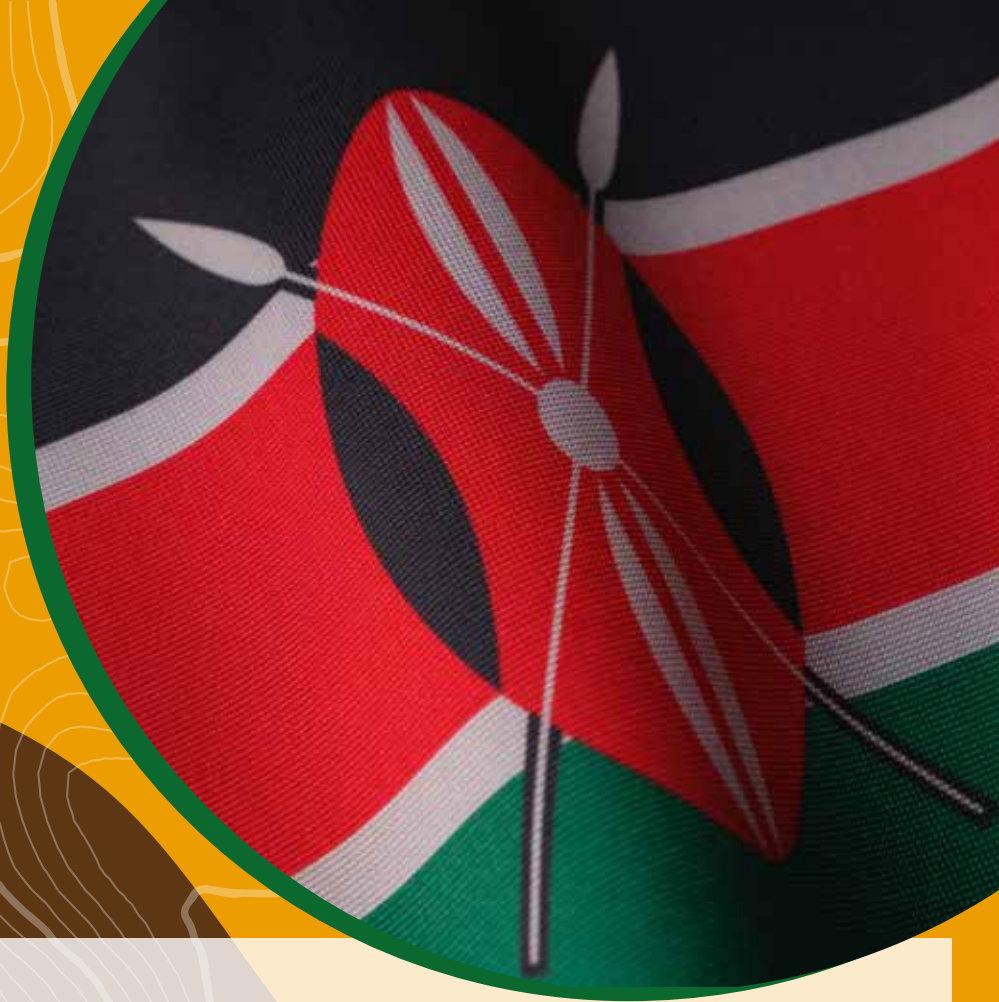




AFRICAN
ENVIRONMENTAL
DEFENDERS



A HANDBOOK FOR ENVIRONMENTAL AND LAND RIGHTS DEFENDERS IN KENYA

Overview of the Roles and Challenges of Environmental and Land Rights Defenders, Their Constitutional and Statutory Rights and Legally Available Mechanisms for Seeking Remedies for Human Rights Violations

 **NATURAL
JUSTICE**

A NATURAL JUSTICE INITIATIVE

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LIST OF ABBREVIATIONS

AED Initiative	: African Environmental Defenders Initiative
CAJ	: Commission on Administrative Justice
ELRD	: Environmental and Land Rights Defender
ESIA	: Environmental and Social Impact Assessment
HRW	: Human Rights Watch
IPOA	: Independent Policing Oversight Authority
KNCHR	: Kenya National Commission on Human Rights
KFS	: Kenya Forest Service
NALEAP	: National Legal Aid and Awareness Programme
NCHRD	: National Coalition for Human Rights Defenders
OPDP	: Ogiek Peoples' Development Program
SEA	: Strategic Environmental Assessment
UN	: United Nations

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CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

Defenders of environmental and land rights play a significant role in tackling the current global crises of climate change and biodiversity loss. However, environmental and land rights defenders are exposed to unprecedented risks and attacks globally because of the powers they stand up against. Reports of incidents of threats, harassment, violence and killing of environment and land defenders on account of mega development projects, the extractive industry and conservation initiatives highlight a drastic increase in the number of fatalities in many countries.

Between 2002 and 2017 alone, it is estimated that approximately 1,600 environmental and land rights defenders were murdered. These alarming figures are nowhere close to reflecting the true magnitude of the issue given that thousands of cases go unreported and/or are never investigated.

The experiences of Kenyan environmental activists and indigenous land rights defenders highlight a trend in which attacks are increasingly being meted out against environmental and land rights defenders in a climate of impunity and in the context of existing and planned development projects that are harmful to the environment.



1.2 THE SITUATION OF ENVIRONMENTAL AND LAND RIGHTS DEFENDERS IN KENYA

Kenya is a fast-growing economy seeking to industrialise with the aim of transforming into a middle-income country by 2030. The push to deliver its ambitious growth aspirations under various multimillion dollar development plans including, but not limited to, Vision 2030 and the Big Four Agenda, has seen the government invest more of its resources in mega development projects and natural resource exploitation ventures. The private sector has equally grown exponentially in recent years, increasing the demand for land and natural resources for profit generation.

The approach to development adopted by the government and private entities has resulted in greater competition for the limited natural resources and increased pressure on the environment, disproportionately impacting indigenous and local communities that depend on environmental resources for their livelihood and survival.

The politicisation of development and conservation projects to meet the needs of companies and governments at the expense of the wellbeing and survival of marginalised and Indigenous communities, has forced them to stand up in defence of their environmental and land rights. Because of this, Kenya continues to find itself in international headlines for being among the most hostile countries to land and environmental defenders.

Research conducted in 2018 by the National Coalition for Human Rights Defenders (NCHR) and Human Rights Watch (HRW) on the threats to environmental activists opposing the Lamu Port South Sudan Ethiopian Transport Corridor (LAPSSET) project in Kenya's coastal region, documented at least 35 cases of harassment and intimidation by law enforcers, members of the armed forces and other government officials.¹

Private investors in Kilifi County are also notorious for using intimidation tactics and state machinery to threaten and harass community leaders and environmental rights activists who call them out for their destructive and harmful salt mining activities. The continued forced evictions, harassment and murder of forest indigenous people from the Ogiek and the Sengwer communities are other examples of the risks that environmental and land defenders are exposed to.

Attacks against environmental and land defenders in a climate of impunity can be attributed to various key drivers. At the top of the list is the lack of awareness among environment and land defenders about their rights under the law and the lack of adequate capacity to ensure that they maintain their physical security and safety when conducting their work.

In view of these and other challenges that Kenyan environmental and land defenders face, there is a need to legally empower them to increase their resilience and ability to conduct their activism safely.



¹Human Rights Watch (2018) "They Just Want to Silence Us" Abuses Against Environmental Activists at Kenya's Coast Region https://www.hrw.org/sites/default/files/report_pdf/kenya1218_web2.pdf

1.3 OBJECTIVES OF THE HANDBOOK

This handbook aims to legally empower environmental and land defenders on their rights and the range of legal protection mechanisms provided for under Constitutional and other statutory provisions in the laws of Kenya. By understanding their rights, as well as the types of protection guaranteed within the law, frontline defenders who find themselves in emergency situations will be able to assert and defend these rights by enforcing them and obtaining remedies for any violations.

The handbook also largely draws lessons from Natural Justice's experiences with the African Environmental Defenders (AED) Initiative, which has been instrumental in revealing key trends and patterns in the way defenders are attacked. Based on the number of requests for emergency support submitted to the African Environmental Defenders Fund, Natural Justice has identified some of the most prevalent types of threats faced by defenders and provided some tips on how defenders can respond while ensuring their safety and security in such situations. This list is neither exhaustive, nor are the tips provided a guarantee of success. However, using these tips can go a long way towards avoiding or mitigating any threats of human rights violations that might ensue.

1.4 INTENDED AUDIENCE

It is anticipated that this handbook will be beneficial to **environmental and land rights defenders** who are often at the forefront in the communities' struggles to assert, affirm and defend their rights. This includes **leaders of indigenous and marginalised communities and their members** who engage in environmental, climate and land rights activism in the Kenyan context to secure and protect their lands and territories of life against destruction by both private and public entities.

The handbook can also be used by **individuals who work closely with communities** using various methodologies such as legal empowerment approaches as a **guide for training communities** on how to respond to threats they encounter in the course of their work.



THIS CHAPTER AIMS TO SHOW THE FOLLOWING:

- Who environmental and land rights defenders are and how they differ from other human rights defenders?
- Types of environmental and land rights defenders.
- The role of environment and land rights defenders in the protection of the environment and ecosystems.



2.1 INTRODUCTION

Environmental and land rights defenders around the world risk their lives to protect and defend their rights, as well as the rights of others, from violations by the state and private actors. The recognition of the important contribution of such individuals, (as well as groups of people, communities, associations and organisations) in eliminating human rights violations has led to the express recognition of the right to defend the rights of others following the adoption of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Institutions to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.²

Article 12.1 of the Declaration on Human Rights Defenders

“Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.”

Collectively, the phrase “Human Rights Defenders” has been used to describe anyone who is involved in peaceful action aimed at promoting and protecting human rights. Therefore, environmental and land defenders are, by definition, human rights defenders because they work towards promoting and safeguarding the right to a clean and healthy environment and other human rights and fundamental freedoms relating to environmental justice or the protection of their land rights.

KEY CHARACTERISTICS OF HUMAN RIGHTS DEFENDERS:

- ✓ Defend, promote and protect human rights.
- ✓ Make use of non-violent means and approaches in their action.
- ✓ Acknowledge the universal nature of human rights.



2.2 WHO IS AN ENVIRONMENTAL AND LAND RIGHTS DEFENDER?

According to the United Nations (UN), **environmental human rights defenders** are *“individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna”*.

Based on this definition, any person, irrespective of their age, gender or background can be a champion of environmental and land rights. No minimum academic or professional qualifications or criteria must be met to qualify to be an environmental rights defender. A majority of those who engage in environmental rights activism do so because their livelihood depends on it. They, therefore, include leaders of indigenous and local communities, forest communities fighting to assert and reaffirm their ancestral and traditional land rights, as well as advocates, journalists or staff members of Non-Governmental Organisations (NGOs) standing with communities in different ways throughout their struggles.

KEY CHARACTERISTICS OF ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

- ✓ Environmental and land rights defenders can be any person (whether male or female, young or old) a group of people, a community or an organisation.
- ✓ Are directly or indirectly involved in peaceful and legal action.
- ✓ The non-violent action is aimed at protecting their environmental, land and other related rights or the rights of others.
- ✓ They act either out of their own volition or by virtue of their profession.

It is important to understand who environmental and land rights defenders are because many people who are involved in the struggle to secure environmental justice rarely identify themselves as such. They are, therefore, unable to hold state agencies accountable for their obligation to protect them.

Defenders who are unable or unwilling to identify themselves as environmental and land rights defenders, may also miss out on the benefits from the range of protection mechanisms put in place by other actors such as Civil Society Organisations (CSOs) and Non-Governmental Organisations (NGOs) to support them and their actions.

Below are two examples of grassroots Kenyan environmental and land rights defenders:



Mohamed Ali Baadi

The late Mohamed Ali Baadi, also known as Mwalimu Baadi, was a resident of Lamu County and an Amu Ranch Manager. During his lifetime, Mwalimu Baadi devoted his life and time towards advocating for environmental justice for himself and his community. He was among the leading petitioners in the LAPSSET case which resulted in a successful outcome for his community in 2012. A renowned Lamu historian and expert in the region's culture and heritage, he sadly passed away on 7th December 2018.³

Elizabeth Wathuti

Elizabeth is a young adult from Kenya that engages in environmental and climate activism. She is the founder of Green Generation Initiative, an organisation that encourages youth to care for the environment through initiatives such as greening schools and building climate resilience. Elizabeth has been presented with several awards for her environmental activism, including being named African Green Person of the year in 2019. As a sustainability analyst, Elizabeth now focuses on issues such as sustainability, social impact and responsible investment.



EXERCISE 1: Identifying environmental and land rights defenders from your community

a. Think of three (3) other personalities from Kenya who you believe are environmental and land rights defenders in your country/community and list them in the spaces below.

- 1.
- 2.
- 3.

b. For all the names mentioned above, give reasons why you consider them to be environmental and land rights defenders.

- 1.
- 2.
- 3.

EXERCISE 2: Assessing Whether You Are an Environmental and Land Rights Defender

Group yourselves into pairs and answer the following questions.

- a. Have you ever been a victim of or encountered an environmental injustice in your community?
- b. If the answer is YES to question (a) above, please explain to your partner about the environmental injustice experienced or encountered.
- c. Have you taken or do you continue to take any actions/steps to address the issue?
- d. If the answer to (b) above is YES,
 - What motivated you to take action or do something about the situation?
 - What are some of the steps/actions you took either alone or with others to address the matter?
- e. Have you faced any challenges in the course of taking action to address the situation?
- f. If the answer to (d) above is YES, mention some of the challenges you have faced.

2.3 WHAT ENVIRONMENTAL AND LAND RIGHTS DEFENDERS DO

Environmental and land rights defenders engage in action on a broad range of issues including, but not limited to:

- climate change action and activism;
- the negative impacts of development projects;
- advocating for the right to a clean and healthy environment;
- defending the territories and lives of indigenous people from destructive projects;
- the protection of the ancestral and traditional land rights of communities; and/or
- the management and utilisation of natural resources.

Although it is common for individuals or organisations to focus on one or more environmental and climate justice-related theme, drawing distinct and hard separation lines between the diverse actors is difficult. That is because the ultimate goal for all these actions is the protection of the environment, lands and livelihoods of people.

2.4 THE ROLE OF ENVIRONMENTAL AND LAND RIGHTS DEFENDERS IN THE PROTECTION OF THE ENVIRONMENT AND ECOSYSTEMS

“Government alone will never be able to do it. ... It is only the people themselves who must utilise law for the purpose of bringing justice at the doorsteps of the large masses of people of the country.” (Justice PN Bhagwati)

Environmental pollution and degradation due to the harmful practices of companies and state actors have claimed the lives of thousands of children and adults around the world and threatened the well-being and survival of several others.⁴ The exposure of people to harmful business practices has interfered with the enjoyment of their human rights, making environmental activism a necessity. State officers and judges alone cannot be the protectors of the law when, on many occasions, these violations occur under their watch. The UN Human Rights Council, through the UN General Assembly resolution 40⁵, recognised the significant role of environmental human rights defenders in promoting the enjoyment of human rights and sustainable development.



⁴UNEP, 'Why does environment, health and pollution matter?' <https://www.unep.org/explore-topics/chemicals-waste/what-we-do/environment-health-and-pollution/why-does-environment>.
⁵UN General Assembly Resolution A/HRC/40/L.22/Rev. 1.

Preamble of the UN General Assembly Resolution 40 on Environmental Human Rights Defenders, Para. 11

Recognising the positive, important and legitimate role played by human rights defenders in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment, and deeply concerned that human rights defenders working in environmental matters, referred to as environmental human rights defenders, are among the human rights defenders most exposed and at risk,



The actions of environmental and land rights defenders are directly linked to improved and healthy ecosystems. Environmental defenders, particularly indigenous and local communities, play a significant role in the promotion of environmental protection. Through organizing and mobilising people around common issues of concern and using available legal avenues, such as legal empowerment and strategic public interest litigation, environment and land rights defenders have held relevant institutions and individuals accountable for their actions. The outcomes of their initiatives have also contributed to the development of standards, principles and guidelines of good environmental governance practices that are lacking in many jurisdictions in Africa.

Examples of Contributions of African Environmental and Land Rights Defenders



LAMU COAL PLANT CASE

In this case, the communities of Lamu successfully challenged a decision by the National Environmental Management Authority to issue an Environmental Impact Assessment (EIA) licence, authorising the construction of a 1,050 MW coal fired power plant in Lamu County, which is an ecologically sensitive area susceptible to climate change impacts. In its landmark judgment, the National Environmental Tribunal found that the environmental impact assessment study report fell short of key mandatory aspects, including, inadequate public participation, the absence of a climate risk assessment and a proper analysis of project alternatives. Throughout the process leading to the lodging of the appeal, the affected communities tried various strategies to engage meaningfully in this project - including petitioning relevant administrative institutions to obtain information on the project and submitting written and oral comments on the environmental impact assessment - but they were, in turn, exposed to a high level of threats due to the political and monetary interest behind this project.



OWINO UHURU CASE

This case came about as a result of the negative impacts of a lead-acid batteries recycling industry on the the workers of the company and the residents of Owino Uhuru, a suburb in Mombasa. Led by the community activist, Phyllis Omido, the community sought justice through the court systems for the harm of the activities of the company on the community's health. In 2020, the court delivered a positive Judgment affirming that the constitutional rights of the community, including the environment, were violated and awarded a total of Ksh. 1.3 billion for damages related to the impacts from the pollution.



CHAPTER 3: THE LEGAL AND INSTITUTIONAL FRAMEWORK ON THE PROTECTION OF ENVIRONMENTAL AND LAND RIGHTS DEFENDERS IN KENYA

THIS CHAPTER AIMS TO DO THE FOLLOWING:



- Provide an understanding Kenya’s legal and institutional frameworks on the protection of environmental and land defenders.
- Outline Kenya’s obligations towards environment and land defenders under international law.
- Examine the gaps in the law and institutional frameworks on the protection of environmental and land defenders.

3.1 UNDERSTANDING YOUR LEGAL CONTEXT

The law plays a very important role in protecting environmental and land defenders from human rights violations. It defines their rights and freedoms, the obligations of states towards defenders and identifies remedies for redress of any human rights violations.

Ways in which the law provides protection to environmental and land rights defenders:

1. Defines the legal rights and freedoms of environmental and land rights defenders.
2. Defines the obligations of State and Non-state actors towards environmental and land rights defenders.
3. Identifies remedies for redress of any human rights violations.

As we will see from the discussion below, although not entirely perfect, Kenya is known to have one of the most progressive constitutional and statutory provisions outlining the rights of its citizens and the responsibilities of the state towards protecting these rights. The rights include the rights of environmental and land rights defenders.

For a long time, the problem has been an issue of poor governance coupled with the lack of enforcement and implementation of the law. In some instances, the laws are not tough enough. This is because the law has been used as a tool for limiting civic space for activists, by limiting certain rights in order to protect political powers. The subsequent section will examine the legal protections available under Kenyan laws and institutional frameworks established to protect land and environmental defenders.

3.2 KENYA’S LEGAL FRAMEWORK ON THE PROTECTION OF ENVIRONMENTAL AND LAND DEFENDERS

NATIONAL LEGAL FRAMEWORK

CONSTITUTION OF KENYA, 2010

Chapter 4 of the Constitution on the Bill of Rights provides for fundamental rights enjoyed by all persons in Kenya, as well as mechanisms for redress in instances of violations of these rights. All these rights are essential both for the protection of environmental and land defenders, as well as for the conduct of their work.

THESE RIGHTS INCLUDE: -

ARTICLE 42: RIGHT TO CLEAN AND HEALTHY ENVIRONMENT

Pursuant to Article 69, this right obligates the State to ensure sustainable exploitation, utilisation and management of the environment and natural resources, enhance indigenous knowledge of biodiversity and encourage public participation in environmental management.

Article 70⁶ provides procedures for litigation before courts to enforce this right. This, coupled with Article 22⁷, forms a basis for class action on environmental issues.

ARTICLE 25: FUNDAMENTAL RIGHTS AND FREEDOMS THAT MAY NOT BE LIMITED

Article 25 prohibits the limitation of certain rights and freedoms, including freedom from torture and cruel, inhuman or degrading treatment or punishment, right to a fair trial and the right to an order of habeas corpus⁸. As a result, these rights are non-negotiable and must be upheld by all state and non-state actors.

ARTICLE 29: RIGHT TO FREEDOM AND SECURITY OF THE PERSON

This right entails freedom from torture, the right not to be detained without trial, the right not to be subjected to corporal punishment and not to be treated or punished in a cruel or degrading manner. This is important because defenders are sometimes arrested and detained when protesting or during their activism.

ARTICLE 31: RIGHT TO PRIVACY

Article 31 guarantees the right not to have one’s person, home or property searched, or possessions seized. This right also entails the right not to have information relating to one’s private affairs unnecessarily acquired and to ensure privacy of one’s communications. This right is important in light of increased digital tracking of environmental and land rights defenders by authorities opposed to their work.

ARTICLE 33: FREEDOM OF EXPRESSION

Article 33 provides for the right to seek, receive or impart information, save for some exceptions listed below. This right allows environmental defenders to disseminate information or views on environmental issues without state interference. Freedom of expression and association is very key to the effective and adequate participation of environmental and land defenders in decision-making processes and in spreading useful information to the public on the environmental harms caused by state and non-state actors.

Note that the right to express one’s views or ideas does not extend to:-

- The spreading of propaganda for war;
- Incitement to violence;
- Hate speech; or
- Advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or is based on any ground of discrimination based on gender, race, religion or other factors.

⁶Article 70 provides that “if a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.”

⁷Article 22 states that “Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.”

⁸This literally means “release the body”.

ARTICLE 35: RIGHT OF ACCESS TO INFORMATION

Under Article 35, the state is required to make public and easily accessible all information affecting the nation. This right is fundamental in ensuring environmental defenders gain access to project information, including Environmental and Social Impact Assessment (ESIA) study reports and Strategic Environmental Assessment (SEA) reports on projects undertaken by the government, and to make informed decisions. Access to information promotes transparent processes and accountability, which will enable land and environmental defenders to question the actions of authorities that affect their rights.

ARTICLE 37: RIGHT TO ASSEMBLY, DEMONSTRATION, PICKETING AND PETITION

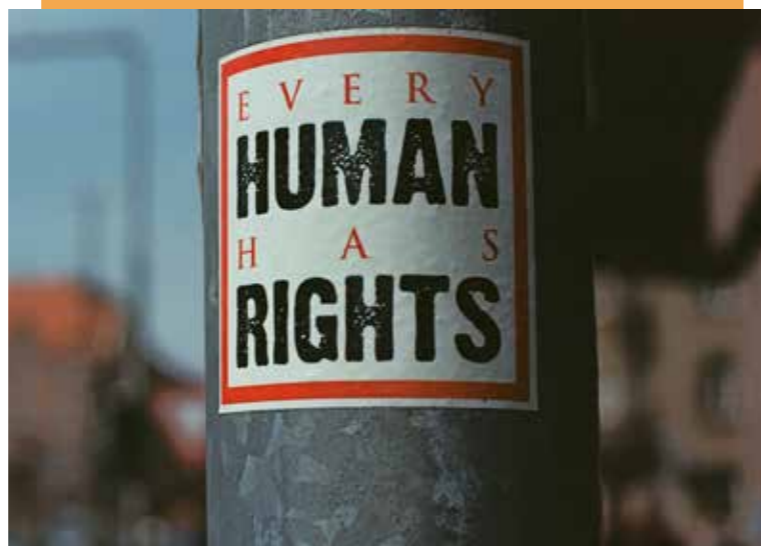
Article 37 of the Constitution of Kenya, 2010 recognises that every person has a right, peaceably and unarmed, to assemble, demonstrate, picket and present petitions to public authorities. This right is regarded as vital in airing grievances by environmental defenders. It has been frequently exercised by environmental defenders among the communities Natural Justice works with. These communities are demonstrating against the setting up of unsustainable development projects, such as the Lamu Coal Plant Project.

However, most environmental and land rights defenders have found themselves “on the wrong side of the law” when exercising this right, primarily because the police and sometimes the military have a tendency to use the ambiguity and gaps in the law to criminalise defenders.

ARTICLES 49 AND 51: RIGHTS OF AN ARRESTED PERSON AND THE RIGHTS OF PERSONS DETAINED, HELD IN CUSTODY OR IMPRISONED

Article 49 and 51 recognise the rights of an arrested or detained person. One aspect of these rights is to be informed of the reason for an arrest and for the arrested person to be brought before court not later than 24 hours after arrest.

From past experiences of environmental defenders who have faced arbitrary arrest, it is evident that the rights under Article 49 are rarely complied with. Environmental activists are often viewed as opponents of government projects and not victims. Article 51 is important as it provides for mechanisms for instituting habeas corpus (literally meaning “produce the body”) proceedings for production of detained activists. This process is particularly important where an environmental and land rights defender has been arrested and it is not clear where he/she is being detained.



Rights of arrested persons

1. To be informed, in a language that they understand, of -
 - i. The reason for the arrest;
 - ii. The right to remain silent; and
 - iii. The consequences of not remaining silent.
2. The right to remain silent.
3. To communicate with an advocate and other persons whose assistance is necessary.
4. The right not to be compelled to make any confession or admission that could be used in evidence against them
5. The right to be held separately from persons who are serving a sentence.
6. The right to be brought before a court as soon as reasonably possible, but not later than -
 - i. 24 hours after being arrested; or
 - ii. If the 24 hours end outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day.
7. The right to be charged or informed of the reason for continued detention at the first court appearance or to be released; and
8. The right to be released on bond or bail, or reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT NO. 8 OF 1999

Chapter 4 of the Constitution on the Bill of Rights provides for the enjoyment of fundamental rights. This law gives effect to Article 42 of the Constitution of Kenya. Section 3 of the Act reiterates the provisions of the Constitution regarding the entitlement of every person to a clean and healthy environment. Further, the Act establishes an institutional framework for the management of the environment, including mechanisms for redress if a person's environmental rights are threatened or violated.

The Act is a key piece of legislation for environmental defenders because it provides legitimacy for their actions and outlines principles of environmental democracy which are necessary for environmental activism. These include the right to access information, meaningful and effective public consultation and access to justice.

PREVENTION OF TORTURE ACT, NO. 12 OF 2017

The Act gives effect to Article 25 (a) and 29 (d) of the Constitution on freedom from torture, cruel, inhuman or degrading treatment or punishment.

Article 25 (a) of the Constitution

“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited -

- a. *Freedom from torture and cruel, inhuman or degrading treatment or punishment...*”

Article 29 (d) of the Constitution

“Every person has the right to freedom and security of the person, which includes the right not to be -

d. Subjected to torture in any manner, whether physical or psychological...”

Under the Act, torture is defined as an act of intentionally inflicting severe mental or physical pain or suffering on a person for the purpose of obtaining information, punishment or intimidation. The Act criminalises the act of torture, of cruel inhumane or degrading treatment and punishment, aiding and abetting torture or cruel, inhumane or degrading treatment and punishment, as well as using information obtained through torture.

The Kenya National Commission on Human Rights (KNCHR) is further mandated to promote and protect the right to freedom from torture and cruel, inhumane or degrading treatment or punishment, as well as investigate any allegation of torture and monitor state compliance with international treaties relating to torture. It also provides remedies for victims of torture, including reparations, compensation and rehabilitation.

ACCESS TO INFORMATION ACT, NO. 31 OF 2016

The Act provides guidelines for safeguarding the right to information under Article 35 of the Constitution, which is vital for the exercise of the freedom of expression under Article 33. It requires public entities to proactively disclose information according to principles of the Constitution. Under the Act, a citizen’s right to information is not affected by any reason the person gives for seeking access or the public entity’s belief as to what the person’s reasons are for seeking access. The right to access information can, therefore, only be limited to the extent allowed by the law.

Article 24 of the Constitution sets out the extent to which fundamental rights and freedoms can be limited. It provides that rights and fundamental freedoms under the law should not be curtailed, except as provided for in law and only to the extent that the limitation is reasonable and justifiable in an open and democratic society. **Section 6 of the Act further clarifies specific instances which the right to information may be limited, including where the disclosure of information is likely to: -**

- Undermine the national security of Kenya.
- Impede the due process of law.
- Endanger the safety, health or life of any person.
- Involve the unwarranted invasion of the privacy of an individual.
- Substantially prejudice the commercial interests, such as the intellectual property rights of an entity or third party from whom the information is obtained.
- Cause substantial harm to the ability of the government to manage the economy of Kenya.
- Significantly undermine a public or private entity’s ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken.
- Damage a public entity’s position in any actual or contemplated legal proceedings.
- Infringe professional confidentiality as recognised in law or by the rules of a registered association of a profession.

These limitations remain the subject of extensive debate since they have been used as a basis for unreasonably denying the public information.

Where an application for access to information to a public entity is denied, the Act provides for procedures to notify the Commission on Administrative Justice (CAJ). Generally, the CAJ oversees the implementation of the Act and guarantees access to information.

The Access to Information Act is important because it allows environmental and land rights defenders to acquire relevant information that is necessary for their meaningful and effective participation in environmental decision-making processes. Access to information is also necessary for accessing justice and remedies where human rights violations occur.

LEGAL AID ACT, NO. 6 OF 2016

The purpose of this Act is to facilitate access to justice pursuant to Articles 19, 48 and 50 (2) (g), and (h) of the Constitution.

Articles 19: Rights and fundamental freedoms

“19 (1) The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.

(2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and promote social justice and the realisation of the potential of all human beings.

(3) The rights and fundamental freedoms in the Bill of Rights -

(a) belong to each individual and are not granted by the state;

(b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are with this Chapter; and

(c) Are subject only to the limitations contemplated in this Constitution.”

Article 48: Access to Justice

“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”

Article 50: Fair Hearing

“50 Every accused person has the right to a fair trial, which includes - the right to choose, and be represented by, an advocate and to be informed of this right promptly;

The Act is also aimed at providing legal aid services to indigent persons, promoting legal awareness and supporting community legal services by funding justice advisory centres. The National Legal Aid Service, established under the Act, ensures implementation of the Act, as well as setting up national legal aid schemes.

To realise the right to legal aid, the government established the National Legal Aid and Awareness Programme (NALEAP) under the State Law Office and adopted the National Action Plan for Legal Aid, 2017-2022. NALEAP works with various stakeholders, such as the Law Society of Kenya, Kenya Community of Paralegal Association, Legal Resources Foundation and Kituo Cha Sheria, to offer legal aid. There are also plans to establish county legal aid programmes that can be used for community legal empowerment.

The provisions of this law are important for facilitating access to justice for environmental and land rights defenders who are unable to afford legal services especially in the case of criminalisation.

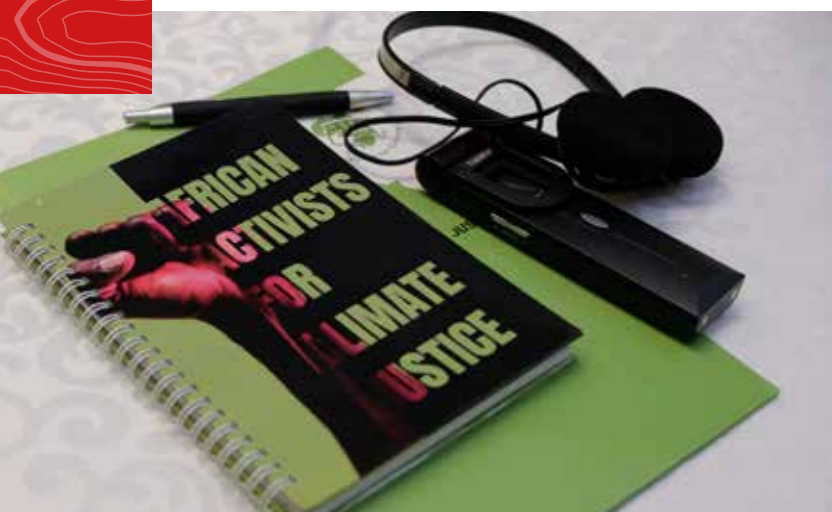
INDEPENDENT POLICING OVERSIGHT AUTHORITY ACT, NO. 35 OF 2011

The Act provides for the establishment of the Independent Policing Oversight Authority (IPOA) as an independent body tasked with investigating complaints relating to disciplinary or criminal offences conducted by members of the police force. IPOA is tasked with monitoring and investigating policing operations affecting members of the public. Upon completion of an investigation, IPOA may recommend to the public prosecutor, prosecution of a member of the police service.

Environmental and land rights defenders can make use of this law to lodge complaints against individual police officers who use excessive force or aggression when enforcing the law. The use of force is a common occurrence in spaces where defenders are exercising their right to protest.

DEFAMATION ACT, CAP 36

The Act relates to offences of defamation, slander and libel. The purpose of this Act is to protect the reputation, rights and freedoms of a person from malicious reporting. The law also regulates and places a legal limitation on the exercise of the freedom of expression. This is crucial for environmental and land defenders who face constant criticism and false reporting on their work.



FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

The Act is intended to give effect to Article 47 of the Constitution on fair administrative action.

Article 47: Fair administrative action

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall -

provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

Under the Act, persons are entitled to be given written reasons for an action taken against them where the action affects their fundamental rights. The Act also provides for procedures for challenging administrative action through judicial review in a court or tribunal with jurisdiction to hear a judicial review case.

The Fair Administrative Action Act is relevant where state officers make unjust and unfair decisions aimed at frustrating the efforts of environmental and land rights defenders because of their position or for other reasons not permissible under the law.



WITNESS PROTECTION ACT, NO. 16 OF 2006

The Act applies to the protection of a witness in a criminal case in Kenya or a witness who is required to testify before a court. Under the Act, a person qualifies for protection by virtue of being related to a witness, on account of a testimony given by a witness or where the Director of the Witness Protection Agency deems there to be sufficient reasons for protection of the person.

The Act also established the Witness Protection Agency to maintain a witness protection programme, establish criteria for witness protection and determine measures of protection. The witness protection programme provides for various protective measures, including physical and armed protection, relocation outside Kenya and change of identity. This Act is crucial for the protection of environmental and land defenders who may be called to testify against companies or government agencies involved in violating human and environmental rights.

DATA PROTECTION ACT, NO. 24 OF 2019

The Data Protection Act was enacted after the Huduma Number mass registration process and the much-publicised petition against the process. It is intended to protect the personal data of individuals by requiring that data controllers and processors obtain consent prior to disclosing any personal data. Consent is, however, not required in cases where the data is required to investigate a potential criminal act or for purposes of national security. The Act also limits misuse of data by government agencies for unintended purposes. To some extent, this Act is important for protecting the rights to privacy or environmental and land rights defenders who might find themselves in risky situations when their personal information falls in the wrong hands.

COMPUTER MISUSE AND CYBER CRIMES ACT, NO. 5 OF 2018

The Act provides for offences related to misuse of computer systems facilitates prosecution of cybercrimes and protection of the freedom of expression and access to information as well as the right to privacy. It establishes the National Computer and Cyber Crimes Coordination Committee to, inter alia, receive and act upon reports related to computer and cyber crimes and analyse cyber crime threats.

The Act criminalises a list of offences, such as unauthorised access to and interference of a computer system, unauthorised interception of a computer or telecommunications system, manufacture or use of illegal devices and access codes, publication of false, misleading or fictitious information that is likely to incite people to violence, constitute hate speech of negatively affect the rights or reputation of others, as well as cyber harassment, that is, conduct which is likely to cause fear or apprehension of violence on a person or his property or that is indecent and grossly offensive in its nature.

This law can be a basis for reporting instances of criminal acts of cyber bullying, online surveillance or tracking of environmental and land rights defenders. However, environmental and land rights defenders need to also be cautious because sometimes the provisions of this law also been used to criminalise defenders as well in the name of "national security".





EXERCISE 3: Applying law to your work

In your activism, which of the national acts would apply to you and what provisions are most important in ensuring you are able to carry out your activism effectively?



REGIONAL LEGAL FRAMEWORK

Regional and international conventions and treaties ratified by Kenya form part of the laws of Kenya pursuant to Articles 2 (5) and (6) of the Constitution.

Article 2: Supremacy of the Constitution

“2 (5) The general rules of international law shall form part of the law of Kenya.

2 (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

CONVENTIONS THAT SPEAK TO RECOGNITION AND PROTECTION OF ENVIRONMENTAL DEFENDERS AT THE REGIONAL LEVEL INCLUDE: -

THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The Charter provides for the right to fair trial (Article 7), freedom from arbitrary arrest and detention (Article 6), freedom from torture (Article 5), freedom of expression and association (Article 9), freedom of assembly (Article 11), the right of all people to freely dispose of their wealth and natural resources free from all forms of foreign economic exploitation (Article 21) and the right to a general satisfactory environment favourable to their development (Article 24).

The Charter also provides for mechanisms for lodging complaints before the African Commission on Human and Peoples' Rights (the African Commission). Non-Government Organisations with observer status and individuals may lodge complaints before the African Court on Human and Peoples' Rights (the African Court) and the African Commission. This mechanism aids in holding state parties accountable for rights under the Charter but can only be used once legal remedies within the state have been exhausted.

AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES

The Convention is aimed at enhancing environmental protection and fostering the conservation and sustainable use of natural resources. It also tasks governments to undertake environmental education, training and awareness on environmental issues. The Convention also obligates State parties to adopt laws that provide for dissemination of environmental information, access to environmental information by the public, public participation in decision-making processes that have a significant environmental impact and access to justice in matters related to protection of the environment and natural resources.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

This convention forms a basis for adoption of the Prevention of Torture Act. It calls upon state parties to criminalise all forms of torture aimed at obtaining information, confession or intimidation. States are also required to investigate and prosecute persons found guilty of torture.



INTERNATIONAL LEGAL FRAMEWORK

The State's obligation to protect its citizens from the violation of their human rights because of environmental degradation extends to every person, including environmental and land rights defenders. Governments also have an obligation under international law to protect those who work to defend their environmental and land rights in accordance with the UN Declaration on Human Rights Defenders. This part provides a detailed discussion on the various obligations owed by the State to environmental and land rights defenders.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is considered an 'international bill of rights' and provides safeguards for environmental defenders, such as the -

- right not to be subjected to torture, cruel, inhumane or degrading treatment (Article 5);
- right to effective remedy before a national court (Article 8);
- right not to be subjected to arbitrary arrests, detention or exile (Article 9);
- right to fair and public hearing before a national court or tribunal (Article 10);
- right to privacy (Article 12);
- right to freedom of opinion and expression (Article 19) and
- the right to freedom of peaceful assembly and association (Article 20).

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The Convention provides for protection of civil and political rights such as the -

- right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7);
- right not to be subjected to arbitrary arrest or detention (Article 9);
- rights of a detained person and the right to fair trial (Article 14);
- right to privacy (Article 17);
- right to freedom of expression (Article 19); and
- the right to peaceful assembly and association (Article 20 and 21).

The Convention also establishes the Human Rights Committee, which acts as a regulatory body for implementing the provisions of the convention.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The Convention recognises socio-economic rights, including the right to a clean environment, and tasks governments to improve all aspects of environmental and industrial hygiene.

UN DECLARATION ON HUMAN RIGHTS DEFENDERS

The UN General Assembly Resolution 40/L.22 on the Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, was adopted in 1998 by the UN General Assembly to specifically provide for the rights of human rights defenders and the obligations of States in respect of those rights. This instrument provides for the following key rights:-

- The right to promote and strive for the protection of human rights (the right to defend rights) (Article 1).
- The right to be protected.
- The right to freedom of opinion and expression as well as, to develop and discuss new human rights ideas (Article 6 and Article 7).
- The right to access and communicate with international bodies and the right to access funding (Article 5(c); Article 9 (4); Article 13).
- The right to freedom of assembly, the right to freedom of association and the right to protest (Article 6).
- The right to an effective remedy (Article 9).

It is important to note that accessing and using regional and international mechanisms can sometimes be complex. However, there are several instances where environmental defenders have used these processes, resulting in positive outcomes.

CASE STUDY: Jeannette Kawas-Fernández

In the leading decision by a regional human rights tribunal on the obligations of States in relation to environmental defenders, the Inter-American Court of Human Rights held in 2009 that Honduras had violated the American Convention on Human Rights by failing to protect the rights to life and to freedom of association, among other rights, of Jeannette Kawas-Fernández, an environmentalist working to preserve a natural area on the Atlantic coast of Honduras.



She was murdered, with the apparent complicity of local officials, and the authorities did not conduct an adequate investigation of her death. The Court ordered comprehensive reparations, including that the State pay compensation to her surviving family members, carry out the required criminal proceedings, make a public acknowledgement of responsibility and undertake a national campaign to raise awareness of the important role of environmental human rights defenders. The Government of Honduras also memorialised Jeannette Kawas-Fernández by giving her name to the national park that she fought to protect and the Court ordered Honduras to build a monument to her there.

3.3 INSTITUTIONS TASKED WITH THE PROTECTION OF ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

NATIONAL INSTITUTIONAL FRAMEWORK

This segment will highlight various government institutions involved in providing redress or protection of environmental defenders in Kenya.

COMMISSION ON ADMINISTRATIVE JUSTICE (CAJ) (OFFICE OF THE OMBUDSMAN)

The CAJ, also known as Office of the Ombudsman, was established pursuant to the Commission on Administrative Justice Act, No. 23 of 2011 and Article 59(4) of the Constitution of Kenya, 2010. The mandate of the CAJ is to investigate any act or omission in public administration by any State organ that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice. They must investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector.

The CAJ has the jurisdiction to investigate alleged malpractices by a public officer, a state corporation or any other agency of the state and allow complaints from an aggrieved person, a person acting on behalf of an aggrieved person or a person who is authorised under law to act on behalf of an aggrieved person.

INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA)

The Independent Policing Oversight Authority was established pursuant to the Independent Policing Oversight Authority Act No. 35 of 2011. It acts as a civilian watchdog over actions of the National Police. Under the Act, IPOA is mandated to receive and investigate complaints from the public related to death or injury caused by the police or police misconduct and recommend prosecution through the office of the Director of Public Prosecutions or provide for compensation to be paid to the person wronged or to institute disciplinary measures against those found guilty.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

The Office of the Director of Public Prosecutions is established pursuant to Article 157 of the Constitution of Kenya, 2010. Under Article 157 (6), the Director of Public Prosecutions may institute, take over and continue or discontinue criminal proceedings against any person before any court other than the court martial. The ODPP Act, No. 2 of 2013, which regulates

the conduct of the DPP, requires the DPP to investigate allegations of criminal conduct through the Office of the Inspector-General, National Police Service or any other investigative agency.

The ODPP Act also allows for private prosecution, an avenue for citizens to initiate proceedings against accused persons where it appears that the DPP is unwilling to initiate such proceedings and that failure to do so will result in an injustice. This avenue may be used by environmental defenders who are yet to receive justice, despite making several complaints against accused persons of criminal conduct.

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

The KNCHR was established pursuant to Article 59 (4) of the Constitution of Kenya, 2010 and the KNCHR Act No. 12 of 2011. The aim of the Commission is to promote respect, protection and observance of human rights in the private and public institutions, as well as to receive and investigate complaints on human rights abuses.

THE COURT SYSTEM

NATIONAL COURTS

National courts in Kenya (and the National Environmental Tribunal) have played a key role in realising the rights of environmental defenders through interpretation and implementation of the law. The National Environmental Tribunal has been instrumental in ensuring compliance with the Environment Management and Coordination Act (EMCA) through affirming the right to public participation during the environment impact assessment process⁹ and procedures for conducting Strategic Environmental Assessment (SEA).



EXERCISE 4: Approaching legal institutions to assert your rights

Have you ever approached any of these institutions? What was your experience of having done so?



What were the challenges and what made it easy to use these institutions to protect your rights?

⁹(Maraba Lwatingu Residents Association & 2 others v National Environment Management Authority & 3 others [2019] eKLR and Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another [2019] eKLR), effects of mining on climate change.

REGIONAL AND INTERNATIONAL INSTITUTIONAL FRAMEWORK

National courts in Kenya (and the National Environmental Tribunal) have played a key role at a regional level, environmental defenders may lodge complaints to the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights for violation of rights under the African Charter on Human and Peoples' Rights. Several cases relating to harassment of environmental defenders and violation of the right to clean and healthy environment have been lodged at the Africa Commission, such as the case of *Socio-economic Rights Action Centre and another v Nigeria*.¹⁰

Internationally, environmental defenders may lodge complaints regarding human rights violations with UN mechanisms, special procedures and treaty bodies including:

1. The UN Human Rights Committee, which then issues recommendations to state parties on realisation of civil and political rights under the ICCPR.
2. The Office of the High Commission for Human Rights (OHCHR).
3. The Special Rapporteur on the situation of human rights defenders.
4. The Special Rapporteur on the rights of indigenous people.

CHAPTER 4: THREATS TO ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

THIS CHAPTER AIMS TO DO THE FOLLOWING:

- To identify the key drivers of threats to environmental and land defenders in Kenya.
- To identify the types of threats environment and land defenders exposed to.
- To find out the main perpetrators of threats to defenders in Kenya.



“They buried us, but they did not know we were seeds.”

- Greek poet Dinos Christianopoulos

4.1 INTRODUCTION

Environmental and land rights defenders operate in very complex and often hostile environments, exposing them to multiple risks and threats because of their work. They face illegal arrests, judicial harassment and forced evictions, among others. This Chapter examines some of the key drivers of attacks against defenders, the forms they take and the most common perpetrators behind these human rights violations.

4.2 KEY DRIVERS OF THREATS TO ENVIRONMENTAL AND LAND RIGHTS DEFENDERS IN KENYA

COMPETITION OVER SCARCE NATURAL RESOURCES

The increasing demand for and reliance on land and natural resources for economic development has been the key driver of conflicts between the Kenyan government and private investors on one hand and indigenous communities on the other hand, who depend on these scarce resources for their survival and livelihoods.

The pursuit of short-term and quick material gain by both government and private actors is the reason for the violation of the rule of law. The law is often ignored, or processes bypassed, especially when it comes to thorough assessment and public participation processes.

Those who courageously speak up against unsustainable development projects that pose a threat to the enjoyment of their rights are then silenced, harassed, imprisoned or worse. To legitimise their actions against environmental rights defenders, the government has resorted to labelling them “enemies of the state” or “enemies of development”, hence associating them with criminals or seeking to turn public sentiment against them.

¹⁰Communication No. 155/96, <https://www.escr-net.org/caselaw/2006/social-and-economic-rights-action-center-center-economic-and-social-rights-v-nigeria>.

POWER INEQUALITY

In many cases, environmental and land rights defenders come from indigenous and local communities that have been marginalised for a long time in terms of economic development and exclusion from decision-making processes on matters that affect them. Too often, their social, political and economic backgrounds place them in a relatively “powerless” situation compared to the individuals or companies they oppose. For them, it is often a difficult question of choosing between their own survival and their families’ wellbeing or sacrificing their own interests for the greater good.

COMPROMISING THE RULE OF LAW

Ironically, one of the main perpetrators of human rights abuses against environmental and land defenders are public officers - the police, the military and other government officials who are the custodians of the rule of law. **There are three main ways in which the government can compromise the rule of law and expose defenders to threats: -**

- a. Directly getting involved in violence against defenders.
- b. Failing to investigate and hold perpetrators accountable under the law.
- c. Enacting backward and oppressive laws.
- d. Intentionally bypassing or acting contrary to the law.

DIRECTLY GETTING INVOLVED IN VIOLENCE AGAINST DEFENDERS

This is where state officers, such as police and military officers, by themselves or acting through others, under instructions from another person or without instructions, carry out the acts that amount to the violation of the rights of defenders.

EXAMPLE: Evictions of Indigenous peoples in Kenya



Between 7 and 10 July 2020, the Kenya Forest Service (KFS) launched coordinated evictions to remove the Sengwer and Ogiek communities from their ancestral lands in the Embobut and Mau forests respectively. This occurred despite the existence of a moratorium by the Cabinet Secretary, Ministry of Interior and Coordination of National Government halting all forced evictions during the coronavirus pandemic period. The evictions also ignored an earlier statement by the United Nations Special Rapporteur on adequate housing and the situation of human rights defenders, calling upon the government to stop all evictions during the pandemic period and protect human rights defenders working with evictees.



FAILING TO INVESTIGATE AND HOLD PERPETRATORS ACCOUNTABLE UNDER THE LAW

Many incidents of attacks against environmental defenders in Kenya are never investigated and the perpetrators are not held criminally liable for the actions. The recurring trend of inaction and laxity among state agencies has made the public lose its confidence in the ability of the police to protect them against human rights violations.

In most of the cases documented through Natural Justice’s African Environmental Defenders Initiative, defenders who reported attacks to police officers and other human rights institutions established under the Kenyan law never received any assistance, which forced them to turn to other alternatives for support and protection.

ENACTING BACKWARD AND OPPRESSIVE LAWS

Through Natural Justice’s work on law and policy reform, which involves tracking the legislative processes in different countries and participating in the processes, Natural Justice has documented instances where governments have used the law as a tool of oppression by legitimising their efforts to undermine fundamental human rights and freedoms, such as the freedom of expression and association. Such laws have been used to increase the risks associated with participating in environmental rights activism.

EXAMPLE: Introduction of punitive laws in Kenya

In Kenya, Parliament introduced an amendment bill to the **Public Order Act** in 2018 of which the effect is to hold the organisers of peaceful demonstrations strictly liable under criminal law where such demonstrations become violent even if they are not responsible for those acts. This unconstitutional restriction on the right to assemble would severely affect the ability of environmental defenders to hold leaders accountable for their actions and push for social change through peaceful demonstrations. The amendment bill was struck out following a public outcry by civil society regarding its potential implications.



It is also common for the Authorities to misuse and misinterpret the provisions of the **Public Order Act, Cap 56**, which provides guidelines to environmental defenders for holding public meetings. This Act requires a person seeking to convene a public meeting to inform the regulating officer, the officer in charge of a police station in the area in which the meeting is to be convened, at least 3 days and not more than 14 days before the proposed date of the meeting. Instead, the police always interpret this to mean that a permit must be obtained.

INTENTIONALLY BYPASSING OR ACTING CONTRARY TO THE LAW

People in positions of power, either politically or economically, are often the primary perpetrators of violence against environmental and land rights defenders. By virtue of the powers they hold, such individuals believe that they can bypass or ignore the requirements of the law without being held accountable by their victims. This is common among both private and state actors who are considered the custodians of the law.

CORRUPTION AND IMPUNITY

A number of development projects in Kenya involve billions of dollars which makes them prey to corrupt practices. The absence of comprehensive transparency and accountability processes has further created opportunities for the oppression and silencing of environmental and land defenders. This is often the case when it comes to processes such as land acquisition to pave way for development projects where lack of transparency and gaps in the law have encouraged corrupt practices.

4.3 PERPETRATORS OF THREATS TO ENVIRONMENTAL AND LAND DEFENDERS

- Private entities: Businesses, Investors, Financiers
- Government agencies: police, military and paramilitary bodies
- Fellow community members



EXERCISE 5: Drivers of threats

If you are currently facing threats, what do you think are the key drivers of those threats?



Secondly, who do you think are behind these drivers?

CHAPTER FIVE: USING THE LAW TO RESPOND TO THREATS AGAINST ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

OBJECTIVES OF THIS CHAPTER:



- To provide a step-by-step guide on how to lodge complaints with relevant national administrative bodies that are mandated to protect environmental defenders.
- To provide a list of some civil society organisations that provide support to environmental and land rights defenders.

5.1 INTRODUCTION

There are different strategies and approaches that environmental and land rights defenders can use to respond to threats. Depending on the different unique context and circumstances of a particular case, environmental defenders can use either or both legal mechanisms and/or other available mechanisms established by civil society to protect themselves and seek redress.

As discussed in Chapter 2 of this handbook, the government of Kenya has established several state agencies and independent commissions under the Constitution to ensure the protection of rights and freedom. Although some of these institutions are slow in responding, the importance of their role cannot be denied, for they have helped remove (or overcome) the problems previously faced by environmental and land rights defenders. Since the promulgation of the 2010 Constitution, these institutions have been key in ensuring that state officers are held accountable for their actions in cases where their action or inaction affects the rights of others.

In addition to government entities, various civil society organisations have put in place mechanisms to provide both proactive and preventive support to environmental defenders. In that regard, several rapid response mechanisms have been put in place to provide urgent and sometimes long-term assistance to defenders at high risk.

This Chapter aims to provide a step-by-step guide on how to lodge complaints with relevant national administrative bodies that are mandated to protect environmental defenders. A list of some organisations providing support to environmental defenders will be provided, including detailed information on how to access Natural Justice's African Environmental Defenders Emergency Response Fund.

5.2 LODGING COMPLAINTS WITH NATIONAL ADMINISTRATIVE BODIES

COMMISSION ON ADMINISTRATIVE JUSTICE

The role of this administrative agency is crucial to the work of an environmental and land rights defender in two ways. In the first instance, a defender can report a state officers who are abusing their power or acting unfairly and unjustly. Secondly, the environmental defender can also report state officials who have refused to grant them information that they have requested within the stipulated time and in the stipulated manner.

Section 9 of the Access to information Act provides that a public officer shall make a decision on a request for information as soon as possible, but in any event, within twenty-one days of receipt of the application. Further, the Act stipulates that where the information sought concerns the life or liberty of a person, the information officer shall provide the information within forty-eight hours of the receipt of the application. In view of the above, when information is not provided within these stipulated timelines then a defender can approach the CAJ.

How to lodge a complaint

Any aggrieved person can lodge a complaint with the CAJ on his own behalf or on behalf of others. Complaints may be lodged on behalf of an aggrieved person in the following instances:

- If the aggrieved person is dead or unable to act for himself/herself, by a member of his/her family or other person suitable to represent the aggrieved person; or
- By a member of the National Assembly with the consent of the aggrieved person or their representative as outlined in (i) above.

All complaints can either be lodged orally or in writing, addressed to the secretary or such other person duly authorised by the Commission. The Commission shall ensure that complaints lodged orally are translated in writing. The CAJ also provides for various means or channels for filing a complaint.

Writing complaint letters

A complaint can take the form of a letter clearly outlining the details and particulars of the violation.

Letters to the CAJ are addressed to this address:



P.O. Box 20414, 00200, Nairobi

(An example of a complaint letter can be found in the annexures).

Writing e-mails

You can address the ombuds in an e-mail to:



complain@ombudsman.go.ke.

Filing the online complaint form

The Commission on Administrative Justice can be reached via their website: <https://www.ombudsman.go.ke/index.php>.

From here, one can access their services, including lodging of complaints.

To lodge an online complaint, there is a tab within the CAJ's website known as



"Complain Here" <http://cmis.ombudsman.go.ke/site/publicindex>.

Physical visits to the CAJ Offices

An environmental defender can visit the CAJ's head office, which is located on 2nd Floor, West End Towers, opposite Aga Khan High School on Waiyaki Way - Westlands. However, they have other offices across the country in Mombasa, Kisumu, Isiolo, Eldoret and at Huduma Centres. It is also permissible for one to physically go to any of these offices to seek help in lodging a complaint.

Calling the toll-free numbers and the SMS Short Code Number

The CAJ can be reached through their **toll-free lines** of



+254-20-2270000 / 2303000 / 2603765 / 2409574/

0777 125818/ 0800221349

For citizens who have a Safaricom line, using the **texting short code number**,



15700 is another available option.



INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA)

The main mandate of IPOA as per the IPOA Act is to

1. investigate deaths and serious injuries caused by police action;
2. investigate police misconduct;
3. monitor, review and audit investigations and actions by the Internal Affairs Unit of the police;
4. conduct inspections of police premises;
5. monitor and investigate policing operations and deployment;
6. review the functioning of the internal disciplinary process; and
7. to give an annual report of police activities to the public.




How to lodge a complaint

An environmental and land rights defender whose rights have been infringed by the police can approach IPOA for redress. Section 24 of the IPOA Act provides that a person wishing to lodge a complaint against the police may do so orally or in writing or in such other appropriate format as may be prescribed by regulations to the Act. Where a complaint is made orally, IPOA is required to assist the complainant to reproduce their complaint in writing.

In practice, IPOA has provided various avenues of filing a complaint. One can make a complaint to the Authority online, in writing, by email or telephone.

Writing complaint letters

There is also the option of writing a letter to the Commission and sending it to their postal address:

 **P.O. Box 23035-00100, Nairobi, Kenya.**

Writing e-mails

You can address the ombuds in an e-mail to:

 **complaints@ipoa.go.ke.**

Filing the online complaint form


To make a complaint online, register and make the complaint on

 **<https://www.ipoa.go.ke/complaints-form/>.**

Alternatively, the said complaint form can be downloaded, filled out and sent. (An example of a complaint letter can be found in the annexures).

Making an oral complaint

Complaints can be lodged orally by **phoning the Complaints Management Team on**




 **+254 792 532 626/627; +254 773 999 000; +254 772 333 000;
+254 780 490 600/601.**

Points to Note:

The police, being an administrative agency, are subject to the office of the ombudsman. Hence one can also lodge a complaint with the CAJ as highlighted above.

Information to be provided when making a complaint.

When making a complaint, one needs to provide:

-  Their name and contact details, details of the incident they want to complain of, including when it happened, what happened and who was involved.
-  The name or any other identifying details of the officer they want to complain about and any other relevant person (such as witnesses).
-  Any relevant evidence, such as photographs or doctors' reports.

Upon receiving the complaint, the Authority shall investigate and table a report on its findings.



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

As the state's lead agency in the promotion and protection of human rights, the Commission has two key broad mandates: to act as a watchdog over the Government in the area of human rights and to provide key leadership in moving the country towards a human rights state.


The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor the compliance of human rights norms and standards, to conduct human rights education and to facilitate training, campaigns and advocacy on human rights, as well as collaborate with other stakeholders in Kenya.

How to lodge complaints

Section 32 and 33 of the Kenya National Commission on Human Rights Act provides for by whom and how a complaint can be made. An environmental and land rights defender whose rights are threatened or have been violated can lodge a complaint to the Commission by:

Writing a complaint letter

An environmental defender can lodge a written complaint with the Commission through this address:

 **P.O. Box 74359/00200 Nairobi, Kenya.**

Writing an e-mail

E-mails to the Commission should be addressed to this formal address:

 **complaints@knchr.org.**

Making an oral complaint

An aggrieved person can also call the Commission on

 **020-2717908**, or on Mobile phone  **0726610159**

and state that they want to lodge a complaint. The Commission will then call them at its own cost.

Filing an online complaint form

Online complaint forms to the Commission can be done through their official website:

 **<https://www.knchr.org/Report-Violation>**
(An example of a CAJ complaint letter can be found in the annexures).

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION (ODPP)

The mandate of the ODPP is important for environmental defenders because acts of human rights violations often amount to criminal acts. The ODPP is the National Prosecuting Authority in Kenya that has been mandated by the Constitution to prosecute all criminal cases in the country. The Director of Public Prosecutions (DPP) is the head of the ODPP and operates independently as stipulated under Article 157 of the Constitution.¹¹

The ODPP has presence in all the 47 counties in Kenya, with its headquarters in Nairobi. A Chief County Prosecutor (CCP) heads each ODPP County Office and is responsible for working with the courts and the investigative agencies to provide high quality prosecution services in their jurisdiction.¹²


How to lodge complaints to the ODPP

Any member of the public who wishes to lodge a complaint must put in writing the nature of the complaint in the form of a letter addressed to the ODPP. The letter should include as much information as possible relevant to the issue being complained of.

The letter has no prescribed form but instead takes the general form of letters. The letter can be sent via an email to

 **publiccomplaints@odpp.go.ke.**

Alternatively, the letter can be sent to their postal address:

 **Box 30701-00100, Nairobi.**

In resolving the complaint, the Director of Public Prosecution can opt to open a file if it is found that an offence was committed and charge the violator with a criminal act for which they shall prosecute in court.



¹¹Office of the Director of Public Prosecution, available at <https://www.odpp.go.ke/who-we-are/> accessed on 7 December 2021.

¹² Ibid

THE COURT SYSTEM

The courts play an important role in dispute resolution. Interaction with the court is twofold. Firstly, environmental defenders can go to court to affirm or protect their rights and fundamental freedoms where their rights are threatened or infringed. Secondly, they can interact with the court as accused persons for which they will be taken through the criminal trial process.

Courts in Kenya are hierarchical and specific in nature, hence the need to approach the right one for the right remedy. Generally, matters pertaining to infringement of rights protected under the Constitution are handled by the High Court, which can grant a remedy.

That notwithstanding, the Magistrate's Court too can listen to matters involving the breach of fundamental rights during the trial process but they can only declare that a right had been breached. Their mandate only extends to making a declaratory order or injunction or conservatory order but this jurisdiction does not extend to hearing and determining claims for compensation for loss or damage suffered because of a violation, infringement or denial of a right or fundamental freedom in the Bill of Rights.

As such, it is good practice to approach the High Court and, in case of dissatisfaction, one can appeal to the Court of Appeal. If the case meets the criteria for a matter that can be tabled before the Supreme Court, then the matter can be appealed to the Supreme Court.

On the other hand, an environmental and land defender can be arrested and be subjected to the court under a criminal trial prosecuted by the Director of Public Prosecution. In this instance, the first trial court tends to be the Magistrate's Court which has jurisdiction to deal with almost all criminal matters save for capital offences.



5.3 CIVIL SOCIETY ORGANISATIONS THAT PROVIDE SUPPORT TO ENVIRONMENTAL AND LAND RIGHTS DEFENDERS


Bearing in mind the increasing incidents of attacks against environmental defenders across the world, several civil society organisations and NGOs have established support mechanisms for defenders as a way of demonstrating their solidarity with them in difficult times. There is a wide range of support offered by CSOs/NGOs, ranging from proactive, preventive and reactive responses to threats.

This section will provide more information on how environmental defenders can access support through the African Environmental Defenders Emergency Fund. A list of other CSOs providing support to defenders will also be provided.

THE AFRICAN ENVIRONMENTAL DEFENDERS EMERGENCY FUND










A grant can be accessed by lodging an application in the prescribed form with the Committee of the Fund. Applications can be made by either:

 Sending an email to **help@envirodefenders.africa**

 Applying online **<https://envirodefenders.africa/emergency-fund/#apply>**

Examples of the nature of documents we may request when an application is submitted include:

-  Evidence of citizenship, residence or work permit.
-  Copies of arrest warrants or summons (where the defendant is being arrested or facing a threat of arrest).
-  News articles or reports of the incidents (where available).
-  Medical reports for instances where a defender has sustained physical injuries due to violence or attacks.
-  A copy of the budget breakdown and the expense items (mandatory).
-  Legal opinions and invoice of legal costs (where one is seeking legal representation). Copies of court orders or judgments.
-  Any other document that can support the facts of the case.

The eligibility criteria

Any person is eligible to apply for an emergency grant if they meet all of the following criteria:

1. Is a citizen of any African country or a person legally residing or working in any African country.
2. Is an active frontline land and environmental rights defender working on issues related to land rights, environmental and climate justice, including but not limited to rights over natural resources, land or environmental conflicts, land grabbing and land reform.
3. Is facing an imminent threat or harm due to the nature of his/her work as a land and environmental defender. AND
4. Has not secured any other kind of support from another entity, organisation or person to support him/her through the emergency situation.

OTHER CSOS/NGOS SUPPORTING ENVIRONMENTAL DEFENDERS

INTERNATIONAL

Centre for International Environmental Law

It uses the law to promote human rights, protect the environment and ensure a sustainable society. They provide diverse services such as legal counsel, advocacy, policy research and capacity building across three main areas: Climate and Energy, Environmental Health and People, Land and Resources.

Website: <https://www.ciel.org/>



The Environmental Defender Law Centre

It focuses on human and environmental rights protection in developing countries and supports activists and environmental advocates by helping in finding lawyers, providing resources and offering grants.

Website: <https://edlc.org/>



Eastern Environmental Law Centre

It provides free legal representation to organisations and individuals who cannot afford it. Their work especially focuses on the protection and preservation of open space and water quality.

Website: <https://defendersprotection.org/home/>



Foundation for International Environmental Law and Development

It has expertise in the application of international environmental law and helps vulnerable countries, communities and campaigners negotiate for fairer international environmental laws.

Website:

<https://www.iied.org/foundation-for-international-environmental-law-development>



350.org

It supports local groups that are campaigning around climate change (i.e., environmental or land defenders) to build their resilience and capacity to reduce security risks. They provide crisis response support at times of need - whether it is practical support, solidarity or putting pressure on the perpetrators or authorities. They work with partners and coalitions to push back against the closing of civic space for activism and protest.

Website: <https://350.org/>



American Bar Association (ABA)

It mobilises lawyers to help threatened advocates; rallying thought leaders on vital issues; and holding abusive governments accountable. Its Justice Defenders Program defends human rights advocates from harassment. They take down legal barriers to advocacy, mobilise the global legal community and hold governments accountable for restricting human rights activities.

Website: <https://www.americanbar.org/>



Article 19

When the freedom to speak or the freedom to know comes under threat, either by the failure of power-holders to adequately protect them, Article 19 speaks with one voice, through courts of law, through global and regional organisations and through civil society across the globe.

Website: <https://www.article19.org/>



Business & Human Rights Resource Centre

It focuses on 'Responsible Resource Use' (land and water grabs in extractives, the impact of carbon majors, building human rights into renewable companies and 'Protection of Civic Freedoms and Human Rights Defenders') to protect environmental defenders threatened by unscrupulous companies.

Website: <https://www.business-humanrights.org/en/>



CIVICUS

They defend civic freedoms and democratic values, strengthen the power of people to organise, mobilise and act, and empower a more accountable, effective, and innovative civil society. It also runs the CIVICUS Solidarity Fund (CSF), a member-led and member-resourced mechanism that provides both flexible and rapid response funds. The objectives of the CIVICUS Solidarity Fund are to

- enhance solidarity within the alliance and foster a sense of belonging to a global movement for change;
- support civil society diversity and resilience, especially among smaller, non-formal actors; and
- create opportunities where they do not exist for change-seeking actors to contribute to a more just, inclusive and sustainable world.

Website: <https://www.civicus.org/>



The Coalition for Human Rights in Development

It hosts the *Defenders in Development Campaign*, which engages in capacity building and collective action to ensure that communities and marginalised groups have the information, resources, protection and power to shape, participate in, or oppose development activities and to hold development financiers, governments and companies accountable.

The Campaign is made up of community organisations, human rights and environmental groups, defender security organisations, transparency and accountability NGOs and indigenous peoples and women's networks.

Website: <https://rightsindevelopment.org/>



Digital Defenders Partnership (DDP)

It provides grants to human rights defenders and organisations to address urgent digital emergency situations. Longer-term grants are provided to organisations that face threats due to the work they are doing to cover training of staff members, internet infrastructure in the office or setting up secure data storage systems for sensitive files. The Rapid Response Network is also coordinated by DDP, through providing financial and logistic assistance to improve the quality and effectiveness of emergency response.

Website: <https://www.digitaldefenders.org/>



Earth Rights International (ERI)

They incorporate environmental and human rights defender issues into several elements of their work such as:

- Legal cases and campaigns on behalf of defenders who face threats from multinational corporations.
- Legal training programmes for activists and public interest lawyers.
- The “Faces of Change” project, a human rights storytelling initiative that provides a safe space for activists and survivors of human rights abuses to tell their stories.
- The leadership role in the “Protect the Protest” task force, a newly formed coalition of U.S. NGOs that seeks to end the threat of Strategic Lawsuits Against Public Participation (SLAPPs).

Website: <https://earthrights.org/>



Environmental Law Alliance Worldwide (ELAW)

- It engages international human rights watchdogs like the UN Special Processes, the Inter-American Commission on Human Rights and domestic human rights bodies when environmental lawyers are attacked.
- Activates its global network to pressure governments and industry actors to protect its partners.
- Provides emergency financial support to partner organisations for medical needs and staffing when partners are taken out of action temporarily.
- Evacuates partners in high-risk circumstances for short-term stays in their office.
- Helps partners defend against SLAPPs.
- Provides skill shares for the global network on personal and digital protection strategies.
- Protects its partners, deters attacks, and builds resilience among attorney partners and the communities they represent to withstand organisational and personal attacks.

Website: <https://www.elaw.org/>



Forest Peoples Programme

Working alongside more than 60 partner organisations representing indigenous peoples and forest communities from across the globe, FPP uses the following strategic approaches to support defenders:

- Self-determination.
- Access to Justice.
- Legal and Policy Reform.
- Building Solidarity

Website: <https://www.forestpeoples.org/>



Front Line Defenders

It provides rapid and practical support to human rights defenders at risk through:

- International advocacy on behalf of human rights defenders at risk, including emergency support for those in immediate danger.
- Grants to pay for the practical security needs of human rights defenders.
- Training and resource materials on security and protection, including digital security.
- Rest, respite and other opportunities for human rights defenders dealing with extreme stress.
- Opportunities for networking and exchange between human rights defenders.
- The annual Front Line Defenders Award for Human Rights Defenders at Risk.
- An emergency 24-hour phone line for human rights defenders operating in Arabic, English, French, Russian and Spanish.

Website: <https://www.frontlinedefenders.org/>



Global Witness

It runs the land and environmental defenders campaign and produces annual reports compiling the cases with analysis on industry drivers and geographical trends.

They also produce this data in real time through a collaboration with the Guardian newspaper.

They investigate the root causes and perpetrators of attacks against LEDs in certain priority countries.

They push for reforms in policies and practices regarding defenders in international mechanisms.

Website: <https://www.globalwitness.org/en/>



The Goldman Environmental Prize

The prize honours grassroots environmental heroes across the world. The Prize recognises individuals for sustained and significant efforts to protect and enhance the natural environment, often at great personal risk.

The Prize seeks to inspire other ordinary people to take extraordinary actions to protect the natural world.

They also amplify the voices of these grassroots leaders and provides them with:

- International recognition that enhances their credibility.
- Worldwide visibility for the issues they champion.
- Financial support to pursue their vision of a renewed and protected environment.

Website: <https://www.goldmanprize.org/>



Human Rights Watch

HRW seeks to:

- **Investigate:** Conduct research in 100 countries, uncovering facts that create an undeniable record of human rights abuses.
- **Expose:** Tell the stories, share them with millions of social media and online followers each day. News media often report on our investigations, furthering our reach.
- **Change:** Meet with governments, the United Nations, rebel groups, corporations and others to see that policy is changed, laws are enforced, and justice is served.

Website: <https://www.hrw.org/>



ICCA Consortium

The ICCA Consortium has developed a policy and programme of work on “Defending territories of life and their defenders”. Under this draft policy, the ICCA Consortium (in collaboration with strategic allies and partners) strives to:

- Actively defend ICCAs—territories of life from harm, particularly from externally driven natural-resource intensive activities, in full concert and solidarity with their custodian indigenous peoples and local communities.
- Actively support and defend custodians and defenders of territories of life and stand in solidarity with them as they assert and secure their rights and responsibilities to govern, manage and conserve their territories and areas.
- Enhance the capacities of members to recognise and stand up to threats and harms to territories of life and their defenders.
- Highlight and demonstrate (economic and livelihood) alternatives to the mainstream economic systems that threaten and harm territories of life and their defenders with impunity.
- Advance global, national and local systems of rights and responsibilities and foster an enabling environment in support of territories of life and their defenders, including through multiple complementary forms of legal and non-legal recognition and support.

Website: <https://www.iccaconsortium.org/>



Indigenous Peoples Rights International (IPRI)

IPRI seeks to:

- Respond to reduce and prevent violence against and criminalization of Indigenous Peoples.
- Secure the safety of indigenous individuals and communities under threat.
- Increase global awareness by leading and coordinating campaigns to address violence and criminalization of Indigenous Peoples.

Website: <https://www.iprights.org/index.php/en/>



International Land Coalition (ILC)

The ILC’s Commitment 10 (“protected land rights defenders”) seeks to respect and protect the civil and political rights of human rights defenders working on land issues, combat the stigmatisation and criminalisation of peaceful protest and land rights activism and end impunity for human rights violations.

It works on Commitment 10 through coordinated advocacy and campaigning, legal assistance, legal empowerment and access to justice.

It also expresses solidarity through a small Land Defenders Fund for ILC members put at risk because of their work.

The ILC’s Dashboard, a land monitoring tool for people centered land governance, has three indicators by which Coalition members are collecting data on land rights defenders.

One indicator measures the legal framework in place to protect land rights defenders.

The second indicator measures the effectiveness of protective measures and levels of impunity.

The third indicator was developed to collect data on violations against LEDs, including the perpetrators, drivers behind such violations and ongoing trends in criminalisation.

Website: <https://www.landcoalition.org/en/>



International Work Group for Indigenous Affairs (IWGIA)

It supports and collaborates with indigenous peoples to protect and defend their rights at the global and local level. This includes capacity development in terms of documentation, community organising, lobbying/advocacy of Indigenous Peoples Rights Defenders.

Website: <https://www.iwgia.org/en/>



Land is Life

The security of Indigenous peoples and their lands and territories is of utmost priority to Land is Life. It provides support directly to grassroots organisations and strives to strengthen those groups and the communities they represent and defend by supporting their initiatives and priorities, building their capacity and supporting strong governance.

They also fund programmes that develop resilience strategies and tools for partners - for instance, digital security, the development of protocols of Free, Prior, and Informed Consent with communities and the founding of the first working group on Indigenous Peoples Living in Voluntary Isolation and Initial Contact.

Website: <https://www.landislife.org/>



Namati

This is a global movement of grassroots legal advocates who give people the power to understand, use and shape the law. These advocates form a dynamic, creative frontline that can squeeze justice out of even broken systems.

Website: <https://namati.org/>



Peace Brigades International (PBI)

Working in Colombia, Guatemala, Honduras, Mexico, Kenya and Indonesia as well as formerly in Nepal, PBI provides protection, support and recognition to local human rights defenders who work in areas of repression and conflict and have requested support.

They combine on-the-ground expertise and local knowledge with advocacy, protective accompaniment and capacity development, as well as material and financial support for HRDs through **ProtectDefenders**.

Website: <https://www.peacebrigades.org/en/about-pbi>



Publish What You Pay (PWYP)

PWYP is a global network of civil society organisations that are united in their call for an open and accountable extractive industry so that the revenues generated by oil, gas and mining operations help improve the lives of citizens in resource-rich countries, particularly at the local level where extraction happens.

Website: <https://www.pwyp.org/>



The Rights and Resources Initiative (RRI)

This is a global Coalition of more than 200 organisations dedicated to advancing the forestland and resource rights of Indigenous Peoples, local communities and rural women. It fosters the creation and implementation of innovative solutions to land tenure security. It seeks to prevent all changes to national laws and regulations that weaken the customary and statutory land rights of Indigenous Peoples and local communities and simultaneously promote new laws that strengthen customary and statutory rights.

Website: <https://rightsandresources.org/>



Water Witness International (WWI)

WWI supports communities living at the sharp end of the global water crisis. They enable them to secure their water rights and to demand action and accountability from those responsible for pollution control, flood and drought management, water and sanitation services as well as conflict resolution.

Website: <https://waterwitness.org/>



World Resources Institute (WRI)'s

They promoted the passage of laws and practices on access to information, public participation and justice to support peoples' voices in environmental decision-making and fight for redress where violations have occurred in over 60 countries.

They defend partners when threatened and attacked in various countries, including Kenya and India.

Website: <https://www.wri.org/>



World Wildlife Fund (WWF)

World Wildlife Fund seeks to:

- support indigenous peoples and local communities to strengthen the security of their rights over their land and resources;
- build innovative methods to combat corruption, which enables abuse by the powerful in the utilisation of natural resources and their impunity;
- conduct advocacy to governments to respond rapidly and effectively to bring to justice perpetrators of crimes against environmental defenders;
- build rights-based approaches to conservation that empower indigenous peoples and local communities; and
- Work with other civil society partners, governments, UN and other actors to fight against shrinking civic space and ensure safe and effective civic voice and action for non-state actors and environmental defenders.

Website: <https://www.worldwildlife.org/>



REGIONAL CSOS/NGOS

African Defenders (the Pan-African Human Rights Defenders Network)

It provides:

- Shield Awards that aim to honour exceptional individuals who have contributed to changes in their community by peacefully promoting and protecting human rights, as universally recognised by the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.
- Ubuntu Hub Cities - a city-based relocation initiative for human rights defenders (HRDs) at risk across Africa
- Defender ID - a tool to assist African HRDs in reminding duty-bearers of their rights under international law and to demonstrate that their human rights work is recognised and supported by the national, regional and international networks.
- Advocacy to raise awareness of the challenges facing human rights defenders (HRDs) and to promote the implementation of concrete measures to improve their situation.

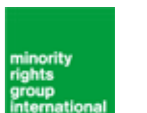
Website: <https://africandefenders.org/>



Minority Rights Group

It brings together 12 indigenous communities across the 4 East and Central African countries (Kenya, DRC, Uganda and Cameroon) to empower indigenous Land Rights Defenders and their representative organisations to overcome the lack of access to judicial and non-judicial remedies and the non-recognition of the role of indigenous peoples in preventing climate change.

Website: <https://minorityrights.org/new/>



DefendDefenders

This is a regional NGO that seeks to fill the gaps of

- insufficient collaboration amongst human-rights organisations;
- resource constraints (notably material), which greatly undermine the effectiveness of the
- work carried out by human rights defenders;
- knowledge gaps, in particular regarding international human rights instruments and mechanisms; as well as
- crisis management.

Website: <https://defenddefenders.org/>



Pan African Institute for Research, Training, and Action for Citizenship, Consumption, and Development in Africa (CICODEV)

CICODEV supports land rights defenders through:

- Legal support (by reinforcing their capacity on land governance, national laws, and their rights and duties in land affairs).
- Monitoring violation cases.
- Judicial support, in the event of arrests (by hiring lawyers to defend them in court).
- Advocacy at the national and international levels for their release.
- Building a national and international network of land rights advocates.

Website: <https://cicodev.org/about-us/>



ANNEXURE 1: Sample Complaint Letter to the CAJ

Mazingira Community Group

PO. Box 168

Mazeras, Kenya

9 July 2019

The Chairperson

Commission on Administrative Justice

2nd Floor, West End Towers

Opp. Aga Khan High school off Waiyaki way-West lands

P.O. Box 20414- 00200

Nairobi, Kenya

Email: complain@ombudsman.go.ke

Dear Sir/Madam

RE: FAILURE TO RESPONDING TO OUR ACCESS TO INFORMATION LETTERS BY THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY VIOLATING ARTICLE 35 OF THE CONSTITUTION OF KENYA, 2010.

We refer to the above-stated matter.

We are a group of over 150 households, residing at Mazeras in Mariakani, entitled to our land according to section 24(a) of the Land Registration Act, 2012. We have been affected by the quarrying activities by the Big Rock Construction Company quarry situated in our area.

We hereby write to the Commission on Administrative Justice (CAJ), which we read about it in the laws of Kenya.

Our complaint is against the National Environment Management Authority (NEMA), Nairobi and Kilifi, for failure to respond to our access to information requests and furnish us with the information, as requested, thus violating our Constitutional right outlined in Article 35. The documents requested are public information and therefore should be made available. In this regard, the institution has also violated Section 3 A and Section 123 of the Environmental Management and Coordination Act (EMCA), 18 of 1999 (amended in 2015).

Section 58-64 of the EMCA, read together with the Environmental (Impact Assessment and Audit)

Regulation 2003, provides that an EIA (Environmental Impact Assessment) study should be undertaken for all schedule II projects. Subsequently, the NEMA reviews the report and issues an environmental licence with conditions according to Section 64 of the Act. Big Rock Construction Company has been undertaking quarrying activities, categorised as schedule II, which have caused impacts on the environment.

To understand the conditions and mitigation measures, the project proponent needs to adhere to, we wrote an access to information request on 31st January 2019 to the NEMA headquarters and on 1st February 2019 to the NEMA county offices requesting NEMA to furnish us with a copy of the EIA and the environmental licence issued for quarrying activities. We did not receive any response. We followed up with another request in our letter dated 6th March 2019 and another on 11th April 2019 in vain.

We therefore request the Commission on Administrative Justice to open a file and investigate all the complaints cited, prepare a report on the findings and instruct the National Environment Management Authority to furnish us with these reports.

Attached please find the the ATI letters received by NEMA.

Yours sincerely

[Name]

[Position]

Mobile Number: 0723 123 456.

ANNEXURE 2: Sample IPOA Online Complaint Form

1/6/23, 1:00 PM

COMPLAINTS FORM | The Independent Policing Oversight Authority



PLEASE READ GUIDELINES BELOW BEFORE FILING COMPLAINTS

The Authority considers complaints alleging misconduct or neglect of duty by the Police, or about Police practices, policies, and procedures affecting the complainant.

The Authority also considers incidents of death and serious injury caused by Police action. The Police have to inform IPOA about these incidents. The Authority can also investigate on its own motion.

Please READ all the GUIDELINES here.

Use the form below to file your complaint. All fields marked * are mandatory.

PERSONAL DETAILS

Your Name*

E-mail

Address

Phone*

Gender*

County (select from list)*

Ward

Are you in the Public Service?*

If you are in the police service, state the following:

Station

Rank

Personal Number

COMPLAINT DETAILS

Which Police Officer(s) are you complaining about?

Officer(s) Name

<https://www.ipoa.go.ke/complaints-form/>

2/4

1/6/23, 1:00 PM

COMPLAINTS FORM | The Independent Policing Oversight Authority

Which Police Station is he/she stationed?

Police Station

Where did the incident happen?

Incident Location

Are there any witnesses?

Yes

No

Which Police Officer(s)/Members of the public witnessed the incident?

Witness Name(s)

Police Number

Uniform Color

What is the nature of the complaint?

When did the incident happen that led to your complaint? If more than one date/time, please specify.

Do you have any evidence to support your complaints? If so, please provide:

Attach any evidence below (hold CTRL key to select multiple files)

No file chosen

If the complainant has been medically examined, give details of the medical examination and the medical officer who attended

Is the complainant/victim being held in police custody? If so state the police station he/she is/was held (if applicable)

Is the complainant subject to any court proceedings?

Yes

No

Do Not Know

Have you made this complaint to any other institution? If yes state where and what action has been taken

<https://www.ipoa.go.ke/complaints-form/>

3/4

ANNEXURE 3: Sample Complaint Letter to the KNCHR

1/6/23, 1:00 PM COMPLAINTS FORM | The Independent Policing Oversight Authority

What specific issues you want the authority to inquire into?

What action do you want taken?

Indicate the outcome that you hope to achieve with this complaint

Indicate any other relevant information

Attach any other relevant documents (hold CTRL key to select multiple files)

No file chosen







Date and time

I confirm all the information I have given is true to my knowledge

Agree

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1/6/23, 1:49 PM Report Violation

 (<https://www.facebook.com/knchr.org>)  (<https://www.twitter.com/HakiKnchr>) 
(<https://mail.knchr.org/owa>) SMS: 22359 | WhatsApp: 0798 849 871 | Email: haki@knchr.org
 Register (<https://www.knchr.org/Register?returnurl=https%3a%2f%2fwww.knchr.org%2fReport-Violation>)  Login
(<https://www.knchr.org/Login?returnurl-%2fReport-Violation>) 



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Report Violation

The admissibility criteria (/Portals/0/Reports/faqs_on_admissibility.pdf) will give you a guide on complaints filed at KNCHR. To file a complaint you can either visit our offices to record your complaint, send as a letter on the contacts provided, use our online complaints page or send the complaints to following email address: complaint@knchr.org (<mailto:complaint@knchr.org?subject=Report%20of%20Violation>)

All human rights violations reported to us are and will always remain confidential. Should you need further guidance on this please free to contact us

Name: *

Email: *

Tel No.: *

Idno/Passport: *

Gender: *

==Please select== ▼

Sexual Orientation:

==Please select== ▼

Age: *

Postal Address:

Marital Status: *

==Please select== ▼

Nationality: *

==Please select== ▼

County: *

==Please select== ▼

SubCounty: *

==Please select== ▼

Ward:

Occupation:

Present Physical Address:

Education Level: *

==Please select== ▼

Type of Complaint: *

==Please select== ▼

Lodging Complaint As: *

==Please select== ▼

Summary of Facts of Human Rights Violation: *

Messages

Attachments:

I'm not a robot reCAPTCHA
Privacy - Terms

[Frequently asked questions \(/Frequently-Asked-Questions\)](#)

[Download Admissibility Criteria \(/Portals/0/Reports/faqs_on_admissibility.pdf\)](#)

[Standard Operating Procedures](#)

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