INTRODUCTION

Access to information and good governance are closely linked to sustainable growth and development of the extractives sector. In Kenya, access to information is a fundamental human right recognized in the 2010 Kenyan Constitution pursuant to Article 35 and expanded upon in the Access to Information Act, 2016. The Act fulfills a threefold purpose:

1. It makes mandatory the disclosure of information by public entities such as those that are in the extractives sector;
2. It creates a framework to facilitate access to information held by private entities in compliance with any right protected by the Constitution and any other law; and
3. It promotes routine and systematic information disclosure by public service and private entities on constitutional principles relating to accountability, transparency and public participation.

With these three aspects, Kenya now closes a historic transparency gap in this area, by establishing a set of standards comparable to those of advanced democracies, under which citizens have access to a wide range of public information pivotal to the country’s socio-economic development.

This policy brief serves as a summary of the research outcomes of the Strathmore Extractives Industry Centre (SEIC) Information Needs Assessment of Kenya’s extractives industry and emphasizes the relationship between the implementation of the right to access information and the accountability of project implementers including extractive companies and government bodies. The research conducted at a national level has particularly demonstrated the urgent need to strengthen implementation mechanisms of the Access to Information Act, 2016 to ensure adequate citizen access to public information at all levels and thereby advance good governance and transparency.

The Research and its Key Findings

The purpose of the study was to measure stakeholder opinions on access to information on Kenya’s extractives sector including soliciting a basic understanding of their informational needs and challenges. The data was collected using qualitative and quantitative methods including interviews with 35 key informants and a quantitative survey (with a sample size of 186). The study was conducted between August and September of 2016.

The research established that:

1. Existing constitutional, legislative and institutional frameworks constitute an extraordinarily significant step forward in securing the right to access information on Kenya’s extractives sector. However, on a pragmatic level, publicly available information is currently scattered among various ministries and other government departments as well as with individual companies or groups active in the sector. Moreover, most information is neither published in a timely fashion nor is it in a format or language easily digestible by ‘Mwananchi’ including our local reporters. Thus, the sector lacks a streamlined procedure that captures its nuances such as through a centralized information platform that curates and shares information on extractives.

2. When it comes to accessing information on Kenya’s extractives industry, there is a significant gap between the haves and the have-nots. In essence, the haves are those that have significant financial and technical resources and can employ highly skilled employees or pay for technical persons to access relevant information on extractives and distil it in a manner that their decision-makers are then able to use. Stakeholders such as the private sector and development partners fall in this category. The have-nots tend to have limited financial and technical resources to access quality information in a timely manner. They are largely dependent on what is reported in the media, what politicians tell them and having proficient Google skills. Stakeholders such as civil society, including NGOs that represent community interests, fall within this category. This dichotomy of resources has contributed to a palpable perception among many stakeholders, particularly the have-nots, that Kenya’s industry is opaque and mired in secrecy.

3. There is a misconception regarding the notion and degree of confidentiality when it comes to certain information that is legally “classified” vis-à-vis the right to access public information. The haves are often privy to contractual agreements detailing what information remains confidential between the investor and the government whereas the have-nots are not. Hence there is a palpable discontent amongst the have-nots that the information is being deliberately hidden from them for nefarious purposes. This may partly be because their views are uninformed by the realities of the contractual regime governing the extractives industry.
4. Fifty eight per cent (58%) of the quantitative survey respondents indicated that they receive information on Kenya’s extractives sector through digital means such as online newsletters and e-journals. At 44%, print media also ranked fairly high as a way through which respondents receive information. Radio received the lowest responses with only 10.39% of respondents revealing that they access information through this medium.

5. Seventy per cent (70%) of the quantitative survey respondents indicated that there is duplication of work especially on capacity building and outcomes of each for the research and capacity building initiatives, which makes it hard to access credible information on what is going on at the project level. This challenge was attributed to lack of a coordinated effort, which keeps track of the ongoing activities and outcomes of each for the research and capacity building initiatives, among different stakeholders especially those that are donor funded since they tend to target similar thematic areas.

6. Seventy nine per cent (79%) of the quantitative survey respondents trust academia as a credible source of information on Kenya’s extractives sector. 52% trust information provided by CSOs whereas government ministries, agencies and departments only command trust levels of 40% among the survey respondents. Mainstream media (radio, TV and print) and social media were the least trusted at 27.42 % and 17.20% respectively.

7. The qualitative survey revealed that over 50% of the stakeholders are frustrated in the difficulties they encounter in accessing the right documents due to bureaucratic processes in government and companies. Certain forms have to be filled out and deposited with certain departments - which make it nigh impossible to access information in a timely manner. They also find it hard to establish the right department or government office to approach for specific information.

8. The qualitative survey also showed that varied stakeholders in government and CSOs found technical or industry related jargon as well as legal jargon as a major challenge to accessing information.

The study revealed several factors which help to explain why many stakeholders are frustrated in their efforts to access relevant and timely information on Kenya’s extractives sector:

a) There is duplication of work especially on capacity building and research initiatives among stakeholders, which make it hard to access credible information on what is going on at the project level. This challenge was attributed to lack of a coordinated effort, which keeps track of the ongoing activities and outcomes of each for the research and capacity building initiatives, among different stakeholders especially those that are donor funded since they tend to target similar thematic areas.

b) Inadequate thought has been put on how best to harness public participation through stakeholder forums. Most qualitative survey interviewees stated that public meetings are a great source of receiving information but raised concerns over the trustworthiness and credibility of the information shared in these forums. Credibility of information was measured based on who organizes and shares the information as stakeholders have already developed perceptions about some sources. In some cases, the meetings were seen to be a challenge due to distance and cost implications for far flung communities who have to pay more to attend meetings held at the national level. In any case, most of these stakeholder discussion forums tend to be accessible by invitation only.

c) Concerns were raised over the quality and accurateness of the information shared through media outlets especially newspapers due to lack of in depth research and investigation by reporters.

**POLICY RECOMMENDATIONS**

**National Government Recommendations**

The National Government has a major role in collating and sharing relevant extractives information. Public awareness-raising, interpretation of current discoveries and events, and prevention of negative and undesirable attitudes among the public, are equally important. Proactive sector-tailored disclosure policies or guidelines should therefore be developed by relevant national government agencies to establish which extractives data and industry updates needs to be shared with the public. There is also a need to balance between privacy of contracts and the right to access information both of which are constitutional entitlements. The government should clarify the relation between these two rights by means of clear checks and balances.

Considering the vast amounts of extractives information held throughout the public sector, active dissemination policies such as those proposed above should not replace the practical or expedient provision of information upon request. This would greatly curtail the perceptions of secrecy and exclusivity surrounding the sector. Bureaucratic channels should therefore be revised and a policy or even guidelines developed, accompanied by a pragmatic real-time mechanism that citizens can use to access information in a timely manner.

The national government authorities should also find proactive ways to disseminate information through new information technology avenues and communication and invest in the development of multilingualism using e-governance. Additionally, an annual country-level forum, together with quarterly forums in regions where resources are found, should be institutionalized as the centre-piece of the government system of sharing information, wider participation and consultation, priority setting, alignment and harmonisation. The government can also use the newly revamped information database Information Centre for Extractives Sector platform, now known as the Extractives Baraza (www.extractives-baraza.com) to share and disseminate information between itself and non-State actors.
The qualitative survey provided the following details on the different types of information stakeholders need at the national level.
Private Sector Recommendations
The private sector should institutionalize an independent extractives sector peer-learning review mechanism that proactively assesses their communication strategies and their effectiveness in providing information to diverse stakeholders. Peer-learning would be mutually beneficial and involve the sharing of knowledge, ideas and experience between the private sector and non-State stakeholders. Such an impartial mechanism should also ideally effectively track private sector engagements such as policy dialogues, discussion seminars, community dialogues, site visits, collaborative projects and so on, so as to constitute a building block for results measurement, monitoring and evaluation. A private sector-led peer-learning system could make a tangible difference in the society by helping to identify and keep track of the full breadth of company access to information mechanisms, help to steer these processes with greater objectivity, and contribute to harmonized systems at the national level for monitoring results.

The recently revamped information database ICES platform, now known as the Extractives Baraza (www.extractives-baraza.com), could also be used to disseminate and share information between companies and non-State stakeholders such as CSOs. Companies can share information, upload their CSR projects and press releases among others, to enhance transparency and fast-track sharing of extractives information. Cooperation between the private sector and advocacy-neutral local platforms such as the Extractives Baraza is very important in order to increase public awareness, explore notions of sustainable development and local content, interrogate the company-community integration process, generate new ideas and implement them.

Civil Society Recommendations
The needs survey revealed a need for an institutional arrangement to build the capacities of CSOs and local communities on which information they can access, where to access this extractives information and how they may use that information to provide strategic input into big picture issues like enhancing national production and contributions to overall economic growth that increase better development outcomes for the country.

Therefore, the CSO-led initiative, Extractive Sector Forum (ESF), currently convened on a quarterly basis by the Institute of Human Rights and Business - Nairobi Process and the Institute for Law and Environmental Governance, should be strengthened. The ESF, formed in 2015, draws upon several non-State actors from business, civil society and academia and encourages dialogue and sharing of information on topical issues in the extractive sector all aimed at building trust among stakeholders and promoting good governance of our natural resources.

The ESF can be strengthened to provide opportunities for capacity building to CSOs on technical and socio-economic aspects of the sector in a manner that gives them considerably more practice than traditional teaching and learning methods in taking responsibility for their own learning and research. This will then provide many stakeholders with an accessible physical public platform to access relevant national-level information as well as articulate extractive governance issues.

Development Partner Recommendations
Donor agencies should mount a concerted effort to coordinate and harmonise their programs. Together they can develop a development partner tracking tool to facilitate their diverse programs in different areas of the country that will build capacity and understanding of their programs among local communities and other stakeholder at the national level. This will also help avoid duplication of work and help in improving the sustainable management of the extractives sector in Kenya. In addition, development partners can use the Extractives Baraza platform (www.extractives-baraza.com) to share updates on their their donor-programs with the general public.

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