

**GOVERNANCE PRACTICES AND ILLICIT FINANCIAL FLOWS
IN KENYA'S OIL AND MINING SECTORS**

BY

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**A Research Proposal submitted in partial fulfillment of the requirements for the award of
the Degree of Master of Public Policy and Administration, of the School of Humanities and
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DECLARATION

This is my original research project, which has not been submitted for examination at this or any other university.

Signed 

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With my agreement as the university supervisor, this Research Project has been submitted for assessment.

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DEDICATION

I dedicate this work to the Almighty God for his strength, provision, and guidance throughout this journey. My Daughter Aariah; you have been my source of strength amidst all our struggles. I did this to show you that it can be done, no matter the challenges. Mummy's got you! Finally, to my parents, Mr. & Mrs. James Mithia and my sisters; Irene, Betty, Monica, Scola and Venessa for always encouraging me through prayers, emotional and financial support. I am grateful to you all.

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OPERATIONAL DEFINITION OF TERMS

Accountability	The extent to which citizens can hold governments, political leadership, and private companies responsible for their performance and conduct.
Base Erosion and profit shifting	It refers to the practice by multinational companies to plan tax strategies that abuse laxities in tax rules to avoid paying taxes.
Beneficial Ownership	True owner(s) of a company or the accepted person(s) who directly or indirectly possesses or controls a business entity.
Governance Practices	The methods of exercising authority in the management of a state's budgetary and public resources for development.
Mining Sector	A sector of a country's economy concerned with the extraction of geological materials that are transformed into a mineralized form to serve as an economic benefit.
Illicit Financial Flows	Funds that are illegally earned, transferred, or utilized and cover all unrecorded private financial outflows that drive the accumulation of foreign assets by residents in contravention of applicable laws and regulatory frameworks

Stakeholders	Persons or groups interested in a specific choice, either as individuals or as representatives of a group.
Tax Avoidance	The practice where individuals or firms carry out their operations to lessen their tax obligations in a way that is not strictly illegal but operates contrary to the purpose of tax law.
Trade mis-invoicing	The alterations made by exporting and importing countries when recording the values of goods to evade tax and foreign exchange payments.
Transfer Mis-pricing	The falsification of prices of a transaction to reduce taxable income by two “related parties.”
Transparency	The extent to which information is made available to members of the public that allows them to have a knowledgeable opinion enabling them to make decisions and evaluate the decisions made by insiders. Transparency in the oil and mining sectors focuses on laws and regulations, policies, administration, revenues, and expenditures.

LIST OF ABBREVIATIONS

AML:	Anti-Money and Laundering
CBK:	Central Bank of Kenya
EITI:	Extractive Industry Transparency Initiative
GDP:	Gross Domestic Product
GFI:	Global Financial Integrity
IFF:	Illicit Financial Flows
ITA:	Income Tax Act
KRA:	Kenya Revenue Authority
MNC:	Multinational Corporations
NOC:	National Oil Companies
NOCK:	National Oil Corporation of Kenya
NRI:	Natural Resource Income
OECD:	Organization for Economic Co-operation and Development
PWYP:	Publish what you pay
SDG:	Sustainable Development Goals
UNCTAD:	The United Nations Conference on Trade and Development
UNECA:	United Nations Economic Commission for Africa

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ABSTRACT

Extractive industries, notably oil and mining sectors are associated with high levels of illicit financial flows. Illicit financial flows cause scathing economic, social, and political costs to a country's development agenda, particularly countries endowed with natural resources like oil and minerals, since they deplete a government's revenues by reducing a country's tax base, as private wealth is unlawfully transferred out of the country. While Kenya has an emerging oil and mining industry with an increasing record of the discovery of mineral resources, expanding mining ventures, and discovery of oil in Turkana, its contribution in the extractive industry is currently low and is expected to grow considerably in the next few years to become a key contributor to Kenya's GDP, the sectors are at risk of illicit financial flows jeopardizing the country's ability in collecting much-needed revenue. Therefore, this study aimed to investigate the effect of governance practices, in particular transparency, accountability, and the rule of law, in curbing illicit financial flows in Kenya's oil and mining sectors. The theories on which this study was based included stakeholder theory, agency theory, and resource-based view theory. The researcher adopted a mixed-method research design by targeting stakeholders in the oil and mining sectors within Nairobi County. The study involved 93 respondents consisting of key stakeholders in mid-level and senior management positions in both government and civil society organizations. The quantitative data was collected by filling in semi-structured questionnaires while qualitative data was collected through drop and pick questionnaires. The quantitative data are presented using tables, texts, and graphs while qualitative data is presented through the identification of common themes from the responses. The findings from qualitative and quantitative data analysis show that the three independent variables (rule of law, transparency, and stakeholder accountability) have significant effect on curbing illicit financial flows in Kenya's oil and mining sectors. However, the regression model shows that the rule of law has the highest influence on the independent variable, followed by transparency, and stakeholder accountability has the least influence. The study recommends the adoption of international standards and codes governing oil, gas and mining industries globally including the Extractive Industry Transparency Initiative (EITI), to enhance contract transparency in Kenya's Oil and Mining sectors. It also recommends the domestication of the African Mining Vision (AMV) that offers a combination of local and international strategies that will improve capacity for mineral sector governance and contract negotiation.

CHAPTER ONE: INTRODUCTION

1.1 Background of the study

Natural resources such as oil and minerals provide a foundation for economic development in many countries, but often experience difficulty in achieving economic success. Except for Botswana, Morocco, Namibia, and South Africa, where natural resources have been properly managed for economic and social gain, the emergence of the extractive industry has not translated into overall economic growth, particularly in many African countries (Ayee, 2014). The World Bank, a huge advocate of good governance in extractive industries in developing countries, recently disclosed that extractive industries produce minimal benefit towards improving development efforts in the countries partaking in extractive activities and reducing general poverty levels (Duncanson, 2017). Similarly, the paradox of countries blessed with natural resources such as oil, gas, and minerals growing less than or like countries that are less endowed (Sachs & Warner 1995; Karl, 1997) has been interrogated, adding to the narrative that countries endowed with oil deposits have had decreasing per capita income leading to less than projected development outcomes (Ross, 1999; Van der Ploeg, 2011).

Recent literature has indicated that extractive industry faces a high risk of illicit financial flows (IFFs), which pose a threat to economic growth in developing countries (UNECA, 2015). A study by Le Billon (2011) indicated that illicit financial flows (IFFs), which constitute cross-border transfers of capital due to tax evasion, corruption, and illegal resource exploitation practices, are more prominent in the extractive sectors of the oil and mineral producing nations. The study also stated that the extractive sector in Africa, which is a major source of revenue, is vulnerable to IFFs due to existing characteristics of the extractive industry including the presence of cross-border

supply chains which are susceptible to tax misconduct, complex extractive operations and the undeniable huge income-generating potential of extractive sectors, multiple layers of secrecy within the industry which present ripe grounds for IFFs to thrive. A high-level panel report, chaired by Thabo Mbeki, further indicated that the extractive sector is susceptible to the occurrence of IFFs through transfer mispricing, clandestine and inexpertly negotiated contracts, exceedingly liberal tax incentives, and under-invoicing (UNECA, 2015).

Studies show that IFFs tend to drain hard currency reserves of oil and mineral producing countries in addition to reducing their tax collection bases due to aggressive tax avoidance practices that deepen tax income gaps by diverting domestic savings from real domestic investment leading to losses in much need funds for investment and development projects, deplete investment, undermine trade and weaken governance due to poor state capacity to deliver services (UNECA, 2013). Policy and conformance gaps in legal frameworks along the extractive industry value chain, according to other research, present risks of illicit financial outflows, curtailing countries' ability to collect already dwindling revenues resources for development, bringing to fore the need for good governance (UNECA, 2017).

1.1.1 Illicit Financial flows

The problem of illicit financial flows is multifaceted and methodological regarding issues related to their source, destination, proportion, processes, drivers, players, and administrative responses (UNECA, 2013). The words illicit financial flow and capital flight are closely interrelated in the literature. However, both in terms of description and in reality; they are two separate concepts. The movement of funds from one country to another to protect or gain a higher return in the case of a negative occurrence, such as a worldwide economic downturn, is known as capital flight. (Reed & Fontana, 2011). IFFs, conversely, are defined in a variety of ways, some of which are

triggered by procedures and practices, as well as crimes, that arise from the transfer of capital outside of a country while breaking state or international laws (OECD, 2013). IFFs can likewise be defined in the form of outcomes: funds lead to an unintended but direct adverse effect on the long-term fiscal growth in a country where IFFs occur (Blankenburg & Khan, 2012). Nonetheless, a consensual definition has progressively developed over the last few years that describe IFFs as cross-border capital dealings that hide and enable illegal activities. Global Financial Integrity's (2012) definition, which this study will adopt, refers to IFFs' as "funds that are illegally earned, transferred, or utilized and cover all unrecorded private financial outflows that drive the accumulation of foreign assets by residents in contravention of applicable laws and regulatory frameworks."

Globally, illicit financial flows are massive. Global Financial Integrity (GFI) approximates that between 2000 and 2009, economically developing nations lost between "USD 723 billion and USD 844 billion per annum" because of illicit outflows (Clark, 2013). The nations with the most illegal outflows during this period were "China (USD 2.5 trillion), Mexico (USD 453 billion), Russia (USD 427 billion), Saudi Arabia (USD 366 billion), Malaysia (USD 338 billion), Kuwait (USD 269 billion), and United Arab Emirates (USD 262 billion)" (Kar & Freitas, 2011). In 2011, Asia documented the biggest volume of illicit financial flows among the continents, representing 39.6 percent of aggregate illicit outflows from third-world nations, while emerging Europe and the Western Hemisphere recorded 21.5 percent and 19.6 percent, respectively. Averagely, the Middle East and North Africa zones factored for 11.2 percent of overall outflows (Clark, 2013). In China, most illicit financial flows recorded were a result of trade mispricing. In contrast, many oil-exporting countries such as Russia, Saudi Arabia, the United Arab Emirates, and Kuwait recorded IFFs mainly through corruption, embezzlement, bribes, and tax evasion (Kar & Freitas, 2012).

Between 2003 and 2012, illicit outflows totaled USD 528.9 billion in Sub-Saharan Africa (SSA), where the natural resources sector includes, among other things, oil, gas, and minerals and accounts for a considerable share of overall exports (GFI, 2014). Estimates by (Ndikumana & Boyce, 2003; 2008) have shown that nearly USD 854 billion has been transferred out of Africa over 39 years, consequently making the African continent a net creditor to the entire world. Ghana, for example, is one of the leading oil producers in Africa. It managed to record illicit financial flows (inflows plus outflows) totaling USD 40 billion between 1960 and 2012 mainly through trade mis-invoicing, an amount that is presently more than enough to eradicate Ghana's entire national debt and even go further and fund the country's most needed infrastructure (Africa Centre for Energy Policy, 2015). Nigeria, similarly, accounted for 30.5% of illicit financial outflows from Africa, ranking among the top ten source countries of illegal transfers, making it the biggest source of IFFs in Africa, losing an estimated USD 217.7 billion during the period 1970-2008 (GFI, 2010). Nkurunziza (2015) established that GDP growth rates in many African states might be significantly greater if they had been capable of preserving and investing the money that moved out of their countries through IFFs over the past decades. More alarmingly, IFFs have been increasing by 10 percent per year over the past decade (Kar & Spanjers, 2015) and as such, continues to hinder governments' efforts to mobilize national resources (Barasa, 2018).

Several studies indicate that Sub-Saharan countries endowed with natural resources widespread occurrence of IFFs pointing to a governance problem caused by inadequate institutions and regulatory environments (UNECA, 2015, 2016; Billon, 2011). Governance, as described by UNICEF (2002) is "the process of making decisions and implementing them based on considerations such as popular participation, respect for the rule of law, observance of human

rights, transparency and accountability, free access to information, accommodation of diverse interests, equity, inclusiveness, effective results and prompt responses to human needs". Thus, governance connotes the existence of all facets of the complex and numerous relations between a government and a people (Bello-Imam & Obadan, 2004). However, World Bank (1999) conceptualized governance by describing it as "the manner in which power is exercised in running a country's economic and social assets for development." The proper management of governmental institutions and structures to foster socioeconomic and political progress in society is referred to as governance in this context. The governance of extractive industries is contained in a country's regulatory and institutional framework, including transparency practices, stakeholder accountability, and the efficiency of the rule of law. The establishment and implementation of required laws and regulations, as well as the allocation of implementation tasks among various government bodies, are all necessary steps in regulating the extractive sector. To avoid misunderstandings, the regulatory system must be broad but not ambiguous, transparent, and applied to high standards. Laws, regulations, and institutional practices must allow full disclosure of information, open competition and accountability (Institute of Natural Resources Governance, 2013).

Efficient and effective management of a country's extractive industry also depends on having a good institutional framework. If there are no safeguards in place, resources and funds are likely to be exploited for improper or even criminal reasons, robbing the country of much-needed development funds. The functions and responsibilities of various government ministries and agencies must be well defined and handled for a country's institutional framework to function efficiently. In policy and compliance, this prevents overlapping or contradictory competencies and duties. It also avoids loopholes in regulatory responsibility. The figure below illustrates the

interrelationship between the regulatory and institutional frameworks in the extractive industry.



Figure 1.1 Interrelations Between Regulatory and Institutional Frameworks

Source: (Extractives hub, 2019).

Thus, the institutional and regulatory foundation of a state can be weakened by poor governance and is identified now as the primary cause of Sub-Sahara Africa's huge illicit outflows in various studies (UNECA, 2016). Weak legal and institutional frameworks, or a lack thereof, permit illicit operations in the absence of institutions responsible for or qualified to identify and prosecute criminal acts or illicit channels that enable illegal activities (Majdanska, 2015).

Kenya is contending with the challenge of governance in mitigating against IFFs. According to Transparency International (2020), IFFs endanger Kenya's political and economic security by weakening institutions, curtailing the rule of law, and rendering the government unable to combat poverty. According to a study by Wangai (2016), mispricing of goods and services that are moved inside multinational corporations among their affiliate companies with the exclusive goal of shifting profits to low-tax jurisdictions, is a significant source of missing income or revenue leakage that constitute IFFs in Kenya. Similar observations were echoed in a report by PASGR, which stated that Kenya lost around KES 160 billion in IFFs between 2002 and 2011 because of practices such as trade mispricing and profit-shifting techniques used by parent businesses and

their subsidiaries to disguise income (Barasa, 2018). According to data from the Kenya Revenue Authority, trade-mis-invoicing by international corporations' costs Kenya roughly 8.3 percent of government revenue. Furthermore, weak governance and corruption have resulted in a loss of KES 270 billion, depleting the country's much needed funding for public initiatives. Curbing illicit financial flows in Kenya's oil and mining industries is thus, a high-stake undertaking that must not be overlooked, given the extractive industries' proneness to the same and the significant challenge it poses in achieving structural reforms and economic development by depleting tax proceeds and limiting foreign exchange reserves, stagnating development and socioeconomic growth, and undermining governance (OECD, 2013).

1.1.2 Kenya's Extractive Industry

The 1950s saw the beginning of oil exploration by companies such as British Petroleum (BP) and Shell along the Lamu coast in 1954. Many other international companies in the last fifty years have considerably conducted viability studies of oil and gas (Deloitte, 2013). In 2000, the National Oil Corporation commenced a long-term strategic drive to extract oil by giving out concessions. It was only in 2012 that viable oil deposits in Turkana and Lokichar were discovered and have created interest and begun the 'race' to benefit from the extractive industry (Obiri, 2014). Mining has been a vibrant sector in Kenya since the early 1930s in Migori County, where gold mining took place. Similarly, soda ash and fluorspar have been mined over many years in Kajiado and Kerio Valley. There is also a variety of minerals and recent discoveries of niobium and rare mineral sand deposits in Kilifi County which add to the potential of Kenya's extractive industry (Runci, 2015). The extractive industry sector in Kenya has seen a surge in development with the discovery of vast amounts of mineral reserves (Odari, Osoro, Omolo, Chira, Ongon'nge, Oduor, Sivi-Njonjo, 2014). The government has gazetted forty-six blocks open to investors for fresh exploration. Permits for

coal exploration of 400 million tonnes of confirmed reserves have also been set up. In addition, Kwale County has been identified to have a capacity of about 200 million tonnes of mineral deposits and 140 million tonnes of metal reserves (Odari *et al.*, 2014). Vision 2030 espouses oil and mineral reserves as Kenya’s seventh priority sector that can propel the country to higher levels of economic growth.

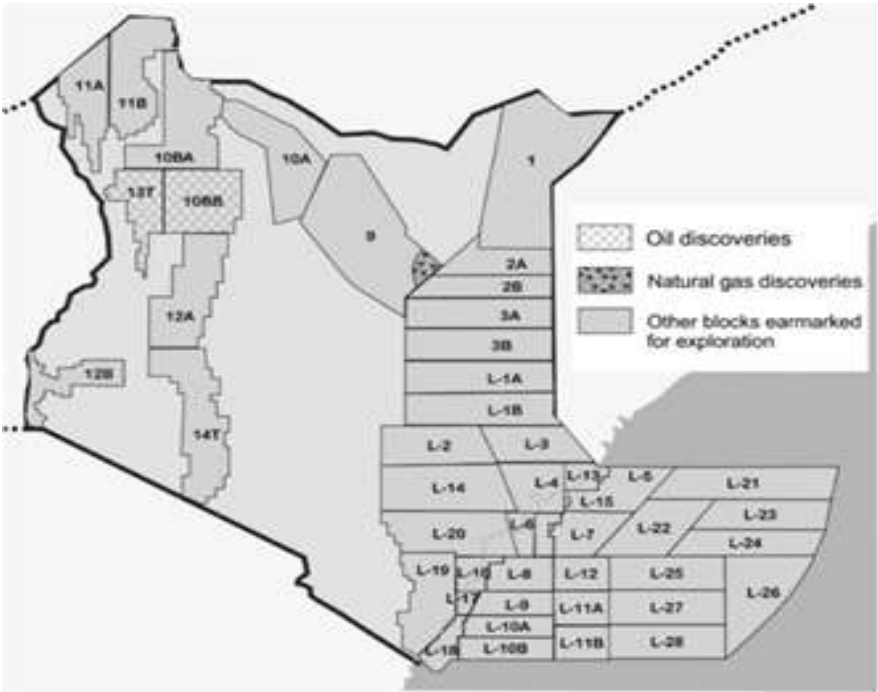


Figure 1.2 Map of Oil Discoveries in Kenya
Source: (Institute Of Economic Affairs, 2014)

Kenya’s extractive industry currently contributes to 1% of the GDP and is projected to increase to above 10% in the future (IHRB, 2016). The combined revenue of Kenya’s mineral exports exclusive of titanium and coal is projected to make Kenya above USD 240 million annually (Otieno, 2014). Moreover, a report by the Kenya Economic Survey (2015) indicated that, between 2010 and 2014, the aggregate amount of mineral production in Kenya climbed from 1.4 million tonnes to 1.7 million tonnes translating to an upsurge of the entire value of the mineral output by

over KES 5 billion (USD 50 million). Thus, if properly managed, Kenya's extractive resource exploitation could be critical in accelerating the country's manufacturing sector, trade, and investment and increase revenue allocation in vital facets of human capital such as health and education (Odari *et al.*, 2014).

While most studies on the extractive industries have focused on countries with a long history of extraction, such as Norway and Nigeria (Majdanska, 2015), the dynamics in emerging industries, such as Kenya, remain largely unexplored (Lundin, 2012; Van Alstine, 2014), including the challenge of illicit financial flows. There is an increasing amount of research on extractive industries and their influence on natural resource-rich countries, and a developing debate regarding natural resource governance (Collier & Venables, 2011; Roberts, 2013), which informs the context of our study. The purpose of this research was to examine effects of governance practices, in particular stakeholder accountability, transparency and the rule of law in curbing illicit financial flows in Kenya's Oil and Mining Sectors.

1.2 Statement of the Problem

For many countries, the extractive sector is still a major source of revenue. However, converting extractive earnings into long-term income for resource-rich countries' population remains a difficulty. According to research, resource-rich countries are not collecting expected tax revenues because of cross-border illicit financial outflows (IFFs), which siphon much-needed funds that would otherwise be available to fund development projects, particularly in poor countries. Over the 2005-2014 period, IFFs are predicted to have expanded at a yearly pace of between 8.5 percent and 10.4 percent, with outflows increasing at a rate of between 7.2 percent and 8.1 percent a year and inflows increasing at a faster rate of between 9.2 percent and 11.4 percent yearly (GFI, 2017).

According to statistics available, mining, and extractive sectors and the import-export industry, are among the most common sources of IFFs (ECA, 2018).

According to ECA estimates, the extractive sector in Africa was responsible for more than half of all IFFs globally (at least 56.2 percent) between 2000 and 2010, with a few nations accounting for most of them. Specific research undertaken highlights definite factors that make resource-rich countries prone to illicit financial flows, which include unrestricted political governance under which extractive sectors are managed, lack of demonstrated accountability to concerned shareholders, little or non-existent competition, highly complex technical and financial techniques that can only be performed by highly skilled personnel and finally, and a high degree of assimilation with the international economy comes about through trade (Le Billon, 2011).

Kenya, a relatively new actor in the global extractives sector, can use the benefits of the wealth of its natural resources to enhance the country's economic and human development. However, it continues to record the high magnitudes of illicit financial flows. For the past 40 years, it is assessed that Kenya lost over USD 10.6 billion in accrued illicit financial flows. This amount exceeds the country's national debt, which equates to about USD 8.4 billion (Boyce & Ndikumana, 2012). Multinational corporations (MNCs) operating in Kenya's extractive sector, primarily oil and mining, are a key conduit for illicit financial flows through trade mispricing, transactions between multinational firms and their subsidiaries, and other profit-shifting mechanisms intended to conceal revenues, subsequently denying the country billions of shillings that would otherwise be used for social and economic development.

MNCs in Kenya rarely disclose information on their operations, including their financial undertakings (Barasa, 2018). This is despite transparency being regarded as a critical requirement in extractives management gives local stakeholders the opportunity to decide which corporations

should operate in their lands, which corporations have obtained proper government licenses, and which organizations may have benefited from preferential tax treatment, potentially depriving local and national governments of much-needed revenue (Bryan Hoffman, 2007). This points to a failure by the government to institute necessary regulatory and institutional frameworks to curb such huge revenue losses. The existing challenge, therefore, remains to mitigate the problem of IFFs by creating an environment where transparency thrives as far oil and mining operations are concerned mainly in revenue collection, allowing the input of necessary stakeholders to enhance accountability in the management of oil and mining resources that is necessary for economic development as well as setting up the necessary regulatory and institutional frameworks that will assist in steering operations of the oil and mining sectors in a beneficial manner.

Arising from previous studies, it is evident that little has been done concerning the risk of IFFs in Kenya's oil, gas, and mining sectors and have focused on other sectors. This research, therefore, sought to address the effects of governance practices in curbing IFFs in Kenya's oil and mining, examining transparency, stakeholder accountability, and the rule of law as the critical governance practices as embedded in the current regulatory and institutional frameworks.

1.3. Research Objectives

The objectives of the study are:

- i. To determine the effect of incorporating transparency principles in Kenya's current regulatory and institutional frameworks to curb IFFs in Kenya's oil and mining sectors.
- ii. To determine the effect of stakeholder accountability in curbing IFFs in Kenya's oil and mining sectors in Kenya.
- iii. To determine the effect of the rule of law in preventing IFFs in Kenya's oil and mining sectors

1.4. Research Questions

- i. How do transparency principles affect current regulatory and institutional frameworks to curb IFFs in Kenya's oil and mining sectors?
- ii. What is the effect of stakeholder accountability in curbing illicit financial flows in Kenya's Oil and mining sectors?
- iii. How does the rule of law principle affect IFFs in Kenya's oil and mining sectors?

1.5. Justification and Significance of the study

The literature on illicit financial flows has not received much scholarly attention, even though illicit financial flow is a global problem. In Kenya, the study on illicit financial flows has mainly focused on the financial regulatory sector and not the extractive industry, especially in oil and mining sectors which are envisioned to be Kenya's seventh priority sector in the country's Vision 2030 strategic framework that can push the country to higher levels of economic growth. The study will be beneficial as it will enrich the body of knowledge in existing literature area of illicit financial flows and how governance practices aligned to the extractive industry can assist Kenya in preventing the occurrence of illicit financial flows. The findings are beneficial to institutions, both in national and civil society organizations, by providing helpful information to examine existing frameworks to alleviate the risk of IFFs critically. Also, the findings can serve as a reference for policy formulation and further studies in IFFs and governance.

1.6. Scope and Limitations of the study

The goal of this research is to add to the conversation on Kenya's extractive industry governance, particularly in the oil and mining sectors, as well as its role in preventing IFFs and the impact (or lack thereof) of revenue allocation and utilization. The research covers eight national regulatory institutions governing Kenya's Extractive Industry whose headquarters are within Nairobi County

nine civil society organizations and three oil and mining companies operating their main offices equally within Nairobi County. The researcher experienced different challenges during the study including lack of cooperation from 100 respondents. This was resolved by reassuring the institutions that the data provided would be kept anonymous and used strictly for scholarly purposes.

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.0. Introduction

The chapter offers a theoretical overview of the study based on an empirical literature assessment, a theoretical literature analysis, and examination of the regulatory and institutional frameworks that govern Kenya's oil and mining industries, and a conceptual framework review.

2.1. Empirical Review

2.1.1. Transparency and Illicit Financial Flows

Transparency and Accountability Initiatives (TAIs) in the extractives sector currently aim to do more than promote an organization but also strive to enhance the methods through which relevant stakeholders can efficiently bring governments to account and to contribute more efficiently to improving development outcomes, such as, equitable division of wealth and more improved socio-economic conditions. Indeed, global initiatives such as the Extractive Industries Transparency Initiative (EITI) and “Publish What You Pay” (PWYP) have sprouted mostly as donor efforts to improve transparency in resource-rich nations. It is assumed that, in the absence of large revenues being received from natural reserves such as fuels and mineral deposits, there is little motive for the government to conceal information from its citizens. However, this is not the case since the presence of large natural resources in resource-rich countries leads to a lack of transparency, especially in disclosing revenues.

To establish the impact and effectiveness of Accountability and Transparency initiatives in natural resource governance, Acosta (2013) looked at current literature on transparency and accountability in the extractive industries sectors of oil, gas, minerals, and metals. According to the study, effective impact appraisal requires an understanding of the underlying processes relating to influence, as well as the integration of previously gathered quantitative data through in-depth

interviews. The study examined documents related to the efficacious impact of transparency and accountability, including studies that looked at specific policy interventions or institutional changes, some of which were linked to personal knowledge and aspirations, and others which looked at past institutional or operational limitations. In his assessment, the current evidence of TAIs is not quite strong because of unproven assumptions and scanty theories of change in addition to practical challenges of assessing particularly complicated initiatives and the complexity of factors that promote their success. He notes that while in some cases improved public discussion is mentioned as a sign of success, factors such as the absence of stakeholder leadership, omission of critical public members, previous institutional restrictions such as frail accountability and oversight bodies could undercut the success of Transparency and Accountability Initiatives (TAIs). However, the author agrees with studies that propose in some situations that TAIs can contribute to better state or institutional reactions and, consequently, the development of new democratic arenas for multi-stakeholder engagement.

Williams (2011), on the other hand, conducted an empirical analysis on the relationship between natural resources, transparency, and economic growth. His study interrogated several hypotheses, among them being that a) countries with great quantities of natural resource revenues are less transparent than those countries without; b) that a lack of transparency has a direct result of resource revenues (in that the government explicitly attempts to prevent access to information to have control in how revenues are spent); and c) lack of transparency has a statistically and economically significant influence on economic development (resource curse). The Release of Information (ROI) Index was used to provide a sensible temporal extent of transparency with the postulation that the information a government release is based on their willingness

Through a panel data study that included approximately 105 countries, the study results suggested that, indeed, countries endowed with natural resources are less transparent, primarily concerning point resources (oil, metals, and minerals). The study also put forward that this deficiency in transparency gives the impression of a fairly direct result of resource revenues at 1% statistical significance. The study found a positive effect of transparency, “measured as a country’s willingness to release information on fiscal transactions,” that lessens the threat of the resource curse. William’s study justified the need for transparency in natural resource governance, citing the appropriateness of existing policy responses such as EITI and PWYP to improve governance despite the difficulty of achieving it in practice. These studies do not indicate how transparency “measured as a country’s willingness to release information on fiscal transactions” can be replicated in the process of issuing licenses and designing contracts and how it can minimize the threat of illicit financial flows, which this research sought to examine.

2.1.2 Stakeholder Accountability and Illicit Financial Flows

The concept of stakeholder responsibility is driven by the need to provide guidance because of the agency problem when agents' interests may not align with those of their constituencies (Allen, 2014; Swift, 2001). According to Swift, the issue of accountability is whether stakeholders have access to appropriate, precise, intelligible, and timely information.

Desai and Jarvis’s (2015) research focused on developing a theoretical framework of accountability that includes political, constitutional, and economic structures, social systems, and historical legacies to address the limitations of antiquated extractive industries policy frameworks in terms of accountability. The study argued that many international financial institutions' efforts to support the effective capture of incomes from extractive industries, notably through EITI, have focused mostly on transparency. While accountability has received far less attention, it is essential

to achieving continuous progressive outcomes, particularly in the development of non-renewable resources, from approving licenses to how earnings are allocated, spent, and how the subsequent investments are managed and monitored, according to the study. The study argued that accountability is achieved by individual or group participation, transparent information exchange, and holding private or public decision-makers accountable. In other words, transparency combined with participation in decision-making and monitoring procedures should result in more accountability. According to the authors, accountability can arise from the "bottom-up or demand-side," i.e., ordinary people, and the "supply-side," i.e., lawmakers and those in positions of power who are responsible for guaranteeing accountability. From this description, accountability is thus based on fair participation and transparency of information.

Giving the example of EITI reports produced by EITI-compliant countries, the authors allude that reporting is not an end goal in itself, but genuine value can be guaranteed if citizens as stakeholders are, for example, able to examine reports, point out inconsistencies, compare them to the national budget, and consequently can make sense of information relating of the revenues gained by a government which can then inform a discussion on how those revenues are used up and to whose profit, thus creating accountability. The authors also refer that current accountability patterns in resource-rich countries raise serious concerns regarding those unable to take part in these groups, including the poor and marginalized, who may be forgotten since data collection, examination, and use may necessitate a certain level of literacy. As a result, public actors, especially at the national and community stages, can function as information sources and accountability implementers, according to the study (Desai & Jarvis, 2015).

Along the value chain of extractive sectors, the research promotes responsibility beyond transparency. The survey demonstrates that accountability can include both upstream and

downstream activities in the extractives industry, such as the allocation of licenses and contracts, as well as procedures for the distribution of revenues and how they are spent, in addition to holding companies accountable for how they fulfill their stated obligations, particularly with respect to public, environmental, and commercial effects of their extraction activities. The study also calls for nurturing country-level accountability to efficiently outline capacity to comprehend and use the information at the country level.

Encouragement for capacity development of state EITI procedures, notably the rise of civil society participation, demonstrates the growing importance of multi-stakeholder engagement created around EITI. If applied properly inside a country, the study also suggests employing information technology tools such as GIS mapping and SMS to facilitate more participation and, as a result, accountability of activities. The study provides a solid theoretical framework to advance the importance of accountability within the extractive industry value chain, including holding companies accountable in disclosure matters. However, it fails to show how stakeholder accountability can address the challenge of illicit financial flows within the extractive industry value chain thus creating a gap which this research sought to fill.

Egbon (2015) looked at accountability regarding the Nigerian Extractive Industries Transparency Initiative (NEITI), focusing on how far NEITI, as a theoretical accountability tool, promotes accountability to favor the public. The study looked at the social disclosures of five multinational corporations (MNCs) in the Nigerian oil and gas industry to assess NEITI's accountability as a means of assuaging public or business anxieties, as the extractive industry is notoriously secretive. The study concluded that revenue transparency narratives serve exclusively the corporations' economic interests, using political economy and legitimacy theories to support their study and provide a basis for evaluating the amount to which such narratives discharge accountability. This is

because there is no strong evidence to support assertions made by firms in Nigeria's oil industry that enacting revenue transparency programs enhances transparency and accountability, as well as a reduction in corruption and, as a result, improved fair resource sharing. The study also discovered that companies employ (NEITI) as one of their management methods to justify corporate operations and appeal to key stakeholders' views, ostensibly demonstrating how their corporate principles are consistent with societal norms and values. According to the report, MNCs' claims about using transparency initiatives to support corruption reduction convey the idea that accountability is being promoted to the State rather than the people. According to the findings, accountability that prioritizes shareholders' economic interests over the public good appears to fall short of the corporate-society relationship's common agency premise. It's worth noting that the research focused solely on the business side of the income transparency program, as well as the nature of corporate responsibility through EITI. It failed to demonstrate how EITI stakeholder accountability may prevent illicit financial flows in the extractive sector, which is what this study aims to do.

2.1.3 Rule of Law and Illicit Financial Flows

The rule of law is a model for addressing the dangers of abuse that arise when political authority is exerted in general by focusing on a specific form of exercising political power, namely governance by law (Waldron, 2008). Establishing the rule of law, according to the United Nations, requires actions to ensure compliance to the doctrines of “supremacy of law, equality under the law, duty to the law, impartiality in the application of the law, division of powers, participation in decision-making, legal certainty, avoidance of unpredictability, and procedural, as well as legal transparency” (United Nations, 2008).

Cust (2018) examines international standards that have emerged and include a vast scope of resource governance aspects, as well as recommendations for best practices in policy creation and implementation the various forms of governance regulations and criteria that are used to evaluate extractive-sector performance, as well as the importance of global initiatives to promote governance reforms. The study posits that codes and standards are important as they guide resource-rich countries by providing expertise on how they might proceed with limited prior experience of navigating natural resource exploitation which creates an opportunity for such countries to make smart deals during the early stages of developing a resource sector and avert bad policies early in the cycle of resource exploitation, thus bolstering strong governance in resource-exporting countries.

The study begins with an examination of the Extractive Industries Transparency Initiative (EITI), which was established in 2003 with the goal of reducing corruption in the extractive industry by informing the public about the money corporations pay against the money governments claim to receive. In determining whether the adoption of EITI has improved good governance, the author explains that it is important to reflect on the wider governance environment surrounding EITI since an improvement in governance due to the adoption of EITI might be in tandem with the improvement of other governance indicators. The study also examines the Kimberly Process Initiative (KPCS), which was formed by the United Nations in 2003 to help guarantee that proceeds from the diamond industry do not go to fund rebel organizations or undermine legitimate governments. Member countries are required by KPCS to collect and release information on diamond extraction and worldwide trading. Since the formation of KPCS, consumers of key minerals have been deterred from engaging in illicit operations that result in revenue loss. The Africa Mining Vision (AMV), an international standard for revenue governance, was also

reviewed, whose main purpose is to make available formulas for popularizing wide-ranging advantages for mineral exploitation. In contrast to the other negative view of the impact of resource exploitation in academic literature, generally referred to as the "resource curse," the AMV, according to the author, emphasizes resource-driven growth, highlighting the potential positive benefits from resource extraction. He also notes the importance of good governance in achieving the goals as the need for transparency and certification schemes, getting governance right, and resource wealth being a blessing as envisioned in AMV. Finally, the author discusses the Natural Resource Charter (NRC), a worldwide tool that provides best practices through twelve precepts on how governments might translate subsurface resources into economic wealth without jeopardizing long-term sustainability. The author points out that, like other good governance initiatives implemented by nations such as Ghana, it's difficult to attribute the benefits of utilizing the NRC toolkit to a specific cause. Ghana's oil income management, for example, has failed to safeguard the government from unfavorable price shocks and fiscal strains.

Overall, the author builds a case for adoption of international standards by resource countries mainly in Africa, as a means of improving resource governance. He cautions nevertheless about the unrealistic expectation of outstanding governance in form of global codes and standards to provide huge and visible effects in a small amount of time, given that majority of the initiatives are new, and actual success in changing laws and implementing best practices is harder to achieve. However, the study does not explore the need for resource-rich countries to adopt the international codes and standards to alleviate the risk of IFFs. Thus, this study examined Kenya's adoption of international standards and codes and standards as best practices governing the oil and mining sector.

At its most basic level, the legislature creates the law, with judges tasked with interpreting it. For years, legislators have recognized the need of judicial independence in maintaining the rule of law. It allows judicial officers of all ranks to carry out their judicial tasks in respect of all people, regardless of social status, and for all causes, in accordance with the law and the facts applicable thereto, without any influence, pressure, or incentive from any other source, person, or authority. As a result, if the court is truly independent and supports the rule of law, the government will be able to rule fairly for its population (Masuku, 2015). In the oil and mining sector, IFFs relate to corruption, crime, and tax evasion, creating increasing concern requiring a rule of law perspective. The judiciary is critical to interpreting and putting into effect fresh laws and principles, and if it is not an autonomous outfit, it will be futile. Johnstone (2013) notes that effective government institutions that consist of robust and independent law enforcement agencies, judicial and tax authorities, and comprehensive and enforceable laws have been modeled to be more effective in preventing illicit financial flows.

The implications of corruption and money laundering on the rule of law and human rights in Nigeria were investigated in a paper published in 2016 by the Centre for Democracy and Development. It specifically examined Nigeria's current legal and regulatory frameworks against IFFS, focusing on corruption and money laundering and the extent to which the current legal structures can deal with the problems effectively. The paper considered how Nigeria could effectively address corruption and money laundering and their devastating consequences for human rights. According to the study, Nigeria has consistently recorded low rankings in Corruption Perceptions Index (CPI), scoring below "50," which is considered "Highly Corrupt," according to Transparency International. This despite Nigeria being partisan to several relevant legally binding instruments, including the "UN Convention against corruption" and the "AU

Convention on Preventing and Combating Corruption,” which provide comprehensive standards against money laundering, which more often predicates corruption.

The article further indicated that Nigerian Banks routinely abuse anti-money laundering requirements by not being transparent and accountable to customers and protecting Politically Exposed Persons (PEPs). The study specified that the reason for such abuse is that in many cases, banks and financial service companies in the country may not have the necessary staff and resources to ensure close monitoring of transactions involving PEPs, nor to carry out due diligence on correspondent banks. The study further indicated that the large-scale corruption experienced in Nigeria and money laundering largely contrast with the simplest notion of the rule of law and the awareness of government as a public trust ad. Therefore, these problems are especially devastating to the “rules of a law-based” society and lead to a loss of confidence by citizens. The study further alluded to the “Thabo Mbeki High-Level Panel on Illicit Financial Flows from Africa” report, which estimated that fraud, tax evasion, and unlawful transfer of revenues by multinationals account for around \$60 billion loss of revenue by Nigeria.

The study discovered that judicial apathy in Nigeria hinders the ability of policy and administrative mechanisms to tackle the issue of IFFs due to a lack of proper legal standards guaranteeing the independence and integrity of the judiciary in situations of corruption and money laundering. Concerns about the independence, objectivity, and impartiality of prosecutorial authorities, particularly chief law officers who fail to exercise their powers and responsibilities in a way that meets the basic requirements of justice and the public interest in cases of large-scale corruption and money laundering, are common. The study indicated that broad official discretion without necessary oversight mechanisms could make the criminal justice system less fair as it may promote the unfair exercise of prosecutorial charging discretion for improper reasons. The study

recommends increased safeguards through constitutional or legal amendments. It further suggests that the judiciary should limit prosecutorial discretion by refusing to validate expansive interpretations of constitutions and legislation that promote policies that the drafters may not have intended. The study demonstrates strong links between IFFs, particularly corruption and money laundering, and their role in weakening the state due to distortion of the rule of law. It asserts that the corrosive effects of corruption and money laundering are far-reaching, permeating, and therefore a need for a strong and independent. The study, however, does not demonstrate how IFFs, through such vices as transfer pricing, beneficial ownership can be prevented through judiciary as a mechanism which this study will seek to explore.

A study by Barasa (2018) investigated Kenya's current institutional, policy, and legal frameworks for combating illicit cash flows. The paper examines broad themes, methods, and policies in IFFs, as well as related reforms to combat IFFs in Kenya, by combining evidence on illicit financial flows in Kenya. It investigates the facts surrounding the existence, scope, drivers, and repercussions of IFFs, as well as the success of institutional policy and legal frameworks in minimizing IFFs. The study looked at both published and unpublished literature on IFFs to identify existing evidence and research gaps when examining the impact of IFFs on Kenya's economic development and the institutional policy and legal framework in place to combat them.

The study's findings revealed that inadequate governmental, administrative, and legal institutions facilitate the misuse of political authority that leads to IFFs. In Kenya, IFFs are the product of political elite corruption, which includes dishonest businesspeople. It cites the military, police, and Kenya Revenue Authority (KRA) as being at the center of illegal transactions such as the illegal selling of contraband sugar transported into Northern Kenya from Somalia in partnership with Al shabaab insurgents. This not only puts Kenya's security at risk, but it also costs the Kenyan

government billions of shillings in taxes. The author highlights the irony of the Kenyan government establishing taxation regulations and official channels across the border, yet Kenyan state entities are unable to comply with them.

The author goes on to discuss the Central Bank of Kenya (CBK), the National Treasury, and the Kenya Revenue Authority as important institutional frameworks for dealing with IFFs. According to the study, the CBK has established anti-money laundering and counter-terrorist financing (AML/CFT) rules. The Proceeds of Crime and Anti-Money Laundering (Amendment) Act 2017, which establishes sanctions for economic crimes and methods to identify, trace, block, recover, and seize crime proceeds, supports these rules. It also creates the Assets and Recovery Agency, which oversees all cases involving the recovery of criminal proceeds. In addition to the legal and administrative frameworks necessary to carry out its duty of evaluating, gathering, and accounting for all revenue generated, the Kenya Revenue Authority (KRA) is backed by regulatory frameworks dedicated to combating IFFs. KRA's Anti-corruption Policy, its Tax Amnesty of Foreign Income Policy, which provides tax amnesty on voluntary declaration of taxable income received outside Kenya, and its ICT strategy, which intends to help KRA reach brilliance in revenue administration, are examples of such policy frameworks. Despite these institutional efforts to combat IFFs, Barasa (2018) notes that Kenya's financial sector remains vulnerable due to the country's strategic location in East Africa, attracting investors with good intentions while others come with negative intentions, and the weak inter-agency cooperation between financial sector regulators, law enforcement agencies, and financial institutions, and existence of weak laws.

Despite evidence of IFFs' impact on Kenya's development agenda, the author concludes that the Kenyan government has been ineffective in combating IFFs, in part due to uncoordinated financial institutions, loopholes in key pieces of legislation, and insufficient resources allocated to relevant

agencies and institutions. Kenya has also failed to meet its international commitments to implement and enforce instruments, particularly in anti-money laundering laws and regulations. The report suggests that the Kenyan government improve policy coherence between national and international normative frameworks, as well as boost the country's tax collecting apparatus, namely the Kenya Revenue Authority in the areas of customs, tax, and banking supervision and regulation, in order to prevent tax evasion and illicit capital flight. Barasa's study focused on assessing the extent to which Kenya's institutional, policy and legal frameworks have succeeded in curbing illicit financial flows. The study however focused on Kenya's financial system and its vulnerabilities to illicit financial flows and did not investigate such sectors as oil and mining which this study will seek to investigate.

2.3. Kenya's Oil and Mining Regulatory and Institutional Frameworks

2.3.1 The Constitution of Kenya, 2010

Kenya's 2010 Constitution includes provisions managing natural resources found in various counties. Article 69 (1) (a) gives Kenyan government responsibility of ensuring sustainable use and management of all the discovered resources. Also, the government is responsible for ensuring equal sharing of benefits accrued from the minerals. Under Article 10 (1) highlights principles and values of good governance, such as "patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability; and sustainable development."

In addition, Article 35 (1) states that all Kenyans have the right to request information from the government if it is required for the preservation of human rights. As a result, under Article (35) (30) the government must disseminate any information that affects the nation. The access to

information Act, 2016, section 3, solidifies this requirement because it requires public and private entities (including extractive companies) to disclose information necessary to promote constitutional principles of accountability, transparency, access to information, and public participation. However, accessing information is limited by Article 24, section 6, which states that information which is likely to prejudice commercial interests, undermine security, impede due process of the law, affect matters under judicial consideration, cause harm to the Government's ability to manage the economy or infringe professional confidentiality as recognized in law need not be published (Extractives Baraza, 2017).

2.3.2 The Petroleum Act 2019

The 2019 Petroleum Act took effect after the abolition of the Petroleum Exploration and Development Act, which governs upstream, midstream, and downstream sectors and gives the Kenyan government ownership of hydrocarbons. The current regulation gives the Cabinet Secretary the powers to authorize petroleum businesses (Petroleum Act, 2019). The Act established an advisory committee to control consultation of petroleum contracts and recommended the cancellation of petroleum licenses. Article 17, paragraph 1, of the law requires the national government to ensure that the implementation of the oil agreement is fair, unbiased, transparent, competitive, and profitable.

The law also mandates the National Oil Corporation of Kenya to assist the National Fossil Fuels Advisory Committee in regulating the petroleum sector oil operations. Article 45 of the Law shows that EPRA is established as an agency to grant non-exclusive exploration licenses and monitor compliance. EPRA is also required to collect and maintain oil exploration data based on different parameters and signed petroleum agreements with contacts and any other information stipulated by them. The bill also describes the oil rights granting process, which is now a competitive bidding

process prior to licensing. The Cabinet Secretary is required to disclose the intention to grant oil blocks, and the interested parties tendered in the round of permits as stipulated in article 18 (2) of the Petroleum Act (Petroleum Act, 2019).

The Petroleum Act provides under Clause 49(5) of the Model Production Sharing Contract that the petroleum contract is a public document. The Government is mandated to publish and keep contracts publicly available for ratification purposes by parliamentarians. Civil Society Organizations such as the Kenya Platform on Oil and Gas society, have however, raised concerns on the commitment of the Kenyan government to implement section 46 of the Act, bearing in mind that companies are also keen on protecting the information of “commercial value” reflected in the contracts (KCSPOG, 2019). Furthermore, the statute lacks explicit procedures for transparent bidding as well as safeguards to guarantee that bidders' rights are safeguarded. The fact that the Cabinet Secretary can negotiate directly with exploration companies and grant licenses, while EPRA can grant non-exclusive exploration licenses, shows that the Cabinet Secretary lacks a clear separation of roles in supervision and decision-making.

Article 119 of the Petroleum Act requires Cabinet Secretary to look at the upstream oil sector and develop transparency framework. The Draft Transparency and accountability framework 2019, is currently awaiting government approval. The Framework includes all exploration and assessment activities to be carried out, oil block descriptions, exploration and assessment periods, government participation, exploration and assessment work plans, exploration and assessment costs, compensation costs, exploration and environmental inclusion. It further contains information on the evaluation stage, social impact reports and waste management plans. In relation to development and production, this framework will allow the cabinet secretary to regularly provide on-site development plans, state participation, production costs, production volumes, detailed

information on the composition of oil produced, and published production volumes. Imagine exposing and how the values were calculated (ILEG, 2020). The framework also details the types of export data. Here, total export volume and value include information about published exports and how their value have been calculated and disclosed. If implemented, Kenya will be a step ahead in preventing the occurrence of IFFs in the extractives by promoting transparency, more so now in the wake of official secrecy and commercial confidentiality within the ministry of petroleum of mining, who have consistently refused to disclose for example, details of agreement reached with Tullow oil in the development of South Lokichar basin and even the details of sale of Kenya's first crude oil export (ILEG, 2020).

2.3.4 The Mining Act, 2016

The Mining Act 2016 mandates the Cabinet Secretary, Principal Secretary, and all persons with administrative authority to be guided by principles outlined in Articles 10, 66(2), 201 (c) and (d), and 232 and Chapter Six of the Constitution that espouses principles of leadership and integrity. All mining agreements under the Act are required to be made public through the Ministry's website (s. 119(1) and (2)). The Cabinet Secretary is mandated to outline regulations that set down transparency and accountability mechanisms regarding the reporting of mining activities, including revenues collected by the Government and production volumes under each license or permit.

Under the Mining (Licence and Permit) Regulations, 2017, all applications or reports relating to mineral rights and dealings in minerals are to be submitted through the Online Mining Cadastre (OMC), which may be accessed through the website of the Ministry (reg. 4). Section 192(4) states, "The Cadastre shall be a public document and may be inspected by an interested person upon the payment of a prescribed fee." The OMC does promote transparency concerning contract disclosure

as there is an open monitoring process of the application process and register of mineral rights. However, the Cadastre Portal does not provide information issued licenses and their status of application. Also, the Mineral Rights Board is not yet operationalized.

The Mining Act also expressly provides ratification by Parliament of agreements relating only to large-scale mining activities. The purpose of these regulations is to reduce or prevent illicit mining deals in the country. The Act establishes the Mineral Rights Board under section 30, responsible for advising Cabinet Secretaries on areas that are not good for mining and licenses that ought to be revoked. The board however is yet to be operationalized (Ally, 2013)

2.3.5 The Income Tax Act

The Income Tax Act (ITA) is the general fiscal framework that establishes the taxing obligations for the extractive industry under the Income Tax Act's Ninth Schedule. The Finance Act 2014 overhauled the Ninth Schedule, ushering in a new, more comprehensive framework for extractive industry taxation that distinguished mining operations from petroleum operations, which was not the case previously. Contractors in the extractive industry pay a corporate tax rate of 30% for residents and 37.5% for non-residents on their income and earnings. Contractors pay income tax on their oil revenues which is deducted from the government's production quota. Costs or losses incurred in the contract area under the oil deal are deducted from the contract area revenue only. If there is a loss, it can be continued until it is exhausted or activities in the area covered by the contract have ceased. Losses can be reported up to three years from the year they occurred (Income Tax Act, 2018).

On royalties and natural resource income (NRI), residents pay a 5% withholding tax, while non-residents pay a 20% withholding tax. If the income recipient is a resident of a country with which According to the Income Tax Act, NRI is defined as the amount paid in exchange for the right to

extract minerals, living or non-living resources from land or sea, or payments calculated completely or partially utilizing the quantity or value of minerals, living or non-living resources collected from land or water. Dividends are subject to a 10% withholding tax on the gross amount, while interest is subject to a 15% withholding tax for non-residents (Ninth Appendix of the Tax Treaty). Companies newly listed on the Nairobi Stock Exchange can benefit from a lower tax rate. Transfers or assignments of shares are subject to a 20% withholding tax, whereas local players pay a lower rate of 10%. Capital deductions of 40% are allowed in the first year for mining operations, and this is decreased to 10% between the second and seventh years.

The Income Tax Act also establishes regulations for enforcing transfer pricing rules. Multinational corporations are the main players in Kenya's oil and mining sectors, and they engage in cross-border trade with related overseas corporations, where tax revenue leakage is a potential concern as a driver of illicit financial flows. The Kenya Revenue Authority (KRA) has launched aggressive efforts to prevent illicit Transfer Pricing by conducting transfer pricing audits on multinationals in Kenya (Income Tax Act, 2018). In Kenya, the operational law provisions regarding transfer pricing are found in Article 18(3) of the Income Tax Act, which states that "Where a non-resident person carries on business with a related resident person and the course of that business is so arranged that it produces to the resident person either no profits or less than the ordinary profits which might be expected to accrue from that business if there had been no such relationship, then the gains or profits of that resident person from that business shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length."

Kenya's Transfer Pricing rules follow the OECD Model Tax Convention guidelines. These standards are used in determining the arm's length prices of goods and services which apply to

related businesses. Unlike in other African countries with similar legislation, terms such as “management”, ‘control’ and ‘capital’ have not been defined making Rule 2 quite wide in its application since it does not provide thresholds (percentage of shareholding) that are to be considered in defining whether an entity controls another and also encompasses both direct and indirect elements of control (Waris, 2017). The taxpayer may choose from the methods described in Rule 7 to determine the arm's length price, according to Rule 4 of the TP regulations. The comparable unregulated price technique, the resale price method, the cost-plus method, the profit split approach, and the transactional net margin technique are all examples of transfer pricing procedures listed in Rule 7. In response to the Kenya Revenue Authority's difficulty in administering the arm's length principle, Rule 8 of the Transfer Pricing Rules 2006 was amended in 2012, authorizing the Commissioner to provide guidelines outlining the criteria and processes of the techniques laid out in Rule 7. In addition, in 2014, Section 18(3) of the Income Tax Act 2014 was enforced, permitting the issuance of Advance Pricing Agreements (APAs), which are arrangements concerning a taxpayer and a revenue authority that specify which transfer pricing method to use in reference to the taxpayer's associated company transactions as well as provisions for dispute resolution in the event of a breach (Waris, 2017).

2.3.5 The Public Finance Management Act, 2012

The Public Finance Administration Act of 2012 is a Parliamentary Act that establishes the manner in which public finances by national and county governments ought to be managed including, the oversight responsibility of legislature and county assemblies, and numerous government and other authority requirements (Muigua, 2019). The intention of the Public Finance Management Act's is to guarantee public funds are managed in accordance with legal provisions at both the national and county levels of government, and that public officials in charge of those funds are held

responsible to the public through National and County Assemblies. The notion of public finance is outlined in Chapter 12 of the constitution, with a focus on transparency and accountability, as well as the incorporation of worldwide best practices.

2.3.6. Tax Procedures Act, 2015

The Tax Procedures Act was passed to standardize and consolidate the procedural rules that underpin the administration of Kenyan tax laws. The Act came about in the wake of foreign companies escaping tax remittances by allocating income to tax havens while attributing expenses in Kenya that is, Transfer Pricing. The Tax procedures Act have a specific provision for the offence of Tax Avoidance. Any transaction or strategy designed to avoid having to pay tax under the law is defined as tax avoidance under Section 3 of the Act. The Act empowers the Kenya Revenue Authority to review pricing arrangements between local subsidiaries of multinational corporations and their parent businesses, and to reverse those that are found to be structured to avoid tax. This Act primarily penalizes any taxpayer who engages in tax avoidance techniques. Under section 85 of the Act, the penalty for tax evasion is set at double the amount of tax evaded (Extractives Baraza, 2017).

2.3.7. The Companies Beneficial Ownership Information Regulations, 2020

In response to global concerns about the transparency of company ownership and the need to reduce the abuse of legal entities for corruption, money laundering and terrorist financing, Kenya introduced section 93A of the 2015 Companies Act through the Miscellaneous Amendment Act. The regulation stipulates that companies incorporated or registered in Kenya must maintain a register of beneficial owners, which contains relevant information related to such owners. The company must submit the registration to the Registrar of Companies within 30 days of completing the preparation (Omuor, 2018). When the ultimate beneficiary's registration is modified, the

modification must be submitted to the Registrar within 14 days after the modification. After the required 14 days, listed companies have a certain degree of freedom to submit amendments to the registry. The company must determine its ultimate beneficiary and prepare a complete information register of the beneficial owner. Failure to comply with the disclosure and reporting requirements is an illegal act under the Company Law. Upon conviction, the company and each responsible person will be fined up to 500,000 Kenyan shillings (approximately US\$4,900). If the company continues to violate the rules after the conviction, the company and each of its senior employees will be fined no more than 50,000 Kenyan shillings (approximately US\$490) for daily violations.

It's worth noting that, in addition to the regulatory frameworks in place, Kenya's constitution, Article 2, allows treaties or pacts accepted by Kenya to form some aspects of the law. Kenya is a signatory to the FATF, the East African Community's Protocol on Preventing and Combating Corruption, and the African Union's Convention on Preventing and Combating Corruption (2003). Kenya has also signed international treaties and agreements on tax information exchange (TIEAs). It has signed several international treaties aimed at battling organized crime, suppressing terrorism, and preventing it. Kenya is expected to implement these international agreements including combating tax-related offences under Article 132 (iii). In addition, Kenya has signed bilateral agreements with nations such as Switzerland (2016) in the fight against IFFs through Memorandums of Understanding (MoUs) for mutual legal assistance. This MoU was essential in securing a settlement with Switzerland in 2018 to restore KShs72 billion to Kenya that had been stashed in Swiss banks by corrupt Kenyan officials (Ombuor, 2018).

2.4. Theoretical Framework

2.4.1 Stakeholder Theory

Freeman (1984) laid down the foundation for the development of the theory. In his book “Strategic Management: A stakeholder Approach,” Freeman paved the way for redefining the organization and describing the relationship of the firm and its external environment as well as its behavior within. Additionally, he constructed a way to theorize an organization by clearly modeling the concept of stakeholders as the actors impacting the firm and on whom the firm impacts. Following up on his definition, Freeman (1993) advanced an explanation for the stakeholder approach based on Kantian principles. This approach contended that people should be treated as “ends unto themselves” in its simplest form. As a result, instead of seeing stakeholders as a merely as a means, managers should make corporate decisions that honor their well-being. Donaldson & Preston (1995) expanded the stakeholder theory, which this paper will focus on, particularly the normative stakeholder theory, considered as the core of stakeholder theory.

Normative stakeholder theory describes stakeholders as all individuals with valid claims upon a corporation, in terms of special entitlements arising from contractual agreements (employment, partnerships, contracts for purchase or services, etc.) or overall moral privileges, such as individual and public rights. According to the theory, these claims do not depend on who is able to raise them successfully but depend on whose claims are warranted for their own sake and consequently should be respected, regardless of whether it pays off in terms of policies for success (Fontaine, Haarman & Schmid, 2006). As a result, business decisions should address the well-being of other stakeholders who are touched by these actions, in addition to the demands of the managers, shareholders, and consumers (Pouloundi, 1999). Managing stakeholder relationships ethically

makes excellent financial sense, and that stakeholders' and investors' long-term interests are compatible, according to proponents of normative stakeholder theory (Preston & Whitley, 1997).

Stakeholders are more likely to trust a company that operates morally, making it easier to form cooperative alliances. The conditions of shared trust and cooperation between a corporation and its stakeholders are intended to minimize business expenses, allowing for more efficient operations, and eventually providing a competitive edge to an organization (Jones, 1995; Preston & Whitley, 1997). In other words, normative stakeholder proponents theorize that ethics and business are not mutually exclusive (Freeman, 1994). Each constitutionally mature person has, in principle, the right to confront a business regarding the moral justifiability of its activities. Within the oil and mining sectors, the operations of extractive industries all through the value chains entail different stakeholders such as companies in the private and public sectors, government organizations, civil society groups, and the local populations. Similarly, state-owned companies and indigenous homegrown businesses can be wholly assimilated or partake in some of the value chain stages (Sigam & Garcia, 2012). These stakeholders have several expectations subject to their interests, loci, associations, and importance related to the local content strategy, which is progressively more becoming a deliberate aspect of investment choices, project delivery, and public policy preparation for business development.

Stakeholder theory applied in this study recommends a resource management model that recognizes and attends to the various wants and interests of the relevant stakeholders to allow for fair, competent, and sustainable exploitation of natural resources. This asserts the commitment for a strategic partnership between the government, the corporate sector, the local communities, and the civil society in achieving extractive industry governance in Kenya.

2.4.2 Resource-based view (RBV) Theory

The resource-based view of the firm is seen as emanating right from the influential work of Penrose (1959). He stated that firms comprise bundles of resources that are “semi-permanently” tied to the firm and that different firms enjoy different combinations of these resources. It is these resources which firms should control to realize a sustainable competitive advantage. Barney (2001) states that such resources must be valuable, rare, inimitable, and the firm must be organized to exploit them (VRIO) for firms to produce a sustainable competitive advantage. According to Julient and Ahmad (2010), resources are considered valuable when they may be used to capitalize on opportunities or defuse dangers.

Resources are deemed unusual when they are unique to a company and not available to competitors. Unique assets are those that cannot be duplicated or replicated by other companies. Finally, non-substitutable assets can't be replaced with other assets. The RBV theory relies on two main assumptions; the first is that assets differ across organizations. Secondly, resources not in current possession of the organization may not be easily developed or acquired by other organizations. As such, the command of vital resources can culminate in a company's competitive advantage, allowing it to outdo other firms. More notably, opponents may not be able to contest the leading organization due to a deficiency of comparable assets (Barney & Hesterly, 2010).

The fact that extractive resources are distributed unevenly globally but dominant amongst the exports of less developed countries such as Kenya makes extractive resources rare and very important in international trade and therefore, have a sustainable competitive advantage. The sustainable advantage exists because natural resources currently comprise a major constituent of real GDP growth in many African states (Lundgren, Thomas & York, 2013). As such, the high price of rare minerals, metals, and oil present in the African Continent has brought about the rise of

emerging economies, forcing international mining companies to come up with more ambitious investment strategies. This could pave the way for resource-rich African countries to leverage their natural resource richness for human socioeconomic development (Lisk, 2013).

According to research, the trouble of IFFS emerges when resource-rich countries fail to plan for the dwindling and eventual depletion of natural resources, and the associated revenues, by condoning such practices as accepting kickbacks for permits or mineral rights, and rechanneling national money collected from national resource corporations and national accounts to non-developmental projects, resulting in a weakening of economic adjustments. (Cameron & Stanley, 2017). The resource-based view hypothesis, according to this study, is relevant to the extractive sector because of its rarity, value, and inimitability components. In this view, governments can be assumed as the custodians of natural resource wealth. As a result, it is their job to effectively manage natural resources to prevent illegitimate wealth accumulation by establishing contemporary legal, legislative, and contractual systems that are consistent with best international practice.

2.4.3. Agency Theory

The first scholars to put forward the theory of agency were Stephen Ross and Barry Mitnick. The principal-agent problem, according to Ross, is the result of a reward decision and is reserved within the organization. It is, nonetheless, widespread among the general populace. Mitnick's institutional approach aided in the development of concepts of principle agency theory, and it was originally written to grasp real-world activities. His idea also indicated that businesses are built around agencies and eventually merge with them. Within the economics literature, advanced by Jensen and Meckling (1976), the agency relationship is defined as a “contract in which one or more persons (principals) enlist another person (agent) to execute a service or services on their

behalf which includes entrusting some decision-making powers to the agent.” They categorize managers as the “agents” who are hired with the main goal of maximizing returns for shareholders, who are “principals.” Jensen and Meckling argue that agents pose a huge risk to the organizations as they might be tempted to engage in unethical behaviors such as avoiding their managerial duties to pursue leisurely pursuits or hide their incompetency from the principal to avoid losing on rewards just to simply to boost their riches at the cost of their principal. The theory further assumes that principals and agents are rational economists and are adept at forming unprejudiced expectations concerning the effect of agency problems and the associated future value (Barnea, Haugen & Sanbet, 1985). In examining the agency theory, the concept of accountability is brought out in terms of principals and agents. Principals delegate power to agents, who are envisaged to act on their behalf. (Akpanuko & Asogwa, 2013). In democracies, the citizens are the principals, and government officials (politicians and civil servants) are the agents. On the other hand, lawmakers and elected officials are representatives of the citizens. Their role is to check the extravagances of the principal on behalf of the citizens and improve the accountability relationship.

In this study, we can argue that agents are the government and government officials operating within Kenya’s oil and mining sectors, responsible for licensing, designing contracts, revenue collection, budgeting processes, commodity pricing, disclosure, and reporting and are accountable to the principals who are the citizens. As such, principals(citizens) have the right and capacity to demand answers and seek full evidence-explanation of how competing deliberations were evaluated and reasonable decisions reached by agents (government and government officials). Accountability is ensured when agents are answerable to the principal on the obligation of full disclosure on decisions taken. The agency theory in this study is used to understand the principal-agent relationship of the government, its citizens, and civil society organizations regarding

disclosure of information in contract negotiations, revenue collection, and licensing procedures as means of preventing illicit financial flows in the oil and mining sectors.

2.5. Conceptual Framework

The conceptual framework of this study is as illustrated below;

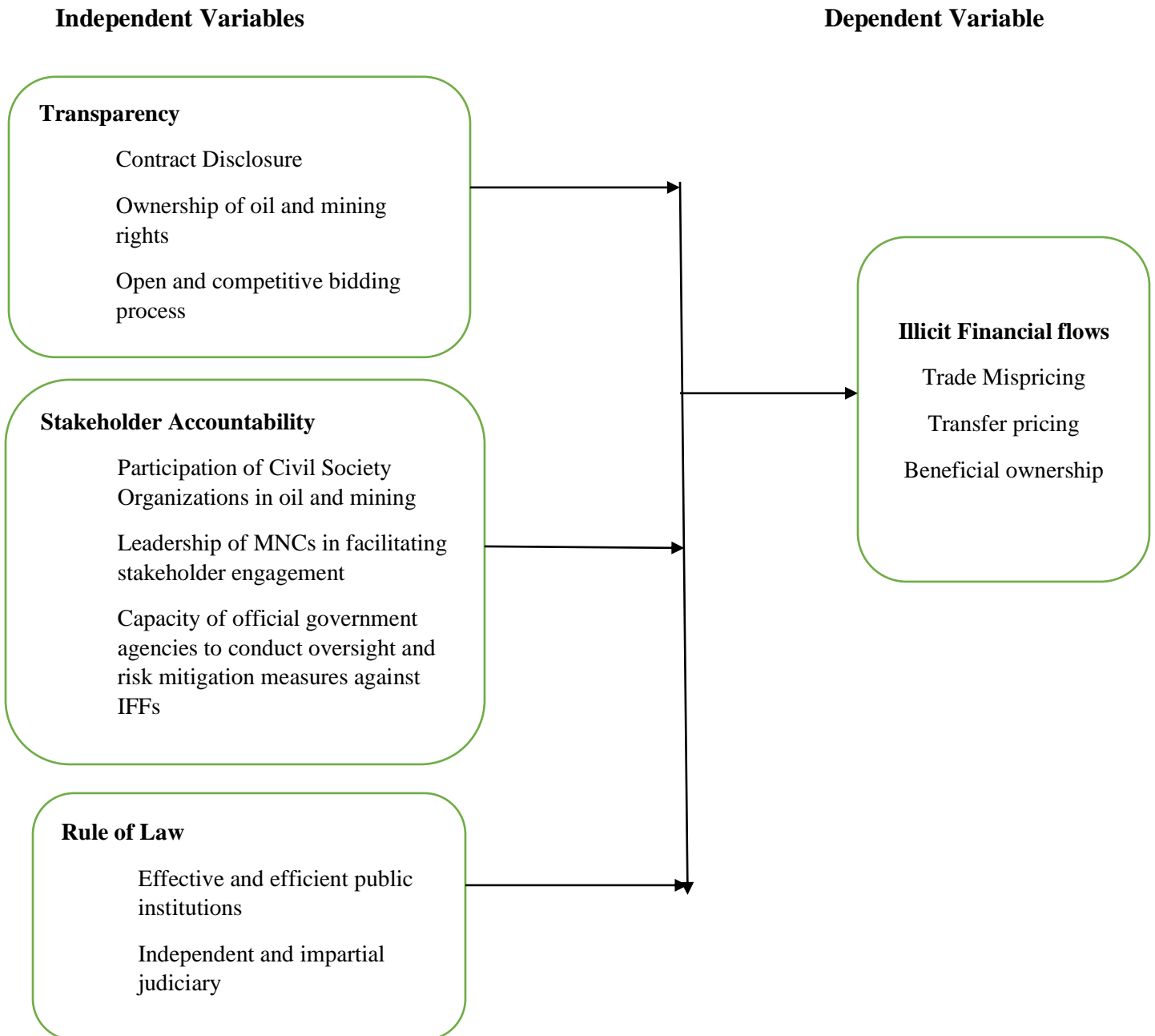


Figure 2.3: Conceptual Framework

Source: (Researcher, 2020).

CHAPTER THREE: RESEARCH METHODOLOGY

3.1. Introduction

This chapter outlines how the study was carried out. Sections discussed in this chapter include the research design, target population; sample size and sampling procedure; research instruments; validity and reliability of research instruments; data collection procedure, data analysis techniques and ethical considerations.

3.2. Research Design

Creswell's (2011) definition was used in this study, which describes mixed methods as a research methodology that uses both qualitative and quantitative in one study to provide for a seamless transition from quantitative to qualitative results. This allowed the researcher to sort the findings in context by using qualitative data to explain quantitative data.

3.3. Site of the Study

The research was carried out in Nairobi City County, which is home to majority of ministries responsible for extractive sector policy formation. In addition, several non-governmental organizations with a critical interest in the sectors were well located in Nairobi City County.

3.4. Target Population

The target population consisted of 305 people encompassing senior officials responsible for policy decision-making in the Ministry of Mining, State Department of Petroleum, National Oil Corporation of Kenya (NOCK), Kenya Revenue Authority (KRA), and the Judiciary of Kenya , directors of several civil societies (CSOs) with expertise in oil and mining activities in Kenya and senior management of private oil and mining companies operating in Kenya, whom the researcher utilized to extrapolate the findings (Mugenda & Mugenda, 2003).

Table 3.1: Target Population

Organizations	Target Population (Senior and Middle Management personnel)	Percentage%
State Department of Petroleum	20	7%
National Oil Corporation of Kenya	18	6%
Ministry of mining	15	5%
Mining Rights Board	18	6%
Energy Petroleum Regulatory Authority	10	3%
The Kenya Revenue Authority	15	12%
Office of the Attorney General	10	3%
The Judiciary	15	5%
Kenya Oil and Gas Association	18	6%
Kenya Oil and Gas Working group	16	5%
Kenya Civil Society Platform on Oil and gas	21	7%
Tax Justice Network Association	16	5%
Strathmore Extractives Industry Centre	15	5%
Oxfam	10	3%
Tax Justice Network Association	18	6%
Transparency International	20	7%
Haki Madini Kenya	7	2%
Base Titanium Company	8	3%
Tullow Oil Company	10	3%

TOTAL Group	15	5%
Africa Oil Corporation	10	3%
TOTAL	305	100%

Source: (Researcher, 2020)

3.5. Sampling Techniques and Sample Size

This study employed Mugenda and Mugenda (2003) formula that specifies a sample of 10% to be drawn from a larger population and a sample of 30% to be drawn from a smaller population. In this way, the researcher, narrowed size of the population that would represent attributes of the entire population. The study sampled 93 (30%) of the 305 targeted respondents, who were randomly incorporated.

Table 3.2: Sample Size

Organizations	Target Population	Sample Population (30%)
State Department of Petroleum	20	6
National Oil Corporation of Kenya	18	5
Ministry of mining	15	5
Mining Rights Board	18	5
Energy Petroleum Regulatory Authority	10	3
The Kenya Revenue Authority	15	5
Office of the Attorney General	10	3
The Judiciary	15	5
Kenya Oil and Gas Association	18	5
Kenya Oil and Gas Working group	16	5
Kenya Civil Society Platform on Oil and gas	21	6

Organizations	Target Population	Sample Population (30%)
Tax Justice Network Association	16	5
Strathmore Extractives Industry Centre	15	5
Oxfam	10	3
Tax Justice Network Association	18	5
Transparency International	20	6
Haki Madini Kenya	7	3
Base Titanium Company	8	3
Tullow Oil Company	10	5
TOTAL Group	15	5
TOTAL	305	93

Source: (Researcher, 2020)

3.6. Research Instruments

The study used semi-structured questionnaires to collect quantitative data. Qualitative data was collected using the drop and pick method where respondents were asked to add more information to support their responses when filling in the questionnaire.

3.7. Pilot Study

Before administering the data gathering instruments, a pilot study was done. This allowed us to assess their clarity, readability, completeness, and suitability. During pilot testing, eight questionnaires were administered to four non-governmental organizations excluded from the study.

3.8. Validity and Reliability of instruments

3.8.1. Validity of the instruments

This study adopts Mugenda and Mugenda's (2013) understanding of validity as the degree to which a test instrument measures what it purports to measure. Validity was achieved through the assessment of the instruments by experts and piloting. The test items were presented to a research expert and the supervisor to assess whether they are valid. Their feedback and recommendations were used to improve the instruments. Additionally, the instruments were piloted in a few stakeholder institutions to ascertain the validity of the instrument.

3.8.2. Reliability of Instruments

Mugenda and Mugenda (2013) define reliability as a measure of a research instrument's ability to produce accurate results or data after several trials. The instruments' reliability was determined by testing and re-testing. The instruments were given to the same people twice in two weeks in four pilot institutions that were not part of the main study. The two results were compared using Pearson's Product Moment's Correlation formula. Reliability stability of at least ± 0.7 or higher was considered sufficient.

3.9. Data Collection

Semi-structured questionnaires were used to obtain primary data. The questionnaire had both open ended and close ended questions to allow the respondents fully respond to the issues under scrutiny. A questionnaire was more relevant to the study as it allowed the researcher to collect large data from a large group of people in a short time in a non-bias and confidential manner.

3.10. Data Analysis

Inferential statistics, a process for reaching inferences about variables, was utilized to examine quantitative data. Semi-structured questionnaires were administered and coded numerically with a

coding scheme for each variable of the study. This ensured that data entry is less prone to errors and the analysis was done efficiently. The raw data were transformed into tables and charts with frequency distributions and percentages to make sense of the data (Welman & Kruger, 2001). Quantitative data was captured through the Microsoft Excel computer package and exported to Statistical Package for Social Science (SPSS) computer program (version 22) to analyze the regression model below:-

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + E$$

Where;

Y= Ilicit Financial Flows

β_0 = Constant

$\beta_1, \beta_2, \beta_3$ = Beta Coefficients

X_1 = Transparency

X_2 = Stakeholder Accountability

X_3 = Rule of Law

E= Error Term.

Content analysis was used to analyze the qualitative data. To improve the reliability and validity of the research outputs, the qualitative data acquired using the interview guides was coded, themes were found, relationships between variables were investigated, and the findings were linked to the quantitative results.

3.11 Data Management and Ethical Considerations

3.11.1 Data Management

Quantitative and qualitative data was collected using semi-structured questionnaires. This was administered through drop and pick method to the sampled respondents. Quantitative data was later examined, coded, and entered in SPSS, with the contents being analyzed separately. The examined data was then saved and backed up in a safe location for future use.

3.11.2 Ethical Considerations

According to Kothari (2008), researchers should consider ethical concerns during planning, conducting, and reporting of research to protect the interests of the public, the subjects of research, and the researchers themselves. Ethical concerns in this study were: the privacy of study respondents and the right to voluntary participation. The researcher sought consent and voluntary participation of respondents before issuing the questionnaires and conducting interviews. The researcher guaranteed confidentiality and anonymity to the study respondents. A research permit was acquired from NACOSTI after getting a letter of introduction from the board of postgraduate studies at Kenyatta University.

CHAPTER FOUR: RESEARCH FINDINGS AND DISCUSSION

4.0 Introduction

This chapter presents study findings arranged based on the characteristics of the respondents and the objectives governing the study. The data is presented in the form of frequency distribution tables, graphs, and regression models.

4.1 Response Rate

Mugenda and Mugenda's (2003) formula was used in this study. It specifies a sample of 10% be drawn from a larger population and a sample of 30% be drawn from a smaller population. Questionnaires were utilized to collect information from respondents at a variety of institutions, including government agencies, civil society organizations, and multinational corporations. The response rate is shown in table 4.1 below.

Table 4.1: Response rate

Response	Frequency	Percent
Responded	82	88.10%
Non-Responded	11	11.90%
Total	93	100.00%

Table 4.1 shows that the researcher sampled 14 senior level management, 39 middle management, and 29 low-level management employees in governmental, civil society groups, and multinational organizations in the oil and mining industries, making a cumulative sample of 82 respondents. Out of the 93 questionnaires distributed, 82 were filled with relevant data that could be coded and analyzed. This means a total of 82 respondents returned filled questionnaires while 11 returned incomplete and blank questionnaires. This represented an 88.10% response rate.

4.2 Characteristics of the Respondents

This section describes respondents based on the type of institution they work for, level of employment, and how long they have been to a given institution.

4.2.1 Type of Organizations

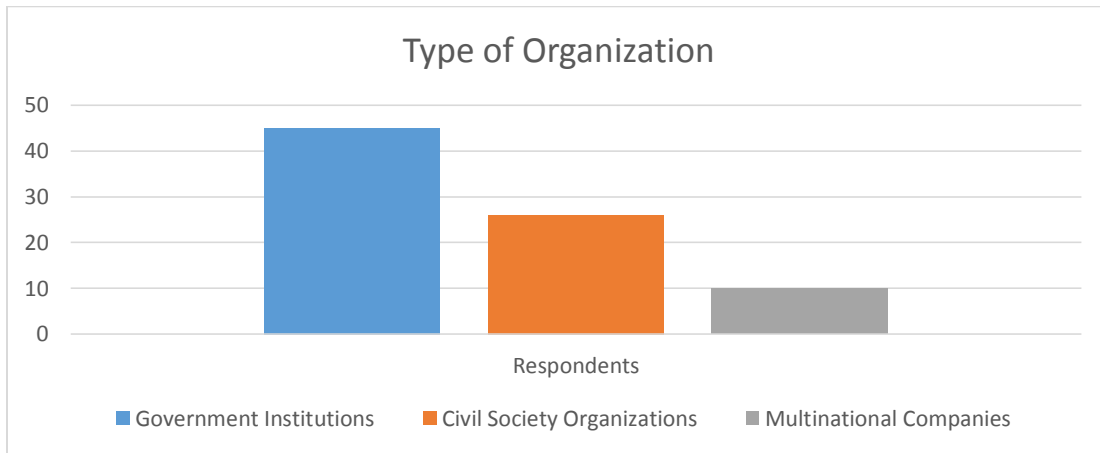


Figure 4.1 Type of Organizations

Majority of the respondents were from civil society organizations (45), representing 54.9% of the responses. Government institutions respondents were 26, accounting for 32.9% of the respondents, while Multinational institutions had 10 respondents representing 12.2% of respondents.

4.2.2 Duration of Employment

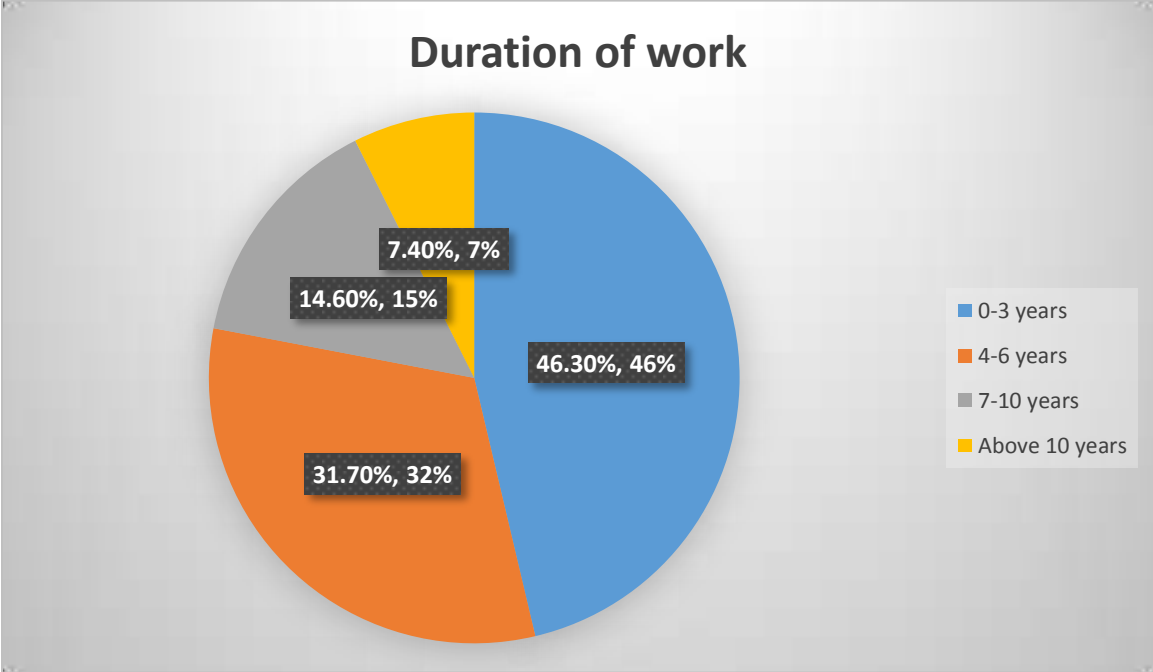


FIGURE 4.2: DURATION WORKED

Figure 4.2 shows that most respondents, 38 (46.3%), have been with their respective organizations for a period of fewer than three years, followed by 4-6 years 25 (31.7%), 7 – 10 years 12 (14.6%) and more than ten years 6 (7.4%). This show is more likely to get reliable answers as most respondents, i.e., 53.6%, were with the organizations for more than three years.

4.2.3 Level of Employment

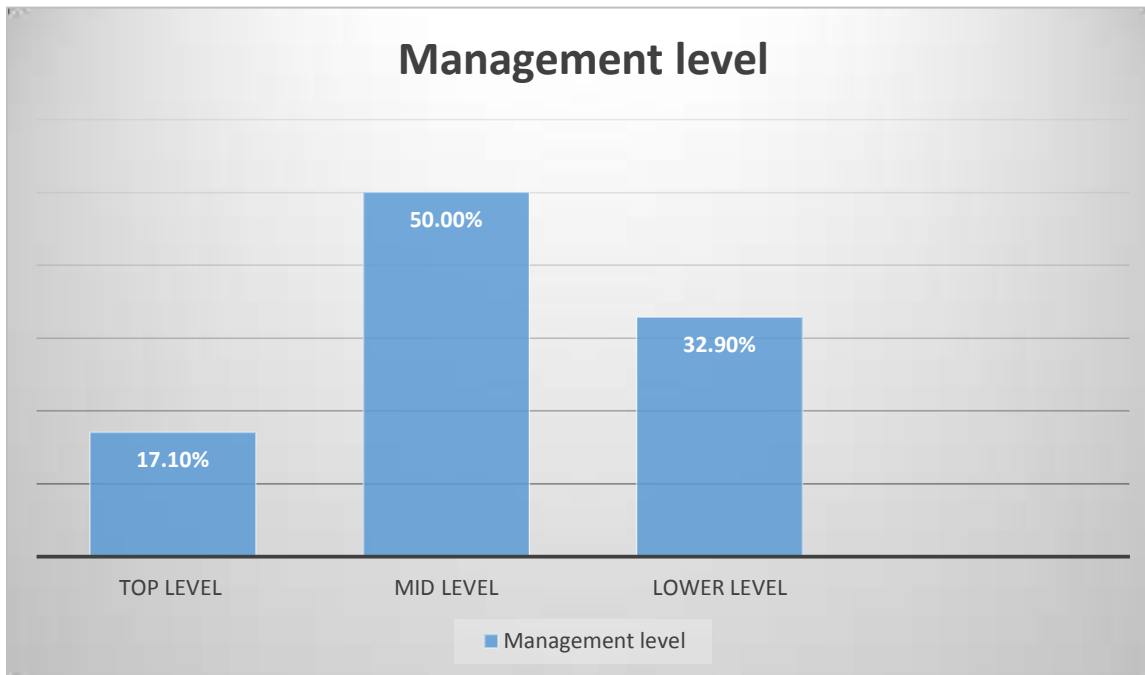


FIGURE 4.3: LEVEL OF EMPLOYMENT

Figure 4.3 shows that many of the respondents belong to mid-level management 41(50.0%), followed by lower-level employees 27 (32.9%), and finally top-level management employees 13 (17.1%). The high response rate among mid-level management can be attributed to the fact that they are more likely to be dealing with technical issues and thus are more familiar with the subject of our study.

4.3 Transparency and Illicit Financial Flows

The researcher sought to indicate how transparency measured as a country's willingness to release information on fiscal transactions can be replicated in the process of issuing licenses and designing contracts and how it can minimize the threat of illicit financial flows. Table 4.2 summarizes their responses.

Table 4.2: Responses on Transparency and Illicit Financial Flows

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The government discloses contracts of oil and mining projects, including full texts of main agreements	42.0%	27.2%	11.1%	17.3%	2.5%
The government discloses information concerning oil and mining rights awarded to MNCs openly and transparently to available to all stakeholders	25.9%	33.3%	17.3%	16.0%	7.4%
The government discloses pre- and post-license information of MNCs (License disclosure)	21.0%	29.6%	14.8%	23.5%	11.1%
There are clear, transparent, competitive, and nondiscretionary procedures for issuing exploration and production rights	18.5%	21.0%	23.5%	23.5%	13.6%
The government mandates information disclosure and public reporting of actual production figure and financial information regarding revenues, receipts, taxes, and costs of production, processing, and sale of oil and minerals by MNCs	22.2%	38.3%	11.1%	17.3%	11.1%
The State-Owned Enterprise(s) operating in Kenya's oil and Mining Sectors subject itself to independent financial audits and publishes	16.0%	23.5%	29.6%	24.7%	6.2%

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
the results					
MNCs provide easy access to published information to the all-relevant stakeholders regarding production, payments made to the government, ownership, and governance of the companies	23.5%	30.9%	21.0%	17.3%	7.4%

Source: (Researcher, 2020)

Table 4.2 shows that 42% of the respondents disagree that the government discloses contracts of oil and mining projects, including full texts of main agreements, while only 2.5% feel that the government discloses contracts of oil and mining projects. Many of the respondents disagree (33.3%) and strongly disagree (25.9%) that the government discloses information concerning oil and mining rights awarded to MNCs openly and transparently. These results support William (2011), who found that countries endowed with natural resources are less transparent, especially when it comes to disclosing information regarding pertinent contracts to third parties and relevant stakeholders. Lack of transparency makes it difficult to monitor and account for all the revenues made by the MNCs and taxes paid to the government. According to William (2011), there is a need for transparency in natural resource governance, especially among the developing nations, which are experiencing increased corruption.

In terms of license disclosure, 21.0% and 26.6% disagree and strongly disagree that the government discloses pre- and post-license information of MNCs. Only 34.6% of the respondents agree that the government has been transparent by sharing disclosing license procedures. There is almost a neutral consensus regarding the issuance of exploration and production rights to multinational corporations. However, 49.1% (18.5% and 21.0%) of the respondents do not agree that there are precise, transparent, competitive, and non-discretionary procedures for issuing exploration and production rights. Only 37.1% (23.5% and 13.6%) of the respondents agree there is transparency regarding the issuance of production rights for MNCs.

Further, the findings show that most of the respondents (54.4%) do not agree that MNCs provide easy access to published information to the all-relevant stakeholders regarding production, payments made to the government, ownership, and governance of the companies. These findings support Acosta's (2013) research, which revealed that variables such as a lack of stakeholder leadership can jeopardize the viability of Transparency and Accountability Initiatives (TAIs). However, on the issue of willingness of a country to release information on fiscal transactions and whether it can be replicated in the process of issuing licenses and designing contracts and how it can minimize the threat of illicit financial flows, which this research sought to examine, findings indicate that 60% of the respondents agree the government does not require MNCs to disclose and publicly report actual production figures and financial information about revenues, receipts, taxes, and expenses of oil and mineral production, processing, and sale, exposing a significant danger of IFFs.

Majority of the respondents (39.5%) do not agree state-owned firms operating in the oil and mining sector exercise transparency when it comes to subjecting themselves to independent financial audits and/or publish audit results. Acosta (2013) advised that transparency in institutions

can be achieved these can be achieved through various global initiatives, such as the Extractive Industries Transparency Initiative (EITI) and “Publish What You Pay” (PWYP), which seek to improve transparency in resource-rich nations. These findings agree with assumptions in stakeholder theory, which describes a stakeholder as anyone with valid claims upon a corporation, in terms of special entitlements arising from contractual agreements or overall moral privileges, such as individual and public rights. The strained principal-agent relationship shows that there is limited commitment for a strategic partnership between the government, the corporate sector, the local communities, and the civil society, making it difficult to have accountability and transparency in controlling and managing operations of MNCs in Kenya.

4.4 Stakeholder Accountability and Illicit Financial Flows

Table 4.3: Responses on Stakeholder Accountability and Illicit Financial Flows

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Current laws governing the oil and mining sectors facilitate public debate and dialogue to allow the release of information to stakeholders	16.0%	27.2%	13.6%	22.2%	21.0%
The government discloses fiscal terms concerning the oil and mining sectors and company data to inform oversight (Tax Transparency)	28.4%	34.6%	12.3%	18.5%	6.2%

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Civil society organizations interested in the oil and mining sectors can collect, analyze, explain, and disseminate information through independent monitoring, lobbying governments, companies, and local communities affected by the oil and mining sector.	8.6%	19.8%	33.3%	23.5%	14.8%
Civil Societies Organizations (CSOs) have unprecedented access to government and MNCs operations, including contracts, licensing procedures, prices, and revenue collection	34.6%	33.3%	18.5%	11.1%	2.5%
Civil society organizations hold the government accountable for the implementation of regulations that curb illicit financial flows in the oil and mining sectors	4.9%	19.8%	38.3%	22.2%	14.8%
Official agencies perform strong oversight of the fiscal regime to mitigate against IFFs, e.g., Auditor General, KRA, the legislature	16.0%	34.6%	24.7%	19.8%	4.9%
Official government agencies are held accountable for the administration of the fiscal regime to prevent illicit outflows	13.6%	28.4%	24.7%	22.2%	11.1%

Table 4.3 evaluates the stakeholder accountability and illicit financial flows. The findings show that leaders in senior, mid-level, and lower managerial positions have conflicting views regarding how current laws governing the oil and mining industry facilitate public dialogue and debate. Some (43.2%) agree they are not effective, while another similar percentage support their effectiveness. Over 50% of the respondents (28.4% and 34.6%) do not agree that there is accountability in oil and mining projects in Kenya because the government does not disclose fiscal terms of oil and mining sectors to inform oversight.

The table also shows that 48.3 percent (23.5 percent and 14.8%) agree the government does not allow civil society organizations interested in the oil and mining sectors to gather, scrutinize, describe, and share information through proper oversight, lobbying governments, companies, and local communities affected by these sectors. This is according to Desai & Jarvis (2015), who found that whereas transparency is the production process that permits information to be produced and then relayed, utilized, and released to the interested parties, the procedure by which information moves from production into circulation is then what is referred to as accountability which often is not direct. In terms of access to government and MNCs operations, 67.9% (34.6% and 33.3%) do not agree that CSOs have access to government and MNCs operations, such as contracts, licensing procedures, prices, and revenue collection. Only 13.6% of them agree that CSOs have been allowed access to government operations.

Some respondents (24.7%) responded by indicating that CSOs hold the government accountable for implementing regulations that curb illicit financial flows in the oil and mining sectors. However, 37.0% of the respondents agree that CSOs hold the government accountable in its operations to curb illicit financial flows in the oil and mining sectors. The response by 50.6% (16.0% and 34.6%) shows that official agencies, such as office of the auditor general and KRA, do

not perform strong oversight of the fiscal regime to mitigate against IFFs. This is affirmed by Egbon (2015), who found that some official agencies serve the companies' economic interests instead of the country's interests, using the example of EITI as a tool to measure accountability. Lastly, most of the interviewed people (52.0%) do not agree that official government agencies are held accountable on the administration of fiscal regimes to prevent illicit outflows.

These findings show that's stakeholder accountability in Kenya's oil and mining sectors is weak. Even though Kenya is not full member of EITI, the finding shows that accountability in the upstream activities i.e., award of contracts, licensing is far from being achieved since companies are not held accountable in how they honor their obligations. Companies such as Tullow Oil operating in Kenya have been rigid and sometimes flout their obligations to government and local citizens in their operations. In the absence of the EITI framework in Kenya, it is difficult to determine the efficacy of the tool to prevent IFFs as studied by Egbon (2015). However, the findings of this study show that country-level accountability to efficiently outline capacity to comprehend and use information from government and multinationals in Kenya's oil and mining sector is severely lacking. The findings lack correlation with the stakeholder theory that recognizes governance that attends to the various wants and interests of the relevant stakeholders to allow for fair, competent, and sustainable exploitation of natural resources. The findings show a general lack of commitment of a strategic partnership between the government, the corporate sector, the local communities, and the civil society in achieving extractive industry governance in Kenya to prevent illicit financial flows.

4.5 Rule of Law and Illicit Financial Flows

Table 4.4: Responses on rule of law and illicit financial flows

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
There is an institution/unit responsible for issuing and overseeing licenses, enforcing license conditions, that is easily accessible by all licenses, enforcing license conditions, that is easily accessible by all	4.9%	24.7%	17.3%	24.7%	28.4%
There is an inspectorate unit that regulates the oil and mining sectors	2.6%	10.5%	19.7%	40.8%	26.3%
The inspectorate unit monitors operations, including developing technical specifications and standards; metering and monitoring production; and ensuring compliance with licensing conditions, laws, and relevant regulations	2.5%	17.3%	24.7%	38.3%	17.3%
Kenya's fiscal regime can mitigate against the loss of revenue in the oil and mining sectors by conducting strong risk management practices	10.0%	23.8%	28.8%	27.5%	10.0%
Regulating bodies in the oil and mining sectors have the necessary technical skills, financial resources, knowledge, access, and legal authority to exercise their powers effectively.	7.4%	25.9%	29.6%	24.7%	12.3%

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
There are strong counter-IFF measures implemented within Kenya' criminal justice system	13.6%	24.7%	35.8%	14.8%	11.1%
There is adequate capacity by the judiciary to investigate and prosecute offenses related to IFFs in the Oil and mining sectors	18.8%	40.0%	26.3%	10.0%	5.0%
MNCs operating in Kenya can be prosecuted for IFF related crimes in Kenya's current legal system	10.0%	26.3%	28.8%	22.5%	12.5%
MNCs operating in Kenya's Oil and mining sectors are signatories to international standards of extractive industry operations	7.7%	11.5%	23.1%	41.0%	16.7%
National laws and regulations governing the oil and mining sectors meet international standards, guidelines, and requirements to combat IFFs.	15.0%	32.5%	28.8%	15.0%	8.8%

Table 4.4 presents participants' responses on the rule of law to combat illicit financial flows. The findings show that over 50% of the respondents agree that there is an institution/unit responsible for issuing and overseeing licenses easily accessible by everyone in the country. The strengths involved in combating illicit financial flow were further affirmed by 67.1% (40.8% and 26.3%) of the respondents who strongly agree that there is an inspectorate unit that regulates the oil and

mining sectors. Since there is an inspectorate unit for regulating these sectors, it is evident that some of the operations, such as developing technical specifications and standards; metering and monitoring production; and ensuring compliance with licensing conditions, laws, and relevant regulations, are properly monitored, something that is affirmed by 55.6% of the respondents. This shows that many senior officials involved in decision making at oil and mining sector believe that Kenya's financial regime can combat loss of funds in the sectors by introducing strong risk management practices.

Many participants (37%) agree that regulating bodies in the oil and mining sectors have the expertise, financial capacity, deep understanding, access, and legal power to adequately assert their authority. Another 29.6% of the respondents are not aware whether such bodies are free to exercise their powers without influence from external forces. Almost 35.8% of the interviewed individuals are unsure whether there are strong counter-IFF measures implemented within Kenya's criminal justice system. This contradicts with 38.3% of the respondents who feel that the system has implemented robust counter IFF measures.

Over half of the respondents (58.8%) agree that Kenya's judiciary has inadequate capacity when it comes to investigating and prosecuting offenses related to IFFs in the oil and mining sectors. However, 15% of the respondents agree Judiciary is competent enough to address such issues. When it comes to the prosecution of MNCs, 28.8% of the respondents are not sure whether multinational firms operating in the oil sector can be prosecuted for IFF-related crimes under the current legal system. 35.0% of them believe that it is easier to prosecute such firms in Kenya because of a powerful judicial system. Lastly, 47.5% of the respondents agreed that national laws and regulations governing the oil and mining sectors do not meet international standards, guidelines, and requirements that aim to combat IFFs. These findings show that it is difficult to

use the rule of law in Kenya to combat illicit financial flow in oil and mining sectors because of the weak judicial systems that cannot prosecute MNCs. This shows that Kenya’s judicial system lacks what Johnstone (2013) refers to as robust and independent law enforcement agencies, judicial and tax authorities, and comprehensive and enforceable laws modeled to combat illicit financial flows effectively. As used in this study under the resource-based view hypothesis, governments can be assumed to be custodians of natural resource wealth. As a result, it is their job to effectively manage natural resources to prevent illegitimate wealth accumulation or illegal outflow of revenues arising from natural resource extraction by establishing contemporary legal systems that are consistent with best international practice. The findings show a failure of strong legal systems to curb illicit financial flows in Kenya’s oil and mining sectors

4.6. Illicit Financial Flows

Table 4.5: Responses on illicit financial flows

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
“Insignificance” of revenues from the Oil and Mining Sector currently poses no significant risk of Illicit Financial Flows	22.5%	38.8%	12.5%	16.3%	10.0%
Inaccurately stating the price, quantity, quality, or other characteristics of commerce in oil and mining products is prohibited by law.	5.0%	20.0%	22.5%	30.0%	22.5%

Variables	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The existing laws are clear and concise to provide for the movement of capital or profits to another jurisdiction	10.1%	22.8%	31.6%	24.1%	11.4%
The existing laws ensure MNCs in the oil and mining sectors disclose and or declare ownership and control (Beneficial Ownership)	12.5%	25.0%	21.3%	31.3%	10.0%
The current fiscal regime mandates MNCs operating in the oil and mining sectors to provide comprehensive financial reporting on a country-by-country basis to the existing revenue authority in Kenya	7.4%	42.0%	29.6%	13.6%	7.4%
Kenya's National administration has in place detailed regulations that determine the tax value of intra-company transactions in a rigorous and consistent manner	11.3%	33.8%	25.0%	21.3%	8.8%

(Source; Researcher, 2020)

According to table 4.5, 61.3% of the respondents disagreed that the insignificance of revenues from Kenya's oil and mining Sector poses no significant risk of Illicit Financial Flows. In contrast, 26.3 percent of them indicated it poses no major risk. 52.5 percent of those polled agreed that there

are clear and unambiguous regulations against incorrectly stating the value, quantity, quality, or other trading features of oil and mining products. In terms of creating a smooth movement of capital to another jurisdiction, 31.6% of the respondents are undecided, and 35.5% indicated that the existing laws are clear and concise. 37.5% of the respondents believe that existing laws do not ensure MNCs declare beneficial ownership. However, this is opposed by 41.3% because they feel that the laws can compel these firms to declare their control and ownership. Lastly, the current fiscal regime does not mandate MNCs operating in the oil and mining sectors to provide comprehensive financial reporting on a country-by-country basis to the existing revenue authority in Kenya. This is affirmed by most of the respondents (49.4%) who believe that MNCs are required to provide their annual financial reports to avoid illicit financial flow. According to these findings, most respondents feel that the government is not transparent in disclosing pertinent information pertaining to the extractives industry.

4.7 Inferential analysis

4.7.1 Regression analysis

The goal of the research was to determine the role of stakeholders, the rule of law, and openness in preventing illegal cash flows in the extractives industry. The dependent variable was Illicit Financial Flow. Independent variables are stakeholders' accountability, the rule of law, and transparency in the extractives sector.

Table 4.6: Regression Coefficients

		Coefficients^a				
		Unstandardized Coefficients		Standardized Coefficients		
Model		B	Std. Error	Beta	t	Sig.
1	(Constant)	.889	.310		2.868	.005
	Rule of law and IFFs	.368	.105	.366	3.487	.001
	Stakeholder Accountability and IFFs	.154	.103	.159	1.487	.141
	Transparency and IFFs	.185	.079	.246	2.356	.021

The constant for the regression model in this study had a coefficient of 0.889. With a *p-value* of 0.05, it is significant at a 95% confidence level. The rule of law and illicit financial flows had a coefficient of 0.368, indicating a positive relationship with Illicit Financial Flows. The relationship was significant at 95% confidence level ($t = 3.487$; $P\text{-value} = 0.01$). Also, stakeholder accountability indicates a positive relationship with Illicit Financial Flows with a coefficient of 0.154. However, their relationship is not significant at 95% confidence level ($t = 1.487$; $P\text{-value} =$

0.141). Similarly, Transparency and IFFs have a positive relationship with Illicit Financial Flows with a coefficient of 0.185. The relationship between these variables is significant at 95% confidence level ($t = 2.356$; $P\text{-value} = 0.021$). Therefore, the resulting regression analysis model is as shown below:

$$Y = 0.889 + 0.185 X_1 + 0.154X_2 + 0.368X_3$$

4.8. Qualitative Analysis

The content analysis method was used to analyze open-ended questions provided on the questionnaires. The respondents were asked to provide additional information as follow up questions with regards to the objectives of the study.

4.8.1 Transparency and Illicit financial flows

The respondents were asked if they believe the government provides symmetrical information to all stakeholders regarding the country's oil and mining industries. The responses were arranged, coded and themed in the following categories;

Table 4.7: Qualitative Responses on Transparency and Illicit Financial Flows

Theme	Sum of No of Responses	Percentage Responses (%)
Transparency	16	13
Access to information	7	6
Disclosure of information	9	8
Information symmetry	36	30
Information asymmetry	49	41
Secrecy	2	2
Grand Total	119	100

Source: (Researcher, 2020).

The study assumed that the themes identified encompass transparency and will act as tools of identifying the occurrence of IFFs in the oil and mining sectors in Kenya according to participants responses. Respondents answered around the themes where some responses covered more than one thematic area hence larger total responses compared to the actual number of respondents which was 82.

From the table, 49% of the respondents felt that there is information asymmetry meaning that the government does not disclose to all stakeholders, the operations concerning oil and mining in a transparent manner. For example, a respondent indicated that information concerning Tullow Oil contracts is not publicly available despite the right to access of information provided for in the constitution and the Petroleum Act, 2019. Further, a section of the respondents explained that the government does not also publish information on royalty payments which is a huge loophole in facilitating the occurrence of IFFs. In addition, a cross-section of the respondents felt that it is the

weak framework in place that hampers greater transparency and accountability of the actors; furthermore, it restricts the voice of the public. This in turn has created a high level of suspicion on how the oil and gas sector operates.

36% of the interviewed respondents had divergent opinions and felt that there is information symmetry, and the government is transparent in providing all the requisite information including publishing contacts and licenses awarded, mining and oil rights, beneficial owners, and revenue but to a certain degree and not full disclosure. The Ministry of Mining, for example, has an Open Mining Cadastre portal, where it publishes information of all bidders and mining contracts awarded to which companies. However, information on profit-sharing, beneficial owners of the companies are not readily available because of non-disclosure agreements (NDA) that prevent companies and governments from disclosing information. A further 16% felt the government is generally transparent and available to those who seek information. A meager 9% and 7% of the respondents believed that the government does not disclose information regarding contracts and licenses in the two sectors where such information is mostly kept confidential with a great deal of secrecy surrounding the industry, the largest beneficiaries being the national government and Multinational companies, despite the existence of the Local Content Act.

These findings show that there is no information symmetry and transparency in the oil and mining sectors. These findings agree with studies conducted by Acosta (2013) and Williams (2011). According to Acosta (2013), the absence of stakeholder leadership, omission of critical public members, previous institutional restrictions such as weak accountability and oversight institutions could undercut the success of Transparency and Accountability Initiatives (TAIs). Also, Williams (2011) found that countries endowed with natural resources are less transparent, primarily concerning point resources (oil, metals, and minerals). Therefore, lack of this transparency gives

the impression of a fairly direct result of resource revenues at 1% statistical significance. It shows that there is a positive effect of transparency, “measured as a country’s willingness to release information on fiscal transactions,” that lessens the threat of the resource curse.

4.8.2 Stakeholder Accountability and Illicit Financial Flows

In response to efforts on stakeholder accountability, respondents were asked whether the public and civil society representatives put pressure on oversight bodies and the government to play an active role in mitigating against illicit financial flows in the Oil and Mining Sectors. The responses are illustrated in the table below.

Table 4.8: Qualitative Responses on Stakeholder Accountability and Illicit Financial Flows

Themes	Sum of No. of Responses	Sum of Percentage (%)
Advocacy by CSOs	48	62
Little effort	19	25
Transparency	1	1
Lack of access to information	9	12
Grand Total	77	100

Source; (Researcher, 2020)

The total number of responses to this question were 77 out of 82 respondents who took part in the study. The responses were grouped into four themes namely, ‘Advocacy by CSOs’, ‘Little effort’, ‘Lack of access to information’, and ‘Transparency’. 62% of the respondents agreed that Civil Society Organizations (CSOs) are putting enough pressure on oversight bodies and the government to prevent the occurrence of IFFs in Kenya’s Oil and Mining Sectors by influencing policies through research and reports recommending the best practice, pushing for disclosure of contract

agreements, and tracking of corporate reporting of Multinational Companies (MNC) to capture details on beneficial ownership. 25% of the respondents interviewed expressed that CSOs have put little effort in pressuring the government and oversight bodies to play an active role in mitigating against illicit financial flows in the oil and mining sectors, with below-average performance.

The challenge for CSOs is the lack of information from the government on issues such as disclosure of permits and how they were awarded and disclosure of revenues especially in mining which hampers their oversight capabilities. Some respondents felt that the CSOs are not mounting enough pressure due to a weak evidentiary base which undermines their ability to hold government and especially MNCs responsible. 12% of the respondents felt that lack of information from the government makes it difficult to hold the government accountable despite regulations in place mandating the same such as the Petroleum Act, 2019.

These findings agree with studies conducted by different scholars. Egbon (2015) studied accountability concerning NEITI by investigating the extent to which NEITI, as a hypothetical accountability instrument, disseminates responsibility in the interest of the public. According to this study, the narrative around revenue transparency serves only the companies' economic interests because there is no clear evidence to validate claims by companies in the oil sector that their enactment of revenue transparency initiatives promotes transparency, accountability, has contributed to a decrease in corruption, and consequently improving fair sharing of resources. Desai and Jarvis (2015) also discovered that while accountability has received less attention, it is critical for achieving continuous progressive results, to achieve consistent growth in the non-renewable resource sector especially in such activities as award of licenses, revenue distribution and the management and monitoring of the resulting investments.

4.8.3 Illicit Financial flows

Questions on IFFs were posed to the respondents to understand their knowledge on the same and why it is a concern in the Oil and Mining sectors. Among the questions was what indicators are used to assess the occurrence and scale of illicit financial flows in Kenya's Oil and Mining sectors in Kenya. The table below provides a summary of the response.

Table 4.9: Qualitative Responses on Illicit Financial Flows

Themes	Sum of No. of	
	Responses	Percentage (%)
Contracts and license agreements	13	16
Corruption	11	14
Financial statement audits	8	10
Governance and institutions	18	23
Illegal exploitation	8	10
Mis-invoicing	6	8
Profit shifting	3	4
Revenue(tax and sales)	8	10
Transfer pricing	5	6
Grand Total	80	100

Source: (Researcher, 2020)

The responses were grouped into 10 themes; “Governance and institutions”, Contracts and license agreements”, “corruption”, “illegal exploitation”, “financial statement audits”, “Revenue”, “mis-invoicing”, “profit shifting”, and “transfer pricing”. All these represented the number of ways in which IFFs can take place in the extractives industries of oil and mining. A total of 80 responses

were analyzed for this question where 23% of the respondents' cited governance and government institutions in place as the best way to investigate the occurrence of IFFs. The establishment of state agencies such as KRA and EACC were mentioned as best tasked to tackle, for example, tax evasion and safeguard public assets from ill practices. However, it was noted that poor governance and coordination of these institutions make it difficult to effectively identify and prevent IFFs. Lack of technical skills and capacity in government institutions to design and scrutinize contracts, laxity in enforcing the law (disclosure) when MNCs register companies and determining beneficial owners and bureaucracy all contribute to the occurrence of IFFs.

A section of the respondents indicated contacts and license agreements as one of the indicators used in assessing the occurrence and scale of IFFs. Secrecy, opacity, and transparency level in contract disclosure of information regarding extractives transactions and non-standardized contracts more often are an indication of possible IFFs, which is notorious between government and MNCs through Non-disclosure Agreements. Corruption was cited by 14% of the respondents as a means of determining the occurrence of IFF government officials receive kickbacks from MNCs to gain favorable contract agreements in terms of profit-sharing, taxes to be paid, and exploration rights. A combined 30% of the respondents indicated illegal oil and mining exploitation activities, audit of government and MNC financial statements, and tax remittances to Kenya Revenue Authority from oil, gas, and mining activities as the best way to determine the occurrence of IFFs. Transfer pricing (6%) and profit-shifting (4%) were also cited as indicators of assessing the occurrence of IFFs. Others cited include tax evasion and mis-invoicing (8%) where MNCs under-declare prices and quality of mineral ores when exporting, for example, to avoid paying the requisite taxes. MNCs also tend to quote vague management fees that ultimately reduce their profit margins to avoid paying royalties.

Respondents were also asked whether the government has enough resources and capacity for preventive measures, supervision, and risk mitigation frameworks in the oil & mining sector to combat IFFs. The responses are indicated in the table below.

Table 4.10: Qualitative Responses on Availability of Resources and Capacity

Themes	Sum of Number of	
	Responses	Percentage (%)
Absence of legal framework	6	7
Available human and technical resources	3	4
Lack of human and technical resources	19	23
Lack of institutional capacity	35	43
Lack of political will	3	4
Presence of institutional capacity	14	17
Presence of legal frameworks	1	2
Grand Total	81	100

Source; (Researcher, 2020)

The responses were classified in several themes; ‘lack of Institutional capacity, lack of human and technical resources and ‘available human and technical resources, Institutional Capacity’, ‘and Absence of Legal frameworks’, and Presence and/or lack of political will’. 43% of the respondents felt that the government lacks the institutional capacity to tackle IFFs. One of the reasons advanced is the lack of specific regulations to monitor IFFs in the oil and mining sector thus exposing the country to significant losses in revenue. Regulations in place do not reveal the real owners of

MNCs and there are no clear reporting guidelines on revenue and disclosure of amounts paid to the government in a structured manner. However, 17% of the respondents believed the government has the institutional capacity but there is no political will (4%) to implement laws and regulations in place to prevent IFFs. A further 23% cited the lack of human and technical resources to supervise and prevent IFFs. These findings corroborate Barasa's (2018) study that indicated a lack of technical capacity by state institutions as a huge stumbling block in the prevention of IFFs. From the analysis, it is clear most agree that the government lacks the technical capacity to scrutinize and negotiate complex contracts or determine revenues to be received from oil and mining exploration activities as well as to conduct detailed audits. However, 4% of the respondents believed the government has the technical and human capacity to engage preventive measures against IFFs.

Finally, the respondents were asked to indicate their perceived or assessed level of priority given to IFFs in Kenya's Oil & Gas sector if they do occur. Many of the respondents did not provide responses with only 53 out of 93 respondents. The responses were categorized into four, 'High Priority, Low Priority, 'Medium Priority', and 'No Priority'. A total of 38 respondents (72%) indicated that there is a low priority given to IFFs in Kenya's Oil, Gas, and Mining sectors. They felt that IFFs are underestimated in these sectors due to illicit transfer of minerals and illegal crude oil exportation and failure to accurately identify the minerals produced by ministry officials which denies the country much-needed revenue. Further, inadequate disclosure of oil and mining concessions and agreements including local content implementation, revenue remittances, and beneficial ownership points to low priority given to combat IFFs in Kenya. Some respondents pointed to tax related IFFs being rarely investigated mostly because there is little revenue being generated from these sectors since Kenya is not a fully-fledged oil exporting country. Others felt priority is low due to a lack of specific regulations regarding IFFs in these sectors. A lack of

transparency because of government's reluctance to tackle corruption hence a driver of IFFs was also cited as a reason for the low priority given in curbing IFFs. These findings echo those of Barasa (2018) that cited a lack of political will by government agencies as a main enabler of IFFs. 13% of the respondents indicated satisfaction with the level of priority given to combat IFFs citing the presence of policy, legal and regulatory frameworks such as the Mining Act, 2016 and the Petroleum Act, 2019. The presence of transfer pricing rules and an oil unit within Kenya Revenue Authority were cited as some of the initiatives taken to indicate high priority towards curbing IFFs in Kenya's Oil and Mining Sectors.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

Chapter five provides a summary of the study findings and analysis based on the three objectives. It also provides a conclusion based on the summary of inferential and descriptive analysis and recommendations on areas that need to be improved in the future on the same topic.

5.1. Summary

Kenya's extractive industry possesses an abundance of untapped natural resources more so, in oil and minerals among others. Even though the extractives sector currently contributes to just over 1% to Kenya's GDP, the sector is projected to grow to 10% of GDP which will play a big role in completely transforming Kenya's economic growth to higher states. Governance, therefore, becomes a crucial component to ensure wealth from extractives is managed efficiently to ensure economic growth and citizen wellbeing.

This study examined the effects of governance practices in curbing IFFs in Kenya's oil and mining sectors by scrutinizing transparency, stakeholder accountability, and the rule of law as critical governance practices. The objectives of the study were to determine the effect of incorporating transparency principles in the current regulatory and institutional frameworks in curbing Illicit financial flows in Kenya, to establish the effect of stakeholder accountability in curbing Illicit financial flows in Kenya's oil and mining sectors and to explore the extent to which the rule of law affects the occurrence of illicit financial flows in Kenya's oil and mining sectors. This was achieved by using the mixed method of research design. Quantitative and qualitative data were collected using semi-structured questionnaires. While quantitative data was analyzed using regression analysis, qualitative data was analyzed using the content analysis method.

5.1.1 Transparency and illicit financial flows

The first objective sought to determine the effect of incorporating transparency principles such as disclosure of oil and mining contracts, license information, public disclosure of revenues collected from the two sectors and publication of financial audits by state-owned agencies in the current regulatory and instructional frameworks, governing Kenya's oil, and mining sectors in curbing illicit financial flows. The study shows that 42% of the respondents strongly disagreed there is transparency in the mining sector in terms of disclosure contracts of oil and mining projects while 47.6% disagreed that government publicizes information concerning oil and mining rights awarded to MNCs, disclose pre-and post-license information of MNCs. 54% of the respondents strongly disagreed that MNCs operating in Kenya's oil and mining sectors provide access to published information to the all-relevant stakeholders regarding production, payments made to the government, ownership, and governance of their organizations. The issue of willingness of a country to release information on fiscal transactions and whether it can be replicated in the process of issuing licenses and designing contracts and how it can minimize the threat of illicit financial flows, which this research sought to examine, findings indicate that 60% of the respondents agree the government does not require MNCs to disclose and publicly report actual production figures and financial information about revenues, receipts, taxes, and expenses of oil and mineral production, processing, and sale, exposing a significant danger of occurrence IFFs.

5.1.2 Stakeholder accountability and Illicit Financial Flows

The study similarly sought to determine the effect of the effect of stakeholder accountability in curbing illicit financial flows in Kenya's oil and mining industry. Findings from the study show that 50% of the respondents strongly disagree that there is stakeholder accountability in oil and mining activities in Kenya since government does not disclose fiscal terms of oil and mining

projects to inform oversight while 48% agreed that government does not allow civil societies with keen interest in the oil and mining industries to gather, scrutinize, describe, and share information through oversight and lobbying governments, companies and local communities. Further, 50.6% of the population agreed that official agencies such as KRA and office of the auditor general do not perform strong oversight of Kenya's fiscal regime to mitigate against IFFs. These findings show that stakeholder accountability as a tool of governance, in Kenya's oil and mining sectors is strongly lacking and therefore a glaring deterrence in curbing IFFs.

5.1.3 Rule of law and Illicit Financial Flows

The findings show that over 50% of the respondents agreed that there is an institution/unit responsible for issuing and overseeing licenses easily accessible by everyone in the country. This is affirmed by the presence of an inspectorate unit that regulates the oil and mining sectors. Also, the regulating bodies in the oil and mining sectors have the expertise, financial capacity, deep understanding, access, and legal power to adequately assert their authority. However, over 50% said that Kenya's judiciary has inadequate capacity when it comes to investigating and prosecuting offenses related to IFFs in the oil and mining sectors. This is affirmed by 47.5% of the respondents strongly agreed that the current national laws and regulations governing the oil and mining sectors do not meet international standards, guidelines, and requirements that aim to combat IFFs.

5.2 Conclusion

This study examined the effects of governance practices in curbing IFFs in Kenya's oil and mining sectors by scrutinizing, transparency, stakeholder accountability and the rule of law as critical governance practices. The study findings show that transparency has a high positive influence on the independent variable. Despite the existence of key institutional and regulatory frameworks governing Kenya's oil and mining sectors, there exists a huge vacuum in adequate transparency

principles to facilitate prevention of illicit financial flows mainly due to a lack information symmetry from government and multinational companies with relevant stakeholders. A lack of transparency makes it extremely difficult, for example, for the governments to account for revenues paid if multinationals do not publicly declare them. Further, the government, because of non-disclosure agreements with multinational organizations, fails in upholding transparency thus exposing the oil and mining sectors to the risk of losing revenues through illicit financial flows. Similarly, the rule of law has the highest influence on the independent variable. As operationalized in this study, the rule of law refers to the existence of robust and independent law enforcement agencies, judicial and tax authorities, and comprehensive and enforceable laws. Indeed, Kenya has oil and mining inspection units as provided for in the Petroleum Act 2019 and Mining Act 2016 that are capable of combatting loss of funds. However, the study points to a weak judicial system that is not sufficiently capable of prosecuting cases that facilitate the loss of revenue i.e. IFFs in oil and mining sectors. In terms of stakeholder accountability, the study concludes that Civil Society Organizations as stakeholders in the oil and mining sector are holding government and multinationals accountable in efforts to prevent the occurrence of IFFs by pushing for disclosure of contract agreements, tracking corporate reporting by multinationals to capture details of beneficial ownership. Multinational Companies in Kenya's oil and mining sectors however are not proving leadership in stakeholder engagement given their reluctance to publicly share information to all stakeholders regarding productions payments and governance of their companies posing a significant challenge in curbing illicit financial flows as it jeopardizes viability of transparency and accountability initiatives.

5.3 Recommendations

5.3.1 Enhancing transparency

The study recommends the adoption of international standards and codes governing oil, gas and mining industries globally such as Extractive Industry Transparency Initiative (EITI) to enhance contract transparency in Kenya's Oil and Mining. EITI not only enhances transparency but improves the management of assets and improvement in governance that holds government accountable. Kenya made a pledge to join EITI in 2015, as part of a global multi-stakeholder initiative to increase transparency of rent from resource rich governments and to adopt a transparent policy and legislative framework for its oil and gas sector, including adoption of a transparent process for licensing(or awarding) oil and gas blocks and publication of contracts. However, it is yet to be compliant perhaps due to its failure to identify existing gaps and challenges in its regulatory framework, including the risk of IFFs. The Kenyan Government should fast tracks its commitment to become an EITI compliant country and thoroughly examine it regulatory flaws, in collaboration with CSOs in the sector, who possess a wealth of information on best practice as far as Kenya is concerned. The study further recommends for the government to prioritize allocation of resources across institutions regulating the oil and mining sectors including Ministry of Petroleum and Mining, Kenya Revenue Authority, Office of the auditor general, anti-corruption offices, and the Judiciary. Increase in resource will help in enhancing capacity of these institutions to identify sources and drivers of IFFs in oil and mining sectors especially, in conducting audits and investigations at an operational level. Kenya Revenue Authority should be given a strong mandate and legal instruments for example, to enforce tax laws and policies that mitigate against IFFs.

5.3.2. Rule of law

The study recommends for the design of a legal framework that offers a combination of local and international strategies that will improve capacity for oil and mining sector governance and contract negotiation and the quality of geological data. This will help to build the capacity of oversight agencies in Kenya to better collect and analyze trade data and identify risks of IFFs occurring. It will also assist in designing specific policy and regulatory frameworks to combat IFFs. Judicial officers should be trained in recognizing sources of IFFs in the extractive industry and especially in the oil and mining sectors, and the risk of delivering rulings only on point of law, often argued by multinationals to favor them and leave the country vulnerable to further loss of revenues.

5.3.3. Stakeholder Accountability

Even in the absence of weak accountability mechanisms, citizens can engage the state through collective action to create policy reform. The study recommends for the establishment of citizen programs that build awareness about illicit financial flows and deepen citizen engagement in the decision-making process and push for reforms in Kenya's oil and mining sectors driven by civil society organizations. As discussed, disclosure of information is a key aspect of corporate citizenship since the disclosure policies render the multinational companies accountable to outside assessment. Multinational companies in Kenya e.g. Tullow oil are more reticent when it comes to transparency towards the general public. The study recommends for MNCs to establish formal engagement process in early stages of exploration among all stakeholders in a clear process that outlines common goals and vision and activities to disseminate information. Further, they should adopt an open-door policy that facilitates stakeholder communications by making relevant information readily available to public.

5.4 Suggested area for future study

The study concentrated on investigating the capacity of the current regulatory and institutional frameworks to fight against illicit financial flows in the oil and mining sectors. However, Kenya's mining sector is faced with a challenge of illegal exploitation and tax evasion from unlicensed miners. Kenya is losing millions of shillings in illicit outflows where these resources are exported unaccounted for. Future research should be conducted to investigate small-scale mining in Kenya which is prevalent and its role in perpetuating illicit financial flows and the importance of perhaps formalizing and making it a legitimate source of revenue for the government and prevent occurrence of IFFs.

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APPENDICES
Appendix 1: Introduction Letter

Catherine Mithia
School of Public Policy and Administration
Kenyatta University
PO Box 43844-00100
NAIROBI.

Dear Respondent,

RE: **DATA COLLECTION FOR MASTER’S IN PUBLIC POLICY RESEARCH**
 PROJECT BY CATHERINE MITHIA

I am a postgraduate student at Kenyatta University, School of Public Policy and Administration, currently undertaking my final research project for a Master’s in Public Policy and Administration.

I'm working on a research project about the role of governance in reducing illicit cash flows in Kenya's oil and mining sectors to fulfill my degree requirements. The study is solely for academic purposes, and it will only be used at Kenyatta University. I'd appreciate it if you could help me fill out the questionnaire for this project.

My supervisor and I guarantee that any information you provide will be kept completely confidential. Your or your company's name will not appear in my report at any point. On request, you will be provided with a copy of the final document.

Thank you in advance for your cooperation.

Yours Sincerely,

Catherine Mithia

Student

Mobile No: 0713333373

Appendix 2: Research Questionnaire

There are five parts to this questionnaire. The respondent's basic information will be collected in Section A. Section B will collect data on the transparency of Kenya's current legal framework for combating illicit financial flows. Section C will be used to gather data on how stakeholder responsibility can help to prevent illicit financial flows from occurring. Section D will be used to gather data on how the rule of law can help to prevent IFFs. The last section, Section E, will be utilized to generate data on the drivers and facilitators of IFFs in Kenya's oil and mining industries. NB: The information gathered will be kept strictly confidential. It would be extremely helpful if you could help me complete this questionnaire. Kindly respond to the following questions by ticking on the appropriate box [] or filling in the answer in the blank spaces.

SECTION A: RESPONDENT'S PERSONAL INFORMATION

1. Name (Optional).....

2. Organization.....

3. Department/committee.....

4. How long have you been with the organization?
 - Less than 3 years
 - 4-6 years
 - 7-9 years
 - Over 10 years

5. In what cadre are you in the organization?

Top level management []

Middle level management []

Lower level management []

SECTION B: TRANSPARENCY AND ILLICIT FINANCIAL FLOWS

6a). What is your level of agreement on the following statements relating to Transparency and Illicit Financial flows (Strongly Disagree – 1, Disagree – 2, Neutral – 3, Agree – 4 and Strongly Agree – 5)

Statement	1	2	3	4	5
The government discloses contracts of oil and mining projects including full texts of main agreements					
The government discloses information concerning oil and mining rights awarded to MNCs in open and transparent manner to available to all stakeholders					
The government discloses pre and post license information of MNCs (License disclosure)					
The procedures for granting exploration and production rights are transparent, accessible, impartial, and nondiscretionary.					
The government requires MNCs to disclose and publicly report real production figures as well as financial data on sales, expenditures, taxes, and costs related to the production, refining, and sale of oil and minerals.					
The State-Owned Enterprise(s) operating in Kenya’s oil and Mining Sectors subject					

itself to independent financial audits and publishes the results					
MNCs provide easy access to published information to the all relevant stakeholders regarding, production, payments made to the government, ownership and governance of the companies					

6b. In your opinion, does the government ensure information symmetry to all stakeholders to in regard to oil and mineral operations in the country?

.....

.....

.....

SECTION C: STAKEHOLDER ACCOUNTABILITY AND ILLICIT FINANCIAL FLOWS

7a). What is your level of agreement on the following statements relating Stakeholder Accountability and illicit financial flows (Strongly Disagree – 1, Disagree – 2, Neutral – 3, Agree – 4 and Strongly Agree – 5)

Statement	1	2	3	4	5
Current laws governing the oil and mining sectors facilitate public debate and dialogue to allow release of information to stakeholders					
The government discloses fiscal terms concerning the oil and mining sectors and company data to inform oversight (Tax Transparency)					
Civil society organizations interested in the oil and mining industries can gather, assess, interpret, and distribute information via monitoring and oversight, lobbying governments, companies, and local communities impacted by oil and mining activities.					

Civil Societies Organizations (CSOs) have unprecedented access to government and MNCs operations including contracts, licensing procedures, prices, and revenue collection					
Civil society organizations hold the government accountable for implementation of regulations that curb illicit financial flows in the oil and mining sectors					
Official agencies perform strong oversight of the fiscal regime to mitigate against IFFs e.g. Auditor General, KRA, legislature					
Official government agencies are held accountable on administration of fiscal regime to prevent illicit outflows					

7b. In your opinion, does the public and civil society representatives put pressure on oversight bodies and the government to play an active role in mitigating against illicit financial flows in the extractive Industry?

.....

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.....

.....

.....

PART D: RULE OF LAW AND ILLICIT FINANCIAL FLOWS

8a). What is your level of agreement on the following statements relating Rule of law and illicit financial flows (Strongly Disagree – 1, Disagree – 2, Neutral – 3, Agree – 4 and Strongly Agree – 5)

Statement	1	2	3	4	5
There is an institution/unit responsible for issuing and overseeing licenses, enforcing license conditions, and maintaining an up-to-date public					

register of exploration and production licenses that is easily accessible by all interested parties					
There is an inspectorate unit which regulates the oil and mining sectors					
The inspectorate unit monitors operations including developing technical specifications and standards; metering and monitoring production; technical supervision of operations; and ensuring compliance with licensing conditions, laws, and relevant regulations.					
Kenya's fiscal regime has the capacity to mitigate against loss of revenue in the oil and mining sectors by conducting strong risk management practices					
Regulating bodies in the oil and mining sectors have the necessary technical skills, financial resources, knowledge, access and legal authority to exercise their powers effectively.					
There are strong counter-IFF measures implemented within Kenya's criminal justice system					
There is adequate capacity by the judiciary to investigate and prosecute offences related to IFFs in the Oil and mining sectors					
MNCs operating in Kenya can be prosecuted for IFF related crimes in Kenya's current legal system					
MNCs operating in Kenya's Oil and mining sectors are signatories to international standards of extractive industry operations					

National laws and regulations governing the oil and mining sectors meet international standards, guidelines and requirements that aim to combat IFFs.					
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PART E: ILLICIT FINANCIAL FLOWS

9a.) What is your level of agreement on the following statements relating Rule of law and illicit financial flows (Strongly Disagree – 1, Disagree – 2, Neutral – 3, Agree – 4 and Strongly Agree – 5)

Statement	1	2	3	4	5
“Insignificance” of revenues from the Oil and Mining Sector currently poses no significant risk of Illicit Financial Flows					
There are clear and concise laws that make it illegal to inaccurately state the price, quantity, quality or other aspect of trade in oil and mining products					
The existing laws are clear and concise to provide for movement of capital or profits to another jurisdiction					
The existing laws ensure MNCs in the oil and mining sectors disclose and or declare ownership and control (Beneficial Ownership)					
The current fiscal regime mandates MNCs operating in the oil and mining sectors to provide comprehensive financial reporting on a country-by-country basis to the existing revenue authority in Kenya					
Kenya’s National administration has in place detailed regulations that determine					

tax value of intra-company transactions in a rigorous and consistent manner						
--	--	--	--	--	--	--

9b. To the best of your knowledge, what indicators are used to assess the occurrence and scale of illicit financial flows in Kenya’s oil and mining sectors in Kenya?

.....

.....

9c. In your opinion, does the government have enough resources and capacity for preventive measures, supervision, and risk mitigation frameworks in the oil and mining sector to combat IFFs?

.....

.....

9d. In your opinion, what is the perceived or assessed level of priority given to IFFs in Kenya’s oil and mining sectors if they do occur?

.....

.....

Appendix 5: Authorization Letters

NACOSTI Letter of Approval


REPUBLIC OF KENYA
National Commission for Science, Technology and Innovation


NATIONAL COMMISSION FOR
SCIENCE, TECHNOLOGY & INNOVATION

Ref No: 605769

Date of Issue: 14/October/2020

RESEARCH LICENSE



This is to Certify that Ms. Catherine Njeri Mithia of Kenyatta University, has been licensed to conduct research in Nairobi on the topic: **Governance Practices and Ethical Financial Flows in Kenya's Oil and Mining Industry for the period ending 14/October/2021.**

License No: NACOSTI/P/20/7143

605769

Applicant Identification Number

Walter Muthira
Director General
NATIONAL COMMISSION FOR
SCIENCE, TECHNOLOGY & INNOVATION

Verification QR Code



NOTE: This is a computer generated License. To verify the authenticity of this document, Scan the QR Code using QR scanner application.

Letter of Approval from KU



KENYATTA UNIVERSITY
GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke

Website: www.ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 810901 Ext. 4150

Internal Memo

FROM: Dean, Graduate School

DATE: 11th June, 2020

TO: Catherine Njeri Mithia
C/o Public Policy and Administration Dept.

REF: C153/CTY/PT/38988/2016

SUBJECT: APPROVAL OF RESEARCH PROJECT PROPOSAL

This is to inform you that Graduate School Board at its meeting of 20th May, 2020 approved your Research Project Proposal for the M.PPA Degree Entitled, "Governance Practices and Illicit Financial Flows in Kenya's Oil and Mining Industry."

You may now proceed with your Data Collection, Subject to Clearance with Director General, National Commission for Science, Technology and Innovation.

As you embark on your data collection, please note that you will be required to submit to Graduate School completed Supervision Tracking and Progress Report Forms per semester. The Forms are available at the University's Website under Graduate School webpage downloads.

Thank you.

A handwritten signature in black ink, appearing to read 'EM'.

ELIJAH MUTUA
FOR: DEAN, GRADUATE SCHOOL

c.c. Chairman, Public Policy and Administration Department.

Supervisors:

1. Dr. Margaret Kosgei
C/o Department of Public Policy and Administration
Kenyatta University

EM/inn