



**NATURAL  
JUSTICE**

LAWYERS FOR COMMUNITIES AND THE ENVIRONMENT



# ANNUAL REPORT

2017 / 2018

## MESSAGE FROM THE EXECUTIVE DIRECTOR



**According to Global Witness, the year 2017 saw a record number of environmental rights defenders killed globally, at a rate of almost four killings a week. Most of them were community defenders, many of them indigenous, stepping up to protect community land, resources or wildlife against the relentless, and often illegal, exploitation of resources - or its ugly sister, the construction of infrastructure that stimulates such exploitation.**

According to John Knox, Special Rapporteur for Human Rights and the Environment, *"Human rights are being jettisoned as a culture of impunity is developing [...] There is now an overwhelming incentive to wreck the environment for economic reasons. The people most at risk are people who are already marginalised and excluded from politics and judicial redress, and are dependent on the environment. The countries do not respect the rule of law. Everywhere in the world, defenders are facing threats. [...] There is an epidemic now, a culture of impunity, a sense that anyone can kill environmental defenders without repercussions, eliminate anyone who stands in the way. It [comes from] mining, agribusiness, illegal logging and dam building."* (Guardian, 2017, **"Environmental defenders being killed in record numbers globally, new research reveals"**)

In 2017/2018, Natural Justice continued to support those communities that are at the frontlines, fighting for environmental justice in Sub-Saharan Africa. We did this by following our strategy of working at different levels.

First and foremost, we focused our efforts on the local level to support communities in realising their rights in relation to land, resources and culture, whether by assisting them in their negotiation with outside parties, building capacity on how to appeal against flawed Environmental Impact Assessments or, in instances where communities have aspirations

to engage in respective benefit sharing negotiations, by working with them in affirming their rights to their traditional knowledge.

Examples include Natural Justice's support during ongoing Rooibos negotiations between the national Rooibos industry and Khoi and San communities in South Africa, in order to ensure the communities benefit from the commercial exploitation of its use; the training of 185 affected community members, and subsequent filing of 30 complaints arising from 15 major infrastructure or extractives projects impacting over 10,000 people in Kenya; and the support of the Khwe community in Namibia, who currently live near Bwabwata National Park, with the aim to ensure that the community gains greater access and use rights to their customary resources inside the protected areas of the park.

At the national level, our strategy has focused on influencing law-making processes, engaging in national advocacy initiatives or undertaking strategic litigation. Highlights of our work on the national level this year included providing input into legal drafting processes surrounding Access and Benefit Sharing legislation in both Madagascar, Namibia and South Africa, as well as contributing to the development of seven laws in Kenya in relation to energy and resource extraction. We are also engaged in two ongoing strategic litigation processes in Kenya; namely, one in Kenya's High Court surrounding Lamu Port and one in



the National Environmental Tribunal surrounding the proposed coal power plant in Lamu.

On the international level, we have continued to use strategic fora to push for greater recognition of community rights in processes where we saw respective policy space to do so. Among these was our contribution to the successful adoption of the 2017 Resolution on Sacred Natural Sites and Territories by the African Commission on Human and Peoples' Rights through one of our staff's membership in the Commission's Working Group on Indigenous Populations. The resolution calls on African states to recognise Sacred Natural Sites and Territories and their custodial governance systems, which lie at the heart of indigenous cultures and belief systems. We believe the resolution makes a significant contribution to protecting indigenous lands and territories on the African continent going forward. In the context of conservation justice, Natural Justice co-organised, together with a number of partners, a multi-stakeholder Dialogue in Eldoret, Kenya. In follow up to the Dialogue, the same partners hosted an event on the critical issue of conservation and human rights at the 2017 United Nations Permanent Forum on Indigenous Issues, further raising the political stakes around this matter.

Finally, in 2017/2018, our work was supported by cutting-edge research. Highlights include research surrounding the rights of indigenous peoples in

the context of climate change, leading to the publication of, "**Protecting Indigenous Peoples' Rights in Academic Research Processes: A Guide for Communities in South Africa**". Of equal importance, Natural Justice coordinated the legal analyses of national laws supporting Indigenous Peoples and Community Conserved Areas and Territories (ICCAs) in 20 countries in Africa, Latin America and Asia.

It has been my pleasure to continue supporting our team throughout this exciting year and I am in awe of our staff's incredible output during these 12 months. While many of the communities we support continue to be faced by uphill challenges, this report will give you an insight into the tireless work of our wonderful team into levelling the playing field so that these challenges can be overcome, one at a time.

A handwritten signature in black ink that reads "Johanna von Braun". The signature is fluid and cursive, with a long horizontal stroke at the end.

**JOHANNA VON BRAUN**  
EXECUTIVE DIRECTOR



# GOVERNANCE OF LANDS AND NATURAL RESOURCES PROGRAMME

PROGRAMME DIRECTOR: LESLE JANSEN



## THE CONTEXT

The African Commission's Working Group on Indigenous Populations' 2003 report confirmed that, "*Land and other natural resources are critical for the survival of any subsistence community. The protection of rights to land and natural resources is fundamental for the survival of indigenous communities in Africa....*"

Land and resource rights are the foundational aspects on which indigenous and local communities' struggles are built. The African regional jurisprudence emerging over the last few years clearly advocates for the recognition and protection of indigenous peoples' land rights. The landmark African Commission decision in the case of *Endorois* (Kenya) formally included all the gains made over time, within the indigenous peoples' movement, on frameworks such as the UN Declaration on the Rights of Indigenous Peoples, the *Mabo* (Australia) decision, the *Awes Tingni* (Nicaragua) decision, as well as the *Richtersveld* (South Africa) decision. The gains have also been felt in the African Regional legal system, especially following the *Ogiek* (Kenya) judgment by the African Court on Human and Peoples' Rights in Arusha. In South Africa, key court cases have emerged which give recognition to both customary law as a valid source of law and to having customary resource rights recognised. These are important developments which give recognition and power to indigenous and local communities as it relates to their traditional resource rights.

In this context, Natural Justice continued to engage both national- and regional-level policy frameworks towards helping to protect indigenous and local communities' land and resource rights.

## LOCAL LEVEL / COMMUNITY EMPOWERMENT

**Guriqua, South Africa:** This indigenous fisheries-based community from the West Coast of South Africa is in the process of developing their biocultural community protocol (BCP) to articulate their shared forms of economies – these being both land and marine-based economies. They have also identified their community vision and priorities in the context of the restoration of their living customary laws. Natural Justice **supported them in starting their BCP development process.**

**National Khoi and San Council, South Africa:** We supported the Khoi and San community representatives in a consultative land rights conference. In consultation with the current Chair to the United Nations Expert Mechanism on the Rights of Indigenous Peoples, Dr Albert Barume, the conference explored the foundations to indigenous land rights. The conference also engaged with thematic areas such as indigenous peoples impacted by issues such as climate change, farm workers, former religious mission stations, access and benefit sharing and its intersections with land.



**Bethany Farm, South Africa:** This Khoisan community is based in the Free State province in South Africa. They successfully claimed back a portion of their ancestral land through the South African restitution process. However, they have remained in an ongoing struggle to protect their indigenous land rights. They have faced multiple onslaughts and land dispossessions through apartheid and colonial laws. Their way of life is intimately linked with **water resource management and their sacred sites**. We supported them in challenging an attempt by the missionary church to auction off their land and have supported their efforts in seeking South African government protection of their ancestral lands.



*“Die fontein is die lewensaar van die mens. Dit is die oog wat die water uitvloei”  
 (“The fountain is the life vein of the human. It is the eye out of which the water flows”)*

*- Captain Kraalshoek, community leader of the Bethany community, when referring to the deep spiritual significance of water to the community.*

On a visit to the Bethany community in the Free State Province in South Africa, Natural Justice were hosted by Captain Kraalshoek, who showed the team some of their water points, which have cultural and spiritual value to the community, as well as the grave site of the Griqua People. Natural Justice have been providing support to the community who are threatened with eviction from their land.

## NATIONAL AND REGIONAL LEVEL PROCESSES

**African Commission's Resolution on Sacred Natural Sites and Territories:** During 2017, the African Commission's General Assembly passed a resolution focusing on sacred sites and indigenous peoples. It calls on African states to recognise Sacred Natural Sites and Territories (SNST) and their custodial governance systems, which lie at the heart of indigenous cultures and belief systems. The Resolution emphasises that Sacred Natural Sites must be protected in order for indigenous and traditional peoples to enjoy their rights enshrined in the African Charter on Human and Peoples' Rights.

This resolution stems from two important gatherings, held in 2012 and 2015, with custodial communities from Benin, Ethiopia, Ghana, Kenya, South Africa and Uganda, who met to discuss their hopes and concerns for the African continent's sacred natural sites. Together, they drafted a Statement of the Common African Customary Laws for the Protection of Sacred Natural Sites, and they decided to take their voices to the African Commission and seek recognition from Africa's most respected human rights institution. This resolution was then brought to the African Commission's Working Group on Indigenous Populations in Africa. Natural Justice contributed to this resolution being presented before the Working Group on Indigenous Populations. This resolution was in turn pushed by the Chairperson of the Working Group, Commissioner Soyata Maiga, before the African Commission's Ordinary Session for **its adoption**.

*"In this landmark resolution, the African Commission opens a space for affirming pluri-legal systems, which recognise the Earth as the primary source of law. The Commission positions itself with other progressive initiatives to transform the dominant industrial jurisprudence and recognize indigenous rights and Nature's rights."*

*- Liz Hoskins, the Director of the Gaia Foundation, on the adoption of the resolution focusing on sacred sites and indigenous peoples by the African Commission.*

## CONSERVATION AND CUSTOMARY USE PROGRAMME

PROGRAMME DIRECTOR: HARRY JONAS



## THE CONTEXT

In July 2016, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, published a report that focuses on human rights violations taking place in the context of conservation initiatives. Among other statistics it contained, it reported that an estimated 50% of protected areas worldwide have been established on lands traditionally occupied and used by Indigenous Peoples, and in Central America this figure is as high as 90%. The report brought global attention to the issues and gave the work of Natural Justice and our partners increased impetus. This sense of momentum was further added to in May 2017 when the African Court on Human and Peoples' Rights delivered a historic judgment in favour of the Ogiek, a forest dwelling community in Kenya. This came after an eight-year legal battle that concerned the community's forced eviction from their ancestral lands by the government of Kenya, without consultation or compensation, in the name of conservation.



Community member from the Khwe traditional community mapping resources in the area.

In this context, Natural Justice has continued to support communities at the local level to engage with the governing authorities of their traditional lands that are now designated as protected areas. We also supported national-level processes and used our research to advocate for Indigenous Peoples' and local communities' rights at the international level.

## LOCAL LEVEL / COMMUNITY EMPOWERMENT

**Khwe Community, Namibia:** In 2016, the Khwe community living near Bwabwata National Park completed their community protocol as a means to advocate for their rights inside the park. During 2017, Natural Justice continued to support the community to engage with the Ministry of Environment and Tourism, through legal empowerment training. The Biocultural Community Protocol (BCP) is currently completed and ready for publication. There are currently internal discussions between Namibian stakeholders, such as the Khwe community and the Ministry of Environment and Tourism, on how best to proceed with implementation of the BCP. The BCP is currently in the "review, verification and validation" stage, whereby an extensive validation process requires the Khwe community to visit each village.



**Kukula Traditional Health Practitioners Association, South Africa:** The Kukula Traditional Health Practitioners Association developed their first community protocol in 2009 and Natural Justice continued to support them to negotiate with conservation agencies to gain access to medicinal plants so they can practice their traditional knowledge and contribute to healing members of their communities.

In 2017, the Kukula held an inclusive community protocols **workshop** which included legal empowerment sessions, a researchers report back, and discussions with conservation agencies. An **outcome** of the workshop was that South African National Parks implemented the *Warburgia* Conservation Programme in Bushbuckridge. The *Warburgia saltaris* (Pepperbark) is an endangered, but highly sought-after medicinal tree species. Forty traditional healers were trained and 800 *Warburgia* saplings distributed amongst healers for their home gardens. Healers should be able to harvest the leaves in 2-3 years, which will provide them with a sustainable supply, and help protect trees in the wild.

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*A member of the Kukula Traditional Health Practitioners Association with a Pepperbark sapling and three-year-old tree which provides her with a sustainable source of leaves for her medicines. Natural Justice assisted the Kukula to develop their Biocultural Community Protocols.*



“...the Kukula have been using their biocultural community protocol to engage effectively with stakeholders and to gain greater formal recognition in their area. Engagement with stakeholders such as government agencies responsible for conservation is a complex and lengthy process, however, the Kukula are willing to expend considerable time and effort in the hope that their aims of stewarding and sustainably managing medicinal plants for the benefit of their wider communities, to whom the Kukula provide valuable healing services, can be realised.”

– reflections by Natural Justice on the Kukula Traditional Health Practitioners Association.

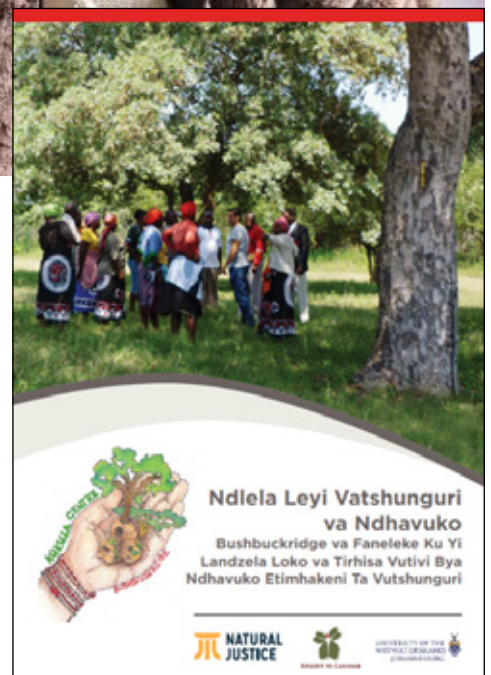


Mr Rodney Sibuyi, CEO of the Kukula Traditional Health Practitioners Association, who passed away in February 2018. Mr Sibuyi has been an important leader in terms of working with Natural Justice to develop the Kukula’s Biocultural Community Protocols.

The Kukula attended the capacity-development workshop for Central, Eastern and Southern Africa on the restoration of forests and other ecosystems in support of the achievement of the Aichi Biodiversity Targets, organised by the CBD Secretariat. The Kukula **presented** on the sustainable harvesting of medicinal plants in protected areas.

The Kukula published their revised community protocol in December 2017. Sadly, in February 2018, **Mr. Rodney Sibuyi**, CEO of the Kukula passed away unexpectedly and the Kukula lost their visionary and deeply spiritual leader.

Front cover of the Kukula Traditional Health Practitioners Association’s revised Biocultural Community Protocol, which was developed by the community, with assistance from Natural Justice.





In Benin, Natural Justice supported the creation of a national consortium of custodians of indigenous territories.

## NATIONAL AND REGIONAL LEVEL PROCESSES

**ICCA Legal Analysis:** Natural Justice is **supporting** the ICCA Consortium to conduct legal analyses in 20 countries in Africa, Latin America and Asia and to support ongoing national level processes. ('ICCA' is an abbreviation for 'territories and areas conserved by indigenous peoples and local communities'.)

**Benin:** We supported the national implementation of a "Global Support Initiative on ICCAs", including a survey of ICCAs, trainings for local NGOs, and the creation of a national Consortium of ICCA custodians.

**Kenya:** Natural Justice stood in solidarity with communities affected by exclusionary conservation initiatives in Kenya, including the **Sengwer** and **Ogiek**.

*"The forest is what we call land"*

*- James Sang, Ogiek community member, during a historic case which saw the African Court on Human and Peoples Rights find in favour of the Ogiek, a forest dwelling community who had been subjected to a forced eviction from their ancestral lands by the government of Kenya.*

## INTERNATIONAL LEVEL

**Global Dialogue on Human Rights and Biodiversity Conservation:** Natural Justice co-organised, together with the Chepkitale Indigenous Peoples Development Project, SwedBio and the Forest Peoples' Programme, a multi-stakeholder Dialogue in Eldoret, Kenya. The Dialogue was attended by representatives from indigenous peoples, local communities, African regional experts and international governmental and non-governmental organisations, as well as the UN Special Rapporteur on the rights of indigenous peoples. The **objective of the Dialogue** was to identify and suggest improvements to existing approaches, tools, and practices to ensure that respect for human rights strengthens the ability to achieve conservation targets, and that by securing conservation targets, communities' abilities to secure their human rights is improved.

Read a reflection from one of the participants here: <http://naturaljustice.org/pathways-harmonizing-human-rights-biodiversity-conservation/>

*'We view National Human Rights Institutions as our allies, particularly when it comes to facilitating dispute resolution when dialogue processes have reached deadlocks, and also reporting on violations against the rights of indigenous communities.'*

*- A member of the Chepkitale Indigenous People Development Project during the Dialogue hosted by Natural Justice.*

**The United Nations Permanent Forum on Indigenous Issues (UNPFII):** As a follow up to the Dialogue, Natural Justice engaged with a number of indigenous-led organisations, Albert Barume (Chair of the Expert Mechanism on the Rights of Indigenous Peoples) and Victoria Tauli-Corpuz (Special Rapporteur on the rights of indigenous peoples), to host **an event on conservation justice** at the UN Permanent Forum on Indigenous Issues in 2017. Natural Justice subsequently co-sponsored a **submission to the Forum** proposing, among other things, that the Forum recommended an Expert Group Meeting on the issue of Conservation and Human Rights, which would result in a meeting to feed its outcomes directly to all UN agencies, including the General Assembly itself.



*Natural Justice co-hosted an event on conservation justice at the United Nations Permanent Forum on Indigenous Issues in 2017.*

**Conserved Areas:** Natural Justice played a **leadership** role in the IUCN World Commission on Protected Area's Task Force on Other Effective Area-based Conservation Measures. We organised the third meeting of the Task Force in early-2017 in Vancouver, Canada, bringing together First Nations representatives and others to discuss the development of the definition of a "conserved area". Natural Justice then facilitated the writing of draft "Guidelines on Recognising and Reporting OECMs (Other effective area-based conservation measures)", which were submitted to the Secretariat of the Convention on Biological Diversity in January 2018. A **presentation** of the work was made to a global gathering in London in early-2018.

**Target 21:** Natural Justice has proposed a new 'target', **Target 21**, under the Convention on Biological Diversity's post-2020 biodiversity framework. This target is directly linked to Sustainable Development Goal 16 on Peace, Justice and Strong Institutions.

## RESEARCH

**Conserved Areas:** Natural Justice continued to undertake **research** on "conserved areas" and this included a paper for *PARKS* about whether, and under which conditions, conserved areas will increase support for ICCAs.

**Benelex:** Natural Justice is a core partner to an international group of researchers who are investigating the linkages between international law on benefit sharing and local approaches to securing related agreements.

# TRADITIONAL KNOWLEDGE AND BENEFIT SHARING PROGRAMME

*PROGRAMME DIRECTOR: BARBARA LASSEN*



## THE CONTEXT

The protection and conservation of natural resources lies in recognising the contribution of communities as custodians of their land. Their traditional knowledge and practices, which is so integral to their cultural heritage, have been developed over many generations and protect the natural environment as an important source of livelihood and cultural benefits. But traditional knowledge and practices are under threat from outside forces. More often than not, communities do not benefit from their knowledge, their conservation efforts or the genetic resources. Without the recognition of the value of community custodians, the environment and natural resources will continue to be exploited and degraded in the name of profit.

However, the 2010 adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization saw the first legally binding international framework established which aims to give rights to these communities. This protocol has been integral to the work of Natural Justice when it comes to supporting communities to protect their traditional knowledge and to obtain equitable benefits from the use of their resources and knowledge.

Natural Justice have been at the forefront of developing legal empowerment strategies and tools to give communities the practical means through which to assert their rights. One of these is the development of Community Protocols. Community Protocols have been able to respond to many of the challenges that are faced by communities, such as not understanding their rights, not being clear as to who can give consent to the use of resources, evening the bargaining power of communities and clarifying their indigenous knowledge and how it is utilised.

While community protocols are not a panacea, they can contribute to meeting some of the challenges of implementing the Nagoya Protocol. Experiences with community protocols show that the approach brings a number of advantages: the process of developing them triggers a community dialogue on cultural values, rights and obligations; it empowers communities to know their rights; it provides clarity regarding the use of genetic resources and traditional knowledge; it defines the "community"; and it brings out the community perspective on the protection of its resources and traditional knowledge.

## LOCAL LEVEL / COMMUNITY EMPOWERMENT

**Rooibos, South Africa:** The Khoi and San communities, through the National Khoi & San Council (including the Cedarburg-belt indigenous farming communities) and the South African San Council, have been engaged in an ongoing advocacy process seeking their recognition as the traditional knowledge-holders to the uses of Rooibos. It is an over 200-year global industry, with most of the Rooibos natural resource being exported. The Khoi and San have been able to make a massive breakthrough in establishing themselves as the traditional knowledge holders. This right was not previously available to these historically disadvantaged communities. They are now in the process of concluding a Rooibos benefit-sharing process in line with South African



Rooibos is a plant that grows in the fynbos biome in South Africa and is harvested for the production of products - most of which are exported. Natural Justice have been assisting the Khoi and San communities of South Africa to engage in a benefit-sharing process which will ensure that the communities will be recognised as traditional knowledge-holders of the uses of Rooibos.

national laws, the Nagoya Protocol and the Convention on Biological Diversity (Article 8(j)).

**Madagascar:** Three community protocols on genetic resources and traditional knowledge were finalised during 2017-2018:

**Mariarano and Bestako:** Seven neighbouring local communities in the communes of Mariarano and Betsako, in the Boeny region, have come together to **develop a community protocol**. The involved communities are all providers of *Cinnamosma fragrans*, one of the most frequently collected aromatic plants in the area, used in essential oils and herbal medicine in Madagascar and abroad. The protocol was developed to address the challenges of illegal access to the *Cinnamosma* plant by biotrade operators, lack of consultation with the communities before access,



Natural Justice and GIZ have been working with the local communities of Mariarano, in the Boeny region of Madagascar, to advance their community protocol concerning the access and use of the Motrobe plant. Motrobe is the local name for *Cinnamosma fragrans*, a plant used in essential oils in Madagascar and abroad. This is the first protocol in Madagascar.



During a visit to a "cultivation test field" of rice varieties, which were received by the farmers of Antavolobe from a foreign research institute, Natural Justice facilitated a discussion of the challenges related to the exchange of seed varieties and the appropriate process that should be followed when farmers give or receive seed varieties for food and agriculture from outside.

and unsustainable harvesting practices. It also serves to prepare the community in the case of future Access and Benefit Sharing (ABS) negotiations. The communities defined a joint decision-making process between the seven villages. From now on, users requesting access to the resource will have to follow the same procedures and rules, regardless of which village they plan to collect the resource in.

**Antavolobe and Analavory:** These two **pilot community protocols** were initiated by a project on the mutually supportive implementation of the Nagoya Protocol and the Food and Agricultural Organisation's International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). The objective of both protocols is to clarify the local process of access, exchange and benefit sharing of the use of genetic resources, with a focus on agricultural genetic resources. At the same time, the communities established seed banks to safeguard and document their agricultural genetic resources.

**Endorois, Kenya:** In the past year, Natural Justice supported the Endorois community in their Biocultural Community Protocol (BCP) development process. Our role was to facilitate community process, provide



Members of the Endorois community in the process of developing their community protocol - which is still at the draft stage. The community hopes that the protocol will assist them in the protection of their natural resources to ensure that future generations are able to benefit from their use.

technical input, and assist with the drafting of the protocol. One of the key outcomes has been the legal empowerment of the community through the facilitation of a good bottom-up process, which ensures local ownership, flexibility and a process that corresponds to local realities. However, the insecurity in the region and the electioneering period in Kenya has, to a large extent, affected the BCP development process.

*"We realized that we do not have a policy or a law to govern the community, and that led to the development of the BCP. We believe it will help us. In fact, we have signed a PIC with [a group of] learning institutions. So those are some of the results we are seeing, it will help us in terms of recognition, benefit-sharing, management and governance and resources – because we are part of Lake Bogoria [Reserve] through the management plan which we have developed with the government."*

*- Wilson Kipsang Kipkazi, Executive Director of Endorois Welfare Council on the need for the development of a Biocultural Community Protocol.*

## NATIONAL AND REGIONAL LEVEL PROCESSES

In Madagascar, Natural Justice has been closely involved with the drafting of a new national law on plant genetic resources for food and agriculture, giving input on farmers' rights. In South Africa, we have taken part in the revision of the National Environmental Management Biodiversity Act (NEMBA); specifically, the article on bioprospecting.

We participated in the 2017 Pan-African Workshop on Access and Benefit Sharing, held in March 2017 in Dakar and organised by the ABS Initiative, which gathers around 140 stakeholders from government, research, business and civil society every other year. We presented on the Rooibos case as an example of benefit sharing processes involving indigenous Traditional Knowledge holders. We also participated as representatives of civil society in the Steering Committee of the Initiative.

In January 2018, we co-organised and facilitated an expert's workshop on communication of ABS for indigenous peoples and local communities (IPLC), in Brackenhurst near Nairobi. The workshop brought together around 20 regional and global experts, including IPLC representatives, who developed ideas for communication materials, content and channels, specifically addressing the needs of communities and community organisations. These ideas will be taken forward by the ABS Initiative to develop model communication materials.



*Natural Justice's Lesle Jansen presenting the Rooibos case as an example of Nagoya Protocol's benefit sharing as it affects communities as Traditional Knowledge holders.*

## INTERNATIONAL LEVEL

The year 2018 marks the fifth year since the Nagoya Protocol has come into force, and the secretariat of the Convention on Biological Diversity is conducting a review of its implementation. Responding to a call for contributions, we **submitted a document** with lessons learned from the development and implementation of community protocols and procedures.

# CLIMATE CHANGE PROGRAMME

*PROGRAMME DIRECTOR: CATH TRAYNOR*



## THE CONTEXT

Climate change is one of the world's greatest human development challenges, and it directly affects human rights like water, food, health and an adequate standard of living. This is a matter of justice, as communities who least contribute to the environmental crisis generated by climate change are expected to suffer the most from its negative impacts. Indeed, it is within natural systems that climate change impacts are strongest, and communities who live in particularly fragile natural ecosystems, such as deserts and semi-arid areas, are already experiencing these impacts.

The United Nations Framework Convention on Climate Change (UNFCCC) aims to prevent dangerous anthropogenic interference in the atmosphere by stabilising greenhouse gas emissions. The Paris Agreement (2015) brings nations from the global North and South to address climate change and its negative impacts, and states have agreed to implement domestic mitigation measures, support adaptation, and minimise and address loss and damage associated with climate change. Furthermore, Goal 13 of the Sustainable Development Goals (SDGs) urges states to, "take urgent action to combat climate change and its negative impacts" and it recognises that the poorest and most vulnerable are hardest hit by climate impacts.

Our climate change programme aims to achieve the recognition of indigenous peoples and community rights in climate change laws and policies; empower communities to know their rights and be able to claim them, and raise awareness around the fact that community contributions can provide valuable solutions to climate change.

## LOCAL LEVEL / COMMUNITY EMPOWERMENT

Natural Justice hosted the '**Contracting Justice Workshop: Exploring Socially Just Research Processes**' in March 2017. Indigenous Nama, Griqua and Khomani San representatives participated, as well as academic researchers and funders. Discussions focused on how academic research practices, which can have unexpected negative impacts upon communities, could be improved. The participants also focused on the role of ethics and law, as well as tools, including community research contracts, in negotiating more beneficial research processes. Natural Justice supported the Nama and Griqua communities to develop and negotiate a community research contract with universities. We also produced a contract template suitable for all communities to utilise when engaging with researchers.

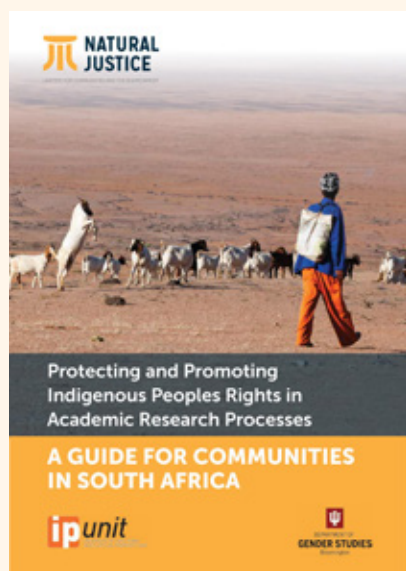
## NATIONAL AND REGIONAL LEVEL PROCESSES

Natural Justice participated in the 'Open and Collaborative Science in Development Workshop 2017', in Cyprus. At the workshop, the '**Open and Collaborative Science Manifesto**' was launched, and our climate change research informed one of the key principles; namely, that open and collaborative science practice "situated

openness” by addressing the ways in which context, power and inequality condition scientific research. The manifesto has been used to call for more open and inclusive science in development.

Regionally, we participated in the Climate Justice Expert Meeting held in Nairobi, Kenya, as well as the **Multi-Actor Dialogue Seminar** to build social-ecological resilience through incorporation of ecosystem-based solutions, held in Durban, South Africa, where we presented a session on regulatory frameworks.

## RESEARCH



During 2017, together with partners from the Intellectual Property Unit at the University of Cape Town and the Department of Gender Studies at Indiana University, Natural Justice embarked on a research project on **“Empowering indigenous peoples and knowledge systems related to climate change and intellectual property rights project”**. We shared initial research findings, which included our **insights** regarding putting the principle of “situated openness” into practice and how it can address power inequality in science. The team produced a chapter for the forthcoming **“Contextualizing Openness”** book and, together with indigenous co-researchers, produced **“Protecting Indigenous Peoples Rights in Academic Research Processes: A Guide for Communities in South Africa”** (Afrikaans language version also available). The guide seeks to address some key concerns expressed by indigenous communities regards externally-driven academic research processes.

In relation to this research, Dr Cath Traynor published a **Data Management Plan** in the *Research Ideas and Outcome Journal*, which highlights the tensions around open data policies and indigenous knowledge, finding that regarding digital objects as ‘data’, which is part of a western scientific discourse, may be incompatible with indigenous knowledge systems. These findings fed into an associated **case study** and **research article**, and policy recommendations to development funders.

We also published an article entitled **“Right to Food and Climate Change in Southern Africa: International and National Protection for Indigenous Peoples. The Cases of South Africa, Namibia and Botswana”** and the findings fed into a commission during the Land Rights Conference, which was held with the Khoi and San communities.

During 2017, we started a new project on Ecosystem-based Approaches (EbAs) to climate change. We conducted a review of international and African regulatory frameworks and the historical context of the concept within the United Nations.

## EXTRACTIVES AND INFRASTRUCTURE PROGRAMME

**PROGRAMME DIRECTOR: GINO COCCHIARO**



## THE CONTEXT

African countries are increasing their reliance upon the extractives sector and forging ahead with major infrastructure programmes in the hope that they will play a catalytic role for development. These projects are



completely transforming landscapes that many communities are dependent upon and exacerbating the pressures that they are already suffering from.

During 2017-2018, we continued our work in Kenya and Zimbabwe, as well as beginning new research projects in South Africa and Guinea. In Kenya, we have continued to build our legal empowerment programme, provided technical advice on proposed legislation and environmental impact assessments, undertaken research and supported the litigation efforts of community partners. In Zimbabwe, South Africa and Guinea, we are undertaking research projects and advising community partners on legal empowerment methodologies.

## LOCAL LEVEL / COMMUNITY EMPOWERMENT

**Kenya:** We recently started a programme of developing a team of community environmental legal officers. Each of our community environmental legal officers are from communities in the northern and coastal areas of Kenya who are affected by extractive and infrastructure projects. We continue to concentrate the legal empowerment efforts in four counties: Lamu and Kilifi counties on the coast of Kenya, and the Isiolo and Marsabit counties in northern Kenya. The community environmental legal officer team has assisted community members to monitor and submit complaints on legal violations caused by project development and operation - violations which have resulted in serious impacts on the local environments, livelihoods and the health of marginalised communities. The projects have included major road construction, salt industrial operations and expansion, sand mining and quarries for cement manufacturing, port construction and the construction of sea walls.



*A meeting of pastoralist representatives in Isiolo County, who are supported by Natural Justice's community environmental legal officers, to express their concern over the construction of various infrastructure projects.*

Over the course of a year, community environmental legal officers have trained 185 affected community members, filed 30 complaints arising from 15 major infrastructure or extractives projects impacting over 10,000 people, and filed 41 access to information requests.

**Marange, Zimbabwe:** Natural Justice has continued our work in the diamond mining areas of Marange in order to support community members to complete and validate their community protocol, as well as to identify and prioritise critical environmental injustice concerns. The community protocol committee, a group of 15 people from various villages affected by mining that Natural Justice has trained and supported over the last two years, held 12 validation meetings with affected community members in Marange and in the Arda Transau relocation area, and also with each of the traditional leaders in the area. A preliminary process of engagement also commenced with the Ministry of Environment, Ministry of Land and the parliamentary portfolios on Land, Environment and Mines. The community protocol will be completed in 2018.

**Penhalonga, Zimbabwe:** Natural Justice has supported community members affected by gold mining in Penhalonga to access information on the legal status of mining projects, monitor the legal compliance of the mining companies and file complaints with the relevant government bodies, when necessary. This has resulted in government bodies attending the project site and ordering mitigation measures be improved to stop impacts on nearby community members.

## NATIONAL AND REGIONAL LEVEL PROCESSES

**Kenya:** Natural Justice worked with local community groups, as well as other civil society groups, to provide



*A meeting of deCOALonize, Save Lamu and Natural Justice with women representatives in Lamu, Kenya. Natural Justice are part of the deCOALonize collective and are assisting the partner organisations to challenge the Lamu coal power plant development.*



*Lamu port construction is well underway with the first berth to be completed in 2019. Natural Justice are assisting the partner organisations to ensure that the construction complies with law.*



*Construction of sea walls along the Kenyan coast are often in violation of national law and result in the erosion of the public beach and impacts fisher communities in the area. Natural Justice is supporting community environmental legal officer teams who are undertaking environmental audits to ascertain project impacts and monitor legal compliance.*



*Illegal expansions and continued violations of law have seen important water sources for local community destroyed. Natural Justice is supporting community environmental legal officer teams who are undertaking environmental audits to ascertain project impacts and monitor legal compliance.*

comments on ten environmental impact assessments (EIA). These included EIA's on irrigation projects, sugar plantation projects, waste projects, oil projects and transmission line projects. In addition, we provided comments and submissions on seven proposed laws, amendments to laws and regulations, as well as task force inquiries. These included the Public Participation Bill, the Land Value Index Bill, the Energy and Petroleum Bills, the Environmental Impact Assessment Regulation, amendments to the Environment and Management Act and the Task Force on Forest Resource Management and Logging.

Natural Justice was also invited to present the findings of our work on environmental legal compliance to the National Environmental Legal Authority, in conjunction with the Kenya National Commission on Human Rights.

During 2017, we supported our partners, Save Lamu and the Katiba Institute, in cases on the construction of the Lamu port and Lamu coal power plant. The Lamu port case began on the 22 May 2017 in Malindi High Court and focused on the lack of information and participation of community members in the process. The appeal against the award of a license for the Lamu coal plant commenced at the National Environmental Tribunal in May 2017. It is set to be completed in 2018.

**Zimbabwe:** During the national enquiry on the 15 billion USD missing from mining diamonds in Marange, we assisted Marange community members to submit their concerns on the social and environmental impacts of mining to the Parliament in Zimbabwe.

## RESEARCH

**Kenya:** The community environmental legal officer teams are undertaking environmental audits to ascertain whether project proponents in Kenya have been following relevant laws and regulations and what the impacts on communities and their environments have been. These are focused on a major road development in northern Kenya, the construction of seawalls on the coast of Kenya and the salt industry in Kilifi County.

**Zimbabwe:** Natural Justice conducted a study on the Environmental Impact Assessment (EIA) practices of mining companies in Zimbabwe. This research was informed by cases we are currently working on. The study covered issues to do with community participation in EIA processes, access to EIA's, the level of legal compliance and enforcement of EIA laws.

**Guinea, South Africa and Zimbabwe:** We are undertaking research assignments in Guinea, South Africa and Zimbabwe that seek to investigate and understand the strategies utilised by communities to mitigate the impacts of extractive and related infrastructure projects. The purpose of the research is to develop three independent reports that provide insight into which strategies communities and community-based organisations rely upon to best stop or mitigate impacts, and their experiences with seeking remedies. The information collected from qualitative and quantitative research will provide insight into which strategies have yielded positive results for remedying the environmental and socio-economic impacts brought on by these mining projects.



**FINANCIAL  
SUMMARY**

# FINANCES

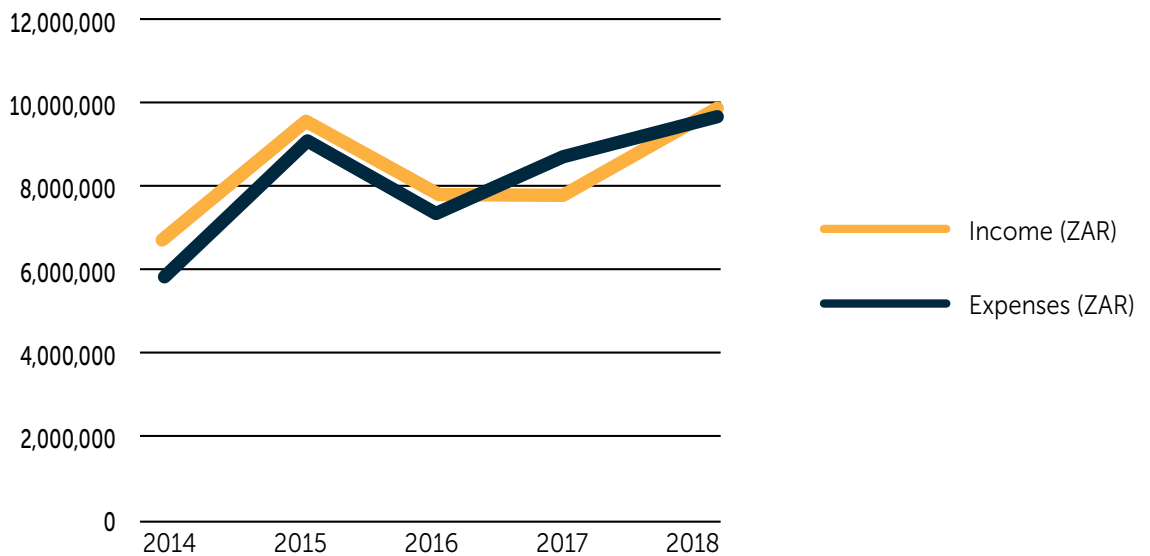
**CHIEF FINANCIAL AND OPERATIONS OFFICER: LAUREEN MANUEL**



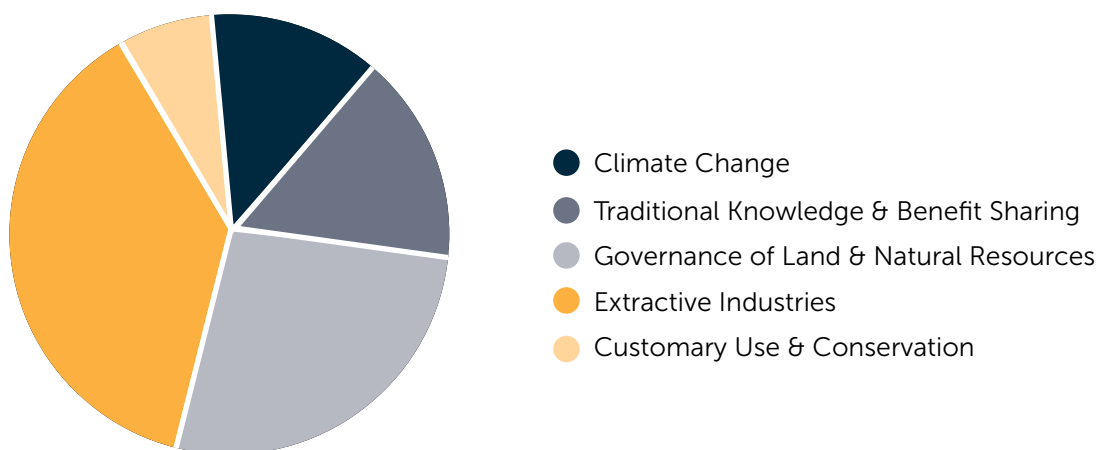
## FINANCE AND FUNDING

The net revenue received by Natural Justice for the 2017-2018 financial year has increased by 31% compared to the previous year. This increase is mainly attributable to an increase in grant funding for the expansion of our work on the impact of the extractive industries on Indigenous Peoples and local communities in southern and east Africa, as well as the further development of our work in francophone Africa.

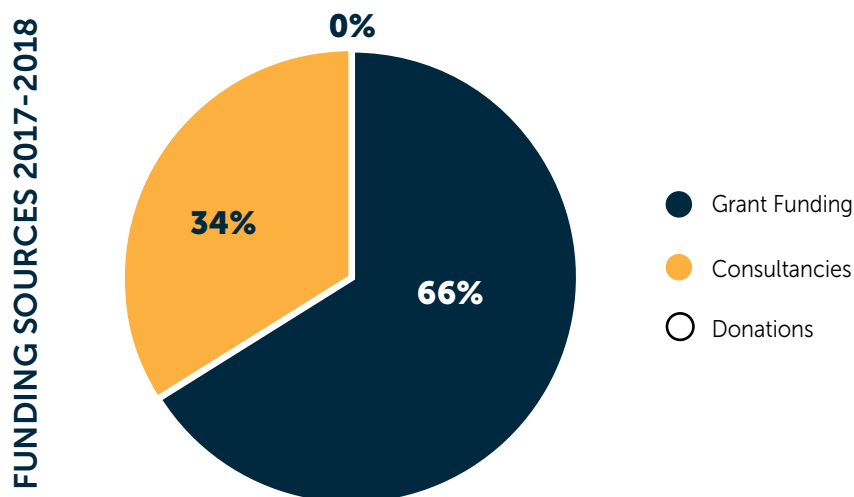
5-YEAR CASHFLOW 2014-2018



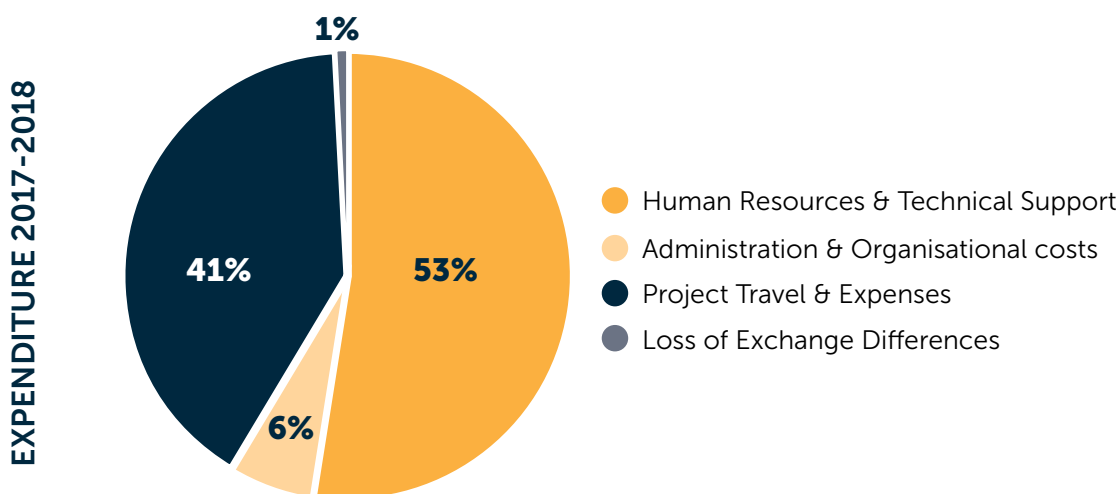
REVENUE PER PROGRAMME



Grant funding remains the primary source of funding that supports our programmatic work with communities, legal empowerment and research projects. Some of this funding also provides overhead support for the general running of the organisation. Other sources of funding include our consultancy work for the provision of technical services to partners and governments, sponsored travel to expert meetings, as well as donations from individuals. We acknowledge, with deep appreciation and thanks, the ongoing support and contributions from our funders, donors and partners.



We continue to be affected by the volatility of global exchange rate markets; although the net exchange losses are significantly lower than the previous year. Our expenditure in the year under review includes external technical support and short-term, project-specific consultancy contracts, as well as staff time for organisational management and oversight.





# HUMAN RESOURCES



Hennie van Vuuren

# BOARD MEMBERS

Natural Justice Board members for the 2017/2018 financial year are:



Loretta Feris



Hadley Becha



Kanchi Kohli



Eileen de Ravin



Johanna von Braun  
ex-officio



Lauren Manuel  
ex-officio

# STAFF AND CONSULTANTS



**Johanna Von Braun**  
Executive Director



**Laureen Manuel**  
Chief Financial &  
Operations Officer



**Barbara Lassen**  
Program Director, Traditional  
Knowledge & Benefit sharing



**Cath Traynor**  
Program Director,  
Climate Change



**Harry Jonas**  
Program Director,  
Conservation & Customary  
Use



**Lesle Jansen**  
Program Director, Human  
Rights, Land & Natural  
Resources



**Gino Cocchiario**  
Program Director, Extractives  
& Infrastructure



**Candice Pillay**  
Program Manager,  
Extractives & Infrastructure



**Rose Birgen**  
Program Manager



**Allan Basajjasubi**  
Lawyer



**Jazy Rasolojaona**  
Consultant: Traditional  
Knowledge and Benefit  
Sharing Programme



**Halima Ibrahim**  
Program Officer





**Fatma Nyambura**  
Program Officer



**Edna Odhiambo**  
Program Officer



**Ilse Booyesen**  
Bookkeeper



**Yanga Mvakwa**  
Fund Administrator



**Judith Kamau**  
Administration Officer



**Dalle Abraham**  
Community Environmental  
Legal



**Wanyee Kinuthia**  
Community Environmental  
Legal Officer



**Rashid Karayu**  
Community Environmental  
Legal Officer



**Said Salim Said**  
Community Environmental  
Legal Officer

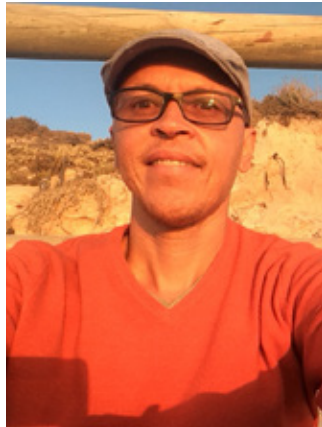


**Justus Tsofa**  
Community Environmental  
Legal OfficerChange

## FELLOWS



Ivan Vaalbooi  
Indigenous Fellow



Shaun Dunn  
Legal Fellow



Angela Mutsotso  
Legal Fellow, Kenya

## ASSOCIATES, INTERNS AND RESEARCHERS



Kaman Koulemou  
Legal Researcher



Lorraine Chiponda  
Legal Researcher



Andrew Williamson



Keicha Mora



Jainan Xu



### **Publications and research**

To support our legal empowerment and advocacy, Natural Justice has a research arm that informs our strategies across programmes and regions. It has led to the development and coordination of a wide range of publications, which are all available on our website. Our published work is always comprehensive and freely available with the aim of making the law accessible to as broad a range of stakeholders as possible.

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