated with oil development. Political tensions are present around oil at the national–local level, they also exist between local communities and their political representatives, together with wrangling between the governor, MPs, and the senate. As such, local communities remain a significant player for anyone looking to implement a project around oil revenues in the county. They may work with third sector players like Oxfam that seek to increase transparency and accountability in the sector as this would be in their interest. They may also resist some work if it is perceived to limit or encroach on their rights and bargaining power.

**Political and bureaucracies’ private interests in revenue matters:** 2003 Public Officer Ethics Act does not prohibit civil servants from owning stakes or having interests in private companies unless these conflict with official duties. As such, the private interests of public officers and those of their friends or cronies remain a significant factor ineffectively implementing a project on better public revenue management. In such counties as Nairobi, where there is a lot of private sector lobbying and amorphous relations between public officers and private enterprise - there are bound to be clashes. Where more transparency and citizen engagement in public finance issues - like on revenue management, may limit business opportunities or space of corrupt dealings - there may be resistance to intervention.

Oxfam and partners must remain aware of the intertwined nature of business interest and government in some contexts in the two counties.

### 8.2 POSSIBLE RETALIATORY AND ADVERSARIAL ACTIONS TOWARDS OXFAM AND PARTNERS

Beyond identifying some of the interests that may pose a threat to or limit success of the project, the PEA also sought to identify and interrogate some possible retaliatory action that power brokers, duty bearers and other influential parties may take in reaction to work done through the project – assuming that it leads to exposure of power networks and relationships and highlighting of those interested in safeguarding status quo. Some of such actions are discussed below:

- **Limitation of access to key policy makers:** The risk analysis has already argued that there exist patron client relationships, vested private interests of politicians and bureaucracies, and a strong influence of the governor in the various counties. The implication of this is that where objectives and activities of Oxfam and partners collide with those of key decision makers, they may actively limit access. This would limit the project’s ability to carry out advocacy and other related activities that target key policy makers and substantively undermine the project’s theory of change.

- **Hostilities from workers – tax administrators/collectors:** The fact that tax administrators and collectors especially at county levels have vested interest in revenue generation and management has already been underscored. Collectors and administrators that non-procedurally benefit from shoddy and illegal collection activities would be substantively undercut by efforts to increase openness and accountability in the revenue generation and management. There is the possibility that they would show hostilities to the project and its agents that may limit its ability to succeed. This may frustrate public education activities, capacity development targeting them and
advocacy work towards better management of revenues.

- **Organization and leveraging of community grievances to oppose Oxfam work:** There exist community gatekeepers – some are political leaders (like some MPs in Turkana County), some prominent business persons, some government officials (like the CS Petroleum) and also local leaders like provincial administration and traditional clan elders. They retain/hold a lot of sway and have capabilities to organize and influence members of the community to support or go against some entities or activities. It is possible that where Oxfam’s aims and/or activities collide with the interests of such persons, there could arise misunderstandings that could lead them to leverage their influence of community members to oppose the project and/or Oxfam and partners. It however should be underscored that Oxfam and some of its partners have long-standing relations with citizens in Turkana County, for example, and partnerships and legacy of good work in the county that may not permit adversarial actions from community members.

- **Exclusion from critical policy making processes and forums:** Sometimes policy makers, gatekeepers and duty bearers in general use their power over invitations to policy making processes to show their displeasure or otherwise with some stakeholders. There is the possibility that where Oxfam’s aims and activities do not augur well with some key policy makers, they may actively prevent Oxfam and agents of the project from accessing such crucial policy making spaces that they are in control of. This could be either at county level policymaking spaces where the project would like to intervene or at national level – especially those on key extractives sector polices, laws and institutions.

- **Unfavourable media portrayal:** There is also the possibility that some actors especially at the counties can misrepresent work done by Oxfam, through the project, in the media. There is a growing concern over politicians exploiting media [especially social media] to settle scores and to make clarifications – sometimes aimed at painting their opponents or people they do not agree with in bad light. Oxfam and partners working towards increasing transparency, accountability and citizen participation in matters regarding generation, application and management of public resources may increase public awareness and involvement that may not be favourable for some agents of government.

### 8.3 Mitigation Strategies Against Possible Threats

In order to preempt and to deal with possible occurrence of the threats outlined above, the PEA suggests the following mitigation strategies. They are based on conversations with key stakeholders regarding their understanding on how best to address such possible challenges. Therefore, some of the risk mitigation strategies that Oxfam and partners can pursue based on the specific threats identified include:

- **Political engagements and advocacy for buy in:** The project could plan for concerted engagements and advocacy targeting key, influential political actors and policy maker within the two counties and also at the national level that could limit its activities and/or aims. Such engagements and advocacy could target increasing and deepening education, information and advice to such key players to understand the importance of increasing transparency, accountability and citizen participation in matters regarding generation, application and management of public resources.

- **Community engagement and public education:** There is merit in educating the public and communities whose resources are exploited and whose livelihoods are impacted by public revenue management decisions made by policy makers. This can improve their appreciation of the value of their ideas and participation in public finance processes. It can also increase their knowledge of the intricacies of oil and public revenue management. Most
so, community engagement and education can provide opportunities for understanding, consensus building that is crucial for building rapport, trust, and buy in that facilitate smooth implementation of interventions. The project can utilize this as a strategy to ward off negative perceptions of its activities, hostilities from different parties borne out of misinformation, and to build a community of citizens more informed about oil and public revenue management.

**Capacity development targeting government officers:** There remain limitations in capacity, in Turkana County government and local communities, to assess the social and environmental impact of the oil industry, to negotiate business involvement, and to manage possible future revenues. There are also still marked challenges in understanding and engagement in overall pubic finance (in both counties) processes especially for people’s representatives like MCAs, which limit effective oversight and contribution of ideas to improve public revenue management. There is opportunity in targeting key stakeholder’s and community members in both counties with education and capacity development initiatives that seeks to improve their knowledge of these issues. This can be pursued as a critical strategy towards dealing with hostilities, non-receptiveness and opposition of some work that Oxfam and partners may want to do in relation to improving oil and public revenue management.

**Media engagement and Effective communication of Oxfam work:** An effective strategy that is often applied by organizations, especially those intervening to make changes in policy or law, is strategic communication. This often includes using communication tools and media engagement to convey messages to the public and targeted recipients understood to be critical to effecting change. Considering the possible limitations, opposition and challenges related to promoting better public revenue management in the Oxfam project, it would be useful to consider conducting effective communication activities. These could include developing information education communication materials on the project, publish works related to the project, and conducting media engagement with both local and national media to expose the conduct of its work. These could function to deal with misinformation, negative media portrayal but also inform and buy in more stakeholders to take interest in and support the work.

**Identification and working with champions:** Another possible strategy to pursue is dealing with some of the possible risks during implementation of the project is working through champions. Champions could include political leaders, influential government officers, community leaders and professionals among others. The intention here could be to work with some champions we have been educating, their capacity built on the important issues about oil and public revenue management. They would function as agents of change, to engage other policy makers, gate keepers and overall citizenry aiming to interest them in participating in development of effective institution, good laws and better mechanisms for ensuring the revenues from oil and other sources are applied to the best interest if the communities.

**Regular monitoring of the environment to pre-empt adversarial responses or retaliatory actions:** Through effective monitoring, evaluation and learning modalities, Oxfam and partners could also ensure regular monitoring of the implementation environment aiming to identify and deal with arising matters that may limit the success of the project. Such monitoring could involve media monitoring, gathering feedback from community members, participating in sector forums among others. These could generate useful information on regular basis that could be used to scan and gauge the favorability of the implementation environment – receptiveness of beneficiaries, openness to the intervention by key policy makers. Information from such activities could be used to gauge the magnitude of threat, to keep politicians, government officers,
community leaders off some risks, and to inform mitigation strategies.

- **Working with local or national partners with rapport with gatekeepers and access to policy makers:** There could also be merit in identifying and working with local partner CSOs/CBOs that already have substantive contacts, buy in and trust amongst communities, and formal or informal relations with some key stakeholders that would be targeted by the project. This could be useful in approaching situation where important stakeholders are not enthusiastic about the project, actively opposed to it, or prefer certain local or known players to work with them rather than ‘outsiders’. In addition, in case there are any negative portrayal of the organization, they can be dealt with by working through intermediaries, or local partners.

### Table 7: Substantive Risks and Possible Mitigation Strategies

<table>
<thead>
<tr>
<th>Substantive Risks</th>
<th>Risk possibility</th>
<th>Remedial/Mitigation strategies</th>
<th>Key Actors to engage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of access to key policy makers:</td>
<td></td>
<td>Political engagements and advocacy for buy in Oxfam work</td>
<td>Ministry of Petroleum and Mining (KEPTAP, State Department for Petroleum)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Effective communication of Oxfam work</td>
<td>County Executive – Finance and Planning, Governor’s Office, revenue officers</td>
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<tr>
<td></td>
<td></td>
<td>Capacity development targeting government officers</td>
<td>Energy and Petroleum Regulatory Authority (EPRA)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Identification and working with champions</td>
<td>National Government (Treasury)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Working with local partners with rapport with gatekeepers and access to policy makers;</td>
<td>Senate – Committee on Energy &amp; Natural</td>
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<td></td>
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<td></td>
<td>Council of Governors/IBEC</td>
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<td>Private Sector Alliance</td>
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<td>MPs</td>
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<tr>
<td>Hostilities from workers – tax administrators or collectors:</td>
<td></td>
<td>Effective communication of Oxfam work</td>
<td>Revenue administration officers/collectors</td>
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<tr>
<td></td>
<td></td>
<td>Community engagement and public education</td>
<td>Kenya Revenue Authority officers</td>
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<td></td>
<td></td>
<td>Capacity development targeting government officers</td>
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<td>Regular monitoring of the environment to pre-empt adversarial responses or retaliatory actions</td>
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<td></td>
<td></td>
<td>Working with local partners with rapport with gatekeepers and access to policy makers;</td>
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</tbody>
</table>
## Organization and leveraging of community grievances to oppose Oxfam work:

- Effective communication of Oxfam work
- Community engagement and public education
- Identification and working with champions
- Regular monitoring of the environment to pre-empt adversarial responses or retaliatory actions
- Working with local partners with rapport with gatekeepers and access to policy makers;

<table>
<thead>
<tr>
<th>Layer</th>
<th>Risk Possibility</th>
<th>Influence</th>
<th>Stakeholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Media</td>
<td>[local radio stations]</td>
<td>National Media</td>
<td></td>
</tr>
<tr>
<td>County Assembly</td>
<td>[MCAs]</td>
<td>CSOs (NGOs, CBOs, FBOS)</td>
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<tr>
<td>Neighbourhood Associations</td>
<td></td>
<td>Associations of Small-Scale traders [NBO]</td>
<td></td>
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<tr>
<td>MPs</td>
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<td>Community groups and Associations Ordinary citizens</td>
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</tbody>
</table>

## Exclusion from critical policy making processes and forums:

- Political engagements and advocacy for buy in
- Effective communication of Oxfam work
- Capacity development targeting government officers
- Identification and working with champions
- Working with local partners with rapport with gatekeepers and access to policy makers;

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<th>Stakeholders</th>
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<tbody>
<tr>
<td>Ministry of Petroleum and Mining [KEPTAP, State Department for Petroleum]</td>
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<td>Auditor General</td>
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<tr>
<td>Commission on Revenue Allocation</td>
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<td>Kenya Revenue Authority</td>
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<tr>
<td>County Executive – Finance and Planning, Governor’s Office, revenue officers</td>
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<td>Energy and Petroleum Regulatory Authority [EPRA]</td>
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<tr>
<td>Controller of Budget [CoB]</td>
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<td>National Government [Treasury]</td>
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<tr>
<td>Senate – Standing Committee on Energy and natural Resources</td>
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<td>MPs</td>
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</tbody>
</table>

## Unfavourable media portrayal

- Political engagements and advocacy for buy in
- Effective communication of Oxfam work
- Community engagement and public education
- Identification and working with champions
- Regular monitoring of the environment to pre-empt adversarial responses or retaliatory actions

<table>
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<th>Influence</th>
<th>Stakeholders</th>
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<tbody>
<tr>
<td>National Media</td>
<td></td>
<td>Local media [community radios]</td>
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<tr>
<td>MPs</td>
<td></td>
<td>County Assembly [MCSs]</td>
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<tr>
<td>Community groups and Associations</td>
<td></td>
<td>Women empowerment groups.</td>
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</tbody>
</table>

## Legend – Qualitative Grading of Risk possibility

<table>
<thead>
<tr>
<th>Colour</th>
<th>Risk Possibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green</td>
<td>Low risk possibility</td>
</tr>
<tr>
<td>Orange</td>
<td>Moderate risk possibility</td>
</tr>
<tr>
<td>Red</td>
<td>Substantive risk possibility</td>
</tr>
</tbody>
</table>
9.0. CONCLUSION AND RECOMMENDATIONS

9.1. CONCLUSION

This PEA sought to analyse the context of oil and public revenue management in Kenyan from a structural and systems approach. It aimed specifically to interrogate the power dynamics that condition the roles and efforts of key stakeholders (including women) in decisions and actions related to the governance of oil and public revenue management and outline notable obstacles that prevent active and influential advocacy for transparent, accountable and inclusive oil and public revenue management. It has established that there is an able configuration of public institutions, laws and policies responsible for oil and public revenue management that could do with more synergies and capacity development in order to provide technical and institutional support. It has noted however that, there remains capacity limitations amongst staffs of many of the institutions of government and amongst elected leaders that limit their ability to effectively promote inclusiveness and prudence in management of public revenue. Besides formal institutions, there exists a framework of informal processes and configurations power within both counties and at national level that impact the functioning of formal institutions and affect transparent, accountability, inclusiveness in the sector. These include: clan politics, political party politics, consolidation of power by the executive, weak intergovernmental relations, elite capture and patron-clientelism. These impact in various ways the openness of MDAs, policy making processes, access to information, public participation and involvement of women in overall public finance management – including in conversations around the management of oil and public revenues. As such, the PEA noted substantive challenges and needs that require action in order to promote transparent, accountable and inclusive oil and public revenue management. There is thus sufficient scope for Oxfam and partners to intervene.

9.2. RECOMMENDATIONS - AVENUES FOR CHANGE AND PRIORITY ISSUES FOR CONSIDERATION

1. Capacity development:

Conduct capacity development activities targeting officers of national and county government officers, as well as elected leader to increase their knowledge of oil and public revenues and to promote prudent management.

2. Stakeholder engagement:

Carry out strategic communication and engagement activities to inform key stakeholders on Oxfam work on oil and public revenue management for buy in and mobilise allies. It can also promote meaningful engagement in promoting prudent management of oil and public revenues.

3. Access to Information:

Utilize suitable platforms and laws to advocate for, and increase, access to information on oil and public revenues for better management and enhanced citizen participation in the processes.

4. Public participation:

Advocate for operationalization of suitable modalities for public participation using legal/policy framework to increase citizen involvement in oil and public revenue management processes.
5. **Public education:**

Conduct contextualized public education activities to increase citizen awareness of technical aspects of oil and public revenue generation and management to catalyze meaningful participation.

6. **Inter-governmental relations:**

Advocate for better intergovernmental relations between county governments and national level institutions (like Treasury and independent commissions/institutions like CRA, CoB and OAG) to open up and increase conversions on better oil and public revenue management.

7. **Influencers and champions:**

Identify and work with influential people in government, private sector, media, civil society and local communities to champion and promote citizen involvement in prudent management of oil and public revenues.
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