

Engaged Scholarship in a 'Minefield'

On the Challenges of Studying Resistance to Resource Extraction in Kenya

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1. Introduction

A recent leak exposes that First Quantum Minerals, a Canadian mining company, had contracted a UK-based political lobbying firm to covertly influence the 2011 presidential elections in the Democratic Republic of the Congo (DRC), where First Quantum was embroiled in a dispute with the government over its concession to mine copper and cobalt in Katanga province (Waterson and Davies 2022). Local communities and NGOs that were fighting First Quantum's actions at the time were undoubtedly oblivious of such high-level tactics being pursued by their adversary. This leak illustrates the scale of the challenge that civil society faces in holding mining corporations to account. By extension, these challenges also affect the work of engaged scholars who try to understand the power dynamics in resource extraction conflicts in solidarity with local communities whose rights to land and livelihood are at risk of being trampled upon (Kirsch 2018).

In this contribution we highlight three complications in studying civil society resistance in relation to resource grabs in Sub-Saharan Africa. Each of these concern confusion about the identity of the actors that operate in and around these contested spaces, often involving their interlinkages. We draw on our (field) experience in coastal Kenya (2018–ongoing), where we study three controversial mining cases (coal, titanium, and salt) as part of a research project commissioned by the Dutch Ministry of Foreign Affairs to critically review the assumptions underlying

its civil society support framework.¹ Each case is briefly described in Section 2, before turning to the complications that we have come across in Section 3. A first complication, which particularly afflicts the coal mining case, is the opacity around the ownership structure of the mining actors involved. The actual decision-making loci of these prime advocacy targets are difficult to pinpoint, which compromises the effectiveness of civil society advocacy efforts. A second challenge consists in the intimate but often concealed relation between the business and political elite in Kenya. Where commercial and political interests coalesce, targeting a business actor may trigger a counter-tactic in the political domain, or vice versa, which adds to the unpredictability in advocacy success.

A third and final identity-related issue, which we stumbled upon in each of the cases, is posed by a set of hybrid organizations that have emerged between communities, corporates, and state authorities. While it is difficult to capture these by a collective label, given their diversity in set-up, role and mandate, these are perhaps most akin to ‘boundary organizations’ (cf. O’Mahony and Bechky 2008). Boundary organizations are special collaborative outfits between unusual allies that “can accommodate the varying interests of parties by providing a mechanism that reinforces convergent interests while allowing divergent ones to persist” (ibid.: 426). Cast in a positive light, these entities “deliberately blur boundaries between two or more distinct social worlds to allow all sides of the boundary to present their discussions in a way most favourable to their own perspectives and constituencies whilst leading to more productive policy making” (Franks 2010: 286). The initiative to set up such go-between organizations varies across our cases. Following the terminology used in the civil society literature, these qualify as quasi-autonomous NGO (QUANGO) or government-organized NGO (GONGO) if instigated by the government, or, alternatively, as business interest NGO (BINGO) or business-organized NGO (BONGO) if the initiative emanates from the private sector (Cumming 2010). In both cases the loyalty of these organizations is often unclear or contested, which adds further ambiguity to the constellation of actors in the mining landscape.

1 More information on the project team and partners is available at <https://includeplatform.net/theme/land-rights-advocacy-kenya/>. We are grateful to all collaborators on the project in both Kenya and the Netherlands, and acknowledge funding from WOTRO Science for Global Development (grant no.: W08.311.108). We are especially indebted to Selma Zijlstra, PhD candidate at the department, who collected part of the data that informs this contribution. Research permission was obtained from Kenya’s National Commission for Science, Technology and Innovation (P18/11005/23680).

Finally, in Section 4, we briefly reflect on how scholars can be equipped adequately to deal with these complications in a bid to offer effective accompaniment to marginalized populations facing powerful adversaries in resource-rich areas.

2. Profiles of Resource Extraction Conflicts under Study in Eastern Kenya

Coal (Kitui County)

In Kitui County, coal was discovered in the early 2000s, and mining plans in the Mui Basin were formally announced between 2010–2015. The largely rural population is already economically marginalized, due to increasing droughts and lack of infrastructure to market their products, but nevertheless feels strongly connected to its ancestral lands. The county government has repeatedly threatened the population with eviction to a proposed area that is even drier and in close proximity to other populations. The Mui inhabitants therefore fear loss of livelihoods, community disruptions, and potential conflict with host communities, apart from concerns about environmental destruction. The government has initiated a process of land titling in view of possible compensation, which community members claim is done too slowly and inaccurately. A court case initiated by community members and Kenyan human rights organizations ruled in favor of the mining proponents in 2015, but set conditions on public consultation and compensation of affected community members, which have not yet seen any follow-up. The investors, a combination of Kenyan and foreign entities detailed below, have not been seen on the ground, and mining activities have not been initiated at the time of writing. The local communities, assisted by a range of NGOs, remain in limbo as to their future in or outside the Mui Basin, but continue to resist the mining plans.

Titanium (Kwale County)

The exploration for titanium in Kwale's mineral sands started in the early 2000s with a Canadian company (Tiomin), which sold its project assets to a relatively inexperienced Australian mining company (Base Titanium Limited, henceforth BTL) in 2010. Actual extraction only took off in 2013. According to the company website, BTL currently employs about 1,100 people, claimed to be 97% Kenyan, and generates 65% of Kenya's total mineral output value. Resettlement of households has taken place in various waves, both by Tiomin and BTL. Although Resettlement Action Plans were in place, the implementation, which was mainly left to the



Activists protesting in the streets of Nairobi against a planned coal mining investment by a Kenyan-Chinese consortium.

Photo: Maaiké Matelski, June 2019.

government, was fraught with irregularities. Moreover, conflicts ensued between relocated households and their host communities, among other reasons because of erratic issuance of title deeds, where relocated people found people already living on the plot of land they had been allocated. Others were assigned plots in swampy areas. Meanwhile, there are people left behind in areas just outside of the mining lease area, who have witnessed their village disintegrate and still await relocation.

Salt (Kilifi County)

Along a 40–50 mile coastal strip, salt is mined by five Indian/Kenyan-owned companies. They started operations mostly in the 1980s on a government lease. Although the government and the salt companies tend to downplay the number of original inhabitants occupying the area designed for salt mining during that time, people had been living there for decades and consider it ancestral land. Since most lack title deeds, however, they were deemed “squatters” and numerous households have been evicted, sometimes by force. They were not compensated for their land as such, only for standing crops and structures, but human rights groups claim

that this gesture was grossly inadequate. Moreover, in some cases, compensation has not been paid out even today. Communities also complain about the salination of fresh water wells, soil fertility loss, health problems, and sea water pollution and mangrove forest degradation, affecting fishing activities.

3. A Game of Guess Who?

Opaque Corporate Governance Structures

An illustrative case of opacity in ownership can be found in the Mui Basin, where the Kenyan government has given out two concessions for coal mining. The northern Blocks C and D were awarded to Fenxi Mui Mining Co. in 2011, while the southern blocks A and B were granted to the HCIG-Liketh consortium four years later. However, it took investigative journalists painstaking efforts to reveal the multi-layered ownership behind each of the concessions to the Kenyan public (see Figure 1 for authors' reconstruction). The ownership profiles feature striking differences as well as similarities. An important difference is that Fenxi Mui Mining is a public-private partnership, as the Kenyan government holds a (minority) stake, while HCIG-Liketh is a purely private consortium. A parallel exists in that both consortia involve a Chinese partner; Shanxi Fenxi Mining and Hebei Construction and Investment Group (HCIG), respectively. In the first concession a third company is involved whose role is unclear, but which is reportedly majority-owned by a Kenyan national. The second concession lacks such a Kenyan connection and involves South African miners instead (Liketh). Regarding the Chinese involvement, it is important to note that both Fenxi and HCIG are part of large conglomerates owned by the governments of Shanxi province (Fenxi) and Hebei province (HCIG). Hence, the overall ownership assemblage is complex, involving three public entities, if we add the Kenyan State, and two private ones, one of which being foreign with a parent-subsidiary structure (Liketh). This implies that the locus of governance is distributed across at least five geographical nodes; Nairobi, Middelburg (South Africa), and Jiexiu (Shanxi), Taiyuan (Shanxi) and Shijiazhuang (Hebei) in China.

For transnational advocacy purposes the China and South Africa connections are problematic. If the ownership trail ran to a Dutch company, for instance, Kenyan civil society could make use of a 'boomerang' strategy, where it would engage a Dutch civil society counterpart to confront the Dutch owners within its own jurisdiction (Shipton and Dauvergne 2021). However, opportunities for such transnational advocacy partnering are slim in China and South Africa, as

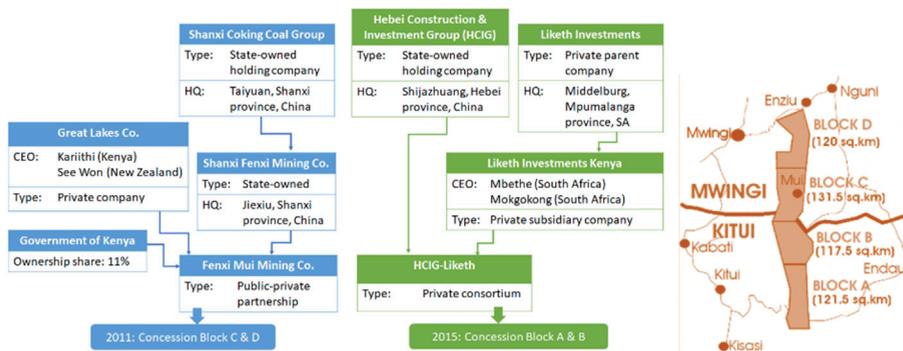


Figure 1. Concession ownership structure in Mui Coal Basin; authors' reconstruction from official press releases and investigative media reports.

Source: Investment Prospectus 2013-2016, Ministry of Energy & Petroleum, Republic of Kenya.

civil society organizations in emerging economies might operate under too many restrictions or be too absorbed in domestic rights violations to take on a foreign case (ibid.). Also, in the case of Chinese actors, advocacy aimed at arm-twisting corporates into legal compliance would be futile, as the code of conduct that the Chinese government has formulated for overseas operations has no legal status and thus remains a voluntary guideline (ibid.). Academic work by scholars from emerging economies may nevertheless prove helpful in understanding the transnational chain of corporate governance. For example, Shi and Hoebink (2020) trace how business ventures overseen by provincial governments in China, carried out under a veil of South-South cooperation, work out on the ground in Uganda.

We suspect that the obscurity around corporate ownership can partly explain our observation that civil society organizations in Kitui often target local and national government bodies rather than the mining companies directly. It is a common strategy to remind public powerholders of their duty to protect citizens and to mobilize these bodies to mount pressure on corporate actors to behave more responsibly. However, this indirect strategy carries a particular risk, to which we turn next.

Business-Government Proximity and Neo-Patrimonialism

A recent study into corporate governance and accountability practices in Kenya offers a damning account of Kenya's state of affairs (Kimani et al. 2021). The researchers explain this dismal performance by pointing at a vigorous neo-patrimonial regime, where they understand neo-patrimonialism as

[...] a broader phenomenon encompassing relationships of loyalty and dependency that are embedded in formal political and administrative systems, and as a result, *the divide between private and public interests becomes an intentionally blurred one*. One important feature of neo-patrimonial systems is the continued display and pretence (a façade) of legal-bureaucratic norms and structures (to maintain legitimacy) which co-exists with relations of authority based on interpersonal rather than impersonal interactions (ibid.: 6, italics added).

This builds on earlier work by Kelsall (2011) drawing attention to the prevalence of ‘parallelization’ and ‘obscurantization’ of political and economic activity in African contexts. Based on interviews with 14 senior corporate executives and 12 members of regulatory boards, Kimani et al. (2021) contend that “tribalism and powerful networks of patronage and clientelism interfere with board appointment processes” (ibid.: 15), which feeds into a widespread culture of rent-seeking. Likewise, Ayhan and Jacob (2022) conduct key informant interviews in Kenya’s coal mining sector and conclude that “[r]ent-seeking dominates and energy deals are awarded based on connections to political elites” (ibid.: 180).

Our cases also contain hints of potential conflation of political and corporate influence. For example, the Australian-based (and UK-listed) titanium mining company in Kwale (Base Titanium Limited) appointed three new members to its Board of Directors in 2018. One of these – the new chairman – had earlier acted as one of the lawyers in defense of ex-President Uhuru Kenyatta (2013–2022) when he was charged by the International Criminal Court in The Hague for his role in orchestrating the post-election violence in 2007–08 (Mwita 2018). This new appointee is listed in the top-20 richest Kenyans with a net worth of \$2.4 million (Billionaires Africa 2021). A second member, in the role of non-executive director, also wields strong political connections, having a long track record on the boards of various of Kenya’s parastatals (e.g. chair of the government-owned Industrial and Commercial Development Corporation). He is also described in the media as Kenyatta’s “Mr. Fix It” (The Standard 2022).

In this light it is interesting that BTL has committed to the reporting guidelines of the global Extractives Industries Transparency Initiative (EITI). The company’s general manager of external affairs expresses the following on the EITI website: “Although Kenya is not currently classified as a candidate country, BTL encourages the Government of Kenya to adopt the EITI Standard and it advocates at every opportunity that Kenya applies for membership.” Heeding this call

would imply that the Kenyan government needs to step up its accountability with respect to the resource rents it collects.

The ‘too close for comfort’ relationship between the political and business elite in Kenya can interact toxically with the opacity of governance structures in global mining, as observed by Schilling et al. (2021) in resource extraction cases in Bolivia, Peru, and Kenya. They explain how “local, national and global scales [...] interpenetrate and co-constitute each other” (ibid.: 10) and, as a result, “state entities and corporations, in many cases together with local pro-extraction actors, form resource assemblages that create downward pressure on communities and on actors who are critical of extraction” (ibid.: 10). The next sub-section zooms in on the ‘boundary organizations’ that form part of these resource assemblages and discusses their role in shaping relations with the affected communities.

Hybrid Organizations and Handshakes

In each of the three cases *liaison committees* (LCs) have been established, either at community and/or sub-county level. These serve as interface between (groups of) communities and companies and, as such, form the first line of the grievance handling mechanism. The set-up of LCs is typically initiated by the mining company or, in the salt case, by the employers association on behalf of multiple extractive businesses active in the area. Members of community liaison committees are recruited and appointed via village elections. In the case of sub-county committees, spots are reserved for area community leaders representing different marginal groups (women, youth, and disabled persons), political leaders, religious leaders, and county government representatives (Kerecha et al. 2019). LCs may be ‘special purpose’, addressing specific grievances, such as dealing with the issue of access roads around mining sites or mangrove forest conservation.

Another category of boundary organization is up and running in the titanium case: *community development agreement committees* (CDACs). Drawing up a community development agreement (CDA) is mandatory for extractive companies under the Kenyan Mining Act 2016, and a multi-stakeholder committee needs to be set up for oversight of the community projects that are part of the agreement, as per the Mining Regulations 2017. A CDAC consists of 11 members and features a wider range of stakeholders than LCs, including three company representatives, the governor and commissioner of the county, a county assembly member, a representative of a civil society organization, and community members representing different vulnerable groups (Kerecha et al. 2019). While its mandate is not clearly delineated, the main task of a CDAC concerns co-implementation and monitoring of Corporate Social Responsibility (CSR) projects, such as scholarship programs

or health service provision, but it also acts as second-line dispute settlement mechanism on issues stretching beyond the CSR domain.

Our conversations with villagers in a large set of affected communities reveal that LCs and CDACs are a divisive issue. The election process of LC members is a recurring flashpoint. In the titanium mining zone, each village appears rife with rumors that the LC elections were staged by the company, pushing carefully groomed ‘pawns.’ Also, LCs are oftentimes accused of unduly appropriating company information and conducting backroom deals with corporate representatives. The perks available to LC members attract particular suspicion. In the coal mining zone, LC members have been taken on ‘exposure trips’, including a visit to China. Interestingly, one of the participants was unable to recall during an interview whether this trip had been arranged by Fenxi or the Kenyan government. A community member from Mui Basin commented that the government, the LC and Fenxi appeared to be “one and the same thing”, and suspected that the community members in the LC had been given money to support the mining plans. A final observation on LC members is that not all of them are strongly embedded in the community they represent. While born in the village, some have spent most of their lives in urban centers like Nairobi or Mombasa instead.

Opinions on the CDAC installed in the Kwale mineral sands area are equally disconcerting. Since the committee exercises control over company funds for charitable projects, allegations of corruption frequently surface in the narrative of the communities. CDACs feature a relatively large contingent of politicians who are, arguably, more embedded in the neo-patrimonial culture of greasing palms, more commonly referred to as ‘handshakes’ in Kenya. In the salt mining belt, an ardent loyalty issue played out when a locally rooted and strongly anti-mining civil society organization took the initiative to set up a multi-stakeholder CSR committee in absence of a CDAC. When the CSR committee decided to join hands with the Kenya Association of Manufacturers (KAM), which also represents the interests of the salt mining companies, the civil society organization considered them ‘compromised.’ Under the assumption that they had become a mere extension of the salt companies, it took its hands off this multi-stakeholder platform.

Despite occasional praise for delivering concrete results, the overall impression is that the proliferation of boundary organizations feeds mistrust and thereby strains social relations, especially within communities themselves. People waste energy trying to find out other people’s allegiances, which may switch overnight if courted or bribed. The presence of hybrid go-betweens thus puts an extra layer of ambiguity onto a landscape already beset by muddled identities. This also has repercussions for scholars exploring this minefield. For example, people sought

out clues as to our own loyalty, even trying to figure out, on the basis of the direction from which we arrived at the village, whether we had passed through the company gate or the human rights defenders' office.

4. Anticipating Complexity When Studying Resource Extraction

In the face of the aforementioned complications around the identity of corporate – and increasingly also hybrid – actors in resource extraction, engaged scholars have no choice but to anticipate, plan for, and accommodate the uncertainty that this complexity entails. Perhaps we should even embrace it. Yet, it also requires us to take a step back from the resource conflict dynamic itself, and reflect on the (change in) legitimacy of the individual actors, especially the ones that emerge on the scene in the process. Are they reasonably 'fit for purpose'? If not, smoke-screen tactics may be at work. This is not a straightforward exercise, however, as legitimacy ultimately is in the eye of the beholder and carries multiple interlinked dimensions (Matelski et al. 2022). The task of actor identification is also a stark reminder of the importance of 'studying up.' In this light, the "shift in anthropological scholarship from studies of the impacts of corporate extraction on people in extractive zones to studies of the practices of extractive corporations themselves" (Shever 2022) can only be encouraged, although these accounts ultimately need to be connected.

We see specific room for improvement in the preparation of the next generation of engaged scholars. First, curricula built around the intersection of Anthropology and Development Studies (ADS) should impart thematic knowledge that helps to understand the (im)moral economy behind corporate practices. Topics such as rent-seeking, global production networks, ethical investment, and tax justice urgently deserve more airtime. Skill-wise, students would benefit from more exposure to the basic principles of investigative journalism, not necessarily to (all) join the ranks of "Follow the Money" watchdogs, but to be able to weigh up the evidence that journalists uncover on the basis of ethical conventions around publication, attribution, and fact-checking (Tate 2020: 90). Catering for such needs helps to sustain the relevance of ADS programs, as the transition to a 'green economy' will not slow down the rush for resources, but may merely change the type of mineral resources coveted and the faces of the key players involved.

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