**THE IMPACT OF TOXICS ON INDIGENOUS PEOPLES’ IN KENYA**

 A Report to the UN Special Rapporteur on toxics and human rights

**Organization Summary**

This report has been prepared by Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT). IMPACT was founded in 2002 to respond to the rising human rights violations of Laikipia Maasai. The organization has observer status with the African Commission on Human and Peoples Rights and is accredited to several UN processes on Indigenous people’s rights and issues. It is affiliated with national and regional networks.IMPACT exists to build, support, and strengthen grassroots social movements. IMPACT envisages an inclusive society where diversity and the rights of indigenous people are recognized, respected, and protected.

IMPACT’s mission is to address deep underlying causes of social exclusion, discrimination, marginalization, and poverty that undermine the indigenous peoples’ right to livelihoods, a healthy environment, and social-cultural rights. IMPACT supports indigenous communities to enable them to protect their natural and bio cultural rights; promotes and enhances indigenous peoples' representation in government; mediates land and resource conflicts between communities, companies, and government; facilitates inter-community dialogue; strengthens the role of pastoralist women as conflict mediators, and conducts research and advocacy for measures to enhance land and resource rights.

**Introduction**

Mining activities have devastating impacts on pre- existing indigenous livelihoods globally as they deprive fauna and flora of food and natural habitat.[[1]](#footnote-1) Indigenous peoples’ in Kenya are no exception to the global challenges experienced through extractive industries owing to their geographical placement as they are located in resource rich lands.

Waste and other by products from mining sites have poisoned the lands, water and air leading to low yields and massive losses. Access to land rights has posed challenges even in cases where the Courts have issued orders of relocation and compensation. Pollution and environmental degradation not only affect the environment but also the health of the people. Water and air pollution has increased prevalence of diseases. Unsafe methods of extraction such as the use of mercury pose serious health issues to the miners.[[2]](#footnote-2)

The closure of 40 gold mines and processing plants in Migori County in the year 2019 revealed a myriad of challenges, violations and exploitations associated with mining in Kenya. A multi- agency team established to look into the mining found that besides exploitation of workers in the mines, it was noted that many mines were reported to discard the pollutants into water bodies and the environment. River Kuja and River Migori which discharge into Lake Victoria are the most affected where various incidents of livestock dying after consuming polluted water were reported.[[3]](#footnote-3) It was especially noted that the mines had been using Cyanide, an illegal toxic chemical illegally imported from Tanzania.

Indigenous Peoples’ in Kenya are not accorded Free, Prior and Informed Consent in respect to extractive industries. Since colonialism, land tenure in indigenous peoples’ domains have been challenged by historical injustices. Most of indigenous peoples’ territories therefore was given to colonial farmers and or designated as national parks, game reserves or forest reserves. Natural resources like gold, oil and gas, rivers and other water bodies are classified as public land vested in the government. The few remaining indigenous territories were classified as Trust lands. Indigenous communities were generally then marginalized from the political and economic decision-making in all countries including in Kenya making them vulnerable in the design and implementation of projects, including extractives, in their territories.

The challenges with mining in Kenya and primarily on indigenous peoples’ domains include **failure to comply with health and safety standards in these often marginalized areas often unregulated to follow through on compliance by the relevant government institutions.**

Loss of land, loss of livestock, health complications are among the challenges indigenous communities in Kenya located in areas where mining is prevalent are experiencing.

**Titanium Mining in Kwale**

Titanium minerals are in large demand worldwide for a variety of industrial and commercial applications including manufacture of pigments, ceramic glaziers, foundry applications and the aerospace industry. The Environmental Impact Assessment conducted by Coastal and Environmental Services in Kwale identified that the Msambweni complex of mineral deposits has about 2.8 million tonnes of ilmenite, 1.0 million tonnes of tutile and 0.6 million tonnes of zircon. They occupy an area which is about 3 Km Long, 2 Km Wide and are generally 25 to 40 m deep. First the Iimenite contains up to 47.9% titanium oxide. Iron contents is also high being about 51.1% and there are low levels of calcium, magnesium and manganese. Secondly the native is a high-grade source of titanium containing about 96.2% of the metal, finally zircon in Msambweni contains about 66.0% of zirconium.[[4]](#footnote-4) From the onset, challenges associated with mining titanium in Kwale was marred with controversies including the EIA undertaken by a company commissioned by Tiomin Limited Company, the mining company.

Radiation from titanium mining is usually associated with the minerals zircon and monazite. However, the Tiomin EIA does not address the issue of radiation in detail in the main reports submitted in April 2000. The Base Titanium Mining Company in Kwale County started operations in 2013 after taking over from the predecessor company Tiomin Limited Company and whose extension to mind is set to extend beyond 2021. The Kwale Mining Project is a leading exporter of heavy minerals making it one of the Flagship Projects of Kenya’s Vision 2030.

Soon after the company commenced mining, the air in Miembeni village started filling with dust that choked the crops.[[5]](#footnote-5) Base Titanium has been accused of poisoning the lands around their mining sites. In the article by The New Humanitarian discusses the plight of residents of Miembeni Village in Kwale County on the effects of Titanium Mining.

“*In 1989, Nelie Yeri and her late husband bought 6 acres (2.4 hectares) of land in Miembeni village in Kwale County, southern Kenya, and moved there with their six children. They built a farm to grow oranges, cashew nuts, coconuts, mangoes, bananas, pawpaws and Bixa orellana, an orange-red shrub whose seeds are used as a coloring agent in processed foods, and used to bring in about $7,000 a year. For Yeri, fighting for her land rights is taking a financial toll. The farm’s coconut, mango and cashew nut yields have dropped since the mining began, she says, and the orange trees are dying as a result of being constantly covered in dust. “Trees that had never dried up for over 20 years are now drying up*.”[[6]](#footnote-6)

In ***Rodgers Muema Nzioka & 2 others v Tiomin Kenya Limited [2001] eKLR,*** the Petitioner’s lawyer Pauline Mwenje stated that the Titanium in the air and drinking water led to irritation and lung infections. Despite the decision issued by the High Court in 2001 compelling Tiomin to relocate residents who were experiencing adverse effects from Titanium mining, the implementation of the case is yet to see the light of day. A new petition to enforce the 2001 High Court judgement was filed at the Mombasa High Court in 2019.[[7]](#footnote-7)

Apart from the large-scale mining projects, a large part of the extractive industries in Kwale is driven by Artisan and Small-Scale Mining (ASM). This is mostly evident in the mining of Silica sand, limestone, gemstones, and copper which requires only very basic tools to extract.[[8]](#footnote-8)

Environmental degradation in Kwale caused by unchecked mining has subsequently affected other crucial sectors such as agriculture. Women, who are the drivers of agricultural activities in the region are the most affected.

**Ewaso Nyiro River Contamination**

The Ewaso Nyiro Basin covers an area of about 210,226 sq.km, 36.3% of Kenyan drainage area and bears 5.8% of Kenya water potential with an annual yield of 1469million m3. The main economic activities in Ewaso Nyiro basin include large- and small-scale horticulture crops production in the upper reaches and livestock rearing downstream of the basin. The river is the main source of water to over 3million pastoralist communities living downstream the river and these communities are facing health related risks associated with pollution of the river by the flower farms upstream. [[9]](#footnote-9) The predominant pastoralist communities located downstream Ewaso Nyiro are Maasai, Samburu, Rendille, Borana, Turkana and Somali communities. Herbicides, leached fertilizer and fuel leaking into the river water are the primary sources of anthropogenic pollution.

According to a research supported by Sino-Africa Joint Research Center, it revealed that Ewaso Nyiro irrigation water had a manganese contamination factor of 9.17, implying it was very contaminated which poses health risks for the unsuspecting pastoralist communities downstream who depend on the river for domestic use. The water also had a higher concentration of iron than the recommended amount in drinking water. Herbicides, leached fertilizer and fuel leaking into the river water were the primary sources of anthropogenic pollution.[[10]](#footnote-10)

This is alarming bearing in mind high concentration of iron in drinking water is associated with cancer and majority of residents within Ewaso Nyiro ecosystem use its water without any form of treatment.

**Oil Exploration in Turkana County**

Oil exploration in Kenya began in the 1950s with Shell and British Petroleum (BP) oil companies conducting the first survey. They mapped out major geological basins and drilled the first oil well in 1960. Over 40 wells have since been drilled, but it was not until 2012 that potential commercially viable oil resources were discovered in Turkana County by Tullow Oil Plc. On June 3, 2018, the launch of Early Oil Pilot Scheme (EOPS) commenced. On June 30, 2018, barely a month after the launch of EOPS in Turkana, Tullow Oil Plc halted operations as they came under pressure from local communities. Some of the grievances raised by the local communities included how changes in the natural environment have affected and degraded livelihoods due to the excavations, seismic processes, emission of hydrocarbons, and dust.[[11]](#footnote-11) Hydraulic fracturing that Tullow uses in Turkana County is known to produce large amounts of wastewater that may contain dissolved chemicals and other harmful byproducts.

In May, 2021 the Governor for Turkana Hon. Josphat Nanok made a call for action on safe disposal of hazardous waste from oil and gas operations at the South Lokichar oil basin. Warning of the harmful impact the toxic waste has on the environmental and the health dangers to communities living close to **unsecured dumping sites**, the Governor said if National Environment Management Authority (NEMA) and Tullow Oil Plc fail to comply, the County Government will head to court. The Governor further noted that the government has done poorly on waste management in the extractives sector, especially with oil and gas where there has been no feedback on disposal of hazardous material on a number of sites not approved by the County Government.[[12]](#footnote-12)

Similarly, residents of Marsabit petitioned the High Court, through Kituo Cha Sheria, to compel the government to intervene quickly to avert further spread of the cancer scourge to save the lives of both people and livestock. Residents claim the poisonous substances were dumped in the desert by multinational corporations. First, there was Amoco Petroleum, which explored for oil in the 1980s and, after drilling oil wells in Kargi and Dukana locations, they abandoned the project but did not properly decommission the wells.

The chemicals they used in their activities were neither destroyed nor buried. They include toxic chemicals, general equipment and scrap metal. The poisonous material was left on the ground and is suspected to be the cause of the numerous cancer deaths among residents. Livestock are also affected.

Kargi Location in southern Chalbi is worst hit by cancer, the third leading killer in other areas affected include Dukana, Bubisa, Maikona, Kalacha and Noth Horr — all in the northern part of the desert. The disease has, however, spread to other parts of the county.

The effects of toxic wastes associated with oil drilling in Kenya range from environmental degradation, livestock loss to health complications among local communities.

**Conclusion**

Evidently, exploration, discovery and exploitation of minerals have both negative and positive impacts on local communities. Pollution and environmental degradation not only affects the environment but also poses a health risk to indigenous communities in regions where extractive industries are being mined. Lack of transparency and accountability is a primary source of mistrust and unregulated management of waste disposal that has adversely contributed to loss of land, loss of livestock, livelihoods and health complications in extractives industry and large scale agriculture.

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