Norwegian University
of Life Sciences

Master's Thesis 2018 30 ECTS
Department of International Environment and Development Studies
Prof Ruth Haug

Oil Governance in Kenya: The Political Processes Shaping the Petroleum Bill

Eric Mungai Ndung'u
International Relations
LANDSAM

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mungai.eric@ymail.com

Noragric
Department of International Environment and Development Studies
The Faculty of Landscape and Society
P.O. Box 5003
N-1432 Ås
Norway
Tel.: +47 67 23 00 00
Internet: https://www.nmbu.no/fakultet/landsam/institutt/noragric

Declaration

I, Eric Mungai Ndungu, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature………………………………..

Date……………………………………..

Acknowledgments

This thesis sums up my journey as a graduate student. It has been a tremendous journey, and I would like to take this opportunity to thank some people who have been helpful along the way. Thanks to the Kingdom of Norway and the Norwegian University of Life Sciences (NMBU) for the opportunity to advance my education and for providing a conducive environment to do so. In particular, I would like to thank my supervisor Ruth Haug for being patient with me in the past year as I changed research ideas several times. Thank you for taking your time to offer advice and provide feedback that improved this paper's quality. I am also grateful to Katharina Glaab and Kirsti Stuvøy, International Relations lecturers who have influenced how I now look at the world.

This journey would not have been fun, or even bearable were it not for *my comrades in arms* at the Cave of Knowledge. I enjoyed our sleepless nights studying and our endless intellectual conversations which have shaped my master's experience. These moments will be etched in my memory. Thanks for your moral support and assistance on and off campus.

I must of course acknowledge my wonderful family; Kenneth, Mary, and Rose. Thank you for the unending sacrifices you have made for the sake of my education. I would not have made it this far without those sacrifices. You have always been supportive of my decision to study in the far land of Norway and your emotional and psychological support at my weak moments have fueled me this far. For that I am indebted. Finally, to the person who has been on my side every step of the way, through thick and thin, Jeanette Joreid. I cannot fathom the last two years without your support in every aspect. I am forever grateful.

Abstract

This thesis investigates the politics of elite commitment to promoting the petroleum bill. Since Kenya discovered oil in 2012, the government has attempted to create an institution that will regulate the country's nascent oil and gas sector. The national debate around the institution formulation – intended to steer Kenya from the resource curse - have followed a neo-institutionalist perspective.This perspective emphasizes the importance of forming specific types of institutions which can help contain and shape the elite commitment to developing oil resources effectively. Therefore, this thesis attempts to expand the horizon of the neo-institutionalist perspective by operationalizing the political settlements approach. Such an approach helps demonstrate that elite commitment is shaped by the expansive configuration of power, not by institutions. Legal documents, reports and public statements were investigated using qualitative thematic analysis. The analysis is based on a case study of the politics of formulating and adopting the petroleum bill, specifically the revenue sharing clause which was the major political point of contention. The thesis argues that the trends underlying Kenya's competitive clientelist political system shaped the political commitment towards promoting the petroleum bill. Kenya's competitive clientelist political settlement also produced incentives for the politicians to use the petroleum bill to bring certain opposing political elites into the ruling coalition. Through the political settlements approach, this thesis offers a richer political economy view into the drivers of elite commitment to governing oil and demonstrates that Kenya's efforts to avoid the resource curse are determined by 'power relations' and 'elite bargaining.'

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Countries with material income from natural resources often perform poorer than countries with little or no income from natural resources (Ross, 2003; Weber-Fahr, 2002). Countries like Nigeria, Angola, Venezuela, and South Sudan have not performed well with natural resources; their economies are denoted by poverty, violent conflict and corruption (Humphrey, Sachs & Stiglitz, 2007). Such cases have informed the academic agreement around the idea of the resource curse (Auty, 2002; Humphreys et al., 2007; Rosser, 2006). Most literature around the resource curse usually end up with the argument that institutions and governance forms determine whether a country suffers from the curse or not (Humphreys et al., 2007; Karl, 2007; Rosser, 2006). In particular, New Institutional Economists (NIE's) who argue that the quality of institutions within a country determines how much economic development a country can achieve from natural resources. However, the notion of 'good institutions' seems to struggle in developing resource-rich countries especially within the African region (Khan, 2010, p. 5).

This thesis argues that the notion of 'good institutions' is only part of the story which ignores the critical aspect that is politics. The theoretical claims fronted by the NIE's do not sufficiently explain the conditions under which 'good institutions' emerge. Therefore, they do not identify the conditions in which resource-rich countries gain the capacity and elites obtain the commitment to bring about development (Khan, 2010; Poteete, 2009). The capacity of institutions to bring about resource-led growth lies within the politics that creates them (Karl, 2007). Politics in this thesis refers to, "all the processes of conflict, cooperation, and negotiation on taking decisions about how resources are to be owned, used, produced and distributed" (Leftwich, 2004, p.19).

This thesis, therefore, employs the political settlements approach, which goes beyond the realm of good institutions and attempts to explain the hidden conditions that transmit the emergence of institutions. The definition of a political settlement as per Di John and Putzel (2009) is "the balance or distribution of power between contending social groups and social classes, on which any State is based." There is a substantial amount of literature that demonstrate in various contexts how political factors shape institutions (Boone, 2003; North, Wallis, Webb & Weingast, 2007; Whitfield & Therkildsen, 2011). Nonetheless, Khan's (2010) political settlements framework provides a more convincing discernment into institutional reform and development than the aforementioned scholars (Di John & Putzel, 2009). Within the political settlements framework, concentration is mainly on the role of inter-elite relations as a causal factor supporting the consensus around institutional and choices, particularly about distributional concerns (Parks and Cole, 2010). Research that has employed the political settlements framework (Hickey, Abdulai, Izama & Mohan, 2015a; Hickey, Bukenya, Izama & Kizito, 2015b; Macuane, Buur & Monjane, 2017; Poteete, 2009) in the context of natural resource governance have provided more in-depth analysis in comparison to NIE's on the impact of politics and power relations on institutions. These scholars argue that coalitional building approaches shape the levels of elite commitment to developing certain types of institutions intended to govern natural resources.

Politics and power relations have dominated Kenya's quest to developing the institution – the petroleum bill - intended to govern its new-found oil.[1] Locals in the historically marginalized but now oil-rich region of Turkana protested aspects of the bill and blocked the extraction sites hindering the progress of the oil export programme. Further, political stalemates have prevented the bill from passing parliament and led to extended negotiations that have frustrated the government. The government eventually got an endorsement for the amended petroleum bill from opposing politicians a few days before the president launched his government's highly anticipated oil export project. Such inter – elite dynamics call for a closer investigation and their effect on institutions such as the petroleum bill. Through such an analysis, political interests are exposed and political behavior (commitments) towards natural resource governance institutional choices better understood.

In the following section, I establish the basis for this framework by critically examining the influence of politics and power relations.

[1] Institutions are the rules of the game in a society, or more formally, the humanly devised constraints that shape human interaction. (North,1990) The term 'institution' in this thesis will be used interchangeably with the term 'policy' since the Petroleum Bill – a policy - is the point of analysis in this case.

Research Context

Aspects of the concepts introduced above exist within efforts to govern oil in Kenya's oil sector. In particular, the institutional bargaining between national elites to develop good institutions to avoid the resource curse. As will be discussed in chapter 4, Kenya's political settlement shifted from an authoritarian coalition to a competitive clientelist system after the 2002 election. Following the aforementioned period, multi-party space developed, and Kenyan elections have become very competitive and contentious. This period marked the beginning of competitive clientelism, characterized by extreme inter – elite bargaining to agree the 'rules of the game' for the exchange of political power. Competitive clientelism refers to a condition where contending elites negotiate with one another, and with each elite actor implicitly threatening that if the arrangements are not to their liking, they could 'defect' from the deal, and potentially disrupt the game as a whole (Levy, 2014, p.3). In this scenario, plans that can help build winning coalitions are a priority to the ruling elites, and development agendas are usually short-term with the focus on winning elections (Whitfield, 2011). The current clientelist character of Kenya's political settlement already signals red flags therefore likely to undermine the prospects for oil to catalyze national development (Makore, 2018). Current attempts to reform policies in the extractive sector are highly politicized and tied to the short-term political agenda of the ruling coalition. For example, the petroleum bill which is supposed to govern the oil and gas industry following the discovery in 2012 is stuck in parliament mainly because of disagreements between the ruling coalition and the opposition coalition. The bill was also at the center of the 2017 election. This case provides a good starting point as to why this thesis seeks to investigate whether and how elite interests are at play in the Kenyan oil governance scene.

While there exist several works that have used the political settlements approach to study how power relations and politics mediate institutions in the Kenyan context (Bedasso, 2015; Booth, Cooksey, Golooba-Mutebi & Kanyinga, 2014; Kanyinga & Walker, 2017; Wanyama & McCord, 2017), there is very limited political settlements research applied to the explanation of natural resource governance. This thesis aspires to fill that knowledge gap especially at this moment when there seems to be momentum in reforming and developing institutions that will ensure Kenya benefits from the oil.

Research Objectives and Questions

As indicated above, policies and reforms do not happen in a vacuum. Other external factors influence policy and reform, and key among them is the political context. It is therefore imperative that the political context within which the petroleum bill is developed in be understood. If only economic considerations are factored in policy, it often misses the mark since politics will always intercede (Hancock & Vivoda, 2014). Therefore, this thesis aims to analyze the politics and power relations between national political elites, to explain how this may have shaped the latest petroleum bill which is critical for oil governance in Kenya.

This research attempts to achieve this objective by answering the following question. *How has the political settlements shaped elite commitment to developing oil policies? In particular: How have the national elites' interests', generated by the underlying configuration of power within the ruling coalition, shaped the promotion of Kenya's petroleum bill?*

Thesis Structure

The chapters are organized as follows:

Chapter 2 provides a critical examination of different debates on the resource curse literature, with a focus on the questionable calls by the NIE approaches to bring politics back into the resource governance discussion (Van der Ploeg, 2011). It explores how this focus on institutions offers a finite understanding of how politics shape resource-led development (Di John & Putzel, 2009). The chapter goes further to review more in-depth arguments that emphasize politics within research around the relationship between natural resources and development, uncovering how power relations underpin elite commitments concerning institutional choices (Poteete, 2009; Khan, 2010).

In Chapter 3, I develop a conceptual framework building on Khan's (2010) political settlements framework by incorporating Brinkerhoff's framework of conceptualizing political will which helps explore the underlying conditions that shape elite commitments to develop certain types of institutions. The chapter outlines the methodological approach to this research, highlighting the methods for data collection and analysis.

Chapter 4 tracks the evolution of Kenya's political settlement after independence, with a focus on how political events have shaped the political culture within, and how elites have reinforced this overtime. It describes the shift from dominant to authoritarian to competitive clientelism, highlighting how electoral competition and patronage have shaped policy choices over the years which also helps uncover the changing nature of Kenya's political settlement and the power dynamics. It also sets the background for understanding the shape of policies and institutions.

Chapter 5 is the empirical chapter whereby I operationalize insights from the political settlements framework in chapter 2; this chapter provides an analysis on the role of state elites in the development of Kenya's petroleum bill, particularly the role of elite interests in shaping the revenue sharing provisions. Such an analysis helps uncover how elite relations and their holding power shaped the level of elite commitment to developing the bill. A brief history of Kenya and oil precedes the analysis to be able to map out some of the interests that may be driving the ruling coalition's commitment towards developing the bill.

Chapter 6 summarises and concludes the empirical analysis. Additionally, it reflects on what the empirical findings of the thesis mean for the politics of oil governance in Kenya. Generally, the chapter studies the possible effect of the findings for the resource curse, institutionalist approaches, and the political settlement framework.

Beyond the Resource Curse: Politics' Role in Resource Governance

This chapter reviews the literature and examines the broader debates on the politics of natural resource governance. The focus will be on the political settlements and institutionalist understanding of natural resource governance. The chapter will begin by a brief retrospection of the resource curse theory while reviewing the focus on rentier politics in explaining the shape and enforcement of institutions in resource-rich countries. The notion that *'good institutions are the silver bullets to the resource curse,'* especially in clientelist political contexts, will be questioned. Douglas North (1990, p. 3) defines institutions "as the rules of the game in a society, or more formally, the humanly devised constraints that shape human interaction." The term 'institution' in this thesis will be used interchangeably with the term 'policy' since the Petroleum Bill – a policy - is the point of analysis in this case. Additionally, the chapter will explore literature that places politics at the heart of the natural resource governance story.

The 'Resource Curse,' A Brief Reminiscence

The concept of the 'resource curse' gained prominence in the nineteen nineties when researchers were trying to understand the paradoxical relationship between natural resources and development (Rosser, 2006). The focus by researchers, in the beginning, was on the economic perspective of the curse which was basically the assumption that commodity booms encouraged politicians to spend in the domestic economy, which in turn inflates the exchange rate, eventually crowding out other exporting sectors of resource-rich countries (Mehlum, Moene & Torvik, 2006). A weakness of this economic perspective was that it did not account for the variations in resource governance across the oil and mineral-rich countries (Ayanoore, 2017).

Between the late nineties and early two thousand's, the resource curse discourse shifted from economic-based accounts to political-based ones, underpinned by institutionalist theories and *'rentier'* states theories (Ayanoore, 2017). Rentier theories argue that the degree of rent-seeking determines the governance direction that a resource-rich country takes (Karl, 2007; Ross, 2001). In the early 2000s, the politically based explanations gained standing with the good governance campaign whereby debates on 'avoiding the curse' emphasized 'good institutions' (Acemoglu, Johnson & Robinson, 2001; Robinson, Torvik & Verdier, 2006).

Resource Curse and the Good Governance Agenda

Around the same time mentioned above, most of the mainstream research that aimed at addressing problems such as corruption and conflict associated with the resource curse was located within the good governance agenda (Mehlum et al., 2006; Robinson et al., 2006). The main propagators were from the New Institutional Economics (NIE)[2] school, and their studies mainly focused on policy, state building and institutions as the crucial components for proper oversight of natural resources (Humphreys & Sandbu, 2007; Bebbington, Hinojosa, Bebbington, Burneo & Warnaars, 2008).

[2] New institutional economics (NIE) is an economic school of thought that incorporates several disciplines such as economics, law, organization theory, political science, to understand the institutions of social, political and commercial life (Klein, 1999).

The emergence of NIE can be credited to the works of Ronald Coase (1960) which tried to prescribe legal and social norms and rules to help address the problem of economy. Later in the nineties, scholars such as (Knight, 1992; North, 1990; North, 1995; Rodrik, 2000) developed the discipline and their major belief was that ‘the rules of the game’ (North, 1990, p 3-4) were fundamental in avoiding the curse. Post neoclassical NIE arguments reflected the understanding that the absence of quality institutions before discoveries dictated the contradiction between oil and mineral boom and development (Karl, 2007). Ploeg (2011), for instance, attributes the deficient development outcome in oil-rich Nigeria and Congo, to ‘weak institutions’ triggered by civil wars over resource control. On the other hand, Acemoglu et al. (2001), credits Botswana’s ‘good’ management of its mineral wealth to the ‘good’ institutions that they argue were set up before diamond discovery. Poteete (2009) counters these claims indicating that the institutions were set up after the diamonds were discovered, supported by an inclusive ruling coalition committed to governing diamonds for the nation’s interest.

Theoretically, the NIE school arguments are founded on the idea that good governance is a prerequisite for successful resource-driven development (Campbell, 2009; Acemoglu & Robinson, 2013; Knutsen, 2013). A problem with this idea is that it highlights ‘good institutions as the panacea to the curse (Ayanoore, 2017). Nonetheless, this objectivist inference can explain why donor agencies such as the International Monetary Fund (IMF) and World Bank promote good governance as the solution to reforming the extractive sector in developing countries. Some studies have proved that this idea can work, for example, Thurber, Hult & Heller (2011) study on Norway demonstrated how improvements in accountability helped generate good resource governance. Despite this, the question that begs is; would this ideal type measure achieve the same result or better if it were divorced from its political context? Rosser (2006) flagged this weakness when he noted, ‘‘rentier states theorists typically portray states in abundant resource countries as divorced from the social environments”. The underlying conditions for countries to undertake institutional reforms and whether these changes will stimulate elevated levels of elite commitments to improve resource governance is not clear.

For critics, the NIE approach fails to explain the variations in institutions and policies in various resource-rich country contexts and how these disparities explain differences in development outcomes in the long run (Khan, 2010; Poteete, 2009). Solli (2011, p.81), argues that the focus on the rules of the game hides the contentions behind such rules and that “what constitutes good governance is a contested political question.” As will be discussed in more detail below, it is imperative to expand the borders of the good governance concept to include how power relations and elite interests limit institutional processes in the natural resource context.

Political Settlements, Institutional Development and Natural Resource Governance

The role of politics must be examined more critically if a versatile understanding of the conditions that shape natural resource governance is to be achieved (Bebbington, 2013). The importance of politics and power relations in the emergence and implementation of institutions has been underscored by various theoretical insights, especially by post-institutionalists such as Acemoglu & Robinson (2013) and historical political economists such as North, Wallis & Weingast (2009). North et al. (2009) for example explores the role of politics in institutional development from a historical institutionalist perspective, within their idea of ‘limited access orders’ (LAO) and their transition to ‘Open Access Orders’ (OAO). They stress the important role that power plays in limiting institutional choices and implementation. In their analysis of OAS’s, North et al., (2009, p.13) demonstrate how ruling coalitions normally exploit their economies to create rents as a solution to violence[3]. Ruling coalitions create and maintain cooperation and order through constraining access to valuable resources and rent-seeking activities, side-lining outside coalitions (North et al., 2009). Key in their framework is the role of power relations in suppressing violence. They also caution that if the power arrangements characterized by patronage and the use of force do not lead to institutions that are inclusive and improve governance, they are likely to relapse into violence.

Focus on politics has inspired a hub of research that employs the ‘political settlements’ framework to justify the important role of power relations in explaining the sources of elite commitment in natural resource governance (Di John & Putzel, 2009; Poteete, 2009). Khan’s (2010) work is particularly interesting since it claims to offer deeper decipherment on the role of politics in shaping natural resource governance. It also

[3] The factions that control political authority and state power in different societies (Khan,2010).

helps reveal the struggles between elite groups which act as the precepts for institutional arrangements (Routley, 2012). Unlike the institutionalist theory, the political settlements approach analyses politics at a deeper level to uncover how institutions are adopted primarily by how they distribute resource rents in conformation with the ‘holding power’ within (Khan, 2010). If this arrangement is not met, it incites coalitions to “strive through different means including conflict to change institutions till they are satisfied, or they give up” (Khan, 2010, p. 4). Khan’s work which is focused on elite incentives and how they shape institutions resonates with the endeavor over resource control and distribution common in the extractive sector governance (Thorp, Battistelli, Guichaoua & Orihuela, 2012; Singh & Bourgouin, 2013). Works in Africa (Guichaoua, 2012; Poteete, 2009; Ovadia, 2016) and Latin America (Bebbington, 2012, Thorp et al., 2012) on the role of elite contestations and elite interests in defining the direction and shape of natural resource governance are consistent with Khan’s.

The LAO’s framework is different from Khan’s political settlement approach. The former places emphasis on how power relations dictate the formation of more competitive and efficient forms of democratic governance focusing on how institutions grow and function over time (Hickey,2013). Khan (2010) on the other hand, is keen on the balance of power between competing groups as fundamental to understanding elite commitment with regard to institutional choices. Concerning clientelist political settlements, Khan emphasizes the role of power relations and patronage politics as key in shaping elite, institutional processes and outcomes. Therefore, in comparison, the political settlements approach offers a more profound insight than LAO’s in explaining the role of power relations in shaping policy choices to govern natural resources.

Elite Commitments to Natural Resource Governance

The political settlements studies have also gained prominence for their ability to explain the conditions within which states acquire the capacity and elites the commitments to deliver development using natural resources. This is in tandem with the emerging agreement that politics and power relations shape the commitments of political elites to developing and implementing institutions that they perceive to relevant for sustaining their coalitions and resource led development (Bebbington, 2013; Poteete, 2009). In the quest to understanding the general context within which key decision makers operate, it is important to focus on elite commitments (Hickey, 2013). This context helps showcase the significant roles that state actors play in shaping institutional paths (Poteete, 2009; Orihuela, 2012; Grugel and Singh, 2013).

Poteete's (2009) research demonstrated the impact of political settlements in shaping elevated levels of elite commitment to extractives – led development in Botswana. She attributes Botswana's success story to entrepreneurial politicians who established stable coalitions by distributing rent-seeking opportunities to elites who were likely to resist and securing their support for policies that provided developmental outcomes, rather than attempting to achieve the same through violent means. This example is a testament to how competition between elite groups for rent shapes the commitment of political coalitions to develop institutions with the potential to develop states using natural resources (Brinkerhoff, 2000; 1999). According to Khan (2010), competition for rents usually results in situations that negotiated institutional arrangements within political coalitions are developed and implemented because ruling elites envisage that their interests of staying in power will best be served upon ratification.

The Structure of the Ruling Coalition and Elite Commitment to Resource Governance

The organization of power within the ruling coalition is an important mechanism that shapes elite commitment to resource governance (Khan, 2010). The level of political will to pursue extractive-led development policies depends on the bargains struck by horizontal and vertical distribution of power. Horizontal power is referring to the power of excluded coalitions relative to the ruling coalition (elites and supporters outside of the ruling coalition). Vertical power is referring to the relative power of higher compared to lower level factions within the ruling coalition (Khan, 2010). Khan (2010, p.64) notes that "these relational dynamics are important for understanding the likely horizon for of the ruling coalition and its capacity for implementation." Where excluded coalitions are weak, the ruling coalition is likely to feel secure and act with a longer time horizon". Therefore, the ruling coalition's interests can generate high levels of elite commitment to resource-led development (Hickey et al., 2015a).

On the flip side, strong excluded coalitions' resistance can reduce the time horizons of the ruling coalition, consequently incentivizing the latter to adopt short-term strategies to secure their power. Another aspect that Khan recognizes is the importance for ruling coalitions to maintain certain vertical commitments to lower factions to consolidate power and legitimacy. This way, the ruling coalition has the power to implement and enforce the capacities of the coalition (Khan, 2010). However, when the lower level factions are stronger, the ruling coalition's capacity to enforce becomes weak. This effect is because the ruling elites will turn their focus on dispensing patronage opportunities to buy off policy resistance by strong lower level factions.

The features of the ruling coalition discussed above resonate with research on how politics shape institutions in emerging resource-rich countries (Hickey et al., 2015a; Hickey et al., 2015b; Asante, 2016; Abdulai, 2017). A critical factor, especially in clientelist settlements, is how ruling elites repress or assimilate powerful groups when building their coalitions and how negotiations under such arrangements shape institutional commitments. Khan (2010) argues that in contexts where there is a dominant party there is less likelihood of electoral turnover, and therefore generate long-term time horizons. In competitive clientelist settings, where electoral turn-overs are likely to happen, politicians are forced to discretionarily allocate rents, patronage public employment and preferential access to natural resources to retain power (Levy, 2014, p. 40).

Hickey et al. (2015a), present the example of Uganda's and Ghana's oil deals. They argue that Uganda was able to secure better deals because of the State's (dominant party) capacity to keep the excluded factions in check, enabling politicians to engage in longer-term negotiations. In contrast, Ghana's negotiation capacity was undermined by the politicization of the issue emanating from the country's competitive clientelist settlement resulting in a lower deal (Hickey et al., 2015a, p. 28). This example shows that elite commitment of certain policies is primarily determined by the features of the coalitions, players and deals made around the contending interests to natural resource rents (Bebbington, 2013; Thorp et al., 2012). As Poteete (2009, p. 6) notes, "behind policies, institutions and state building lie political coalitions."

The Politics of Oil Governance in Kenya: A Conceptual Framework

The previous chapter introduced the key concepts and theories that form the basis for debates concerning institutional development within the natural resource settings. This chapter combines the above theoretical insights into a consolidated conceptual framework drawing from the political settlements approach

(Hickey et al., 2015b; Mohan & Asante, 2015; Mohan, Asante & Abdulai, 2018) and Brinkerhoff's (2000) approach. I will then use the consolidated framework to investigate the extent to which tendencies (competitive elections and patronage) within Kenya's competitive clientelist political system shapes the commitment of elites to develop the petroleum bill 2017. I seek to achieve this by exploring the broad challenge of how Kenya's competitive clientelist political settlement generates incentives for the ruling elites to use the petroleum bill development process to court political support with the goal of expanding their coalition and how this in effect shapes the policy commitments negotiated between political elites.

Political Coalitions and Elite Commitment to Oil Governance in Kenya

The struggle between political elites to develop policies that support greater rents retention fits with insights from Khan's approach. The level of political commitments to govern oil is influenced by 'elite relations' and their 'holding power' within the ruling coalition (Gyimah-Boadi & Prempeh, 2012). This dynamic helps identify the national level incentives that shape policy commitments, whereby ruling elites generate rent-seeking opportunities for factions to preserve order since access to resources determines how groups cooperate or fight the coalition in power (Khan, 2010). This dynamic further demonstrates how coalitions are formed through processes of fracas and bargaining amongst the elite groups which in turn forms the basis for the type of policy that politicians adopt. This relational context of power is helpful for examining the interests of political elites around supporting national participation in oil, where they seek to distribute rents and maintain their patronage networks (Di John & Putzel, 2009).

To offer a meso - level theorization of elite commitment, I will use Brinkerhoff's approach of conceptualizing political will; defined as the "*commitment* of actors to undertake actions to achieve a set of objectives…" (2000, p.242).

Elite commitments are shaped by the constantly evolving interests and can help my inquisition of policy processes through a political settlements lens. Brinkerhoff's approach extends past the standard institutionalist perspective of political commitment and places the key decisions made by politicians within the broader relationships with other elites (Bebbington, 2012; Bebbington, 2013).

In this thesis,the term ‘elites’ refers to organised state bureaucrats with the capacity to impose ‘transition costs’ on institutions and include those with power of adjudication over the distribution, allocation and control of resources,for example politicians, and those with authority to bargain on behalf of organised social groupings,for example, civil society organisations (Di John and Putzel, 2009).[4] Focusing on negotiations between elite groups helps reveal the interests that underlie political commitments which sequentially helps explain the type of policies that are developed (Brinkerhoff, 2000; Watts,2012; Bebbington, 2013).

Brinkerhoff (2000, p.242) conceptualizes political commitment through five main indicators:

Locus of Initiative – The locus of the initiative is a question of where the drive for policy reform originates. According to Brinkerhoff, political commitment is high when the push for policy reform is from actors adopting the change.

The degree of Analytical rigor – This characteristic of political will is about the extent to which the reformer conducts an in-depth analysis of the policy in question. Studies on policies around natural resource governance underline the degree of analysis conducted by politicians (Bridge and Le Billon, 2013).

Mobilization of Stakeholders – The key concern here is whether political elites in the reform agenda have engaged other groups such as civil society and the private sector. Poteete (2009) notes that this aspect is important, especially in the context of natural resource governance; where politicians include ideas from powerful elites such as businessmen and civil society groups to bolster their legitimacy.

Application of credible sanctions – Application of credible sanctions entails the extent to which politicians provide credible incentives and sanctions to individuals and agencies during policy implementation.

Continuity of effort – The fifth feature of political will is the sustained effort by politicians to see through the policy reform until the results are achieved. This feature shows the need for politicians to create a good

[4] This refers to the ability of powerful groups to block institutional changes (Khan, 1995).

environment for implementation which also includes monitoring and engaging in long-term planning for required for oil development (Thurber et al., 2011).

Brinkerhoff's framework provides a suitable foundation for exploring how interests shape the level of elite commitment to policy choices (Routley, 2012). In this regard, I lay out a form of power relations that is important for understanding how interests shape elite commitment to policy development around oil. Kenya's competitive clientelist political settlement dictates that oil will tend to be governed according to the short-term interests of the ruling coalition. Further, given the importance of political power (Booth et al., 2014; Khan, 2010;), political elites may have vital incentives to secure oil rents in ways that maintain their authority. As a result, the distribution of oil rents may follow arrangements that relate to appease coalitions pertinent to the electoral interests of ruling elites or provide participatory opportunities in oil activities that can appease different groups with significant holding power. Another arrangement could be to deliver some form of economic and social development to gain electoral favors from the general public. To explain how policy commitments, emerge therefore requires an understanding of the exercise of power based on the patron-client tendency of Kenya's political settlement (Khan, 2010). Understanding these power dynamics helps explore the research question in Chapter 1, concerning how national elite interests, generated by the underlying configuration of power within the ruling coalition, shape elite commitment to developing the petroleum bill.

Importantly, this framework does not depend on the performance of the institution to identify the political mechanisms at play in oil governance. Rather the framework traces the key political factors underlying the shaping of institutions. The reason is that of the policy process within Kenya's oil industry, is still ongoing therefore impossible to attempt to measure institutional performance.

Research Design and Methodology

The goal of this research is to identify how the political settlement of Kenya has shaped elite commitment to developing oil policies. Specifically, how national elite interests, generated by the underlying configuration of power within the ruling coalition, shaped the promotion of Kenya's petroleum bill. The complex relationship (between elite interests and commitments to govern oil) emphasized by this research requires a qualitative approach to explain (Maxwell, 2004). Utilizing the conceptual framework in Chapter 3, the process of conducting this research was divided into two components. The first was analyzing the petroleum bill 2017 and compared it with the 2015 (focusing on the revenue sharing provisos) version to track changes in the national elite's effort to derive greater rents and control over oil through the bill. The second component was identifying and analyzing the political settlement that the petroleum bill is embedded within.

This research utilized both primary and secondary data sources for analysis. Primary data sources included legal documents, video broadcasts, government documents, and press releases. Primary data in this context means original data collected for a specific research goal (Hox & Boeije, 2005). Secondary data sources included research documents, journalistic pieces, and press statements. These data sources have been analyzed through thematic analysis. Thematic analysis is a qualitative research approach used to identify and analyze patterns and themes within data sets (Bryman, 2016, p. 584 -589). Therefore, these data sources have been perused and subsequently repeated themes and patterns identified. Background interviews with people involved with the petroleum bill development helped to inform the themes investigated in these documents. Further, the extensive review of primary and secondary sources offered deeper insights into the strategic interactions between policy-makers who shape political commitments to the petroleum bill promotion.

Case study research strategy. I employed a case study because it helps operationalize my conceptual framework (Yin, 2014). The power relationships that underpin political settlements are dynamic meaning that the roles played by specific elites (politicians) can be critical in shaping the content of petroleum bill and their commitment to making sure it becomes law. I also used the case study method because the integrated political settlements framework in Chapter 3 can be explored through case study research, which is generally considered as a vigorous tool for testing the reliability of specific theories within different relational cases (Bebbington, 2013).

Kenya presents an appropriate setting to investigate how underlying forms of politics and power relations underpin elite commitment to govern oil. After the commercial discoveries of oil, the imperative of avoiding the resource curse saw various policy stakeholders (politicians, civil society, private sector elites) engage in processes to develop and promulgate a new legal framework for governing oil - the petroleum bill.

Data collection. Secondary data entails data and knowledge that is collected by researchers other than the ones in the current research. This paper uses secondary sources as the main source of knowledge for analysis. The secondary data for this paper could be broadly sub-divided into two subgroups. The first is data related to the theoretical perspective of political settlements and second, data related to Kenya's case.

As highlighted in Chapter 2, some of the secondary data sampled in this research are from Mushtaq Khan. He is an economist whose seminal work, *Political Settlements and the Governance of Growth Enhancing Institutions*, is one of the most vital scholarly endeavors regarding the effect of the distribution of power among elites on institutions. Khan's work now appears regularly in scholarship on African countries. Kenya has received very little attention; however, secondary data exists some of which has been sampled in this research. Wanyama & McCord's (2017) research, *The politics of scaling up social protection in Kenya* provides a historical account of Kenya's political settlement since independence and its effect on policy. Booth et al. research, *East African Prospects: An update on the political economy of Kenya, Rwanda, Tanzania, and Uganda* was an important source as well. An analysis of these secondary data sources was useful in drawing out themes around the implicit inter - elite power relations in Kenya's political settlement and how they influence various institutional and policy choices over time.

To supplement the information mentioned in the previous paragraph, I conducted background interviews and discussions. These interviews were not intended for primary data sources but rather to gather more information to confirm or adjust themes identified in the pre-interview process. In total, I interviewed three respondents; a professional lawyer who works with the organization *Friends of Turkana* and has been tracking and actively engaged in the process of developing the petroleum bill, a researcher who has conducted research on the petroleum bill and a politician in the Kenyan African National Union (KANU) party. These interviewees were sampled on a convenient basis and were interviewed later in the research process as they sort to confirm rather than collect data.

Following the analysis of primary and secondary data, the findings were triangulated by comparing research documents, expert analyses and information gathered from the interview process. Triangulation is a qualitative research method whereby the researcher investigates the research from numerous sources.

Triangulation supports a study's credibility by ensuring that the findings did not come from misunderstanding the data (Bryman, 2016, p.386).

Challenges and reflections. I thoroughly informed all respondents about why they are selected for interviews and provided adequate information about the research, including the objectives. I also sought informed consent before interviewing each participant. Participants were guaranteed complete confidentiality and anonymity. Participants were further informed of their right to withdraw from interview sessions at any time including requesting for the destruction of information they provided.

It is important to emphasize that my position as a researcher at a foreign university, seeking political information in Kenya was challenging. This aspect made it difficult to secure interviews with necessary respondents especially politicians. One politician withdrew participation although he had initially agreed to participate. However, there were a few who were willing to conduct interviews and were open to discuss these issues. Through these conversations, I was able to gather information that supports the findings in this thesis. To manage the issue of bias from the respondents, I unreservedly provided all respondents with details about my educational background and relationship with the research.

I conducted these interviews through WhatsApp calls due to its availability, flexibility and cost savings; however, it came with its challenges. During an interview with one respondent, the call kept on breaking due to the weak connection. As an alternative, I followed up with some more questions through email.

During the whole research process, I was aware of my presumptions about the Kenyan political system. Being a Kenyan, I have been exposed to the country's political system which has generated presuppositions to how it functions. Bryman (2016), identifies methodological self-consciousness as a form of reflexivity (i.e., being aware and considering one's relations with their research) which is the first step towards limiting and controlling the researcher's presumptions on the research.

The Political Settlement of Kenya

This chapter explores the character of Kenya's political settlement tracing its evolution from independence to the present day. It provides a historical account of the inter – elites power relations that underlie institutional and policy choices in Kenya. The analysis in this section draws on the analytical framework set out in Chapter 2 to offer a context for understanding the role of Kenya's political settlement in shaping oil governance in the Chapter that follows. In other words, identifies the various factors that produce Kenya's prevailing competitive clientelist political settlement, and the tendencies which consequently make access to political power important in shaping political commitment to the choice of policies. This chapter focuses on the competitive clientelist political system that emerged after 2002, when there was a greater sense of democracy and how this influenced the ruling coalition's incentive structure and their policy choices to deliver development.

Kenya between 1964 and 1978: Independence and Transition to the Dominant Political Settlement

The colonial government left Kenya with a briskly structured multi-party system under a federal constitution that required shared power between the central government and the regional authorities. This system was also referred to as the *Majimbo* system. Kenyatta, who was the first president of Kenya, was at odds with this system. He was more inclined to a one-party political system and a unitary state in which the president was the main authority (Oyugi, 1992). He, therefore, adopted an approach that still defines Kenyan politics now. Kenyatta used clientelism to create a one-party state within a nominally democratic multi-party process, by rewarding those who were willing to defect to Kenya African National Union (KANU) with public position appointments and state resources (Barkan, 1994). This move by Kenyatta effectively led to the dissolution of Kenya African Democratic Union (KADU) when the party merged with KANU in 1964, and its leaders appointed into government. It was also around the same time that colonial settlers who were uncertain about the country's future were leaving and selling their land. The government assisted the new KANU and KADU leaders to acquire large tracts of land in the settler or the white highlands. Another way the State machinery was used to ensure exclusive access to the elites was through trade. Control over trade was masked by the Africanisation drive which saw the promulgation of Import, Export and Essential Supplies Act and the Trade Licensing Act of 1967 (Bedasso, 2015). This marked the foundation of patronage politics in independent Kenya (Wanyama & McCord, 2017).

The single-party divided into various factions along a range of fracture lines - ethnic, ideological, regional and personality - all seeking patronage resources. Soon after these divisions, Kenyatta abandoned institutional rule via the party in favor of personal rule (Kanyinga, 1995). He formalized clientelism as the apparatus within which Kenyans would participate in political processes. The state and the citizens were connected through a hierarchy of patron-client networks that Kenyatta commanded. All political power and development resources came from him and trickled down through a chain of clients who were also patrons in the lower levels (Barkan, 1984).

Kenyatta legitimized the patronage system by introducing the concept of *'constituency service.'* This idea encouraged Members of Parliament (MPs) to initiate constituency self-help projects as a form of 'practical' politics. In effect, the worth of politicians was assessed by their ability to attract development resources to the constituencies (Okumu & Holmquist, 1984). At the same time, the president encouraged people to demand development projects from the local politicians. This meant that to win both parliamentary and local authority elections, it was imperative that politicians contributed to constituency development projects. This system that channeled state resources through patron-client networks meant that only politicians who enjoyed state patronage could win elections (Wanyama & McCord, 2017).

This initial period of competitive clientelism was characterized by the presence of many factions competing for power and influence around the patron; who in turn rotates them in the governance process to maintain political stability (Wanyama & McCord, 2017). Kenyatta shifted to dominant clientelism in the 1970s, whereby the existence of a powerful ruling coalition that surrounds the patron to ensure compliance with his directives. In other words, the clientelist activities by various factions were tolerated so long as they did not challenge Kenyatta's authority (Barkan, 1992). Kenyatta recruited, assisted and influenced leaders who wanted to build their political power rather than suppressing them; the goal was to consolidate political authority by selectively distributing or withholding patronage resources. He frequently switched alliances with various clientelist factions to political advantage while simultaneously sidestepping any form of dissent (Wanyama & Okumu, 2017). Consequently, groups pitted against each other to be in his inner circle of periodic alliances. It must be noted that most of the elites that benefited from this regime were from Kenyatta's Kikuyu community (Booth et al., 2014).

The Transition to Authoritarian Settlement, 1978 to 2002

When Moi took over in nineteen seventy-eight, clientelism became more pronounced. In Moi's era, it became evident that there was a shift of state resources from the elite groups that formed the power base of the Kenyatta regime to constituting his own. He achieved this by taking control of all political arenas in the country, locking out all Kenyatta era patron-client networks. Instead, he brought to the center of economic and political power elites from his Kalenjin community. It was customary practice for elites, especially from the Kenyan Asian community to obtain public sector contracts by association with elites surrounding Moi (Booth et al., 2014). As a result of all these, there was an increase in centralization, authoritarianism and the weakening of national institutions.

After an attempted coup in 1982, authoritarian politics increased (Wanyama & McCord, 2017). Patronage networks and state machinery that directly linked Moi to the local level strengthened. Further, the autonomy of other centers of political power was drastically curtailed. This involved centralization of the state apparatus and steady encroachment on civil society by the state to reduce their influence on local politics; local non-governmental organizations were deregistered or co-opted (Kanyinga, 1995). Moi's dominant coalition of clients ensured compliance with his political bidding by all means. Alternative views were not tolerated. When the multi-party-political system was introduced in 1992, it did not significantly change the settlement since the ruling coalition was too strong for the weak opposition party factions that remained in the periphery (Wanyama & Okumu, 2017).

In 2002, KANU, Moi's party lost the elections to a united opposition coalition, the National Rainbow Coalition (NARC). As Khan (2010, p.66) notes, "authoritarianism is typically overthrown when excluded factions become strong." The political settlement under president Mwai Kibaki reflected how the coalition was formed.

The Transition to a Competitive Clientelist Political Settlement, 2002 - 2018

NARC was formed after excluded party factions realized that their fragmentation played a role in their election loss in nineteen ninety-two and nineteen ninety-eight. Therefore, fourteen political parties, two pressure groups and a dissenting faction of KANU merged to form NARC. The binding agreement of the party was that if they won the election, government positions would be distributed to the leading players of the coalition, carry a review of the constitution and promotion of good governance and social development (Anyang-Nyongo, 2007). Kibaki's regime was an indication of a shift from authoritarian to the competitive clientelist ruling coalition. In this variant, ruling coalitions are formed by the leadership of political entrepreneurs which brings together enough factions to be able to acquire power at the lowest cost (Khan, 2010).

As president of a coalition, Kibaki's power was not as centralized as his predecessors. He was also a relatively liberal leader in his leadership style which allowed senior government officials to conduct their work without interference. Kibaki is also credited for opening up the political space which facilitated public debate. Nonetheless, his regime was also characterized by patronage. The appointment of high public positions such as ministers and ambassadors were based on a combination of ethnic balancing and patronage (Masime & Kibara, 2003). In his cabinet, were three ministers who were perceived to be powerful and were referred to as the Mt. Kenya (home of the Kikuyu and allied Meru tribes) Mafia due to their influence on business and economic decisions (Booth et al., 2014).

Clientelism empowered the president to default on some of the election promises. A notable one was the completion of the constitutional review process which was supposed to weaken the presidency by devolving power (Anyang – Nyongo, 2007; Wanyama & Okumu, 2017). His failure to do so is attributed to the growing strength of the lower factions of the ruling coalition which made it difficult for the president to implement the promises. Given the pyramidal structure of patron-client organizations, the more powerful lower level factions become, the more difficult it becomes to enforce particular rules since they can be challenged. Enforcement and implementation then require greater collective action and the distribution of rents to many or all lower-level factions to ensure their cooperation (Khan, 2010, p. 65). It is for the same reason, corruption was rampant in Kibaki's regime. Booth et al. (2014) attribute this factor as the reason that inclined Kibaki's regime to adopt the *'look East policy.'* The Western donors were critical towards the regime's track record in fighting corruption which was lacking.

Although his coalition experienced internal disputes, there was not much of an opposition. This factor allowed Kibaki to focus on long-term growth and development projects (Khan, 2010, p. 65). During his first term, there was growth in all economic sectors. He assumed a liberalized approach to the economy, which provided space for people to engage in economic activities without major restrictions. The government also pursued major infrastructural programmes such as building mega roads and rehabilitating old ones (Booth et al., 2014).

Kibaki's first term ended in 2007 followed by a contested presidential election then the violence of unprecedented scale. Although Kenya's economy had improved during Kibaki's first term, political leaders from outside his tribe – Kikuyu - felt excluded. Grievances accumulated about perceived imbalances and inequalities in regional development (Booth et al., 2014). This laid the foundation for the extreme violence that the preceded the disputed 2007 election results. The ruling coalition of NARC disintegrated, and new alliances were formed.

The 2007 post-election violence was ended after intervention by the international community. A power-sharing agreement between Raila Odinga's party, the Orange Democratic Movement (ODM) and Kibaki's new party, the Party of National Unity (PNU) was negotiated. Kibaki as president and Raila as the prime minister; the constitution was altered to accommodate this position. This did not change the status of the competitive clientelist political settlement much, and President Kibaki remained dominant despite the promulgation of the of a new constitution in 2010 that contained measures to prevent patronage in the government; it radically altered the formal structure of the government and put measures to check executive power (Booth et al., 2014). Nonetheless, rent-seeking was significant on both sides of the coalition government. It is also during this regime that oil exploration companies discovered oil in Northern Kenya. Unsurprisingly, politically powerful individuals within certain ministries had already acquired oil exploration blocks and sold their rights to the exploration companies (Booth et al., 2014). This coalition government lasted from 2008 to 2013 when a new general election was held.

Competitive Clientelism Settlement under the Jubilee Party, 2013 to 2018

The 2013 election was first under the new constitution. The Jubilee government which emerged victoriously is a coalition of two major political parties representing two numerically large ethnopolitical groups: the Kikuyu and the Kalenjin. President Kenyatta, a Kikuyu representing the National Alliance Party (TNA) and Deputy President William Ruto, a Kalenjin representing the United Republican Party (URP). The coalition, however, comprises of 11 parties in total (Booth et al., 2014). Both leaders were implicated and indicted by the International Criminal Court for inciting tribal violence during the 2008 post-election violence. Both cases which were later dismissed (Booth et al., 2014).

When Uhuru Kenyatta came into power, he perpetuated the patronage system. Despite the requirement by the new constitution to appoint the cabinet from outside parliament, political leaders and ethnic-elites close to the president and his deputy sourced candidates for various posts; those appointed were loyalists, just like their predecessors (Booth et al., 2014, p.21).

As is expected in competitive clientelist settlements corruption has also been a major feature of the current regime. This is caused by the increased competition for rent through the patronage system. There have been numerous cases of alleged corruption within the president's cabinet. For example, in 2015 the Minister of Petroleum and Energy was suspended for alleged corruption, as were three other cabinet secretaries (Nalubega, 2015). There have been other big scandals that have implicated the president's close allies such as the National Youth Scandal where the Minister of National Devolution was linked to the loss of over 7.5 million USD (Kenya Today, 2015). The Deputy president has also had a seemingly unshakable association with corruption (Brunton, 2018). Further, rent-seeking in the public sector seems to be gaining some form of acceptance as it has become an important feature of Kenya's democracy (Brunton, 2018; Topguy360 Kenya, 2018).

General elections were held in August 2017 which was also marred by drama and violence. Incumbent president Uhuru Kenyatta was declared the winner of the presidential contest. The opposition leader and

Uhuru's main rival denied the results claiming that the government had rigged the election. The opposition appealed to the Supreme court citing a breach of the technical processes required by the constitution (BBC, 2017). To the surprise of many Kenyan's, the court ruled in the opposition's favor, canceling the results and ordering fresh elections within 60 days. Before the fresh elections, Raila announced that he was withdrawing from the race since he had issues with the electoral body. Around the same time, a few commissioners were on record saying that some commissioners were partisan-minded (Karanja, 2017). Despite these setbacks, fresh elections were held, and Uhuru Kenyatta was again declared president. Raila delegitimized Uhuru's presidency, incited protests and even had himself sworn in as the people's president by the opposition followers. As a result, there were regular conflicts between the police and Raila's supporters (Burke, 2018). In line with Khan's political settlements approach, the president, to maintain a certain level of stability, struck an informal deal with the opposition leader also popularly referred to as the handshake deal (Onyulo, 2018; AFP, 2018). The dialogue that took place between the opposition leader and the president was private; not even the deputy president was present for the meeting. Therefore there is no formal documentation as to what was agreed. Some think that the handshake was not about ending hostilities between the two parties but about sharing the state goodies (Warah, 2018).

Elections in Kenya, are the quintessential examples of Khan's (2010, p.68) description of elections in competitive clientelist political settlements. He notes that elections in these systems are a platform for testing the organizational power of competing coalitions. Additionally, elections are successful if the organizational power on the ground is reflected and there is a silent rule of law amongst the competing coalitions that ensures that losers accept the outcomes without descending into conflict. Following this mindset, Kenya's 2017 election was unsuccessful since the silent rule of law was not observed and therefore chaos followed. However, the ruling coalition, through the 'handshake deal,' managed to regain stability in the short term. The 'handshake deal' also effectively managed to weaken the excluded coalitions by incorporating the major opposing coalition into the ruling coalition. A weakened opposition could potentially signify a shift from competitive clientelism to a dominant party. However, it is too early to make such an assessment since this event occurred a few months ago.

Some of the dominant features (tendencies) observed from Kenya's competitive clientelist system include the dominant presidential power, intense electoral competition, and patronage politics. The section below discusses these features in more detail. The goal is to underline how clientelist politics shape the decisions politicians perceive as fit for development which helps set the stage for studying the major factors that underlie Kenya's institutional framework to govern oil.

Intense Electoral Competition based on Ethnicity

As noted above, elections in Kenya have become competitive since the 2002 elections. All three elections (2007,2013 and 2017) since then have resulted in disputes. This dynamic is in line with Khan's (2010, p.68) argument about how elections "provide a mechanism for testing organizational power of competing coalitions", Kenya's competitive multi-party politics, supported by its winner takes all standard, horizontally excludes the losing side from participating in decision making (Bedasso, 2015; Mueller, 2011). Ethnic factors play a role too. According to Khan, if there is no mechanism formal or informal to ensure that the loser agrees with the outcome, the country is likely to plunge into chaos which has been the case in Kenya. Raila Odinga in three instances refused to accept the outcome of the elections although he had valid reasons for concern. Given his holding power (significant support from excluded ethnic groups) and capacity to generate violence, the ruling coalition tends to strike deals – informal and formal – that return some form of political stability (Khan,2010). Nonetheless, the opposition is always a threat, and the ruling coalition tends to be vulnerable in power which influences their pursuit of politically motivated public spending aimed at winning elections (Mueller, 2011).

Another crucial feature of electoral competition in Kenya is how it generates specific patterns of resource allocation to 'party strongholds.' The goal here is to expand electoral support not because it is needed. Ethnic voting behavior and partisanship have been a factor since Kenya attained independence but has been reinforced by the patronage politics that resulted in the disproportional distribution of public resources to areas with high electoral support. This tends to act as a reward for existing voting loyalty and as a pact to consolidate political backing (Booth et al.,2014; Wanyama & McCord, 2017). Mueller (2011) argues that that ethnicity is an important determining factor in the distribution of Kenya's national resources:

> Politics [in Kenya] is viewed primarily as a winner-takes-all zero-sum ethnic game. The national economic cake is the prize. Various ethnic groups argue that it is their turn to eat. The means to this end is controlling the state and having a fellow co-ethnic become president (Mueller, 2011:105).

Although the Kenyan constitution contains clear provisions aimed at encouraging the inclusion of all 42 ethnic communities by the distribution of state resources and political appointments, this statutory rule is rhetorically relied on by politicians for electoral gains. The cold hard fact is that ethnic politics remains significant in Kenya's multi-party democracy. Mueller (2011, p.104), notes that "Kenyan political parties are barely distinguishable regarding ideology, programs, platforms, or organization. Many are no more than changing sets of ethnic coalitions." This factor (ethnic block voting) therefore presents a challenge to Kenya's multi-party democracy as evidenced by the post-election violence that has become a norm.

Patronage System

As noted above, political competition and building of coalitions are both explained and maintained by clientelist politics. Additionally, the Kenyan constitutional requirement that mandates the five-year term limit intensifies the need for political survival and consequently generates pressure for politicians to deliver short-term demands of their supporters (Mueller, 2011). These demands ultimately influence the service delivery strategies of politicians seeking elections (Bratton, Bhavnani & Chen, 2012; Whitfield, 2011).

The persisting political pressure can be useful in explaining the relationship between formal institutions, for example, bureaucratic resource allocation processes and the 'informal institutions,' for example, deals, in clientelist politics and how they influence the policy commitment to certain types of policies. Hidden beneath Kenya's competitive clientelist political settlement, is an organized patron-client relationship, where two dominant political parties structured along ethnic lines sustain their power by distributing socio-economic rewards to their supporters (Bedasso, 2015; Booth et al., 2014). This has effectively turned political parties to vehicles of patronage that reward supporters of political elites with jobs and rent-seeking opportunities after elections (Bedasso, 2015; Booth et al., 2014; Topguy360 Kenya, 2018). This, in turn, contributes to the disproportionate allocation of state resources, since the ruling elites neglect merit-based considerations in favor of partisan allocative decisions: usually from the same tribe (Booth et al., 2014).

As briefly highlighted before, competitive elections in Kenya also generate the incentive for political elites to focus on broad-based development. Many Kenyans agree that Kibaki's PNU government contributed significantly to the economic and democratic space improvement (Booth et al., 2014). The current Jubilee regime has also pursued ambitious infrastructural and health projects (Booth et al., 2014). There is currently a growing sense that public service is considered a right rather than by patronage.

Patron-client politics in Kenya existed even before independence (Bedasso, 2015). It, however, increased with the electoral turnover of 2002. As a result, the competition for rent through patronage networks became more prevalent in the last 15 years, deepening corruption in Kenya's public sector. The discovery of oil seems likely to deepen these tendencies (Booth et al., 2014, p.33). Patronage driven politics remains significant in Kenya's democratic governance efforts and affects patterns of resource distribution and government spending in favor of powerful individuals and groups with short-term electoral payoffs (Bedasso, 2015).

The chapter explored the nature of Kenya's political settlement. It traces the political settlements features from when Kenya attained independence and analyses its contemporary role in shaping policy choices. It has illustrated the various factors that have produced Kenya's prevailing competitive clientelist political settlement, underpinned by certain tendencies (patronage politics and electoral competition) which consequently make access to political power important in shaping political commitment to the choice of policies.

Second, despite a new constitution that increased checks on the executive, liberalized market and growing civil society and media space, these democratic aspects are underlain and sustained by a competitive clientelist political settlement characterized by intense electoral competition and patronage politics. As was demonstrated above, the fact that ruling elites have become highly exposed in power because of the competitive elections, political elites depend on patronage networks and intended distribution of state resources to court support from the electorate.

Finally, the structural nature of Kenya's competitive clientelist political settlement poses a challenge to the efficiency of policy choices and implementation since they tend to follow short-term to medium term goals in sectors crucial to development (Whitfield, 2011, Whitfield, Therkildsen, Buur & Kjær, 2015). So important decision-making institutions such as parliament remain weak mainly because of the dominance of the executive (presidency) which uses the former to its benefit. The patron-client system reproduces itself as politicians seek to expand and maintain their coalitions to secure power. Even though power is spread among key actors in the ruling coalition and who have different levels of influence on decision making, these actors have a stronger incentive to maintain the status quo (Mueller, 2011).

The Politics of the Petroleum Bill Legislation in Kenya

This chapter aims to operationalize the logic of the political settlement framework to inquire about the politics of developing the proposed petroleum bill in Kenya. The goal is to provide key critical insights into the main political factors that have shaped the petroleum bill as it is now. I attempt to achieve this goal by exploring how different interests have shaped elite commitment in promoting the proposed petroleum bill. The fundamental claim of the political settlements approaches that the incentives generated by the underlying political balance of power between competing parties within the ruling coalition form the foundation of institutional arrangements in ways that ensure distribution of rents to politicians and their supporters (Khan, 2010), inform this chapter.

The general literature on natural resource governance points to rentier politics as being important in understanding the relationship between natural resources and development (Collier & Hoeffler, 2005; Collier & Venables, 2011). In contrast, the political settlements approach goes further and suggests that since political power is essential to the political elite, they are often motivated by the need to reserve control over natural resources and allocate these resources in ways that help them maintain their power (Throup et al., 2011). The political settlements approach is useful in that it highlights the importance of power relations in framing incentives structure of the ruling coalition, and the tendency for political elites to shape policy decisions to serve their interests (Khan, 2010).

The chapter explores how political interests played a role in shaping the promotion of the petroleum bill. Through an analysis of Kenya's political settlement (chapter 4), this chapter aims to understand how 'elite relations' and their 'holding power' power within the petroleum bill development process shaped the behavior of politicians regarding policy choices. Brinkerhoff's (2000) framework will lay the basis for my analysis of elite commitment.

This chapter argues that interests, underpinned by the configuration of power within the ruling coalition, shaped the elevated levels of elite commitments to developing Kenya's petroleum bill. The begins with a brief history of oil in Kenya including an overview of the current regimes flagship project which is connected to the petroleum bill. A brief overview of the petroleum bill development process follows and an analysis of the key political occurrences in line with the political settlement. This helps to identify the main actors and their interests, facilitating the observation of elite commitment. The last section traces the actors' behavior at various stages of the petroleum bill development and discusses the level of commitment from the various actors. This paper draws on Brinkerhoff's framework to examine the levels of elite commitment.

Kenya's History with Oil

Kenya's history with oil can be traced back to the colonial times. However early wells drilled were empty. Between 1960 and 1984,16 wells were drilled mainly in the coastal regions (KCSPOG, 2014). In 1981, the government, to accelerate oil search, established the National Oil Corporation of Kenya (NOCK). The first comprehensive law to govern the industry, the Petroleum (Exploration and Production) Act was enacted in 1984 (KCSPOG, 2014). The Act was revised in 1986 when the Production Sharing Contract (PSC) replaced royalties. An additional 14 wells were drilled between 1985 and 1992 thanks to the legislation. The effort, however, bore no fruit (KCSPOG, 2014).

Nonetheless, exploration activities continued with the government commissioning studies to establish the potential of some hydrocarbon basins. A study on the Lamu basin was completed in 1995 and another on the tertiary rift in 2001 (KCSPOG, 2014: NOCK, n.d.). There were no commercial finds in this period although there were indications that significant oil plays were present. For example, Patey (2014, p.8) notes that oil was discovered in a particular well in Turkana county, but political tensions prevented the contractor, Shell, from gaining an extension for its exploration period and the well was left undeveloped.

After decades of failed efforts, investor interests in Kenya reduced significantly. A key turning point was when massive discoveries of oil and gas were made in offshore Mozambique and onshore Uganda (KCSPOG, 2014). Drilling activity escalated, and in March 2012, Tullow Oil found oil accumulations in the south Lokichar basin which forms part of the tertiary rift basin (Tullow, n.d.).

Tullow's success increased drilling activity. According to a KPMG (2016, p. 5) estimate 40 wells were drilled between 2012 and 2016 owing to the renewed enthusiasm over prospectiveness of the region (Brunton, 2018). Exploration activities in Kenya are ongoing. There is also focus on further appraisal and development of existing discoveries; with estimated recoverable resources of 750 MMBO and an overall upside potential targeting 1 billion barrels (Tullow, n.d.; PDU, n.d.).

Uhuru's government has also prioritized midstream activities to capitalize on the recent discoveries before the 2022 elections. Initially, the government had planned to construct a pipeline from Uganda through Kenya or Tanzania to a port. This would have allowed export of oil by sea from Uganda and Kenya through connection points. These plans were shattered in April 2016 when Uganda opted for a pipeline through Tanzania to the port of Tanga (Senelwa, 2016). In turn, the government decided and announced that Kenya would build its own US$2.1 billion pipelines that will run from the South Lokichar Basin area in Turkana to Lamu port in the east (Senelwa, 2016) and will be approximately 865km long (Ndege, 2017). According to Tullow (n.d.), large-scale production and transportation of crude (estimated at up to 100,000 barrels of oil per day) are thus expected to begin once the pipeline has been built, with bullish indications suggesting this could be as early as 2020 (Otuki, 2017).

Early oil pilot scheme (EOPS). The government's desire to see oil exports begin as early as possible saw President Kenyatta (2016) announce that small-scale exports would begin in June 2017: "We have started, and we are not moving back. We want to be at the top of the pile. So, we have set a path, and Kenya is going to be a major oil producer and exporter." In March 2017, the government signed a production agreement with

Tullow oil that provided for the transportation of crude from Turkana to the port of Mombasa for export (Otuki, 2017).

Termed as the EOPS, the project is aimed at establishing enabling commercial, physical and logistical that will promote future full field development of the petroleum resources (DPU, n.d.). This programme is one of Uhuru Kenyatta's flagship programme. The EOPS is using the existing upstream oil wells and storage tanks to produce approximately 2000 barrels per day (Tullow, n.d.). The scheme is not intended to make any profits but to provide important technical and market information to assist full field development (DPU, n.d.).

Despite the initial delays in awarding the EOPS upstream contracts, Tullow made plans to evacuate its stored crude (Tullow, 2017). Kenyatta's attempts to accelerate the timeline for crude exports seemed to be gaining ground, for in May 2017 China and India declared their pledge to buy Kenya's crude oil (Ndege, 2017). However, on 29 June 2017 – a day before the government's deadline to start the EOPS- the then Cabinet Secretary for Energy announced that the EOPS plans were suspended. According to official explanations, the suspension was because of the delayed adoption of the petroleum bill (Githae, 2017; Letting & Kamau, 2018). Media reports also suggested that tensions in Turkana had prevented Tullow from accessing its sites and that bandit attacks on the company responsible for building the essential Kitale – Turkana road was what led to the suspension of the scheme (Achuka, 2017; Githae, 2017). These reports indicated a truth that was reflected in a statement asserted by the Ministry of Energy and Petroleum (2017); "it is clear that the National Government and Turkana county government have more to discuss before the first oil can be transported to Mombasa."

In August 2017, Kenya held its general election which saw the re-emergence of the Jubilee government which was still determined to get the project going. After intense negotiation with the Turkana leaders, an agreement was reached on May 2018 regarding the revenue sharing issue that was stalling the adoption of the petroleum bill (Kamau, 2018). On 3 June 2018, Uhuru Kenyatta launched the EOPS and the transfer of crude oil to Mombasa by road finally commenced (Tullow, n.d.).

The 'launch' of the EOPS resulted in concerns that call the government's efforts to fast-track the project into question. The first concern relates to the Environmental and Social Impact Assessment (ESIA) which by the law (Environmental Management and Coordination Act, 1999) should be conducted before a project begins. Tullow, however, held a consultation meeting on the ESIA on 29 June 2018 which could mean one of two things; either the EOPS was launched without a full ESIA or what the president launched was not the EOPS. Tullow oil has not clarified if the EOPS kicked off or why it has begun before completion of the ESIA (Makore, 2018). Tullow's website acknowledges that the ESIA was meant to commence in the second quarter of 2018. Further, the website is silent on the EOPS launch and only acknowledges that transportation of oil to the port has begun.

On 27 June 2018, barely a month after the EOPS 'launch', communities long the Lokichar- Kapenguria road affected a road-blockade that resulted in the suspension of the EOPS for about seven weeks. Allegedly, the issue that the community was concerned about the rising insecurity, jobs and other benefits related to the oil. The government has since then gazetted the establishment of the Turkana Grievance Management Committee which is expected to deal with any arising concerns once the EOPS kicks off again (Makore, 2017).

The government is clearly in a hurry to get rents from oil that it is overlooking some important aspects. The determination is to an extent determined by the 2022 elections (Interview 1,2018). As Khan (2010, p. 67-68) argues, the imperative of winning elections generates incentives that shape the likely time horizon and its implementation capacities. Given Kenya's competitive clientelist political system, the excluded horizontal factions are powerful which explains Jubilee's short-term strategy. The government wants to show that it did some development on oil to woo voters for the party and legacy for the president.

The Petroleum Bill Development Process

Kenya's discovery of oil comes with its challenges and opportunities regarding revenue management and revenue sharing and institutional design. The government is now in the position of considering the most appropriate policy and fiscal options. As will be discussed below in detail, the Jubilee government embarked on a journey to reform the country's petroleum law that spurred a critical development debate (EPWG, 2018).

A major debate was around the sharing of petroleum revenues, which was also affected by politics. The 2010 constitution introduced a devolved government system with forty-seven counties, and therefore the issue of resource revenue sharing struck a chord among relevant stakeholders, particularly county governors of resource-rich counties and their constituents. This discussion was further incited by the projected revenues. Estimates place the figures at about 1.2 USD per year at maximum production going with the current market prices and with exports (thus the EOPS) expected to begin at 2021(EPWG, 2018). This is equivalent to 10 percent of the annual revenue comparable to tea, the country's largest export (EPWG, 2018).

The revenue from oil is proposed to be shared among the national government, county government and local communities. Fair sharing of oil revenues plays a role in Kenya's economic growth, mitigates conflict and generates incentives for sub-national governments to exploit other resources to generate revenues (EPWG, 2018). It is important also to note that given Kenya's political clientelist political settlement, this is also an opportunity for rent-seeking -not for the country's sake (Interview 3, 2018). A poorly designed mechanism can lead to the resource curse. However, as has been stressed in the previous Chapters, the political context in which the 'mechanism' (institution or policy) is designed determines how it will look like and when it will be implemented. Therefore, beginning the conversation at properly designed mechanisms is "like putting the cart before the horse" as will be demonstrated below.

It is important to note at this juncture that this thesis does not predict whether the final revenue sharing clause in the Petroleum Bill 2017 will result in the curse. It simply investigates the role of politics in shaping elite commitment towards developing the bill and offers observations. Below I describe the process that the bill has undergone.

Following the discovery of oil in 2012, the government had to review the laws regulating the sector and therefore proposed the Petroleum Exploration, Development and Production Bill, which was introduced to parliament in 2015 (Kenya Law, 2015; Senelwa, 2014). This bill sought to repeal the outdated (Exploration and Production) Act of 1986 which did not contain significant content on exploration and exploitation (Mutua, 2014; KCSPOG, 2018). The new petroleum bill would not only align the oil and gas sector to the provisions of the 2010 constitution but also ensure that Kenya secures greater rents (Senelwa, 2014b).

The bill made its way through parliament and Senate in August 2016 (KCSPOG, 2018) and was forwarded to president Uhuru for assent in September 2016. The president, however, refused to assent the bill and sent it back to parliament through a memorandum that cited his dissatisfaction with the revenue sharing percentages in the proposed bill (KCSPOG, 2018; Senelwa, 2017). According to the proposed bill (both the 2015 and 2017 petroleum bills), the national government's share of the profits derived from upstream petroleum operations should be shared between the national government, county government and the local communities. The memorandum noted that Uhuru wanted the allocation to the local communities reduced from 10 percent of what the government gets as set by parliament, to 5 percent. As for the amount due to the county government, the president was satisfied with the 20 percent but put a caveat that the money will not be more than twice amount allocated by parliament in a fiscal year.

These proposed changes by the president did not please several politicians, especially from the opposition party CORD and leaders from Turkana - the region where the oil is found (Githae, 2017; Senelwa, 2017; Wafula, 2016). The major political issues concerning the petroleum bill were the percentages to be awarded to county governments and local communities and the caps (Natural Justice, 2018). From this point on, as will discussed in the next section, politics took the front seat and has shaped the petroleum bill as it is now. The house of assembly passed the bill including changes 'requested' by the president's memorandum, but the Senate had not yet debated it before adjournment for the general elections on June 2017 (Mbaka, 2017).

Following the contentious and prolonged 2017 general elections, that saw Jubilee re-emerge as the government, majority party leader, Aden Duale, reintroduced the petroleum bill to the new parliament in February 2018. In April 2018, the bill was handed over to the designated committee – the Departmental Committee of Energy[5] (DCE) - in the national assembly. The Departmental Committee of Energy accepted memoranda from the public and held public hearings in March 2018 (DCE, 2018). According to the Departmental Committee of Energy's report (2018), members of the public, civil society organizations, the private sector, and government agencies were consulted. This open approach to policy development reinforces Brinkerhoff's (2000) notion of political commitment. He argued that one of the key indicators of commitment is the extent to which the political elite develop a strategy that is participative and includes the interests of important stakeholders. While public participation is required by the constitution, the current regime has

[5] This is the committee assigned all matters relating to Energy in parliament. This is usually done during the first reading, the first step in legislative process (Kenya Law, n.d.).

previously been known to pass laws without consultation or ignored stakeholders recommendations (Oruko, Owere & Owino, 2018). This is in line with Kenya’s political settlement. As Khan (2010, p. 48) notes, “In competitive clientelist political settlements, there is a structural problem with the operation of formal institutions according to their own stated rules.” Therefore, in the case of the petroleum bill, the inclusive participation indicates elite commitment to reform.

In May 2018, the national government and the Turkana leaders, led by Governor Nanok, reached an agreement that the national government would be allocated seventy-five percent of the revenue, the county government twenty percent and the local community five percent of the national government's revenue (Letting, 2018). The agreement further removed the previously contentious caps that were included in the 2015 Bill which required:

> *The county government's share shall be equivalent to twenty percent of the national government's share: Provided that the amount allocated by this subsection shall not exceed the amount allocated to the county government by Parliament in the financial year under consideration.*
>
> *The local community's share shall be equivalent to five percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community: Provided that the amount allocated in accordance with this subsection shall not exceed one-quarter of: the amount allocated to the county government by Parliament in the financial year under consideration. (Petroleum Bill, 2017).*

These caps would have restricted the county and community allocations based on the amounts received from the national government in the fiscal year.

In June 2018, the bill went through the second and third reading and passed parliament and was forwarded to the Senate for discussion in July where it is yet to be debated and adopted. The negotiation process was conducted in a manner that is in sync with Kenya’s political settlement of competitive clientelism and patronage which will further be explained in the next section.

The politics of the petroleum bill: Analysis. Above the paper tracked the long political and legislative process that the petroleum bill has undergone so far. It is evident that politics have been the major challenge facing the adoption of the policy and at the same time, it has played a role in shaping the policy. This section will analyze how incentives generated by Kenya's competitive clientelist political settlement have influenced the process and ultimately policy.

The first major issue among the politicians was the percentages of how the revenue should be shared between the national government, county governments and the local community. Therefore, a high political issue because as stated earlier, because it is a question of power. The national government retains power in the executive and creates more opportunities for rent-seeking by attaining the five percent (Interview 3, 2018). The same would apply to the county government, the greater the percentage, the more money the county government has at its disposal. Therefore, when the president refused to assent the petroleum bill 2015, the governor of Turkana was not pleased. At a press conference, one month after the president refused to assent the bill, Governor Nanok angrily noted that the president violated the rights of the Turkana people as far as equitable share of natural resources was concerned. He equated the president's action to legalized theft (Senelwa, 2017).

The president at the time was very powerful. He controlled the majority of the National Assembly and the Senate. He could have easily gotten the bill to pass both houses; it has been done before (Oruko, Owere & Owino, 2018; Kiprono, 2018). However, Nanok presented two problems that determined the president's reaction. The most urgent was the 2017 elections. The president's memorandum turned the issue into a political debate between Jubilee and ODM. According to a Turkana member of parliament, the bill cost the Jubilee party the Turkana Governor's position. Nanok politicized the president's memorandum by telling the community's constituents that the government planned to 'steal' the oil and that he was responsible holding the talks until the elections were over (Githae, 2017b). He retained the governor's position posing a new challenge for the Uhuru.

Following the contentious 2017 elections, Uhuru still needed the bill to pass parliament. In his final term, he needs to demonstrate development. One of his government's main projects EOPS, which was already lagging needed to begin, and the bill was a major hindrance. The petroleum bill gives legal backing to the EOPS, and further, the local communities pose a threat to the project if they are not satisfied with the revenue sharing clause (AOP, 2018). Despite the president having a majority of the members in both houses, Nanok's re-election gave him sufficient holding power. This follows Khan's (2010, p.6) definition of holding power; the capability of an individual to engage and survive in conflicts. Nanok had already threatened to derail the EOPS if the national government did not agree their terms (Senelwa, 2017). A significant part of holding power in clientelist political settlements is based on control over political processes and organizational capabilities that allow factions to threaten significant costs on society if they are not allowed to capture informal benefits (Khan, 2010, p. 54). The Governor's threats could not be taken lightly given the Turkana's history of conflict and his influence in the region. The community had also previously halted the transportation of oil from the region to the coast for exports (Makore, 2018). The risk of violence could result in the project failing and worse long-term violence in the oil-rich region. Both would not be good for the president. Co-option was a better option. As Khan (2010, p. 35) notes, "if powerful groups are bought off by sharing some of the benefits from the outset the trade-off is likely to be less steep compared to a strategy of confrontation."

On January 2018, Uhuru pushed for the appointment of John Munyes as Cabinet Secretary of a new Ministry of Mining and Petroleum. Munyes was a former Turkana Senator and Jubilee loyalist who is known as a power broker in the region. His appointment would help appease the local community to a certain degree (Oil News, 2018). Munyes critical position in the region would also help fast-track the negotiation of a deal with the region's leaders, especially the Governor. A senior analyst at IHS Markit noted that:

> *"Munyes' appointment was likely motivated by Kenyatta's desire to expedite development of the Turkana oil field while reducing the share of revenue earmarked for the local community. He may provide a counter-balance to opposition coordinated by Council of Governors Chairman Josephat Nanok." (Oil News, 2018)*

Nanok and Munyes met several times and eventually a deal was struck in May 2018 between the president, deputy president and some Turkana leaders - Led by Nanok (Africa Energy Intelligence, 2018; Alert Kenya, 2018; Kamau, 2018; Letting, 2018). At the same press conference where the president made the announcement, Nanok said the "leadership and the people of Turkana are now fully in support of the exploration and production of oil after the disagreements were resolved."

What made the leaders change their minds? According to the Indian Ocean Newsletter, William Ruto, the current deputy president, convinced Nanok to agree to the revenue sharing formula in the 2017 Bill in exchange for a key position in government if Ruto succeeds in the 2022 elections (Africa Energy Intelligence, 2018). It is Nanok's final term as a Governor and by the acquiring a position in Ruto's government he retains access to power. In Kenya's current political scene, Ruto is the likely president in 2022 especially following the truce between Uhuru and Raila (Interview 1, 2018). These claims are reinforced by the fact that Ruto and Nanok, initially fierce political rivals from the two competing coalitions have been warming up to each other and have been attending various events together in recent months. Daily Nation, a local daily noted that:

> *"Mr. Ruto and Mr. Nanok, a governor elected on the Orange Democratic Movement party ticket and hitherto one of opposition Raila Odinga's valued political asset, were on the extreme ends before the last elections, but the speed at which they have bridged the political gulf between them has left tongues wagging in the North Rift region." (Kiplangat & Lutta, 2018)*

As argued in the previous chapter, the dynamics of Kenya's political settlement sets certain structural conditions which shape policies. Such conditions are crucial because they create a space for politicians to gather votes during elections. Political elites take these dynamics seriously when constructing their coalitions. In this case, Ruto the currently in the ruling coalition that is Jubilee, operating within the high electoral stakes generated by oil may be using the petroleum bill policy process to woo and build an electoral coalition with opposing political elites to enhance his fortunes in the 2022 elections.

The Commitments of Ruling Elites towards promoting the Petroleum Bill

Drawing from three (locus of the initiative, the degree of analytical rigor and mobilization of support) of the five indicators of political commitments set-out in chapter 3; this section conceptualizes the levels of elite commitment and how these shaped the promotion of the petroleum bill (Brinkerhoff, 2000). The paper will focus on these 'three' indicators of commitment here because they best explain the commitments of political elites in the policy and legislative processes.

Locus of the initiative. This indicator accentuates where the drive for policy reforms reside. If the actor that commands change initiates the reforms, it indicates high political commitment (Brinkerhoff, 2000). Was the need for developing a new petroleum legal and regulatory framework imposed on political elites, or did the politicians see this as an important issue to address? Brinkerhoff's framework (2000) suggests that if political elites advocated for the development of the Petroleum bill 2017, it signals a high commitment to policy reform and the vice-versa.

Operationalizing this framework in the context of the petroleum bill processes that followed the 2012 discovery of oil indicates a high level of political commitment across the political elite, more so from the Jubilee government. Commitment from the opposition - National Super Alliance (NASA) – became evident once certain 'conditions' were met. After oil discovery, both parties demonstrated a commitment to reviewing the laws that govern the oil industry with the goal of aligning them to the new constitution and improve governance of the sector. The major bills introduced were the petroleum and energy bills which seek to repeal the Petroleum (Exploration and Production) Act 1984(EPWG, 2018; KCSPOG, 2018). Both Bills have however not been passed into law yet due to political disruptions and lengthy legislative debates.[6]Despite the setbacks, the political commitments have been evident.

The reintroduction of the petroleum bill 2017 to parliament by the majority party leader, Aden Duale is one example of the party's (Government) commitment after the petroleum bill lapsed due to elections (KCSPOG, 2018). An interviewee pointed out that this is primarily fuelled by the government's plan to demonstrate its development projects, such as the EOPS, by 2022 when Uhuru's term expires and to pave a campaign platform for his Deputy President, Ruto.

Another demonstration of commitment is the president's direct involvement in the deliberations with the Turkana leaders (Alert Kenya, 2018). He was committed to ensuring that the petroleum bill 2017 (that includes the agreed revenue sharing percentages) passes parliament without opposition. The bill did pass

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[6] They include political uncertainty around Uhuru and Ruto's ICC case and the 2017 election period which lasted for almost a year.

parliament but has now at the Senate. This resulted in the majority party leader to voice his concerns and pressure the Senate to speed up the process (Capital News, 2018).

The opposition too, NASA has demonstrated minimal commitment towards promoting the petroleum bill, at least in the beginning. Their involvement in the petroleum bill development process was minimal and was only evident after the deal between Governor Nanok, Turkana MPs and the Jubilee government. The opposition's disappointment and uproar following the president's refusal to assent the bill could be a demonstration of its commitment towards promoting the bill (Wafula, 2016). However, this could have been motivated by the fact that the 2017 election was only a few months away and therefore could have been a campaign tact by the opposition leaders (Interview 1, 2018). The fact that these disputes were quickly solved when the elites on both sides of the divide struck deals that met their interests strengthens the campaign argument. The hand-shake deal between Raila and Uhuru and deal between Nanok and Ruto increased the likelihood of the petroleum bill to pass the Senate. Local communities will end up with a 5 percent share of the profits generated from oil revenues despite their leaders' promise to ensure that they retain 10 percent (Letting, 2018). Additionally, it is the elites who will determine how the 5 percent will be distributed to the community since the bill requires that: "The local communities' share shall be… managed by a Board of Trustees established by the County government in consultation with the local community…" (Petroleum Bill, 2017). Considering Kenya's political settlement (Chapter 4) the stated clause creates another avenue for elites to seek rents for their benefit.

The Degree of analytical rigor. The degree of analytical rigor is useful in conceptualizing and evaluating political commitment (Brinkerhoff, 2000). To what extent have the politicians undertaken a critical analysis of an issue and effectively used the analysis to device technically applicable and politically feasible interventions? In the context of the petroleum bill development in Kenya, key questions to explore here include whether political elites took logical steps to understand the complexities associated with the petroleum bill development and whether this knowledge informed the framing of the petroleum bill 2017. If the political elites neglected these complexities, it is an indicator of low political commitment to pursue change and vice versa.

As I indicated before, the main political issues regarding the petroleum bill have been on the topic of sharing the petroleum revenues. To reiterate, one of the primary reasons for the petroleum bill 2015 being rejected by the executive was the issue of actual proportions to the county and local communities — the provision in the 2015 Petroleum Bill that the County Government’s twenty percent share shall not exceed twice the amount allocated to the County Government by the National Assembly in the fiscal year (EPWG, 2018; KCSPOG, 2018). The 2017 Petroleum Bill, however, changed this provision to read that this amount shall not exceed the amount allocated to the County Government from Parliament. Though the county government’s percentage remained the same at twenty percent, it substantially reduced to not exceeding its usual budgetary allocation, as opposed to the previous provision that County petroleum revenues shall not exceed twice the usual budgetary allocation.

The president in the memorandum to the parliament stated the rationale for the above:

> *“Unless the shares of the petroleum revenues reserved to county governments are capped, the implementation of the (percentages set by Parliament) shall pose the challenge of the inequitable distribution of resources and the risk that county governments and local communities shall receive disproportionately higher allocations which might be beyond their absorption capacities,” (Wafula, 2016)*

All revenues in Kenya are shared in accordance with the constitutional principle of equitable distribution. The Commission on Revenue Allocation (CRA) is mandated by the constitution to provide objective recommendations on equitable sharing of revenue raised by the national government between the national and county governments (Constitution of Kenya, 2010, Article 216). Therefore, the challenge of inequitable distribution that the president was alluding to was based on the parameters used to generate the revenue sharing formula that the CRA had recommended (EPWG, 2018, p.34). This well-thought-out response demonstrates the government’s initial commitment to developing a policy that is consistent with the Constitution and both the counties’ and local communities’ technical and financial capacity.

On the contrary, antagonists argued that the president’s refusal to assent the bill is unconstitutional and aims to retain power within the executive arm of the government (Wafula, 2016). In a submission to the

Departmental Committee of Energy, the council of Governors called for the removal of the cap on the local community's share, providing the rationale that it "undermines the objects of devolution under the article 174 of the constitution on the right to recognize the communities managing their affairs and ensuring equitable sharing of national and local sharing of resources" (CDE, 2018,p.25). The argument by the council of further simulates the practicality of the cap in the report, showcasing its limitations. This evidence demonstrates some degree of assessing the feasibility of the revenue sharing provisions, revealing a considerably high degree of elite commitment to examining the petroleum bill that could help Kenya, secure greater rents from its oil.

The negotiations between the government and the Turkana leaders (major antagonists) resulted in a 75:20:5 revenue sharing agreement and the county and government caps were dropped. This deal presents a perception of compromise on both sides. However, a clause was included in the latest version of the petroleum bill that requires the parliament to review the revenue sharing percentages within the next ten years (Petroleum Bill, 2017). This could be seen a politically feasible intervention resulting from the political elite's analytical rigor. It creates room to address any concerns in the future as a result of the *'compromised'* agreement.

Usefully, the argument that political incentives to create rent-seeking opportunities for elites shaped the policy and legislative outcomes is well acknowledged. However, this proposition that the agreed revenue sharing provision in the petroleum bill could be a 'quick policy fix' to appease elite factions does not only disregard how revenue sharing percentages framings elsewhere have supported economic growth, but also frustrate the strategic challenges and opportunities politicians face while "institutionalizing cooperation" on how resource rents should be distributed (EPWG, 2018: Poteete, 2009, p. 548). Indeed, creating the enabling environment for the petroleum bill development was tacit in the stability and scale of the political support elites gave to the policy.

The Mobilisation of support. Whether politicians mobilize support to build a consensus which then enhances their legitimacy in the reform policy process is also an indicator of commitment (Brinkerhoff, 2000). One way to do this could be developing a strategy that considers the interests of relevant stakeholders which is crucial for diffusing disagreements. In cases whereby, political elites anticipate principal policy contentions and do not mitigate these, undermine the reform process (Ayanoore, 2017).

As was elaborated earlier, the Departmental Committee of Energy (parliamentary committee charged with the responsibility of developing the bill) accepted memoranda from the public which included civil society and the private sector and further consulted local communities (DCE, 2018). This could be construed as an inclusive and participatory strategy by the political elites. A closer look at the report that only one civil society group - Turkana county university students association – made submissions regarding the revenue sharing provision which was included in the bill but was later reversed following the agreement between the government and the Turkana demonstrating minimal commitment in this respect.

To mobilize support from the Turkana community, the president pushed for the appointed a party loyalist from the Turkana community as the Minister of Petroleum. An interviewee also reiterated that the current Minister of Petroleum's appointment was meant to appease the Turkana community and counterbalance the opposition from the Turkana Governor (Interview 1, 2018). The Minister was also tasked with the job of mobilizing support from the Turkana leaders more so Governor Nanok which he did (Africa Energy Intelligence, 2018). On the contrary, Governor Nanok only began mobilizing support once a deal was reached. Together with the government, they have been encouraging the Turkana community to accept the negotiated provisos (Alert Kenya, 2018; Kamau, 2018).

The local community disrupted EOPS operations a few weeks after it was launched demonstrating that the government may not have sufficiently consulted the community. The government later established the Turkana grievance management committee to deal with arising issues in the future. However, this reactive rather than proactive measure demonstrates moderate commitment from the political elites in mobilizing support.

To conclude, the application of Brinkerhoff's framework in the petroleum bill development, this section offered a lens for observing and understanding how elite commitments to promote the petroleum bill 2017 were shaped by the underlying configuration of power within the ruling coalition. As has been noted the government's commitment was substantive from the beginning and only increased when it faced obstacles from the opposition. Opposition elites became committed and began promoting the bill once their interests were met. In summary and in line with Khan's (2010) political settlement's approach, the competitive clientelist political settlement generated Jubilee's short-term goal, which obliges the government to demonstrate development before the 2022 elections (Which serves to retain power by winning the elections and by creating more rents at the executive through acquiring a larger percentage of revenues). Therefore, the hurry to kick-off the EOPS programme, which cannot proceed without the Petroleum Bill becoming law. Faced by the problem of opposition and its holding power, the ruling coalition is forced to co-opt (driven by Kenya's competitive clientelist political settlement tendencies – competitive elections, patronage politics), satisfying the interests of the opposing elites and gaining commitment to passing the negotiated bill.

Conclusion

The 'good institutions' mantra as the panacea to avoiding the resource curse has been at the center of Kenya's recent challenge to govern its oil and gas industry (EPWG, 2018; KCSPOG, 2018). The problem with these debates is that they do not provide enough political economy insights that can help avoid the 'curse.' The findings of this thesis show that going beyond the 'good institution' conversation to concentrate on the underlying forms of politics and power relations that lay the foundation of institutional development can be useful (Ayanoore, 2017). As we have seen, the tendencies within Kenya's competitive clientelist political settlement, specifically coalition building, and patronage politics shaped the promotion of the petroleum bill which is an important aspect of oil governance. The Jubilee government is operating under a competitive clientelist political settlement needs to demonstrate development in the next election and also generate rents through the EOPS in this case. Without the petroleum bill, which is being delayed in part by the holding power of the opposition the government is forced to coopt which buys the support of the bill from the opposition.

The findings lie at the core of Khan's political settlements framework, particularly how the distribution of power among political elites both within and outside the ruling coalition influenced the promotion of the revenue sharing formula within the petroleum bill. In line with Khan (2010), the development of the petroleum bill displayed the extreme inter-elite bargaining and biased deal-making within Kenya's competitive clientelist political settlement distinguished by elite incentives to generate political loyalty through rent distribution.

Kenya's proposed petroleum policy and legislative development processes are in line with Khan's (2010) argument that the shape of institutions emerges from the distribution of power within a political settlement. In competitive clientelist settings such as Kenya, the importance of winning elections leads politicians to adopt policy initiatives that distribute rents to powerful factions that either threaten or help sustain their power. As argued in Chapter 4, the dynamics of Kenya's political settlement are crucial within this context in that in managing these relationships; politicians mobilize votes to win elections. Therefore, these dynamics are taken seriously by political elites when building their coalitions. First, Jubilee elites, operating within an increasingly competitive political settlement context are using the petroleum policy processes to court and build a potentially winning coalition with opposing elite groups. Before the 2017 elections, the president promised to ensure economic benefits from oil, through the government's flagship programme that has been hindered by impending adoption of the bill. Therefore, having won the 2017 elections, the Jubilee government reintroduced the bill to parliament and engaged with opposing politicians to ensure a smooth passage (promotion) of the bill. Further, the Jubilee government in a bid to retain a greater share of the oil revenues and pass the bill through parliament made bargains that may increase the Jubilee party's political strength in the region come 2022.

Second, the Jubilee government's inclusive strategy to the petroleum bill promotion accelerated much of the policy and legislative development processes, particularly with the opposition's political elite, which in turn influenced the form of the current petroleum bill. The principal actors within Kenya's petroleum bill development process comprised the President, Petroleum Minister, Governor of Turkana County, and Parliament. These actors' holding power vis-a-vis the ruling coalition determined critical aspects of Kenya's local petroleum bill. With considerable 'holding power', the Turkana County Governor and county elites pushed the President (government) to drop the caps on the counties' and local communities' share of revenues. Mindful of legitimacy, the President and the Petroleum Minister also had a direct role in policy development, mediating between conflicting interests and subsequently framing the revenue sharing provisions in a manner that serves the interests of the two elite groups. Kenya's petroleum bill development thus reflects the predictions of the political settlements analysis that factions excluded from the ruling coalition, depending on their holding power can often pressure elites from the ruling coalition to distribute resources in their interest.

All of the above to answer the question, how have the national elite interests, generated by the underlying configuration of power within the ruling coalition, shaped the promotion of Kenya's petroleum bill? The findings of this paper highlight the major national elites specific to this case are the president, deputy president, opposition leader and the governor of Turkana. The interests of the president and deputy president are getting the EOPS going since its success serves them in the 2022 election. Further, early oil exportation translates to early revenues providing an opportunity for rent-seeking. The opposition leader whose interest was winning the 2017 election demonstrated commitment to promoting the petroleum bill -albeit with a different revenue sharing clause - months before the elections when he denounced the president's refusal to assent the bill. After losing the elections, he made a truce with the president and his commitment towards promoting the bill was not evident. The last national elite is the Governor of Turkana whose interest is retaining power after his final term in 2022. After the deal with the government, the Governor's commitment to promoting the bill was evident. All these interests are generated and perpetuated by the political settlement as has been discussed in Chapter 4. It is clear that the interests of the national elites have shaped the promotion and the form of the petroleum bill. The promotion of the petroleum bill has been shaped (increased) through negotiations between national elites that resulted in informal deals that satisfy their interests.

The mainstream thinking around governance is that the quality of institutions is the key to avoiding the 'the resource curse' (Acemoglu and Robinson, 2013; Humphreys et al., 2007; Knutsen, 2013). Such debates around governance go further to explain the alterations in resource governance across resource-rich countries. Theories fronted by the new institutionalists pay much attention to institutions rather than the politics and power relations behind them. The findings herein pose a challenge to the adequacy of the 'good institutions' perspective in explaining the relationship between natural resources and development (Poteete, 2009; Hickey et al., 2015a; Hickey et al., 2015b). This is because they still do not answer the question; assuming good institutions help resource-rich countries avoid the resource curse, how do such institutions emerge in the first place? To answer this question, it essential to investigate the power relations and elite interests generated by the promise of natural resources. As is the case in this thesis, the national elites negotiations resulted in the institution (the petroleum bill) with certain provisos on revenue sharing that satisfy their interests. This thesis does not assess the quality of the bill and its implication in regards to the curse because the process is still ongoing. However, in regards to the curse, the attempt by the government to co-opt the opposing coalitions could be a significant factor in avoiding the curse. Similar to Poteete's (2009) argument that attributed Botswana's success to entrepreneurial politicians who established stable coalitions by distributing rent-seeking opportunities to elites who were likely to resist and securing their support for policies that provided developmental outcomes, rather than attempting to achieve the same through violent means. There are some red flags noted such as ignoring environmental factors and not consulting the local communities enough but Khan (2010) notes that formal institutions in competitive clientelist political systems do not work as they should. Informal institutions (deals) may, therefore, be more reliable in sustaining development since peace is maintained. While the thesis did not go beyond to assess the quality of the institution, ultimately the fact is that politics did play a crucial role in determining the type of institution that is highly likely to govern Kenya's nascent oil industry. The shape institutions take in resource-rich countries is determined by the politics that produces it (Karl, 2007). If this is taken as the starting point then perhaps more meaningful conversations such as how can countries with political settlements similar to Kenya's transform rent-seeking behaviors into uses conducive for growth.

A better understanding of how institutions emerge is provided by the political settlements approach in comparison to that of the 'good institutions' (Khan,2010). The application of this approach in the context of natural resource governance has generated knowledge for strengthening significant arguments of the framework (Hickey et al., 2015a; Hickey et al., 2015b; Mohan and Asante, 2015). While the perspective is useful in exploring the struggles that underlie institutional development, its instrumental interpretation of elite behavior hinders our understanding of how elite ideas also shape institutional choices. For example, in this case, the government could be driven by the economic idea that the county government and local communities cannot absorb such amounts of revenue which could potentially lead to the Dutch disease. However, through the political settlements, this approach limits one within the confines of power. Natural resource governance analysis should factor in elite interests and ideational factors that are not always instrumental to elites (Bebbington, 2013; Hickey et al., 2015b) which this thesis has not achieved.

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Appendices

Appendix 1 – 2015 Petroleum Bill

85. (1) The national government's share of the profits derived from upstream petroleum operations shall be apportioned between the national government, the county government and the local community. Sharing of petroleum resource.

(2) The county government's share shall be equivalent to twenty percent of the national government's share.

Provided that the amount allocated in accordance to this sub-section shall not exceed twice the amount allocated to the county government by the National Assembly in the financial year under consideration.

(3) The amount shared under subsection (2) shall be exclusive of the amount allocated by the National Assembly in the financial year.

(4) The local community's share shall be equivalent to five percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community.

Provided that the amount allocated under subsection (4) above shall not exceed one quarter of the amount due to the county government in the financial year under consideration.

(5) The respective county government shall legislate on the establishment of the board of trustees and the prudent utilisation of the funds received under this section for the benefit of present and future generations.

Appendix 2 – 2017 Petroleum Bill 2017

58. (1) The national government's share of the profits derived from upstream petroleum operations shall be apportioned between the national government, the county government and the local community. Sharing of petroleum resource.

(2) The county government's share shall be equivalent to twenty percent of the national government's share:

(3) The local community's share shall be equivalent to five percent of the national government share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community:

(4) The respective county government shall legislate on the establishment of the board of trustees and the prudent utilisation of the funds received under this section for the benefit of present and future generations.

(5) Parliament shall review the percentages under this section within ten years.

Norges miljø- og biovitenskapelige universitet
Noregs miljø- og biovitskapelege universitet
Norwegian University of Life Sciences

Postboks 5003
NO-1432 Ås
Norway