**Tullow Oil Comments on Oxfam Report: “Complying with Free, Prior and Informed Consent: A Case Study of Tullow Oil in Turkana, Kenya”**

**November 2017**

Tullow thanks Oxfam for its report, which provides useful commentary on the progress and challenges faced in relation to achieving FPIC in Turkana. We are pleased with the assessment that our engagement process has improved, and welcome the wide range of recommendations for better FPIC delivery in this extremely challenging environment. We will continue to work closely with the IFC to iron out any agreed weaknesses in the process, including accessibility of documentation and participation of women and Youth.

Tullow looks to engage with and obtain the informed agreement of project-affected communities early in the project cycle and, subsequently, prior to major project developments or changes that would significantly affect them. We recognise however that in certain circumstances we will be required to achieve the Free, Prior and Informed Consent of potentially impacted communities. As such we recognise the IFC’s requirement that we achieve the Free, Prior and Informed Consent of potentially affected communities in relation to our activities in Turkana.

The IFC has engaged actively with Tullow on the issues highlighted in the report. Specifically, we both agree that Tullow’s signed Community Consent Agreements can and should be more widely available and understood, and that more can be done to involve women and youth in the process. In addition, Tullow agrees that it can play a role to help improve the capacity of Community Committees and constituent members in support of common FPIC objectives. We have recently contracted a third party capacity building organisation to work with these Committees, and have been exploring the potential relationship between these Committees and the Village Councils described by the TCG Governor in a recent speech.

We would welcome both further suggestions on how we might address some of the significant contextual challenges to achieving FPIC that are identified in the report, as well as opportunities for collaboration.

Our Exploration & Appraisal (E&A) Stakeholder Engagement Framework for Turkana was published on the Tullow website in August 2017.

**Additional Notes:** **Tullow Commentary on Oxfam Recommendations**

1. ***There are Significant Contextual Challenges to Achieving FPIC in Turkana***

Tullow notes that Oxfam states, “the social and economic realities of Turkana County present serious challenges for FPIC implementation”. Challenges observed in the Oxfam report include high levels of poverty, remoteness, low literacy and numeracy levels compounded by a lack of familiarity with the oil industry and issues of benefits, impacts and mitigation measures. Tullow agrees with Oxfam’s observations and furthermore wishes to highlight the challenge of authority and representation in traditional Turkana pastoralist society with diffuse leadership and a consensus-based decision making mechanism. Socio-political change in Turkana is occurring at a rapid pace due to ongoing devolution and new accountabilities being vested at a county level, the rise of a wage-economy linked to new private sector market entrants (including Tullow) and challenges of maintaining a nomadic pastoral lifestyle, as well as an emerging demographic of educated, largely urban, youth who are seeking to share power and decision-making responsibilities and project benefits with ‘traditional’ Turkana elders.

Given the state of ongoing socio-political change in Turkana it is challenging for Tullow to ensure engagement and ultimately agreement from true representatives speaking on behalf of affected communities. Tullow would welcome the participation of local government and civil society and other actors in promoting inclusive platforms that bring together legitimate stakeholders. The establishment of such platforms would need to address key issues, including representation, and encompass the issue of authority to represent, negotiate and agree on behalf of Affected People, accountability, etc. It would also need to strike the right balance between engagement on impacts and future development pathways and community priorities such as more immediate employment and business opportunities.

1. ***Broad-based Responsibilities***

The aforementioned socio-political challenges in Turkana have implications for the effectiveness and efficiency of implementing FPIC processes and highlight the need for a multi-stakeholder effort to create an enabling environment in Turkana. The Oxfam report includes a broad spectrum of recommendations, including suggestions for building community ownership (recommendation 3), improving county government engagement (recommendation 11) and integrating FPIC principles into national legal frameworks (recommendation 13). These recommendations and others fall outside of Tullow’s control to directly implement. While useful to be aware of, Tullow wishes to highlight that where implementation of recommendations falls outside of Tullow’s direct control, we can at most endeavour to influence other society actors to lead implementation, principally communities, civil society and government. Tullow is currently considering what role and responsibility we should have regarding institutional capacity building across government, civil society and communities to help work together towards a common FPIC objective.

1. ***Recent Progress has been made by Tullow***

Tullow is keen to highlight three areas of progress made, with relevance to FPIC.

Tullow is committed to transparency and disclosure as an important first step in enabling governments, communities and civil society to participate in debate and the exchange of ideas on all aspects regarding how oil resources should be managed sustainably and equitably. We have recently published our [E&A Stakeholder Engagement Framework (SEF)](http://www.tullowoil.com/Media/docs/default-source/operations/kenya-eia/stakeholder-engagement-framework-%28sef%29.pdf?sfvrsn=0) for South Lokichar Basin, Turkana, Kenya on the Tullow website. The SEF captures the enhanced engagement approaches described positively by the interviewees during Oxfam’s research. The SEF also includes comprehensive details of our activities to identify and manage environmental and social impacts (Section 5), the principles that underpin our stakeholder engagement (Section 9) our approach to achieving FPIC (Section 9.2) as well as template Land Access Community Consent Agreement between Tullow and the community (Appendix 3).

Secondly, the Oxfam report recommends that Tullow consider providing capacity building for the recently formed well pad committees (Recommendation 5). By way of background, in 2016 the Land Access Procedure was revised such that the Land Access Community Consent Agreement defines a standardised compensation value and the community assumes responsibility for management and use of the funds. While this transfer of responsibility has been received positively there are of course concerns regarding the community capacity in key areas such as consensus building and decision making, representation, governance and project management.

Thirdly, Tullow has been supporting a targeted initiative to work with the Turkana pastoralist community who traverse the Turkana landscape in accordance with pasture conditions, and who do not reside in established settlements. This work has had multiple objectives including: (i) securing broader based engagement on project activities, risks and impacts, and; (ii) promoting discussion on key issues involving authority, representation and decision making. This work continues and is one component of processes involving broader based platforms (including local government) in discussions regarding the project.

Tullow Kenya has recently contracted a third party capacity building organisation to support building the capacity of well pad community committees and constituent members (or other Affected Communities representative groups) to manage land access related compensation. It is expected that the selected service provider will help build capacity regarding: project selection processes, representation, governance, accountability, financial management, conflict of interest, procurement, project management, etc. The objective of seeking a third-party to provide such capacity building support is to ensure Affected Communities have adequate capacity to manage the utilisation of land access related compensation and thereby ensure delivery of agreed projects in accordance with community priorities and with adequate levels of governance, transparency and accountability. We are also exploring the potential relationship between these Committees and the Village Councils described by the TCG Governor in a recent speech.

1. ***Disclosure and Dissemination of Agreements***

Oxfam states in its report: “The lack of readily available and appropriate documentation of FPIC consultation processes and agreements, and the related lack of a common understanding within communities of the process and agreements, form a central theme of Tullow Oil’s engagement with communities around Ngamia and Amosing oil fields. Such information should be known by and readily available to all community members.” Tullow agrees that signed Land Access Community Consent Agreements should be widely available and understood by Affected Communities and the process by which the content of the Agreement reached should also be carefully documented.

Tullow is concerned that researchers were not able to view agreements in the Ngamia and Amosing area and can confirm that the content of agreements signed in the Oxfam study area are materially similar to the viewed signed agreements in the Lochwa area referenced in the report. Tullow has listened to Oxfam’s advice that a “formal protocol” is required covering disclosure of Agreements and the processes through which the content of agreements was negotiated and agreed upon. Tullow is currently committed to developing a Procedure to guide disclosure of Land Access Community Consent Agreements, including how copies of Agreements will be disseminated, to whom and the media to be used.

While we agree with Oxfam’s findings and recommendations regarding improvements in document and process disclosure, Tullow also highlights that in a largely oral society such Agreements should be complemented by consistent verbal explanation of the Agreement contents. We are exploring filming verbal disclosure of Agreements and playing these recordings at our Community Resource Centres. This would help improve broad understanding and recognition of the Agreement making process and content.

1. ***Demonstrating Informed Consent regarding a Future Development Project Scenario is Challenging***

The report notes that Tullow’s “Focus is very short term” (Finding 6) and recommends that consultations in each site-specific process should ensure full information and understanding about how the particular issues under discussion contribute to future options, e.g. going to production vs not going to production (Recommendation 2). Tullow recognises the validity of this finding and recommendation but notes significant challenges, whilst in the current Exploration and Appraisal phase, with having meaningful discussions about future Development and Production phases. Tullow is currently reviewing resource volumes, engineering considerations and the economics associated with a broad range of Development scenarios. We are concerned that the extent of the future Project uncertainty is such that discussions regarding future phases would risk creating unnecessary confusion within communities, likely prompt more questions that cannot be comprehensively answered, and/or potentially unfairly raise expectations.

1. ***Development-Phase Multi-Stakeholder Frameworks***

Associated with the above point, Tullow recognises the limitations of informed consent being granted through Land Access Community Consent Agreements that cover Exploration and Appraisal, whilst the intention is for the company to hopefully transition into a Development phase. Details of the Development-phase Project are currently under review within Tullow. Once the Development-phase concept has been agreed, the company intends to encourage the development of multi-stakeholder frameworks that encourage common understanding of the nature of the project and anticipated impacts and agreed approaches to mitigation measures and benefit sharing mechanisms. In turn these frameworks will assist in the development of location specific FPIC agreements. The process involved in establishing, developing and ultimately delivering commitments contained in such frameworks represents an industry trend towards ‘partnership in development’ and ‘engagement for risk and impact mitigation’. Depending on the project context, footprint and impacted population these frameworks will help define the working relationship between the Project and Affected Communities.

Multi-Stakeholder Project Frameworks(s) will include representative stakeholders covering all aspects of affected society (e.g. affected communities, business, government, pastoralists, faith-based groups, civil society, youth, women, etc.) and are anticipated to cover land access agreements and compensation, benefit sharing, livelihood support programmes, shared infrastructure, employment and skills building opportunities, procurement and business development initiatives as well as social investment programmes. The strategy for establishing these Multi-Stakeholder Project Frameworks is under discussion, but it is anticipated that they will form a bridge between the current E&A Land Access Community Consent Agreements and a future Development phase, ensuring consistency of FPIC processes between phases of Tullow’s activities in Turkana.