

# **Gender Participation in Kenya's Petroleum Sector: Towards Promoting Gender Mainstreaming**

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## **Series 2**

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## Introduction

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In our last [series](#), we examined the regulatory framework on gender in Kenya and determined that despite Kenya's abundance in laws that protect and promote gender equality in the extractives sector, there is still a lot of work needed to ensure gender mainstreaming. This series identifies the existing gender gaps in the petroleum sector and how these gaps can be bridged.

Participation according to the World Health Organisation (WHO) requires that individuals are entitled to take part in the decisions that directly affect them, including the design, implementation, and monitoring of interventions (WHO, 2016). Gender participation can be defined as the equal and balanced representation of both men and women in decision making processes that may affect their social, economic, political, environmental and physical well-being.

Global evidence suggests that, while the benefits of extractive industry projects are captured primarily by men, women often bear a disproportionate share of social, economic, and environmental risks (World Bank Group, 2013). The participation of women in the extractives sector is way below that of other sectors in the economy with only 9.4% of employed workers being women and the majority of these are engaged in low skilled or low wage positions compared to men (Haki Madini).

## Gender Gaps in Kenya's Petroleum Sector

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Studies suggest that social and economic empowerment of women contributes to growth, poverty reduction and sustainable development (UN Women, 2018). When women are denied the platform to engage in decision making and access to socioeconomic services, they are often left to fend for themselves with meagre jobs which pay way below the required amount to sustain themselves and their families. These serve to seriously constrain women's ability to effectively participate in and benefit from economic development. Rural women are at a bigger disadvantage when compared to their urban counterparts because even access to information is a major challenge (IEA, 2008) and widens the gender gaps below.

## Gender and Employment

Gender inequalities in employment and income contribute to poverty and reduce the well-being of men, women, and children (WBG, 2016). The Constitution under Article 27(3) prohibits social and cultural practices that are prejudicial to women. Women and men are entitled to equal treatment and equal opportunities in political, economic, cultural and social spheres. The Employment Act, 2007, also prohibits discrimination of employees based on any of the grounds listed in Article 27(4) of the Constitution which includes sex. This is however not the situation in practice.

Although many women now get equal pay for similar qualifications and work in organizations, very few still get enrolled for engineering and other technical courses and yet the petroleum sector is mainly technical (NEMA, 2017). The reverse is true when it comes to the retail industry which is dominated by women and yet pays much less, for example, women own 48% of all micro and small enterprises, but access only 7% of credit (AfDB, 2015). Many women would rather work in the retail sector as the work conditions therein are more convenient and enable them to dedicate time to their families.

Overall, the one-third gender rule under the Constitution is yet to be fully implemented and there is still a lot of work to do, including enacting enabling legislation. Unless this is attended to

urgently, women will continue to live in poverty with increased dependency on men for basic needs.

### **Gender and compensation**

In most traditional Kenyan communities, land is owned and controlled by men. Some traditions even discourage women from inheriting agricultural land and livestock. In addition, a widow cannot claim a life interest from her deceased husband yet the same does not apply to men under the Law of Succession Act. Consequently, when compensation for use of the land for petroleum activities starts, only the registered owners of the land will be paid (NEMA, 2017).

Land rights of women are protected under Article 60 of the Constitution, 2010 through elimination of gender discrimination in law, customs and practices related to land. The Community Land Act, 2016 also echoes Article 60 by providing for the right of every member of a community to equal benefit from community land. Furthermore, under Article 40 of the Constitution, compensation for loss of land must be made in full.

The Matrimonial Property Act, 2013 also recognizes spousal rights over matrimonial property to which all registered property must adhere. Section 93(2) of the Land Registration Act, 2012 equally grants spouses a legal interest in land that is held in one spouse's name where the other has contributed to it through his/her labour. A spouse thus cannot purport to sell matrimonial property without the prior consent of another.

In the same light, when it comes to benefit sharing, the Constitution 2010 under Article 69 (1) (a) requires that Parliament enacts enabling legislation to ensure the sustainable exploitation, utilization, management and conservation of natural resources and equitable sharing of the accruing benefit. The Petroleum Act 2019, provides for the sharing of benefits derived from upstream petroleum operations as follows: 75% to National Government; 20% to the County Government; and 5% to the local community, payable to a trust fund managed by a board of trustees established by the County Government in consultation with the local community. It however does not mention the mechanisms that will be adopted in distributing the benefits to communities and in particular, women. Furthermore, very few women (and men) in the affected communities are aware of their rights to land, and are often victims of squandering.

### **Gender and the Environment, Health and Safety**

The Constitution under Article 42 provides that, "every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures". Petroleum activities involve release of carbon emissions and other dangerous chemicals which largely affect the health of women as they may affect development of an unborn child, cause infertility and other health concerns (WICF, 2016).

Matters concerning the environment in Kenya are governed by the Environmental Management and Co-ordination (EMCA) Act, 1999. The Act under section 9 establishes the National Environmental Management Authority (NEMA) whose mandate is to exercise supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

Communities in Kenya that deal in petroleum activities, especially upstream and midstream activities are the most affected by EHS concerns. These include gas flaring which reduces air

quality, poor disposal of waste due to lack of proper machinery and training and poorly equipped medical facilities to deal with accidents from petroleum activities.

There is overall need for a framework that is sector specific, with clearly outlined roles and responsibilities on environment, health and safety issues within the petroleum sector and with a further concern for women. The available legislation, although good, fails to address the unique needs of the petroleum sector.

### **Sexual and Gender based violence (SGBV)**

Majority of cases that are prosecuted for SGBV fall under the Penal Code. However, under the Constitution, non-discrimination and the right to freedom and security of the person is guaranteed and covers the right not to be subjected to any form of violence or torture. Kenya's policy on SGBV is also guided by the *National Policy for Prevention and Response to Gender-based Violence*, 2014. The Policy aims at providing guidance for coordination among the various actors in combating SGBV. Kenya also has a model policy and legislative framework aimed at guiding institutions at county level on SGBV related matters when drafting SGBV legislation. The National Gender and Equality Commission (NGEC) for example is mandated with promoting gender equality and freedom from discrimination, with focus on special interest groups including women (IDLO, 2017).

Article 35(1) of the Constitution provides that, *"Every citizen has the right of access to information held by the State and information held by another person and required for the exercise or protection of any right and fundamental freedom."* The government is obliged under Article 69 to promote public participation in the management, protection and conservation of the environment. Article 35 is complimented by the Access to Information Act, 2016 which provides a framework for public entities and private bodies to disclose information that they hold and provide routine updates as well as facilitate public education on the right to access to information. The laws and policies need to be harmonized towards gender sensitive provisions.

Despite the robust legal provisions, statistics indicate an alarming nature of SGBV with an estimated 66.7 per cent of women experiencing SGBV in 2018 (IDLO, 2019). The petroleum sector exacerbates pre-existing tensions relating to limited resources and control over assets in low income households (International Alert, 2017). Petroleum activities like construction of roads and pipelines which have access to communities contribute to "boomtown" effects like increased poverty, prostitution, depression, drug abuse, increase in bars and lodges, trafficking of women (especially the young), family disconnects and increase in female care givers as a result of forced prostitution and inevitably, the spread of STDs and drug abuse (International Alert 2014).

### **Gender and information**

Information is mostly disseminated through websites, national and county governments and spread through radio media. However, in many petroleum affected communities, there are high levels of illiteracy, little or no access to electricity, poverty and archaic cultural beliefs that all go against the spirit of sharing information. In general women are frequently excluded from information on the outcome of discussions regarding the petroleum sector (NEMA, 2017, p.17).

Research reveals that women's limited access to information inhibits their ability to take advantage of employment opportunities in the oil and gas sector (International Alert, 2014). This is due to their limited access to media, such as radio (which is often considered the property of the male partners); low literacy levels within communities; and cultural constraints, for instance women having no say in meetings, or rarely being included in meetings and information has to be passed on a need basis with the elders/men determining the need. Notices are posted at sub-

national offices; yet rural women are considerably less mobile and have less access to resources and time required to move beyond the village.

Fortunately, gender-based initiatives have recently emerged to promote women empowerment in the petroleum sector through employment, provision of information and protection of their rights. These initiatives include the Association of Women in Energy and Extractives in Kenya (AWEIK) which aims at providing women with business and professional development opportunities for equitable and economic development within Kenya's extractives industry as well as the Women in Energy and Extractives (WEX) which is dedicated to promoting and progressing the development of women directly and indirectly affected by the energy & extractives sector among others.

### Way Forward

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There are different gender biases against women in light of social, cultural and economic environments hence no one size fits all in trying to forge a solution. Gender disparities exist in the distribution of risks and benefits in the extractives industry. Benefits accrue to men in the form of employment and income, while the costs, such as family/social disruption, and environmental degradation, fall most heavily on women.

The government, companies and CSOs still have some work to do towards gender mainstreaming which includes; improving the regulatory environment to capture gender impact assessments; involve women in community investment projects; make consultation processes open and fair to both men and women; invest in education schemes and programs that encourage girls to participate; support equal employment opportunities at the work place; increase support to radio stations that carry out programs in the local language of the community; avail reporting and sensitization structures on SGBV to prevent and handle incidents; amend the Occupation Safety and Health Act to provide clear guidelines for safety standards for women in the industry including well fitted gloves, goggles, overalls and gumboots to accommodate their unique needs; offer working conditions that are flexible for women to deal with needs at home including taking care of children or the sick; partner with local community organizations to increase awareness on SGBV in the company and community; Maximize stakeholder collaboration between companies, governments and communities to promote women's voices and participation within the petroleum industry and create programs to challenge social and cultural biases that exclude women from pursuing and leading business opportunities related to the extractives.

Because women in Kenya's petroleum sector benefit the least, there is need to create an environment that specifically caters to their unique needs through gender mainstreaming to better deal with the existing gender gap. This should begin at the exploration stage and continue throughout the operations life cycle (World Bank Group, 2013). The existing initiatives for women and legal provisions have done well to bridge the gap. However, there is a lot more to be done in order to achieve complete gender mainstreaming.

Do check back for our next series as we delve deeper into working solutions for specific gender gaps that exist within Kenya's petroleum sector with a few examples from countries that have succeeded in gender mainstreaming.

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