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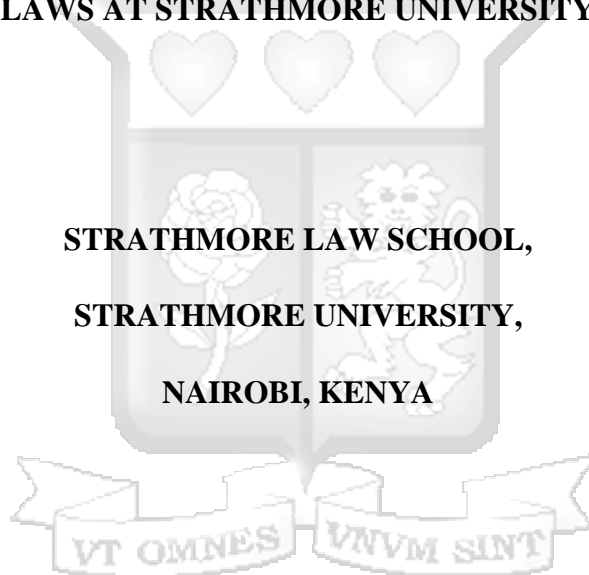
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**THE TAP-PLUS APPROACH TO GOOD GOVERNANCE IN THE OIL AND GAS
SECTOR: LEGAL AND INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION
IN KENYA**

LUMEN KAZURI WANJIKU NDUNYU

**SUBMITTED IN PARTIAL REQUIREMENTS FOR THE DEGREE OF MASTER OF
LAWS AT STRATHMORE UNIVERSITY**



**STRATHMORE LAW SCHOOL,
STRATHMORE UNIVERSITY,
NAIROBI, KENYA**

SEPTEMBER, 2021

DECLARATION

By submitting this thesis, I declare that what is contained herein is my own original work, except where due reference has been made on the thesis itself and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Lumen Kazuri Wanjiku Ndunyu



23rd September 2021

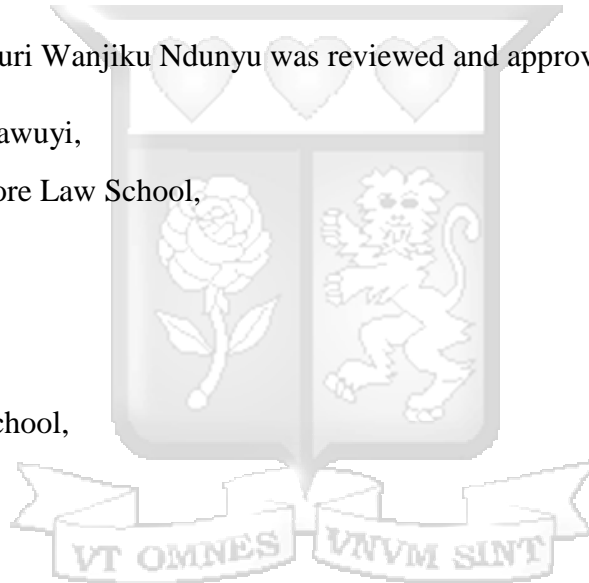
Approval

The thesis of Lumen Kazuri Wanjiku Ndunyu was reviewed and approved by the following:

Professor Damilola S. Olawuyi,
Senior Lecturer, Strathmore Law School,
Strathmore University

Dr Peter Kwenjera,
Dean, Strathmore Law School,
Strathmore University

Dr Bernard Shibwabo,
Director, Office of Graduate Studies,
Strathmore University



ABSTRACT

In 2012, Kenya discovered a substantial amount of commercially viable oil and is well on the way to becoming an oil-exporting country. However, there are many perils linked to exploitation of natural resources, the most prominent being the resource curse. Many resource-rich countries find themselves grappling with corruption, bribery and rent-seeking which have made it difficult for the said countries to exhibit economic growth and development. Extensive research in this field has identified good governance as an important aspect in beating the resource curse. In an endeavor to establish how Kenya can mitigate the nullifying effects of resource abundance, this research examines the role of good governance in Kenya's oil and gas sector. It focuses specifically on theories that support combining transparency, accountability and participation as key factors in promoting good governance. This is because growing evidence shows that adopting and implementing these concepts in isolation can lead to a lack of coordination, incoherence and fragmentation which ends up having a detrimental effect on the socio-economic development of the country. Given that Kenya currently lacks a coherent and integrated legal framework on transparency, accountability and participation in the oil and gas sector, this seems to be a ticking time bomb. The TAP-plus framework, as proposed in this research, provides a normative guideline derived from international law principles and instruments, on how resource-rich countries can achieve coordination, coherence and systemic integration of anti-corruption efforts in order to avoid the resource curse. Through a thorough desk review of existing literature, this study examines how Kenya can effectively implement the TAP-plus framework in oil and gas governance to achieve greater coherence in anti-corruption efforts. The resulting conclusion is that by adopting and implementing the TAP-plus framework, Kenya will stand a better chance of escaping the resource curse. This research and its findings will be of great assistance to stakeholders in the oil and gas sector especially when it comes to creation and implementation of laws on good governance in the sector.

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The Constitution of Kenya, 2010

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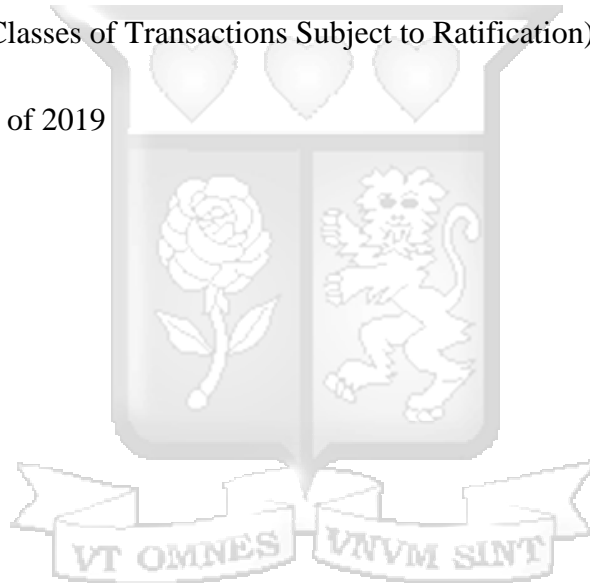
The Kenya Vision 2030

The Mining Act (No. 12 of 2016)

The National Energy and Petroleum Policy, 2015

The Natural Resources (Classes of Transactions Subject to Ratification) Act (No.41 of 2016)

The Petroleum Act (No.2 of 2019)



LIST OF INTERNATIONAL & REGIONAL INSTRUMENTS

African Charter on Human and People's Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M.58) (1982)

African Convention on the Conservation of Nature and Natural Resources (CAB/LEG/24.1)

Africa Mining Vision

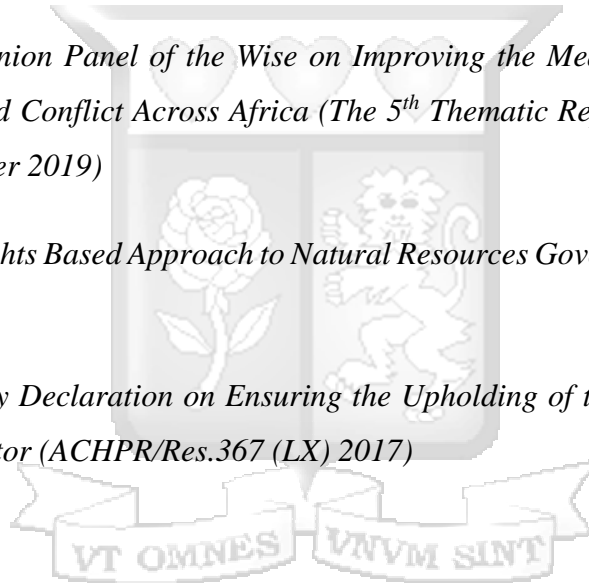
African Union Convention on Preventing and Combatting Corruption (Adopted 01 July 2003)

East African Community Protocol on Environment and Natural Resources Management (Adopted 3 April 2006)

Report on the African Union Panel of the Wise on Improving the Mediation and Resolution of Natural Resource-Related Conflict Across Africa (The 5th Thematic Report of the African Union Panel of the Wise, October 2019)

Resolution on Human Rights Based Approach to Natural Resources Governance (ACHPR/Res.224 (LI) 2012)

Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector (ACHPR/Res.367 (LX) 2017)



Declaration on the Right to Development (General Assembly Resolution 41/128 4 December 1986)

Paris Declaration on Open Government (9 December 2016)

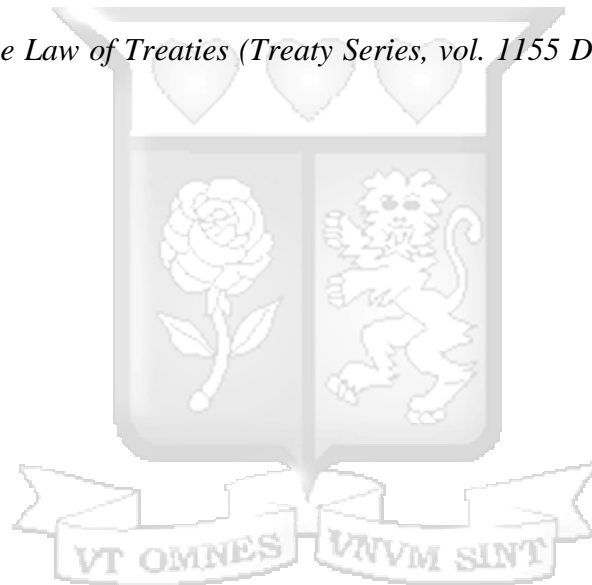
Responsibility of States for Internationally Wrongful Acts (General Assembly Resolution 56/83 12 December 2001)

United Nations Convention Against Corruption (2004)

United Nations Guiding Principles on Business and Human Rights (2011)

Universal Declaration of Human Rights (1948)

Vienna Convention on the Law of Treaties (Treaty Series, vol. 1155 Done at Vienna on 23 May 1969)



LIST OF CASE LAW

Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017]eKLR

Katiba Institute v President's Delivery Unit & 3 Others [2017]eKLR

Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company & 2 Others [2013]eKLR

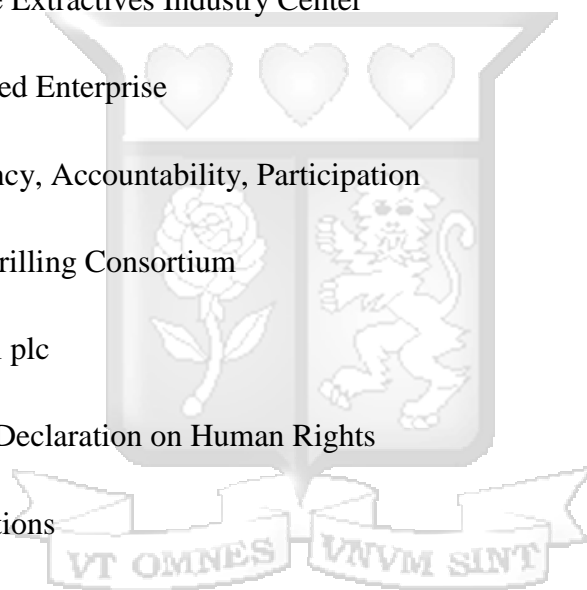
Peter Makau Musyoka & 19 others (suing on their own behalf and on behalf of the Mui Coal Basin Local Community) v Permanent Secretary Ministry of Energy & 14 others [2014]eKLR



LIST OF ABBREVIATIONS

AMV	Africa Mining Vision
AOC	Africa Oil Corporation
CDA	Community Development Agreement
CS	Cabinet Secretary
CSO	Civil Society Organization
CMV	County Mining Vision
EITI	Extractive Industries Transparency Initiative
EOPS	Early Oil Pilot Scheme
EPRA	Energy and Petroleum Regulatory Authority
GDP	Gross Domestic Product
IGO	Intergovernmental Organization
IMF	International Monetary Fund
KEPTAP	Kenya Petroleum Technical Assistance Project
KPC	Kenya Pipeline Company
KRA	Kenya Revenue Authority
MPSC	Model Production Sharing Contract
NEMA	National Environmental Management Authority
NGO	Non-governmental Organization
NOCK	National Oil Corporation of Kenya

NRGI	Natural Resource Governance Institute
NUPAC	National Upstream Petroleum Advisory Committee
OGP	Open Government Partnership
PSC	Production Sharing Contract
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SEIC	Strathmore Extractives Industry Center
SOE	State-Owned Enterprise
TAP	Transparency, Accountability, Participation
TDC	Turkana Drilling Consortium
Tullow	Tullow Oil plc
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
World Bank	World Bank Group
PWYP	Publish What You Pay

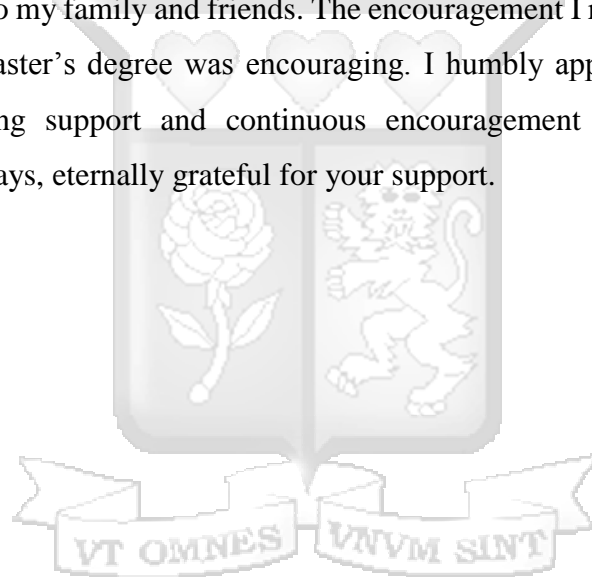


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DEDICATION

To Louisa Njeri Ndunyu, you have been my greatest cheerleader and my motivation.



CHAPTER 1: INTRODUCTION

1.1 Background

There exists literature describing the resource curse phenomenon, a term first used by Richard Auty in 1993.¹ The natural resource curse, suggests that countries with oil or other natural resources fail to grow more rapidly than those without.² Whereas one might logically expect resource-rich countries to have better development outcomes, research has shown that most of these countries suffer from low economic growth and stability as well as high rates of conflict.³ There has also been the observation that resource-rich countries are vulnerable to corruption and they consistently register poor scores on Transparency International's corruption perceptions index.⁴ This means that only few individuals benefit from the windfall revenues gained from natural resource exploration while the vast majority continue to wallow in abject poverty. As Kaufmann aptly points out, approximately twenty percent of the world's impoverished reside in resource-rich countries and if the situation continues unchanged, half of the world's poorest will reside in resource-rich countries come the year 2030.⁵

Africa is rich in natural resources and it is said to be home to approximately twelve percent of the world's oil reserves.⁶ Despite the geological affluence however, resource extraction and utilization has seemingly not provided corresponding economic growth⁷ and Africa remains the abode to some of the world's most poverty-stricken people.⁸ Indeed, resource rich African countries such as Angola, the Democratic Republic of Congo, Libya, Nigeria and South Sudan, continue to rank poorly in the resource governance index.⁹ For example, Nigeria, which is reputed as the thirteenth

¹ Shaffer B and Ziyadov T, *Beyond the Resource Curse*, University of Pennsylvania Press (2012), 17–57.

² Iimi A, 'Escaping from the Resource Curse: Evidence from Botswana and the Rest of the World' (2007) 54 IMF Staff Papers 663, 663 <<https://www.jstor.org/stable/30035929>>.

³ 'Nrgi_Resource-Curse.Pdf' 1 <https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf>.

⁴ 'Corruption Perceptions Index' (*Transparency.org*) <<https://www.transparency.org/en/cpi>>.

⁵ Africa at a Fork in the Road and others (eds), *Africa at a Fork in the Road: Taking off or Disappointment Once Again?* (2015), 240.

⁶ Olawuyi D, *Extractives Industry Law in Africa*, Springer International Publishing (2018), 3–17.

⁷ Olawuyi D, 'The Emergence of Right-Based Approaches to Resource Governance in Africa: False Start or New Dawn', (2015) 15 Sustainable Development Law & Policy 13, 13 <<https://heinonline.org/HOL/P?h=hein.journals/sdlp15&i=81>>.

⁸ Olawuyi D, 'The Emergence of Right-Based Approaches to Resource Governance in Africa: False Start or New Dawn', 13.

⁹ 'Resource Governance Index' <<https://resourcegovernanceindex.org/>>.

largest oil producing country in the world, and Africa's largest oil producing country,¹⁰ has fallen prey to the resource curse because the culture of impunity and corruption has continuously plagued its oil industry.¹¹ Equatorial Guinea has also been referred to as a world class example of the devastating effects of the resource curse with its ruling family currently being the subject of several investigations for claims of corruption.¹² It is further estimated that fifty six percent of all illicit financial flows leaving Africa between 2000 and 2010 came from the extractives industry.¹³

Kenya announced its first discovery of oil in March 2012, making it yet another oil producing country in Africa.¹⁴ For a country that was purely dependent on agriculture as the backbone of its economy, discovery of oil comes as a great and anticipated boost to the economy and brings to light the place of the oil sector in Kenya's economic development.¹⁵ It is estimated that the mining sector's contribution to the economy is likely to grow Kenya's gross domestic product (GDP) by ten percent by the year 2030.¹⁶

This discovery has further thrust to the limelight, the huge expectations for the local communities and these are particularly high given the fact that Turkana is an area that has over the years been marginalised and neglected by the government.¹⁷ Turkana county is home to approximately 1.3 million inhabitants and is one of the poorest and most marginalized county in Kenya.¹⁸ The region is known for its arid climate which therefore means that most inhabitants are pastoralists.¹⁹ While pastoralism makes up an estimated twelve percent of Kenya's GDP,²⁰ successive governments

¹⁰ 'Nigeria' (*Extractive Industries Transparency Initiative*) <<https://eti.org/nigeria>>.

¹¹ Mähler A, 'Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta', German Institute of Global and Area Studies (GIGA) (2010) 17 <<https://www.jstor.org/stable/resrep07605>>.

¹² Gary I, 'Back to the "Bottom of the Barrel"? Will East Africa's New Oil and Gas Producers Get It Right?' (*Brookings*, 30 November 1AD) <<https://www.brookings.edu/blog/africa-in-focus/2014/02/20/back-to-the-bottom-of-the-barrel-will-east-africas-new-oil-and-gas-producers-get-it-right/>>.

¹³ 'Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa' <<https://repository.uneca.org/handle/10855/22695>>.

¹⁴ 'Excitement as Tullow Strikes Oil in the First Well in Turkana County' (*Daily Nation*) <<https://www.nation.co.ke/kenya/news/excitement-as-tullow-strikes-oil-in-the-first-well-in-turkana-county--805846>>.

¹⁵ Mbote, 'Extractive Industries in Kenya: A Blessing or A Curse' (2014) 2-8.

¹⁶ 'Kenya Mining Policy' 6 <<https://www.idlo.int/sites/default/files/pdfs/highlights/Kenya%20Mining%20Policy%20Popular%20Version-LowRes.pdf>> .

¹⁷ 'Kenya Got Oil: What Next?' <<https://blogs.worldbank.org/african/kenya-got-oil-what-next>>.

¹⁸ 'Inside Kenya's Turkana Region: Cattle, Climate Change, and Oil' (*The New Humanitarian*, 15 January 2018) <<https://www.thenewhumanitarian.org/feature/2018/01/15/inside-kenya-s-turkana-region-cattle-climate-change-and-oil>>.

¹⁹ 'East Africa Living Encyclopedia' <<https://www.africa.upenn.edu/NEH/kethnic.htm>>.

²⁰ 'Inside Kenya's Turkana Region: Cattle, Climate Change, and Oil'.

have made very little effort to harness the potential in the livestock sector and instead focused on agriculture which is always termed as the backbone of Kenya's economy, further marginalizing the people of Turkana.²¹

Additionally, high levels of perceived or real inequalities when it comes to sharing of benefits from oil can further worsen this already bad situation.²² This played out in Kenya when the Petroleum Bill (2014) as it then was, had proposed an allocation of five percent of the oil revenue to the community but Turkana governor Josephat Nanok lobbied to have the figure increased to ten percent.²³ The figure was increased to ten percent and the Bill was approved by parliament but was unfortunately dealt a blow when president Kenyatta refused to assent to it and returned it to parliament demanding that the community share revert to five percent.²⁴ This led to strong grievances with leaders from Turkana feeling that their people will not benefit from the oil resources.²⁵

Moreover, the people are not included in development, politics or other participatory processes where their opinions and views can be regarded.²⁶ For instance, the people of Turkana have accused Tullow oil of failing to take into account the local dynamics when they fenced off large areas of the South Lokichar basin where oil is being extracted, leaving the people with no access to pasture for their animals as this is the area they relied on for dry season grazing.²⁷ The region also has a long history of armed conflict as well as an unusually high number of illegal weapons.²⁸ Since the discovery of oil in Turkana in 2012 and leading up to 2015, the area had experienced over 14 incidents of demonstrations, road blockages and violent attacks²⁹ which threaten the future

²¹ 'Unmasking Ethnic Minorities and Marginalized Communities in Kenya.Pdf' 21–22 <<https://www.ngeckkenya.org/Downloads/Unmasking%20Ethnic%20Minorities%20and%20Marginalized%20Communities%20in%20Kenya.pdf>>.

²² Norman Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' 220, 99.

²³ Matthew Tyce, 'Competition, Fragmentation and "Resource Factionalism": The Politics of Governing Oil and Gas in Kenya' [2020] SSRN Electronic Journal 20–22 <<https://www.ssrn.com/abstract=3661541>>.

²⁴ Tyce (n 23) 20–22.

²⁵ 'Oil-Rich yet on Edge in Turkana' (*The New Humanitarian*, 6 November 2017)

<<https://www.thenewhumanitarian.org/analysis/2017/11/06/oil-rich-yet-edge-turkana>>.

²⁶ Maurice Odhiambo Makoloo, *Kenya: Minorities, Indigenous Peoples and Ethnic Diversity* (Minority Rights Group 2005) 2.

²⁷ 'Oil-Rich yet on Edge in Turkana'.

²⁸ Patricia I Vasquez, 'Kenya at a Crossroads: Hopes and Fears Concerning the Development of Oil and Gas Reserves' [2013] *International Development Policy | Revue internationale de politique de développement* <<http://journals.openedition.org/poldev/1646>>.

²⁹ Kennedy Mkutu and Gerard Wandera, 'Conflict, Security and the Extractive Industries in Turkana, Kenya' 46, 3.

of oil production activities in Kenya.³⁰ This creates even more reason for concern because the propensity for violent conflict is high when oil is discovered in an area occupied by marginalised communities with strong grievances against the government.³¹

With all these factors in mind, what then comes to sharp focus is the reality that leaves Kenya vulnerable to the resource curse. Will Kenya suffer the same resource challenges as Nigeria or will she follow in the steps of Norway and Botswana which have managed to evade the resource curse and achieve high economic development through their natural resources?

Given that Kenya's oil industry is still budding, there exists the possibility to mould and shape it, thereby drastically changing the country's development tangent. As already indicated, corruption, mismanagement of resources and rent seeking activities are some of the causes of the resource curse.³² As of 2019, Kenya ranks at position 137 in the Transparency International corruption perceptions index.³³ Kenya's political lifestyle is denoted by corruption, bribery and patronage.³⁴ It is even estimated that Kenya loses approximately thirty percent of its annual budget to corruption.³⁵ These glaring statistics leave no doubt that drastic action needs to be taken to ensure Kenya does not succumb to the resource curse.

Transparency, accountability and participation (TAP) throughout the natural resource value chain is key in ensuring that resource-rich countries benefit from their natural endowment by curbing levels of corruption.³⁶ TAP are important tenets of good governance that have for many years been recognized in several core international law instruments and treaties.³⁷ Recent extensive studies show that transparency alone is insufficient in reducing corruption in the oil and gas sector and it needs to be supplemented with accountability and participation as opposed to adopting them

³⁰ Reuters Staff, 'Tullow Oil May Halt Kenyan Oilfield Operations Due to Protest' *Reuters* (17 July 2018) <<https://www.reuters.com/article/us-tullow-kenya-idUSKBN1K71QJ>>.

³¹ Ross M, *The oil curse: How petroleum wealth shapes the development of nations*, New Jersey Princeton University Press, 2012, chapter_1.Pdf <https://www.sscnet.ucla.edu/polisci/faculty/ross/oilcurse/oil_curse_chapter_1.pdf>.

³² 'What Are the "Natural Resource Curse" and "Dutch Disease"?' | Oil In Uganda' <<https://oilinuganda.org/facts-faqs/global-oil-facts-faqs/what-are-the-natural-resource-curse-and-dutch-disease/>>.

³³ 'Corruption Perceptions Index' (*Transparency.org*) <<https://www.transparency.org/en/cpi>>.

³⁴ Brunton S, 'Beating the Resource Curse: Transparency in Kenya's Upstream Oil and Gas Sector' (2018) 4.

³⁵ nationmedia 2017, 'Kenya Loses up to 30% of Its Annual Budget to Corruption' (*NTV*) <<https://ntv.nation.co.ke/news/2720124-4929996-10iuyp4/index.html>>.

³⁶ Bassetti V and Eisen N, 'Oil, Gas, and Mining Corruption: Is It Inevitable?', *Brookings*, 28 June 2020 <<https://www.brookings.edu/blog/fixgov/2020/06/28/oil-gas-and-mining-corruption-is-it-inevitable/>>.

³⁷ Olawuyi D, *The Human Rights Based Approach to Carbon Finance* (Cambridge University Press, 2016) 1-25.

separately.³⁸ A triumvirate TAP approach is more inclusive and likely to produce better results as opposed to transparency measures alone or accountability initiatives alone.³⁹ As Thurber notes, the Norwegian model which promotes fragmentation and separation of functions may not necessarily be effective in a country such as Kenya that lacks institutional capacity and robust political competition.⁴⁰

Kenya has made some significant reforms in her oil and gas laws, passing the Energy Act No. 1 of 2019 and the Petroleum Act No.2 of 2019 on March 12, 2019. However, despite the existence of these new laws, Kenya, just like many Sub-Saharan African countries, continues to lag behind when it comes to implementation of laws related to TAP.⁴¹ For starters, Section 119 of the Petroleum Act mandates the Cabinet Secretary for petroleum to develop a framework for reporting, transparency and accountability.⁴² To achieve this, in 2018, the government, through the World Bank funded Kenya Petroleum Technical Assistance (KEPTAP), engaged the Strathmore Extractives Industry Centre (SEIC) to help develop a transparency framework tailored for the oil and gas sector in Kenya.⁴³ However, to date, Kenya is yet to have a comprehensive framework governing transparency and accountability in its oil sector⁴⁴ because the draft framework is still pending official launching by the Government and is not accessible to the public.⁴⁵ Indeed, there is recognition that Kenya's extractive industry has been operating outside a well-structured transparency framework, reinforcing the urgent need for a competitive framework, in line with international best practice, that promotes TAP.⁴⁶

³⁸ Kolstad I and Wiig A, 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?' (2009) 37 World Development 521 <<http://www.sciencedirect.com/science/article/pii/S0305750X08002246>>.

³⁹ Eisen N, Kaufmann D, Heller N, Preston W, Picon M, Bassetti V, and John, 'The TAP-Plus Approach to Anti-Corruption in the Natural Resource Value Chain'.

⁴⁰ Mark C Thurber, David R Hults and Patrick RP Heller, 'Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance' (2011) 39 Energy Policy 5366, 1 <<https://linkinghub.elsevier.com/retrieve/pii/S0301421511004125>>.

⁴¹ Madden P, 'Figure of the Week: Natural Resource Governance in Africa' (*Brookings*, 24 April 2019) <<https://www.brookings.edu/blog/africa-in-focus/2019/04/24/figure-of-the-week-natural-resource-governance-in-africa/>>.

⁴² 'The Petroleum Act 2019 81.

⁴³ 'Transparency and Accountability in Kenya's Oil and Gas Sector | Extractives Baraza' <<https://www.extractives-baraza.com/single-style/transparency-and-accountability-in-kenyas-oil-and-gas-sector/>>.

⁴⁴ 'Kenya Civil Society Platform on Oil and Gas Resolutions.Pdf' 4 <<https://www.business-humanrights.org/sites/default/files/documents/Kenya%20Civil%20Society%20Platform%20on%20Oil%20and%20Gas%20Resolutions.pdf>>.

⁴⁵ Jovia Bogere, 'Transparency and Accountability in Kenya's Extractives Sector' 8, 6.

⁴⁶ 'Kenya Mining Policy 9.

In addition to this, the two Acts create different entities to regulate different facets of the natural resource value chain and this ends up creating institutional incoherence, overlap of functions and unnecessary bureaucracy which may or may not be viewed as deliberate efforts to frustrate anti-corruption efforts.⁴⁷ For instance, the duplication of roles by local statutory institutions like National Environment Management Authority (NEMA), Energy and Petroleum Regulatory Authority (EPRA), National Oil Corporation of Kenya (NOCK), National Upstream Petroleum Advisory Committee (NUPAC) among others, creates conflict and the opportunity for any of the institutions to technically avoid statutory responsibility thereby hampering anti-corruption efforts.⁴⁸

The reality is that fragmentation and separation of functions among these institutions is not a prerequisite to a thriving oil and gas industry and the deeply fragmented nature of Kenya's TAP laws in the oil and gas sector may actually prove to be a stumbling block.⁴⁹ This is because a lack of clarity in laws can potentially lead to duplication of efforts, wastage of funds, conflicting agendas and ultimately, policy paralysis.⁵⁰ Integration among such institutions is therefore necessary to address the problem of fragmentation and lack of coherence and thereby promote good governance.⁵¹

With statistics showing that no oil-rich country in Africa has to date managed to overcome the resource curse,⁵² Kenya appears to have all the odds stacked up against her. There is therefore an urgent need to test the TAP-plus framework and get a better understanding of how it can help Kenya mitigate the devastating effects of the resource curse.

⁴⁷ Odari E, Osoro D, Omolo M, Chira R, Ong'onge L, Oduor C and Katindi Sivi-Njonjo, A primer to the emerging extractive sector in Kenya: Resource bliss, dilemma or curse, Institute of Economic Affairs (IEA) 2014 44-46

⁴⁸ 'SESA Draft Report for Petroleum Sector in Kenya.Pdf' 139

<<https://www.nema.go.ke/images/Docs/SEA%20Reports/SESA%20Draft%20Report%20for%20Petroleum%20Sector%20in%20Kenya.pdf>>.

⁴⁹ Tyce, 'Competition, Fragmentation and Resource Factionalism: The Politics of Governing Oil and Gas in Kenya' 34.

⁵⁰ Olsen W, 'Kenya-new opportunities-new challenges, INTSOK, Norwegian Oil and Gas partners', 18

⁵¹ Damilola Olawuyi, 'Sustainable Development and the Water-Energy-Food Nexus: Legal Challenges and Emerging Solutions' (2020) 103 Environmental Science & Policy 1, 3
<<https://linkinghub.elsevier.com/retrieve/pii/S1462901119308858>>.

⁵² Brunton S, 'Beating the Resource Curse: Transparency in Kenya's Upstream Oil and Gas Sector' 4.

1.2 Statement of the problem

The discovery of oil and gas in any given country usually raises the expectations of the citizens. Many tend to equate resource abundance with wealth and prosperity of a country. It is expected that the windfall revenues gained from oil extraction will grow a country's GDP, improve the lives of the citizens, create job opportunities and bring good fortune to the country. While that is the ideal situation, the reality is that many resource-rich countries across the world grapple with poverty, corruption, conflict and exhibit poor development outcomes. Mismanagement and poor governance have plagued many oil rich countries and led to a situation where only the political elite benefit from the oil revenues. With Kenya joining the ranks of oil producing countries, there is the realization that the flow of huge sums of money will likely create avenues for corruption, self-gain, illicit financial flows, misappropriation of funds, leaving the country vulnerable to the resource curse.

Because of this realization, it becomes necessary to ensure that proper safeguards are put in place to cushion the country from any of the adverse effects. Key among these safeguards is to ensure there is good governance through TAP. It is important to ensure that the legal regime governing the oil and gas sector in Kenya is coordinated, coherent and incorporates international best practice approaches such as the TAP-plus framework, because having a weak or non-existent legal framework only provides a proper breeding ground for the culture of impunity and corruption to thrive, delving Kenya further to the entrapments of the resource curse. Having a strong TAP governance framework will mean Kenya stands a better chance of benefiting from the discovered oil reserves. This research therefore seeks to investigate the TAP-plus framework and how it can be adopted in Kenya to help the country benefit from her oil.

1.3 Justification of the study

Kenya discovered oil in 2012 and passed new laws governing the oil and gas sector in 2019. A plethora of research exists explaining the resource curse phenomenon and pointing to the importance of TAP in helping resource-rich countries mitigate or avoid the curse and turn their resource abundance into a blessing. The mere fact that only a handful of countries like Norway, Botswana and Canada are often cited as shining exemplars for having avoided the resource curse while the number of those that have succumbed to the curse far outnumbered them, points to the difficulty in tackling this curse.

Many commentators with great knowledge in this area have noted the importance of TAP in promoting good governance and thereby mitigating the effects of the resource curse. To date, there exist no integrated framework governing TAP in Kenya's oil and gas sector. It is therefore evident that matters of good governance have not been addressed adequately in Kenya's oil and gas sector.

It would only be sagacious to investigate the TAP-plus framework and how it can be adopted in Kenya to help her benefit from her oil. Indeed, this is even more relevant given that Kenya is still in the initial stages of oil exploitation and there exists the possibility to adopt and develop new policies that will bring about positive change in the oil and gas sector.

This research and its findings will be of great assistance to the government of Kenya as well as lawmakers when it comes to creation of laws governing the oil and gas sector. It will also aid the Civil Society Organizations (CSOs) involved in the oil and gas industry because most of them advocate for TAP. It will also be beneficial to Kenyan citizens because when Kenya adopts measures that turn the resources into good fortune as opposed to a curse, the citizens benefit. Further, this research will play an even bigger role of developing literature around the TAP-plus framework because although coordination, coherence and integration has been explored to a great extent in areas such as international law and human rights, not much has been written concerning their application in the context of the oil and gas sector.

1.4 Objectives

The objectives of this research are to:

1. examine the nature, scope and content of the TAP-plus framework in international law.
2. analyze coordination, coherence and integration gaps in Kenyan laws when it comes to enforcing TAP in Kenya's oil and gas sector.
3. explore whether adopting the TAP-plus framework will help Kenya in addressing coordination, coherence and integration gaps that may exist in the laws.

1.5 Hypotheses

1. The extant legal and institutional framework governing the oil and gas sector in Kenya are incapable, in their current form, of addressing the issues of TAP.
2. There is no coordination, coherence and integration in Kenya's laws related to TAP in the oil and gas industry.

1.6 Research questions

This study seeks to achieve its objectives by answering the following key research questions:

1. What is the nature, scope and content of the TAP-plus framework under international law?
2. What are the coordination, coherence and integration gaps in Kenyan laws when it comes to enforcing TAP in oil and gas sector?
3. Could the TAP-plus framework help Kenya address the coordination, coherence and integration gaps that may exist in the laws?

1.7 Conceptual framework

The TAP-plus framework is an approach that seeks to promote a coordinated, coherent and integrated implementation of TAP as a preventive mechanism for promptly anticipating, identifying and addressing corruption and illicit financial flows in the oil and gas sector. Promoted and developed by Brookings in collaboration with other leading researchers,⁵³ the TAP-plus framework builds on some of the international law principles on good governance that have been recognized in core international law instruments, some of which Kenya has ratified and by virtue of Article 2(6) of the Constitution of Kenya, conventions and treaties that Kenya has ratified forms part of her laws and the same applies to general rules of international law as per Article 2(5) of the Constitution. Accordingly, the relevant concepts that are key to the TAP framework will be considered hereunder.

1.7.1 Transparency

Transparency has been defined as the extent to which information is made available to third parties/outside, to enable them to assess the decisions made by the parties/insiders.⁵⁴ This is a concept that has long been considered an important tenet for good governance.⁵⁵ It entails ready access to reliable, comprehensive, timely, understandable and internationally comparable information on government activities.⁵⁶ Transparency can play a vital role in fighting against

⁵³ Eisen N, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' 220, 6.

⁵⁴ Cameron P and Stanley M, 'Oil, Gas, and Mining' 321, 222.

⁵⁵ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 48.

⁵⁶ George Kopits and others, *Transparency in Government Operations* (International Monetary Fund 1998) 1 <<https://elibrary.imf.org/view/books/084/07499-9781557756978-en/07499-9781557756978-en-book.xml>>.

corruption and illicit financial flows, that is why it is now largely promoted in the oil and gas sector.⁵⁷

According to the United Nations Conference on Trade and Development (UNCTAD), to which Kenya is a member state, transparency obligates parties to be ready to subject their transactions to public scrutiny and consideration.⁵⁸ UNCTAD proposes that transparency requirements ought to be delimited and there should be time requirements for when certain information should be disclosed and the scope of transparency requirements should be extended to cover even corporations, in this case, National Oil Companies, foreign investors such as Tullow Oil, as opposed to just focusing on states generally.⁵⁹

While there exists numerous laws, policies and initiatives that champion transparency in the oil and gas sector, there is also the realization that to form any meaningful law on transparency, there needs to be interactions between a variety of actors some of whom will be resistant to support the provisions depending on what they are supposed to disclose.⁶⁰ It is as a result of this that governments have often been resistant to implement transparency provisions because they want insulation from public condemnation when they make mistakes and also because a lack of transparency offers great opportunity for them to advance their personal interests.⁶¹ This has consequently led to inclusion of confidentiality clauses in most oil and gas contracts as a way of limiting transparency obligations⁶² and as a result most of these commitments to transparency initiatives in the oil and gas sector have to a great extent remained political rhetoric.⁶³

Additionally, there are no uniform, standardized patterns to transparency and transparency initiatives like EITI and PWYP offer great divergence in their understanding and definition of transparency as well as the degree of transparency they adopt.⁶⁴ These initiatives have also been

⁵⁷ Carole Nakhle, 'Transparency in the Oil and Gas Sector: Much Talk but Limited Action' (*Carnegie Middle East Center*) <<https://carnegie-mec.org/2016/12/16/transparency-in-oil-and-gas-sector-much-talk-but-limited-action-pub-66495>>.

⁵⁸ *Transparency* (UN 2004) 7.

⁵⁹ *Transparency* 1–5.

⁶⁰ Albert Meijer, 'Understanding the Complex Dynamics of Transparency' (2013) 73 *Public Administration Review*, 429–432 <<http://www.jstor.org/stable/42002946>>.

⁶¹ 'On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life | Columbia Business School Research Archive' <<https://www8.gsb.columbia.edu/researcharchive/articles/1475>>.

⁶² 'Contract Transparency' (*Natural Resource Governance Institute*, 27 January 2016) <<https://resourcegovernance.org/analysis-tools/publications/contract-transparency>>.

⁶³ Nakhle, 'Transparency in the Oil and Gas Sector: Much Talk But Limited Action' 4-9.

⁶⁴ Meijer, 'Understanding the Complex Dynamics of Transparency' 429–432.

placing emphasis on producing or publishing information, leaving the task of translating, interpreting the information and demanding accountability to other unspecified players hence making transparency less effective.⁶⁵ The timing of information disclosure is yet another area of concern, with most governments disseminating information after the fact which does not do much for accountability, as opposed to before the fact which could go a long way in avoiding undesirable effects from happening in the first place.⁶⁶ Perhaps most significant is that the timing of information disclosure is important within the institutions, ministries, departments because it determines how well coordination will happen.⁶⁷

While it is difficult to argue against transparency particularly because it eventually promotes good governance in the oil and gas sector, it takes additional efforts to eliminate corruption; transparency is only one of them.⁶⁸ Considered on its own, transparency is insufficient to promote good governance because simply having access to information is not enough to drive meaningful popular engagement.⁶⁹ There is need to explore synergies with other concepts and for transparency to have meaningful impact in the oil and gas sector, accountability is required to incentivize good behaviour and impose some form of sanction where misconduct is detected.⁷⁰

1.7.2 Accountability

Accountability is the obligation to give satisfactory reasons for one's actions and transparency is often regarded as a precursor to accountability because without disclosure, an individual, organisation or government cannot be held accountable.⁷¹ Well reputed organisations such as the United Nations place great emphasis on accountability and work towards achieving better accountability mechanisms and strengthening oversight within the organisation.⁷² The Africa

⁶⁵ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 49.

⁶⁶ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 53.

⁶⁷ Regina M Anctil and others, 'Does Information Transparency Decrease Coordination Failure?' (2010) 70 *Games and Economic Behavior* 228, 2 <<https://www.sciencedirect.com/science/article/pii/S0899825610000618>>.

⁶⁸ Nakhle, 'Transparency in the Oil and Gas Sector: Much Talk But Limited Action' 8.

⁶⁹ Ben Shephard, *Oil in Uganda: International Lessons for Success* (Royal Institute of International Affairs : [distributor] NBN International Ltd : [distributor] Brookings Publications (2013) 23–24.

⁷⁰ Ivar Kolstad and Tina Søreide, 'Corruption in Natural Resource Management: Implications for Policy Makers' (2009) 34 *Resources Policy* 214, 224 <<https://ideas.repec.org/a/eee/jrpoli/v34y2009i4p214-226.html>>.

⁷¹ Weiss E, 'On Being Accountable in a Kaleidoscopic World', 2010. 104 *Proceedings of the ASIL Annual Meeting* 477, 5 <https://www.cambridge.org/core/product/identifier/S0272503700050333/type/journal_article>.

⁷² 'A/RES/60/260 : UN Documents : Security Council Report' 2–3 <<https://www.securitycouncilreport.org/un-documents/document/sge-a-2006-60-260.php>>.

Mining Vision equally places great emphasis on accountability and oversight as a way of promoting good governance in the extractive sector.⁷³

As already alluded to earlier, transparency is supposed to generate accountability.⁷⁴ In fact, in most instances, the demand for accountability is usually met by increasing the level of transparency.⁷⁵ The roots of accountability can be traced to book-keeping where accounting is seen as linking those who own an account and those to whom an account it owed.⁷⁶ In the oil and gas sector, this link can best be understood from the principal-agent theory which views the citizens as the principals and the elected representatives as the agents.⁷⁷ Several resource rich states have legislation in place that specify that natural resources belong to the people (who are the principals)⁷⁸ and the government (the agent) usually manages these resources on behalf of the citizens⁷⁹ thereby justifying the need to have the citizens hold the government accountable for the actions they undertake in their stead.⁸⁰ Nevertheless, just like transparency, accountability is also very rarely defined with precision and there is no single universal definition.⁸¹

It is important to point out that for accountability to be effective, the transparency and accountability systems should be coordinated and designed in such a way that they end up supporting each other because how and what type of information is made available will determine what accountability is possible.⁸² Additionally, for accountability to produce a good outcome,

⁷³ '30984-Doc-Africa_mining_vision_english.Pdf' 18 <https://au.int/sites/default/files/documents/30984-doc-africa_mining_vision_english.pdf>.

⁷⁴ Jonathan A Fox, 'The Uncertain Relationship between Transparency and Accountability' 663–669 <<https://escholarship.org/uc/item/8c25c3z4>>.

⁷⁵ Nieves Zúñiga, Matthew Jenkins and David Jackson, 'Does More Transparency Improve Accountability?' (Transparency International 2018) 2–3 <<http://www.jstor.org/stable/resrep20498>>.

⁷⁶ *The Oxford Handbook of Public Accountability* (Oxford University Press 2014) 2 <<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199641253.001.0001/oxfordhb-9780199641253>>.

⁷⁷ 'Making Politics Work for Development: Harnessing Transparency and Citizen Engagement' (*World Bank*) <<https://www.worldbank.org/en/research/publication/making-politics-work-for-development>>.

⁷⁸ Emmanuel Graham and Jesse Salah Ovidia, 'Oil Exploration and Production in Sub-Saharan Africa, 1990-Present: Trends and Developments' (2019) 6 *The Extractive Industries and Society* 593, 593 <<https://www.sciencedirect.com/science/article/pii/S2214790X18300455>>.

⁷⁹ Levon Epremian, Päivi Lujala and Carl Bruch, *High-Value Natural Resources and Transparency: Accounting for Revenues and Governance* (Oxford University Press (OUP) 2016) <<https://ntnuopen.ntnu.no/ntnu-xmlui/handle/11250/2483982>>.

⁸⁰ Jonathan A Fox, 'Social Accountability: What Does the Evidence Really Say?' (2015) 72 *World Development* 346, 347 <<https://www.sciencedirect.com/science/article/pii/S0305750X15000704>>.

⁸¹ Fox 'The Uncertain Relationship Between Transparency and Accountability' 665.

⁸² Zúñiga, Jenkins and Jackson 'Does More Transparency Improve Accountability?' 2–5.

citizens must be empowered to participate.⁸³ It is critical to ensure that accountability is rooted in citizen empowerment and participation⁸⁴ because in most resource rich states, the poor and marginalized are not involved in decision making and this leads to decisions that do not reflect the views and needs of the public and essentially waters down accountability.⁸⁵

1.7.3 Participation

Public participation is an important element of democracy as it gives citizens the right to be heard and to participate in decision making.⁸⁶ The Declaration on the Right to Development in Article 1.1 grants all human beings the right to participate in and contribute to any social, cultural or political development and this is regarded as an inalienable right.⁸⁷ The African Charter on Human and Peoples' Rights in Articles 20 and 21 respectively, gives all people the right to self-determination and to freely do away with and benefit from their natural resources, an element that involves free prior informed consent on the part of the citizens.⁸⁸ This provision is echoed in the United Nations Declaration on the Rights of Indigenous Peoples which places strong emphasis on free prior and informed consent as an important aspect of public participation.⁸⁹

The public consists of a wide variety of stakeholders such as CSOs, NGOs, common citizens and it is important to consider their views and input when it comes to decision making.⁹⁰ The ability of citizens to take part in policy formation, express their opinions, preferences and views is therefore a necessary ingredient for good governance in the oil and gas sector.⁹¹ The Resolution on Human Rights Based Approach to Natural Resource Governance underscores the importance of public participation and consultation in decision making related to natural resource

⁸³ '2011-EITI-Evaluation-Report.Pdf' 13 <<https://eiti.org/files/documents/2011-EITI-evaluation-report.pdf>> accessed 29 April 2021.

⁸⁴ Alexandra Gillies and Antoine Heuty, 'Does Transparency Work - The Challenges of Measurement and Effectiveness in Resource-Rich Countries Spotlight on Resources' (2011) 6 *Yale Journal of International Affairs* 25, 37 <<https://heinonline.org/HOL/P?h=hein.journals/yajoina6&i=153>> accessed 4 August 2020.

⁸⁵ Deval Desai and Michael Jarvis, 'Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank' (2012) 30 *Journal of Energy and Natural Resources Law* 101, 112 <<https://heinonline.org/HOL/P?h=hein.journals/jenr130&i=109>> accessed 4 August 2020.

⁸⁶ Muigua K, 'Towards Meaningful Public Participation in Natural Resource Management in Kenya' 31, 5–6.

⁸⁷ 'OHCHR | Declaration on the Right to Development'

<<https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>> on 8 August 2020.

⁸⁸ 'African Commission on Human and Peoples' Rights <<https://www.achpr.org/legalinstruments/detail?id=49>>.

⁸⁹ 'United Nations Declaration on the Rights of Indigenous Peoples_en.Pdf' 61/295

<https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>.

⁹⁰ OITA US EPA, 'Public Participation Guide: Introduction to Public Participation' (*US EPA*, 24 February 2014)

<<https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation>>.

⁹¹ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 56.

governance.⁹² A similar provision is found in the Report of the African Union Panel of the Wise on Improving the Mediation and Resolution of Natural Resource Related Conflicts Across Africa, which calls upon all African countries to ensure citizens are actively consulted and involved in decision making in the oil and gas sector.⁹³

Public participation has to be present at all levels and the first step is to ensure legislators, who are entrusted to formulate laws and policies, act in the best interest of the citizens because for the legislative making process to be seen as successful, it has to be inclusive.⁹⁴ For public participation to work, there has to be a belief in the value of public input, that it leads to better governance, there has to be complete transparency, accurate and timely sharing of information.⁹⁵ Therefore, it is evident that all the three elements, that is, TAP, are required to more effectively tackle governance challenges in the oil and gas sector.⁹⁶ TAP is presented herein as an indivisible package that facilitates progress towards coordination, policy coherence and integration as a way of promoting good governance in the oil and gas sector.⁹⁷

1.8 Literature review

1.8.1 Introduction

The purpose of this review is to give a better understanding of the subject matter. The topic is important because Kenya is a new entrant to the oil and gas sector and if proper safeguards are not put in place to insulate the country from the resource curse, then the exploitation of oil will be of no benefit to the country.

The review begins by giving a background of the resource curse phenomenon and demonstrates how many resource-rich countries, especially in Africa, have failed to realize any tangible benefits

⁹² 'Resolution on a Human Rights-Based Approach to Natural Resources Governance' ACHPR/Res.224 (LI) 2012 <<http://rio20.net/en/propuestas/resolution-on-a-human-rights-based-approach-to-natural-resources-governance/>>.

⁹³ 'AUP.Pdf' 7

<<https://wedocs.unep.org/bitstream/handle/20.500.11822/31043/AUP.pdf?sequence=1&isAllowed=y>>.

⁹⁴ 'Our Role in Securing Public Participation in the Kenyan Legislative and Policy Reform Process' (*Natural Justice*, 23 July 2020) <<https://naturaljustice.org/our-role-in-securing-public-participation-in-the-kenyan-legislative-and-policy-reform-process/>>.

⁹⁵ US EPA 'Public Participation Guide: Introduction to Public Participation'.

⁹⁶ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 63.

⁹⁷ 'Transparency-Accountability-and-Participation-a-Common-Agenda-for-Social-Cohesion-and-Governance-in-Latin-America.Pdf' 11–12 <<https://observ-ocd.diba.cat/sites/observ-ocd.org/files/2018-04/transparency-accountability-and-participation-a-common-agenda-for-social-cohesion-and-governance-in-latin-america.pdf>>.

from their resource endowment. The literature shows that governance is an important factor in determining whether or not a country will fall prey to the resource curse.

To combat the resource curse, transparency, accountability and participation which are considered important hallmarks of good governance, have been proposed as critical concepts. However, these concepts had for a long time been treated as separate and independent but recent research shows that they are interdependent and for them to have a lasting impact on governance, they need to be applied together in a coordinated, coherent and integrated manner.

1.8.2 Review

Over the last two decades, oil reserves in Africa have grown by approximately twenty five percent making Africa the new frontier for oil exploration and production.⁹⁸ This evidence of resource abundance in Africa is further bolstered by a report from the World Bank indicating that come 2020, only five countries in Africa will not be engaged in any kind of mineral exploitation.⁹⁹ Kenya is rich in natural resources, including oil which was discovered in 2012. This discovery raised the expectations of Kenyan citizens, the government and the investors. The expectations usually stem from the belief that the huge revenues gained from oil exploitation activities will be used to spur economic development, create better infrastructure and reduce poverty.¹⁰⁰ However, it is important to remember that oil is a non-renewable resource and its finite nature makes it necessary to ensure that any financial gains from its exploitation are utilised in a sustainable manner.¹⁰¹

Global evidence points to the fact that Kenya should accept this oil discovery with caution because extensive research has shown that resource-rich countries grow at a slower pace and attain very little socio-economic outcomes as compared to the non-resource-rich countries.¹⁰² It appears that the existence of natural resources hinders rather than contributes to the economic development of a country and the connection between natural resources and the overall development of a country

⁹⁸ Mawejje J, 'UNCTAD African Oil and Gas Conference Focus on Governance Is Spot On' (*Brookings*, 30 November 1AD) <<https://www.brookings.edu/blog/africa-in-focus/2013/11/25/unctad-african-oil-and-gas-conference-focus-on-governance-is-spot-on/>>.

⁹⁹ 'Africa Continues to Grow Strongly Despite Global Slowdown, Although Significantly Less Poverty Remains Elusive' (*World Bank*) <<https://www.worldbank.org/en/news/press-release/2013/04/15/africa-continues-grow-strongly-despite-global-slowdown-although-significantly-less-poverty-remains-elusive>>.

¹⁰⁰ Mawejje J, UNCTAD African Oil and Gas Conference Focus on Governance Is Spot On.

¹⁰¹ Africa at a Fork in the Road and others (n 5) 239–242.

¹⁰² Mawejje J, UNCTAD African Oil and Gas Conference Focus on Governance Is Spot On..

has been shown to be good governance.¹⁰³ Alao accurately notes that a country's endowment with natural resources is not a curse in itself, neither is the lack of natural resources a blessing; rather, what determines the trajectory a country will take is the defectiveness or efficiency of the governance structures a country has in place.¹⁰⁴ Olawuyi points out that governance challenges in resource-rich countries in Africa have for a long time been consistent and similar.¹⁰⁵ Corruption and illicit financial flows in the oil and gas sector is one of the major contributors to lack of good governance.¹⁰⁶

Good governance is a process where public institutions manage public resources in a way that adheres to the rule of law, promotes sustainability and the realization of human rights.¹⁰⁷ The main justification for advocating for good governance is that it has the potential of positively changing institutions.¹⁰⁸ Good governance is achieved by having proper transparency and accountability mechanisms that will help curb corruption.¹⁰⁹ The quality of regulations promoting transparency and accountability also plays a major role in how natural resources will be managed and lead to growth.¹¹⁰

The need to institutionalise transparency in the extractives sector was the motivation behind the creation of the EITI as well as the PWYP campaign, which Van Alstine views as key catalysts in mainstreaming a growing consensus in favour of transparency in the extractives sector.¹¹¹ The international community, in July 2002, launched EITI, an international policy intervention that promotes transparency by governments of resource-rich states as a way of mitigating the negative effects of resource abundance.¹¹² EITI initially focused on transparency but has over the decades

¹⁰³ Mwangi S, 'Oil and Gas Boom in East Africa: Avoiding the Curse' (*Brookings*, 30 November 1AD) <<https://www.brookings.edu/blog/africa-in-focus/2014/02/18/oil-and-gas-boom-in-east-africa-avoiding-the-curse/>>.

¹⁰⁴ Alao A, *Natural Resources and Conflict in Africa: The Tragedy of Endowment*, vol 29, Boydell & Brewer (2007) 242–276.

¹⁰⁵ Olawuyi D, *Extractives Industry Law in Africa*, Springer International Publishing (2018), 3–17.

¹⁰⁶ Eisen N, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' 6.

¹⁰⁷ katharina.kiener-manu, 'Anti-Corruption Module 2 Key Issues: What Is Good Governance?' <<http://www.unodc.org>>.

¹⁰⁸ Brunton (n 34) 29.

¹⁰⁹ Mwangi S, 'Oil and Gas Boom in East Africa: Avoiding the Curse'.

¹¹⁰ Jimi A, *Escaping from the Resource Curse: Evidence from Botswana and the Rest of the World* 663.

¹¹¹ James Van Alstine, 'Transparency in Resource Governance: The Pitfalls and Potential of "New Oil" in Sub-Saharan Africa' (2014) 14 *Global Environmental Politics* 20, 21 <https://www.mitpressjournals.org/doi/10.1162/GLEP_a_00213>.

¹¹² 'Who We Are | Extractive Industries Transparency Initiative' <<https://eiti.org/who-we-are>>.

worked on improving their rigorous standards to meet the changing industry needs.¹¹³ PWYP on the other hand focuses on revenue transparency and access to information to empower citizens to hold their governments accountable in ensuring revenues from oil and gas are used to improve people's lives.¹¹⁴

It is argued that governments in resource-rich countries have no choice but to join and be a part of these international initiatives on transparency and accountability.¹¹⁵ Cameron and Stanley contend that the poor record of performance among resource-rich countries when it comes to governance has led to an international consensus that transparency is the effective policy response to this issue.¹¹⁶ Muigua argues that by adopting and implementing the EITI standards, alongside the existing laws governing the oil sector, Kenya can escape the resource curse.¹¹⁷ Halland et al also acknowledge the importance of EITI by stating that it helps governments of resource-rich countries adopt internationally recognized standards of transparency, thereby increasing levels of trust and stability.¹¹⁸ This view is also backed by the International Monetary Fund (IMF) in their guide on resource revenue transparency, where they view transparency, as outlined in the EITI standards, as a critical element in ensuring there is credibility in collection and distribution of revenue earned from natural resources.¹¹⁹ Eigen similarly goes further to suggest that powerful countries like the United States of America should join EITI as this would send a strong signal to other countries that they support matters of transparency in the oil sector.¹²⁰

However, Sovacool and Andrews hold a contrary view and argue that while EITI can have some positive impact, it would be unjustifiable to attribute all good governance improvements in any

¹¹³ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 75–80.

¹¹⁴ 'About' (*Publish What You Pay*) <<https://www.pwyp.org/about/>> accessed 29 July 2020.

¹¹⁵ Cameron P and Stanley M, 'Oil, Gas, and Mining' 321, 221.

¹¹⁶ Cameron P and Stanley M, 'Oil, Gas, and Mining' 321, 221.

¹¹⁷ Muigua K, 'Promoting Open and Accountable Management of Extractives in Kenya: Implementing the Extractives Industries Transparency Initiative' 40, 2.

¹¹⁸ Halland H, Lokanc M and Nair A, *Extractive Industries Sector: Essentials for Economists, Public Finance Professionals, and Policy Makers*, World Bank Publications (2015) 73–75

<<http://ebookcentral.proquest.com/lib/strathmore-ebooks/detail.action?docID=3572452>> on 5 August 2020.

¹¹⁹ International Monetary Fund (ed), *Guide on Resource Revenue Transparency* (International Monetary Fund, Fiscal Affairs Dept 2007) 2.

¹²⁰ Eigen P, 'Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry International Energy Issue', 2006 29 *Houston Journal of International Law* 327, 347–348

<<http://heinonline.org/HOL/P?h=hein.journals/hujil29&i=337>>.

resource-rich country to EITI alone.¹²¹ Barrett and Okamura even aver that corrupt countries only join EITI for reputational purposes and also because they are in need of financial aid from international donors, not necessarily because they are concerned about good governance or the need to improve transparency in their oil and gas sector.¹²² Andrews holds the view that proponents of EITI tend to give it more weight than it actually has in practice.¹²³ He asserts that EITI, being a form of “soft law” is reliant on disclosure compliance by the participating states and there is no guarantee that the states will comply and disclose all relevant, accurate information; therefore, while EITI can be useful, it is not the foolproof solution to eradicating the resource curse.¹²⁴ Be that as it may, it is important to recognize that voluntary initiatives like EITI are a means to an end and not an end in themselves.¹²⁵ EITI itself is alive to the fact that it is not the silver bullet to end corruption in resource-rich countries but rather one among many tools that may help in promoting good governance.¹²⁶

Closer home, the petroleum sector was largely governed by the Petroleum (Exploration and Production) Act CAP 308 of 1984 and several other regulations.¹²⁷ With the advent of the Constitution of Kenya, 2010, and the discovery of oil in 2012, there was the realization that the existing petroleum laws were outdated and insufficient in promoting good governance in the sector.¹²⁸ This led to the enactment of The Energy Act No. 1 of 2019 and the Petroleum Act No.2

¹²¹ Sovacool B and Andrews N, ‘Does Transparency Matter? Evaluating the Governance Impacts of the Extractive Industries Transparency Initiative (EITI) in Azerbaijan and Liberia’ (2015) 45 Resources Policy 183, 183 <<http://www.sciencedirect.com/science/article/pii/S0301420715000409>>.

¹²² David-Barrett L and Okamura K, ‘The Transparency Paradox: Why Do Corrupt Countries Join EITI’ (2013) 2 <<http://sro.sussex.ac.uk/id/eprint/52111/>>.

¹²³ Andrews N, ‘A Swiss-Army Knife? A Critical Assessment of the Extractive Industries Transparency Initiative (EITI) in Ghana’ (2016) 121 Business and Society Review 59, 62 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/basr.12081>>.

¹²⁴ Andrews N, ‘A Swiss-Army Knife? A Critical Assessment of the Extractive Industries Transparency Initiative (EITI) in Ghana’ 59–62.

¹²⁵ Dumbuya R, ‘The Implementation of the EITI by Developed Nations and the EU’s Transparency Related Initiatives, Such as Chapter 10 of the Directive 2013/34 EC: Will It Help or Hinder the Sustainable Development of Resource Rich Nations?’ (Social Science Research Network 2014) SSRN Scholarly Paper ID 2541422 5 <<https://papers.ssrn.com/abstract=2541422>>.

¹²⁶ ‘How We Work’ (*Extractive Industries Transparency Initiative*) <<https://eiti.org/about/how-we-work>>.

¹²⁷ ‘Conducting-Oil-Gas-Activities-Kenya-1.Pdf’ 1 <<https://www.africalegalnetwork.com/wp-content/uploads/sites/22/2017/05/Conducting-Oil-Gas-Activities-Kenya-1.pdf>>.

¹²⁸ ‘Introduction to the Upstream Oil and Gas Industry.Pdf’ 1–5 <<http://oilandenergy.co.ke/downloads/Introduction%20to%20the%20Upstream%20Oil%20and%20Gas%20Industry.pdf>>.

of 2019 are the key laws influencing the oil and gas sector.¹²⁹ The Energy Act is the primary law directing the downstream energy activities whereas the Petroleum Act places a lot of emphasis on upstream activities.

Despite these new laws however, Kameri-Mbote argues that Kenya's extractive industry lacks adequate provision for access to information.¹³⁰ Even with the Access to information Act being in force, Wasunna notes that many Kenyans still do not understand the workings of the extractive industry and the existence of confidentiality clauses hampers access to certain information.¹³¹ Ongaro and Nderi observe that this lack of adequate provision for access to information, the fact that the extractive industry involves multiple players, complex accounting procedures, and a long standing tradition of secrecy when it comes to disclosing licenses awarded, predisposes this industry to corruption and the resource curse and hence the urgent need to integrate transparency and accountability in this industry to cultivate good governance.¹³² Indeed, the emergence of the freedom of information movement worldwide further reinforces the importance of access to information as a right and not merely a privilege.¹³³

A recent occurrence that points to the need for a framework to govern transparency and accountability in Kenya's oil sector is the now infamous Early Oil Pilot Scheme (EOPS). EOPS was a controversial project through which Kenya sold 240,000 barrels of her crude to ChemChina for a price of Kshs 1.2 billion. Proponents of EOPS lauded it as vital in presenting Kenya's crude oil to the international arena and a critical litmus to test Kenya's oil governance¹³⁴ whereas critics viewed it as a loss-making venture with no economic rationale. Despite all this, EOPS remained shrouded in secrecy and to date it is unclear as to who between Tullow Oil and the government shouldered the cost implications of EOPS and also as to how the Kshs1.2 billion revenue earned

¹²⁹ 'Petroleum Act, 2019 Is Now in Force - Bowmans' <<https://www.bowmanslaw.com/insights/oil-gas/petroleum-act-2019-is-now-in-force/>>.

¹³⁰ Mbote, 'Extractive Industries in Kenya: A Blessing or A Curse', (Key Note Speech), UNDP and Civil Society, Leisure Lodge, November 2014.

¹³¹ 'NEEDS ASSESSMENT REPORT ON ACCESS TO INFORMATION IN KENYA'S EXTRACTIVES SECTOR' 49, 30–31.

¹³² Osogo J and Wasunna M, *Mining Law: Commentaries on Kenya's Framework Legislation* (2018) 113–114.

¹³³ Jessica L Beyer, 'The Emergence of a Freedom of Information Movement: Anonymous, WikiLeaks, the Pirate Party, and Iceland' (2014) 19 *Journal of Computer-Mediated Communication* 141, 2 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/jcc4.12050>>.

¹³⁴ 'The Early Oil Pilot Scheme: A Litmus Test of Kenya's Oil Governance | Oxfam in Kenya' <<https://kenya.oxfam.org/latest/blogs/early-oil-pilot-scheme-litmus-test-kenya%E2%80%99s-oil-governance>>.

was to be shared.¹³⁵ The scheme came to an end on 2 June 2020, with Tullow Oil announcing that it had achieved its purpose, yet approximately 100,000 barrels of oil still lie at the Kenya Petroleum Refinery Ltd storage facility and it continues to accrue storage charges at the expense of the Kenyan taxpayers.¹³⁶

Similarly, parastatals and government agencies like NOCK, KPC and EPRA have been the subject of numerous intrigues. NOCK has for a long time grappled with mounting allegations of corruption among their top officials.¹³⁷ KPC has also had its fair share of corruption allegations with senior top management officials constantly facing charges of corruption and being hounded out of office.¹³⁸ In 2019 Dr Macharia Irungu, then director at Total Kenya Ltd, was appointed as a director at EPRA, essentially holding two positions that create a conflict of interest.¹³⁹ Such instances give a glimpse into the deplorable status of transparency, accountability and participation in Kenya's oil and gas sector.

Whereas Kenya may benefit from adopting and implementing the EITI standards as Muigua suggests, evidence now shows that transparency alone is not enough to help resource-rich countries benefit from their resources.¹⁴⁰ Gillies and Heuty maintain that while transparency is the generally recommended response to poor governance in resource-rich countries, it has not triggered significant reduction in corruption because of methodological challenges that hamper its accurate observation and also because most initiatives apply transparency too narrowly.¹⁴¹ An approach

¹³⁵ 'KCSPOG-EOPS-Press-Release_August-2019.Pdf' 2 <http://kcspong.org/wp-content/uploads/2019/08/KCSPOG-EOPS-Press-Release_August-2019.pdf> on 27 July 2020.

¹³⁶ 'Taxpayers Lose \$2m in Kenya's Early Oil Scheme' (*The East African*) <<https://www.theeastafrican.co.ke/tea/business/taxpayers-lose-2m-in-kenya-s-early-oil-scheme-1442742>>.

¹³⁷ 'NOCK-Mismanagemnet of the National Oil Corporation of Kenya.Pdf' 1-3 <<http://www.cofek.co.ke/NOCK-Mismanagemnet%20of%20the%20NAtional%20Oil%20Corporation%20of%20Kenya.pdf>>.

¹³⁸ 'Sang's Exit Adds to High CEO Turnover at Kenya Pipeline' (*Business Daily*) Thursday December 06 2018 <<https://www.businessdailyafrica.com/bd/lifestyle/profiles/sang-s-exit-adds-to-high-ceo-turnover-at-kenya-pipeline-2230602>>.

¹³⁹ 'Referee-Player? Severe Conflict of Interest as Total Kenya Boss Now Sits on EPRA Board' (*COFEK*) <<https://www.cofek.co.ke/index.php/news-and-media/2443-severe-conflict-of-interest-as-total-kenya-boss-sits-on-epra-board>>.

¹⁴⁰ Kolstad I and Wiig A, 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?'

¹⁴¹ Gillies A and Heuty A, 'Does Transparency Work - The Challenges of Measurement and Effectiveness in Resource-Rich Countries Spotlight on Resources' (2011) 6 *Yale Journal of International Affairs* 25, 26 <<https://heinonline.org/HOL/P?h=hein.journals/yajoina6&i=153>>.

that incorporates TAP is more effective in promoting good governance in the oil sector as opposed to just focusing on transparency.¹⁴²

Evidence shows that in a resource-rich country where there is transparency, effective accountability and active, unhindered citizen participation, there is more likely to be reduced corruption as opposed to resource-rich countries that solely place emphasis on transparency.¹⁴³ It is against this backdrop that Kwaku posits that transparency, accountability and participation are fundamental tenets that support good governance because they are interdependent and that resource-rich countries should work towards incorporating them in their legal frameworks for managing their oil resources.¹⁴⁴ This view is also supported by Limi who opines that governance is a key determinant for whether resources will benefit a country and more so, transparency and accountability policies, especially in the public sector, will go a long way in ensuring a country turns its resources into a blessing.¹⁴⁵

Desai and Jarvis criticise the tendency to equate transparency with accountability and that while the concepts are interdependent, treating them as synonyms reflects a lack of understanding of these two separate concepts.¹⁴⁶ Accountability is pursued through active and effective citizen participation which in turn leads to transparency.¹⁴⁷ They hold the view that the extractive industry is complex and as such, needs a detailed framework that clearly defines these concepts of transparency, accountability and participation, and incorporates them in an integrated framework.¹⁴⁸

Incorporating TAP will undoubtedly yield better results compared to transparency initiatives alone and Moss et al point out that in most developing resource-rich countries, combining TAP is

¹⁴² Landau K and Bassetti V, 'The Evolution of the EITI and next Steps for Tackling Extractive Industries Corruption' (*Brookings*, 30 July 2020) <<https://www.brookings.edu/blog/up-front/2020/07/30/the-evolution-of-the-eiti-and-next-steps-for-tackling-extractive-industries-corruption/>>.

¹⁴³ Eisen N, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' 6.

¹⁴⁴ Appiah-Adu K, *Governance of the Petroleum Sector in an Emerging Developing Economy*, Taylor & Francis Group (2013) 79–82 <<http://ebookcentral.proquest.com/lib/strathmore-ebooks/detail.action?docID=4512703>>.

¹⁴⁵ Iimi A, 'Escaping from the Resource Curse: Evidence from Botswana and the Rest of the World' 3.

¹⁴⁶ Desai D and Jarvis M, 'Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank' (2012) 30 *Journal of Energy and Natural Resources Law* 101, 109 <<https://heinonline.org/HOL/P?h=hein.journals/jenr130&i=109>>.

¹⁴⁷ Desai D and Jarvis M, 'Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank' 109.

¹⁴⁸ Desai D and Jarvis M, 'Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank' 108–119.

avoided because there exists a sense of indifference between the citizens and the government, the social contract is non-existent so to speak.¹⁴⁹ This therefore means that the governments deliberately formulate opaque contracting and budgeting systems and there is a sense of apathy from the citizens because they do not expect much from their governments, which ultimately leads to a lack of accountability and participation.¹⁵⁰ They therefore believe that in such countries, governments deliberately avoid integrating TAP as they want to benefit from corruption and illicit financial flows.¹⁵¹

The TAP-plus framework points to the need to combine TAP because of its positive impact on coordination, coherence and integration.¹⁵² Tyce avers that state capture and inter-core contestations among political elites in Kenya led to a rush to develop new laws governing the oil and gas sector which in turn resulted in an incoherent institutional framework which threatens Kenya's oil sector's viability and credibility.¹⁵³ Policy coherence is important because it ensures that all policies work in synergy to achieve good development outcomes by eliminating the barriers to development.¹⁵⁴

1.8.3 Conclusion

While other academics are skeptical of the potential benefits of oil and gas exploration because of their strong link with the resource curse, others hold the view that natural resources in themselves have no inherent power to be either a curse or a blessing. What determines the trajectory a country takes is the effectiveness or defectiveness of the governance system a country has in place. This literature review has demonstrated the importance of good governance in the oil and gas sector. Over the years, policy makers and academics alike have had diverging viewpoints on what entails good governance. While others support transparency promoting initiatives, others view transparency alone as inadequate in achieving good governance in the oil and gas sector. The silver

¹⁴⁹ Moss T, Lambert C and Majerowicz S, *Oil to Cash: Fighting the Resource Curse through Cash Transfers* (Brookings Institution Press 2015) 1–3 <<http://ebookcentral.proquest.com/lib/strathmore-ebooks/detail.action?docID=3563438>>.

¹⁵⁰ Moss T, Lambert C and Majerowicz S, *Oil to Cash: Fighting the Resource Curse through Cash Transfers* 3.

¹⁵¹ Moss T, Lambert C and Majerowicz S, *Oil to Cash: Fighting the Resource Curse through Cash Transfers* 1.

¹⁵² Eisen N, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' 7.

¹⁵³ Matthew Tyce, 'Unrealistic Expectations, Frustrated Progress and an Uncertain Future? The Political Economy of Oil in Kenya' (2020) 7 *The Extractive Industries and Society* 729 <<http://www.sciencedirect.com/science/article/pii/S2214790X19304010>>.

¹⁵⁴ Stephen Mutimba and Rachel Wanyoike, 'TOWARDS A COHERENT AND COST-EFFECTIVE POLICY RESPONSE TO CLIMATE CHANGE IN KENYA: COUNTRY REPORT' 60, 3.

lining is that there is now emerging consensus on the need to combine transparency, accountability and participation as a more effective way of promoting good governance in the oil and gas sector.

When it comes to Kenya, several authors holding the view that matters of good governance have not adequately been addressed in the petroleum sector. There is an apparent lack of coordination, coherence and integration in the application of TAP in Kenya. The literature reviewed points to the need to integrate the multiple stakeholders in the oil and gas industry in Kenya, to align laws related to the sector to ensure there is coherence, synergy, that all players are working towards promoting good governance and this is what the TAP-plus framework seeks to achieve.

1.9 Research methodology

This research is based on the doctrinal methodology and a desk-based review of existing literature. This is the most appropriate method for achieving the objectives of the research and answering the research questions because majority of information contained here has been gathered from primary legal sources such as the Constitution of Kenya, statutes, conventions and treaties. Secondary sources that have been employed in this research include government reports, authoritative journal articles, academic books, newspaper articles, publications from civil society organisations as well as commentaries from think tanks in the oil and gas sector.

Majority of the reading materials were found in the Strathmore University library, as well as online research platforms such as HeinOnline, JSTOR, Taylor & Francis Online, ProQuest, Lexis Library, Kenya Law Reports among other digital library platforms.

1.10 Limitations of this research

The scope of this research has been limited by the fact that Kenya has not yet reached commercial oil production, which is when the most impactful consequences of poor governance can begin to manifest. This study is therefore speculative because it attempts to show how the TAP-plus framework can help improve good governance in Kenya's oil and gas sector; but the true effectiveness of any TAP initiative can only be truly realized when the oil and gas sector is at more advanced stages of development.

1.11 Chapter Breakdown

- Chapter 1: **Introduction:** This contains the proposal to the research. It gives a basic introduction and brief background to the problem, the statement of the problem, the conceptual framework, literature review and sets out the objectives of this research.
- Chapter 2: **The TAP-plus framework in international law:** This chapter gives a detailed analysis of the nature, scope and content of the TAP-plus framework. It also discusses how the TAP-plus framework showcases the importance of a whole-of-government approach in promoting good governance. It depicts the importance of policy coherence and coordination in anti-corruption measures in the oil and gas sector.
- Chapter 3: **The Search for coordination, coherence and integration in TAP provisions governing the oil and gas sector in Kenya:** This chapter reviews the existing laws in Kenya that touch on TAP, with the main focus being on the Constitution of Kenya, The Petroleum Act 2019, the Energy Act 2019, the Access to Information Act 2016, Kenya Vision 2030 and other relevant laws. The chapter further points out the existing gaps in the current laws related to TAP.
- Chapter 4: **Implementing the TAP-plus Framework in Kenya:** This chapter discusses the need for a comprehensive legal and institutional framework on TAP in Kenya. It discusses why Kenya needs to implement the TAP-plus framework as a tool for promoting good governance, greater coherence and coordination in anti-corruption efforts.
- Chapter 5: **Conclusion, Findings and Recommendations**

CHAPTER 2: THE TAP-PLUS FRAMEWORK IN INTERNATIONAL LAW

2.1 Introduction

The aim of this chapter is to discuss the nature, scope and content of the TAP-plus framework. The focus herein is on international and regional instruments that promote the TAP-plus framework. It begins by offering an in-depth discussion on transparency, accountability and participation and shows why it is necessary to incorporate all these three concepts together as a way to promote policy coherence and coordination in entrenching good governance in the oil and gas sector. This will go a long way in helping to better understand what the framework entails. The framework is backed by extensive bibliography review, existing evidence and lessons from experience which have shown that to achieve the change that is needed in combating corruption in the oil and gas sector and achieve better development outcomes, there is need to combine TAP as opposed to applying these concepts in isolation.¹⁵⁵

2.2 Elements and content of TAP

Currently, TAP are regarded as desirable and the socially acceptable norms that the government, oil corporations and other stakeholders in the oil and gas sector are supposed to adhere to in order to promote good governance.¹⁵⁶ Their demand is even greater because of their close association with fundamental human rights such as the right to access information.¹⁵⁷ This is what led to transparency being embedded in Article 19 of the Universal Declaration of Human Rights (UDHR) in 1948.¹⁵⁸ Philosophers like Immanuel Kant even considered transparency as an integral part of public law.¹⁵⁹ While talk on TAP has been the focus of philosophers for many years, they were not fully regarded as legal standards, rather, they were treated as prevailing mores of a society that should guide people's conduct.

When it comes to the oil and gas sector, it has for a long time been characterized by opacity. IOCs would operate in developing countries without much regard for TAP as that was not deemed as

¹⁵⁵ Norman Eisen, Daniel Kaufmann, Nathaniel Heller, J Preston Whitt, Mario Picon, Victoria Bassetti, and John, 'The TAP-Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (*Brookings*, 28 June 2020) <<https://www.brookings.edu/research/the-tap-plus-approach-to-anti-corruption-in-the-natural-resource-value-chain/>>.

¹⁵⁶ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 48.

¹⁵⁷ Vladyslav Darahan, 'The History of the Principle of Transparency in International Trade Law' (2020) 3 *Lex Portus* 64–65.

¹⁵⁸ United Nations, 'Universal Declaration of Human Rights' (*United Nations*) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>.

¹⁵⁹ Immanuel Kant, *To Perpetual Peace: A Philosophical Sketch* (Hackett Publishing Company 2003) 135.

industry practice. This caused activists like Ken Saro-Wiwa of Nigeria to lament about how oil companies were complicit in environmental degradation and human rights violations but such claims were met with great resistance from the governments and oil companies.¹⁶⁰ At the same time, TAP was fast growing as a norm in other sectors such as trade and international human rights, and this led donors and other well established international NGOs in the oil and gas sector to see the link between good governance and economic development. This led to a more vibrant and robust agitation for TAP as more than just a “morally right” thing to do but as a concrete industry norm.

In 1999, a Global Witness report revealed how lack of transparency in the oil sector contributed to civil war and the plundering of state assets in Angola.¹⁶¹ The report strongly highlighted the need to prioritize TAP in the oil and gas sector and for the first time, placed responsibility on both the governments and private sector actors to disclose information about the oil sector revenue flows and operations. It is against this backdrop, coupled with the growing emergence of freedom of information laws,¹⁶² that led a coalition of NGOs in 2002 to launch the PWYP campaign to call for revenue transparency in the oil and gas sector.¹⁶³ The EITI was also launched in 2002 and over 70 extractive companies worldwide support the initiative, a clear indication that TAP promoting initiatives are gaining popularity in the oil and gas sector.¹⁶⁴

Currently, numerous laws and policies have some form of provision for TAP as important concepts that are meant to promote good governance. The United Nations Convention Against Corruption calls for transparency as a way of combating the insidious plague that is corruption.¹⁶⁵ This provision is replicated in the Southern Africa Development Community (SADC) Protocol Against Corruption, which in its preamble acknowledges transparency as an important element in the fight

¹⁶⁰ Marion Campbell, ‘Witnessing Death: Ken Saro-Wiwa and the Ogoni Crisis’ (2002) 5 *Postcolonial Studies* 39, 1–5 <<https://doi.org/10.1080/13688790220126870>> accessed 22 July 2021.

¹⁶¹ ‘A Crude Awakening: The Role of the Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets.Pdf’ 5–18 <<https://cdn2.globalwitness.org/archive/files/pdfs/a%20crude%20awakening.pdf>> accessed 24 May 2021.

¹⁶² Beyer (n 133).

¹⁶³ ‘About - Publish What You Pay’ <<https://www.pwyp.org/about/>>.

¹⁶⁴ ‘EITI Now Supported by 70 Companies’ (*Extractive Industries Transparency Initiative*, 8 November 2012) <<https://eiti.org/news/eiti-now-supported-by-70-companies>>.

¹⁶⁵ United Nations Convention Against Corruption

against corruption.¹⁶⁶ Article 3 of the African Union Convention on Preventing and Combating Corruption also recognises transparency as a key principle when it comes to tackling corruption and ensuring proper management of public affairs.¹⁶⁷ The Paris Declaration on Open Government is yet another instrument that pushes for open government reforms through transparency, accountability and meaningful public participation.¹⁶⁸

Other international law instruments like the International Law Commission Articles on State Responsibility for Internationally Wrongful Acts also codify accountability among states and have now recognised the need to diversify this framework and apply it to international organisations as well.¹⁶⁹ Current global trends show that there is clamor for accountability to a variety of organisations (NGOs, IGOs) as well as corporate bodies and there is a need to align the accountability requirements with practice to make them practical.¹⁷⁰ Most accountability requirements are usually skewed in favor of those in power or those with a financial interest and that is why it becomes necessary to develop a framework that is inclusive because accountability increases legitimacy, trust and it strengthens governance structures.¹⁷¹ In the same breath, the AU Convention on Preventing and Combating Corruption places great emphasis on accountability as a mechanism to promote good governance.¹⁷²

The East African Community Protocol on Environment and Natural Resource Management is also founded on the principle of public participation when it comes to formation of policies, plans and activities.¹⁷³ In the same vein, the UN Convention Against Corruption in Article 5(1) advocates

¹⁶⁶ 'Protocol_Against_Corruption2001.Pdf' 2

<https://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf> accessed 28 March 2021.

¹⁶⁷ '36382-Treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.Pdf' 6

<https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf>.

¹⁶⁸ 'Paris Declaration' (*Open Government Partnership*) <<https://www.opengovpartnership.org/paris-declaration/>>.

¹⁶⁹ Slabbinck R and Bocken H, 'Responsibility of States for Internationally Wrongful Acts', in Hannes Descamp, *International Documents on Environmental Liability*, Springer Netherlands (2008), <http://link.springer.com/10.1007/978-1-4020-8367-9_22>.

¹⁷⁰ Hammer M and others, *Pathways to Accountability II: The 2011 Revised Global Accountability Framework : Report on the Stakeholder Consultation and the New Indicator Framework*, One World Trust 2011, 3–13.

¹⁷¹ Blagescu M, Lucy de Las Casas and Lloyd R, 'Pathways to Accountability' 80, 8–13.

¹⁷² '36382-Treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.Pdf' 6

<https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf>.

¹⁷³ 'Revised_PROTOCOL-on-Environment-and-Natural-Resources-24-August-2018.Pdf' 16

<http://www.environment.go.ke/wp-content/uploads/2018/11/Revised_PROTOCOL-on-Environment-and-Natural-Resources-24-August-2018.pdf>.

for public participation as a preventive mechanism for anticipating, identifying and addressing corruption.¹⁷⁴ It calls on countries to ensure “coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

While not all of these instruments directly target the oil and gas sector, they nonetheless demonstrate the important role that TAP plays in promoting good governance.

2.3 Coordination, policy coherence and integration as the “plus”

2.3.1 Coordination

This has been defined as the intentional alignment of units, duties and efforts so as to produce harmonious results.¹⁷⁵ It involves a recalibration of the actions and decisions of the government in order to achieve the targeted TAP objectives.¹⁷⁶ Coordination is necessary for policy coherence to be effective¹⁷⁷ because a lack of it has the potential of leading to duplication of efforts, wastage of funds, conflicting agendas and ultimately, policy paralysis.¹⁷⁸

The two main characteristics of coordination are that it creates an environment where there is exchange of information and knowledge and there are clearly defined roles and responsibilities for all the parties that are meant to coordinate. Where duties and responsibilities are not clearly defined, collective action problems that need TAP will continue to bedevil the oil and gas sector.¹⁷⁹ Policy coherence places emphasis on different government institutions as well as other stakeholders working together to achieve optimal results while making sure that the roles and responsibilities of one institution do not contradict or undermine those of another institution.¹⁸⁰

2.3.1.1 Types of coordination

Internal and external

¹⁷⁴ ‘United Nations Convention Against Corruption’ (n 165) 9.

¹⁷⁵ Tom Christensen, ‘Governance Coordination Capacity and Quality. Does Wicked Policy Areas Matter?’ 27, 4.

¹⁷⁶ ‘Exploring the Co-Ordination of Economic Regulation: Journal of European Public Policy: Vol 21, No 9’ 9 <<https://www.tandfonline.com/doi/abs/10.1080/13501763.2014.923023>>.

¹⁷⁷ ‘Governance as an SDG Accelerator’ <[././././gov-2019-3980-en/index.html](https://www.gov.uk/government/news/governance-as-an-sdg-accelerator)> accessed 21 May 2021.

¹⁷⁸ Olsen W, Kenya-new opportunities-new challenges, INTSOK, Norwegian Oil and Gas partners, 18

¹⁷⁹ Noele Crossley, ‘Conceptualising Consistency: Coherence, Principles, and the Practice of Human Protection’ (2020) 12 Global Responsibility to Protect 440, 440–463 <https://brill.com/view/journals/gr2p/12/4/article-p440_440.xml>.

¹⁸⁰ ‘Policy Coherence for Sustainable Development :: Scotland’s International Development Alliance’ <<https://www.intdevalliance.scot/how-we-help/policy-and-advocacy/policy-coherence-sustainable-development>>.

Internal coordination refers to collaboration in and among the government actors, coordinating the activities of persons working within a certain ministry.¹⁸¹ External coordination on the other hand involves collaboration between the government and other stakeholders (like CSOs, NGOs, private sector interest organizations) within the oil and gas sector.¹⁸² The natural resource value chain involves multiple actors and that in itself can cause fragmentation when all these stakeholders operate in an uncoordinated and isolated manner hence making it difficult for anti-corruption efforts like TAP to succeed.¹⁸³

Additionally, the sector is particularly technical and requires advanced technology and it is crucial to ensure government officials within the ministry have the level of expertise and technological know-how or can retain persons with such expertise.¹⁸⁴ This includes capacity development which aims to ensure government officials and all stakeholders have the necessary knowledge and skills to work together, make decisions and implement policies that promote good resource governance.¹⁸⁵

Horizontal and vertical

Horizontal coordination refers to intra-level collaboration between different government ministries, agencies or departments.¹⁸⁶ Vertical coordination on the other hand is the inter-level collaboration between an executive and the support staff or a parent ministry and subordinate agencies, departments etc.¹⁸⁷ These types of coordination become even more needed where there is decentralization and decision-making power and responsibility over policies is both at the national as well as county government levels.¹⁸⁸ Whereas decentralizing functions is a good thing for empowerment, it is important to consider the financial constraints that decentralization can

¹⁸¹ Marume and Jaricha, 'Coordination As An Essential Part of Public Administration.Pdf' 7 <<http://www.questjournals.org/jrhss/papers/vol4-issue6/B460609.pdf>>.

¹⁸² Tom Christensen, 'The Challenge of Coordination in Central Government Organizations' 33, 11–14.

¹⁸³ Anna Rubin, 'Policy Coherence at the Local Level: Aligning Employment, Skills and Economic Development Policy' 10, 3–5.

¹⁸⁴ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 112.

¹⁸⁵ 'Capacity Development Amid Uncertainty' (*Natural Resource Governance Institute*, 16 April 2020) <<https://resourcegovernance.org/blog/capacity-development-amid-uncertainty>>.

¹⁸⁶ Christensen, 'The Challenge of Coordination in Central Government Organizations' 12.

¹⁸⁷ Marume and Jaricha, 'Coordination As An Essential Part of Public Administration' (n 183) 7.

¹⁸⁸ Mosely Hugh, 'Decentralization and Co-ordination: The Twin Challenges of Labour Market Policy.Pdf' 1 <<https://www.oecd.org/employment/leed/40917889.pdf>>.

bring as well as the fragmentation, bureaucracy and incoordination, especially of activities that cut across several departments, ministries, agencies etc.¹⁸⁹

While all these types of coordination are necessary to ensure good governance, there are some barriers that can inhibit effective coordination.¹⁹⁰ To begin with, there are behavioral elements such as disruptive or difficult personalities, lack of a common language etc. which though minor, can have an impact on coordination.¹⁹¹ Perhaps a more significant barrier is the structural element of lack of political backing, support or goodwill to ensure there is coordination in order to promote TAP.¹⁹² This inhibitor makes achieving information exchange very challenging because most governments believe in the notion “information is power” and are keen on avoiding coordination and working in synergy with other partners so as to retain that power.¹⁹³ It is for this reason that the Resolution on Human Rights Based Approach to Natural Resource Governance underscores the importance of coordination, interdependence and information sharing as a way of restraining corruption, illicit financial flows and bad governance in the oil and gas sector.¹⁹⁴

2.3.2 Policy coherence

This is used to refer to a situation where all policies that govern operations of a certain industry or sector are designed in such a way that they end up complementing each other and are consistent throughout the text.¹⁹⁵ Policy coherence is an important component that is recognized under guiding principle 8 of the United Nations Guiding Principles.¹⁹⁶ It is further embedded in target 17.14 of the Sustainable Development Goals (SDGs) where countries are encouraged to enhance

¹⁸⁹ B Guy Peters and Donald J Savoie, ‘Managing Incoherence: The Coordination and Empowerment Conundrum’ (1996) 56 *Public Administration Review* 281, 281 <<https://www.jstor.org/stable/976452>>.

¹⁹⁰ Evert Meijers and Dominic Stead, ‘Policy Integration: What Does It Mean and How Can It Be Achieved? A Multi-Disciplinary Review’ 15, 6–7.

¹⁹¹ Linda Challis and others, *Joint Approaches to Social Policy: Rationality and Practice* (Cambridge University Press 1988) 209–230 <<https://www.cambridge.org/core/books/joint-approaches-to-social-policy/DFB52FE96789D1D4A979A5BCBA8D51A1>>.

¹⁹² Challis and others, ‘Joint Approaches to Social Policy: Rationality and Practice’ 209–230.

¹⁹³ B Guy Peters, ‘The Challenge of Policy Coordination’ (2018) 1 *Policy Design and Practice* 1, 5 <<https://www.tandfonline.com/doi/full/10.1080/25741292.2018.1437946>>.

¹⁹⁴ ‘Resolution on a Human Rights-Based Approach to Natural Resources Governance’ ACHPR/Res.224 (LI) 2012 <<http://rio20.net/en/propuestas/resolution-on-a-human-rights-based-approach-to-natural-resources-governance/>>.

¹⁹⁵ Guillermo M Cejudo and Cynthia L Michel, ‘Addressing Fragmented Government Action: Coordination, Coherence, and Integration’ (2017) 50 *Policy Sciences* 745, 8 <<http://link.springer.com/10.1007/s11077-017-9281-5>>.

¹⁹⁶ ‘Guiding principles on business and human rights_en.Pdf’ 10 <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed 16 March 2021.

policy coherence as one of the ways of attaining sustainable development.¹⁹⁷ Similar provisions are echoed in the African Convention on the Conservation of Nature and Natural Resources which has one of its objectives as harmonizing and coordinating policies on natural resources in order to ensure there is coherence within the law and its application.¹⁹⁸ Without a coherent TAP framework, it is difficult for good governance in the oil and gas sector to thrive.¹⁹⁹

Owing to the nature of the oil and gas sector, functions and operations of different ministries and agencies are bound to intersect and therefore various components of the TAP policies will correspond because they share the same objective which is to ensure good governance.²⁰⁰ Therefore, for policies to be coherent, there needs to first be coordination between the policymakers to ensure related policies are aligned to reinforce each other or at the very least, that they do not counteract each other.²⁰¹ Having mutually reinforcing policies that cut across all the relevant institutions that are involved in the oil and gas sector²⁰² in addition to a coordinated workforce, helps government achieve its TAP objectives more efficiently.²⁰³ Additionally, coherence within the national laws on TAP as well as international norms goes a long way in combating corruption and illicit financial flows in the oil and gas sector.²⁰⁴

Policy incoherence is sometimes used deliberately as a political tool to turn a blind eye to corruption and evade accountability.²⁰⁵ This happens when legislators deliberately form broad and ambiguous laws or set extremely high (nearly impossible) standards on parties seeking to enforce

¹⁹⁷ '17.14 Enhance Policy Coherence for Sustainable Development – Indicators and a Monitoring Framework' <<https://indicators.report/targets/17-14/>>.

¹⁹⁸ 'African convention on the conservation of nature and natural resources e.Pdf' <https://au.int/sites/default/files/treaties/7782-treaty-0029_-_revised_african_convention_on_the_conservation_of_nature_and_natural_resources_e.pdf> accessed 27 May 2021.

¹⁹⁹ Crossley 'Conceptualising Consistency: Coherence, Principles, and the Practice of Human Protection' 440–463.

²⁰⁰ Peter J May and others, 'Policy Coherence and Component-Driven Policymaking: Arctic Policy in Canada and the United States' (2005) 33 Policy Studies Journal 37, 37–63 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1541-0072.2005.00091.x>>.

²⁰¹ 'Principles for Policy Coherence | Making Better Policies for Food Systems | OECD Library' Chapter 2 <<https://www.oecd-ilibrary.org/sites/ddcf9356-en>>.

²⁰² 'Policy Coherence | Capacity Development' <<https://www.un.org/development/desa/capacity-development/what-we-do/areas-of-work/policy-coherence/>>.

²⁰³ 'Policy Development and Co-Ordination - OECD' <<http://www.sigmaweb.org/ouexpertise/policy-development-coordination.htm>>.

²⁰⁴ Coherent Policies For Combating Illicit Financial Flows, UNODC, OECD, IATF_Issue_Brief.pdf (2016) 1–7 <<https://www.oecd-ilibrary.org/development/coherent-policies-for-combating-illicit-financial-flows-en>>.

²⁰⁵ Peters, 'The Challenge of Policy Coordination' 3–5.

the given law thereby hindering TAP.²⁰⁶ Furthermore, politicians are usually not held accountable for the final outcome of the policies they initiate and this often causes them to be attracted to the possibility of short-term gain, and they ignore or fail to thoroughly probe issues to come up with realistic, coherent, workable policies.²⁰⁷ This happens often because the process of adopting a legal framework is usually viewed as an end in itself and the process of ensuring that these adopted laws are coherent and can be properly integrated is ignored.²⁰⁸ All laws and policies that address TAP in the oil and gas sector therefore need to be coherent if good governance is to be attained.²⁰⁹

2.3.3 Policy Integration

This concept, though similar to policy coherence and coordination, is more profound than the two because it results in one joint policy for the oil and gas sector whose cross-cutting objective is to promote good governance,²¹⁰ in this case through the combination of TAP. It refers to the process of replacing certain elements of existing policy such as the goals, objectives, roles and responsibilities, with a new framework that combines all these elements, in a bid to avoid the counterproductivity that arises from treating interrelated concepts in isolation.²¹¹ Integration has its roots in Article 31(3)(c) of the Vienna Convention on the Law of Treaties under what is now referred to as systemic integration.²¹² It is further enshrined in goal 17 of the SDGs which is a call for countries to align their national policies to the SDGs framework.²¹³

A variety of other international and regional instruments also point out the need to have a coordinated, coherent and integrated TAP framework governing the oil and gas sector to properly curb corruption and illicit financial flows and ensure good governance in the sector. The Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the

²⁰⁶ David Barnhizer, 'The Implementation Gap: What Causes Laws to Succeed or Fail?' 1–6 <https://works.bepress.com/david_barnhizer/79/>.

²⁰⁷ Bob Hudson, David Hunter and Stephen Peckham, 'Policy Failure and the Policy-Implementation Gap: Can Policy Support Programs Help?' (2019) 2 Policy Design and Practice 1 <<https://doi.org/10.1080/25741292.2018.1540378>>.

²⁰⁸ 'Improving Public Governance: Closing the Implementation Gap between Law and Practice' (*Center for International Private Enterprise*) 1 <<https://www.cipe.org/resources/improving-public-governance-closing-implementation-gap-law-practice/>>.

²⁰⁹ Cejudo and Michel, 'Addressing Fragmented Government Action: Coordination, Coherence and Integration' 8.

²¹⁰ Meijers and Stead 'Policy Integration: What Does It Mean and How Can It Be Achieved? A Multi-Disciplinary Review' 4–5.

²¹¹ Jeremy Rayner and Michael Howlett, 'Introduction: Understanding Integrated Policy Strategies and Their Evolution' (2009) 28 Policy and Society 99 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>.

²¹² 'Vienna Convention on the Law of Treaties (1969)' 31, 13.

²¹³ 'Goal 17 | Department of Economic and Social Affairs' <<https://sdgs.un.org/goals/goal17>>.

Extractive Industry Sector is convinced that to achieve good governance in the oil and gas sector, African countries need a transformative framework that is well synchronized with other laws and that promotes cooperation among all the stakeholders.²¹⁴ A similar provision is echoed in the African Union Panel of the Wise report which urges countries to systemically integrate TAP dimensions in their natural resource laws.²¹⁵

Integration is meant to deal with the challenge of fragmentation of TAP provisions in the oil and gas sector.²¹⁶ Fragmentation can present itself in the form of conflicting or incoherent laws or sector objectives, plenitude of laws governing a single sector, a decentralized government with different players legislating over the same issues among others.²¹⁷ While fragmentation supports specialization and diversity, it poses a threat to TAP in the oil and gas sector because it makes it difficult for all the stakeholders involved to pull in the same direction which is that of promoting good governance.²¹⁸

2.3.3.1 The process of policy integration

The first process in policy integration is identifying whether a cross-cutting problem exists.²¹⁹ A cross-cutting problem is one that affects all aspects of an industry or sector and therefore requires special focus to address it.²²⁰ Good governance is a cross-cutting issue across the oil and gas sector that requires the effort of all stakeholders in order for it to be achieved. It cannot be the responsibility of only one individual or agency to ensure there is good governance through the implementation of TAP.

²¹⁴ ‘Resolution-on-the-Niamey-Declaration-on-Ensuring-the-Upholding-of-the-African-Charter-in-the-Extractive-Industries-Sector-.Pdf’ ACHPR/Res.367 (LX) 2017 1–3 <<https://www.acdhrs.org/wp-content/uploads/2017/07/Resolution-on-the-Niamey-Declaration-on-Ensuring-the-Upholding-of-the-African-Charter-in-the-Extractive-Industries-Sector-.pdf>>.

²¹⁵ ‘AUP.Pdf’ (n 93) 5.

²¹⁶ ‘Systemic Integration and International Investment Law - Some Practical Reflections | ArbitrationLaw.Com’ <<https://arbitrationlaw.com/library/systemic-integration-and-international-investment-law-some-practical-reflections>>.

²¹⁷ Gabrielle Kissinger, Maria Brockhaus and Simon R Bush, ‘Policy Integration as a Means to Address Policy Fragmentation: Assessing the Role of Vietnam’s National REDD+ Action Plan in the Central Highlands’ (2021) 119 *Environmental Science & Policy* 85 <<https://www.sciencedirect.com/science/article/pii/S1462901121000563>>.

²¹⁸ Gerhard Hafner, ‘Pros and Cons Ensuing from Fragmentation of International Law’ 25 *16*, 849–862.

²¹⁹ Philipp Trein, Martino Maggetti and Iris Meyer, ‘Necessary Conditions for Policy Integration and Administrative Coordination Reforms: An Exploratory Analysis’ (2020) 0 *Journal of European Public Policy* 1 <<https://doi.org/10.1080/13501763.2020.1788121>>.

²²⁰ Jeroen JL Candel and Robbert Biesbroek, ‘Toward a Processual Understanding of Policy Integration’ (2016) 49 *Policy Sciences* 211 <<https://doi.org/10.1007/s11077-016-9248-y>>.

Once the cross-cutting problem has been identified, the next step is to identify the relevant institutions and stakeholders that are responsible or involved in ensuring there is good governance.²²¹ This will also help facilitate coordination among all the relevant stakeholders.

The third step is to identify the policy goals, objectives, roles and responsibilities of each of these stakeholders and look at how coherent and coordinated their policies are.²²² This will help to point out the existing gaps and provide a starting point on what method of integration will be appropriate.

The last step is to settle on a method of policy integration.

2.3.3.2 Methods of policy integration

Various methods can be employed to achieve an integrated policy framework. In choosing which approach to adopt, the policy integration process which has been discussed above, will help to identify whether there is a need to implement new laws or whether the existing laws can be adjusted or re-interpreted to achieve integration.²²³ The methods are discussed herein.

Layering

This is a process which involves embedding new provisions into already existing laws and policies without repealing or revoking the same. In such a case the new provisions form part of the existing requirements and applying them can lead to incoherence and inconsistency.²²⁴

Conversion

This process involves making changes to existing laws and policies governing TAP such that incoherent and contradicting provisions are removed or rephrased to ensure there is coherence, consistency and clarity.²²⁵

Displacement/Replacement

²²¹ Candel and Biesbroek, 'Toward a Processual Understanding of Policy Integration'.

²²² Candel and Biesbroek, 'Toward a Processual Understanding of Policy Integration'.

²²³ Weber R, 'Legal Interoperability as a Tool for Combatting Fragmentation.Pdf' 5–6 <https://www.cigionline.org/sites/default/files/gcig_paper_no4.pdf> accessed 31 May 2021.

²²⁴ Daniel Béland, 'Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift' (2007) 88 *Social Science Quarterly* 20, 20–38 <<https://www.jstor.org/stable/42956169>>.

²²⁵ Béland, 'Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift' 20–38.

This involves a change in the existing laws and policies to create a single framework that is consistent, congruent and coherent.²²⁶ It does away with the existing policies and comes up with a new integrated framework.

The golden thread that runs across policy integration is the aim to consolidate all TAP provisions in the oil and gas sector and have a single coordinated and coherent framework that promotes good governance as opposed to having several policies that touch on the same issues.²²⁷

Additionally, integration seeks to have a whole-of-government approach by harmonizing the roles and responsibilities of institutions in the oil and gas sector to ensure they are aligned and that one's functions do not counteract or overlap with another's.²²⁸

2.4 Conclusion

To date, despite significant efforts and support for TAP initiatives, the oil and gas industry still remains prone to corruption risks that consequentially undermine good governance. The reason for this has to a great extent been the division of TAP with different initiatives focusing only on transparency or on accountability alone or solely on participation. The TAP-plus framework offers an attractive new outlook, backed by extensive research and lessons from experience of other resource rich countries worldwide. The framework recognizes that adopting a TAP troika produces significant improvement in good governance in resource rich countries as opposed to focusing on separate strands of TAP.

Indeed, most oil producing countries already have laws and policies that address TAP and good governance but the same are fragmented, incoherent, uncoordinated or burdened with inconsistencies. For this reason, the TAP-plus framework focuses on combining TAP in a bid to promote coordination, coherence and integration. Additionally, countries with limited human capacity, limited experience and knowledge in the workings of the oil and gas sector often require the presence of sector laws and policies that are detailed and well put together. This therefore means that for an intervention to achieve optimum results, ensuring there is synergy, cohesion and

²²⁶ *Designing Government: From Instruments to Governance* (McGill-Queen's University Press 2005) <<https://www.jstor.org/stable/j.cttq938d>>.

²²⁷ Campbell McLachlan, 'The Principle of Systemic Integration and Article 31(3)(C) of the Vienna Convention' (2005) 54 *The International and Comparative Law Quarterly* 279, 280–282 <<http://www.jstor.org/stable/3663251>> accessed 27 May 2021.

²²⁸ Candel and Biesbroek (n 223).

coherence among the laws, relevant institutions and all stakeholders involved is an important precondition.

Given the potential of the TAP-plus framework to revolutionize and strengthen good governance in the oil and gas sector, it is wise to discuss the current provisions in Kenya related to TAP. This will give good insight into how the legal regime governing TAP in the oil sector in Kenya currently stands, point to any shortfalls and give a clear picture as to how the TAP-plus framework can be of benefit to Kenya.



CHAPTER 3: THE SEARCH FOR COORDINATION, COHERENCE AND INTEGRATION IN TAP PROVISION GOVERNING THE OIL AND GAS SECTOR IN KENYA

3.1 Introduction

The aim of this chapter is to analyze the TAP provisions in Kenya's oil and gas sector and identify any coordination, coherence or integration gaps that may exist. Chapter 2 laid the foundation by unpacking the TAP-plus framework and showed why it is necessary to have coordination, coherence and integration in the oil and gas sector. This chapter will begin by probing the various laws and policies in Kenya that govern TAP in the oil and gas sector and proceed to identify the coordination, coherence or integration gaps and show how those impact on TAP and good governance in Kenya's oil and gas sector. It is important to point out that international treaties and conventions which Kenya has ratified form part of its laws by virtue of Article 2(6) of the Constitution, and the same applies to general rules of international law which are deemed to be part of the law of Kenya as per Article 2(5). Majority of these international and regional instruments that apply to Kenya have already been discussed in Chapters 1 and 2 and this section will therefore place more focus on domestic laws.

3.2 The search for coordination, coherence and integration in TAP laws and policies in Kenya

Although petroleum exploration activities in Kenya begun in the 1950's in the Lamu Basin, it was not until 2012 when significant amounts of commercially viable oil were discovered in Lokichar.²²⁹ This discovery thrust Kenya to the limelight and made the country start gaining prominence as a potential oil producing country.²³⁰ Kenya had to take steps to prepare for this nascent oil sector and the most significant step was to overhaul the existing legal and institutional framework governing the oil and gas sector.²³¹ The old laws governing this sector were viewed as archaic, inadequate and needed to be aligned to the provisions of the Constitution of Kenya 2010, as well as best international industry practice.²³² On March 12, 2019, president Uhuru Kenyatta signed into law the Energy Act 2019 and the Petroleum Act 2019, ushering in a new legislative

²²⁹ 'Upstream – National Oil Corporation of Kenya' <<https://nationaloil.co.ke/upstream/>> accessed 18 March 2021.

²³⁰ 'Introduction to the Upstream Oil and Gas Industry.Pdf' (n 128) 3.

²³¹ 'ESAL-Overview-of-the-Petroleum-Act-2019.Pdf' 2 <<https://esalafrika.com/wp-content/uploads/2019/04/ESAL-Overview-of-the-Petroleum-Act-2019.pdf>>.

²³² 'ESAL-Overview-of-the-Petroleum-Act-2019.Pdf' (n 234) 2.

system in the oil and gas sector in Kenya.²³³ Kenya, throughout its political history, has grappled with good governance particularly when it comes to legislating and enforcing TAP provisions, making it critical to examine the current provisions on TAP in the oil and gas sector.²³⁴

3.2.1 Constitution

The Constitution of Kenya 2010, which is the supreme law of the country, has robust provisions relating to TAP.²³⁵ It is the first port of call when it comes to core principles governing natural resource exploitation in Kenya.²³⁶ The starting point is article 10 which binds all state organs, state officers, public officers and all persons to adhere to transparency, accountability and participation of the people, as important national values and principles of governance when making or implementing public policy decisions.²³⁷ Having these key elements enshrined in the Constitution as national values is meant to improve the quality of leadership, lead to higher levels of investment and improve the quality of national resource management.²³⁸

As a matter of fact, the court in *Peter Makau Musyoka & 19 others (suing on their own behalf and on behalf of the Mui Coal Basin Local Community) v Permanent Secretary Ministry of Energy & 14 others [2014]eKLR*²³⁹ emphatically held the view that the precepts of Article 10 of the Constitution are established justiciable rights which are enforceable immediately. This view was further bolstered in *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017]eKLR*²⁴⁰ where the court found that transparency, accountability and participation as provided for in Article 10(2) of the Constitution are justiciable and enforceable rights whose violation provides sufficient basis for a cause of action. This lays a

²³³ 'Kenya's Energy Sector Gets Three New Agencies' (*The East African*) <<https://www.theeastafrican.co.ke/tea/business/kenya-s-energy-sector-gets-three-new-agencies-1414112>>.

²³⁴ 'Adane Bekele, The Challenges of Good Governance in Africa: The Case of Kenya, June 2013Pdf' 7 <<http://etd.aau.edu.et/bitstream/handle/123456789/243/Adane%20Bekele.pdf?sequence=1&isAllowed=y>> accessed 30 March 2021.

²³⁵ Bogere (n 45) 4.

²³⁶ Muigua (n 117) 8.

²³⁷ 'Const2010' <<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>> accessed 1 April 2021.

²³⁸ 'TRAINING-MANUAL-ON-NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE-2017.Pdf' 17 <<https://www.cohesionandvalues.go.ke/wp-content/uploads/2017/04/TRAINING-MANUAL-ON-NVPG-2017.pdf>>.

²³⁹ 'Constitutional Petition 305 of 2012 - Kenya Law' <<http://kenyalaw.org/caselaw/cases/view/95572>> accessed 13 July 2021.

²⁴⁰ 'Civil Appeal 224 of 2017 - Kenya Law' <<http://kenyalaw.org/caselaw/cases/view/138741>> accessed 13 July 2021.

proper foundation for good governance in Kenya's oil and gas sector because TAP are regarded as binding principles.

The constitution further introduces a devolved government in chapter 11. The very nature of a devolved government is that it results in fragmentation because the two levels of government negotiate different agreements and different administrative authorities enforce these agreements.²⁴¹ The constitution appears alive to this fact and article 189 provides for cooperation between the national and county governments.²⁴² This cooperation is in terms of exchange of information, coordination and alignment of policies and for purposes of enhancing capacity.²⁴³ This is an important aspect that promotes coordination, policy coherence and integration because as discussed earlier, for TAP initiatives to succeed, there has to be information exchange and stakeholders working together to achieve the cross-cutting objective of good governance in the oil and gas sector.²⁴⁴ It is particularly important that coordination between the national and county government is adhered to because with the advent of devolution and discovery of oil in Kenya, institutions and county governments have had to take up governing responsibilities which had to a large extent been the preserve of the national government and the lack of necessary training and human capacity to take up these new roles and responsibilities has been a recurring obstacle to good governance in Kenya's oil and gas sector.²⁴⁵

Additionally, article 35 grants all citizens the right to access information held by the state and mandates the state to publish all information affecting the nation.²⁴⁶ Access to information is a necessary precondition for TAP and is also required to facilitate coordination through sharing of information.²⁴⁷ This right is however limited under article 24 and this causes a barrier to effective

²⁴¹ Anne Peters, 'The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization' (2017) 15 *International Journal of Constitutional Law* 671, 3–4
<<https://doi.org/10.1093/icon/mox056>>.

²⁴² 'Const2010' (n 240).

²⁴³ '189. Cooperation between National and County Governments - Kenya Law Reform Commission (KLRC)' <<https://www.klrc.go.ke/index.php/constitution-of-kenya/143-chapter-eleven-devolved-government/part-5-relationships-between-governments/358-189-cooperation-between-national-and-county-governments>>.

²⁴⁴ Mst Begum and Md Momen, 'Coordination and Effective Governance' (2019) 1–4.

²⁴⁵ Patricia I Vasquez, 'Four Policy Actions to Improve Local Governance of the Oil and Gas Sector' [2016] *International Development Policy | Revue internationale de politique de développement* <<http://journals.openedition.org/poldev/2227>> accessed 14 May 2021.

²⁴⁶ 'Const2010' (n 240).

²⁴⁷ Fatou Ndoye, 'Access to Information, Public Participation, and Access to Justice in Environmental Matters' 13, 3–7.

implementation of TAP because it creates incoherence and inconsistency in that on the one hand TAP are recognized as important principles but the means to achieve them, such as access to information, are limited or curtailed.²⁴⁸ To add on, the success of TAP in the oil and gas sector relies heavily on exchange of information between government and stakeholders as a way of promoting synergy and coordination and limiting access to information only works to discourage coordination which in turn renders TAP ineffective in promoting good governance.²⁴⁹

Although the constitution does not explicitly provide for coordination, coherence and integration in the implementation of TAP, it is still evident that these three concepts are meant to bind all public officers when implementing public policy decisions.

3.2.2 Access to information Act

This main objective of this Act is to give life to article 35 of the Constitution on access to information.²⁵⁰ As already discussed, it is important because it gives citizens the right to access any information needed in order to participate meaningfully in democratic processes.²⁵¹ However, just like the Constitution, the right to access information is not an absolute right under section 6 of the Access to Information Act. It is limited to the extent that the requested information is likely to jeopardize commercial interests, undermine national security, infringe a confidentiality agreement among several other instances listed in the Act.²⁵² This limitation is an affront to public participation and accountability because if citizens cannot access information, then they cannot effectively hold government to account.²⁵³ Corruption thrives in environments where there is limited access to information because there is no public participation, no involvement of NGOs,

²⁴⁸ ‘What Are the Limitations to Access to Information | AHADI Toolkit’ <<https://countytoolkit.devolution.go.ke/what-are-limitations-access-information>>.

²⁴⁹ African Development Bank, ‘Information Centre for the Extractives Sector’ (*African Development Bank - Building today, a better Africa tomorrow*, 18 April 2019) <<https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/information-centre-for-the-extractives-sector>>.

²⁵⁰ ‘Access-to-Information-ActNo31.Pdf’ 6 <<https://www.cuk.ac.ke/wp-content/uploads/2018/04/Access-to-Information-ActNo31.pdf>> accessed 31 January 2020.

²⁵¹ ‘Ileg Policy Briefs Transparency and Accountability in the Extractive Sector in Kenya What Works What Does Not.Pdf’ 8 <[Http://Ilegkenya.Org/Wp-Content/Uploads/2020/07/Ileg Policy Briefs Transparency and Accountability in the Extractive Sector in Kenya What Works What Does Not.pdf](http://Ilegkenya.Org/Wp-Content/Uploads/2020/07/Ileg Policy Briefs Transparency and Accountability in the Extractive Sector in Kenya What Works What Does Not.pdf)> accessed 5 April 2021.

²⁵² ‘Access-to-Information-ActNo31.Pdf’ (n 253) 9–10.

²⁵³ ‘Access to Information – and Its Constraints’ (*GSDRC*) <<https://gsdrc.org/topic-guides/communication-and-governance/access-to-information-and-its-constraints/>>.

CSOs; and that is why it is necessary to ensure there are very few, if any, restrictions to the right to access information.²⁵⁴

Still on access to information in Kenya, there has been inconsistency and contradictions as to the definition of who a “citizen” is as this determines whether or not the person will be allowed to access information. Courts have held diverging opinions on this. In *Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company and 2 others* [2013] eKLR²⁵⁵ the high court held the view that the definition of citizen as envisioned in the Constitution is limited to natural persons only. While the court decision recognized the constitutional right to information, it excluded NGOs and other CSOs from being able to request for and access information held by public officials and state corporations.²⁵⁶

In *Katiba Institute v Presidents Delivery Unit and 3 others* [2017] eKLR²⁵⁷ however, the high court held that the word “citizen” as used in article 35 of the Constitution as well as the Access to Information Act, referred to both natural and juristic persons as long as the director of the juristic person is a citizen of Kenya. This decision further reaffirmed that full disclosure of information ought to be the norm when it comes to information held by public officials and endorsed a broader definition of the word “citizen” as envisioned in the Access to Information Act.²⁵⁸ While the decision in *Katiba Institute case* is important because it promotes a progressive interpretation as in most countries worldwide, NGOs and CSOs are able to request information and they are usually the ones fighting for implementation of TAP interventions;²⁵⁹ contrasting it with the *Nairobi Law Monthly case* shows how inconsistency in interpretation, a lack of policy coherence and presence of numerous laws that are not integrated and coordinated can be detrimental to the realization of TAP.²⁶⁰

²⁵⁴ Article 19 (Organization), *Kenya: Realising the Right to Information*. (2014) 27–28.

²⁵⁵ ‘Petition 278 of 2011 - Kenya Law’ <<http://kenyalaw.org/caselaw/cases/view/88569/>>.

²⁵⁶ ‘Kenyan Court’s Interpretation of “Citizens” Limits Access to Information’ (*IFEX*, 22 May 2013) <<https://ifex.org/kenyan-courts-interpretation-of-citizens-limits-access-to-information/>>.

²⁵⁷ ‘Constitutional Petition 468 of 2017 - Kenya Law’ <<http://kenyalaw.org/caselaw/cases/view/144012/>>.

²⁵⁸ ‘Katiba Institute v. Presidents Delivery Unit’ (*Global Freedom of Expression*) <<https://globalfreedomofexpression.columbia.edu/cases/katiba-institute-v-presidents-delivery-unit/>>.

²⁵⁹ ‘Kenyan Court’s Interpretation of “Citizens” Limits Access to Information’ (n 259).

²⁶⁰ Julie Dickson, ‘Interpretation and Coherence in Legal Reasoning’ in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Winter 2016, Metaphysics Research Lab, Stanford University 2016) <<https://plato.stanford.edu/archives/win2016/entries/legal-reas-interpret/>>.

Lastly, the Act does not talk about TAP and simply focuses on disclosure of information. It perhaps assumes having access to information is synonymous to achieving TAP and consequently, there is no mention on coordination, coherence and integration in the implementation of TAP.

3.2.3 Petroleum Act

The Petroleum Act, 2019 is the key legislative instrument governing TAP in Kenya's oil and gas sector.²⁶¹ Section 18 of the Act seeks to promote transparency in the contract negotiating process by requiring that award and signing of the petroleum contract to be after successful competitive bidding.²⁶² However, there is contradiction because the same section still provides for the possibility of direct negotiations which are prone to secrecy and hence undermine transparency provisions.²⁶³ A case in point that demonstrates the lurking dangers of allowing for direct negotiations in Kenya happened in 2007 which was before the enactment of the Act but is still relevant in showcasing why allowing this is detrimental to TAP. Block 10BB in Turkana, where oil was subsequently discovered in 2012, had originally been privately allocated to Turkana Drilling Consortium (TDC) in 2007, a company linked to then foreign affairs minister Moses Wetangula, despite having no history in oil exploration activities.²⁶⁴ TDC held on to the promising block for over 2 years, engaging in no exploration activities until it eventually sold the block to Africa Oil Corporation (AOC) for 10 million USD.²⁶⁵

To add on, clause 49(5) of the Model Production Sharing Contract (MPSC) makes the production sharing contract a public document that should be published and made publicly available,²⁶⁶ yet at the same time introduces a confidentiality clause which bars the parties to the contract from disclosing the information contained therein to third parties. A similar confidentiality clause is reflected in section 46 of the Act²⁶⁷ which does not provide for mandatory disclosure of information but rather places hurdles on access to information by requiring persons to seek prior

²⁶¹ 'A Year of Shocks and Reflections for Kenya's Oil and Gas Industry | Oxfam in Kenya' <<https://kenya.oxfam.org/latest/blogs/year-shocks-and-reflections-kenya%E2%80%99s-oil-and-gas-industry>>.

²⁶² 'The Petroleum Act 2019.Pdf' (n 42).

²⁶³ Lea Kaspar and Andrew Puddephatt, 'Benefits of Transparency in Public Procurement for SMEs' 22, 3.

²⁶⁴ 'Kenya: A Decidedly Odd Montage - 02/02/2008 - The Indian Ocean Newsletter' (*Africa Intelligence*, 2 February 2008) <https://www.africaintelligence.com/eastern-and-southern-africa_business/2008/02/02/a-decidedly-odd-montage,37629348-art>.

²⁶⁵ 'The latest Kenyan news: Wetang'ula Was Adviser to Firm That Sold Block' (*THE LATEST KENYAN NEWS*, 1 April 2012) <<http://kenyaupdate.blogspot.com/2012/03/wetangula-was-adviser-to-firm-that-sold.html>>.

²⁶⁶ 'The Petroleum Act 2019' (n 42).

²⁶⁷ 'The Petroleum Act 2019' (n 42) 151.

consent before obtaining information. This provision is an affront to TAP and good governance as it deprives citizens of their right to know how oil revenues are being utilized.²⁶⁸ As of 2019, it was estimated that out of the 44 Production Sharing Contracts (PSCs) signed by the government of Kenya, only 10 had been made publicly available.²⁶⁹

Contract confidentiality is a deeply ingrained industry practice that has been used for decades to protect “commercially sensitive” information in the oil and gas sector.²⁷⁰ This has led to a situation where the general public has very limited access to information or are required to give satisfactory reasons why they should be allowed to access such information.²⁷¹ Perhaps the saving grace is that over the years, there has been a growing international call for contract transparency and a move from these confidentiality clauses because of the discovered benefits that transparency has for not only the government but also the companies and the citizens.²⁷²

Contract transparency gives the citizens and other stakeholders the necessary information to hold governments accountable in protecting public interest.²⁷³ It provides an incentive for both the government and companies to get into better, more durable agreements and deter corruption.²⁷⁴ Additionally, contract transparency builds citizens confidence in the institutions tasked with overseeing good governance and it helps in effectively managing expectations.²⁷⁵ Most significantly, contract transparency or disclosure is a necessary precursor for the coordination and effective management and implementation of the contract by other government sectors and agencies given the multi sectoral nature of petroleum operations.²⁷⁶ Increasing transparency

²⁶⁸ ‘Kenya Civil Society Platform on Oil and Gas Resolutions.Pdf’ (n 44) 3.

²⁶⁹ Wednesday August 07 2019, ‘Transparency Keeps Resource Curse at Bay’ (*Business Daily*) <<https://www.businessdailyafrica.comhttps://www.businessdailyafrica.com/bd/opinion-analysis/ideas-debate/transparency-keeps-resource-curse-at-bay-2260306>>.

²⁷⁰ ‘RWI_Contracts_Confidential_Chapter_1.Pdf’ 17 <https://resourcegovernance.org/sites/default/files/RWI_Contracts_Confidential_Chapter_1.pdf>.

²⁷¹ ‘Contract Transparency’ (n 62).

²⁷² ‘Contract Transparency’ (*Extractive Industries Transparency Initiative*) <<https://eiti.org/contract-transparency>>.

²⁷³ ‘Mixed-Blessing-Promoting-Good-Governance-in-Kenya’s-Extractive-Industries1.Pdf’ 20 <<https://africog.org/wp-content/uploads/2015/10/Mixed-Blessing-Promoting-Good-Governance-in-Kenya%E2%80%99s-Extractive-Industries1.pdf>>.

²⁷⁴ ‘RWI_Contracts_Confidential_Chapter_1.Pdf’ (n 273) 16.

²⁷⁵ ‘Kenya’s New Government and Imperatives for Extractives Governance Reform | Oxfam in Kenya’ <<https://kenya.oxfam.org/latest/blogs/kenya%E2%80%99s-new-government-and-imperatives-extractives-governance-reform>>.

²⁷⁶ ‘Contract Transparency’ (n 62).

promotes coherence and coordination because all stakeholders are able to work in tandem to achieve the terms and standards set out in the contract.²⁷⁷

Additionally, section 119 of the Act mandates the Cabinet Secretary (CS) in charge of petroleum to formulate a framework for transparency and accountability and this includes publication of all fees, revenues, taxes and monies received or paid out by all parties to the petroleum agreement in the petroleum sector all in a bid to achieve policy integration.²⁷⁸ The wording in and of itself is problematic because it excludes public participation and it is perhaps assumed that having transparency and accountability will lead to public participation. Other than that, to meet the stipulated requirement, the government sought 50 million US dollar funding from the World Bank through a project dubbed KEPTAP and was to work with SEIC to develop the framework.²⁷⁹ Suffice to say, the framework was developed but is yet to be approved by the government and consequently, it is not available to the public despite activities such as the EOPS having already been done and completed²⁸⁰ This is alarming given that the Report of the African Union Panel of the Wise on Improving the Mediation and Resolution of Natural Resource Related Conflicts Across Africa strongly encourages countries to ensure that TAP provisions and mechanisms are in place prior to commencing development and exploitation of oil and gas resources.²⁸¹

Section 12 of the Act also establishes the National Upstream Petroleum Advisory Committee (NUPAC) whose main mandate is to advise the CS on upstream petroleum activities. The secretary to NUPAC is the director general of the EPRA. This creates a situation where EPRA is advising the CS during contract negotiation but is also responsible for investigating any complaints arising from the licenses issued or the petroleum operations and this creates an overlap and conflict of interest which then undermines TAP. Additionally, the Act provides for the possibility of 40 new regulations being formulated to govern the upstream petroleum sector²⁸² and this bewildering

²⁷⁷ Anctil and others (n 67) 1.

²⁷⁸ 'The Petroleum Act 2019.Pdf' (n 42).

²⁷⁹ 'World Bank Project: Kenya Petroleum Technical Assistance Project (KEPTAP) - P145234' (*World Bank*) <<https://projects.worldbank.org/en/projects-operations/project-detail/P145234>>.

²⁸⁰ 'A Year of Shocks and Reflections for Kenya's Oil and Gas Industry | Oxfam in Kenya' (n 264).

²⁸¹ 'AUP.Pdf' (n 93).

²⁸² 'The Petroleum Act 2019.Pdf' (n 42).

plenitude of existing or proposed regulations is likely to lead to a lack of coordination between the regulators, lead to conflicting or overlapping agendas and incoherent policies.²⁸³

The Act also makes no mention of information exchange within the ministry and among the stakeholders and relevant institutions. Promoting information and knowledge exchange in order to align tasks and efforts aimed at promoting good governance in the oil and gas sector is a much-needed endeavor.²⁸⁴ A case in point is in 2018 when the CS petroleum admitted that he was not aware of how much the transporters were being paid for the EOPS because the negotiations took place when the functions were still under the ministry of energy, pointing to a lack of coordination and information sharing²⁸⁵ Initially, all oil and gas operations were under the ministry of energy but President Uhuru Kenyatta hived off the petroleum and mining ministry from the energy ministry in 2018 thereby making them separate ministries.²⁸⁶

3.2.4 Energy Act

The Energy Act, 2019, is yet another sector specific law but it governs the energy sector in Kenya with a special focus on renewable energy.²⁸⁷ The Act is significant for the oil and gas sector in that under section 9, it establishes EPRA²⁸⁸ which has among many others, the duty to collect, maintain and manage upstream petroleum data. EPRA also plays a critical role of formulating, reviewing and enforcing regulations and codes for the oil sector in Kenya.²⁸⁹ These are important roles because EPRA is well positioned to promote TAP in the regulations it creates and ensure strict enforcement of such provisions.²⁹⁰

However, under the Act, EPRA has a very broad mandate and is answerable to both the ministry of energy and the ministry of petroleum,²⁹¹ and there is also duplication of roles by local statutory institutions like EPRA, NOCK, NUPAC among others, which creates conflict and the opportunity

²⁸³ 'Kenya Seeks to Make the Most of Its Resources' (*Oxford Business Group*, 24 January 2016) <<https://oxfordbusinessgroup.com/analysis/natural-response-government-seeks-make-most-its-resources>> accessed 24 May 2021.

²⁸⁴ Cejudo and Michel (n 198) 5–7.

²⁸⁵ Tyce (n 23) 23.

²⁸⁶ Tyce (n 43).

²⁸⁷ 'Energy Act 2019.Pdf' 11.

²⁸⁸ 'Energy Act 2019.Pdf' (n 290) 25.

²⁸⁹ 'Role of EPRA in the Petroleum Subsector' (*Energy and Petroleum Regulatory Authority*)

<<https://www.epra.go.ke/services/petroleum/functions-of-petroleum-department/>>.

²⁹⁰ 'Energy and Extractives Sector Board Engages EPRA on Key Sector Issues' (*KEPSA*, 29 March 2021)

<<https://kepsa.or.ke/energy-and-extractives-sector-board-engages-epra-on-key-sector-issues/>>.

²⁹¹ Tyce (n 23) 16.

for any of the institutions to technically avoid statutory responsibility thereby hampering anti-corruption efforts.²⁹² The Act also makes no mention on the issue of coordination, coherence and policy integration in the implementation of TAP provisions.

3.2.5 The Natural Resources (Classes of Transactions Subject to Ratification) Act

The Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016 is another legislative instrument that is meant to promote good governance through TAP in Kenya's oil and gas sector. The Act deals with classification of transactions involving natural resources and requires parliament to ratify those agreements as well as obliging the CS to keep a public register of all such ratified agreements or transactions.²⁹³ The import of this is that agreements, concessions or any transactions involving natural resources are to be known and available to the public in a bid to enhance transparency and accountability.²⁹⁴ However, the Act does not talk about TAP and it in fact empowers the CS under section 13, with the ability to declare certain agreements as confidential and therefore exempt from being made public.²⁹⁵

3.2.6 The Mining Act

The Mining Act, 2016 has some fairly progressive provisions for TAP including an obligation on the CS to make all mineral agreements available on the ministry website.²⁹⁶ Perhaps the most significant is section 109(i) which requires the holder of a mining license to get into a Community Development Agreement (CDA) with the community located around the mining operations area. The Mining (Community Development Agreement) Regulations, 2017 provide the manner in which such agreements are to be entered into and also aim to ensure there is transparency, accountability and participation of the local communities.²⁹⁷ The import of having a CDA is that it allows the citizens to actively participate throughout the productive life of the mine.²⁹⁸

²⁹² 'SESA Draft Report for Petroleum Sector in Kenya.Pdf' (n 48) 149–155.

²⁹³ 'NaturalResources_ClassesofTransactionsSubjecttoRatification_Act_No41of2016.Pdf' 6–8
<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NaturalResources_ClassesofTransactionsSubjecttoRatification_Act_No41of2016.pdf>.

²⁹⁴ 'Ileg Policy Briefs, Transparency and Accountability in the Extractive Sector in Kenya: What Works What Does Not.Pdf' (n 254) 9.

²⁹⁵ 'NaturalResources_ClassesofTransactionsSubjecttoRatification_Act_No41of2016.Pdf' (n 296) 8.

²⁹⁶ 'MiningAct_No12of2016.Pdf'

<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MiningAct_No12of2016.pdf>.

²⁹⁷ 'LN148_2017.Pdf' 2 <http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2017/LN148_2017.pdf> accessed 13 July 2021.

²⁹⁸ 'Legal Alert | Mining Act Series | Mining Community Development Agreements Regulations' (*ALN Kenya*) <<https://www.africalegalnetwork.com/kenya/news/legal-alert-mining-act-series-mining-community-development-agreements-regulations/>> accessed 13 July 2021.

However, by dint of section 3 of the Act itself, its provisions do not extend to the oil and gas sector despite petroleum and mining sharing the same ministry and sharing the same CS and this poses a threat to coordination. Be that as it may, these progressive provisions could serve as valuable lessons on what should be included in the oil and gas sector to ensure there is greater transparency, accountability and public participation.

3.2.7 Policy documents

Kenya also has a Vision 2030 document which is a long-term development blueprint meant to transform Kenya into a middle-income country by the year 2030.²⁹⁹ The Vision 2030 strategy was published in 2007 when oil had not yet been discovered in Kenya and it therefore does not explicitly identify the oil sector as a key economic growth driver in Kenya.³⁰⁰ It nonetheless places strong emphasis on transparency and accountability in all government institutions as effective tools to combat corruption.³⁰¹ Following the discovery of oil in March 2012, the Vision 2030 second medium term plan 2013-2017 identified the oil sector as a priority sector which could greatly assist in the growth of Kenya's GDP and recognized the need to strengthen the existing legal and regulatory framework to ensure good governance in the oil sector.³⁰² However, it does not mention any need or provide any means to ensure coordination, coherence and integration in the implementation of TAP in the oil and gas sector.

In addition to Vision 2030, Kenya has the National Energy Policy 2014³⁰³ which was adopted after the discovery of oil in 2012. This policy is significant in that under section 11(a), the government commits to adopt and implement EITI as a way of strengthening good governance in the oil sector.³⁰⁴ This commitment is also replicated in the Vision 2030. Despite this commitment, Kenya is yet to adopt and implement the EITI.³⁰⁵ While the EITI will not solve all good governance issues in Kenya, the reluctance to adopt it signals the lack of government's commitment to good

²⁹⁹ 'About Vision 2030 | Kenya Vision 2030' <<https://vision2030.go.ke/about-vision-2030/>>.

³⁰⁰ '20150730_oil_governance_in_uganda_and_kenya_public_report_final.Pdf' 37 <https://www.macfound.org/media/files/20150730_oil_governance_in_uganda_and_kenya_public_report_final.pdf>.

³⁰¹ 'Vision-2030-Popular-Version.Pdf' 1-9 <<http://vision2030.go.ke/wp-content/uploads/2018/05/Vision-2030-Popular-Version.pdf>> accessed 5 April 2021.

³⁰² '2nd MTP Report - Rizz Fa_Layout 1' 194, 67-69.

³⁰³ 'KENYA) National Energy Policy, 2014.Pdf'

<<https://www.greengrowthknowledge.org/sites/default/files/downloads/policy-database/KENYA%29%20National%20Energy%20Policy%2C%202014.pdf>> accessed 8 April 2021.

³⁰⁴ 'KENYA) National Energy Policy, 2014.Pdf' (n 306) 4.

³⁰⁵ Muigua (n 117) 10.

governance in the extractives sector and depicts how such provisions are merely political rhetoric.³⁰⁶ Other than that, the policy does not include provisions on coordination, coherence and integration in the implementation of TAP.

To add on, Kenya joined the Open Government Partnership (OGP) in 2011 and made commitments to promote transparency and accountability in contract negotiation and to reduce corruption.³⁰⁷ Several high-level commitments were also made to ensure that government data is open and accessible to all.³⁰⁸ This is in line with the provisions of the Paris Declaration on Open Government which pushes for open government reforms through transparency, accountability and meaningful public participation.³⁰⁹ Kenya committed to disclose all contractual information and revenues derived from the oil and gas sector, to increase public participation as well as civic participation.³¹⁰ While Kenya has an open data portal³¹¹ where the government releases information on some of the on-going projects, information regarding the fiscal terms and payments is usually conspicuously missing from the site.³¹² Suffice to say, Kenya has been on a meandering journey of failing to meet its commitments under the OGP and failing to fully implement the action plans.³¹³

Additionally, Kenya is a member of the African Union which in 2009 developed the Africa Mining Vision (AMV) as a policy framework to help African countries properly utilize their resource wealth to bring forth meaningful development.³¹⁴ The AMV has transparency as part of its vision and recognizes the need to combat corruption and have accountability mechanisms to ensure resource endowment becomes a blessing as opposed to a curse.³¹⁵ However, since its inauguration

³⁰⁶ ‘Publishing Terms of Mining Contracts Is an Antidote to Graft’ (*The East African*) <<https://www.theeastafrican.co.ke/tea/oped/comment/publishing-terms-of-mining-contracts-is-an-antidote-to-graft-3224468>>.

³⁰⁷ ‘<https://www.opengovpartnership.org/members/kenya/commitments/KE0025/>’ (*Open Government Partnership*) <<https://www.opengovpartnership.org/members/kenya/commitments/KE0025/>>.

³⁰⁸ ‘The OGP Story in Kenya: Building Political Will for Open Government’ (*Open Government Partnership*) <<https://www.opengovpartnership.org/stories/the-ogp-story-in-kenya-building-political-will-for-open-government/>>.

³⁰⁹ ‘Paris Declaration’ (n 168).

³¹⁰ ‘Kenya_AP2_2016_0.Pdf’ 13–16 <https://www.opengovpartnership.org/wp-content/uploads/2001/01/Kenya_AP2_2016_0.pdf>.

³¹¹ ‘Kenya Open Data’ <<https://www.opendata.go.ke/>>.

³¹² August 07 2019 (n 272).

³¹³ ‘The OGP Story in Kenya: Building Political Will for Open Government’ (n 311).

³¹⁴ Vanessa Ushie, ‘From Aspiration to Reality: Unpacking the Africa Mining Vision’ 40, 2.

³¹⁵ ‘30984-Doc-Africa_mining_vision_english.Pdf’ (n 73) 18–19.

in 2009 and despite the fact that it contains progressive provisions related to TAP, the AMV has had no significant impact in Kenya because it is not being implemented.³¹⁶ While the AMV aims to promote good governance in the sector, it also considers the varying context of each country and for its effective implementation, countries are to come up with their own integrated country mining vision (CMV) to cater for their own unique context.³¹⁷ Kenya is still in the process of developing her CMV and has therefore not fully implemented the AMV.³¹⁸

3.3 Conclusion

This chapter has demonstrated that on the surface, Kenya appears to have seemingly robust provisions for TAP in the oil and gas sector. The Constitution, Access to Information Act, Petroleum Act, Energy Act, Kenya Vision 2030 and other laws and policies all contain some form of provisions for TAP as key elements in promoting good governance. The Constitution is the most significant because it binds all public officers to adhere to TAP when formulating or implementing any public policies. It follows therefore that since the Constitution is the supreme law, other sector laws will mirror the constitutional provisions. However, that does not appear to be the case.

Sector laws treat these principles as separate and expect to be applied independently. There is no mention on how these concepts should be applied together to enhance coordination, coherence and integration in the oil and gas sector. Additionally, the laws and policies are also fragmented with the vast majority being incoherent, repetitive and embedded with other provisions that contradict and seemingly undermine or make it nearly impossible to realize the TAP provisions. Kenya has made several commitments to improve on good governance but daily reports on corruption, mismanagement of public funds and opacity overshadow these commitments and point to a lack of political goodwill.

³¹⁶ 'Call to Adopt Mining Values and Principles in East Africa' (*The East African*) <<https://www.theeastafican.co.ke/tea/business/call-to-adopt-mining-values-and-principles-in-east-africa-1423610>>.

³¹⁷ HMK Team, 'Haki Madini Kenya - Tracking Africa Mining Vision in Kenya; Reflections from a CSO Consultative Forum' <<http://hakimadinikenya.org/blog/tracking-africa-mining-vision-in-kenya-reflections-from-a-cso-consultative-forum>>.

³¹⁸ 'Report on the Kenya Country Mining Vision (KCMV) Retreat Held at Sentrim Elementaita Naivasha | UNDP in Kenya' (*UNDP*) 6 <<https://www.ke.undp.org/content/kenya/en/home/library/poverty/Report-on-the-Kenya-Country-Mining-Vision-Retreat.html>>.

Given that Kenya discovered oil in 2012, the industry is still at its infancy and there is a lack of capacity, expertise and resources which makes it difficult to ensure good governance in the oil and gas sector. For this reason, the TAP provisions need to be well articulated, there needs to be coordination, coherence and integration of TAP efforts which is currently lacking in Kenya. The resulting conclusion therefore is that Kenya still has significant challenges to overcome in order to ensure that oil extraction will be of benefit to the country as a whole. The following chapter will demonstrate how the TAP-plus framework can assist Kenya in surmounting her good governance challenges.



CHAPTER 4: IMPLEMENTING THE TAP-PLUS FRAMEWORK IN KENYA

4.1 Introduction

The aim of this chapter is to explore the need for a comprehensive legal and institutional framework on TAP in Kenya. It discussed why Kenya needs to adopt and implement the Tap-plus framework as a tool for promoting good governance, greater coherence and coordination in anti-corruption efforts in the oil and gas sector. Chapter 2 laid the foundation by unpacking the TAP-plus framework and what it entails. Chapter 3 then set the context on the current situation of TAP provisions in the oil and gas sector in Kenya and pointed to the lack of coordination, coherence and integration in these provisions as well as the plenitude of laws on TAP. What follows herein is a discussion on how the TAP-plus framework can be used in Kenya as a solution to the problem of incoordination, incoherence and a lack of integration as a way of promoting good governance in the oil and gas sector.

4.2 What Kenya can do

Kenya has several provisions on TAP in the upstream oil sector. The current provisions in Kenya however treat transparency, accountability and participation as separate concepts that ought to be realized independently.³¹⁹ Whenever they are provided for, the focus appears to be on transparency and accountability, with public participation provided for separately or not at all.³²⁰

As already discussed, these concepts are interdependent and cannot achieve good governance on their own. Transparency enables accountability by shining light on what is being done and facilitating the provision of necessary information to hold government officials accountable.³²¹ It further enables public participation because citizens become aware of what government is doing.³²² Employing these concepts in isolation is not effective when it comes to combating corruption

³¹⁹ 'Ileg Policy Briefs, Transparency and Accountability in the Extractive Sector in Kenya: What Works What Does Not.Pdf' (n 254) 6.

³²⁰ Ambani and Wasunna (n 132) 113–115.

³²¹ Scott L Greer and others, *It's the Governance, Stupid! TAPIC: A Governance Framework to Strengthen Decision Making and Implementation* (European Observatory on Health Systems and Policies 2019) 9 <<http://www.ncbi.nlm.nih.gov/books/NBK553604/>>.

³²² Ambani and Wasunna (n 132) 113–114.

because it exacerbates the potential for incoordination, lack of coherence and a lack of integration.³²³

Similarly, even where there are provisions for TAP in a given law in Kenya, the same are watered down with other provisions that are equivocal or contradict one another.³²⁴ As alluded to, this is sometimes a deliberate policy creation tactic done in order to circumvent TAP obligations and continue with corruption.³²⁵ It has been said that in Kenya, greed, myopic self-interest and lack of a long-term vision for the country and its future are what drive public policy as opposed to reason and public interest considerations and this is perhaps why the TAP provisions are bedeviled with such incoherence and remain political rhetoric.³²⁶ What follows then is a discussion on the possible reforms or actions that Kenya can employ to harmonize the existing laws and institutions on TAP in order to promote coordination, coherence and integration in the oil and gas sector.

4.2.1 Reforms to current sector laws

The current laws governing the oil and gas sector in Kenya need to be aligned to reflect the binding nature of article 10 of the Constitution. This article recognizes TAP as important national principles and binds all public officers to adhere to them when making or implementing any public policy decisions. The courts have also held emphatically that these are justiciable rights that ought to be realized immediately. What this means therefore is that the government has an obligation to ensure these rights are enforced and having them incorporated in the oil and gas sector laws is much needed.

The presence of numerous laws and policies that govern different aspects of TAP in Kenya's oil and gas sector is yet another factor that makes it difficult for good governance to thrive and gives rise to the urgent need for law reforms. Getting rid of fragmentation of laws can be achieved through a thorough examination, realignment, adjustment and reinterpretation of existing sector laws to ensure they are coherent and coordinated when it comes to good governance objectives. This also includes a systematic review to add or eliminate goals, roles, responsibilities etc. to make

³²³ Victoria Bassetti and Norman Eisen, 'Supercharging Anti-Corruption Initiatives: The TAP-Plus Approach' (*Brookings*, 7 July 2020) <<https://www.brookings.edu/blog/fixgov/2020/07/07/supercharging-anti-corruption-initiatives-the-tap-plus-approach/>>.

³²⁴ Muigua (n 117) 23–25.

³²⁵ Peters (n 196).

³²⁶ Rasna Warah, 'RASNA WARAH - Saving Lamu: How a Campaign for Environmental Justice Was Fought | The Elephant' (15 July 2019) <<https://www.theelephant.info/op-eds/2019/07/15/saving-lamu-how-a-campaign-for-environmental-justice-was-fought/>>.

sure they do not counteract each other, there are no inconsistencies, they are coherent and coordinated.

Another reform to the sector laws is to make contract transparency a requirement and remove confidentiality clauses. This will help reduce knowledge asymmetries between the government and the oil companies because in developing countries like Kenya, the government usually has insufficient knowledge on the cost and other technical requirements of the oil and gas sector compared to the oil companies. When government knows what was agreed in other countries through contract transparency, it levels the playing ground.

Additionally, there should be provision for a CDA just as is provided for in the mining sector. The CDA should include the community members and they should be made aware of what the PSC provides for, and be actively involved in the oil extraction activities. Having a CDA promotes TAP and makes it easier for good governance to thrive. It also helps to manage community expectations because they are actively involved in the project from the start, understand the risks and rewards involved, and have a good appreciation of the general operations of the entire natural resource value chain.

4.2.2 Interoperability to enhance coordination and coherence

This is where computerized systems are used to connect and communicate with one another.³²⁷

The aim here is to promote coordination, information exchange by making systems work together. In this case, computerized systems can be employed to store information and facilitate easy access for the relevant institutions and stakeholders. These systems can be used to enhance internal coordination within the ministry and to facilitate exchange of information between the national and county government. This can be very beneficial for Kenya when it comes to achieving institutional coordination and coherence in the oil and gas sector.

Additionally, with new discoveries like in Kenya, there is usually a rush from foreign donors and other technical advisors to offer guidance to government officials and the relevant ministries and parastatals. While this is good, it often leads to incoherence and a lack of coordination because multiple persons or agencies are offering their services simultaneously without necessarily building up on the assistance already offered. Interoperability can be a potential solution to this

³²⁷ Stephen O'Connor, 'What Is Interoperability, and Why Is It Important?' <<https://www.adsc.com/blog/what-is-interoperability-and-why-is-it-important>>.

problem because it creates a database of information and links all the relevant stakeholders. The government becomes aware of their needs and are better placed to draft a terms of reference document that defines their exact need and can link with appropriate service providers.

4.2.3 Capacity building for relevant stakeholders

The fact that Kenya is a new entrant to the oil sector and therefore lacks effective capacity and resources is yet another factor that has to be addressed as it will have an impact on good governance.³²⁸ The Petroleum Act creates the petroleum training fund which is meant to be utilized to train Kenyans on the workings of the upstream petroleum sector.³²⁹ However, the fund is yet to be operationalized and in 2019, the ministry was on the spotlight for having Kshs 943.9 million lying idle in the fund³³⁰ while the sector was dominated by foreign expertise and Kenyans lacked basic understanding of the workings of the sector.³³¹

It is particularly important to ensure state owned enterprises (SOEs) like NOCK are run by competent and knowledgeable persons. In many resource rich countries, SOEs play a central role in resource extraction and therefore their importance in good governance cannot be overlooked.³³² SOEs are particularly vulnerable to corruption owing to the agency role they play in the extractives industry.³³³ They become good targets for bribery and illicit financial flows because they are typically headed by high ranking public officials with close proximity to the government and can influence the award of licenses.³³⁴ In a case study by OECD involving 224 bribery cases, 27% of the bribery cases involved SOEs and 80% of the total bribe amounts were paid to SOEs.³³⁵ These worrying statistics point to the need to focus on improving government effectiveness in oversight of SOEs to block possible channels of illicit financial flows.³³⁶

³²⁸ Vasquez (n 28).

³²⁹ 'The Petroleum Act 2019.Pdf' (n 42) 47.

³³⁰ 'Sh900m Lies Unused in Petroleum Training Fund' (*Business Daily*) Monday July 15 2019 <<https://www.businessdailyafrica.com/bd/economy/sh900m-lies-unused-in-petroleum-training-fund-2257544>>.

³³¹ Muigua (n 117) 25.

³³² Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 121.

³³³ 'Survey-Integrity-Anti-Corruption-SOEs-Latin-America-OECD-Countries.Pdf' 2 <<https://www.oecd.org/daf/ca/Survey-Integrity-Anti-Corruption-SOEs-Latin-America-OECD-countries.pdf>> accessed 12 March 2021.

³³⁴ katharina.kiener-manu (n 107).

³³⁵ 'OECD Foreign Bribery Report | READ Online' (*OECD iLibrary*) 2014 22–23 <https://read.oecd-ilibrary.org/governance/oecd-foreign-bribery-report_9789264226616-en> accessed 12 March 2021.

³³⁶ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 122.

Expecting the ministry and other stakeholders, with limited legal and technical expertise and personnel, to work alone in this new field is a recipe for disaster because it gives the government a disadvantage when it comes to contract negotiation, monitoring, auditing financial statements etc. and this reduces government effectiveness and provides good breeding ground for corruption and rent seeking.³³⁷ Government effectiveness is used as an indicator of good governance because it captures the quality of policies and their implementation, the credibility of government's commitment to the policies and the level of government's independence from political pressures.³³⁸ Government effectiveness and capacity then become crucial because they speak to the government's ability to dispense of all the necessary functions related to resource management and to support anti-corruption efforts.³³⁹

Further, for good governance to be attained, personnel in the ministry, KPC, NOCK, EPRA, NGOs, CSOs, other government departments and other relevant stakeholders need to be trained on how the oil and gas sector operates and why it is so critical to uphold good governance.³⁴⁰ Capacity here extends to policy makers as well, with this being a nascent sector, legislators need to be trained to formulate a coherent, workable policy that governs TAP in the oil and gas sector.³⁴¹ Additionally, personnel at Kenya Revenue Authority (KRA) should be trained on efficient means of collecting tax revenues from the oil and gas sector. Taxation of extractives is quite complex and it becomes necessary to ensure the persons responsible are well trained and that effective tax policies are established. All these stakeholders need to undertake synchronized and coordinated actions owing to the interdependence of their work and legislators making coherent policies that support training and information sharing will help Kenya attain effective good governance in the entire oil and gas sector.³⁴²

4.2.4 Implement Beneficial ownership screening, verification and oversight mechanisms

Over the recent years, there has been clamor to access information related to beneficial ownership in the oil and gas sector in a bid to bring greater transparency and combat global networks of

³³⁷ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 112.

³³⁸ 'WGI 2020 Interactive > Home' <<https://info.worldbank.org/governance/wgi/>> accessed 12 March 2021.

³³⁹ Eisen, 'The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain' (n 22) 111–112.

³⁴⁰ 'SESA Draft Report for Petroleum Sector in Kenya.Pdf' (n 48) 213–215.

³⁴¹ Greer and others (n 324) 10.

³⁴² Begum and Momen (n 247) 4–5.

corruption and illicit financial flows.³⁴³ Hidden or undisclosed beneficial owners of oil and gas related companies have been linked to corruption, money laundering and tax evasion.³⁴⁴ Shell companies have long been used to launder proceeds of corruption and to hide improper relationships with government officials. Complications in determining beneficial ownership shields criminals because they continue to remain anonymous and thereby evade law enforcement.³⁴⁵

This opacity and lack of access to information on beneficial ownership is a key risk of corruption in the oil and gas sector.³⁴⁶ Indeed, the leaks from “Panama papers” revealed that politically connected individuals in 44 out of 54 African countries hid wealth generated from oil activities through the use of shell companies.³⁴⁷ Publishing information about a company’s beneficial owners and those who ultimately profit from it can help reduce these instances of tax evasion, money laundering and corruption.³⁴⁸ A good starting point for Kenya to improve good governance would be to commit to beneficial ownership disclosure in the oil and gas sector.³⁴⁹

4.2.5 Adopt and implement EITI standards

The EITI represents the gold standard and is one of the most important examples of the TAP approach in terms of their coherent enforcement. Adopting and implementing EITI will help Kenya adhere to TAP concepts because EITI mandates countries and companies to disclose revenues due, paid and received. EITI provides rigorous standards which member states have to adhere to in order to be regarded as being compliant and such standards will help keep Kenya’s

³⁴³ ‘Linking Beneficial Ownership Transparency to Improved Tax Revenue Collection in Developing Countries’ (*Transparency and Accountability Initiative*, 1 May 2018) <<https://www.transparency-initiative.org/blog/2725/linking-beneficial-ownership-transparency-improved-tax-revenue-collection-developing-countries/>> accessed 3 April 2021.

³⁴⁴ Eisen, ‘The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain’ (n 22) 123.

³⁴⁵ Nyman Gibson Miralis-Dennis Miralis, ‘Beneficial Ownership and Anti-Money Laundering: Challenges & Best Practices | Lexology’ <<https://www.lexology.com/library/detail.aspx?g=b66f08fb-be18-41e5-a32f-fb84c922c042>> accessed 13 March 2021.

³⁴⁶ ‘Corruption in the Extractive Value Chain | READ Online’ (*OECD iLibrary*) 20 <https://read.oecd-ilibrary.org/development/corruption-in-the-extractive-value-chain_9789264256569-en> accessed 13 March 2021.

³⁴⁷ Scott Shane, ‘Panama Papers Reveal Wide Use of Shell Companies by African Officials’ *The New York Times* (25 July 2016) <<https://www.nytimes.com/2016/07/25/world/americas/panama-papers-reveal-wide-use-of-shell-companies-by-african-officials.html>> accessed 28 March 2021.

³⁴⁸ ‘Beneficial Ownership’ (*Natural Resource Governance Institute*, 2 April 2015) <<https://resourcegovernance.org/topics/beneficial-ownership>> accessed 13 March 2021.

³⁴⁹ ‘Disclosing beneficial ownership information in the natural resource sector (February 2016).Pdf’ 3 <<https://opengovpartnership.org/wp-content/uploads/2019/05/FIN20OGP20Issue20Brief20BO20Disc1.pdf>> accessed 13 March 2021.

oil and gas sector accountable and transparent. In addition to having coherent and coordinated sector laws that promote TAP in Kenya's oil and gas sector, implementing EITI standards will not only help to buttress TAP concepts but also signal government's commitment to good governance in the sector.

4.3 Possible barriers to the implementation of the suggested legal and institutional reforms

Achieving policy coordination, coherence and integration involves transactional cost and Kenya might possibly lack the finances to do that. Additionally, a lack of available technology to achieve interoperability or the cost involved in setting up such technology might also make it difficult for the proposed reforms to be actualized.

A scarcity of information about all the possible interactions also poses a threat to the realization of the proposed reforms. The number of potential interactions among different policy areas that may need to be coordinated is vast and if information is not readily available as is highly likely the case, then a lot of time, attention, energy and resources will need to be spent in conducting extensive research and consultations to identify the potential interactions.

As stated several times, the lack of sufficient trained personnel is a stumbling block to the actualization of the reforms. This is especially true for Kenya given that the industry is still relatively new and not many people have the relevant skills and knowledge in the workings of the oil and gas sector.

Lastly, a lack of political will and commitment to implementation is yet another obstacle. If the government is not focused and committed to implementing these TAP provisions, then they will not be effective in helping to combat corruption and illicit financial flows.

4.4 Steps to address the possible barriers

While these challenges cannot necessarily be "solved", they can be managed effectively. The financial challenges can be mitigated by seeking budget support from external actors. This kind of support can be conditioned on ensuring the proposed reforms are implemented. Additionally, links with universities and institutions of higher learning to support research into possible interactions and areas of coordination in the oil and gas sector will go a long way in increasing the information needed to guide policymakers.

Similarly, to resolve the lack of political will, the power lies with the citizens. Citizens need to be proactive in sanctioning their leaders based on performance. This will ensure that when the politicians run for office with certain pledges and commitments, once elected, they will have to deliver on their promises. The same goes for training and building human capacity. As already seen, the training fund exists but is not being utilized and those in charge need to be held accountable.

The benefits to be realized from good governance are much more than any cost spent in setting up the conducive environment. As such, the focus and motivation should be on the future benefits.

4.5 Conclusion

While the provisions for TAP in Kenya are fragmented, incoherent and littered with inconsistencies which pose a threat to the realization of good governance in the oil and gas sector, these are not insurmountable challenges. The TAP-plus framework presents a good guide that can be adopted to help coordinate good governance efforts in Kenya's oil and gas sector. The framework will help Kenya in this regard because it seeks to streamline TAP provisions in a coordinated, coherent and integrated framework which solely advances good governance in the oil and gas sector. This has the potential of minimizing incoherence because it does away with multiplicity of laws which are often a major cause of incoherence, inconsistency and conflicting provisions.

In order to achieve good governance by curbing corruption and illicit financial flows, there is need to recognize the interdependence that exists in the oil and gas sector. To this end, government ministries, departments, parastatals and other stakeholders need to work together. Working together encompasses sharing the same common goal of good governance and sharing information to ensure that there is cooperation, coordination and TAP within the workings of the sector itself. This can be done through interoperability where computerized systems are put in place to facilitate easy access to and sharing of information among all the relevant institutions. Additionally, committing to beneficial ownerships disclosures will also help in advancing TAP in Kenya's oil and gas sector.

To add on, for matters of expertise and training, it becomes necessary to engage in capacity building to certify that the same ministries, departments, agencies, parastatals etc. are run by

skilled, trained and sufficient personnel who understand how the oil and gas sector operates. It is foolhardy to expect good governance to stem from persons who have no understanding of industry operations. Part of this capacity building is also on the legislators to ensure they formulate laws that are in line with best industry practice, that are coherent and coordinated.

To actualize the TAP-plus framework, Kenya needs to engage in legal reforms which adopt a TAP troika that treats transparency, accountability and participation as related and interdependent concepts. Kenya should then harmonize its laws governing TAP because as it currently stands, the provisions are fragmented and scattered in numerous policies. An integrated framework that supports coordination and coherence is therefore paramount and Kenya can attain this by restructuring its laws to come up with a coordinated and coherent framework.



CHAPTER 5: CONCLUSION

5.1 Introduction

The aim of this Chapter is to give a summary of the entire study. It summarizes the key findings of this study, offers a discussion on how the objectives of the study were met and whether the hypotheses listed in Chapter 1 were tested. It concludes by suggesting recommendations for further studies.

5.2 Summary of findings

With the aim of discovering how the TAP-plus framework can help Kenya curb corruption and illicit financial flows and consequently improve good governance in the oil and gas sector, this study has analyzed the nature, scope and content of the TAP-plus framework. It further delved into the current laws and policies on TAP in Kenya that govern the oil and gas sector, identified the existing gaps and made proposals on what Kenya needs to do to achieve coherence, coordination and integration in the implementation of TAP in the oil and gas sector. A number of notable findings were discovered.

Firstly, this study explained that the TAP-plus framework is grounded in international law as well as academic research from scholars who have studied these concepts for years. There is growing consensus on the interdependence that exists between transparency, accountability and participation. As a result, these three concepts need to be applied together for any meaningful change in governance to happen. Treating them as separate strands that can be attained independently only creates room for corruption and illicit financial flows to flourish.

Secondly, the study established that a lack of coordination, incoherence and a lack of an integrated policy on TAP can be detrimental to good governance in the oil and gas sector. For TAP to achieve its objective of promoting good governance, there needs to be coordination among all the stakeholders, roles and responsibilities need to be clearly defined and information exchange needs to be encouraged. Information exchange is not just for purposes of being accountable but it also works to strengthen synergy and cooperation within the bodies in charge such as the ministry of petroleum, parastatals, and to avoid overlaps or the proverbial “left hand not knowing what the right hand is doing”.

Further, policies promoting TAP need to be coherent. Inconsistency, contradictions and ambiguity only work to hamper the success of TAP provisions. Having policies that are consistent throughout and that share the same goal is a necessary precondition to promoting good governance. Additionally, to be more effective, these policies need to be integrated in a single framework governing TAP in the entire oil and gas sector. Integration does away with the problem of fragmentation where several laws exist all governing the same sector, making it prone to contradictions, inconsistency and ultimately watering down the effectiveness of TAP.

Lastly, the study examined the laws and policies in Kenya that govern the oil and gas sector. The conclusion arrived at is that the oil and gas sector laws in Kenya are inconsistent, do not support coordination and they treat TAP as independent concepts. While the Constitution expects application of TAP to be a binding consideration in policy formulation and implementation, the same does not resonate in the sector laws. The laws are deeply fragmented with the presence of overlaps in roles and responsibilities and the provision of many industry players whose activities are not well defined or coordinated. There is also provision for contract confidentiality which ultimately works to discourage TAP. All these discoveries mean that the hypotheses as provided for in chapter 1 proved to be true.

Kenya currently has a devolved system of government and it is necessary to ingrain coordination not only within the ministry of petroleum, but also between the two tiers of government and all other stakeholders. It is necessary that TAP concepts are at the forefront and remain the binding consideration in order for good governance to thrive. To achieve this, five proposals on what reforms Kenya undertake to harmonize the existing laws and institutions were recommended. These included reforms to existing sector laws and policies, interoperability, capacity building, adopting and implementing EITI standards and having beneficial ownership disclosure mechanisms. All these suggested reforms are meant to improve coordination, coherence and integration in the application of TAP in Kenya's oil and gas sector.

The resulting conclusion that was drawn is that Kenya is ripe for the TAP-plus framework as it will go a long way in helping cover these coordination, coherence and integration gaps.

5.3 Contribution of this research

This research has given a good understanding of the TAP-plus framework. Though several studies have delved into the need for policy coordination, coherence and integration, particularly the need to integrate international law, environmental laws etc. not much has been explored concerning its application in the oil and gas sector. This study therefore adds to a currently sparse body of academic research on coordination, coherence and integration as ways of attaining good governance in Kenya's oil and gas sector. It further demonstrates what Kenya stands to gain if it embraces the TAP-plus framework and that is curbing corruption and illicit financial flows and ensuring good governance thrives. Additionally, it shows the importance of combining transparency, accountability and participation as key interdependent concepts across government institutions as well as all other stakeholders in the oil and gas sector in order to promote good governance.

5.4 Recommendations for future study

This study focused on the need for Kenya to adopt the TAP-plus framework as a way of promoting good governance in the oil and gas sector. However, adopting the framework is not the only solution to governance challenges in Kenya and part of the problem lies in a lack of implementation. Further studies can focus on the implementation gaps and explore ways to close these gaps so that frameworks such as the TAP-plus can be properly utilized and enforced.

Additionally, as mentioned previously, Kenya has a draft framework for reporting, transparency and accountability in the oil sector which at the time of this study is yet to be approved and made publicly available. Revisiting and updating this study once the said framework has been approved would add an invaluable perspective into the provisions for TAP therein and how it seeks to improve good governance in the oil and gas sector in Kenya.

5.5 Final thesis conclusion

This study set out to explore the TAP-plus framework and how it can be adopted in Kenya to aid in achieving good governance in the oil and gas sector. The research laid bare the lack of coordination, coherence and integration in TAP laws and policies in Kenya's oil and gas sector owing to contradicting legal provisions, multiplicity of sector laws, duplication of roles among key stakeholders and several other factors. This study found out that these challenges, which contribute to a lack of good governance, can be addressed through the TAP-plus framework which focuses

on combining transparency, accountability and participation as a way of achieving coordination, coherence and integration.

This study and its findings are significant because not much academic literature exists on coordination, coherence and integration of TAP as ways of attaining good governance in Kenya's oil and gas sector. Given that Kenya is not yet at commercial oil production, ensuring the TAP laws and policies are coordinated, coherent and integrated prior to commercial production will go a long way in promoting good governance and save Kenya from the resource curse.



LIST OF REFERENCES

BOOKS

Alao A, *Natural Resources and Conflict in Africa: The Tragedy of Endowment*, Boydell & Brewer, 2007.

Ambani J and Wasunna M, *Mining Law: Commentaries on Kenya's Framework Legislation*, Strathmore University Press, 2018.

Appiah-Adu K, *Governance of the Petroleum Sector in an Emerging Developing Economy* Taylor & Francis Group, 2013.

Begum M and Momen M, *Coordination and Effective Governance*, Springer International Publishing, 2019.

Bovens M, Schillemans T and Goodin R, *The Oxford Handbook of Public Accountability*, Oxford University Press, 2014.

Challis L and others, *Joint Approaches to Social Policy: Rationality and Practice*, Cambridge University Press, 1988.

Eliadis P, Hill M and Howlett M, *Designing Government: From Instruments to Governance*, McGill-Queen's University Press, 2005.

Epreman L, Lujala P and Bruch C, *High-Value Natural Resources and Transparency: Accounting for Revenues and Governance* Oxford University Press, 2016.

Greer S and others, *It's the Governance, Stupid! TAPIC: A Governance Framework to Strengthen Decision Making and Implementation*, European Observatory on Health Systems and Policies, 2019.

Halland H, Lokanc M and Nair A, *Extractive Industries Sector: Essentials for Economists, Public Finance Professionals, and Policy Makers*, World Bank Publications, 2015.

Hammer M and others, *Pathways to Accountability II: The 2011 Revised Global Accountability Framework: Report on the Stakeholder Consultation and the New Indicator Framework*, One World Trust, 2011.

Kopits G and others, *Transparency in Government Operations*, International Monetary Fund, 1998.

Makoloo M, *Kenya: Minorities, Indigenous Peoples and Ethnic Diversity*, Minority Rights Group, 2005.

Moss T, Lambert C and Majerowicz S, *Oil to Cash: Fighting the Resource Curse through Cash Transfers*, Brookings Institution Press, 2015.

Olawuyi D, *Sustainable Development and the Water-Energy-Food Nexus: Legal Challenges and Emerging Solutions*, Environmental Science & Policy, 2020.

Olawuyi D, *Extractives Industry Law in Africa*, Springer International Publishing, 2018.

Olawuyi D, *The Emergence of Right-Based Approaches to Resource Governance in Africa: False Start or New Dawn*, Sustainable Development Law & Policy, 2015.

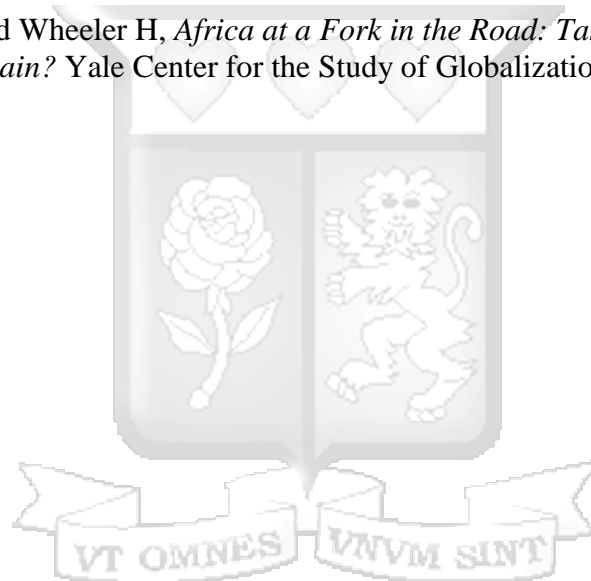
Ross M, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*, Princeton University Press, 2013.

Shaffer B and Ziyadov T, *Beyond the Resource Curse* University of Pennsylvania Press, 2012.

Shephard B, *Oil in Uganda: International Lessons for Success* Royal Institute of International Affairs, Brookings Publications, 2013.

Vasquez P, *Kenya at a Crossroads: Hopes and Fears Concerning the Development of Oil and Gas Reserves*, International Development Policy, 2013.

Zedillo E, Cattaneo O and Wheeler H, *Africa at a Fork in the Road: Taking off or Disappointment Once Again?* Yale Center for the Study of Globalization, 2015.



JOURNAL ARTICLES

About - Publish What You Pay.

Anctil RM and others, *Does Information Transparency Decrease Coordination Failure?* Games and Economic Behavior, 2010.

Andrews N, *A Swiss-Army Knife? A Critical Assessment of the Extractive Industries Transparency Initiative (EITI) in Ghana*, Business and Society Review, 2016.

Article 19 (Organization), *Kenya: Realising the Right to Information*, Article 19 Publications, 2014.

Article 19 (Organization), *Kenyan Court's Interpretation of "Citizens" Limits Access to Information*, IFEX Publication, May 22, 2013.

AWEMAC-IMPULSO, *Strategic Environmental and Social Assessment Draft Report for the Petroleum Sector in Kenya*, Ministry of Energy and Petroleum Publication, 2015.

Bank AD, 'Information Centre for the Extractives Sector' (*African Development Bank - Building today, a better Africa tomorrow*, 18 April 2019)

Barnhizer D, *The Implementation Gap: What Causes Laws to Succeed or Fail?* Cleveland State University Publication, 2013.

Bassetti V and Eisen N, *The Evolution of the EITI and next Steps for Tackling Extractive Industries Corruption*, Brookings Institution Press, 2020.

Battle M, *Capacity Development Amid Uncertainty*, Natural Resource Governance Institute, April 16, 2020.

Béland D, *Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift*, Social Science Quarterly, 2007.

Beyer JL, *The Emergence of a Freedom of Information Movement: Anonymous, WikiLeaks, the Pirate Party, and Iceland*, Journal of Computer-Mediated Communication, 2014.

Birgen J and Okoth M, *Our Role in Securing Public Participation in the Kenyan Legislative and Policy Reform Process*, Natural Justice Publications, July 23, 2020.

Blagescu M, Casas L and Lloyd R, *Pathways to Accountability: The GAP Framework*, One World Trust Publication, 2005.

Bogere J, *Transparency and Accountability in Kenya's Extractives Sector*, Extractives Baraza, Strathmore University, 2020.

Bowmans, *Petroleum Act, 2019 Is Now in Force*, Bowmans Law, 2019.

Brunton SL, *Beating the Resource Curse: Transparency in Kenya's Upstream Oil and Gas Sector*, Stellenbosch University Publication, 2018.

Cameron PD and Stanley MC, *Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries*, Open Knowledge World Bank Publications, 2017.

Candel JLL and Biesbroek R, *Toward a Processual Understanding of Policy Integration*, Policy Sciences Journal, 2016.

Cejudo GM and Michel CL, *Addressing Fragmented Government Action: Coordination, Coherence, and Integration*, Policy Sciences, 2017.

Christensen T and others, *Administrative Coordination Capacity: Does the Wickedness of Policy Areas Matter?* Policy and Society, Taylor and Francis Journal, 2019.

Chuhan-Pole P and others, *Africa's Pulse: An Analysis of Issues Shaping Africa's Economic Future*, World Bank Publications, 2013.

COFEK, *Mismanagement of the National Oil Corporation of Kenya*, Consumers Federation of Kenya, 2020.

COFEK, *Referee-Player? Severe Conflict of Interest as Total Kenya Boss Now Sits on EPRA Board*, Consumers Federation of Kenya, June 20, 2019.

Contract Transparency, Natural Resource Governance Institute Publications, January 27, 2016.

Contract Transparency: Making Contracts Accessible for Citizens, Extractive Industries Transparency Initiative Publications, February 15, 2021.

Cooperation between National and County Governments, Kenya Law Reform Commission (KLRC), 2012.

Corruption Perceptions Index, Transparency International, 2020.

Crossley N, *Conceptualising Consistency: Coherence, Principles, and the Practice of Human Protection*, 12 Global Responsibility to Protect 440, Brill Journals, 2020.

David-Barrett L and Okamura K, *The Transparency Paradox: Why Corrupt Countries Join the Extractive Industries Transparency Initiative*, Annual Meeting Paper, American Political Science Association, 2013.

Desai D and Jarvis M, *Governance and Accountability in Extractive Industries: Theory and Practice at the World Bank*, Journal of Energy and Natural Resources Law, 2012.

Dickson J, *Interpretation and Coherence in Legal Reasoning*, The Stanford Encyclopedia of Philosophy Winter 2016, Metaphysics Research Lab, Stanford University, 2016.

Eigen P, *Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry*, Houston Journal of International Law, 2006.

Eisen N, *The Tap Plus Approach to Anti-Corruption in the Natural Resource Value Chain*, Brookings Institution Press, 2020.

Eisen N and Bassetti V, *Oil, Gas, and Mining Corruption: Is It Inevitable?* Brookings Institution Press, 2020).

EITI-Evaluation-Report, 2011

EITI Now Supported by 70 Companies Extractive Industries Transparency Initiative Publication, November 8, 2012.

Energy and Extractives Sector Board Engages EPRA on Key Sector Issues, Kenya Private Sector Alliance, March 29, 2021.

Enhance Policy Coherence for Sustainable Development – Indicators and a Monitoring Framework, Sustainable Development Solutions Network, 2017.

ESAL, *Overview and Analysis of the Kenya Petroleum Act 2019*, Energy Solutions Africa, April 3, 2019.

Excitement as Tullow Strikes Oil in the First Well in Turkana County, Daily Nation Newspaper, March 26, 2012.

Fox JA, *The Uncertain Relationship between Transparency and Accountability*, Taylor & Francis Journals, 2010.

Gary I, *Back to the “Bottom of the Barrel”? Will East Africa’s New Oil and Gas Producers Get It Right?* Brookings Institution Press, 2014.

Gathu P and Kahindi H, *Access to Information in Kenya*, Transparency International, 2015.

‘Gcig_paper_no4.Pdf’ <https://www.cigionline.org/sites/default/files/gcig_paper_no4.pdf>.

Gillies A and Heuty A, *Does Transparency Work - The Challenges of Measurement and Effectiveness in Resource-Rich Countries Spotlight on Resources*, Yale Journal of International Affairs, 2011.

Goal 17 | Department of Economic and Social Affairs <<https://sdgs.un.org/goals/goal17>>.

Graham E and Ovadia JS, *Oil Exploration and Production in Sub-Saharan Africa, 1990-Present: Trends and Developments*, 6 The Extractive Industries and Society Journals 593, 2019.

Gumato U and others, *Unmasking Ethnic Minorities and Marginalized Communities in Kenya*, National Gender and Equality Commission Publication, 2017.

Hafner G, *Pros and Cons Ensuing from Fragmentation of International Law*, Michigan Journal of International Law, 2004.

Haider H, Mcloughlin C and Scott Z, *Access to Information – and Its Constraints*, Governance and Social Development Resource Centre Publications, 2011.

How We Work, Extractive Industries Transparency Initiative, 2021<<https://eiti.org/about/how-we-work>>.

Howlett M and Rayner J, *Design Principles for Policy Mixes: Cohesion and Coherence in “New Governance Arrangements”*, 26 Policy and Society, Taylor & Francis Journals, 2007.

OGP, *Opengovpartnership.Org/Members/Kenya/Commitments/KE0025/’ (Open Government Partnership)* <<https://www.opengovpartnership.org/members/kenya/commitments/KE0025/>>.

Hudak J, Eisen N, Kaufmann D and others, *The TAP-Plus Approach to Anti-Corruption in the Natural Resource Value Chain*, Brookings Institution Press, 2020.

Hudson B, Hunter D and Peckham S, *Policy Failure and the Policy-Implementation Gap: Can Policy Support Programs Help?* 2 Policy Design and Practice, 2019.

Imi A, *Escaping from the Resource Curse: Evidence from Botswana and the Rest of the World* 54 IMF Staff Papers 663, 2007.

ILEG, *Transparency and Accountability in Kenya's Extractives Sector: What works, what doesn't?* Institute for Law and Environmental Governance, 2020.

IMF, *Guide on Resource Revenue Transparency*, International Monetary Fund, Fiscal Affairs Department, 2007.

Inside Kenya’s Turkana Region: Cattle, Climate Change, and Oil, The New Humanitarian, January 15, 2018.

Introduction to the Upstream Oil and Gas Industry, <<http://oilandenergy.co.ke/downloads/Introduction%20to%20the%20Upstream%20Oil%20and%20Gas%20Industry.pdf>>.

Jansen M, *Principles for Policy Coherence: Making Better Policies for Food Systems*, OECD Publishing, 2021.

Kaspar L and Puddephatt A, ‘Benefits of Transparency in Public Procurement for SMEs’ 22

Katiba Institute v. Presidents Delivery Unit Case Analysis, Global Freedom of Expression, Columbia University Publication, 2017.

KCSPOG, *Kenya Civil Society Platform on Oil and Gas: Agenda for Kenya's Oil and Gas Development*, Business and Human Rights Publication, 2017.

KCSPOG, *Kenya Civil Society Platform on Oil and Gas: Statement on Expected Revenue from the Early Oil Pilot Scheme*, KCSPOG, August 01, 2019.

KENYA: A Decidedly Odd Montage, The Indian Ocean Newsletter, Africa Intelligence, February 02, 2008.

Kenya Open Data <<https://www.opendata.go.ke/>>.

Kenya Seeks to Make the Most of Its Resources, Oxford Business Group, January 24, 2016.

Khemani S, *Making Politics Work for Development: Harnessing Transparency and Citizen Engagement*, World Bank Publications, 2016.

Kiener-Manu K, *Anti-Corruption Module 2 Key Issues: What Is Good Governance?* UNODC Publication, 2019.

Kimenyi MS, *Oil and Gas Boom in East Africa: Avoiding the Curse*, Brookings Institution Press, 2014.

Kissinger G, Brockhaus M and Bush SR, *Policy Integration as a Means to Address Policy Fragmentation: Assessing the Role of Vietnam's National REDD+ Action Plan in the Central Highlands*, Environmental Science & Policy, 2021.

Kitimo A, *Call to Adopt Mining Values and Principles in East Africa*, The East African Newspaper, July 27, 2019.

Kolstad I and Søreide T, *Corruption in Natural Resource Management: Implications for Policy Makers*, 34 Resources Policy, 2009.

Kolstad I and Wiig A, *Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?* 37 World Development, 2009.

Koop C and Lodge M, *Exploring the Co-Ordination of Economic Regulation*, Journal of European Public Policy: Vol 21, No 9, Taylor & Francis Online, 2014.

Kopits G and others, *Transparency in Government Operations*, International Monetary Fund Publications, 1998.

Madden P, *Figure of the Week: Natural Resource Governance in Africa*, Brookings Institution Press, 2019.

Mähler A, *Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta*, German Institute of Global and Area Studies, 2010.

Makore G, *Kenya's New Government and Imperatives for Extractives Governance Reform*, Oxfam International Publications, February 14, 2018.

Makore G, *The Early Oil Pilot Scheme: A Litmus Test of Kenya's Oil Governance*, Oxfam International Publications, August 20, 2018.

Marhoum A and Samper D, *East Africa Living Encyclopedia*, African Studies Center, University of Pennsylvania Publication, 2020.

Mas J, Diez A, Martinez M and Pagan J, *Transparency, Accountability and Participation: A Common Agenda for Social Cohesion and Governance in Latin America*, URB-AL III Programme Publication, 2018.

Mawejje J, *UNCTAD African Oil and Gas Conference Focus on Governance Is Spot On*, Brookings Institution Press, 2013.

May PJ and others, *Policy Coherence and Component-Driven Policymaking: Arctic Policy in Canada and the United States*, Policy Studies Journal, 2005.

Mbote, *Extractive Industries in Kenya: A Blessing or A Curse* 2014.

Mbugua S, *Oil-Rich yet on Edge in Turkana*, The New Humanitarian, November 06, 2017.

McLachlan C, *The Principle of Systemic Integration and Article 31(3)(C) of the Vienna Convention*, The International and Comparative Law Quarterly, 2005.

Meijer A, *Understanding the Complex Dynamics of Transparency*, Public Administration Review, 2013.

Meijers E and Stead D, *Policy Integration: What Does It Mean and How Can It Be Achieved? A Multi-Disciplinary Review*, Delft University Publication, 2004.

Mkutu K and Wandera G, *Conflict, Security and the Extractive Industries in Turkana, Kenya: Emerging Issues 2012-2015*, United States International University-Africa and Kenya School of Government Publication, 2016.

Muchira N, *Taxpayers Lose \$2m in Kenya's Early Oil Scheme*, The East African Newspaper, June 06, 2020.

Muigua K, *Towards Meaningful Public Participation in Natural Resource Management in Kenya*, Semantic Scholar Journal, 2014.

Mussa A, *Conducting Oil and Gas Activities in Kenya*, Africa Legal Network, CMS Cameron McKenna LLP articles, 2016.

Mutimba S and Wanyoike R, *Towards A Coherent and Cost-Effective Policy Response to Climate Change in Kenya: Country Report*, Heinrich Boll Stiftung East & Horn of Africa Publishers, 2013.

Nakagaki M, Kompanek A and Tominic M, *Improving Public Governance: Closing the Implementation Gap between Law and Practice*, Center for International Private Enterprise, 2012.

Nakhle C, *Transparency in the Oil and Gas Sector: Much Talk but Limited Action*, Carnegie Middle East Center, Lebanese Center for Policy Studies Publication, December 16, 2016.

National Values and Principles of Governance: Training Manual, Executive Office of the President Publication, 2017.

Ndoye F, *Access to Information, Public Participation, and Access to Justice in Environmental Matters: Engaging National Governments in the Conversation*, UNEP, West Asia Regional Consultative Meeting November 26-27, 2013.

Nigeria, Extractive Industries Transparency Initiative Publications, 2020.

NRGI, *The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth*, Natural Resource Governance Institute Publication, 2015.

O'Connor S, *What Is Interoperability and Why Is It Important?* Advanced Data Systems Corporation Blogs, May 30, 2017.

Odallo B and others, *Mixed Blessing? Promoting Good Governance in Kenya's Extractive Industries*, AfriCOG Publications, 2014.

OECD, *Illicit Financial Flows from Developing Countries: Measuring OECD Responses* OECD Publications, 2014.

Peters A, *The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization*, International Journal of Constitutional Law, 2017.

Peters BG, *The Challenge of Policy Coordination*, 1 Policy Design and Practice, Taylor & Francis Journals, 2018.

Peters BG and Savoie DJ, *Managing Incoherence: The Coordination and Empowerment Conundrum*, Public Administration Review, 1996.

Pillay N, *The Negative Impact of Corruption on Human Rights*, Opening Statement, Office of the United Nations High Commissioner for Human Rights, March 27, 2008.

Policy Coherence for Development- Lessons Learned, Organisation for Economic Co-operation and Development Policy Brief, 2008.

Policy Coherence for Sustainable Development, Scotland's International Development Alliance, September 2019.

Policy Development and Co-ordination, Organisation for Economic Co-operation and Development Publication, 2020.

PSCU, *Kenya's Energy Sector Gets Three New Agencies*, The East African Newspaper, March 12, 2019.

Rayner J and Howlett M, *Introduction: Understanding Integrated Policy Strategies and Their Evolution*, Policy and Society, 2009.

Reynolds J, *A Crude Awakening: The Role of the Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets*, Global Witness, 1999.

'Report on the Kenya Country Mining Vision (KCMV) Retreat Held at Sentrim Elementaita Naivasha | UNDP in Kenya' (UNDP)
<<https://www.ke.undp.org/content/kenya/en/home/library/poverty/Report-on-the-Kenya-Country-Mining-Vision-Retreat.html>>.

'Resource Governance Index' <<https://resourcegovernanceindex.org/>> accessed 30 July 2020

Robinson M, *Publishing Terms of Mining Contracts Is an Antidote to Graft*, The East African Newspaper, December 10, 2020.

'Role of EPRA in the Petroleum Subsector' (*Energy and Petroleum Regulatory Authority*)
<<https://www.epra.go.ke/services/petroleum/functions-of-petroleum-department/>>.

Rosenblum P and Maples S, *Contracts Confidential: Ending Secret Deals in the Extractives Industries*, Revenue Watch Institute Publications, 2009.

Rubin A, *Policy Coherence at the Local Level: Aligning Employment, Skills and Economic Development Policy*, OECD Publications, 2016.

Sanghi A and Onder H, *Kenya Got Oil: What Next?* World Bank Blogs, April 08, 2016.

SEIC, *Needs Assessment Report on Access to Information in Kenya's Extractives Sector*, Strathmore Extractives Industry Centre Publications, 2017.

Sovacool B and Andrews N, *Does Transparency Matter? Evaluating the Governance Impacts of the Extractive Industries Transparency Initiative (EITI) in Azerbaijan and Liberia*, 45 Resources Policy Journals 183, 2015.

Staff R, 'Tullow Oil May Halt Kenyan Oilfield Operations Due to Protest' *Reuters* (17 July 2018) <<https://www.reuters.com/article/us-tullow-kenya-idUSKBN1K71QJ>>.

Stiglitz J, *On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life*, Oxford University Press, 1999.

'Systemic Integration and International Investment Law - Some Practical Reflections | ArbitrationLaw.Com' <<https://arbitrationlaw.com/library/systemic-integration-and-international-investment-law-some-practical-reflections>>.

Tarus V, *A Year of Shocks and Reflections for Kenya's Oil and Gas Industry*, Oxfam Kenya, 2020.

Team HMK, *Haki Madini Kenya - Tracking Africa Mining Vision in Kenya; Reflections from a CSO Consultative Forum*, Haki Madini Kenya, September 04, 2018.

Thurber MC, Hults D and Heller P, *Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance*, 39 Energy Policy Journal 5366, 2011.

Transparency (UN 2004)

Transparency and Accountability in Kenya's Oil and Gas Sector, Extractives Baraza, 2018.

Transparency Keeps Resource Curse at Bay, Business Daily Africa, August 07, 2019.

Trein P, Maggetti M and Meyer I, *Necessary Conditions for Policy Integration and Administrative Coordination Reforms: An Exploratory Analysis*, Journal of European Public Policy, 2020.

Tyce M, *Competition, Fragmentation and "Resource Factionalism": The Politics of Governing Oil and Gas in Kenya*, The Extractive Industries and Society Journal, 2020.

Tyce M, *Unrealistic Expectations, Frustrated Progress and an Uncertain Future? The Political Economy of Oil in Kenya*, 7 The Extractive Industries and Society Journal 729, 2020.

United Nations, *Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa*, United Nations Economic Commission for Africa, 2015.

'Upstream – National Oil Corporation of Kenya' <<https://nationaloil.co.ke/upstream/>>.

US EPA O, *Public Participation Guide: Introduction to Public Participation*, US Environmental Protection Agency, February 24, 2014.

Ushie V, *From Aspiration to Reality: Unpacking the Africa Mining Vision*, Oxfam International Publications, March 9, 2017.

Van Alstine J, *Transparency in Resource Governance: The Pitfalls and Potential of "New Oil" in Sub-Saharan Africa*, 14 Global Environmental Politics 20, Mitpress Journals, 2014.

Vasquez P, *Four Policy Actions to Improve Local Governance of the Oil and Gas Sector*, International Development Policy, Revue internationale de politique de développement, openedition Journals, 2016.

Warah R, *Saving Lamu: How a Campaign for Environmental Justice Was Fought*, The Elephant, July 15, 2019.

Waswa S, *The OGP Story in Kenya: Building Political Will for Open Government*, Open Government Partnership Publication, January 28, 2020.

Weiss EB, *On Being Accountable in a Kaleidoscopic World*, Cambridge Journals, 2010.

‘WGI 2020 Interactive > Home’ <<https://info.worldbank.org/governance/wgi/>>.

What Are the Limitations to Access to Information, County Governance AHADI Toolkit, September 2020<<https://countytoolkit.devolution.go.ke/what-are-limitations-access-information>>.

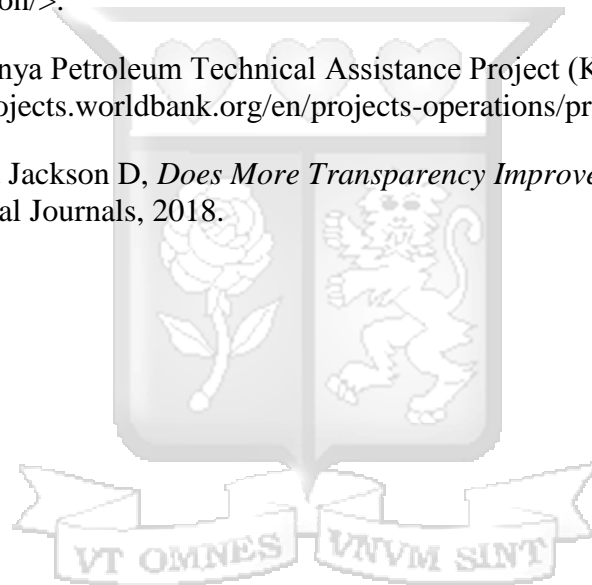
What Are the “Natural Resource Curse” and “Dutch Disease”? Oil In Uganda, ActionAid Uganda, February 11, 2012.

Who We Are, Extractive Industries Transparency Initiative Publications, 2020.

‘WIGO 2016: Transparency, Accountability & Participation | WIN’ (*WIN - Water Integrity Network*) <<https://www.waterintegritynetwork.net/wigo/special-topics/transparency-accountability-participation/>>.

‘World Bank Project: Kenya Petroleum Technical Assistance Project (KEPTAP) - P145234’ (*World Bank*) <<https://projects.worldbank.org/en/projects-operations/project-detail/P145234>>.

Zúñiga N, Jenkins M and Jackson D, *Does More Transparency Improve Accountability?* Transparency International Journals, 2018.



APPENDICES

APPENDIX 1: ETHICS CLEARANCE

RHInnO Ethics - SU-IERC1126/21 - 1 of 1

Final Decision

This document certifies that the study:

\\\"THE TAP-PLUS APPROACH TO ANTI- CORRUPTION IN THE OIL AND GAS SECTOR: LEGAL AND INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION IN KENYA\\\"

Principal Investigator: Ms. Lumen, Kazuri Wanjiku Ndunyu

Reference number: SU-IERC1126/21

Was reviewed and received the following status:

\\\"done\\\"

Additional Comments: Final decision: **approved**

Comments sent:

Reviewer #1:

'Recommended for approval.'



APPENDIX 2: PLAGIARISM REPORT

















Document Information

Analyzed document	The TAP-Plus Approach to Good Governance in the Oil and Gas Sector Legal and Institutional Framework for Implementation in Kenya.docx (D113645520)
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Submitter email	Lumen.Ndunyu@strathmore.edu
Similarity	13%
Analysis address	library.strath@analysis.arkund.com

















Sources included in the report
















W	URL: http://www.acode-u.org/uploadedFiles/PRS94.pdf Fetched: 2021-08-10 08:17:01		1
W	URL: https://plus.strathmore.edu/bitstream/handle/11071/10212/Legal%20and%20institutional%20framework%20for%20implementing%20a%20hybrid%20approach%20to%20local%20content%20in%20Kenya%E2%80%99s%20petroleum%20sector%20-%20lessons%20from%20Norway.pdf?sequence=3&isAllowed=y Fetched: 2021-06-08 18:09:43		3
W	URL: https://core.ac.uk/download/pdf/188223561.pdf Fetched: 2021-01-11 17:00:17		17
W	URL: https://www.bowmanslaw.com/insights/oil-gas/petroleum-act-2019-is-now-in-force/ Fetched: 2021-09-28 11:28:00		1
W	URL: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NaturalResources_ClassesofTransactionsSubjecttoRatification_Act_No41of2016.pdf Fetched: 2021-09-28 11:28:00		1
W	URL: http://www.environment.go.ke/wp-content/uploads/2018/08/KSIF-Kenya-Strategic-Investment-Framework-on-SLM-2017-2027.pdf Fetched: 2021-09-28 11:28:00		3
W	URL: https://wedocs.unep.org/bitstream/handle/20.500.11822/31043/AUP.pdf?sequence=1&isAllowed=y Fetched: 2021-09-28 11:28:00		3
W	URL: https://www.acdhrs.org/wp-content/uploads/2017/07/Resolution-on-the-Niamey-Declaration-on-Ensuring-the-Upholding-of-the-African-Charter-in-the-Extractive-Industries-Sector-.pdf Fetched: 2021-09-28 11:28:00		4
W	URL: http://kenyalaw.org/caselaw/cases/view/138741 Fetched: 2021-09-28 11:28:00		3
W	URL: http://kenyalaw.org/caselaw/cases/view/88569/ Fetched: 2021-09-28 11:28:00		1

1/99

W	<p>URL: https://plus.strathmore.edu/bitstream/handle/11071/10214/Transparency%20in%20the%20management%20of%20oil%20and%20gas%20blocks%20-%20a%20review%20of%20Kenya%20legislative%20framework.pdf?sequence=3&isAllowed=y</p> <p>Fetchd: 2021-06-16 08:05:29</p>		4
W	<p>URL: https://africog.org/wp-content/uploads/2015/10/Mixed-Blessing-Promoting-Good-Governance-in-Kenya%E2%80%99s-Extractive-Industries1.pdf</p> <p>Fetchd: 2021-09-28 11:28:00</p>		2
W	<p>URL: https://www.cohesionandvalues.go.ke/wp-content/uploads/2017/04/TRAINING-MANUAL-ON-NVPG-2017.pdf</p> <p>Fetchd: 2021-09-28 11:28:00</p>		1
W	<p>URL: https://www.extractives-baraza.com/single-style/transparency-and-accountability-in-kenyas-oil-and-gas-sector/</p> <p>Fetchd: 2021-09-28 11:28:00</p>		2
W	<p>URL: https://carnegie-mec.org/2016/12/16/transparency-in-oil-and-gas-sector-much-talk-but-limited-action-pub-66495</p> <p>Fetchd: 2021-09-28 11:28:00</p>		5
W	<p>URL: http://kmco.co.ke/wp-content/uploads/2020/04/Securing-Our-Destiny-through-Effective-Management-of-the-Environment-Kariuki-Muigua-April-2020.pdf</p> <p>Fetchd: 2021-05-10 19:02:02</p>		4
W	<p>URL: https://www.brookings.edu/wp-content/uploads/2020/06/ltrc_corruption_vfinal_x2screenreader4.pdf</p> <p>Fetchd: 2021-09-28 11:28:00</p>		12
W	<p>URL: http://documents1.worldbank.org/curated/en/186991495657679496/text/SFG2851-V2-EA-P145234-Box402910B-PUBLIC-Disclosed-5-24-2017.txt</p> <p>Fetchd: 2021-09-28 11:28:00</p>		1
W	<p>URL: https://arbitrationlaw.com/library/systemic-integration-and-international-investment-law-some-practical-reflections</p> <p>Fetchd: 2021-09-28 11:28:00</p>		2
W	<p>URL: https://rgu-repository.worktribe.com/OutputFile/296927</p> <p>Fetchd: 2021-09-28 11:28:00</p>		3
W	<p>URL: https://nationaloil.co.ke/upstream/</p> <p>Fetchd: 2021-09-28 11:28:00</p>		1
W	<p>URL: https://globalfreedomofexpression.columbia.edu/cases/katiba-institute-v-presidents-delivery-unit/</p> <p>Fetchd: 2021-09-28 11:28:00</p>		2
W	<p>URL: http://kmco.co.ke/wp-content/uploads/2019/08/Implementing-the-Extractives-Industries-Transparency-Initiative-in-Kenya-Kariuki-Muigua-15th-August-2019.pdf</p> <p>Fetchd: 2021-06-01 09:55:26</p>		8
W	<p>URL: https://dspace.library.uu.nl/bitstream/handle/1874/337348/S.%20Runci%20-%204044266%20-%20MSC%20Thesis%20-%20Sep%2C%202015%20%282%29.pdf?sequence=2&isAllowed=y</p> <p>Fetchd: 2021-06-25 22:43:48</p>		4








Original

W	URL: https://www.nema.go.ke/images/Docs/SEA%20Reports/SESA%20Draft%20Report%20for%20Petroleum%20Sector%20in%20Kenya.pdf Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.macfound.org/media/files/20150730_oil_governance_in_uganda_and_kenya_public_report_final.pdf Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.opengovpartnership.org/wp-content/uploads/2001/01/Kenya_AP2_2016_0.pdf Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.theelephant.info/op-eds/2019/07/15/saving-lamu-how-a-campaign-for-environmental-justice-was-fought/ Fetched: 2021-09-28 11:28:00	 3
W	URL: https://kam.co.ke/wp-content/uploads/2021/02/2021-Manufacturing-Priority-Agenda.pdf Fetched: 2021-09-28 11:28:00	 2
W	URL: https://ntnuopen.ntnu.no/ntnu-xmlui/handle/11250/2483982 Fetched: 2021-09-28 11:28:00	 2
W	URL: http://www.ncbi.nlm.nih.gov/books/NBK553604/ Fetched: 2021-09-28 11:28:00	 2
W	URL: http://journals.openedition.org/poldev/2227 Fetched: 2021-09-28 11:28:00	 3
W	URL: https://www.brookings.edu/blog/africa-in-focus/2014/02/20/back-to-the-bottom-of-the-barrel-will-east-africas-new-oil-and-gas-producers-get-it-right/ Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.thenewhumanitarian.org/feature/2018/01/15/inside-kenya-s-turkana-region-cattle-climate-change-and-oil Fetched: 2021-09-28 11:28:00	 3
W	URL: https://www.africaportal.org/documents/17511/saia_sop_266_adeleke_20170828.pdf Fetched: 2021-08-14 09:28:45	 1
W	URL: https://www.brookings.edu/research/the-tap-plus-approach-to-anti-corruption-in-the-natural-resource-value-chain/ Fetched: 2021-09-28 11:28:00	 20
W	URL: https://www.ssrn.com/abstract=3661541 Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.reuters.com/article/us-tullow-kenya-idUSKBN1K71QJ Fetched: 2021-09-28 11:28:00	 1
W	URL: http://journals.openedition.org/poldev/1646 Fetched: 2021-09-28 11:28:00	 2
W	URL: https://oilinuganda.org/facts-faqs/global-oil-facts-faqs/what-are-the-natural-resource-curse-and-dutch-disease/ Fetched: 2021-09-28 11:28:00	 1

W	URL: https://www.brookings.edu/blog/fixgov/2020/06/28/oil-gas-and-mining-corruption-is-it-inevitable/ Fetched: 2021-09-28 11:28:00	 1
W	URL: http://pubs.iied.org/pdfs/16555IIED.pdf%253F Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.brookings.edu/blog/africa-in-focus/2019/04/24/figure-of-the-week-natural-resource-governance-in-africa/ Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www8.gsb.columbia.edu/researcharchive/articles/1475 Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.brookings.edu/blog/fixgov/2020/07/07/supercharging-anti-corruption-initiatives-the-tap-plus-approach/ Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.cambridge.org/core/product/identifier/S0272503700050333/type/journal_article Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.sciencedirect.com/science/article/pii/S2214790X18300455 Fetched: 2021-09-28 11:28:00	 1
W	URL: http://rio20.net/en/propuestas/resolution-on-a-human-rights-based-approach-to-natural-resources-governance/ Fetched: 2021-09-28 11:28:00	 4
W	URL: https://naturaljustice.org/our-role-in-securing-public-participation-in-the-kenyan-legislative-and-policy-reform-process/ Fetched: 2021-09-28 11:28:00	 2
W	URL: https://observ-ocd.diba.cat/sites/observ-ocd.org/files/2018-04/transparency-accountability-and-participation-a-common-agenda-for-social-cohesion-and-governance-in-latin-america.pdf Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.brookings.edu/blog/africa-in-focus/2013/11/25/unctad-african-oil-and-gas-conference-focus-on-governance-is-spot-on/ Fetched: 2021-09-28 11:28:00	 4
W	URL: https://www.brookings.edu/blog/africa-in-focus/2014/02/18/oil-and-gas-boom-in-east-africa-avoiding-the-curse/ Fetched: 2021-09-28 11:28:00	 3
W	URL: https://www.mitpressjournals.org/doi/10.1162/GLEP_a_00213 Fetched: 2021-09-28 11:28:00	 1
W	URL: http://sro.sussex.ac.uk/id/eprint/52111/ Fetched: 2021-09-28 11:28:00	 1
W	URL: https://papers.ssrn.com/abstract=2541422 Fetched: 2021-09-28 11:28:00	 1

	<p>Fetches: 2021-09-28 11:28:00</p>	
W	<p>URL: http://etd.aau.edu.et/bitstream/handle/123456789/243/Adane%20Bekele.pdf?sequence=1&isAllowed=y Fetches: 2021-09-28 11:28:00</p>	 1
W	<p>URL: https://www.klrc.go.ke/index.php/constitution-of-kenya/143-chapter-eleven-devolved-government/part-5-relationships-between-governments/358-189-cooperation-between-national-and-county-governments Fetches: 2021-09-28 11:28:00</p>	 2
W	<p>URL: https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/information-centre-for-the-extractives-sector Fetches: 2021-09-28 11:28:00</p>	 2
W	<p>URL: https://ifex.org/kenyan-courts-interpretation-of-citizens-limits-access-to-information/ Fetches: 2021-09-28 11:28:00</p>	 2
W	<p>URL: https://kenya.oxfam.org/latest/blogs/year-shocks-and-reflections-kenya%E2%80%99s-oil-and-gas-industry Fetches: 2021-09-28 11:28:00</p>	 3
W	<p>URL: https://kenya.oxfam.org/latest/blogs/kenya%E2%80%99s-new-government-and-imperatives-extractives-governance-reform Fetches: 2021-09-28 11:28:00</p>	 1
W	<p>URL: http://kenyaupdate.blogspot.com/2012/03/wetangula-was-adviser-to-firm-that-sold.html Fetches: 2021-09-28 11:28:00</p>	 1
W	<p>URL: https://oxfordbusinessgroup.com/analysis/natural-response-government-seeks-make-most-its-resources Fetches: 2021-09-28 11:28:00</p>	 1
W	<p>URL: https://www.epra.go.ke/services/petroleum/functions-of-petroleum-department/ Fetches: 2021-09-28 11:28:00</p>	 1
W	<p>URL: https://kepsa.or.ke/energy-and-extractives-sector-board-engages-epra-on-key-sector-issues/ Fetches: 2021-09-28 11:28:00</p>	 2
W	<p>URL: https://www.africalegalnetwork.com/kenya/news/legal-alert-mining-act-series-mining-community-development-agreements-regulations/ Fetches: 2021-09-28 11:28:00</p>	 2
W	<p>URL: https://justice-project.org/wp-content/uploads/2020/08/Transparency-and-Accountability-in-Kenyas-Extractives-Sector-State-of-Play.pdf Fetches: 2021-04-24 02:31:32</p>	 2
W	<p>URL: https://www.theestafrican.co.ke/tea/oped/comment/publishing-terms-of-mining-contracts-is-an-antidote-to-graft-3224468 Fetches: 2021-09-28 11:28:00</p>	 2
W	<p>URL: https://www.opengovpartnership.org/stories/the-ogp-story-in-kenya-building-political-will-for-open-government/ Fetches: 2021-09-28 11:28:00</p>	 3

W	URL: https://kenya.oxfam.org/latest/blogs/early-oil-pilot-scheme-litmus-test-kenya%E2%80%99s-oil-governance Fetched: 2021-09-28 11:28:00	1
W	URL: https://revistas.uexternado.edu.co/index.php/fiscal/article/download/5946/7657/ Fetched: 2021-09-28 11:28:00	1
W	URL: https://www.theeastafrican.co.ke/tea/business/taxpayers-lose-2m-in-kenya-s-early-oil-scheme-1442742 Fetched: 2021-09-28 11:28:00	2
W	URL: https://www.businessdailyafrica.com/bd/lifestyle/profiles/sang-s-exit-adds-to-high-ceo-turnover-at-kenya-pipeline-2230602 Fetched: 2021-09-28 11:28:00	2
W	URL: http://oilandenergy.co.ke/downloads/Introduction%20to%20the%20Upstream%20Oil%20and%20Gas%20Industry.pdf Fetched: 2021-09-28 11:28:00	1
W	URL: https://www.brookings.edu/blog/up-front/2020/07/30/the-evolution-of-the-eiti-and-next-steps-for-tackling-extractive-industries-corruption/ Fetched: 2021-09-28 11:28:00	2
W	URL: http://www.sciencedirect.com/science/article/pii/S2214790X19304010 Fetched: 2021-09-28 11:28:00	1
W	URL: https://reliefweb.int/sites/reliefweb.int/files/resources/4F2D6E7D11DB3BD8C1256E66002F1219-gw-transparency-24mar.pdf Fetched: 2021-09-28 11:28:00	1
W	URL: https://brill.com/view/journals/gr2p/12/4/article-p440_440.xml Fetched: 2021-09-28 11:28:00	3
W	URL: https://www.intdevalliance.scot/how-we-help/policy-and-advocacy/policy-coherence-sustainable-development Fetched: 2021-09-28 11:28:00	1
W	URL: https://www.oecd.org/employment/leed/40917889.pdf Fetched: 2021-09-28 11:28:00	1
W	URL: https://www.cambridge.org/core/books/joint-approaches-to-social-policy/DFB52FE96789D1D4A979A5BCBA8D51A1 Fetched: 2021-09-28 11:28:00	1
W	URL: https://indicators.report/targets/17-14/ Fetched: 2021-09-28 11:28:00	1
W	URL: https://works.bepress.com/david_barnhizer/79/ Fetched: 2021-09-28 11:28:00	1
W	URL: https://www.sciencedirect.com/science/article/pii/S1462901121000563 Fetched: 2021-09-28 11:28:00	1
W	URL: https://www.theeastafrican.co.ke/tea/business/kenya-s-energy-sector-gets-three-new-agencies-1414112	1

W	URL: http://hakimadinikenya.org/blog/tracking-africa-mining-vision-in-kenya-reflections-from-a-cso-consultative-forum Fetched: 2021-09-28 11:28:00	 2
W	URL: https://www.businessdailyafrica.com/bd/economy/sh900m-lies-unused-in-petroleum-training-fund-2257544 Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.ke.undp.org/content/kenya/en/home/library/poverty/Report-on-the-Kenya-Country-Mining-Vision-Retreat.html Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.transparency-initiative.org/blog/2725/linking-beneficial-ownership-transparency-improved-tax-revenue-collection-developing-countries/ Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.lexology.com/library/detail.aspx?g=b66f08fb-be18-41e5-a32f-fb84c922c042 Fetched: 2021-09-28 11:28:00	 2
W	URL: https://read.oecd-ilibrary.org/development/corruption-in-the-extractive-value-chain_9789264256569-en Fetched: 2021-09-28 11:28:00	 1
W	URL: https://www.nytimes.com/2016/07/25/world/americas/panama-papers-reveal-wide-use-of-shell-companies-by-african-officials.html Fetched: 2021-09-28 11:28:00	 2

