



Extractives Hub



“What is the future of ‘Social Licence to Operate’ in the East African Extractive Industries post-COVID19?”

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TABLE OF CONTENTS

Abstract	3
1. Introduction	4
2. An analysis of SLO in The East African Extractives Sector	6
3. Long-term impacts of COVID-19 on SLO practices in East Africa	8
4. Concluding remarks and key issues for policymakers and investors	11
REFERENCES	12

ABSTRACT

The basic characteristic of a pandemic is its ability to spread widely implying that it not only affects various countries but also all the sectors of the economy. Whereas it is worth to review the present impacts of the COVID-19 pandemic, it becomes inevitable to think of the post-pandemic future. In the extractive industries, the obvious impacts of the pandemic are manifested in the social and economic disruptions including lockdowns and other restrictions regarding the physical mobility of people and goods, an escalation in unemployment, strain on the health care system just to mention a few. In the extractive industries, decline in energy demand and consumption have not only forced many oil companies into bankruptcy due to all-time low oil prices but have also equally negatively impacted the mining companies. Whereas all these effects will change the way the extractive industry operates, we have to think of the impact this pandemic will have on the relationship which companies have for long been trying to establish with the local communities through acquiring the Social Licence to Operate (SLO).

SLO has the potential of reducing project risks and as such it has in recent years been accepted as the simplest way to ensure the success of energy and mining projects. The acquisition of SLO facilitates smooth operations due to collaborative efforts amongst the stakeholders - on one hand, companies may proceed with the profitable operations of their business without interruptions and on the other hand, host communities and other stakeholder groups may benefit from social amenities such as developmental infrastructure, training and employment opportunities. However, this relationship is not immune to the impacts of the pandemic and will be affected. As such, this means that going forward, the relationship between local communities and oil and mining companies will take a different turn post COVID-19. The economic challenges to follow the pandemic will not only influence future investment decisions for these companies but will also change the way these companies relate with host communities. In essence, this research seeks to highlight the impact of COVID-19 pandemic on Social Licence to Operate in the extractive industries specifically addressing the key issues for companies, local communities and governments.

1. INTRODUCTION

A good relationship between host communities and extractive companies is key in managing some of the risks which are encountered during the energy project life cycle. This relationship is what many scholars have described as a Social Licence to Operate (Parsons et al., 2014; Wilson, 2016). By its nature, SLO is a representation of societal acceptance of the ongoing projects formally undertaken by companies. In this respect therefore, it is unwritten and as such differs from the legal licence often granted by the government to energy companies (Wilson, 2016). Whereas SLO has been reduced to the mere social acceptance of projects, scholars have in recent years emphasised the significant contribution of the concept to the achievement of energy justice more broadly (Heffron et al., 2018).

The informal character of SLO implies that companies are at liberty to decide what obligations to fulfil with respect to SLO. These obligations do obviously have financial and economic implications and as such companies will only commit to SLO activities that fit in their budget. Nevertheless, we note that SLO is a non-permanent right and as such it may be granted, withdrawn or subject to change as new information about the project is acquired (Boutilier et al., 2018). Scholars have also emphasised that earning an SLO often involves building social capital over time through sustained capacity building practices (Boutilier et al., 2019).

Taking stock of the above, a question arises as to whether a drastic change in the financial status of extractive companies can affect SLO? The answer to this is in the affirmative and this research seeks to address the economic impact of COVID-19 in the energy sector as it relates to the achievement of SLO in East Africa.

The COVID-19 pandemic has undoubtedly led to a decrease in consumption of both energy (oil and gas) resources and mineral raw materials. It is no secret that many companies have encountered economic backlash due to the current crisis. For instance, on Monday the 20th of April 2020, the world experienced a negative price for US crude. This caused various oil companies, especially US shale companies, to declare bankruptcy. The drop in oil prices is mainly due to the March 2020 oil price wars. Additionally, the COVID-19 pandemic which has reduced oil demand in the transport sector and manufacturing industry has also significantly contributed to the low oil prices.

Consequently, there has been massive stress in the oil industry with many companies losing their value including Halliburton, Noble Energy, Marathon Oil and Occidental (OXY)- all of which have lost more than two-thirds of their value (CNN Business, 2020).

The social and economic disruptions encountered as a result of the pandemic will have resultant effects in the near future. Post COVID-19, companies are likely change the way they operate and relate with host communities. These changes will with no doubt impact local communities both socially and economically. In the extractive industries, SLO especially in many African countries has been mirrored by the way oil and mining companies have been trying to uplift communities through financing developmental infrastructure such as schools, hospitals and roads. Gestures of this nature by these companies have indeed made it possible for host communities to readily offer their “social permission” for companies to conduct their businesses. With the current pandemic and the resultant economic crisis, the views on SLO will drastically change and as such this paper analyses the outlook of SLO post COVID-19, specifically highlighting key considerations for companies, host communities and governments. Section two briefly gives an analysis of SLO in the East African extractive industries; section 3 highlights likely changes in SLO post COVID-19; section 4 gives the concluding remarks.

2. AN ANALYSIS OF SLO IN THE EAST AFRICAN EXTRACTIVES SECTOR

As is the case on the wider African continent, governments and other players within the extractives industry in East Africa have taken note of the shift from purely economic-driven development and issues pertaining to SLO have become a major factor for sustainable investment. Increased community empowerment means that the demands that communities have with regards to operations by companies within the extractives sector have also increased. Communities are demanding more involvement in decision-making around such operations, they have expectations of receiving a greater share of the benefits from these operations and they require assurances that the commercial industry players involved are appropriately regulated (Moffat et al., 2015).

There are several examples of extractives operations within the region that have incurred costly set-backs due to the inadequate consideration of SLO issues. For instance, in the Kenya oil sector, a UK based mid-tier oil company, was initially unable to proceed with operations under the Early Oil Pilot Scheme in 2018 due to community push-back. As a result of this, the company suspended operations for a few weeks and suffered significant losses in both time and money. In the Tanzania natural gas sector, community discontent with respect to the construction of a gas supply pipeline from Mtwara region to Dar es Salaam led to violent protests resulting in loss of life and extensive infrastructure damage (BBC News, 2013). In the Uganda oil sector, commercial production of oil has not commenced almost 15 years post commercial discovery largely due to conflicts between the investor group and the communities surrounding the developments evidenced by demonstrations and judicial activism. Broadly, these issues have involved the acquisition of and compensation for land, population displacement, human rights violations as well as negative impacts on the environment and on the local wildlife ((EJAtlas. 2015).

Conversely, where SLO concerns have been addressed adequately, communities and companies are able to thrive in peaceful and mutually beneficial relationships. For instance, in the same Kenya EOPS project, the impasse between the community and the investor was resolved when the parties took part in round-table discussions facilitated by the government which led to the official gazettelement of a Grievance-Management and Inter-Ministerial (Escalation and Support) Committee comprised of representatives from the relevant stakeholder groups. The mandate of the committee was to facilitate community engagement and come up with collaborative solutions with regards to any emerging issues associated with the project. Eventually the company resumed operations in a peaceful environment (Senelwa, 2018). In the Tanzania gas sector, the company involved in the Mtwara natural gas exploration area, set up a fund to support local healthcare development in areas which

were identified as critical namely, pre-hospital care and the ambulance service; emergency rooms for resuscitation care and capacity building to manage common medical emergencies, trauma and snake-bite management (Shell Tanzania. 2019). In the Uganda oil and gas sector, the investor consortium undertook renovations of the Uganda Museum to include an oil and gas section and has been offering local and international education and training through its Oil & Gas Scholarship Programme (Total Uganda. 2019).

In an attempt to further enforce SLO in these countries, the individual national governments have provided some guidance by providing sector specific legislation pertaining to SLO issues. For instance, in all the East Africa environmental legislation, environmental impact assessment (EIA) studies are required to include aspects of social impact assessment and are also required to include public participation by affected stakeholders. In Kenya, the new Petroleum Act 2019 requires oil & gas licensees to include comprehensive community development plans in their project development plans. The Kenya Mining Act 2016 requires, in part, that mining licensees enter into community development agreements with the local communities; In 2018, Uganda enacted its Mining Policy 2018, which among others, calls for local content and community considerations in mining licensing; Commencing in 2017 in the Tanzania mining sector, the historically inadequate consideration of matters pertaining to SLO provoked legislative reforms (Karanja et al., 2020) while in early 2019, the Tanzanian government amended the mining law to specifically legislate for SLO and corporate social responsibility (CSR).

Globally, influential international non-governmental organisations (NGOs), international organisations and private sector membership organisations have also provided some interventions which recognise the centrality of SLO in the development of extractives include the increasing pressure on players within the sector from influential. Some of these interventions include the United Nations Global Compact (Un.org, 2020), launched in 2000 by the UN, encourages businesses worldwide to adopt sustainable and socially responsible policies through ten (10) Principles in the areas of human rights; the 2007, the World Bank Group published its Environmental, Health and Safety Guidelines (WB - EHS Guidelines) for reference on technical issues during project appraisal and which have a detailed section on community health and safety (IFC 2007); the 2012, the International Finance Corporation (IFC) performance standards (the IFC Performance Standards), applicable to all projects funded by the IFC four of which deal directly with community SLO issues, and include standards for community health, safety and security; and safety, land resettlement, indigenous peoples and cultural heritage all of which are pertinent.

3. LONG-TERM IMPACTS OF COVID-19 ON SLO PRACTICES IN EAST AFRICA

With just under 45,000 confirmed cases of the virus and approximately 1,900 deaths, as of May 2020, African countries have not been as hard-hit by the virus as countries in the West. However, the continent is fertile ground for the spread of the virus due to significant constraints in the social welfare and healthcare infrastructure. Some of the preventative measures that have recommended by the WHO, in the absence of a vaccine, including regular hand-washing and social distancing are not within the practical reach of many. In countries where many households do not have access to running water, sanitary conditions are basic for many people. On the other hand, social distancing is a challenge in many African countries where many people practice communal living in densely populated areas; often sharing facilities in crowded multi-generational households.

Because acquiring and maintaining SLO essentially turns on fostering and maintaining relationships primarily at the grassroots level, it is the writers' view that one of the long-term impacts of COVID-19 is that, managing communication by all development partners will continue to be a critical success factor in the delivery of projects. It has already been observed that misinformation has been at the heart of the spread of the novel coronavirus and this may continue to be the case even in the inevitable future where operations in the extractives industry will have to continue. For instance, in Ethiopia, many consider COVID-19 to be a 'rich person's' or a 'foreigners'¹ disease and therefore discount themselves from potential infection. Others think that those wearing masks have the virus and so steer clear while remaining close to people without protective gear (Ethiopia Insight, 2020). People's inability and/or reluctance to change social behaviour will definitely be manifested in managing SLO post the pandemic.

This means that going forward, companies and other industry players will have to address the misinformation surrounding infections and spread of the disease as well as satisfy the relevant stakeholders at the community level that the lives of the community are not at risk due to the entry of foreigners into their communities. They may do this by undertaking public participation forums where they can sensitise the community members on these matters.

Governments may demonstrate their commitment to ensuring the health of their citizenry by requiring that immigrants into their sovereign borders undertake and maintain routine health

¹ After the majority of the first confirmed cases were foreigners, there was a spate of minor attacks, such as stone-throwing and verbal abuse, on non-Ethiopians, mainly in Addis Ababa - Tasfaye E, 'Ethiopia's COVID-19 Quandary - Ethiopia Insight' (*Ethiopia Insight*, 2020) <<https://www.ethiopia-insight.com/2020/04/01/ethiopias-covid-19-quandary/>> accessed 3 May 2020

checks. Companies may have to provide personal protective equipment for their staff as well as potentially provide medical services to assure community members that the highest standards of healthcare are being preserved. Additionally, governments may also consider negotiating with companies with a view to offset some of the costs of company interventions such that the same are not necessarily overly restrictive on companies and their ability to engage in their operations profitably.

Moving forward, as highlighted in the previous sections, the pandemic has had drastic economic impacts on energy and mining companies. The financial difficulties experienced by these companies will be a ground for not fulfilling their SLO obligations which are by nature non-binding. This will in essence necessitate a robust legislation on SLO. Although some of the SLO aspects including issues relating to environmental protection are legislated upon, other social aspects such as establishment of developmental infrastructure are not legally binding. The economic disruptions post COVID-19 will leave many host communities in financial distress and these besides turning to governments, will also expect more from extractive companies. In essence, the pandemic presents a solid reason to develop the legal nature of SLO to ensure that the interests of both host communities and companies are well balanced. Introducing legality in SLO will also ensure that promises made by companies are binding and it will also ensure accountability in the sector. Nevertheless, there are some implications of legislating on SLO issues especially for companies that are in a position to argue that they have already fulfilled the legal requirements by acquiring the necessary government permits (Nalule, 2020; Nalule, 2019).

The table below highlights some of the changes likely to be experienced as a result of the COVID-19 pandemic.

Table 1: Summary of SLO outlook post COVID-19

Extractive companies will shy away from expensive developmental infrastructure
Host communities will expect more from companies
Governments through legislation will have to balance the interests of both host communities and companies

As spotlighted in the table above, the way SLO is perceived by both the companies and host communities will change post COVID-19. This will necessitate the need to strike a balance on the expectations of both parties. Additionally, digitalisation and automation will characterise the extractive industry post COVID-19. Consequently, many local people will lose their jobs in the extractive industries. All these developments will affect the relationship between host communities and companies and as such, there will need to be a new way to re-define SLO. Currently, we have experienced job loss in different sectors as a result of the lock down. There is still hope for people that the situation will change in the near future. However, the lessons learnt during the COVID-19 crisis will trigger innovation in the extractive industries and as such more companies will opt for automation in their operations.

4. CONCLUDING REMARKS AND KEY ISSUES FOR POLICYMAKERS AND INVESTORS

Although this paper is focused on the extractive industries, we note that in addition to the extractives sector in the Eastern Africa region, there continue to be other investor-attractive sectors. Some of these include the ICT (digital and mobile-money) sector in Ethiopia and Uganda, the ICT and hospitality, tourism and service sectors in, Rwanda; the SME sector in Kenya and the agriculture (palm-farming) sector in Tanzania (Lexology.com, 2020).

However, as countries look to infuse their economies with much needed vigour and recover from the shocks caused by COVID-19, stakeholder concerns will continue to be central to encouraging and maintaining sustainable development in the region.

The strain on prevailing economic conditions combined with existing political tensions in many parts of the continent have the potential to induce significant social and political upheaval, especially if the supplies of basic commodities or essential services are threatened. This therefore means that matters concerning SLO will need to be given significant attention through robust SLO programmes even in a post COVID-19 world.

In conclusion therefore, the key issues for policy makers is to find a way to balance the demands and expectation concerning SLO for both host communities and extractive companies. Whereas it becomes necessary for host communities to relax on their demands given the economic crisis to follow post COVID-19: extractive companies should be mindful of the financial distress likely to be experienced by developing countries such as those in East Africa. In this respect therefore, companies should not hide behind the pandemic to forego their SLO obligations.

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