



Governing the Extractives Sector in Kenya: Understanding the Role of Parliament



A Brief Guide

The governance of the extractives sector is an integral component of transforming resource wealth into development and citizen wellbeing. Parliament plays a crucial role in this and must carry out specific actions in order to ensure this transformative agenda is achieved. This report provides a succinct, normative description of the Parliament of Kenya's role and function at each stage of the extractives industry value chain, giving details on the scope of actions, supporting institutions, expected outcomes and recommended program priorities.

In terms of best-practice, Parliament as a whole, must carry out specific actions throughout the entire process of natural resource governance. These are expressed through 5 stages of the extractives industry value chain which include:

*Decision to Extract
Negotiating the Best Deal
Developing the Resources Properly
Revenue Collection
Revenue Management*



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Acronyms & Abbreviations

BMOs	Business Member Organisations
CSOs	Civil Society Organisations
CoK	Constitution of Kenya
CPST	Centre for Parliamentary Studies & Training
EI	Extractives Industry
EITI	Extractives Industries Transparency Initiative
GoK	Government of Kenya
MP	Member of Parliament
NA	National Assembly
NGOs	Non-Governmental Organisations
PBO	Parliamentary Budget Office

Executive Summary

The governance of the extractives sector is an integral component of transforming resource wealth into development and citizen wellbeing. Parliament plays a crucial role in this and must carry out specific actions in order to ensure this transformative agenda is achieved. This report provides a succinct, normative description of the Parliament of Kenya's role and function at each stage of the extractives industry value chain, giving details on the scope of actions, supporting institutions, expected outcomes and recommended program priorities.

The Parliament of Kenya is a bi-cameral institution constituted for the purpose of representation, oversight and legislation. While there are two separate houses with specific mandates following the aforementioned three purposes, the governance of natural resources is a mandate for Parliament as a whole as articulated in Article 71 of the Constitution of Kenya, 2010. There are four Parliamentary committees (two in the National Assembly and two in the Senate) that could claim authority over different aspects of natural resource governance. In terms of best-practice, Parliament as a whole, must carry out specific actions throughout the entire process of natural resource governance. These are expressed through 5 stages of the extractives industry value chain as follows:

- I. *Decision to Extract*** – At this stage, Parliament must conduct studies on the potential consequences of extraction that inform the decision to extract the resource, gathering views of stakeholders and vetting the final decision by the Executive branch of government.
- II. *Negotiating the Best Deal*** – Parliament must review legal frameworks guiding the process of tendering, due-diligence, local content requirements & contract awarding. According to Articles 71 and 72 of the Constitution of Kenya (2010), parliament must further oversee & scrutinize the respective executive agency mandated with this process by assessing the contracting process & officially ratify the final agreements.
- III. *Developing Resources Properly*** – This stage involves compliance monitoring of both the government and contracted company. Parliament must provide a regulatory framework clearly identifying the role of each stakeholder including relevant ministries & other state agencies and oversee their work.
- IV. *Collecting Revenues*** – Oversight over the budget process is integral during this stage, as is the review of legal & regulatory frameworks clearly outlining the mandate of various institutions in the process and requirements on information disclosure.
- V. *Managing Revenues*** – Parliament plays an important role in reviewing appropriate legal frameworks for revenue management, overseeing mandated institutions and providing a mechanism for transparency & accountability in transforming collected revenues into sustainable development.

The 5 stages describe the best-practice approach to Parliament's involvement in extractives sector governance. However, there are a number of challenges to its implementation including the ambiguity on authority with 4 different committees, disconnects between the legislature & executive and an inadequacy of knowledge on the extractives sector amongst Parliamentarians. These challenges and the model role of Parliament within the extractives industry value chain must be addressed and achieved in order to fulfil the transformative potential of natural resources towards national development and citizen wellbeing.

Introduction

The emerging extractives sector in Kenya provides an unprecedented opportunity for social and economic transformation of the country. Significant deposits of oil, titanium, coal and other mineral resources have been discovered and are set for exploitation at a most opportune moment for the country on a quest for upper-middle income status by 2030. The new sector not only offers an additional source of revenue for development spending but provides opportunities to cultivate business models and develop dynamic comparative advantages across the value chain.

In order to realise the holistic potential of the extractives sector, however, there must be significant good governance practices in place. Across the World, countries have been plagued by the ‘Resource Curse’ where natural resources have exacerbated inequality and fuelled conflict rather than transform the lives of citizens. Good governance and oversight of the extractives sector is a crucial variable of success and must be institutionalised from the very beginning of a country’s journey in the extractives sector so that it does not fall victim of this curse.

A country’s legislature is a fundamental institution within this governance of the extractives sector. Parliament is the only public institution, constitutionally mandated through 3 core functions, with the authority to oversee the

development & implementation of policy, interrogate public expenditures, develop legal and regulatory frameworks and represent constituent interests and views in decision-making (World Bank Institute, 2009). By exerting their authority on representation, legislation and oversight, Parliament can greatly influence the budget process, make laws to enable and constrain activities and contribute to the development of long and medium-term strategies for the sector. Therefore, it is fundamental for the country’s long-term development well-being, to both understand and strengthen Parliament’s role in the governance of the extractives sector.

This report intends to provide a succinct description of the Parliament of Kenya’s role in governing the extractives sector. It begins with a brief overview of the structure and key internal units within the Kenyan Parliament needed to develop capacity and play a role in extractives sector governance. It then undertakes a value chain approach that proposes a best-practice model on key actions for Parliament to undertake at each stage. The matrices developed not only clearly outline Parliament’s role but offer a mechanism for the evaluation of performance at each stage of the value chain. Finally, the report concludes with a description of challenges and opportunities one must generally consider with regards to providing external support towards Parliament’s role in the governance of the

extractives sector.

The Parliament of Kenya

Through Chapter 8 and more specifically Article 93 of the Constitution of Kenya (CoK) 2010, a bi-cameral Parliament was formed consisting of a National Assembly and Senate. Representation, legislation and oversight are three core functions of both houses of Parliament but while the National Assembly represents the interest of constituencies and legislates for the same, the Senate represents the interests of county governments and develops legislation intended to safeguard and advance devolution.

With regards to the extractives sector and the governance of natural resources, there is no explicit specification on a split of mandate between both houses. Articles 71 and 72 of the CoK 2010 give Parliament (as a whole) the authority to ratify agreements relating to natural resources and to develop legislation for the same. Therefore, the governance of natural resources which includes the extractives sector supersedes both houses individually and is a function for Parliament as a whole. This is an important point of consideration in understanding the role that Parliament must play in extractives sector governance. It should be noted however that practice has evolved, perhaps for ease of operations or administration, in which Parliamentary roles of legislation and oversight appear to be executed separately.

There are two departmental committees in the National Assembly and two standing committees in the Senate that can have authority over extractives sector governance. The committees are mandated to investigate, inquire into, and legislate on all matters relating to the sector for which the committee is formed.

The two committees in the National Assembly are the:

- Environmental & Natural Resources Committee; and
- Energy, Communication & Information Committee.

In the Senate, the two committees are the:

- Committee on Energy, Roads & Transportation; and
- Committee on Land, Environment & Natural Resources.

These committees are supported by clerks and other staff who handle daily operations and provide technical support. The Parliamentary Budget Office (PBO) and the Centre for Parliamentary Studies and Training (CPST) are two other key internal units that handle capacity building initiatives of committee members and MPs. The main avenues used for introducing legislation are the respective Parliamentary committees, MPs from the resource-rich constituencies and counties, and the National Assembly/Senate majority leader who represents the Government of the day's interests within the

confines of Parliament. Ministries of Government may also submit legislation to Parliament. These proposals are taken through the Parliamentary

The Extractives Industry Value Chain

The ‘value chain’ is a business management term popularized by Michael Porter in the 1980s that provides a framework to describe and determine the stages through which a product accrues value and develops its optimal yield. In his seminal 2007 book, *The Bottom Billion*, Paul Collier used the value chain approach to develop a framework that describes the optimal value-creating processes and stages required for a country to transform natural resource wealth into sustainable development. Collier’s approach has since attained the status of a best-practice framework in the governance of natural resources and has become a key point of reference for all organizations working around extractives sector governance. This framework is particularly useful for framing Parliament’s role in this process and covers the entire breadth of the extractives sector through five stages:

- 1) **The Decision to Extract** – Determining whether the benefits of extraction outweigh the costs using a number of key considerations including environmental, social and economic impact.
- 2) **Negotiating the Best Deal** – The mechanism for awarding exploration & exploitation

committee system according to the sector they fall under, the committees review and propose amendments to the document before approval.

licenses and contracts, emphasising transparency and accountability throughout the entire process.

- 3) **Developing Resources Properly** – Making sure that Governments and extractives companies comply with obligations and regulations including the maximization of local content across the board.
- 4) **Collecting and Maximising Revenues** – Ensuring a transparent and accountable system of revenue collection that promotes the public disclosure of revenues paid by companies and revenues collected by Governments.
- 5) **Managing Revenues towards Sustainable Development** – Spending resource revenue in line with development agendas.

Parliament has a crucial role to play across the entire extractives industry value chain and must exercise a combination of its functions in order to support effective extractives sector governance. Using a desk review of literature, reports and case studies, the following section develops a normative, best practice model for Parliament’s involvement at each stage of the extractives industry value chain, providing details on the combination of functions required, the internal capacity needed to effectively carry out these

functions and the key supporting institutions for each action among other notable considerations. The information contained within the matrices will allow the reader to better understand and evaluate the Parliament of Kenya's performance and capacity with regards to its role in governing

the extractives sector. Brief recommendations have also been provided on possible areas of external support towards strengthening Parliament's ability to carry out core functions at each stage.

Extractives Industry Value Chain - Stage 1

DECISION TO EXTRACT

Key Points of Consideration

Environmental Impact	Social & Poverty Impact	Economics	Land Management
<ul style="list-style-type: none"> • Damaging landscapes • Waste production • Pollution • Impact on flora & fauna • Agricultural disruption 	<ul style="list-style-type: none"> • Welfare of indigenous communities • Socio-economic status of local communities • Artisanal/small-scale mining • Gender impact 	<ul style="list-style-type: none"> • World commodity prices • Level/value of deposits • Costs of extraction • Potential Revenues • Value-creation/multiplier effect 	<ul style="list-style-type: none"> • Current land use • Concessions and compensation • Land ownership • Traditional/Community land considerations • Land allocation • Future use/state

In the discovery of mineral resources, the first key point of departure is the formal decision on whether or not to exploit the resource and if indeed the resource is to be exploited, how it should be exploited in terms of rate and method (nationalisation or open market). The final decision rests with the executive arm of Government but the process of decision-making and indeed scrutiny of the final decision is inherently applicable to Parliament. Collection of information & public views, house debate, public participation, representation of indigenous interests and oversight are all crucial.

Parliament Action	House	Function	Medium	Internal Capacity Requirement	Supporting Institutions	Output
<i>Conduct study on potential consequences of extraction (using key considerations above)</i>	National Assembly & Senate	Representative & Oversight	Joint Committee on Energy and Natural Resources	Funding (creation of new joint committee) Research & Technical expertise	Ministry of Energy and Petroleum Ministry of Environment, Ministry of Lands Ministry of Mining	Report on potential consequences of extraction, House debate
<i>Carry out further investigations based on initial report findings</i>	National Assembly & Senate	Representative & Oversight	Specific Committee (depending on area of investigation i.e. Lands Committee investigates Land Management)	Research & Technical expertise Funding Field Visits	Specific Ministry (depending on area of investigation) CSOs & NGOs	Submissions on findings and way forward to Joint Committee
<i>Highlight interests and views of indigenous community and marginalised groups</i>	National Assembly	Representative	Private Member motion (respective constituency)	Public Participation/ Survey Knowledge on extractives sector in question	CSOs & NGOs Specific Regional Caucus	Voicing of interests, House debate
<i>Highlight interests of respective County Government(s)</i>	Senate	Representative	Private Member motion (respective county)	County Government consultation Knowledge of extractives sector in question	County Government(s) Council of Governors CSOs & NGOs	Voicing of interests, House Debate
<i>Transmit findings/views to executive authority</i>	National Assembly & Senate	Representative & Oversight	Joint Committee on Energy and Natural Resources Committee on Implementation	Public Relations/ Communication Report writing	Ministry of Energy and Petroleum/ Ministry of Mining	Final Report by Joint Committee on specific case
<i>Scrutiny of Final Executive Decision</i>	National Assembly & Senate	Representative & Oversight	House sitting Committee on Implementation	Familiarity with final report by joint committee	CSOs	Approval or Disapproval via House debate

Recommendations

- *Support the creation of a Joint Committee on Energy and Natural Resources*– This is intended to bridge the apparent disconnect between the two houses on the issues of extractives and streamline the entire oversight function.
- *Provide direct technical assistance to the committees in the study, research and investigative phase* – Technical & expert capacity in the extractives industry is a key hurdle for Parliament in developing a comprehensive understanding and stand on the extraction of resources.
- *Promote inter-governmental and inter-ministerial dialogue and taskforces by hosting stakeholder conferences and working groups* – This is intended to build consensus on direction and promote a comprehensive understanding of the resource in question.

Extractives Industry Value Chain - Stage 2

Key Points of Consideration

Exploration & Exploitation Licenses	Fiscal Rules	Local Content	Procurement & Contracting
<ul style="list-style-type: none"> Existing legal/regulatory framework Article 71, CoK 2010 Institutional responsibilities Best-Practice Model 	<ul style="list-style-type: none"> Clear fiscal strategy on tax & regulation. Competitive & conducive fiscal regime (progressive) Long-term view Existing legal framework 	<ul style="list-style-type: none"> Local employment & welfare opportunities. Capacity building Linkages to domestic economy Local participation Existing Legal framework 	<ul style="list-style-type: none"> Competitive tendering Public procurement legal framework Transparency Alternative methods (auctioning, bidding) Value of resource

NEGOTIATING THE BEST DEAL

After deciding to exploit the resource, GoK must negotiate a contract with relevant firms. During this stage, Parliament must review legislation & frameworks guiding the process of tendering, due-diligence, local content requirements & contract awarding. It must further oversee & scrutinize the respective executive agency mandated with this process by assessing the contracting process & officially ratify the final agreements. In the case where a Government-owned entity is granted the rights of extraction, it is Parliament that must oversee the operations and ensure accountability & transparency.

Parliament Action	House	Function	Medium	Internal Capacity Requirement	Supporting Institutions	Output
<i>Review of legal framework required for licensing & contracting against best practice in extractives</i>	National Assembly & Senate	Legislative	Joint Committee on Energy and Natural Resources, Joint Public Accounts Committee	Research & Technical expertise Knowledge of licensing & contracting in extractives Legislative analysis	Ministry of Energy and Petroleum, Ministry of Mining, Auditor General, Development Partners	New legislation or submit amendments to existing legislation
<i>Review of legal framework on taxation & regulation of private sector against extractive sector needs</i>	National Assembly & Senate	Legislative	Joint Committee on Energy and Natural Resources Finance, Planning & Trade Committee (NA)	Research & Technical expertise Legislative analysis Cross-Committee communication and work stream	Revenue Authority, Treasury, BMOs, Multinational firms, Think Tanks	New legislation or submit amendments to existing legislation
<i>Develop legal framework on local content in the extractives industry</i>	National Assembly & Senate	Legislative	Joint Committee on Energy and Natural Resources Private Member motion	Research & Technical expertise Knowledge on extractives sector Stakeholder engagement	Ministry of Energy and Petroleum, Ministry of Mining, BMOs, CSOs	New legislation on local content in extractives
<i>Highlight interests of respective county government(s)</i>	Senate	Representative	Private (respective county) Member motion	Inter-Governmental communication Knowledge of extractives sector in question	County Government(s) Mandated executive authority	Voicing of interest Submission of views to executive
<i>Oversee the procurement process and ratify each contract/license</i>	National Assembly & Senate	Oversight	Joint Committee on Energy and Natural Resources, Joint Public Accounts Committee	Information access on procurement Knowledge of licensing & contracting in extractives	Ministry of Energy and Petroleum / Ministry of Mining, Auditor General	Submit comments on process, Official ratification
<i>Promote transparency in procurement & contracting</i>	National Assembly & Senate	Representative, Legislative & Oversight	Private Member motion, House sitting, Joint Public Accounts Committee	Knowledge of licensing & contracting in extractives Information access on procurement	Ministry of Energy and Petroleum / Ministry of Mining, Auditor General, Awarded firm	House debate, Public information access legislation

Recommendations

- *Set up new or partner with existing Think Tank with research capacity and deployable technical experts* – This is intended to provide Parliamentary committees with a source of experts and information on best practice in legislation for extractives governance.
- *Facilitate a training and capacity building workshop on legislation for extractives governance to key Parliamentary committees* – Members of these committees may not have a firm understanding of the intricacies of the extractives industry.
- *Host stakeholder conferences and work groups to build consensus on legal frameworks among Government, multinationals, CSOs etc.* – This is intended to supplement the constitutional requirement for public hearings that may not reach all the necessary stakeholders due to time constraints and other factors.

Extractives Industry Value Chain - Stage 3

DEVELOPING RESOURCES PROPERLY

Key Points of Consideration

Contract Execution	Environmental, Social & Local Content Obligations	Compliance Monitoring Process
Legally sound execution of contract Compliance of both Government and company towards contract provisions Transparency in execution Anti-corruption & ethics	<ul style="list-style-type: none"> •Obligations on the part of the extractives company towards environment, social development & local content. •Promoting local industry •Replenishing environment •Long-term sustainability of site 	<ul style="list-style-type: none"> •Clear identification of various Ministry roles in monitoring •Regulatory framework •Alternative option of 'One-Stop-Shop' authority •Semi-annual reports on fulfilment of objectives by extractives company

Following the successful negotiation of a contract, the awarded firm may begin operations. During this contract execution stage, it is imperative for Parliament to ensure that both the Government and company comply with contract provisions & existing rules such as those on anti-corruption. Further, the operational processes embedded within the extractives industry demands close technical & environmental monitoring of the company. Parliament must provide a regulatory framework clearly identifying the role of each stakeholder Ministry & other state agencies. Finally, Parliament must oversee the work of executive authorities mandated with compliance monitoring.

Parliament Action	House	Function	Medium	Internal Capacity Requirement	Supporting Institutions	Output
<i>Oversight of contract execution process</i>	National Assembly & Senate	Oversight	Joint Committee on Energy and Natural Resources Committee on Implementation	Technical expertise Knowledge of licensing & contracting in extractives Stakeholder engagement	Ministry of Energy and Petroleum, Ministry of Mining, Awarded firm, Anti-Corruption Commission	Evaluation of contract execution, Hearing/Summons (if needed)
<i>Review legal/regulatory framework(s) on compliance monitoring</i>	National Assembly & Senate	Legislative & Oversight	Joint Committee on Energy and Natural Resources	Research & Technical expertise Legislative & Regulatory analysis Knowledge of contractual obligations Cross-Governmental communication	Ministry of Energy and Petroleum, Ministry of Mines, Ministry of Environment, Ministry of Lands, Think Tanks	New regulation or submit amendments to existing.
<i>Oversight of executive authorities mandated with compliance monitoring</i>	National Assembly & Senate	Oversight	Joint Committee on Energy and Natural Resources	Technical expertise Cross-Governmental communication Knowledge of contractual obligations Access to information	Mandated authority Awarded firm Anti-Corruption Commission CSOs	Report on performance of mandated executive authority
<i>Highlight views of local community on achievement of obligations</i>	National Assembly	Representative & Oversight	Private (respective constituency) Member motion	Knowledge of contractual obligations Access to information Public Participation/ Survey	CSOs & NGOs Specific Regional Caucus	Voicing of interests, House Debate
<i>Conduct site visit to obtain first-hand information and knowledge on operations</i>	National Assembly & Senate	Representative & Oversight	Joint Committee on Energy and Natural Resources	Funding Knowledge of contractual obligations Access to information	Awarded firm, Ministry of Energy and Petroleum, Ministry of Mining, CSOs	Report by Joint Committee on specific case

Recommendations

- Support review and development of an effective legal and regulatory framework on compliance monitoring, towards a 'One-Stop-Shop' model – The option of having one regulatory authority would streamline the entire compliance monitoring process and promote ease of doing business in the country.
- Facilitate site visits – This is intended to bolster knowledge on extractives industry processes and supplement the function on oversight of compliance monitoring.
- Conduct information collection and public surveys amongst the communities living within close proximity to the resource site – The public participation initiatives by Parliament are often not substantive enough to develop a clear understanding of local community views.

Extractives Industry Value Chain - Stage 4

REVENUE COLLECTION

Key Points of Consideration

Collection Mechanism	Transparency & Accountability	Potential Risks	Potential Benefits
<ul style="list-style-type: none"> Legal framework Mandated institutions Expected revenue in National Budget vs Actual revenue collected Compliance to existing laws 	Public information disclosure Reporting by both Government agency & company Best Practice on Extractive Industries Transparency	Capital flight & laundering Rent-seeking & graft Conflict over revenue Managing expectations Mismanagement	<ul style="list-style-type: none"> Boost development budget Foreign exchange Boost the economy Strengthen revenue collection methods Improve Government trust

The lucrative nature of the extractives industry necessitates that Government revenue collection must be closely monitored and interrogated by Parliament. Oversight over the budget process is integral during this stage, as is the review of legal & regulatory frameworks clearly outlining the mandate of various institutions in the process and requirements on information disclosure. Transparency & accountability are pivotal during this stage and Parliament's oversight function is intended to operationalise the need for public information access on collected amounts.

Parliament Action	House	Function	Medium	Internal Capacity Requirement	Supporting Institutions	Output
<i>Review legal/ regulatory framework(s) on revenue collection in the extractives industry</i>	National Assembly & Senate	Legislative & Oversight	Joint Committee on Energy and Natural Resources House sitting	Research & Technical expertise Stakeholder engagement Legislative & Regulatory analysis Cross-Governmental communication	Ministry of Energy and Petroleum, Ministry of Mining, Treasury, Central Bank, Revenue Authority, County Government(s)	New legislation or submit amendments to existing legislation
<i>Conduct study on expected revenues from each natural resource in question</i>	National Assembly & Senate	Representative & Oversight	Joint Committee on Energy and Natural Resources	Funding Research & Technical expertise Stakeholder engagement	Ministry of Energy and Petroleum, Ministry of Mining, Extractives Companies, CSOs, BMOs	Report and submission of findings to Treasury.
<i>Oversee institution mandated with resource revenue collection</i>	National Assembly & Senate	Representative & Oversight	Joint Committee on Energy and Natural Resources Public Accounts Committee	Cross-Governmental Communication Stakeholder engagement Access to information	Revenue Authority, Auditor General, CSOs, Anti-Corruption Commission	Formal request for information, Summons/hearings
<i>Review & compare estimated revenues from approved budget with actual received revenues</i>	National Assembly & Senate	Oversight	Joint Committee on Energy and Natural Resources Budget & Appropriations Committee (NA)	Access to information Research & Technical expertise Stakeholder engagement Cross-Governmental communication	Revenue Authority, Treasury, Anti-Corruption Commission, CSOs, Extractives Companies	Report on findings, Summons/hearings (if needed)
<i>Develop an extractives industry transparency index/framework to supplement Parliamentary functions at this stage</i>	National Assembly & Senate	Representative, Legislative & Oversight	Joint Committee on Energy and Natural Resources	Knowledge on best practice of extractives industry transparency, Research & Technical expertise, Legislative analysis, Funding	EITI, Ministry of Energy and Petroleum, Ministry of Mining, Treasury, Central Bank, Revenue Authority, Think Tanks.	Index/framework on extractives industry transparency.

Recommendations

- Foster and support efforts to develop extractives industry transparency index/framework – A transparency index would supplement Parliamentary functions at this stage of the value chain and greatly bolster information disclosure and access as well as provide a best-practice mechanism for country review.
- Facilitate a training and capacity building workshop on oversight of resource revenue to key Parliamentary committees – Members of these committees may not have any understanding of the intricacies of resource revenue management.
- Conduct parallel study on expected revenues from each natural resource in question – Whether or not Parliament actually conduct the study themselves, this information would inform budgetary debates and bridge the heavy information asymmetry currently in place.

Extractives Industry Value Chain - Stage 5

REVENUE MANAGEMENT

Key Points of Consideration

Revenue Management	Revenues to Development	Transparency & Accountability
<ul style="list-style-type: none"> • Holding institution (Treasury or Sovereign Wealth Fund) • Revenue Sharing and Transfers • Reporting obligations • Best Practice models • Legal & regulatory framework 	<ul style="list-style-type: none"> • Long-Term Development Plan • Core development needs • Macroeconomic fundamentals • Savings/Spending ratio strategy • Investment proposals • Avoiding 'Dutch Disease' 	<ul style="list-style-type: none"> • Regular audits of spending and accounts (both National & County Governments) • Public information disclosure • Fiscal Plans and Reporting • Anti-Corruption and Ethics • EITI

The primary benefit that a country receives from the extractives industry is revenue from tax, royalties and fees. This revenue provides a crucial opportunity to support development agendas and must be soundly managed to reap the expected rewards. Within this context, Parliament plays an important role in reviewing appropriate legal frameworks for revenue management, overseeing mandated institutions and providing a mechanism for transparency & accountability in transforming collected revenues into sustainable development.

Parliament Action	House	Function	Medium	Internal Capacity Requirement	Supporting Institutions	Output
<i>Review legal/ regulatory framework(s) on revenue management in the extractives industry</i>	National Assembly & Senate	Legislative & Oversight	Joint Committee on Energy and Natural Resources House sitting	Research & Technical expertise Stakeholder engagement Legislative & Regulatory analysis Cross-Governmental communication	Ministry of Energy and Petroleum, Ministry of Mining, Treasury, Central Bank, Revenue Authority, County Government(s)	New legislation or submit amendments to existing legislation
<i>Review & scrutinize resource revenue spending plans as per approved budget</i>	National Assembly & Senate	Representative & Oversight	Joint Committee on Energy and Natural Resources, House Sitting, Private member motion	Access to information Knowledge of extractives sector and national development	Treasury or mandated institution managing resource revenue, CSOs, Development partners	Voicing of interests, House Debate
<i>Oversee institution mandated with resource revenue management</i>	National Assembly & Senate	Oversight	Joint Committee on Energy and Natural Resources Public Accounts Committee	Cross-Governmental Communication, Understanding audit reports Stakeholder engagement	Treasury or mandated institution managing resource revenue, Auditor General, CSOs	Audit Report, Summons/hearings (if needed)
<i>Oversee execution of revenue sharing obligations by National Government</i>	Senate	Representative & Oversight	Private member motion Senate Committee on Energy	Access to Information Knowledge of extractives sector Inter-Governmental communication	Treasury, Central Bank, County Government in question, Council of Governors, CSOs	Formal request for information, Summons/hearings
<i>Oversee County Government spending of resource revenue</i>	Senate	Representative & Oversight	Public Accounts Committee (Senate) Private member motion	Access to Information Knowledge of extractives sector Inter-Governmental communication	Central Bank, County Government in question, CSOs	Formal request for information, Summons/hearings

Recommendations

- *Provide technical expertise in the development of legal/regulatory frameworks for revenue management* – The revenue management model a country adopts (e.g. Sovereign Wealth Fund), is directly related to the effectiveness of resource revenue towards national development.
- *Develop and establish an impact monitoring system that observes and assesses the effectiveness of spending* – This is intended to provide Parliament with a resource to supplement the function of oversight and may be too complex to develop internally.
- *Host stakeholder conference on revenue sharing between National and County Governments* – This is intended to promote dialogue on revenue sharing, its importance & best practice methods, supporting the Senate’s mandate on protecting the interests of counties.

Challenges & Opportunities

The matrices provided in the preceding sections outline a normative, best-practice model of Parliament's ideal role in extractives sector governance. In practice, however, there are a number of existing challenges that one must recognise in order to develop a holistic understanding of the subject. The four listed below represent the most salient of these;

- 1) **Ambiguity on authority** – As mentioned, there are 4 different committees that could claim authority over extractives sector governance, this is what provides the rationale for the Joint Committee on Energy and Natural Resources proposed in the preceding matrices.
- 2) **Disconnect between the Senate and National Assembly** – While the governance of natural resources is constitutionally a mandate for Parliament as a whole, the tension on supremacy between both houses tends to derail the due process required and makes attempts to combine efforts such as those articulated in the preceding point difficult.
- 3) **Disconnect between the Executive and the Legislature** – While a number of proposed Bills have originated from the Ministry of Energy and Petroleum and the Ministry of Mining, rarely is there direct consultation with Parliamentary committees during the

formulation stage. This is perhaps a result of the ambiguity on authority aforementioned.

- 4) **Lack of significant knowledge on extractives** – MPs come from an incredibly diverse background and very few have even a remote understanding of the extractives sector. There is a substantial knowledge and technical gap that must be addressed.

Despite the significant challenges that exist, there are also a number of opportunities that can be identified. Drawing from the recommendations given in each of the matrices provided, three cross-cutting opportunities can be identified across the entire value chain;

- 1) **Leverage the Intergovernmental Relations Act, No. 2 of 2012** – to enable effective communication, relationships and engagement between Parliament and the Executive and between Parliament and County Governments. Supporting institutions are a core component of best practice in extractives sector governance.
- 2) **Encourage and support efforts to develop an extractives industry transparency index/framework for Kenya** – this represents a key variable in the achievement of the overall goal of transforming resource wealth into citizen wellbeing.

3) **Set up new or partner with existing Think Tanks** – to support Parliamentary efforts at each stage by providing access to deployable

experts & advisors and thus an immediate solution to the technical and capacity lacuna.

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