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Governance Practices and Illicit Financial Flows in Kenya's Oil and Mining Sectors

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Abstract

Purpose: This study aimed to examine governance practices that oversee oil and mining sectors in Kenya and their efficacy in curbing illicit financial flows.

Methodology: This study 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 were collected by filling in semi-structured questionnaires while qualitative data was collected by conducting interviews. The quantitative data are presented using tables, texts, and graphs while qualitative data is presented through the identification of common themes from the responses.

Findings: The findings from qualitative and quantitative data analysis showed that rule of law and transparency have a significant effect on curbing illicit financial flows in Kenya's oil and mining sectors. However, the regression analysis findings showed that the rule of law has the highest influence on the dependent variable, followed by transparency and stakeholder accountability.

A unique contribution to theory, practice, and policy: Most studies have focused on examining extractive governance practices in countries with long histories of extraction, such as Norway and Nigeria while the dynamics in emerging industries, such as Kenya, remain largely unexplored, especially in addressing the challenge of illicit financial flows. This study will contribute to the existing literature in examining the capacity of existing regulatory and institutional frameworks in emerging economies such as Kenya, in combatting illicit financial flows in their oil and mining sectors.

Keywords: *Illicit Financial Flows, Governance, Transparency, Stakeholder Accountability, Rule of Law*

1.0 Introduction

Natural resources such as oil and minerals provide a foundation for economic development in many countries, but often have trouble 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 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 (Van der Ploeg, 2011).

Recent literature has also indicated that the extractive industry faces a high risk of illicit financial flows (IFFs), which pose a threat to economic growth in developing countries (United Nations Economic Commission for Africa (UNECA), 2015). IFFs 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 (The Organization for Economic Co-operation and Development-OECD, 2013). They can likewise be defined in the form of outcomes; that is funds lead to an unintended but direct adverse effect on the long-term fiscal growth in a country where they occur (Blankenburg & Khan, 2012).

Le Billon (2011) indicates that the extractive sector in Africa 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, undeniable huge income-generating potential of extractive sectors and multiple layers of secrecy within the industry which present ripe grounds for IFFs to thrive. UNECA (2013) shows that IFFs tend to drain hard currency reserves of oil and mineral-producing countries by reducing their tax collection through aggressive tax avoidance practices. This deepens tax income gaps which divert domestic savings from real domestic investment causing losses in funds for investment and development projects and undermining trade while weakening governance due to poor state capacity to deliver services.

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). The institutional and regulatory foundation of a state is weakened by poor governance and has been identified as the primary cause of Sub-Saharan Africa's huge illicit outflows in literature (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).

A report by Transparency International (2020) shows that IFFs endanger Kenya's political and economic security by weakening institutions, curtailing the rule of law, and rendering the government unable to combat poverty. Wangai (2016) shows that 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 constitutes 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 as a result 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-stakes 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 Statement of the Problem

Kenya is a relatively new actor in the global extractives sector, meaning it can use the benefits of the wealth of its natural resources to enhance the country's economic and human development. However, it has recorded the highest magnitude of illicit financial flows. For the past 40 years, it is estimated 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 (Barasa, 2108). The reviewed studies show that little has been done concerning the risk of IFFs in Kenya's oil, gas, and mining sectors, thus creating a research gap. 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.

1.2 Objective of the Study

The objectives of this study were to determine effect of incorporating transparency principles in Kenya's current regulatory and institutional frameworks in curbing illicit financial flows, to determine the effect of stakeholder accountability in curbing IFFs in Kenya's oil and mining sectors in Kenya and to determine the effect of the rule of law in preventing IFFs in Kenya's oil and mining sectors

2.0 Literature Review

2.1 Theoretical Framework

2.1.1 Stakeholder Theory

The study was premised on stakeholder theory advanced by Freeman in 1984. 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. This theory contends that people should be treated as

“ends unto themselves” in its simplest form. As a result, instead of seeing stakeholders as merely a means, managers should make corporate decisions that honor their well-being. The researcher focused on normative stakeholder theory, which 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. Freeman (1984) shows that 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. In this study, the use of stakeholder theory 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.

2.1.2 Resource-based View (RBV) Theory

The resource-based view was advanced by Penrose in 1959. According to this theory, firms comprise bundles of resources that are “semi-permanently” tied to the firm, and different firms enjoy different combinations of these resources. It 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. 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 resource-based view hypothesis is relevant resources found in Kenya’s extractive sector because of their 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 practices.

2.1.3 Agency Theory

The agency theory was first advanced by Stephen Ross and Barry Mitnick (Mitnick, 1975). The theory categorizes managers as the “agents” who are hired with the main goal of maximizing returns for shareholders, who are “principals.” Its founders 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 hiding their incompetency from the principal to avoid losing on rewards just to simply to boost their riches at the cost of their principal. Also, it 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 this study, the researcher argues 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. Therefore, 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 government and government officials.

2.2 Empirical Review

2.2.1 Transparency and Illicit Financial Flows

Acosta (2013) examined existing 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.

Similarly, Williams (2011) conducted an empirical analysis on the relationship between natural resources, transparency, and economic growth. 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. However, 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.

2.2.2 Stakeholder Accountability and Illicit Financial Flows

Deval and Jarvis (2015) found that the efforts by many international financial institutions 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. Deval and Jarvis (2015) argue that accountability is achieved by individual or group participation, transparent information exchange, and holding private or public decision-makers accountable.

Using the example of Extractive Industry Transparency Initiative (EITI) reports produced by EITI-compliant countries, Deval and Jarvis (2015) allude that reporting is not an end goal in itself, but

genuine value can be guaranteed if citizens as stakeholders can 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. Also, the study refers 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.

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 concerning 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. However, it fails to show how accountability can address the challenge of illicit financial flows within the extractive industry value chain, particularly upstream activities, thus creating a gap that this research sought to fill.

2.2.3 Rule of Law and Illicit Financial Flows

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.

3.0 Research Methodology

3.1 Research Design

The researcher adopted a mixed-method research design in this study. This research design was adopted because it encourages the systematic integration or blending of qualitative and quantitative data within specific research, allowing for a more thorough and mutually reinforcing use of data.

3.2 Site of the Study

The research was carried out in Nairobi City County, which is home to the 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.

3.3 Target Population

The study targeted a population 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). The target population has expertise in oil and mining activities in Kenya and senior management of private oil and mining companies operating in Kenya.

3.4 Sampling Techniques and Sample Size

This study employed Mugenda and Mugenda's (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. The study sampled 93 (30%) of the 305 targeted respondents, who were randomly incorporated.

3.5 Research Instruments

The primary data was collected by filling out semi-structured questionnaires that contained both open and close-ended questionnaires.

3.6 Data Collection

Semi-structured questionnaires were used to obtain primary data. The questionnaire contained open 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. Qualitative data was collected using the drop and pick method where respondents were asked to elaborate on specific questions of the independent variables.

3.7 Data Analysis

Inferential statistics were utilized to examine quantitative data. Semi-structured questionnaires were administered and coded numerically with a coding scheme for each variable of the study. Qualitative data was analyzed using the content analysis method where themes were identified and coded for analysis. Raw data was 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) for analysis where Pearson's correlation model was used. The researcher used the following regression model.

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

Where: Y= Illicit Financial Flows; β_0 = Constant; β_1 , β_2 , β_3 = Beta Coefficients; X_1 = Transparency; X_2 = Stakeholder Accountability; X_3 = Rule of Law; E= Error Term.

4.0 Presentation of Findings, Analysis, and Interpretation

4.1 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. The study found sought to examine, findings indicate that 60 percent 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 disagreed (33.3 percent) and strongly disagreed (25.9 percent) that the government discloses information concerning oil and mining rights awarded to MNCs openly and transparently. 47.6 percent of the respondents disagreed that the Kenyan government discloses pre- and post-license information of MNCs. A further 49.1 percent of the respondents did not agree that there are precise, transparent,

competitive, and non-discretionary procedures for issuing exploration and production rights. Only 37.1 percent of the respondents agreed that there is transparency regarding the issuance of production rights for MNCs.

4.2 Stakeholder Accountability

The findings showed that over 50 percent of the respondents 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. A further 48.3 percent agreed that the Kenyan 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. Similarly, 50.6 percent of the respondents showed 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. Thus, these findings showed that's stakeholder accountability capabilities as a tool of governance, in Kenya's oil and mining sectors are weak.

4.3 Rule of Law and Illicit Financial Flow

The findings showed that over 55.6 percent of the respondents agreed that there is an institution/unit responsible for issuing and overseeing licenses easily accessible by everyone in the country. This was affirmed by the presence of an inspectorate units 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, 58.8 percent of the respondents agreed that Kenya's judiciary has inadequate capacity to investigate and prosecute offenses related to IFFs in the oil and mining sectors. A further 47.5 percent of the respondents affirmed 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 showed 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.

4.4 Inferential Analysis

The researcher adopted regression analysis in estimating the relationship between dependent and independent variables. The beta coefficients give the rate of deviations or change on the dependent variable that was produced by a change on the independent variables. The regression analysis showed that stakeholder accountability was positively correlated with Illicit Financial Flows with a coefficient of 0.154. However, their relationship was not significant at 95% confidence level ($t = 1.487$; $P\text{-value} = 0.141$). Similarly, Transparency and IFFs had a positive relationship with Illicit Financial Flows with a coefficient of 0.185. Similarly, the rule of law and illicit financial flows had a coefficient of 0.368, indicating a positive relationship with Illicit Financial Flows. The relationship between these variables was significant at 95% confidence level ($t = 2.356$; $P\text{-value} = 0.021$). The researcher thus concluded that the rule of law and transparency have a significant impact on the dependent variable (Illicit Financial Flows). The resulting regression model was:

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

4.5 Qualitative Analysis

The findings showed that 49 percent of the respondents agreed there is information asymmetry meaning that the government does not disclose to all stakeholders, the operations concerning oil and mining in a transparent manner. 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. These findings agreed 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).

With regards to stakeholder accountability, 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. These findings agreed with studies conducted by Deval and Jarvis (2015) which concluded that accountability can include both upstream and downstream activities in the extractives industry, where governments should be accountable in such process as allocation of licenses and contracts, procedures for distribution of revenues and how they are spent, and further in holding multinational companies accountable for how they fulfill their stated obligations, particularly with respect to public, environmental, and commercial effects of their extraction activities. However, 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 and a weak evidentiary base which undermines their ability to hold government and especially MNCs responsible.

5.0 Summary, Conclusion, and Recommendation

5.1 Summary of Findings

The study findings showed that there is limited transparency in Kenya's oil and mining sector, specifically in terms of disclosure of contracts, disclosure of pre-and post-license information, and mining rights given to MNCs. Also, stakeholder accountability in Kenya's oil and mining sectors is weak. Although there is a unit that issue and oversees licensing in the oil and mining sectors and regulating bodies, Kenya's Judiciary has inadequate capacity to investigate and prosecute offenses related to IFFs because of a lack of awareness and in-depth knowledge of the sources of IFFs in these sectors which are mostly perpetuated by Multinational organizations. There is limited accountability in this sector due to a lack of information from the government on issues such as disclosure of permits and how they were awarded revenues while multinational companies are quite vague in their operations including disclosure of fiscal revenues. The inferential analysis

showed that the rule of law and transparency have a significant impact on the dependent variable (Illicit Financial Flows).

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 Recommendation

The study recommends different measures to address identified weaknesses in the oil and mining sector. First, it recommends the domestication of the African Mining Vision (AMV) which offers a combination of local and international strategies that will improve capacity for mineral 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. Secondly, 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. Third, citizens can facilitate accountability by engaging the state through collective action to create policy reform. This can be achieved by establishing 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. Lastly, the study recommends for MNCs to establish a formal engagement process in the early stages of exploration among all stakeholders in a clear process that outlines common goals and vision and activities to disseminate information. Also, they should adopt an open-door policy that facilitates stakeholder communications by making relevant information readily available to the public.

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