JUKWAA

LA MADINI,

MAFUTA NA GESI 2019

(NATIONAL CONFERENCE ON MINING, OIL AND GAS 2019)

CONCEPT NOTE

1.1 Dates: 23rd-27th September 2019

1.2 Venue: Safari Park Hotel, Nairobi

1.3 Conveners – Haki Madini Kenya (HMK), Kenya Civil Society Platform on Oil & Gas (KCSPOG), Law Society of Kenya- Supporting Inclusive Resource Development (LSK/ SIRD) and Kenya Land Alliance.

1.4 Host Organizations: Civil Society Organizations (CSOs), Faith-Based Organizations (FBOs) and academic institutions working in the mining, oil and gas sector. (See annexe 1)

1.5 Participants: At least 400 participants drawn from host Communities in 11 counties, Community Based Organizations (CBO’s), Civil Society Organizations (CSOs), Faith-Based Organizations (FBOs) working in extractives sector, National Government officials, County Government officials, mining, oil and gas companies, media, regional experts, academic, research institutions, professional bodies and members of the public.

1.6 Goal: To promote dialogue and action towards an accountable and sustainable extraction for improved livelihoods of local communities in areas with active mining oil and gas.

1.7 Objectives:

1. To amplify the voice of host and affected communities and enhance dialogue with national and county governments as well as companies on benefit sharing.
2. To provide space for reflection by actors in the extractive sector on the state of benefit sharing.
3. To promote sharing and learning amongst stakeholders on benefit sharing.
4. To strengthen solidarity and action on emerging issues concerning benefit sharing in the advancement of human rights at the county and national levels.
1.8 Expected Outcomes:

1. Actionable commitments by the relevant actors on issues around benefit sharing in the extractive industry.
2. Consensus on issues and recommendations to form part of a memorandum that informs the practice and implementation of policies and legislation on benefit-sharing both at the national and county levels.
3. Facilitated advocacy through synergies and networks of local communities from the targeted counties spearheading discussions around benefit sharing.
4. Consolidation of a vibrant, coherent and consistent voice of local communities, faith-based organizations (FBO’s) and civil society organizations (CSO’s) for sustained engagement on benefit sharing in the mining, oil and gas sector.

1.9 Expected Outputs:

1. Key issues on benefit-sharing from local communities are documented and shared during the conference;
2. Developed memorandum of issues to inform the practice and implementation of policies and legislation on benefit-sharing both at the national and county levels.
3. Established synergies and networks spearheading discussions around benefit sharing across the country.
4. Developed a follow-up mechanism that allows for continued engagement of the local communities, FBOs, CSOs and other stakeholders with companies and the national and county governments on benefit sharing.

1. BACKGROUND

Since the 1950s Kenya has engaged in the extractives (oil, gas and mining) sector. In 2012 the Government announced the discovery of commercial quantities of Oil in Turkana. The 2012 announcement, coupled with the creation of County Governments in 2013 began the Kenyan discussion on the upstream oil and gas sector. Host communities expect rapid economic growth and are concerned about the negative impacts of the industry and the general public anticipate oil revenues to power the economy and reduce the tax burden. Since then, there have been massive developments in the sector ranging from the adoption of the Petroleum Act, 2019 in place, to the capacity building of government agencies to the interventions by civil society organizations. The Government of Kenya and the World Bank through the Kenya Petroleum Technical Assistance Project (KEPTAP) has since 2014 built the capacity of government agencies in anticipation of the commercialization of Kenya’s crude oil. Various civil society organizations- including the conveners of Jukwaa- have worked with communities in Turkana County to build the capacity of host communities and ensure that they advocate for a good deal in the sector.

The earliest record of commercial mining in Kenya dates back to 1911 with the formation of the Magadi Soda Company which operated in modern-day Kajiado County. Mining sector reforms began in 2013 with the creation of the Ministry of Mining and the subsequent adoption of the Minerals and Mining Policy of 2016 and the Mining Act, 2016. Subsequent efforts such as the development of the Mining Cadaster and the development of Community Development Committee guidelines have enabled better regulation and oversight in the sector. Mining companies in Kwale and Magadi are now under more scrutiny as communities are looking to finalize their Community Development Agreements to ensure adequate beneficiation.

“Getting it Right – Just and fair share of benefits from the extractive resources”


**Context**

In the Mining Sector, the major development centres around the expansion of operations and communities working towards equitable beneficiation and the implementation of artisanal and small scale mining regulations. Base Titanium in Kwale have expanded their operations thus are set to acquire additional land and will be required to sign various Community Development Agreements (CDAs). Tata Chemical in Magadi is negotiating a CDA. CDAs are gaining popularity as a tool to ensure equitable benefit-sharing between companies and host communities. During the national Jukwaa and county convenings, the benefit-sharing for host communities with regards to CDAs and revenue sharing shall feature in the discussions in Kwale, Migori, Kajiado, Kakamega, Kitui and Elgeyo Marakwet counties.

For Oil and Gas- Tullow Kenya and Africa Oil have dominated the upstream oil sector. The three significant developments in the sector are first the Early Oil Pilot Scheme (EOPS) launched in 2018, the development of the proposed Lokichar Lamu Crude Oil pipeline that will transport the crude oil to the Kenyan Coast. Third the journey towards full filed development with the Final Investment Decision expected at the end of 2019. During Jukwaa the discussions around benefit sharing shall consider these three developments and will aim to position the public and host communities to ensure the sustainable development of the sector, and they benefit equitably from the crude oil revenues. During the conference, Turkana County will be the focus; however, participants from Kisumu (Nyakach), Baringo, Elgeyo Marakwet, West Pokot, Kajiado and Lamu Counties impacted by the sector will share their experiences.

2019 Theme

With all these developments in the extractives sector- stakeholders must ensure that host communities are adequately compensated and supported to ensure their social and economic development- keeping in mind the potentially disruptive nature of extractive industries.

It is in this context that the Haki Madini coalition, Kenya Civil Society Platform on Oil & Gas and the Kenya Land Alliance are organizing the *Jukwaa la Madini Mafuta na Gesi* 2019 that will focus on benefit Sharing in the extractives industry. The conference this year will examine various aspects of benefit-sharing ranging from local content, the management of County Government and Community share of revenues/ royalties and the implementation of CDAs under the Mining Law. Additionally, during the National and County convenings land rights issues as well as artisanal and small-scale mining, shall be traversed.

Who We Are

The Haki Madini Kenya (HMK) coalition was formed in November 2014 as the culmination of efforts of civil society and faith-based organizations, the rallying call at this meeting was the centrality of communities as key stakeholders in the extractive sector. With this in mind, representatives from eight (8) mineral-rich counties decided to form HMK as a vehicle for collective action. Having implemented activities in six counties for over two years, HMK decided to cast its thinking and engagement in the extractive sector. HMK has since expanded its membership and now works across 11 counties.

The Kenya Civil Society Platform on Oil and Gas (KCSPOG), formed in 2013, is a network of member organizations that collaborate their efforts and activities aimed at ensuring that there is transparency and accountability in the nascent oil and gas sector in Kenya. The Platform seeks to convene and coordinate Civil
Society Organizations (CSOs) working in the oil and gas sector with common advocacy strategies to influence policy and regulations. The Platform gives a collective voice in thematic areas such as revenue sharing and management, legal and regulatory framework, transparency and accountability, land and environmental rights and local content, among others.

The Supporting Inclusive Development (SIRD) in East Africa project is a five year (2017-2022) established to comprehensively handle the delicate issue surrounding natural resource extraction in East Africa. With the generous support of Global Affairs Canada, the project is implemented by the Canadian Bar Association in partnership with the Law Society of Kenya. It is focused on enhancing inclusivity and supporting good governance of the natural resource(s) sector in East Africa, ensuring that the benefits of the industry, from mining, oil and gas exploration and other extractive industries, extends to all key stakeholders, including governments, their business partners and most importantly, their citizens – especially those most marginalised. It will build the capacity of members of the different law societies, government ministries and community rights holders and duty bearers, to better understand their rights and obligations as relates to the sector and to effect positive change working towards gender sensitive, transparent and accountable governance.

2. ABOUT THE CONFERENCE

The National Conference on Mining, Oil and gas, dubbed “Jukwaa la Madini, Mafuta na Gesi Kenya” is a collaborative effort by CSOs, FBOs, CBOs, academia/ research institutions, professional bodies and members of the public currently engaging on benefit sharing in the extractive sector. The convening organizations have committed to a national conference whose outcomes and learnings will be cascaded and contextualized for the benefit of extractives host communities through late 2019 and early 2020. This will be the second national conference on mining, oil and gas, a community-centred process that is supported by different stakeholders.

The National Conference is intended to be a culmination of County-level forums that will be conducted in at least 11 counties (Kakamega, Migori, Kwale, Kitui, Taita Taveta, Elgeyo Marakwet, Lamu, Turkana, Kajiado, Kilifi, and Baringo) coordinated/hosted by different convening organizations.

3. THEMES AND SUBTHEMES

The theme for the national conference will focus mainly on benefit sharing, which includes;

- **Revenue sharing**: Sub-national revenue management at the county level and at the host community level; Creating structures for sub-national revenue management.
- **Local content**: Expectations of host communities; Training opportunities to be pursued; Analysis of types of employment and contracts including business ventures; Gendered dynamics of women in local content

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1 Majority of the organizations have participated in the Alternative Mining Indaba, [http://altminingindaba.co.za/](http://altminingindaba.co.za/) a regional process that consolidates and amplifies the voice of communities in mining across the continent, whose outcomes and learnings are cascaded and contextualized at the national level through the National Indabas. This will, therefore, be Kenya’s second National Indaba.
c) **Community Development Agreements:** Negotiation of CDAs; What to expect from CDAs; Proper management of CDAs by the CDA committees

The two featured themes are:

- **Land:** acquisition of community land; resettlement; compensation and grievance redress
- **Artisanal and Small Scale Mining:** payment of royalties and support for artisanal miners by Government

The **County Forums** will focus on the issues within the county related to any of the above themes.

4. **METHODOLOGY**

**Action-oriented dialogue** at plenary will be the fundamental approach at the County Platforms and National level conference. **Community experiences** and **expert commentaries** from non-state actors will provide insights that will enrich these dialogues.

**Breakout sessions** will be organized to deepen understanding and synthesize issues on the thematic areas above. Current legislative frameworks and progress made will be highlighted, expert analysis and community experiences will be embedded in these sessions, which are expected to note the gaps and possible actions. Organizations responsible for the 4 breakout sessions will provide briefs before and after the sessions that will feed into the final communique.

**Panel discussions** at the plenary will provide the opportunity for engagement with relevant duty bearers, expert commentaries, academic papers and community experiences.

Recommendations and possible action points will be agreed upon. Relevant Government and Company officials (at the National and County levels) are critical players and will be invited to engage with the participants on specific issues of discussions. All panellists will be briefed before the conference to ensure efficient usage of time.

**Concrete action points** from all the sessions will be consolidated with **clear follow-up timeframes by respective agencies after the conference.** It is anticipated that future annual conferences will revisit the progress on the specific actions in addition to emerging issues of focus.

**Additional Points**

- Participating organizations and individuals will have the opportunity to sponsor **publications or report launches** relevant to the thematic areas of focus.
- Participants will also have Exhibition opportunity for **their products and initiatives** at the National Conference for sharing and learning.
- The organizers will ensure that **all the sessions allow ample opportunity for communities** to effectively engage amongst themselves, with government officials, companies and the non-state actors.
- The organizers will ensure that all panellists and break out session leads are **briefed in writing** and with a short meeting to ensure adequate time management.
Annexe 1: Participating Organizations

1. Haki Madini Kenya
   • Caritas Kitui
   • Catholic Justice and Peace Commission (CJPC)
   • Diakonia
   • Econews Africa (ENA)
   • Groots Kenya
   • Inuka Kenya Ni Sisi!
   • Kenya Conference of Catholic Bishops (KCCB)
   • Kenya Human Rights Commission (KHRC)
   • National Council of Churches of Kenya (NCCK)
   • Inter-Religious Council of Kenya (IRCK)
   • Kenyan Section of the International Commission of Jurists (ICJ Kenya)
   • Anglican Development Services Kenya

2. Kenya Civil Society Platform on Oil & Gas
   • Friends of Lake Turkana
   • Oxfam GB
   • Save Lamu
   • Transparency International Kenya
   • Katiba Institute
   • The Institute for Social Accountability
   • HakiJamii
   • Natural Justice
   • International Institute for Legislative Affairs
   • Kenyan Section of the International Commission of Jurists (ICJ Kenya)
   • Kwale County Natural Resources Network
   • Econews Africa
   • Kenya Human Rights Commission
   • Association of Women in Energy and Extractives in Kenya (AWEIK)

3. Kenya Land Alliance (KLA)

4. Law Society of Kenya- Supporting Inclusive Resource Development (LSK/ SIRD)

5. Institute for Law and Environmental Governance

6. Research Institution: Extractives Baraza