JUKWAA LA MADINI, MAFUTA NA GESI 2019

NAIROBI, 24-26 SEPTEMBER

THEME: GETTING IT RIGHT: JUST AND FAIR SHARE OF BENEFITS FROM THE EXTRACTIVE SECTOR
EXECUTIVE SUMMARY

- Civil society organizations working in the extractive sector in Kenya held the second conference ‘Jukwaa La Madini Mafuta na Gesi 2019’, between the 24th and 26th of September.
- Themed Getting it Right: Just and Fair Share of Benefits from the Extractive Sector, the conference’s goal was to promote dialogue and action that would enable accountability and sustainability in a way that would improve the livelihoods of communities in areas affected by Kenya’s oil, gas and mining industry.
- The 2019 theme carried over from the 2018 theme by the same name, due to the recognition that there was still progress to be made by the sector to get things right.
- The conference brought together more than 200 stakeholders in the extractives sector, including extractive companies, community organizations from the counties, civil society and the government.
- The conference was structured around receiving input on community perspectives, reconciling community expectations and company perspectives, and roping in the government in a way that would see forward movement.
- The opening session saw a review of the Jukwaa 2018 communique, with a focus on examining what goals had been achieved and what were still pending.
- The conference featured six panel discussions and one break out session to dwell on three particular topics.
- The outcome document, a communiqué was issued at the end of the conference, signed and endorsed by participants (Appendix 1).

I) BACKGROUND

- The second Jukwaa la Madini Mafuta na Gesi conference, hosted by the Kenya civil society organizations active in oil & gas and mining, was successfully held from the 24th to the 26th of October 2019 at Safari Park Hotel Nairobi. A stakeholder focused conference, it was the second such ‘Jukwaa’ organized to promote dialogue and action to ensure improved livelihoods of local communities in areas where extraction activity was taking place.

II) EXPECTATIONS OF THE CONFERENCE

1. Jukwaa La Madini, Mafuta na Gesi 2019 was convened to: i) amplify the voice of host and affected communities and enhance dialogue with national and county governments as well as companies on benefit sharing; ii) provide space for reflection by actors in the extractive sector on the state of benefit sharing; iii) promote sharing and learning amongst stakeholders on benefit sharing; and iv) to strengthen solidarity and action on
emerging issues concerning benefit sharing in the advancement of human rights at the county and national levels.

2. Outcomes expected from the conference were outlined as: i) actionable commitments by the relevant actors on issues around benefit sharing in the extractive industry; ii) 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; iii) facilitated advocacy through synergies and networks of local communities from the targeted counties spearheading discussions around benefit sharing; and iv) 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.

3. Outputs expected at the end of the conference were that: i) key issues on benefit-sharing from local communities would be documented and shared during the conference; ii) a memorandum of issues to inform the practice and implementation of policies and legislation on benefit-sharing both at the national and county levels would be developed; iii) synergies and networks spearheading discussions around benefit sharing across the country would be established; iv) a follow-up mechanism allowing for continued engagement of the local communities, FBOs, CSOs and other stakeholders with companies and the national and county governments on benefit sharing would be developed.

III) PROCEEDINGS OF THE CONFERENCE

4. A total of 200 stakeholders, including 18 member organizations of the Kenya Civil Society Platform on Oil and Gas, two extractive companies, community members from eleven counties, and government representatives were in attendance at Jukwaa La Madini, Mafuta na Gesi 2019. Media practitioners were also present to capture key events in the conference. Counties represented were Turkana, Kisumu, Kitui, Elgeyo Marakwet, Nairobi, Migori, Taita Taveta, Kwale, Siaya, and Nakuru. Organizations present included Anglican Development Services (ADS), The Fellowship of Christian Councils and Churches in the Great Lakes and Horn of Africa (FECLAH), Fairtrade Africa, Econews Africa, Transparency International, Oxfam, Action Aid, National Council of Churches of Kenya (NCCK), Natural Resources Alliance of Kenya (KeNRA), GROOTS Kenya, Haki Madini, Kenya Community Development Foundation (KCDF), Inter-Religious Council of Kenya, Caritas Kitui, Diakonia, International Institute for Legislative Affairs, Inuka Kenya, Institute for Law and Environmental Governance (ILEG), Lamukani CBO, Publish What You Pay Kenya (PWYP), Law Society of Kenya (LSK), Global Affairs Canada, Supporting Inclusive Resource Development (SIRD), Kenya Land Alliance (KLA), Kenya Civil Society Platform on Oil and Gas, and the Association of Women in Energy and Extractives (AWEIK).
5. The opening session featured welcome address by conference organizers and special guests including the General Secretary of the National Council of Churches of Kenya (NCCK), Rev. Canon Peter Karanja, Mr. Alnoor Meghani, the Canadian Field Regional Manager with the Supporting Inclusive Resource Development (SIRD) in East Africa project, and the Principle Secretary (PS) of the Ministry of Petroleum and Mining, Mr. John Morangi Omengen. In his address, Rev. Canon Peter Karanja challenged participants to come up with practical plans to improve the welfare of community members in the area of the environment and citizen rights. Mr. Alnoor Meghani highlighted SIRD’s work including meetings, trainings and consultations with local leaders, women’s groups, advocates, and journalists, as well as research into laws and policies governing the extractive industry, and training of advocates for law reform. PS John Omengen updated conference participants about ongoing initiatives within the ministry towards making sure the extractives industry was benefiting Kenyans. Speaking on behalf of conference organizers, Joy Baraza of NCCK emphasized the need to ensure that communities based around sites of extraction benefit economically and were not negatively impacted, while Bernard Ochieng of Econews Africa spoke of the work Haki Madini has been doing in helping communities engage to realize their rights in the extractives sector. The opening session also featured a review of the Jukwaa 2018 Communiqué and Working Group Reflections.

After the opening session, the conference featured six panel discussions and one breakout session to dwell on three particular topics. Interactive plenary sessions followed each discussion, where conference participants gave feedback, asked questions, and received clarification. The panels involved fifteen presentations, digital and oral, by partner members and guests.

6. Follow up on the 2018 inaugural conference was relayed, based on the broad themes of artisanal mining, land, and benefits sharing. On artisanal mining, it was hoped that the conference would help push for the gazettment of artisanal mining committees formed in Kakamega, Migori and Taita Taveta, for the issuing of permits for artisanal miners, and for the mining act to be reviewed to redefine artisanal mining to capture the reality of technological innovations over time. On land, issues of land grabbing, large scale land acquisition and breaches in land acquisition processes emerged; the draft land index bill has since been assented into law but again recalled; issues emerging are on community land registration; there is need to review the Land Act; the Land Value Index Law was passed in 2018 although there was an outcry that it did not take some of the recommendations civil society made into account; the Community Land Act regulations were adopted in 2018, paving the way for the implementation of the act. Discussions have already started as to the appropriate manner in which community land (where most resources are found) should be registered; a process is currently ongoing to review the National Land Policy of 2009 to align it to the constitution. Under benefits sharing, it was recognized that there was a need for civil society to sensitize and empower communities with the right information on revenue divisions, so as to manage expectations; a date...
needed to be set for Community Development Committees (CDA) to be gazette so that they could become operational; and transparency and accountability needed to be upheld.

7. The conference focused on one broad area for each day: i) Community perspectives; ii) Reconciling community expectations and company perspectives; and iii) Summing it up with the government. The panels that took place over the three-day period covered the following themes: i) Setting best practice for stakeholder engagement; ii) International and government perspectives on benefit-sharing; iii) Company lens on benefit sharing; iv) Land – acquisition, compensation, resettlement and community land; v) Government lens on benefit sharing vi) Transparency and accountability in the extractives sector.

8. Topics of the singular break out session on the second day were: i) Revenue Sharing; ii) Community Development Agreements; and iii) Local Content, Value Addition and Gender

IV) OUTCOMES OF THE CONFERENCE

9. By adopting the conference communique, conference participants affirmed their commitment to taking action on the issues serving as deterrents towards getting the extractives sector right, making it sustainable and beneficial for all involved.

Benefit Sharing and Management

10. Article 69 (1)(h) of the Constitution of Kenya 2010 requires the state to “utilize the environment and natural resources for the benefit of the people of Kenya”. Further to this, the Mining Act (2016) in Section 183 requires holders of mineral rights to pay royalties at a rate prescribed by the Cabinet Secretary, outlining that the community where the mining operation occurs is entitled to ten percent of such royalties. At present, no framework for disbursement of the royalties to the county governments and the communities exists. In addition, the Ministry of Petroleum and Mining is yet to finalize the Guidelines required for the development and implementation of Community Development Agreements signed between large scale operators and communities, as required by Article 47 of the Mining Act 2016. The guidelines will also specify how communities will access information to enable them competently compute the one percent that the company is meant to spend on Community Development Agreements.

The Petroleum Act 2019 requires all operators in the extractives sector to comply with local content requirements; specific regulations and guidelines on the same are however yet to be developed. In view of the foregoing, on benefit sharing and management, Jukwaa La Madini, Mafuta na Gesi 2019 outlined the following specific commitments to action:

a) The Ministry of Petroleum and Mining was called upon to speedily finalize the requisite guidelines to ensure that communities can promptly benefit from the extraction of natural resources in their areas.
b) Parliament was called upon to finalize and enact the Sovereign Wealth Fund Bill 2019 and the Kenya National Mining Institute Bill 2019 to facilitate proper usage extractive resources revenue so as to benefit current and future generations.

c) The Ministry of Petroleum and Mining was called upon to finalize and implement the Gender Strategy and Action Plan for the Mining Sector; the Draft Community Development Agreement Guidelines; the Draft Model Community Development Agreement; the Draft Mining (Local Equity) Regulations; and the Strategic Plan (2018 – 2022) for the mining sector.

d) The Ministry of Petroleum and Mining and companies involved in natural resources extraction were called upon to publicize information on amounts paid through royalties and spent through Community Development Agreements as well as actions undertaken under Local Content commitments as per the law.

e) The Cabinet Secretary for Petroleum and Mining was called upon to urgently gazette the Community Development Agreement Committees.

f) Organizations partnering with communities pledged to continue to build capacities of communities to advocate for fair and equitable benefit from the extractive sector.

Land Acquisition, Compensation, Resettlement and Community Land

11. The primary resource in the extractives sector is land. For this reason, many communities in Kenya have been denied their fair share of benefits and opportunities to participate in the sector due to shortcomings in land adjudication and registration. Quite often, community members have not been adequately compensated when their land is earmarked for extractives operations. There are numerous instances where the government and investors gain consent from and even compensate people who do not belong to the affected communities. As a result, there are grievances surrounding the compensation of community members in Kwale, Kitui, Turkana and Elgeyo Marakwet counties. In this regard, Jukwaa La Madini, Mafuta na Gesi 2019:

a) Called for the National Land Commission and the Ministry of Lands and Physical Planning to fast track the development of the Compensation, Relocation and Resettlement Framework through an inclusive process. It was particularly highlighted that the life of a community should be better after relocation, resettlement or compensation, unlike the current situation where community members were left disadvantaged.

b) Called upon the Ministry of Lands and Physical Planning to fast track the process of adjudicating and registering community land to confer rights of access, ownership and control to the communities.

c) Called upon the Ministry of Mining and Petroleum to comply with Section 119 of the Mining Act 2016 by publicizing all mineral agreements, including the ones made with Tullow Oil and Base Titanium Limited.
Environmental and Social Impacts of Exploiting Natural Resources

12. Conference participants expressed the need for the social and cultural impacts of exploitation of extractive resources to be adequately assessed and addressed, and the existing regulations providing for public participation in the impact assessments be enforced. In that regard, Jukwaa La Madini, Mafuta na Gesi 2019:

a) Called upon the Ministry of Petroleum and Mining and the National Environmental Management Authority to partner with non-state actors to expand the Environmental Impact Assessment framework to include other important aspects including Climate Change, Gender, Social and Cultural impacts.

b) Further called for the framework to provide for regular monitoring of companies with regards to adherence to the Environment and Social Impact Assessments.

Artisanal and Small Scale Mining

13. The conference appreciated that the Mining Act 2016 recognizes Artisanal and Small Scale Mining. Despite this, artisanal and small scale miners remain largely informal and require technical and financial support to enable them scale up their operations. This will facilitate improvement of their living standards without crippling their livelihoods. The conference also recognized the need to adequately address inclusivity in artisanal and small scale mining so as to appreciate the role of women and youth. In that regard, it:

a) Urged the Cabinet Secretary of the Ministry of Petroleum and Mining to gazette the Artisanal and Small Scale Miners Committees as it had pledged to during Jukwaa La Madini 2018.

b) Urged the Cabinet Secretary to facilitate the completion of the development of the Artisanal and Small Scale Miners Strategy.

c) Called upon the Cabinet Secretary for Petroleum and Mining to consultatively work with communities to demarcate and allocate mining areas for artisanal and small scale miners to end the persistent disputes with large scale operators.

d) Pledged as participants to undertake a comprehensive review of extractives-related laws and make recommendations for appropriate amendments within the next six months.

Women and Youth Involvement in The Extractives Sector

14. Jukwaa La Madini, Mafuta na Gesi 2019 noted that women and youth experience the consequences of extractives projects in a more pronounced way than men yet they do not equitably enjoy the potential benefits. In this regard, Jukwaa La Madini, Mafuta na Gesi 2019:
a) Urged the Ministry of Petroleum and Mining to ensure that women and youth occupy positions in leadership of extractives structures.
b) Urged the Ministry of Petroleum and Mining in liaison with National Gender and Equality Commission to enforce frameworks that protect women from sexual exploitation and gender based violence in the extractives sector.
c) Called upon the Ministry of Lands and Physical Planning and the National Land Commission to ensure that women rights to land and property were recognized, promoted and protected.

V) FOLLOW UP TO THE CONFERENCE

STAKEHOLDER ENGAGEMENT

A) Action by civil society organizations

15. Civil society organizations and groups will have a keen eye on ensuring the present of county government officials and representatives at future gatherings such as these as they were unrepresented at the conference. Having all groups present will ensure there is meaningful engagement.

16. Civil society organizations and groups will endeavor to carry out awareness programmes to ensure committee members are aware of their role. Certain communities (Kakamega county) raised the issue that committee members would attend meetings without knowing what to watch out for and what questions to ask, which meant that the community was not adequately represented.

17. Civil society groups will carry out awareness programmes to ensure that communities are in the know on matters related to permits and licenses for small scale and artisanal miners. This was also raised by community members from Kakamega county.

18. Civil society organizations need to enhance the negotiating capacity of community members in the face of company experts.

B) Action by Companies/ Government

19. Companies need to share information on their extractive activities via adequate and relevant platforms, so that all community members are in the know about what is going on.

20. Companies need to listen to communities and have good working relationships with them.

21. Investors need to understand the issues taking place within the community.

22. Companies need to involve committees in their plans to use money on the community
23. The county government of Taita Taveta needs to ensure that the gem center has artisanal members represented on it.

The Ministry of Petroleum and Mining

24. The Ministry of Petroleum and Mining needs to ensure that communities have the opportunity to participate and have their voices heard in relation to matters affecting them and ensure that they are not sidelined by the companies.
25. The government need to give licenses and permits to small scale miners so that they are no longer arrested for operating without these.
26. The national government needs to have blasters certified and the buying of explosives regulated so that it is no longer done underground with no safety measures in place. This concern was raised by Taita Taveta community members.
27. The national government needs to set out deliberate plans to implement the recommendations of the public enquiry report by the Kenya National Commission of Human Rights and the Truth Justice and Reconciliation Commission on the land issue in Taita Taveta.
28. The government needs to implement the Mining Act and the Local Content Act to ensure that compensation, relocation and resettlement plans are actualized.
29. The government needs to introduce a training session on money management to make sure that people compensated and resettled use the money properly. Those getting compensated need to be trained on financial management before transfer of money.
30. The government needs to develop Community Development Agreement guidelines on how royalty shares for communities will be used so that the committees can be gazette.
31. The government needs to train its officers to assist miners on how to use explosives.
32. The government needs to domesticate the African Mining Vision 2009.
33. The government needs to address negative effects of mining like environmental change, health hazards, and violation of rights. At present, Kenya does not have remedial policies for closure and rehabilitation.

REVENUE

A) Action by civil society organizations and groups

34. Civil society needs to continue working with small scale miners and continue building their capacity to enable them to utilize the opportunities that come with the extraction projects. People need to be strategically placed to benefit from opportunities that come up such as jobs, training on technical skills, and scholarships.
35. Civil society needs to coordinate how themselves, governments and companies can work together with clear roles. The distinction will make things work better because people will know what the expectations are and there will accountability and transparency.
36. Civil society groups/organizations need to create linkages and share information so that all industry players benefit.
37. Civil society groups need to put more focus on tracking and auditing the costs mining companies put forward to make sure that companies are not overstating costs as has happened in other parts of the continent. This will maximize on revenues.

38. Civil society groups and communities needs to make the government accountable to them, so because the problem of lack of accountability of leaders is transferred to companies.

B) Action beyond civil society

Communities

39. Communities need to organize themselves to ensure money is being spent the way they want it to be spent, by deciding as a collective what their priorities are. This will ensure that by the time the company is approaching the community, the community is already organized and is telling the company how it wants to be engaged with.

40. Communities need to develop long term integrated plans.

41. Activists need to be ready to work for the community selflessly so that they are not easily compromised.

42. Communities need to own part of the process of engaging with companies. One way of doing this is by codifying how they want to be consulted so that if anyone approaches them, they have rules of engagement.

43. Community members need to know what their rights are, so that they demand for the respect of these rights.

44. Communities should learn from others and use what’s there and work with it, instead of reinventing the wheel. Eg. The possibility of equity as part of revenue sharing.

45. Communities could create their own development corporations, trust funds and other formal structures of receiving the trust funds so that they are accountable.

46. Citizens need to also keep the government accountable by requesting for disclosure of details of mining costs and contracts so that they get their fair share of revenues. The validity of these costs needs to be challenged if necessary as cases have been seen where companies inflated costs to the tune of millions in DRC and Uganda.

47. Communities need to be vigilant when identifying who should represent them in the committees, so that the people who go to represent them don’t betray them.

48. Communities need to be proactive in requesting for information.

49. Communities need to start making plans that will ensure their economic stability even after the extractive companies leave, and not put all their eggs in one basket. In Kwale for instance, Base Titanium will leave the country after 13 years and the people of Kwale need to start thinking about what they will do next after Base leaves.

50. Communities need to have basic minimums that stipulate what companies should do before they begin mining in their areas, so that they do not keep having a cycle of complaints throughout.
Artisans

51. Artisans need to get together to improve their collective lot. Getting together in groups will give them the necessary volumes and they can get Fairtrade and other certifications. There are additional opportunities and markets artisanal miners can tap into when certified. There are buyers willing to pay extra so that they can invest in the community.

Companies

52. Companies should disclose the costs and expenses of their work in the spirit of being transparent and accountable.
53. Companies should have mechanisms where community members can regularly be informed about their work, eg. Setting up information centers.

County governments

54. County governments need to look into issues of occupational health and safety of artisanal miners.
55. County governments need to look into the environmental degradation that comes up with artisanal mining.
56. The county government of Siaya needs to sensitize community members on the importance of public participation because it is currently low, with few member of the community attending public participation forums.
57. County governments need to allay the fears community members have of funds disappearing through corruption.
58. The Kwale county government needs to investigate the issue of water pollution as community members are getting affected by the water.
59. County governments need to sensitize communities to be aware of what they are signing on to so that there is less confusion down the road and expectations on all sides are managed.
60. The Elgeyo Marakwet county government needs to look into the vandalism of equipment and assets that were used in fluorspar mining.
61. The Kitui county government needs to look into community grievances whereby they are opposing the extraction of coal on health and environmental grounds.
62. County governments need to make communities aware that they are entitled to legal support, which will be paid for through the national fund.

The Ministry of Petroleum and Mining

63. The government needs to put a time frame for when the CDAs will be gazetted and the funds will reach the people.
64. The government needs to make sure that people get their compensation promptly and not after many years.
65. The Ministry of Petroleum and Mining needs to put resources, political will and monitoring behind enacted legislation, to ensure it is implemented and adhered to.
66. The national government needs to clearly outline the criteria of the pricing of land with regard to compensation as it is still seen as problematic. Some community members complained about the disparity of compensation between Kwale and Lamu land, where one community was given millions and the other hundreds of thousands. While variations of land prices is a legitimate issue, this needs to be communicated adequately so that some communities do not feel ripped off.
67. The Ministry of Petroleum and Mining needs to be more forthcoming and open with information regarding mining contracts it sets up with mining companies.
68. The national government needs to make sure that affected communities are knowledgeable and aware of the laws in place that enshrine their rights so that they do not get unfairly exploited.

LAND AND COMPENSATION

A) Action by civil society

69. Civil society groups need to safeguard and protect land right defenders because they have been violated and attacked in the past.
70. Let us simplify investors document i.e community engagement tool of base titinium

B) Action beyond civil society

County governments

71. Kakamega artisanal miners want the county government to stop harassing them as they carry out their mining activities

Ministry of Lands

72. The Ministry of Lands needs to deal with contested ownership of lands in the places it occurs.
73. The Ministry of Lands needs to address the issue of women in Kakamega without title deeds who were not compensated.
74. The Ministry of Lands needs to come up with other methods to show ownership of land apart from title deeds.
75. The Ministry of Lands needs to provide simplified and user-friendly documents to explain the existing land laws to people of all education levels.

National Land Commission
76. The National Land Commission should carry out compulsory land acquisition of illegally allocated and grabbed communal land.

LOCAL CONTENT, VALUE ADDITION AND GENDER

A) Action by civil society

77. Civil society groups need to support citizens to know, claim and realize their rights.
78. Civil society needs to involve the banking sector at future industry events to encourage them to fund local entrepreneurs that will then further benefit from the mining companies.
79. Civil society organizations need to carry out sensitization campaigns to enable women to own land and get title deeds for their land.

B) Action beyond civil society

Company

80. Companies need to be compliant with providing information so as to manage the expectations of the community.
81. Companies need to put in place sexual harassment policies to protect women from sexual harassment.
82. Companies need to be on the look out for tribalism and nepotism which are big deterrents to local people getting employed.

Community

83. The community needs to push for their land rights to be respected.
84. Community members need to refuse to be bullied to pay bribes for artisanal mining.
85. Communities need to map their own resources so that when it comes to negotiations, they have all the knowledge on their side.

National government

86. The government needs to make sure public participation and information dissemination to the communities is adequate to manage communities expectations.
87. The government need to share production agreements with the oil and mining companies and make sure they are available to the public.
88. The Ministry of Lands should look into issuing title deeds to communities in Kwale, Kakamega and other counties.
89. The government should ensure that people are relocated to liveable areas.
90. Compensation needs to take into account social amenities and also historic ties to land eg. Where relatives have been buried, community shrines, and where crops have been planted.
91. The government needs to make sure that it issues the appropriate acreage for title deeds, rather than giving title deeds written lesser numbers.
92. The government needs to issue immediate and timely compensation.
93. The government needs to map and clarify community land.

GOVERNANCE

A) Action by civil society

94. Civil society needs to push to get a good governance framework so as to arrest the possible consequences of poor governance and avoid the resource curse. A good framework must fully capture the key pillars of environmental democracy: access to information, public participation, access to justice.
95. Civil society needs to push for implementation of laws enabling a good governance framework.
96. Civil society needs to push to ensure that accurate and reliable information is available to be accessed by the citizenry, to enable meaningful, informed and effective citizen participation.
97. Civil society needs to sensitize communities on their rights to access information related to mining activities in their areas.
98. Civil society needs to sensitize duty bearers on their duty to ensure access to information.
99. Civil society needs to help communities set up structured engagements with mining companies. One way of doing this is ensuring that multi-sector working group exist in areas where minerals are being extracted. These should be in place even before mining takes place.
100. Civil society needs to push communities to get the information they need from the government, such as information on what exists in Kenya in terms of oil, minerals and gas; who is interested in it; who owns the businesses; their track record; beneficial owners; the bidding processes; the terms of engagement; how long they will be in operation; how much are they extracting; how much revenue; and how much are they processing.

B) Action beyond civil society

National government

101. The government needs to be transparent and accountable to the people, enabling communication for all groups and providing data and information for all, so as to avoid the resource curse seen in other African countries.
102. The government needs to use appropriate systems and platforms to enable good information flow to communities where extraction takes place, and not rely only on the Kenya Gazette and newspaper advertisements. In Nigeria for instance, they relay
messages even via SMS. Information should be packaged differently for different audiences so that there is no information asymmetry between the elite and the common man.

103. The government needs to set and keep timelines for compensation and disbursement of royalties.

104. The government needs to set up feedback mechanisms between the communities, civil society and the mining companies.

COUNTY SUBMISSIONS

Taita Taveta
1. Communities need to be unified to speak in one voice. Public participation needs to be improved.

2. Boundaries need to be demarcated so that community members can know where they can mine.

3. People’s welfare needs to be reflected in the laws.

4. The government should establish a kitty to support local artisanal miners in the county because presently they don’t have tools, skills and access to permits.

5. Prioritize employment of locals.

6. Provide security materials to small scale miners.

7. All mining committees must be involved in.

8. Provide markets.

9. Bring in ministry to solve boundary disputes.

10. A framework should be set up that will enable the Ministry of Petroleum and Mining to work with other ministries to make getting licensing and paperwork easier for miners. Eg. Ministry of Lands.

11. The Minister for Land and the Kenya Land Commission and courts should come up with adequate compensation agreements for loss of land and property.

**Kwale**

1. Problem of land resettlement. Some people were taken to a place not good for living, they are deprived of social amenities. The people in Kuranze, Nguluku and Chibuku for instance are living in bad conditions with no telephone network, no schools. The government needs to address this appropriately.

2. The government should fast track the gazettement of the already constituted Community Development Agreement Committees as it works on CDA funds management guidelines.

3. The government should disburse royalties to the county government and community because the money is there.

4. foreigners have come in and invaded community lands in Matuga, Shimoni and other places. They have taken up jobs meant for locals.

5. Leaders need to represent the community adequately and not misrepresent the companies for their own benefit.

6. The PS should organize to ensure that those at Nguluku and Chibuku are taken care of because they are in a dire place. The letters written need to be fast tracked.

**Kitui**

1. The benefit sharing legislation should be revised so that investors don’t make locals miss out on their rights.
2. Government should make sure that community members do not suffer unduly e.g. from polluted water.
3. Alternatives to coal mining should be sought because coal has adverse health effects on people and the environment. The government should note that developed nations are turning to green energy and should follow suit.
4. Land adjudication needs to be done as most areas do not have title deeds.
5. Problematic land demarcation in some places needs to be resolved as it has brought problems. E.g. Size of land given is smaller than what families claim, there have been land and boundary disputes with claims and counter claims.
6. The government needs to involve the community in all its activities as community members are living in fear of eviction and displacement. Public participation is key.
7. The government needs to do awareness creation on the projects, updating the community members every step of the way. Community members also need to be able to access information on mining deals. Concessions available, revenue collected.
8. Environmental impact assessments and audits need to be done and adverse effects mitigated.
9. Communities need to be able to benefit from mining revenues, training and jobs.
10. Artisanal and small scale mining needs to be recognized in law so that the arbitrary arrests of artisanal and small scale miners can end.
11. Community members need to be organized, unified and speaking with one voice, so that some don’t betray the rest.
12. The current liaison committees should be dissolved and new ones elected by the people with an eye on transparency and inclusivity. They need to be formed through elections by the community and they need to have clear terms of office. The law requiring that committee members should have degrees should be amended as many community members do not have degrees.
13. Civic education on land laws should be carried out to the people.
14. A clear compensation arrangement agreeable to all should be set up, with the community made aware of it. Currently community members are not aware of any clear compensation arrangements.
15. The right of community members to say no should be respected.

Migori county
1. The government should move in to protect miners from exploitation by middle men.
2. Given that Kenya is a member state of the Minamata convention which saw mercury face a global ban, the government needs to ensure the use of mercury to mine gold stops in Migori. Numerous infections and health complications have arisen as a result of mercury, causing death and physical deformities of minors due to mercury contamination in the environment.
3. The government needs to end the use of sodium cyanide in gold mining because it is dangerous.
4. The government needs to provide safety equipment for small scale miners who use these dangerous substances.
5. It needs to be made clear which institution is mandated to give consent on trust land, if it is the National Land Commission or the county government. It is not clear from the act.
6. The ministry needs to stop favoring large companies at the expense of small miners. Public participation was not done before giving licensing and permits to Redrock company to operate in Nyatike. A local group – Osir Matanda had applied for a similar license but the license was issued to this international one at the expense of the local company. Community members want to be told of the criteria used.
7. The act requires the CS to declare an area for artisanal mining or large scale mining. This has never been done and today the community finds a company has been given a license.
8. The PS should gazette the artisanal mining committees.
9. The government should do audits of large companies coming to do large scale mining, to ascertain the personalities behind these companies to avoid conflict of interest of cartels.
10. The government should put in place mechanisms to mitigate social ills and disruption that come with mining such as school dropouts and spread of HIV and other diseases.

Turkana county

1. Registration and adjudication of land ought to be done swiftly. The county government and National Land Commission should set a deadline for Turkana County to enable registration before the process of compulsory acquisition begins.
2. The Cabinet Secretary at the Ministry of Lands should appoint, train and deploy community land registrars as soon as possible.
4. The county government should assist communities to come up with community land management committees to ensure proper management and allow the community to cede land and manage compensation.
5. The National Land Commission in partnership with the national and county government should work to develop a land value index for pastoralist lands that considers the intrinsic value of the land separate from the existence of structures on the land as most of the land does not have structures but is used by the community as strategic drought reserves, salt licks, marketing and mobility routes, social cohesion, conservation and other ecosystem services.
6. A hybrid system of compensation should be set up that includes land for land compensation and monetary compensation. Affected communities should be relocated.
to a similar piece of land compensation should cover all costs related to this resettlement including access to services and assistance to restart their economies and live optimum lives. Resettlement that preserves the pastoral way of life is difficult as rangelands are extensive and posses unique qualities which cannot be replicated elsewhere.

7. A sustainable model should be set up to administer the funds on behalf of current and future generations. The formation of a Community Trust Fund had been suggested in 2018 by the Kenya Civil Society Platform on Oil and Gas to ensure proper management of compensation money.

8. Environmental issues around waste management of drill cuttings should be conclusively dealt with to ensure protection of the environment and to allow the oil company and community members to co-exist harmoniously. The government and Tullow oil should come up with a sustainable waste handling and treatment facility with timelines provided to the community on how this will be done. The hazardous waste could be taken to Stony Athi for instance.

9. The national government, county government and Tullow oil should inform communities on their plans around acquisition of water because Turkana is water scarce and it is vital that the oil company’s activities will not put undue pressure on the fresh water supply for host communities.

10. National and county government should develop and carry out a civic education programme on the community land laws to ensure that people know their rights, duties and responsibilities with regards to community land.

11. The process should be more consultative and bring in the community to ensure that all are in agreement on how the land will be held and managed.

12. The government should provide a timeline listing out a schedule of activities and steps to be taken along the process.

13. The National Land Commission needs to organize capacity building exercises of government officials so that they can carry out the work of delineating and registering land professionally.

14. The Kenya government should join the Extractives Industry Transparency Initiative (EITI) so that there is appropriate disclosure of Production Sharing Contracts (PSC).

Kakamega county

1. Land titling is needed especially for women. Women should get title deeds.

2. The national and county governments should take full responsibility about ensuring that the community is well taken care of in terms of welfare.

3. The county government needs to update the community members about revenue, informing them how the disbursements will be made.

4. The CDA committees need to be gazetted.

5. Permits should be given to small scale miners.
6. Women should be afforded their rights within the mining sector
7. A gold refinery plant needs to be built so as to give better market prospects for small scale gold miners
8. The government should allocate separate land for small scale miners and large companies

Siaya county
1. There is need for a social and environmental impact assessment. There are issues such as children dropping out of school cause of gold, and girls getting pregnant
2. Middle men from Tanzania
3. The government needs to have a land reclamation strategy for exhausted land
4. The county government should carry out sensitization for artisanal miners

Kisumu county
1. Local content is an issue. They need an act, an agreement on paper
2. There needs to be written down agreements
3. There is need for community awareness and engagement via sensitization and training
4. Need to have outline of benefits on paper from company to community
5. Government needs to put agreements in place
6. Need measures to compensate land

Elgeyo Marakwet
1. The National Land Commission should implement the Flourspar Taskforce Report on compensation fully and not partially
2. The 4.1 million land compensation for fluorspar mining should be recovered and given to community members
3. Not all locals have title deeds
4. Migrants invaded the area and bought land with the knowledge of oil prospects. The government should make any discoveries public beforehand
5. Communities that will be affected should be involved in the setting up of MOUs with companies and county and national government
6. Environmental impact assessment report should be made public
7. Mechanisms need to be put in place to regulate minerals so that companies don’t exploit everything and leave nothing for future generations
8. The government should not clear the fluorspar mining company until it addresses the issues of unfairly dismissed employees, destruction of property, livestock and trees of the
community and the issue of denying people access to their land to grow crops, fetch water, firewood and building

Women

1. Women should get jobs in the mining sector
2. Health and safety of women should not be compromised
3. Women should be involved in the compensation process, not men only
4. Women’s representation as leaders in the industry is key. Should adhere to 2/3 rule
5. Access of opportunities should be for both men and women
6. Inclusion – Women should be included in all processes along the way