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# Abbreviations

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AfDB</td>
<td>African Development Bank</td>
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<tr>
<td>ASI</td>
<td>Adam Smith International</td>
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<tr>
<td>ASM</td>
<td>Artisanal and Small-Scale Mining</td>
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<tr>
<td>Cadastre</td>
<td>Mining Cadastre System</td>
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<tr>
<td>CE</td>
<td>Community Engagement</td>
</tr>
<tr>
<td>CIDP</td>
<td>County Integrated Development Plan</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
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<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<tr>
<td>DFID</td>
<td>United Kingdom Department for International Development</td>
</tr>
<tr>
<td>DoP</td>
<td>Directorate of Petroleum</td>
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<tr>
<td>EI</td>
<td>Extractive Industries</td>
</tr>
<tr>
<td>EISD</td>
<td>Extractive Industries for Sustainable Development</td>
</tr>
<tr>
<td>ETR</td>
<td>Effective Tax Rate</td>
</tr>
<tr>
<td>Facility</td>
<td>Flexible Funding Facility</td>
</tr>
<tr>
<td>Government</td>
<td>Government of the Republic of Kenya</td>
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<tr>
<td>HSE</td>
<td>Health Safety and Environment</td>
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<td>HSNP</td>
<td>Hunger Safety Net Programme</td>
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<td>ICES</td>
<td>Information Centre for the Extractives Sector</td>
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<td>ITC</td>
<td>MoEP Inter-Ministerial Technical Committee on Energy and Petroleum</td>
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<tr>
<td>KCM</td>
<td>Kenya Chamber of Mines</td>
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<tr>
<td>KEPTAP</td>
<td>Kenya Petroleum Technical Assistance Programme</td>
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<tr>
<td>KEIDP</td>
<td>Kenya Extractive Industries Development Programme</td>
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<tr>
<td>MAP</td>
<td>Markets Assistance Programme</td>
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<tr>
<td>MoEP</td>
<td>Ministry of Energy and Petroleum</td>
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<tr>
<td>MoM</td>
<td>Ministry of Mining</td>
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<tr>
<td>NEMA</td>
<td>National Environmental Management Authority</td>
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<tr>
<td>NOCK</td>
<td>National Oil Corporation of Kenya</td>
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<tr>
<td>OTMCP</td>
<td>Online Transaction Mining Cadastre Portal</td>
</tr>
<tr>
<td>Parliamentary Committee</td>
<td>Parliamentary Committee on Environment and Natural Resources</td>
</tr>
<tr>
<td>PSC</td>
<td>Production Sharing Contract</td>
</tr>
<tr>
<td>PSC of 2002</td>
<td>Model Production Sharing Contract of 2002</td>
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<tr>
<td>SESA</td>
<td>Strategic Environmental and Social Assessment</td>
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<td>Spatial Dimension</td>
<td>Spatial Dimension South Arica Pty Ltd</td>
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<tr>
<td>TA</td>
<td>Technical Assistance</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>Upstream Petroleum Bill</td>
<td>Petroleum (Exploration, Development and Production) Bill</td>
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Executive Summary

The development of Kenya’s petroleum and mining industries presents considerable opportunities. If governed well, the national extractive industries (EI) sector will have widespread positive downstream effects for the people of Kenya; otherwise the potential for equitable and accelerated growth would be constrained. The maximization of this potential will largely depend on the ability of its Government to manage these resources well, and on the availability of functioning mechanisms and processes through which Kenyan citizens can articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences in relation to the sector.

The Government of the United Kingdom’s Department for International Development (DFID), through its wealth creation pillar, has identified that EI represents a large and growing activity in less developed countries such as Kenya. In its Operational Plan for Kenya 2011-2015, DFID Kenya has identified that it shall invest in wealth creation by supporting efforts to improve transparency, market development and economic integration in the EI sector and this shall be achieved principally through the Kenya Extractive Industries Development Programme (KEIDP). KEIDP is designed to support the robust performance of a stable and sustainable extractive industries sector that delivers equitable and inclusive benefits to Kenyan citizens in the short-, medium- and long-term.

This progress report reviews the achievements of KEIDP to date, a programme that commenced in November 2013 and will run through June 2015. This is the first progress report since the inception of the project in November 2013. It highlights the results for each programme component and provides a narrative of the activities, challenges, risks and how the programme has overcame them and eventually draws up key lessons learned during this period.

KEIDP’s current work plan consists of 4 components. Firstly, the Ministry of Mining component that includes: assisting the Ministry to undertake a transparent and participatory legislation process; upgrading of the online transactional cadastre; and assistance in reforming the Ministry’s organizational structure. Secondly, the Ministry of Energy and Petroleum component includes: assisting the Ministry to undertake a transparent and participatory process in the legislation process; and enhancing the capacity of the Ministry to effectively implement the World Bank managed Kenya Petroleum Technical Assistance Programme (KEPTAP). Thirdly, the Community Engagement component focuses on Turkana and Taita Taveta counties. In Turkana KEIDP plans is to ensure that consensus is reached on a medium/long term model for effective and inclusive provision of local benefits from the oil industry. In Taita Taveta, KEIDP plans to ensure that opportunities to participate in the artisanal and small scale mining sector in Taita Taveta are increased through public awareness and pilot project(s). Fourthly, the Cross-Cutting component consists of 4 sub-components: Extractives Primer Training; Local Content;
Communications; and the Extractives Industries Cabinet Level Coordinating Body. These sub-components are a set of supportive activities which when implemented will not only achieve the objectives for which they have been individually designed, but will also support the achievement of results of the first three key components of the programme.

To date, KEIDP has achieved a number of milestones. Under Ministry of Mining component KEIDP has supported the Ministry through the legislative drafting and parliamentary process of the Mining Bill including introducing 36 key improvements in the Mining Bill ranging from improved transparency to more investor friendliness to assistance of Government operations. The programme supported the Ministry in developing various regulations including mining taxation, mineral rights, definitions, licence application, land rights, mineral title management, institutional aspects, and providing for artisanal and small scale mining (ASM) as well as the technical regulations that will be needed to program the online transactional cadastre.

Under Ministry of Energy and Petroleum component, KEIDP has supported the Ministry in drafting of key oil and gas legislation. KEIDP was nominated by the Ministry to be the main technical advisor in three workshops of drafting and reviewing several pieces of legislation within the Ministry. The project has provided expertise in reviewing the Petroleum (Exploration, Development and Production) Bill, the draft Model Production Sharing Contract and the National Content Bill. The review process is still underway.

In Community Engagement, KEIDP has been able to design a detailed plan of community engagement activities in Turkana and Taita Taveta. For Turkana, the programme has drawn up a County Integrated Development Programme process for piloting with both central and county government – this includes a medium/long term model for effective and inclusive provision of local benefits from the oil industry. In Taita Taveta, KEIDP has developed a comprehensive plan that will focus on awareness raising of the new Mining legislation and a suite of health and safety training opportunities for ASM. While developing both plans, KEIDP engaged and initiated contact with a wide range of stakeholders including donors, private sector, INGOs, local NGOs and CSOs. These stakeholders assisted in providing information on the specific counties which was critical in designing the activities. KEIDP also held a conflicts-sensitive programming workshop that will enable the pilot project planning to be conflict-sensitive when designing and executing activities in the two counties.

Finally, the Cross-cutting Component has achieved several results in supporting the achievement of various results for the previous three main components. Under the Communications sub-component, KEIDP supported the Ministry of Mining in preparation for the 20th Annual Investing in African Mining Indaba Conference held in Cape Town, South Africa from 3 – 6 February 2014. Also under Communications, in December 2013, KEIDP set up the Information Center for the Extractives Sector.
ICES, a virtual entity that has established itself to gather news around the sector and disseminate it to 480 subscribers. During the reporting period, ICES has initiated and hosted stakeholder dialogues. Also, under Local Content sub-component, KEIDP has supported both ministries in discussing local content in their specific legislation.
1. Background and Introduction

1.1 Project Background

(a) DFID Kenya Wealth Creation Pillar

DFID through its wealth creation pillar, identified that the EI represents a large and growing activity in less developed countries such as Kenya. In its Operational Plan 2011-2015, DFID Kenya has identified that it shall invest in wealth creation in Kenya by supporting efforts to improve transparency, market development and economic integration in the EI sector. DFID had an ongoing programme with Kenya Markets Trust titled the Kenya Market Assistance Programme which aims at reducing poverty in Kenya by contributing to job creation and improving the income growth of poor and disadvantaged people in selected market systems. KEIDP is nested under the same programme with a focus on improving governance in the extractives sector.

(b) Scoping Study March 2013 - September 2013

Following a request for assistance on EI from the Government in 2012, DFID undertook initial consultations and commissioned a Scoping Study in March 2013.

(i) Scoping Study Recommendations - General

The Scoping Study high-level report makes actionable recommendations for the development of Kenya’s EI. It serves to identify the immediate steps that Kenya must take to ensure that it can mitigate the risks and leverage the significant opportunities of mineral resource exploitation. The recommendations are evidence-based, and derived from wide-reaching and comprehensive consultation with representatives of all key stakeholder groups in Kenya including the key Government ministries and were related to:

(I) the formulation of a national and inclusive vision, policy and legislation for the sector;
(II) the development of adequate frameworks for communities and environment; and
(III) fostering transparency and accountability in extractives.

(ii) Scoping Study Recommendations - Specific

Specifically the Very High priority and High priority recommendations from Scoping Study were as follows:

2 The full list of 18 recommendations are listed in Section 4.5 of this report below.
Government agrees on and implements a coordination mechanism
(II) Establish a compelling and inclusive national vision and roadmap for extractives
(III) Design and implement communications strategy
(IV) Develop policy, legal and regulatory framework for extractives
(V) Develop community development framework
(VI) Strategic Environmental and Social Assessment (SESA)
(VII) Ensure transparency and accountability in extractives

(c) KEIDP November 2013 - June 2015

Following on from approval of the Scoping Study by the Government, DFID commissioned a follow-up programme, the Kenya Extractives Industries Development Programme (KEIDP). KEIDP’s remit is to selectively address the high priority recommendations of the Scoping Study.

1.2 Programme Strategy and Design

(a) Programme Key Objective

KEIDP was designed as a relatively short-term support package to address the high priority needs outlined in the Scoping Study, and enable the groundwork to be laid for the emergence of an inclusive extractives sector.

The overall objective of KEIDP is to contribute to DFID’s wider impact aim of accelerated growth and poverty reduction in Kenya, and an inclusive and peaceful development of Kenya’s extractive industries sector.

(b) Programme Principal Outputs

KEIDP is designed to support the robust performance of a stable and sustainable extractive industries sector that delivers equitable and inclusive benefits to Kenyan citizens in the short, medium and long term. In order to achieve this outcome the Programme will be structured around two principal outputs:

(i) increased capacity of key National Government agencies to govern the sector well; and
(ii) significantly improved participatory, equitable and sustainable collective stewardship of the extractive sectors.

(c) Programme Principles

Programme activities will be guided by the following key principles:
(i) a focus on delivering inclusive, actual benefits for Kenyan citizens, where possible during the programme timeframe (to mid-2015);

(ii) a focus on laying the groundwork for other initiatives to deliver inclusive local benefits, where they can not be secured during the programme timeframe; and

(iii) transparency, accountability and good governance through increased capacity of extractives stakeholders operating within an improved institutional and legislative frameworks.

(d) Key Beneficiaries

The key beneficiary clients of the Programme services include:

(i) Government

Ministry of Mining (MoM), Ministry of Energy and Petroleum (MoEP), and other Government agencies that play an important role in the governance of the EI sector; and

(ii) Other stakeholders

Civil society actors, industry associations and media representatives, as well as stakeholders in key resource-rich counties (communities, county officials, non-government sector).

(e) Delivery Mechanism

KEIDP is designed to combine direct delivery of Technical Assistance (TA) with a Flexible Funding Facility (the Facility) to ensure a nimble and responsive approach to ensure maximum impact.

(i) Technical assistance

Engagements with the National Government are planned to be delivered primarily through direct technical assistance.

(ii) Facility

Funds for the Facility are being utilized to fund:

(I) National Government requests for support. These are being considered on an exceptional basis.

   (A) MoM Online Transaction Mining Cadastre Portal (OTCMP)

   The Facility funded the engagement of Spatial Dimension as the key contractor for the OTCMP upgrade for MoM.

(II) Partner organizations.

The Facility will allow KEIDP to leverage the significant capabilities of partner organisations, thus supporting sustainability through linking and developing the capacity of Kenyan organisations.

   (A) Information Centre for the Extractives Sector (ICES)

   The Facility is funding the establishment and operation of ICES until December 2014.

   (B) Community Engagement programs
KEIDP’s Community Engagement component shall be identifying, engaging and funding local partners for the design and delivery of pilot project activities in Turkana and Taita Taveta.

(f) KEIDP Inception Report

As KEIDP commenced with the process of developing an Inception Report (the Inception Report) for the programme, simultaneously, programme activities commenced ahead of the finalization of the report, in order to address the urgent needs of the two key ministries, MoM and MoEP. Annex 1 appends the Inception Report.

(i) Programme Priorities

The consultation process during the KEIDP Inception Phase demonstrated that demand for delivery of assistance far surpassed current planned supply. Proposals for activities of direct support were rationalised and prioritised based on the recommendations of the scoping study and DFID’s strategic priorities. As a result, the areas and sequencing of support set out in the Inception Report reflect the Government’s priority needs, as well as DFID’s country priorities, ensuring that DFID’s investment remains relevant and demand-driven. As such the activities proposed in the Inception Report were, subject to Government agreement, designated as having a Very High or High priority and others were designated as having a Medium or Low priority. The activities designated as Very High and High priorities shall be executed under KEIDP.

(ii) Revised Work Plan

Whilst the Inception Report was still in draft form, during a meeting with DFID on 10 July 2014, DFID requested KEIDP to develop a process of clearly identifying the priorities of the two ministries in regards to available resources. As such KEIDP developed a Revised Work Plan, as an annexure to the Inception Report, and in the process, certain activities proposed in the Inception Report were redesignated as having a Very High or High priority and others were designated with a lower priority. The current Work Plan follows a format of component, results and key deliverables and is appended as Annex 2.

(l) Current Status

On 7 October 2014, DFID agreed to baseline the Revised Work Plan. Finalization of the Revised Work Plan is subject to MoM and MoEP approval of their respective components. At the time of writing this report, DFID has submitted the Revised Work Plan to MoM for their approval and will soon be submitting the same to MoEP. Once the Ministries have approved their work streams of the Revised Work Plan, DFID will provide letters of agreement to both
MoM and MoEP that will officially sign off the proposed activities and formalize the support to the Government.

(II) Assumptions

The successfulness of KEIDP activities shall depend on the assumptions that were laid out in the KEIDP logframe appended in Annex 3.

(g) KEIDP Result Chain

Figure 1 below outlines the results chain of KEIDP. This results chain outlines the various levels of results that the programme will work towards achieving for each component and ultimately, how each component will work towards achieving the overall result of KEIDP in ensuring that there’s a more effective governance of the extractives market system in Kenya. This will be achieved by working on results across three different components – the MoM component, the MoEP component and the Community Engagement component. The fourth component, the Cross-cutting Component on the other hand comprises of various activities that, when carried out, shall help achieve results within it’s own sub-components, but also supports the attainment of results across the other components.

While the results are organised in different components, they are inherently intertwined building on synergies across various activities in order to achieve integrated dimensions of change at different levels. For instance, activities under the communications component will not only result in a communications strategy for the MoM & MoEP but will also results in a stakeholder strategy that will also guide how engagement with stakeholders will be carried out under the communications component. KEIDP will collect data and information throughout the life of the programme in order to plausibly associate the changes/results achieved to the efforts of KEIDP.
Figure 1: KEIDP Result Chain

More effective governance of the EI market system

Increased understanding and access to information on the extractives sector: improved capability of MoM & MoEP to effectively engage with stakeholders; local content needs identified; National local content policy developed & extractives sector vision and strategies facilitated.

Mining Bill & Priority regulations drafted, mining policies developed; online cadastre system implemented; organisational structure reformed.

A transparent and participatory reform of the mining sector legislation, policy & regulatory framework conducted; an effectively operational modern cadastre system in place in MoM to support relevant provisions; & MoM organisation structure strengthened to discharge the legal and regulatory framework.

Upstream Oil & Gas Bill, Policy and priority rules and regulations drafted; model contracts drafted; Oil & gas local content policy developed & capacity of DoP strengthened.

Consensus reached on a medium/long term model for effective and inclusive provision of local benefits from the oil industry (Turkana).

Framework for provision of local benefits from the oil industry developed in a consultative manner; Improved public awareness on the new legislation & regulations on ASMs; pilot projects implemented to demonstrate feasibility of the framework & how AMS can participate under a new legal regime.

Consensus reached on a medium/long term model for effective and inclusive provision of local benefits from the oil industry (Turkana).

Increased opportunities to participate in the formal artisanal mining sector.

Improved public awareness on the new legislation & regulations on ASMs; pilot projects implemented to demonstrate feasibility of the framework & how AMS can participate under a new legal regime.

More effective governance of the EI market system

Cross-cutting Activities

Increased understanding and access to information on the extractives sector: improved capability of MoM & MoEP to effectively engage with stakeholders; local content needs identified; National local content policy developed & extractives sector vision and strategies facilitated.

Community Engagement

Cross-Cutting Activities

MoM organisation structure strengthened to discharge the legal and regulatory framework.

Upstream Oil & Gas sector, Policy and priority rules and regulations drafted; model contracts drafted; Oil & gas local content policy developed & capacity of DoP strengthened.

Mining Bill & Priority regulations drafted, mining policies developed; online cadastre system implemented; organisational structure reformed.

Increased opportunities to participate in the formal artisanal mining sector.

Increased understanding and access to information on the extractives sector: improved capability of MoM & MoEP to effectively engage with stakeholders; local content needs identified; National local content policy developed & extractives sector vision and strategies facilitated.
2. Programme Level Reporting

2.1 Component 1: Ministry of Mining

2.1.1 Summary of the MoM and KEIDP relationship

The delivery of support to MoM from KEIDP commenced in January 2014. At this time, whilst conducting research at MoM for the Inception Report, KEIDP also embarked on developing a working relationship with MoM that involved careful review with MoM staff, consultations and negotiations over frequent meetings with the Ministry in order to provide urgently needed TA principally in the area of legislative reform. KEIDP has been able to achieve the following results for Ministry of Mining to date:

(i) KEIDP conducted several redrafts of the Mining Bill based on continued negotiations and discussions of added-value changes that meet Government needs.

(ii) KEIDP has supported MoM through the Parliamentary process, with specific support to the Parliamentary Committee on Environment and Natural Resources responsible for reviewing the draft Mining Bill.

(iii) KEIDP has supported MoM in developing policy briefs with straightforward language that provides information for non-sector reviewers.

(iv) KEIDP has supported MoM in developing Mining Regulations, to append to the Mining Bill, that comply with international standards and best practices.

(v) In the whole legislation process, KEIDP introduced new industry concepts, terminology, and incentives that serve to attract investment and emphasized strong legal, regulatory, financial, and policy criteria throughout the Bill.

(vi) KEIDP has supported MoM in upgrading the Flexi cadastre Mining Cadastre System (Cadastre) and adding an Online Transaction Mining Cadastre Portal (OTMCP). The upgraded Cadastre and OTMCP are planned to be launched by the President of Kenya shortly after the Bill has been passed by Parliament.
### Summary - Activities carried out under the Revised Work Plan

<table>
<thead>
<tr>
<th>KEY DELIVERABLE</th>
<th>DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
</tr>
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</table>
| **RESULT** 1 | **Key deliverable a) Mining Bill drafted with MoM in accordance with international best practice and approved** | 1. KEIDP was the main legal and technical advisor to MoM during the drafting and redrafting process of Mining Bill.  
2. KEIDP has supported MoM through the Parliamentary process, with specific support to the Parliamentary Committee on Environment and Natural Resources by educating the committee about the Mining Bill as well as on the general nature of the legal and fiscal frameworks for mining globally  
3. The first draft of the Mining Bill that KEIDP assisted in introducing key amendments was published on 17 March 2014 and underwent the first reading on 22 March 2014 and second reading in June 2014. The third reading of the Bill is due in October 2014.  
4. KEIDP assisted MoM in consolidating and addressing subsequent issues raised by other stakeholders on the published Bill. KEIDP submitted the final draft Bill on 29 May 2014.  
5. Of the extensive improvements to the Bill, there are 36 very key improvements introduced by KEIDP, ranging from improved transparency to more investor friendliness, to assistance of Government operations. |
| **Key deliverable b) Priority regulations drafted with MoM in accordance with international best practice and fit for presentation to Parliament** | 1. KEIDP supported MoM to draw up a full list of regulations and to prioritize them.  
2. KEIDP supported MoM in developing various regulations including mining taxation, mineral rights, definitions, licence application, land rights, mineral title management, institutional aspects and ASM.  
3. KEIDP is in the process of developing draft Mining Regulations that will regulate the tenement management of Mining Rights, including the technical part needed to program the OTMCP. |
| **Key deliverable c) Mining Policy developed with MoM in accordance with international best practice** | 1. KEIDP supported MoM in developing Mining policy briefs with simple language and template that provides information for non-sector reviewers including key policy makers and decision makers.  
2. In May 2014 KEIDP developed 5 Mining Policy briefs that were |

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2 The Key Deliverables in this document correspond directly to the Key Deliverables listed in the Revised Work Plan

2 The Results listed in this document correspond directly to the Results listed in the Revised Work Plan
<table>
<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
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<tr>
<td></td>
<td>used to educate internal and external Ministry stakeholders about the Mining Bill.</td>
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</table>

RESULT 2

Ministry of Mining effectively operates a modern cadastre system to support the relevant provisions of the new mining regulatory framework

Key deliverable a) Fully functioning transactional online cadastre system implemented by MoM

1. KEIDP led the process with the Cadastre Working Group to assess the Spatial Dimension proposal and to make the relevant recommendation to DFID for the approval of KEIDP Flexible Funding Facility funds for procurement of the upgraded Cadastre and OTMCP.

2. In preparation for the OTMCP, a data-cleaning project was completed. This involved verification of 1289 Mineral Titles from their paper records against the digital records in the Cadastre.

3. As indicated above, KEIDP is developing draft Mining Regulations that will regulate the tenement management of Mining Rights including the technical part needed to program the OTMCP.

RESULT 3

Ministry of Mining reforms its organisational structure to effectively discharge its role in a changed legal and regulatory framework

Key deliverable a) Strategic plan and institutional change management plan developed and implementation plan agreed by MoM

1. Preliminary discussions commenced at a Strategy Retreat with MoM in Mombasa on 26 May 2014.

2. TA was provided to MoM as they developed their strategy documents and organizational structure.

Detailed TA yet to commence.

2.1.3 Summary - Activities that were carried out outside of the Revised Work Plan

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STATUS (COMPLETED, DELAYED, POSTPONED, UNDERWAY OR CANCELLED)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop Mining Regulations based on the <em>Mining Bill</em> 1940 (Cap 306) to allow the launch of OTMCP to be on 1 July 2014.</td>
<td>Completed</td>
</tr>
<tr>
<td>Cadastre Test Portal working and demonstrated at MoM</td>
<td>Completed</td>
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</tbody>
</table>
2.1.4 Narrative – Activities carried out under the Revised Work Plan

(a) Revised Work Plan – MoM Component - Result 1

RESULT 1
Ministry of Mining undertakes a transparent and participatory reform of mining sector legislation, policy and regulatory frameworks in step with the new Constitutional requirements and international best practice

(i) Mining Bill

MoM had a draft Mining Bill that had been developed in 2013, prior to KEIDP commencement (the original draft Mining Bill). The original draft Mining Bill was very weak in that it lacked provisions that dealt with ASM, community engagement, transparency and accountability provisions regarding mining contracts and revenues collection; the Cabinet Secretary was granted too much powers on the grant, suspension, transfer and termination of mineral rights; the mechanisms for the resolution of disputes were not impartial; the duration for Exploration Licences was too short and the size of the Licence Areas that are to be granted for exploration rights were too small compared to other jurisdictions; and security of tenure for mineral rights was generally very weak. These were the key weaknesses of the original draft Mining Bill.

KEIDP commenced providing TA to MoM on the legislative drafting process during the first quarter of 2014 by assisting in developing multiple redrafts of the original draft Mining Bill. This included reviewing the draft Bill in comparison to the existing Mining Act 1940 (Cap 306) and making recommendations for change. KEIDP made several proposals and contributions to the original draft Mining Bill, however the Ministry elected not take up most of them when they were originally suggested. As a result, KEIDP’s contribution was not immediately obvious in the redrafting of the original draft Mining Bill by the Attorney General in March 2014.

The Mining Bill 2014, based on the original draft Mining Bill, was published on 17 March 2014 (the published draft Mining Bill) and underwent the first reading in National Assembly on 22 April 2014. However, this version was still poor and weak. Publishing of the draft Mining Bill, for the first time, provided a public arena for all interested parties to provide their input and raise their concerns on the Bill. As such, concerns were expressed by the media, the Kenya Chamber of Mines (KCM), Civil Society Organizations (CSOs) and the Commission for the Implementation of the Constitution among others. KCM for instance, raised several concerns regarding mineral rights; mining licenses; mineral

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4 In the Narrative Sections throughout the document, the information provided under each Result encompasses all Key Deliverables attributable to that Result
agreements; royalties; and most importantly they wanted a new section for ASM to be introduced in the Bill. In May 2014, the Cabinet Secretary requested KEIDP to assist the Ministry in reviewing the published Mining Bill with the view to address the concerns raised by the various groups mentioned above.

As the core advisor to MoM, KEIDP commenced the redrafting process. KEIDP debated various provisions with the Cabinet Secretary and the Mining Secretary while introducing international standards, best practices, concepts, definitions, and terminology and remaining within the confines of the constitution. KEIDP put persistent efforts to ensure that the issues were relevant for Kenya and would be seriously considered and understood by Ministry and Government officials.

This review of the published draft Mining Bill addressed serious problems, similar to the ones identified in the original draft Mining Bill, and made suggestions for making the proposed new law workable and in line with internationally recognized standards. Following successful discussions and a participatory process that involved both the Ministry and KCM, KEIDP introduced 8 major amendments to the published draft Mining Bill as follows:

(I) Reconnaissance Licences, enabling large-scale airborne and other reconnaissance surveys to be carried out, and Artisanal Licenses that will bring existing small-scale miners into the regulatory framework and make their activities legal;

(II) Community development: local communities are given due consideration and benefit from the impacts of mining;

(III) Transitional arrangements that protect grandfather licences and set out the basic principles according to which those holding pre-existing mineral rights granted under the existing Act will be dealt with in a fair and equitable manner;

(IV) Adding a Mineral Rights Advisory Board as balance to the Mining Cabinet Secretary Powers;

(V) Clarity of institutional roles and responsibilities;

(VI) Time-based actions;

(VII) Considerable emphasis on “definitions”; and

(VIII) Mining taxation.

During this process, two key documents were produced for the Ministry by KEIDP. The first was the published draft Mining Bill with track changes highlighting the various amendments made and the second was a matrix with an explanatory memorandum on the various amendments that were proposed. Of the extensive improvements to the Mining Bill to date, introduced by KEIDP, there are 36 very key improvements that were introduced ranging from improved transparency, improved public safety, more Community benefits, more investor friendliness, better revenue collection to better
KEIDP Progress Report

assistance of Government operations. There were subsequently several iterations of the draft Mining Bill and KEIDP submitted the final draft Mining Bill to MoM on 29 May 2014 (the final draft Mining Bill). The version was then further presented to Parliament as amendments to the published draft Mining Bill. This review process comprehensively changed the draft Mining Bill overall. As a result of KEIDP efforts, the final draft Mining Bill was determined to be much better by MoM Cabinet Secretary, the Ministry as a whole and external stakeholders.

After the submission of the amendments, the Parliamentary Committee on Environment and Natural Resources (the Parliamentary Committee) invited the Cabinet Secretary to discuss the amendments he had submitted to Parliament. On 27 May 2014, KEIDP assisted the Cabinet Secretary to discuss the proposed amendments with the Parliamentary Committee. Simultaneously, KEIDP educated the Parliamentary Committee on the nature of the legal and fiscal frameworks for mining globally. Members of the Parliamentary Committee also took the opportunity to seek views on the comments they had received from the general public following the publication of the published draft Mining Bill.

The second reading of the draft Mining Bill took place on 16 July 2014 at the National Assembly. The reading was accompanied by a detailed report on the work done by the Parliamentary Committee on the Mining Bill and also amendments that were proposed by the Committee based on the discussions with the Cabinet Secretary and the comments received from the general public.

Photo 1: Second reading of the Mining Bill at the National Assembly on 16 July 2014

Following the second reading, the Cabinet Secretary requested KEIDP to review the proposed amendments and compare them to the amendments he submitted to Parliament. KEIDP’s comments
on the amendments were discussed through a series of intensive meetings held in August 2014 with the Cabinet Secretary. After these meetings, the Cabinet Secretary submitted further amendments to the amendments proposed by the Parliamentary Committee. KEIDP assisted the Cabinet Secretary to discuss these further amendments with the Parliamentary Committee on 14 August 2014 and the final meeting with the Parliamentary Committee held on 19 August 2014 successfully concluded the discussions on the amendments.

The final draft Mining Bill is expected to be passed by Parliament in the coming quarter, at the third tabling of the Bill, and ascended into Law in early 2015.

(ii) Mining Policy

As indicated above, KCM raised many concerns on the original draft Mining Bill that was published on 17 March 2014. Following the Ministry’s request, KEIDP reviewed and solved the issues that were raised by KCM through negotiations and in the process developed 5 Mining policy briefs for the Ministry, covering:

(I) Geosurvey and Geoscience aspects;
(II) Ministry of Mining decision-maker powers, authorities and responsibilities;
(III) Health, Safety and Environment- compliance monitoring and enforcement’
(IV) ASM; and
(V) Strengthening Relationships and Communications: National and Local Governments and small communities.

The policy briefs summarised the rationale for including (or not including) certain issues, recommendations and options for addressing those issues, along with advice on a comparative handling of similar issues in other countries. KEIDP’s reviews and comments were used by the Ministry as the basis for its engagement with KCM. KEIDP also assisted the Ministry in explaining and justifying its positions on all the issues raised by KCM.

(iii) Mining Regulations

KEIDP’s support for the Ministry’s legislative reform included developing a full list of regulations required to support the Mining Bill, and then developing a prioritized list of regulations and following that, TA proceeded to developing and drafting regulations for the Mining Bill. During the first quarter of the year, KEIDP developed mining taxation regulatory language and guidance with particular emphasis on royalties – how they would be levied, calculated, collected and monitored. The process was however difficult and challenging because the current regime is relatively silent on the specifics of royalty collection. Counterparts not only from the mining sector but also from the Ministry of Finance
and Treasury were highly astute in recognizing the mining taxation issues and areas to be addressed. Regulations development also involved drafting various notices and forms.

Intensive regulatory drafting and review continued through the second quarter, specifically in May – July 2014 that emphasized the overall regulatory regime. When ASM was introduced in the Bill, following the KCM proposal, KEIDP supported MoM in preparing specific regulations to legalize and instruct ASM. In preparing these regulations, KEIDP drew upon other emerging market/transition economy experiences in order to provide very practical regulatory guidelines that may be adapted to and implemented in Kenya. Discussions on formalization of existing operations took place and it was agreed that ultimately a more formal programme beyond regulatory drafting might be useful. KEIDP also held discussions with MoM Cabinet Secretary and Mining Secretary on the various processes that are required for appropriate exploration licence applications, notably the requirements for a clear first-come-first-served approach, implications for landowner notification and approvals, and above all for licence approval and granting procedures to be transparent (in terms of process) and non-discretionary.

KEIDP also prepared regulatory guidelines and options on land rights, which the Government had raised as a critical issue, but one that lacked clarity. This is because existing Mineral Rights holders approach their land rights in various ways, making an array of payments to various landowners and occupants, creating some confusion. Accordingly, the regulatory drafting attempted to streamline institutional roles in what and how payments would be made and monitored. On land regulations KEIDP succeeded in convincing the Cabinet Secretary and Mining Secretary of the fact that it is not workable to get landowner approvals before lodging a licence application, and that such approvals only need to be sought after a licence is granted, prior to the need to access any particular piece of land.

In August and September 2014, KEIDP also prepared mining regulations on the technical part of the mineral title management that were submitted to the Cabinet Secretary on 15 September 2014.

The process of drafting regulations will continue once the current suspension is raised and there is clear agreement between DFID and MoM.
RESULT 2

Ministry of Mining effectively operates a modern cadastre system to support the relevant provisions of the new mining regulatory framework

(i) Flexible Funding for Cadastre

MoM already had an existing Flexi Cadastre System (Cadastre), however, the Ministry had requested the contractor Spatial Dimension South Africa Pty Ltd (Spatial Dimension) to propose an upgrade and include the possibility to make online applications. Spatial Dimension submitted a preliminary proposal to MoM Cabinet Secretary in late 2013. When KEIDP commenced its support to MoM in January 2014, one of the urgent tasks conducted was to follow up on this proposal and provide TA to MoM for the procurement and implementation of the Cadastre upgrade. KEIDP therefore started defining and advising MoM on the needs of the proposed Cadastre upgrade.

The process started with KEIDP assessing the status of the earlier partial implementation of the ‘Flexi Cadastre’ and conducting a brief review of the existing Cadastre at Madini House in consultation with the Cabinet Secretary, Mining Secretary and Spatial Dimension. The Cadastre was found to be functional, but not up to date. A number of application reviews had been conducted on paper-based applications in parallel to the computerised system, resulting in double records and the granting of licences to non-compliant applicants. After the above-mentioned discussions, Spatial Dimension produced a more complete proposal for an upgrade to the Cadastre and for an Online Transactional Mining Cadastre Portal (OTMCP). In order to review this proposal, a Cadastre Working Group was formed, with participation of MoM, KEIDP and Spatial Dimension. On 25 February 2014, KEIDP and MoM held a Working Group meeting that laid out the deliverables for Spatial Dimension, responsibilities for MoM and the role of KEIDP.

The Working Group assessed the Spatial Dimension proposal, compared it to their earlier proposal and their contract for the implementation of the existing Cadastre. DFID was prepared to consider funding under the KEIDP Flexible Funding Facility. Due to the urgency of the requirement, Spatial Dimension was chosen as a sole-sourcing procurement solution because they already had copy rights of Cadastre in their system as such it would have been very expensive and inefficient to consider other companies for upgrading a proprietary Spatial Dimension system.

KEIDP made recommendations to DFID in regards to MoM’s application for the Flexible Funding, and in particular, to note the commitments from MoM to enable a successful and sustainable implementation. These recommendations were based on KEIDP’s assessment of the Spatial Dimension proposal, supported by the discussions within the Working Group. The proposal included a number of
commitments required from MoM, including aspects like the need for appropriate staffing of the MoM Cadastre Unit, the need for data backlog capture, data cleaning, and the need to budget for on-going annual costs related to software licensing fees and system support by Spatial Dimension. The MoM Cabinet Secretary duly signed the Flexible Funding application form, where the MoM commitments are listed.

(ii) 1 July 2014 Online Cadastre Launch

The signing of the Flexible Funding application led to a simultaneous process of regulatory drafting and review with emphasis on Cadastre processes which KEIDP took charge of. Great consideration was given to the practicality of being able to implement the Cadastre system while attempting to cover critical investor and Government concerns about licensing and monitoring mineral rights. This was an extremely challenging drafting process due to increasing pressure from the Government to meet an extremely short timeline of launching the OTMCP by 1 July 2014.

KEIDP prepared the first set of interim regulations intended to enable the online Cadastre to go live on 1 July 2014. This involved drafting high-level workflow diagrams, specifically to illustrate the processes related to the application for and granting of new Prospecting Licences, informed by the draft regulations that were still being worked on at the time. The initial workflows were intended to be covering only new applications. The intention was to launch the OTMCP only for new Licence Applications, in order to launch by 1 July 2014.

However, it was clear that the new draft Mining Bill, needed for development of regulations that would facilitate the launch of OTMCP, would not be enacted in time. The Cabinet Secretary thus made a decision that the OTMCP would be based on the existing Mining Act 1940 (Cap 306). This new plan meant the KEIDP team was required, again, to amend the draft Mining Regulations in order to permit the OTMCP to work under the Mining Act 1940 (Cap 306). KEIDP developed these regulations that were approved by MoM and forwarded to the contractor, Spatial Dimension. Spatial Dimension programmed the OTMCP, using the amended draft Regulations. The functional OTMCP was presented to MoM on 26 June 2014 including user registration form and the user information flyer.

After several consultations with the Ministry, it became clear towards end of June 2014 that the second plan of developing the mining regulations based on the Mining Act 1940 (Cap 306) would create problems regarding investor attraction and security of tenure. It was agreed with the Ministry to go back to the first plan which was developing regulations based on the current draft Mining Bill, and accordingly to delay the launch of the upgraded Cadastre until the Mining Bill has been passed; the Cadastre regulations have been developed; and the OTCMP has been designed based on the new Cadastre Mining Regulations.
(iii) Cadastre Mining Regulations

The Cabinet Secretary then requested that KEIDP draft the Mining Regulations, based on the draft Mining Bill, which was about to be deliberated for the second reading in Parliament.

During the drafting, several calculations were made that form the basis to draft Regulations with regards to royalties, fees, charges and annual minimum operational expenditures, which need to be competitive with neighbouring countries or countries with similar geological and legal risk ratings.

KEIDP strongly supported MoM in developing the regulations, concurrently explaining the new provisions to the Parliamentary Committee in two sessions. In addition, individual Members of Parliament approached KEIDP for more in depth information, which KEIDP provided.

(iv) Cadastre Data Cleaning

With the development of the Mining Cadastre Regulations, in preparations for the launch of the OTMCP, a data-cleaning project had to be completed. KEIDP supported MoM in the verification of 1,289 Mineral Titles from their paper records against the digital records in the Cadastre, a process that was completed on 25 July 2014. KEIDP worked with MoM Cadastre Unit to set up the data validation procedure, work on various issues related to the move of the Cadastre Unit from Madini House.

(c) Revised Work Plan – MoM Component - Result 3

RESULT 3

Ministry of Mining reforms its organisational structure to effectively discharge its role in a changed legal and regulatory framework

During development of the Mining Bill, KEIDP provided technical advice to MoM on the institutional review part of the bill. In February 2014, KEIDP provided TA to MoM on organizational restructuring for finalization of the Ministry’s annual budget. KEIDP reviewed MoM’s proposal and prepared a brief functional analysis of the proposed organizational structure that proposed recommendations for improvement. MoM included KEIDP’s suggestions into the final plan that mainly included restructuring the organization as well as introducing new departments like the policy and outreach department.

On 26 May 2014, KEIDP accompanied MoM team to Mombasa for a strategy retreat. The strategy meeting agenda was as follows:

(i) Reflect about the last one year - Identify key milestones, Achievements and Challenges;
(ii) Map out the scope of work – to achieve key MoM goals;
(iii) Communication strategy – Investor relationship and Marketing Kenya as a Mining Hub – Identifying important Mining Conferences and make a programme to market Kenya to potential investors;
(iv) New structure of the Ministry - alignment with New Legislation;
(v) Mines and Geology Department – strengthening;
(vi) Airborne Geophysical Survey – Way forward; and
(vii) Identify focus areas for the next financial year 2014/15.

These topics were identified as the main tasks that were to be achieved during 2014/15 and in which MoM requested KEIDP support.

2.1.5 Narrative – Activities carried out outside of the Revised Work Plan

(a) Airborne Survey

KEIDP also provided advice and information to the Cabinet Secretary on the proposed airborne survey of Kenya. The airborne survey is one of the activities proposed in the Inception Report, however it is currently a deprioritized activity due to timing and funding issues.

(b) Cadastre 1 July Launch

As described above, KEIDP developed regulations to allow the launch of OTMCP to take place by 1 July 2014 based on the Mining Act 1940 (Cap 306), including developing a Test Portal working and demonstration at MoM. A contractor was commissioned to modify and program the existing digital Mining Cadastre such that it allowed for the launch of the OTMCP by 1 July 2014. However these regulations were abandoned after MoM resolved development of regulations to be based on the current draft Mining Bill.
2.2 Component 2: Ministry of Energy and Petroleum

2.2.1 Summary of the MoEP and KEIDP relationship

(a) Past relationship status

KEIDP’s engagement with MoEP commenced in January 2014 with a simultaneous process of drafting the Inception Report and building relationships with the MoEP. KEIDP has been able to support MoEP with the development of the following documents to date:

(i) draft Petroleum (Exploration, Development and Production) Bill (Upstream Petroleum Bill);
(ii) draft Model Production Sharing Contract (Model PSC); and
(iii) draft Local Content Regulations

2.2.2 Summary - Activities carried out under the Revised Work Plan

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<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF OUTPUT</th>
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<tr>
<td>RESULT 1</td>
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Ministry of Energy and Petroleum undertakes a transparent and participatory reform of the upstream oil and gas sector legislation, policy and regulatory frameworks in step with the new Constitutional requirements and international best practice

Key deliverable a) Upstream Oil and Gas Bill drafted with MoEP in accordance with international best practice and based on extensive stakeholder consultation

1. KEIDP provided TA to MoEP in developing the initial working drafts of the Upstream Petroleum Bill during the first ITC on Petroleum.
2. After the first ITC on Petroleum retreat KEIDP reviewed the Upstream Petroleum Bill and disseminated comments to MoEP.
3. KEIDP closely monitored and advised the development of the Upstream Petroleum Bill committee during the second MoEP combined retreat of ITC on Petroleum and ITC on energy.
4. KEIDP reviewed the Upstream Petroleum Bill and provided comments and advice on the document during the third MoEP ITC retreat.

Key deliverable b) Upstream Oil and Gas Policy drafted with MoEP in accordance with international best practice and based on extensive stakeholder consultation

1. KEIDP reviewed the draft National Energy and Petroleum Policy and provided comments and advice on the document during each ITC retreat.

Key deliverable c) Upstream Oil and Gas priority rules and regulations drafted with MoEP in accordance with international best practice and based on extensive stakeholder consultation

1. Two (2) sets of regulations are being developed – (i) the Model PSC and (ii) Local Content Regulations.
KEIDP to provide support to the Ministry to draw up a full list of regulations, prioritise them and then develop the prioritised regulations.

Key deliverable d) Model contracts of

1. KEIDP provided technical assistance to MoEP in developing the
2.2.3 Narrative - Activities carried out under the Revised Work Plan

(a) Revised Work Plan – MoEP Component – Result 1

RESULT 1

Ministry of Energy and Petroleum undertakes a transparent and participatory reform of the upstream oil and gas sector legislation, policy and regulatory frameworks in step with the new Constitutional requirements and international best practice

(i) Background

Kenya currently has a Petroleum (Exploration and Production) Act of 1986 (Petroleum Act) and a Model Production Sharing Contract of 2002 (PSC of 2002). Although these two documents were established and adopted to meet Kenya’s needs at those times, they do not fully meet the current international standards and practices. The discovery of oil in Kenya in 2012 made the Government recognize the need for a new petroleum law and a new model production sharing contract that would attract world class investors and set a more stable platform for better governance and regulation of
the industry for the future. As such, KEIDP engagement with MoEP is focused on providing TA for the
development of new legislation.

(ii) Inter-Ministerial Technical Committee on Petroleum – first ITC Retreat 25 March 2014 to 6 April
2014

KEIDP commenced its engagement with MoEP by first building relationships with the Ministry through
meetings and frequent conversations. KEIDP met often with DoP and its staff to discuss a variety of oil
and gas operations, administration, management, best practices, legal issues, contracts, role of the
MoEP, rules and regulations, organizational structure, policy, processes and procedures, and many
other technical issues. This relationship was complemented with trust and confidence. Due to these
meetings and discussions with DoP, KEIDP was invited to be the only non-government member at the
ITC on Petroleum in March 2014. The ITC on Petroleum consisted of 45 high and mid-level
government officials from eight different ministries and agencies with careers in law, accounting,
finance, economics, geology, and engineering.

With this appointment as a member of the ITC, KEIDP was requested to assist in revising the existing
Petroleum Act and existing PSC of 2002, for which KEIDP participated in two separate ITC retreats in
Mombasa. The first ITC on Petroleum retreat took place from 25 March 2014 to 6 April 2014. The
retreat constituted of 24 members including KEIDP, and 23 member representation from six
government institutions (MoEP, Kenya Revenue Authority, Office of the Attorney General, National
Environmental Management Authority (NEMA), National Oil Corporation of Kenya (NOCK), and the
Department of Treasury). The retreat conducted thorough review and extracted concepts and sections
from the following documents:

(I) Petroleum Act – serves as the base document for revisions of the Upstream Petroleum
Bill;
(II) PSC 2002 – serves as the base document for revisions of the draft Model PSC;
(V) International Monetary Fund Fiscal Regime Reforms’
(VI) Recent Petroleum Acts passed by Iraq, Uganda, Ghana, Nigeria, Georgia, Turkmenistan,
South Sudan, Afghanistan, Kazakhstan; and
(VII) Ohio Oil and Gas Law, Texas Railroad Commission Law, Interstate Oil and Gas Compact
Commission documents.

The Petroleum Act and the PSC of 2002 served as the foundation documents to build upon, primarily
for recognition and ownership purposes. Reviewing included conducting research on recently adopted
laws and model production sharing contracts (both within Africa and other parts of the world), review proposed concepts from the World Bank and International Finance Corporation, salvage as much as possible and retain formatting of the current Petroleum Act and PSC of 2002, and propose revisions wherever needed in both documents.

KEIDP was the key advisor in the retreat providing explanations and clarifications of details. The retreat developed initial working rough drafts of analyses and revisions of Petroleum Act and PSC of 2002 language, concepts, methods and functions. At the request of the DoP, KEIDP continued redrafting both documents (resulting in the new draft Upstream Petroleum Bill and the new draft Model PSC) after the first retreat and proposed changes to each one, based on research, language, and terminology. KEIDP emphasized the need for coordination of each document, and new concepts and reforms that were still necessary and needed. The findings of the retreat were presented to MoEP Cabinet Secretary and Permanent Secretary on 14 May 2014 by the ITC on Petroleum. The Cabinet Secretary and Permanent Secretary then directed the ITC on Petroleum to further review and cleanup the two documents at a second ITC retreat in Mombasa, including KEIDP’s proposed changes and other proposed changes from different ITC members. In addition the ITC on Petroleum was also asked to harmonize and resolve all pending issues in the Energy Bill, Energy Policy, Upstream Petroleum Bill, and Model PSC at a combined retreat with the ITC on Energy – separating the upstream petroleum industry from the Energy Bill and Energy Policy.

(iii) Inter-Ministerial Technical Committee on Petroleum and Energy – second ITC Retreat 8 June 2014 to 24 June 2014

This new direction from MoEP Cabinet Secretary and Permanent Secretary led to the second ITC on Petroleum and ITC on Energy Retreat in Mombasa that was held from 8 – 24 June 2014. This retreat constituted of 50 members including KEIDP, Petroleum Institute of East Africa and member representation from eight government institutions (MoEP, Kenya Revenue Authority, office of the Attorney General, NEMA, NOCK, Department of Treasury, Energy Regulatory Commission and Kenya Power). All four draft proposed documents (i.e., draft Upstream Petroleum Bill, Model PSC, draft Energy Bill, and draft Energy Policy) were thoroughly reviewed including the extraction of Petroleum references from the draft Energy Bill and incorporation into the Upstream Petroleum Bill. As a result, four review committees were formulated – Energy Bill, Energy Policy, Upstream Petroleum Bill and Model PSC. The committees’ main purpose was to meet daily and discuss, resolve, and redraft revisions to all the four documents. KEIDP served mostly on the Model PSC committee but also closely monitored and advised the Upstream Petroleum Bill proceedings. Each committee reviewed and revised their assigned documents thereafter two plenary sessions were held for presentations by each committee. On the last day of the retreat, KEIDP was appointed to a subsequent five member team to
conduct cleanup revisions of the Upstream Petroleum Bill and Model PSC and to “harmonise” both documents.

In both retreats the KEIDP served as the main legal and technical advisor, consistently emphasizing the international standards and best practices that the ITC needed to consider.

KEIDP continued to review the Upstream Petroleum Bill, Model PSC and regulations as directed at the second ITC meeting in Mombasa. In July 2014, KEIDP submitted the final track changes to MoEP in order to input the revisions to the most recent drafts of the Upstream Petroleum Bill and the Model PSC from the ITC. Most of the track changes were accepted by the ITC and revised into the documents.

(iv) Inter-Ministerial Technical Committee on Petroleum – third ITC Retreat 29 September 2014 to 11 October 2014

Following the second ITC Retreat in June and the subsequent drafting of the key documents by KEIDP, the Ministry circulated the documents to certain industry stakeholders – private sector and industry associations. Those comments were collated and then a third ITC retreat was called in which those stakeholders were invited to attend and the result was the Joint Technical Committee that met from 29 September 2014 to 11 October 2014 in Mombasa.

KEIDP was invited to attend and KEIDP’s role was to review and advise on the following documents: National Energy and Petroleum Policy; and Upstream Petroleum Bill; Model PSC; and Local Content Regulations. These are currently the official working drafts of the MoEP legislation process.

During this retreat, KEIDP developed and presented Local Content primer and policy briefs to the ITC. KEIDP also reviewed the NOCK National Content Bill and presented the comments to the retreat for discussions. KEIDP worked with the committee to set aside the NOCK National Content Bill and MoEP requested that KEIDP commence the drafting of MoEP National Content Regulations. It was agreed that it would be premature to fix strict targets in the regulations without the information coming from the KEIDP National Gap Analysis5. As such, the findings from the National Gap Analysis6 will be required in developing the final draft of the National Content regulations.

5 KEIDP is currently undertaking a Local Content National Gap Analysis covering supply and demand across both oil and gas and mining sectors.
6 KEIDP Local Content National Gap Analysis Report due Q1 2015
(b) Revised Work Plan – MoEP Component – Result 2

RESULT 2

Directorate of Petroleum (DoP) has the capacity to effectively implement the World Bank managed Kenya Petroleum Technical Assistance Programme (KEPTAP) and on-going legislative and regulatory reforms.

During the second and third quarter of 2014, KEIDP met with World Bank on three occasions in order to map the planned KEIDP activities in the Inception Report against the KEPTAP proposed activities.

Following on from the mapping exercise, KEIDP discussed with DoP where their needs are ahead of KEPTAP and the support KEIDP can provide to assist the DoP to prepare for KEPTAP. Most of those activities will be in the areas of communications and organizational support and shall commence in the next quarter.
2.3  Component 3: Community Engagement

2.3.1  Summary of the Community Engagement Component

(a)  Past CE component status

Initial work-plans for each programme component were formulated within the Inception Report. Over the life of the programme, the Community Engagement (CE) component design has undergone a number of changes over time due principally to the continued revision of the Revised Work Plan alongside changes to resource allocation. This contributed significantly to a delay in finalizing the design and implementation of CE activities.

Despite the delay in finalizing the Revised Work Plan, KEIDP has been carrying out a number of activities related to this component. Efforts have concentrated a lot on creating linkages and initiating relationships with strategic partners both in Taita Taveta and Turkana Counties and in researching and consolidating best approaches to the activities.

In the meantime, efforts have also been made to engage with a wide range of stakeholders through networks based in Nairobi. KEIDP recognizes that both counties have very different and complex operational contexts and the programme is working to take these complexities into consideration as planning continues. Efforts are being made to ensure also, specifically, that conflict sensitivity is incorporated planning and activities.

2.3.2  Summary - Activities carried out under the Revised Work Plan

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<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
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| RESULT 1 Consensus is reached on a medium/long term model for effective and inclusive provision of local benefits from the oil industry in Turkana                                                                 | 1. KEIDP initiated a process of engagement with the Turkana county Governor, County officers and members of the county assembly to introduce the project.  
2. Stakeholder mapping in Turkana conducted and discussions held with a range of stakeholders. These include international development agencies, CSOs, Oil companies and local community organizations.  
3. After many team consultations in Nairobi a plan that aims to |
As indicated above, the CE component has changed overtime. Alongside the development of the Revised Work Plan, KEIDP embarked on a process of re-designing community engagement activities. The largest change was to plans for activities in Turkana. The result is a plan to be piloted in Turkana, described as the “County Integrated Development Plan (CIDP) Process” (CIDP Process), which is described below.

(i) Field trips and Turkana Local Representative

It was deemed important to establish local presence in Turkana County and accordingly KEIDP recruited a KEIDP Local Representative for Turkana in June 2014. The purpose of this role was to ensure strong local presence in the County, build trusting relationships and monitor the context in relation to the programme objectives. The Turkana Local Representative assisted in mapping key stakeholders and networking with potential partners and established contacts with the Turkana County
Governor, various County Officers and members of the County Assembly, informing them about KEIDP. Through the Turkana Local Representative, KEIDP was able to engage with potential local partners such as Friends of Lake Turkana, Diocese of Lodwar and NGOs such as Oxfam GB, World Vision, Danish Demining Group and Safer World amongst others.

KEIDP team had also planned an initial field trip to Turkana in June 2014 in order to access the situation as well as officially meet the local stakeholders and strengthen the established relationships. This trip was however pending the on-going exercise of developing and reviewing the Revised Work Plan.

(ii) Stakeholder engagement

While developing the Revised Work Plan, KEIDP continued to engage with stakeholders at national level. KEIDP held meetings with NGOs such as Oxfam GB, Act!, Danish Demining Group and CordAid. The deliberations with some of the partners focused on potential partnering to support the CIDP process and accessing the organisation’s studies to deepen an understanding of the context, understand the community attitudes and expectations regarding the EI sector and subsequently support the development of effective engagement strategies. KEIDP received proposals from organizations that would like to support KEIDP’s activities at the local level. KEIDP has also met with United Nations agencies including Food and Agriculture Organization, World Food Programme and UNDP in order to obtain an understanding of their programs and their perspectives on the local context.

In September 2014, KEIDP held a round table discussion with three oil companies namely Tullow, Afren and Africa Oil. This meeting deliberated community engagement approaches and communication aspects that would be incorporated into the programme design. The oil companies highlighted the need for a standardised framework to provide guidance on engaging with county government and communities.

KEIDP has also engaged with other donor-funded projects. KEIDP held meetings with the DFID funded ‘Drivers of Accountability Programme’ to learn from them on how the Programme engages with the MoEP as well as checking how the county development process works. More informal conversations have been held with the National Drought Management Authority to keep abreast of the changing situation in the ASALs and among communities and also to learn more of the Hunger Safety Net Programme (HSNP) work regarding cash transfers. Discussions were held with Development Pathways, the Futures Group/GRM International and DAI regarding the Oxford Policy Management’s recent evaluation of the HSNP programme and its potential to be supported by EI generated revenues or as a way of reaching communities with Corporate Social Responsibility (CSR) interventions. Meetings were
also held with private sector and research groups interested in supporting CSR product opportunities linked to cash transfer and small business ventures.

On the communications front, KEIDP held a meeting with a firm called the Well Told Story and discussions were held on new and more creative IT developments to promote dialogue with communities.

(iii) Pilot Activity - CIDP Process

In Q3 2014, a number of internal and external discussions were held on the CE component that helped to clarify the focus on the CIDP process. This has resulted in the development of a plan for the CIDP Process. The purpose of the CIDP process is to create a sustainable way of engaging the community to ensure inclusion in the decision-making process regarding investment from the extractives sector. The CIDP Process is essentially a framework to guide that the use of CSR resources from EI investors wishing to support local benefits is developed in consultation with stakeholders including county government, NGOs, CBOs, private sector and central government complementing the vision of the Ministry of Devolution and Planning.

The current strategy entails complementing the National and County Government devolution process as outlined by the Ministry of Devolution and Planning. CSR funds made available by EI investors would then be aligned with investment plans highlighted in the CIDP. The role of KEIDP will be twofold:

(I) to encourage KEIDP partners (selected from local NGOs/CSOs/CBOs and faith-based organisations) to build community capacity to engage more effectively in the CIDP process; and

(II) to encourage EI investors to work with county government and communities when considering where best to place their CSR resources.

Any pilot activities that are undertaken in implementing the CIDP Process will be used as case studies to test the process and develop best practice guidelines for the Ministry of Devolution and Planning for a national approach to CIDPs. These will be reviewed and decisions made by the Ministry on whether regulation and legislation might be required to standardise a framework for use in other counties in the future.

It’s been noted that carefully designed communications strategies will need to be developed to ensure increased awareness of the realities of the benefits that can be expected from the extractives industries sector. This is especially important since the exploration in Turkana is taking place against a backdrop of a region where there’s an increasing number relief dependent households which have developed a “broker” mentality stifling attempts to build relationships on trust and mutual responsibility.
(iv) Conflict sensitivity

As the programme team continued to design this component, it was deemed important to improve the team’s understanding on conflict sensitivity. As required by the Inception Report, a workshop on the same was held on 18 September 2014 and was attended by eight members of the KEIDP team. This helped widen the understanding on conflict issues and equip the participants on how to plan, implement and monitor from a conflict sensitive perspective.

(v) MoEP Approval

In Q3 2014, KEIDP advised the MoEP Principal Secretary and the Petroleum Commissioner of the CE component of the programme and the intention of piloting the activities described above in Turkana. The Principal Secretary gave the Ministry’s concurrence and requested that the Petroleum Commissioner officially introduce KEIDP to Tullow and facilitates the relationship. This introduction followed soon thereafter.

(b) Revised Work Plan – CE Component – Result 2

RESULT 2

**Opportunities to participate in the formal artisanal mining sector in Taita Taveta are increased through public awareness and pilot project(s)**

(i) Field trips

Field trips to Taita Taveta had been organized in June, July and August this year in order to carry out courtesy calls to the county government, conduct stakeholder assessments, initiate contacts with local stakeholders and inform them on the project. However, these trips were cancelled. KEIDP had initiated contacts with Wildlife Works, Taita Wildlife Forum, the Taita Taveta Women’s Mining Group ‘Thamani Gems’, and the local Taita Taveta University, amongst others. These contacts will still be useful entry points for initiating contacts in the planned visits in future, once clearances/authorisation to travel and engage are approved. The first field trip will be critical to supporting the relationship between central government and county government, designing the awareness and training programs and also for selecting potential partners to carry out the awareness and training programs.

(ii) Stakeholders

KEIDP has also engaged several stakeholders in planning for activities in Taita Taveta, including (KCM) to map out areas of cooperation. KEIDP will utilise this relationship to acquire a list of their member ASMs in Taita Taveta. This information will be used to support programming such as targeting numbers of ASMs to be trained and targeting the feasible numbers to be used for awareness creation.
etc. KEIDP has also engaged with organisations like UN Women, Act and Wildlife Works to assess their presence and activities in Taita Taveta.

(iii) Pilot Activities – Awareness and Training

In July 2014, KEIDP developed a plan for engaging ASM in Taita Taveta. This engagement shall be focused around the Mining Bill and the Health Safety and Environment (HSE) regulations (that shall be drafted once the suspension is lifted). Accordingly the design and execution of this work will be a joint initiative between the Mining and CE components.

(I) Awareness

ASM communities will require education about the legislative change that is coming which will, for the first time in Kenya, legalize ASM activity. Information will need to be disseminated about what the new law means, how to apply for a permit and what a permit holder is permitted to do.

KEIDP intends to engage local partner(s) to train to deliver this awareness to ASM communities in Taita Taveta.

KEIDP is in the process of developing a media strategy to raise awareness on the EI sector. The Communications Advisor is also exploring the most appropriate communication channels for the community engagement component

(II) Training

KEIDP has adopted a strategy of preparing for the ASM training that will focus on HSE. As the Mining Bill is being finalized, KEIDP will soon be supporting MoM with the development of HSE Regulations and these regulations will form the basis of the material upon which training for ASM shall be conducted in Taita Taveta. Such material will cover the handling of explosives and toxic substances, among others.

(iv) Mining Bill

This CE component of piloting ASM awareness and training in Taita Taveta is highly dependent on the passing of the Mining Bill and on the agreement of the Minister for Mining on the proposed set of activities.
2.4 Component 4: Cross-Cutting Activities

2.4.1 Summary of the Cross-Cutting Activities Component

The Cross-cutting Activities component comprises of the following 4 sub-components:

(i) Extractives Primer Training;

(ii) Local Content;

(iii) Communications; and

(iv) Extractive Industries Cabinet Level Coordinating Body.

These 4 sub-components, when implemented, will not only achieve the objectives for which they have been individually been designed, but will also support the achievement of results of KEIDP’s other three key components of MoM, MoEP and CE.

The Cross-cutting Activities component of the Revised Work Plan, like others, has gone through a number changes over the last few months as some activities were deprioritised from Very High and High priorities to Medium and Low priorities under the Inception Report, and new activities added in the Revised Work Plan. At the beginning of the programme for instance, the Communications sub-component was an individual work stream under each of MoM and MoEP's components, however, this was eventually drawn out to be its own stand-alone sub-component under the Cross-cutting Activities. This was in recognition of the important role of Communications across KEIDP. Another example is that the extractives primer on the other hand had various additional activities delivering primer training in both Turkana and Taita Taveta counties, however, due to funding challenges, these were deprioritised and only one EI primer training programme will now be held at national level in Nairobi.

At the onset of the programme, the aim of having a section of Cross-cutting Activities was to address some of the issues that cut across EI in Kenya.

While the relationship between the various Cross-cutting Activities and other components is not explicit in some instances, clear links can be drawn between some of them. For instance the Extractives Primer Training is expected to create a broad understanding on the extractives sector to a few targeted stakeholders who can then utilize that information and knowledge to support the implementation of the programme and to improve and inform decision-making by the attendees, especially the Government. Some of the participants who will be targeted for the training will come from various relevant ministries as well as some community representatives from Turkana and Taita Taveta counties. It is anticipated that the knowledge acquired by representatives from the County
Governments will equip them with sufficient information to support programme activities under the CE component in Turkana and Taita Taveta Counties. Also for example, the Communication Strategy and Stakeholder Engagement Plan on the other hand will create the framework upon which the communication protocols and engagement with stakeholders across a wide spectrum will be drawn from.

### 2.4.2 Sub-Component – Extractives Primer Training

#### (a) Summary - Activities carried out under the Revised Work Plan

<table>
<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RESULT 1</strong></td>
<td></td>
</tr>
<tr>
<td>Understanding of the extractives sector by the national level decision makers and key stakeholders is enhanced</td>
<td>So far, there has been minimal progress in relation to the Extractives Primer training due to the on-going discussions on finalizing the Revised Work Plan. One of the key decisions in relation to the extractives primer training has been that only one training will be held at national level. The targeted participants will include representatives from the national government, national assembly, civil society and the two counties of Taita Taveta and Turkana.</td>
</tr>
</tbody>
</table>

#### (b) Narrative - Activities carried out under the Revised Work Plan

(i) Revised Work Plan – Cross-cutting Activity - Sub Component Extractives Primer Training – Result 1

**RESULT 1**

Understanding of the extractives sector by the national level decision makers and key stakeholders is enhanced

The Cross-cutting work plan in the Inception Report had designated several Extractives Primer Training activities over the life of the programme - one at national level, one in Turkana County and one in Taita Taveta County - however these have now been reduced to one training at national level. This will be held in Nairobi towards the end of 2014. The Extractives Primer Training shall be a 3 day training course that will provide comprehensive, practical training to selected stakeholders to help better
manage the challenges faced throughout the natural resource value chain. The training will adopt a
twinning approach where there will be international consultants paired with local consultants. The
local consultants will provide local perspectives such as in the areas of local content and aspects of
ASM. The international consultants are internationally recognized extractives experts and bring in a
wealth of experience from different areas of the world and apply it to the local context. The in-depth
curriculum covers topics such as mineral and petroleum policy and legislation, contracts and
negotiations, revenue administration for the extractives sector, ASM, community relations and local
content.

2.4.3 Sub-Component – Local Content

(a) Summary - Activities carried out under the Revised Work Plan

<table>
<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
</tr>
</thead>
</table>
| RESULT 2
Strategic national local content analysis is conducted that generates information on local content needs and contributes to the development of the national local content policy |

Key deliverable a) Gap analysis of demand and supply of goods and services in extractives sector conducted

1. KEIDP has developed terms of reference for the Gap analysis.
2. KEIDP conducted stakeholder engagement to get their general view on local content issues in Kenya.
3. The questionnaires for the gap analysis have been developed.

Key deliverable b) Database of suppliers developed

1. From the stakeholder engagement, KEIDP developed a database of suppliers. This database will be strengthened during the gap analysis survey.

Key deliverable c) Consultative formulation of a national EI local content policy is agreed with EI Policy lead in Government

Once the EI cabinet level coordinating body has been established, there is a clear indication from both MoM and MoEP that national local content policy shall be one of the first EI national policies to be developed by the body. KEIDP will be well placed to provide advice on the development of this policy if the body is established during the life of the programme.
(b) Narrative – Local Content - Activities carried out under the Revised Work Plan

(i) Revised Work Plan – Cross-cutting Activity – Result 2

RESULT 2

Strategic national local content analysis is conducted that generates information on local content needs and contributes to the development of the national local content policy.

Local Content work within KEIDP commenced during the first quarter of the year with the drafting of the Inception Report. The purpose of the Local Content sub-component is to align the EI sector with local businesses and create business linkages and opportunities for the local businesses. KEIDP engaged with stakeholders to get the general view of local content in Kenya.

(I) MoM & MoEP Policy and Legislation

Since the inception of KEIDP, KEIDP local content advisors have provided local content primers to both of MoM and MoEP and also extensive legislative drafting advice to both MoM and MoEP.

KEIDP initiated discussions on local content with MoM. In June 2014, KEIDP made a presentation to MoM on local content. KEIDP supported MoM in defining local content during the Local Content Summit in June 2014.

KEIDP also initiated discussions on local content with MoEP and was then asked by the MoEP Permanent Secretary to support the Ministry with the development of local content policy and regulation. As a consequence, KEIDP Local Content Advisors were invited to join the MoEP ITC in Mombasa from 29 September 2014 to 11 October 2014 to provide local content primers and local content legislative and policy drafting advice.

Both ministries are awaiting the outcome of the KEIDP Local Content National Gap Analysis before formalizing their approaches to local content policy and legislation.

It is hoped that these discussions and engagement will continue and contribute to development of a broader National Content Policy in Kenya.

(II) National Gap Analysis

KEIDP identified a national gap analysis as a critical component required for the development of local content policy formulation in Kenya. The aim of the gap analysis is to identify and interview oil & gas and mining industry stakeholders to understand current and forecasted domestic procurement requirements and preferences, levels of commitment to business linkages implementation will be subject to discussion.
With the Revised Work Plan now finalized and the Local Content National Gap Analysis Terms of Reference agreed, the National Gap Analysis planning is currently being finalized and activity will kick off in the next quarter. The methodology is to identify and interview oil & gas and mining industry stakeholders to understand current and forecasted domestic supply and demand procurement requirements and preferences, levels of commitment to business linkages, and so on in the Kenyan context. The National Gap Analysis terms of reference outlines the various phases of the research, the report deliverables and milestones. The result will be a report, to be produced in 1Q 2015, that will contain the results of the study, a supplier database, and local content recommendations for Government, moving forward.

(III) Stakeholder engagement

During the first and second quarter of the year, KEIDP focused on initiating and establishing contacts for assessment of local content issues among other reasons. The key stakeholders that were contacted for initiation of local content include MoM, MoEP, and private companies both in oil & gas and mining.

Discussions with private companies covered local content framework in Kenya, community approach, CSR, security, project developments, critical needs of the EI in Kenya, current exploration projects and planning, present lead contractors, local content approaches, socio economic impacts, vocational training gaps in Kenya, and so on. As indicated under the MoM and MoEP components, KEIDP engaged with the two ministries in providing extensive advice on local content in the legislative development process. Discussions with donors and international organizations were based on the capacity needs in the extractive sector in Kenya as well as vocational training gaps in Kenya.

From this stakeholder engagement, KEIDP developed a database of suppliers and contacts in EI in Kenya. The database and contacts and will be used as key informants for the National Gap Analysis and will be further developed as part of the study. ICES will also use the database for communication purposes.

(IV) EI Local Content Policy

Once the EI High Level Coordinating Body is established, the Local Content Advisors will work with the body to draw up national level local content policy. The results of the National Gap Analysis will be key in developing this policy.
2.4.4 Sub-Component – Communications

(a) Summary - Activities carried out under the Revised Work Plan

<table>
<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>RESULT 3</td>
<td></td>
</tr>
<tr>
<td>Ministry of Mining capability to effectively communicate with stakeholders is strengthened</td>
<td>1. Communication assessment conducted</td>
</tr>
<tr>
<td>Key deliverable a) Communications strategy and stakeholder engagement plan delivered and agreed with MoM</td>
<td></td>
</tr>
<tr>
<td>RESULT 4</td>
<td></td>
</tr>
<tr>
<td>Ministry of Energy and Petroleum capability to effectively communicate with stakeholders is enhanced</td>
<td>1. Qualitative research to develop a communication assessment of the MOEP.</td>
</tr>
<tr>
<td>Key deliverable a) Communications assessment is conducted and Communications Assessment Report is approved by MoEP.</td>
<td></td>
</tr>
<tr>
<td>Key deliverable b) Communications support provided to MoEP on the on-going legislative and regulatory reforms and in preparation for KEPTAP</td>
<td>Work on this hasn’t started in earnest but a few activities have taken place. Developed Terms of Reference for a Communication Officer, DoP.</td>
</tr>
</tbody>
</table>
RESULT 5

A neutral platform to inform and connect stakeholders in the extractives industry and facilitate discussions on extractives issues is provided through the Information Centre for the Extractives Sector (ICES)

**Key deliverable a) Establish and make publicly available a resource database of publications, studies, legislation drawn from different stakeholders to develop knowledge around extractives**

1. Stakeholders in the sector continue to send publications to ICES for further dissemination and hosting on the website
2. ICES is researching and collating publicly available EI material for the region and disseminating widely
3. ICES working to reach out to new and existing stakeholders to build and maintain relationships, and also seek stakeholder buy-in
4. ICES conducting public seminars on EI issues in Kenya and the region

**Key deliverable b) Promote the work of ICES in Kenya and the region to increase subscriptions and online interaction.**

1. The number of subscribers has grown from 150 in April 2014 to 480 in September 2014
2. There have been very few unsubscribers to date

**Key deliverable c) Promote stakeholder relationships and dialogue around key topics through panel discussions.**

1. Participants more informed on the specific topic
2. Willingness of stakeholders to engage with each other
3. Stronger stakeholder relationships established

(b) **Narrative – Communications - Activities carried out under the Revised Work Plan**

At the beginning of the Programme under the Inception Report, the Communications activities were designed as single work stream falling under each of the MoM and MoEP components.

For MoM, the objective was to strengthen the outreach and investment promotion functions of the Ministry of Mining. This was going to be achieved by supporting the development of a costed, time-bound investment promotion strategy for Kenya’s minerals sector and offering on-the-job support for stakeholder outreach and investment promotion activities. These activities were going to be led by an expert from ASI and supported by a senior geologist. However, as the Revised Work Plan revision process continued, the component underwent several changes and it was eventually drawn out from the MoM and MoEP Components and put as a Cross-cutting Activity sub-component. Hence, the Communication sub-component will now focus its support across both the MoM and MoEP components as well as the CE component. The Communications sub-component is now also responsible for ensuring that ICES achieves its output goals. Previously, ICES stood alone under the
Inception Report and did not come under the specific remit of any of KEIDP experts, which it now does.

The Communications sub-component aims to build the capacity of both MoM and MOEP to effectively communicate to its stakeholders. The key deliverables under this component include the development of a Communications Strategy and Stakeholder Engagement Plan for MoM, which is agreed upon by MoM, and the provisions of communications support to the MoEP on the on-going legislative and regulatory reforms, and in preparation for KEPTAP. The section below outlines the activities that have been carried out since the beginning of the programme.

(i) Revised Work Plan – Cross-cutting Activity - Sub Component Communications - Result 3

RESULT 3
Ministry of Mining capability to effectively communicate with stakeholders is strengthened

(I) Past Communications activity status

At the onset of the KEIDP TA to MoM, the Ministry identified the requirement for managing communications as a high priority, with a particular immediate focus on the 20th Annual Investing in African Mining Indaba held in Cape Town from 03-06 February 2014. It’s believed that more than 7,000 individuals were present, representing more than 1,500 international companies from 100 countries and approximately 45 African and non-African government delegations. Kenya was represented by a high level delegation of 7 government officers led by the Mining Cabinet Secretary, in the country’s first official appearance for Kenya since 2007. The key objective of the Ministry was to represent the Kenyan mining sector and to build relationships with industries, countries and certain investor and analyst communities on an informal but structured basis. KEIDP accompanied MoM and provided in-depth support for engagement and presentations at the Indaba.

It was also clear that the Ministry required support in developing internal and inter-departmental communications concerning the development and promulgation of the Mining Bill and the Mining Policy. Both documents in their infancy stage, were being developed urgently, but the process for delivering an understanding of the documents either internally in the Ministry or externally to stakeholders, was unclear and undocumented. Externally, MoM had only basic, informal channels and procedures for communicating with stakeholders. Furthermore, no work was evident of any of the rudimentary tools and ownership of audiences was uncertain and hence unmanaged.

The KEIDP Communications Advisor was given the mandate to support the Ministry in the following short-term activities:
(A) Initial Policy & Growth Workstream activities, to be determined with programme management upon commencement.

(B) Supporting communication of Mining Policy and Mining Bill consultations
Mining Indaba support – Investor promotion activities, development of a communications plan and strategy, supporting delivery of communications in January and February 2014;

(C) Designing the work plan for the mining component of the Policy & Growth Workstream, and for the Vision and Communications Workstream, which will be led by the respective work stream leaders; and

(D) Development of Ministry communications plan

There was however limited scope to effect a meaningful external communications support to the Mining Policy and Mining Bill consultations at this time due to lack of political will. Despite these challenges KEIDP was able to contribute to the internal development of these programmed elements.

(II) Current Communications activity status

On-going activities are focused on providing opportunities for strengthening communications and transparency amongst stakeholders while building a strong foundation for the next steps that need to be addressed as the Government priorities for the Mining sector such as governance, regulatory and compliance issues, revenue distribution, local community and national content requirements, training and capacity building etc. Additionally, there are presentations consistently being developed to address a portfolio of technical, operational and administrative issues that served to create recognition of the portfolio of needs of the Ministry.

In June, the Communications Lead conducted a desk research on the evolution and issues facing the EI sector in Kenya and the political and social issues related to the sector. It was then deemed appropriate to carry out a communications assessment that would clarify the main components of the communication programme. This included a review of the different audiences and their relationships, their information/knowledge needs, available communication vehicles and those that are most appropriate and the means of monitoring impact. The assessment also included a situational analysis and assessment of MoM as well as a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of the same. This assessment was a partial attempt to decipher the conditions within which MoM would develop its Communication Strategy, understand the terms and the conditions within which it can operate, what it seeks to achieve, selecting the stakeholders of focus and determining the right messages. It is hoped that once this assessment is adopted, it would form the basis for the development of a Communications Strategy and action plan for the Ministry.
KEIDP Communications Advisor held a series of meetings and engagement with a number of stakeholders that included, journalist, CSOs, Chamber of Mines etc. Based on preliminary information available, the Communications Advisor developed and distributed a questionnaire on main issues, informational needs and approaches of the Ministry’s clients. The survey was disseminated directly as well as through the Kenya Chamber of Mines. Although the response rate was low, the information obtained allowed several conclusions on the main communication variables. Additional research, at the level of the communities and ASM and other stakeholders was put on hold by the MOM, specifically by the Cabinet Secretary, pending a memorandum of understanding between MoM and DFID that would formalize the relationship regarding KEIDP.

Other activities that have taken place included the development of a number of products on demand by the MoM. These included:

(A) developing a terms of reference for a Communication Officer;
(B) drafting a memorandum containing the main ideas for developing a branding strategy for MOM;
(C) suggestions for the Ministry’s Mission and Vision Statements;
(D) developing a terms of reference for the creative work to develop the visual identity of the Ministry; and
(E) developing a press brief for the OTCMP and preliminary advice for the launch.

(ii) Revised Work Plan – Cross-cutting Activity – Result 4

RESULT 4
Ministry of Energy and Petroleum capability to effectively communicate with stakeholders is enhanced

(I) Past Communications activity status – MoEP

Between February and June 2014, KEIDP made several presentations of the proposed KEIDP activities at the Mombasa ITC on Petroleum retreats, counterparts and stakeholder meetings and discussions, workshops, forums and conferences. Most of this engagement was focussed on encouraging the Ministry to develop an appetite and a plan for graduated stakeholder engagement and public awareness on the on-going legislative reform.

As the Ministry develops legislation and policy, it will need to embark on a well-considered and effective stakeholder engagement and public information campaign and KEIDP has been invited to provide that support, however, capacity at the Ministry to receive and process
communications support is low. Accordingly, KEIDP has provided preliminary support to help build the Ministry’s communications team so that progress on a communications strategy can begin.

These activities provided opportunities for strengthening communications and transparency amongst stakeholders while building a strong foundation for the next steps that need to be addressed as the Government priorities for the oil and gas sector such as governance, regulatory and compliance issues, revenue distribution, local community and national content requirements, training and capacity building etc. Additionally, these presentations addressed a portfolio of technical, operational and administrative issues that served to create recognition of the portfolio of needs and KEIDP assistance and provoked further discussions of current mining and petroleum sector challenges.

In September 2014, the activities concentrated on qualitative research to develop a communication assessment of the MOEP. This involved engaging with specialized mass media, representatives of oil companies, mainly their communications and community engagement officers.

Activities at the level of MoM were still on hold pending a formal agreement between DFID and MOM over the KEIDP support being provided to the Ministry.

(iii) Revised Work Plan – Cross-cutting Activity - Result 5

RESULT 5
Information Centre for the Extractives Sector (ICES). A neutral platform to inform and connect stakeholders in the extractives industry and facilitate discussions on extractives issues is provided through ICES

(1) ICES status

ICES (http://ices.or.ke) was established in December 2013 following year-long stakeholder discussions on how the country can avoid the resource curse following the discovery of oil by Tullow Kenya B.V. in 2012. One of the main gaps identified was the lack of sufficient, credible and relevant information in the sector, gaps that had resulted in the development of high and unattainable expectations by stakeholders and constituents. This led to the establishment of ICES, which is housed at the African Development Bank (AfDB) and is managed by an ICES Coordination Forum Officer, whose role is funded by KEIDP from January 2014 to December 2014.
ICES has continued to gather news around the sector and disseminate the same to its audience through an established email system that currently has 480 subscribers. As a virtual platform, ICES hosts a wide array of publications developed by various stakeholders and covering a wide range of topics. The resource centre has reports from the public sector, civil society, development partners, government as well as media. Some of these reports require publishing rights from the authors that ICES has been able to acquire due to its neutrality.

ICES has also played a crucial role in fostering strong relationships between stakeholders in the sector to allow for dialogue on key issues. This has been achieved by engaging in active discussions on selected topics of mutual interest that has resulted in openness and accountability. The first event was held on 31 July 2014 on transparency in the extractives sector and the second event in October 2014 on the mining sector. In its discussions, ICES is keen on ensuring that the role of each critical stakeholder is appreciated in an effort to establish effective stakeholder dialogue.

ICES has also been fostering linkages between actors in the sector such as introducing new entrants into the Kenyan business arena to the relevant industry associations like the Kenya Oil & Gas Association and the Kenya Chamber of Mines.

While the aim of establishing ICES was to support Kenyans to understand the extractives sector, its membership is global as subscribers are drawn from all over the world. It continues to
provide a neutral platform to disseminate “best practice” drawn from other countries to help inform discussions and subsequently decision-making. It also provides other stakeholders a comparative view of how the extractives sector is managed in other countries.

(II) Revised Work Plan

Under the Inception Report, ICES was treated as an activity funded by KEIDP but as an independent activity, with eventual handover to AfDB. KEIDP provided some institutional development advice for the long-term sustainability strategy and consistent and regular oversight of ICES.

Following the changes to the programme under the Revised Work Plan, ICES is now specifically falling under the Communications sub-component and the purview of the KEIDP Communications Lead.

(c) Summary and Narrative – Activities that were carried out outside of the Revised Work Plan

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STATUS (COMPLETED, DELAYED, POSTPONED, UNDERWAY OR CANCELLED)</th>
</tr>
</thead>
</table>
| Communications support for the Mining Conference - Indaba | Completed KEIDP supported the communications requirements of the Ministry delegation (Minister Balala; Mr Mirie, Economist; Hon. Professor Ekai, Permanent Secretary; Mr Kimomo, Chief Geologist). The duties included:  
  • Message development: Key themes for Ministerial Forum address; speech and presentation preparation and talking points and Q&A for engagements  
  Targeted outreach to existing investors, including introductory meetings with potential investors |
2.4.5 Sub-Component – EI Cabinet Level Coordinating Body

(a) Summary - Activities carried out under the Revised Work Plan

<table>
<thead>
<tr>
<th>KEY DELIVERABLE DESCRIPTION</th>
<th>SUMMARY OF ACTIVITIES TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RESULT 6</strong></td>
<td></td>
</tr>
<tr>
<td>The establishment of an extractive industries cabinet level coordinating body to steer the sector vision and strategies is facilitated</td>
<td></td>
</tr>
<tr>
<td>Key deliverable a) Support the Extractive Industry Policy Framework lead in Government (CS Najib Balala) in mobilizing his Cabinet counterparts to lay the foundation for the development of the Cabinet-level extractives coordinating body</td>
<td>1. KEIDP has initiated the idea of establishment of EI cabinet level coordinating body to MoM and has been working to encourage the political appetite from MoM and MoEP to engage on this</td>
</tr>
<tr>
<td>Key deliverable b) Extractive industry policy briefs intended to support the design of a compelling and inclusive national extractive industry vision are developed and agreed with the Extractive Industry Policy Framework lead in Government</td>
<td>To be developed following establishment of EI cabinet level coordinating body</td>
</tr>
</tbody>
</table>

(b) Narrative - EI Cabinet Level Coordinating Body - Activities carried out under the Revised Work Plan

(i) Revised Work Plan – Cross-cutting Activity – Result 6

**RESULT 6**

The establishment of an extractive industries cabinet level coordinating body to steer the sector vision and strategies is facilitated

In the Inception Report, KEIDP has proposed the establishment of an EI cabinet level coordinating body to develop a national approach and policy towards cross-cutting EI issues in Kenya. Subsequently the President of Kenya issued Executive Order No 2 dated 2 May 2014 that calls on MoM to lead the development of EI national level policy.

Accordingly, KEIDP has continued to provide support and encouragement to both MoM and MoEP to meet in order to set up this body and to carry out the instructions of the President’s executive order.
Direct discussions with MoM Cabinet Secretary motivated him to discuss the proposal with his counterpart, the MoEP Cabinet Secretary, to set up this cabinet body. An initial breakfast meeting had been planned to take place in September 2014, however the lack of formal agreements on the Revised Work Plan between DFID and MoEP led to postponing of the meeting.

When the cabinet body is established, KEIDP will work with the Government to develop a priority list of national EI level policies to be developed, work to set up separate working groups to address the development of those policies and work to provide advice, policy briefs to those working groups and assist with drafting of policy. Strong indications from Government are that national local content policy shall be high on the agenda.
3. Challenges, Risks and Lessons Learned

3.1 Challenges and Measures to Address Challenges

This section outlines the major challenges experienced by KEIDP, risks faced and the lessons learnt from 14 November 2013 to 30 September 2014.

Most of the challenges and lessons learnt are associated with the continuous revision of the Work Plan alongside the subsequent changes to and uncertainties around resource allocation. A large percentage of the risks faced by KEIDP are also related with the delay in approval of the Revised Work Plan and its effects on the relationship with key counterparts, most especially both MoM and MoEP. Most of the activities commenced and have been going on while development of the Work Plan was taking place.

3.2 Risk Management

This section outlines the major risks that KEIDP has faced and continues to face, the mitigation measures taken to address those risks as well as any follow-up that's needed to reduce the level of risk to as low as possible.

In the table below, KEIDP has divided the risks into two major parts. The first part is the general programmatic risks; those risks that affect the programme as a whole and at a macro level and those that are specific to the various programme components. Apart from the delayed approval of the Revised Work Plan (which, once addressed will remove a lot of bottlenecks for the programme to move quickly into delivery mode), the other major risk that the programme will continue to face is that of vested interests that can hamper the effective delivery of programme results. The major mitigation measure to address this is to consistently monitor the context and identify the most appropriate measure of addressing issues identified. Conflict sensitive programming is also being applied during planning, implementation and monitoring.

<table>
<thead>
<tr>
<th>RISK</th>
<th>MITIGATION MEASURE</th>
<th>FOLLOW UP ACTION/REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROGRAMME LEVEL RISKS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Delayed approval of the Revised Work Plan.</td>
<td>Consistent engagement and dialogue with DFID on the work plan</td>
<td>DFID has recently approved the Revised Work Plan as a baseline document</td>
</tr>
</tbody>
</table>

COMPONENT - MINISTRY OF MINING
<table>
<thead>
<tr>
<th>RISK</th>
<th>MITIGATION MEASURE</th>
<th>FOLLOW UP ACTION/REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Relevant legislation and regulations not passed by Parliament in time.</td>
<td>The timetable is already delayed but still on course. Continue providing good advice to the Cabinet Secretary and support him to continuously lobby Parliament</td>
<td>Continue supporting the Cabinet Secretary and providing any technical assistance when needed</td>
</tr>
</tbody>
</table>

**COMPONENT - COMMUNITY ENGAGEMENT**

<table>
<thead>
<tr>
<th>RISK</th>
<th>MITIGATION MEASURE</th>
<th>FOLLOW UP ACTION/REMARKS</th>
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<tbody>
<tr>
<td>3. Lack of programme presence in the counties for continuous engagement at local level.</td>
<td>Engage local partners to start developing relationships and ensure local presence.</td>
<td>Continuous engagement with partners to keep abreast of what is happening and design the programme in a responsive manner</td>
</tr>
<tr>
<td>4. Relevant legislation and regulations not passed by Parliament in time (affects the legalisation of ASM)</td>
<td>Support the Minister to continuously lobby Parliament</td>
<td>Continuous engagement and follow-up</td>
</tr>
<tr>
<td>5. Flexible Funding Facility resource constraints and delay in the work plan approval may affect the effective implementation of the pilot projects within the timeframe</td>
<td>Design lean, integrated and streamlined pilot projects. Leverage opportunities by other organisations such as tapping into private sector resources e.g. CSR initiatives or piggybacking on existing projects.</td>
<td>Carry out continuous context analysis to keep abreast with changes in the operating environment and ensure the project is responsive to the context</td>
</tr>
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</table>

**COMPONENT - CROSS-CUTTING ISSUES**

**SUB-COMPONENT - COMMUNICATIONS**

<table>
<thead>
<tr>
<th>RISK</th>
<th>MITIGATION MEASURE</th>
<th>FOLLOW UP ACTION/REMARKS</th>
</tr>
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<tbody>
<tr>
<td>6. Inadequate access to information necessary to develop strategies.</td>
<td>Continuous negotiation and dialogue with the relevant ministries</td>
<td>Continuous negotiation, dialogue and follow-up especially after work plan approval and once the letter of agreement is signed</td>
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**ICES**

<table>
<thead>
<tr>
<th>RISK</th>
<th>MITIGATION MEASURE</th>
<th>FOLLOW UP ACTION/REMARKS</th>
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<tbody>
<tr>
<td>7. Uncertainty in continuation of this component</td>
<td>Seeking alternative sources of funding. Explore options on formalisation of ICES</td>
<td>Continuous engagement with DFID, UNDP, ASI and other interested strategic</td>
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<td>RISK</td>
<td>MITIGATION MEASURE</td>
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<td>stakeholders to explore the options for the legal identity and follow-on plan</td>
</tr>
<tr>
<td>8.</td>
<td>Willingness of stakeholders to engage with ICES if they are perceived as not neutral.</td>
<td>Maintain a neutral stand on the issues covered and encourage participation of a variety of stakeholders.</td>
</tr>
<tr>
<td>9.</td>
<td>Inability of ICES to produce content for the website</td>
<td>Work with other stakeholders to produce content to be disseminate by ICES</td>
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</table>

**SUB-COMPONENT - EXTRACTIVE INDUSTRIES CABINET LEVEL COORDINATING BODY**

<table>
<thead>
<tr>
<th>RISK</th>
<th>MITIGATION MEASURE</th>
<th>FOLLOW UP ACTION/REMARKS</th>
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<tbody>
<tr>
<td>10.</td>
<td>Lack of political will to engage across government on extractive sector issues.</td>
<td>Continue dialogue and negotiations with the key ministries, focusing on MoM and MoEP as a starting point.</td>
</tr>
</tbody>
</table>
3.3 Lessons Learned

KEIDP has learnt a number of lessons during the current reporting period. These lessons have helped and will continue to strengthen programme implementation as well as improve engagement with Government.

This section outlines the major lessons learned that KEIDP has undergone to date. A more thorough and detailed lessons learned analysis for the programme shall take place in Q2 2015.

<table>
<thead>
<tr>
<th>THEME</th>
<th>DESCRIPTION</th>
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</thead>
<tbody>
<tr>
<td>1. Understanding the context</td>
<td>Understanding the political, social and economic context in the sector and especially the intricacies of engaging with the government and the donors continues to prove to be an important skill to apply as various negotiations and programme implementation continues. These skills will continue to be applied as the KEIDP team gets ready to engage with the communities and other stakeholders in Turkana and Taita Taveta counties.</td>
</tr>
<tr>
<td>2. Continuous engagement and transparency</td>
<td>Continuous engagement and transparency with all key stakeholders throughout the process especially the government counterparts is critical to get buy-in, internal commitment and consolidate every gain made in the process from one work stream to the next to ensure that the results of the programme are met and to lay the foundation for future investments in the sector.</td>
</tr>
<tr>
<td>3. Relationship building, respect and trust</td>
<td>KEIDP recognises that the successful working relationship between the programme and MoM has resulted largely due to the huge investments made in committing a lot of time upfront engaging with the MoM. The personal relationships established by various consultants built inroads that enabled building of an institutional relationship between KEIDP and MoM. This has also created a sound platform to engage with MoEP. KEIDP made a deliberate effort to translate personal relationships into an institutional relationship noting that partnerships happen between institutions but succeed due to individuals. Like most projects, it is clear that the success of this project will depend a lot on the trust and cordial relationship between the KEIDP and MoM.</td>
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<td>THEME</td>
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<td>the project counterparts.</td>
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<td>4. Flexibility</td>
<td>Flexibility has also been adopted within the programme resulting in a successful working relationship with Government counterparts.</td>
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<tr>
<td>5. Build on respect for the client</td>
<td>Respect for the client counterparts is paramount. The project approached the counterparts with respect and building on capacity and capabilities available and offering guidance on areas where there are gaps. This approach will continue to be used.</td>
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4. ANNEXES

Annex 1: KEIDP Logframe

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More effective governance of the extractives market system (Extractives Industry Component)

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Number of strategic and operational documents developed by MOM & MOEP with KEIDP and approved by the Counterparts (Institutional Change Management Plan, Communication Strategy, Stakeholder Engagement Plan)

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<td>Programme M &amp; E system</td>
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Number of people provided with increased information on the extractives sector ( disaggregated by training, access to information on the oEES platform, others )

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Quality of engagement demonstrating local community involvement in the extractives sector
### MFACT WEIGHTING (%)

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<td>Planned</td>
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<tr>
<td>Number of stakeholders engaged to advance the objectives of the Kenya Extractives Development Program (KEIDP)</td>
<td>16</td>
<td>32</td>
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</table>

**Source:** Program Review System

### INPUT 1 (E)

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<tr>
<th>DFID (E)</th>
<th>Total (E)</th>
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**SA 1M excl. payment to UNDP of 50 15M (that KEIDP is not accountable for)**

### INPUT 1 (HR)

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<tr>
<th>DFID (PTE)</th>
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**Notes on achieved milestones**

1. Progress on this indicator will be reported in the next quarter. All activities are awaiting approval of the workplan and go ahead by the MoM & MoECP.
2. Progress on Output Indicator 4.4 will be reported in the next quarter. All activities are awaiting approval of the workplan and go ahead from MoM & MoECP.

---

The Mining Bill that existed prior to the start of the project was inadequate and did not meet international best practice.

**KEIDP anticipates to work on at least 6 deliverables over the 18 months of program implementation. So far, 7 milestones have been achieved here - the Mining Bill is at an advanced stage and will be tabled for the third reading in Parliament in October 2014. The mining regulations drafting is underway. It is anticipated that the rest of the deliverables will be achieved in the next 9 months which is the time left up to the end of the project period which is June 2015. Indicative regulations and regulations include the Oil and Gas Bill, Oil & Gas rules and regulations etc.**

**A draft Strategic Plan for the Ministry of Mining (MoM) exists but is inadequate as indicated by MoM. KEIDP will support its finalization and advice on its implementation.**

**Others includes other ways in which people are provided with increased information on the extractives sector e.g. through the community engagement component planned training of facilitators (TDF) training for artisanal miners in Taita Taveta.**

**This is a qualitative measure. It is anticipated that quality of engagement between the local community and various stakeholders i.e., the county government, extractive industry players and other and relevant stakeholders will improve over the life of the project. This will be measured through conducting Focus Group Discussions, key informant interviews and gathering regular feedback from identified local parties.**

**This indicator will include all meetings where 2 or more interested parties have a strategic dialogue that advances the objectives of the KEIDP.**

**This is a cumulative figure of the total number of stakeholders who will be engaged over the life of the project.**