



AFRICAN  
ENVIRONMENTAL  
DEFENDERS



# REGIONAL AND INTERNATIONAL HANDBOOK FOR ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

The Human Rights, Legal and Institutional Frameworks,  
Protection Mechanisms and Other Resources Available for  
African Environmental and Land Rights Defenders at Regional  
and International Levels

 **NATURAL  
JUSTICE**

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# LIST OF ABBREVIATIONS

<b>AWID</b>	: Association for Women’s Human Rights in Development
<b>CSO</b>	: Civil Society Organisations
<b>CITES</b>	: Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>EACJ</b>	: East African Court of Justice
<b>EAC</b>	: East African Community
<b>EACOP</b>	: East African Crude Oil Pipeline
<b>ECOWAS</b>	: Economic Community of West African States
<b>EDLC</b>	: Environmental Defender Law Center
<b>ELRDs</b>	: Environmental and Land Rights Defenders
<b>IUNC</b>	: International Union for Conservation of Nature
<b>MCL</b>	: Mineral Commodities Limited
<b>NGO</b>	: Non-Governmental Organisations
<b>OAU</b>	: Organisation of African Unity
<b>SADC</b>	: Southern African Development Community
<b>SLAPP suits</b>	: Strategic Legal Action Against Public Participation Suits
<b>UN</b>	: United Nations
<b>WRI</b>	: World Resource Institute

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# CHAPTER ONE: INTRODUCTION

## OBJECTIVES OF THIS CHAPTER:



- Establishing the purpose of this handbook and who the intended audience is.
- Outlining the legal context of the handbook.

## 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. All human rights defenders are exposed to unprecedented risks and attacks due to their work. However, compared to human rights activists defending other types of human rights, environment and land rights defenders are the most targeted and exceptionally vulnerable to attacks due to the powers and economic interests they stand up against.*

Africa is a vast continent that is rich in biodiversity, which is often threatened by development projects such as mining, oil exploration, and deforestation. These not only threaten the lives of environmental and land rights defenders, but their homes, land, crops, livestock and livelihood.



Across the African continent, there are reports of legal sanctions, threats, harassment, violence and killings of environmental and land rights defenders. In 2020, Global Witness reported that 227 environmental and land rights defenders were killed globally. Within the African continent, 15 individuals were murdered in the Democratic Republic of Congo, 2 in South Africa and 1 person in Uganda. It is difficult to verify deaths of environmental and land rights defenders in Africa because cases are likely wildly underreported and it is thus probable that deaths in the continent are significantly higher than the statistics indicate.<sup>1</sup>

## 1.2 OBJECTIVES OF THE HANDBOOK

The handbook hopes to legally empower environmental and land rights defenders (ELRDs) in African countries by informing them of their rights, legal and institutional frameworks, protection mechanisms and resources that are available at the regional and international levels. ELRDs may especially benefit from legal frameworks in cases where they experience harassment, prosecution and/or detention. By understanding the rights and the protections that are guaranteed by law, ELRDs across the continent can assert those rights and have a course of action, if need be.

This handbook can also be useful to the work of other Civil Society Organisations and Community Based Organisations in Africa who are working to support defenders in different capacities.

The handbook draws on lessons from Natural Justice's experiences with the African Environmental Defenders Initiative, which has been instrumental in revealing key trends in the way defenders are threatened and attacked. From 2020 to 2021, 45 applications, from 10 African countries were submitted to the initiative's Emergency Fund.

The most common issues faced by the applicants include threats, eviction, arrest, detention, harassment, imprisonment, physical assault and destruction of property. This indicates that environmental and land rights defenders are located across Africa and can face a range of threats for their activism. The African Environmental Defenders Fund also provides tips on how defenders can respond while ensuring their safety and security in such situations.

The legal frameworks and considerations in the handbook are not exhaustive, nor do they guarantee success. However, the information in this handbook can go a long way towards avoiding or mitigating any threats of human rights violations that might arise.

## 1.3 INTENDED AUDIENCE

It is anticipated that this handbook will be beneficial to ELRDs who are at the forefront in the struggles to assert, affirm and defend their rights. This includes ELRDs who engage in environmental, climate and land rights activism in the African context to secure and protect their lands and territories of life from destruction perpetrated by both private and public entities.

Environmental and land rights defenders can be individuals, communities, Organisations, women, youth, Indigenous Peoples and marginalised groups. The handbook can also be a resource for professionals 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.



### 1.4 DISCLAIMER

This handbook is strictly focused on the legal means that ELRDs could use and **does not provide legal advice**. Litigation may be costly and time-consuming and may not result in immediate action or relief. The national court system must generally be exhausted before accessing the regional or international court systems that are discussed in this legal handbook. However, legal means are not the only actions available to environmental and land rights defenders.

Although this is not the focus of this legal handbook, other means available for environmental and land rights defenders may include, but are not limited to:

*working through Non-governmental Organisations (NGOs), awareness raising and protest through media and social media, advocacy in international and national forums, public protest and lobbying governments for legislative changes.*

The final chapter in this handbook can guide you to organisations that may assist you beyond legal means.



### OBJECTIVES OF THIS CHAPTER:

- To define who an Environmental and Land Rights Defender is and how they differ from other Human Rights Defenders.
- To outline the types of Environmental and Land Rights Defenders.
- To describe how Environmental and Land Defenders protect the environmental and ecosystem.



### 2.1 INTRODUCTION

Around the world, individuals risk their lives to protect and defend their rights, as well as the rights of others from violations by the state and private actors. This 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*.<sup>2</sup> Article 12.1 of this document states that everyone has the right to engage in peaceful activities against human rights violations.

### CHARACTERISTICS OF A HUMAN RIGHTS DEFENDER:

- ✓ Any person, organisation or group of people defending, promoting and protecting human rights.
- ✓ Making use of non-violent and legally acceptable means and approaches.
- ✓ Acknowledging the universal nature of human rights.



### 2.2 WHO IS A HUMAN RIGHTS DEFENDER?

The term "Human Rights Defender" has been described as: *anyone who is involved in peaceful action aimed at promoting and protecting human rights*.<sup>3</sup> Therefore, environmental and land rights defenders are, by definition, human rights defenders because they work towards promoting and safeguarding the right to a clean and healthy environment and other related human rights and freedoms.

<sup>2</sup>OHCHR, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms". Available at: <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>

<sup>3</sup>OHCHR, "About human rights defenders". Available at <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>





## CHARACTERISTICS OF AN ENVIRONMENTAL AND LAND RIGHTS DEFENDER

- ✓ Being an individual from a background, group of people, organisation or indigenous community.
- ✓ Promoting human rights related to the environment and protecting the environment. This includes, for instance, championing for the right to a clean and healthy environment, land rights, the right to access clean and safe water, and climate justice, among others.
- ✓ Being involved in peaceful or legal action.
- ✓ Engaging in protecting the environment because their livelihood depends on it.

### 2.3 WHO IS AN ENVIRONMENTAL AND LAND RIGHTS DEFENDER?

It is important to understand who an environmental and land rights defender is because many people who fight for environmental justice rarely identify themselves as such. Defenders who do not identify themselves as environmental and land rights defenders may not benefit from protection mechanisms and support offered by other actors, such as Civil Society Organisations (CSOs) and Non-Governmental Organisations (NGOs). Further, it exposes them to the risk of stigmatisation due to the false labels that society associates them with.

The United Nations (UN) has defined environmental human rights defenders as, *“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”*.<sup>4</sup>

John Knox, former UN Special Rapporteur on human rights and the environment, stated that environmental human rights defenders can come from any background and defined them as, *“individuals and groups who strive to protect and promote human rights relating to the environment”*.<sup>5</sup> He added that they often work with Indigenous Peoples and *“traditional communities whose lands and ways of life are threatened by large projects such as dams, logging, mining or oil extraction”*.<sup>6</sup>

The International Union for Conservation of Nature (IUCN-Netherlands) defines environmental defenders as, *“individuals who exercise their human rights – the freedom of speech, freedom of association, freedom of assembly, freedom to participate in decision-making, the right to work – to protect the environment”*.<sup>7</sup> One may simultaneously be an environmental defender and a human rights defender.<sup>8</sup>

*Therefore, any person, irrespective of their age, gender or background can be an environmental and land rights defender. No minimum academic, professional qualifications or criteria are required. Instead, many of those who engage in environmental rights activism do so because their livelihoods depend on it. They include leaders, 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 NGOs standing with communities throughout their struggles.*

### 2.4 WHAT DO 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;
- The negative impacts of development projects;
- Advocating for the right to a clean and healthy environment;
- Defending the territories of Indigenous Peoples from destructive projects;
- The protection of the ancestral and traditional land rights of communities; and
- The management and utilization of natural resources.

Often, individuals or organisations focus on multiple and cross-cutting environmental and climate justice-related themes and drawing distinct lines between the diverse actors can be difficult. The diverse actors all have the common goal of protecting the environment, lands and livelihoods of people from destruction and degradation by governments and private entities.



<sup>4</sup>UNEP, “Advancing the Right to a Healthy Environment”. Available at: <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-right-healthy-environment>

<sup>5</sup>John Knox, “Policy Brief: Environmental Human Rights Defenders: A Global Crisis”, February 2017, <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf> at Pg. 2.

<sup>6</sup>Ibid.

<sup>7</sup>Wijdekop Femke, “Environmental Defenders and Their Recognition Under International and Regional Law – An Introduction” [https://www.iucn.nl/app/uploads/2021/03/environmental\\_defenders\\_and\\_their\\_recognition\\_under\\_international\\_and\\_regional\\_law.pdf](https://www.iucn.nl/app/uploads/2021/03/environmental_defenders_and_their_recognition_under_international_and_regional_law.pdf) at Pg. 5.

<sup>8</sup>Ibid, at Pg. 5.



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

*Environmental pollution and degradation due to the harmful practices of companies and state actors have claimed the lives of children and adults around the world and threatened the well-being of many others. The exposure of the African continent to harmful business practices has interfered with individuals' 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 A/HRC/RES/40/11, recognised the significant role of environmental human rights defenders in promoting the enjoyment of human rights and sustainable development.<sup>9</sup>

Whereas the actions of ELRDs are rarely acknowledged as being directly linked to improved and healthy ecosystems, they play a significant role in the promotion of environmental protection. By organising and mobilising individuals around common issues and using available legal avenues, such as legal empowerment and strategic interest litigation, ELRDs can hold actors accountable for their actions. The efforts of environmental defenders have also contributed to the development of standards, principles and guidelines of good environmental governance practices, which are lacking in many jurisdictions in Africa.



## CHAPTER 3: ENVIRONMENTAL AND LAND RIGHTS DEFENDERS IN AFRICA: THREATS, CHALLENGES AND VICTORIES

### OBJECTIVES OF THIS CHAPTER:

- To show what defending the environment looks like in Africa.
- To outline how youth, women and Indigenous communities defend the environment in Africa.
- To discuss the risks Environmental and Land Rights Defenders in Africa are exposed to.



### 3.1 INTRODUCTION

There are several environmentally destructive practices happening across the continent, including but not limited to, mining, deforestation and oil extraction. Individuals, organisations, women, youth, Indigenous communities and other groups have all fought to uphold environmental rights in the African context. African environmental and land rights defenders have faced a series of threats, including eviction, legal threats, physical attacks and even death.

### 3.2 OVERVIEW OF THE THREATS TO DEFENDERS

The dangers to human rights defenders, as well as environmental and land rights defenders specifically, are alarming. In 2019, 304 human rights defenders were murdered around the world. Of these, 40% were environmental and land rights defenders, 13% were female and 85% have experienced previous threats.<sup>10</sup> In 2022, Global Witness reported that at least one defender has been killed every two days since 2012. Beyond these assassinations, the ALLIED Data Working Group, through their report entitled *"Uncovering the Hidden Ice Berg"*, documented the widespread presence of non-lethal attacks – often a precursor to lethal violence.<sup>11</sup> This report, merging local, regional and international datasets, revealed 355 cases of non-lethal attacks against 536 distinct individuals, communities, organisations and unaffiliated groups in five countries (Colombia, Guatemala, Kenya, Mexico and the Philippines).



<sup>9</sup>UN, "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development : resolution / adopted by the Human Rights Council on 21 March 2019". Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/48/PDF/G1908848.pdf>

<sup>10</sup>IUCN Women Environmental Human Rights Defenders: Facing gender-based violence in defense of land, natural resources and human rights. Available at [https://portals.iucn.org/union/sites/union/files/doc/iucn-srjs-briefs-wehrd-gbv-en\\_0.pdf](https://portals.iucn.org/union/sites/union/files/doc/iucn-srjs-briefs-wehrd-gbv-en_0.pdf)

<sup>11</sup>ALLIED Coalition "Uncovering the Hidden Iceberg". Available at: [https://d3o3cb4w253x5q.cloudfront.net/media/documents/2022\\_4\\_the\\_hidden\\_iceberg.pdf](https://d3o3cb4w253x5q.cloudfront.net/media/documents/2022_4_the_hidden_iceberg.pdf)



In Sub-Saharan Africa, environmental/land/Indigenous peoples' rights were the riskiest sector for human rights defenders, with 25% of the human rights violations reported to human rights defenders belonging to this category. In this region, human rights defenders were subject to arrest/detention (35% of men, 26% of women), physical attack (22% men, 26% women) and legal action (12% men, 14% women).<sup>12</sup>

In 2019, the UN Human Rights Council expressed, *“grave concern at the situation of environmental human rights defenders around the world, and strongly condemns the killing of and all other human rights violations or abuses against environmental human rights defenders, including women and Indigenous human rights defenders, by State and non-State actors”*.<sup>14</sup>

### 3.3 WOMEN ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

Women in Africa play an essential role in defending the environment. Women environmental and land rights defenders can be defined as “women defenders working on human rights issues related to environmental justice, land rights and access to and control over natural resources”. Intersecting vulnerabilities of women defenders can lead to increased violence and decreased access to support.<sup>15</sup>

More than 1 out of 10 defenders killed are women. They may also face gender-based violence or sexual violence. Women face dual challenges in their fight to protect their land, but also face challenges when voicing their concerns in their communities.

Aside from women, individuals who do not identify with traditional gender norms may also face increased risks. Indigenous women defenders and LGBTQ defenders, especially transgender and gender non-conforming persons, are especially vulnerable to experiencing violence.<sup>16</sup>

Actions that states can take to assist women ELRDs include:

- ♀ Using existing policies and agreements to support environmental and land rights defenders and creating new ones that acknowledge gender-based risks;
- ♀ Creating and implementing safeguards, resources and strategies to protect environmental and land rights defenders while considering gender-based violence; and
- ♀ Addressing causes of violence against women, Indigenous Peoples, and LGBTQ environmental and land rights defenders by combatting corruption, securing land rights for these marginalised communities and upholding their human rights.<sup>17</sup>

Worldwide, Indigenous peoples continue to be disproportionately attacked, despite making up only 5% of the world's population. Many dangers against ELRDs occur due to the actions of companies, but governments are also to blame for violating the human rights of environmental defenders and for turning a blind eye to the violations. Killings of ELRDs are especially more likely to occur in countries with limited civic freedoms.<sup>13</sup>

### 3.4 STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION

While this handbook focuses on regional and international mechanisms, Strategic Litigation Against Public Participation or a SLAPP suit is brought against environment and land rights defenders around the world. This type of lawsuit is generally commenced through a national legal system. A SLAPP suit is a defamation lawsuit that negatively impacts the ability of individuals to engage in public protest or debate. They are often used by corporations to silence individuals who criticise the company or engage in public activism against the company's actions.<sup>18</sup>

SLAPP suits include:

- ⚖ The lawsuit being commenced by a private party;
- ⚖ The lawsuit involving acts of public participation relating to human rights, social justice and environmental concerns; and
- ⚖ The lawsuit commencing after there was a critique of the plaintiff's economic activities published in a report, on social media, in an interview, through a campaign or a public demonstration.<sup>19</sup>

Mining, followed by agriculture and livestock were the top two industries where SLAPP suits were commenced. Africa represents 8.5% of SLAPP cases brought around the world. Most SLAPP cases around the world were brought against individuals instead of organisations, with criminal cases (as opposed to civil cases) comprising the majority of matters brought.

#### CASE STUDY: Defamation Lawsuit against Joseph Rahall in Sierra Leone



Joseph Rahall, a prominent land rights defender in Sierra Leone, is facing trial after being accused in 2019 of defamation by the multinational corporation, Socfin Group. This corporation exploits palm oil and rubber in West Africa. Rahall has denounced human rights violations committed by the company since 2011, especially against the Sahn Malen chiefdom, whose customary land has been developed into an oil palm plantation without their free, prior and informed consent.<sup>20</sup>



Strategies to counter SLAPP suits include:

- ⚖ Creating SLAPP coalitions, such as Asina Loyiko: United Against Corporate Bullying, which was formed in South Africa to fight against Mineral Commodities Limited (MCL).
- ⚖ Having companies engage stakeholders to address criticism instead of seeking legal action and commit to not using SLAPPs or judicial harassments.
- ⚖ Lobbying governments to create anti-SLAPP legislation.<sup>21</sup>

Please see “Case Study: The Mineral Sands Case in South Africa” for more information.

<sup>18</sup>Asina Loyiko “About SLAPP suits”. Available at <https://asinaloyiko.org.za/resources/about-slapp-suits>

<sup>19</sup>Business and Human Rights Resource Centre, “SLAPPed but not silent”. Available at [https://media.business-humanrights.org/media/documents/2021\\_SLAPPs\\_Briefing\\_EN\\_v51.pdf](https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v51.pdf)

<sup>20</sup>Frontline Defenders “Global Analysis”. Available at: [https://www.frontlinedefenders.org/sites/default/files/fld\\_global\\_analysis\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf) at pgs 55-56.

<sup>21</sup>Business and Human Rights Resource Centre, “SLAPPed but not silent” Available at [https://media.business-humanrights.org/media/documents/2021\\_SLAPPs\\_Briefing\\_EN\\_v51.pdf](https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v51.pdf)

<sup>12</sup>Frontline Defenders “Global Analysis”. Available at: [https://www.frontlinedefenders.org/sites/default/files/fld\\_global\\_analysis\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf) at pg.50.

<sup>13</sup>Global Witness, “Last line of defence” Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>

<sup>14</sup>UN Human Rights General Assembly: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/071/97/PDF/G1907197.pdf?OpenElement>

<sup>15</sup>IUCN Women Environmental Human Rights Defenders: Facing gender-based violence in defense of land, natural resources and human rights. Available at [https://portals.iucn.org/union/sites/union/files/doc/iucn-srjs-briefs-wehrd-gbv-en\\_0.pdf](https://portals.iucn.org/union/sites/union/files/doc/iucn-srjs-briefs-wehrd-gbv-en_0.pdf)

<sup>16</sup>Ibid.

<sup>17</sup>IUCN “Women Environmental Human Rights Defenders: Facing gender-based violence in defense of land, natural resources and human rights”. Available at [https://portals.iucn.org/union/sites/union/files/doc/iucn-srjs-briefs-wehrd-gbv-en\\_0.pdf](https://portals.iucn.org/union/sites/union/files/doc/iucn-srjs-briefs-wehrd-gbv-en_0.pdf)



## CASE STUDY: The Mineral Sands Case in South Africa



Several environmental activists were sued by MCL, an Australian mining company that had been extracting in South Africa. The environmental activists criticised MCL on social media and in academic lectures for the extractions, the impact they have had on local communities and the environmental damage they caused. MCL sought that the environmental activists pay them damages or make a public apology. In defence, the environmental activists argued that the litigation was a SLAPP suit aimed to silence their concerns by intimidation.

The Court concluded that SLAPP suits are an abuse of power and go against the constitutionally guaranteed right to freedom of expression. It emphasised that public participation is key to environmental activism and dismissed the case.<sup>22</sup>



## HONOURING WOMEN ENVIRONMENTAL DEFENDERS

### Fikile Ntshangase



Fikile Ntshangase was an environmental and community rights activist from South Africa, who was killed at her residence by four gunmen and in front of her young grandson. Fikile was a vocal activist against the Somkhele coal mine on the border of Hluhluwe-iMfolozi, a game park in KwaZulu-Natal. This mine, owned by Tendele Coal Mining Ltd., harmed the land, livestock, the tourism industry near the park, as well as the homes and livelihood of the Somkhele community. Fikile was a member of the Mfolozi Community Environmental Justice Organisation, which took legal action against the mine for the environmental harm caused and to prevent the mine's expansion.<sup>23</sup>

### Dr. E Ehi-Ebewele Elizabeth

Dr. Ehi-Ebewele Elizabeth was a dedicated defender of wildlife in West Africa as she worked for the government of Nigeria. She successfully advocated for the listing of African pangolins in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Appendix I (over-exploited species) and for adopting CITES measures to increase the protection of African lions. Elizabeth was the co-chair of the West Africa Strategy on Combating Wildlife Crime Steering Committee for the Economic Community of West African States (ECOWAS). Dr Elizabeth passed away unexpectedly in 2019.<sup>24</sup>





### 3.5 YOUTH ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

Youth are the future of environmental activism. A child or youth defender is “a human rights defender under the age of 18 who focuses on environmental issues”.<sup>25</sup> The UN Human Rights Council recognised the *“important and legitimate role played by children and by child- and youth-led movements that defend human rights relating to a healthy environment, and deeply concerned that they may be among those most exposed and at risk, and recognizing the need to protect them”*.<sup>26</sup>



### HONOURING YOUTH ENVIRONMENTAL DEFENDERS

#### Leah Namugerwa

Leah is a teenage environmental activist from Uganda. Instead of asking for presents on her 15th birthday, she planted 200 trees and upon turning 16 she planted 500 trees. It was through her social media presence that Leah shared her initiative and encouraged others to plant trees on their birthdays. Leah also developed an initiative called Fridays for Future, where she leads her supporters in climate strikes, lakeshore clean ups and planting trees.<sup>27</sup>



#### Elizabeth Wathuti

Elizabeth is a young adult from Kenya who 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.<sup>28</sup>



#### Vanessa Nakate

Vanessa is a young adult who is a climate activist from Uganda. She created the Rise up Climate Movement that draws attention to the voices of African climate change activists and heavily contributed to the campaign to save Congo's rainforest.<sup>29</sup> Vanessa was one of the young climate activists who was chosen to speak at the COP25 in Spain.



At a gathering for the World Economic Forum in Davos, Switzerland a picture was taken of the attending youth, including Vanessa. However, when the Associated Press released the photo Vanessa had been cropped out and only the white participants were shown.<sup>30</sup> This demonstrates how the intersectionality of one's identity, in this case age, gender and race, can create additional challenges for environmental and land rights defenders.

<sup>25</sup>Humaniam, “Child Environmental Rights Defenders”. Available at <https://www.humanium.org/en/focus-on/environment/child-environmental-rights-defenders/>

<sup>26</sup>Resolution adopted by the Human Rights Council on 7 October 2020 45/30. Rights of the child: realizing the rights of the child through a healthy environment. At <https://undocs.org/pdf?symbol=en/A/HRC/RES/45/30>

<sup>27</sup> Africa News, “16-year old climate activist on mission to replant trees in Uganda”. Available at <https://www.africanews.com/2021/04/22/16-year-old-climate-activist-on-mission-to-replant-trees-in-uganda/>

<sup>28</sup>Kenya, “Elizabeth Wanjiru Wathuti”. Available at <https://www.kenyans.co.ke/personality/elizabeth-wanjiru-wathuti>

<sup>29</sup>UN Youth Envoy, “Vanessa Nakate”. Available at <https://www.un.org/youthenvoy/vanessa-nakate/>

<sup>30</sup>New York Times, “Vanessa Nakate” <https://www.nytimes.com/2021/05/07/world/africa/vanessa-nakate-climate-change-uganda.html>



### 3.6 INDIGENOUS COMMUNITIES

Indigenous communities are being disproportionately affected by climate change and the exploitation of the earth’s resources. They are impacted by deforestation, mining and oil exploration and are often evicted or have land taken from them without their consent. During the COVID-19 pandemic, the risk to environmental and land rights defenders increased, especially to indigenous defenders, as they had limited healthcare access, which increased their vulnerability to COVID-19 and posed a critical threat to their survival. The continuing loss of land and resulting food insecurity forced Indigenous peoples to leave their communities and work in frontline positions during the pandemic.<sup>31</sup>

For instance, the Ogiek People have historically resided on their traditional lands in the Mau Forest, Kenya. While the Ogiek identified themselves as custodians of the Mau Forest before the state of Kenya was formed, the government has not recognised the Ogiek as an Indigenous group. The Ogiek had their homes in the Mau Forest demolished or burned, their farms destroyed and community members have been killed. Many of the Ogiek were evicted from their traditional lands and have continued to be evicted even during the COVID-19 pandemic, despite holding land titles and having a court decision in their favour.<sup>32</sup>

*Please see “Case Study: The Ogiek Peoples in the African Court” for further discussion about how the Ogiek were impacted by the slow process of international courts and the inability of these courts to enforce their decisions.*



### CASE STUDY: Free Prior and Informed Consent in South Africa



The Umgungundlovu community lives in Xolobeni, where they use the land for housing, water, grazing animals, agriculture, medicine and tourism generated income. A titanium mine was to be opened on the land of the Umgungundlovu community, which would displace the community and destroy the land in the area.

The High Court of South Africa held that the Umgungundlovu’s free prior and informed consent was required, as the mine would deprive the community of their land. The Court stated that consulting a community when developing their land is not sufficient and does not equate to consent.

The Umgungundlovu community spent over 10 years fighting against the development of the mine, facing intimidation and threats along the way. One of the leaders in this movement, Sikhosiphi “Bazooka” Rhadebe, was killed in front of his teenage son, a death which is believed to be due to his opposition to the mine.<sup>33</sup>

### CASE STUDY: The Muchinda Chiefdom in Zambia

In Zambia, commercial investors bulldozed and burned the homes of the Muchinda chiefdom, despite these homes being located on the chiefdom’s traditional lands. The Muchinda were evicted from their land without their consent to clear the land for farming, even when the investors did not possess the required permits.

On April 30, the High Court in Lusaka found that the taking of this traditional land was illegal and the chiefdom’s rights to life, freedom of movement, dignity and equal protection under the law were violated. The displaced individuals were awarded compensation for the rights violations and provided with alternative land.<sup>34</sup>

<sup>31</sup><https://www.landcoalition.org/en/newsroom/case-study-indigenous-peoples-and-land-and-environment-defenders-face-risks-due-covid-19/> 36 Article 56(6) ACHPR.

<sup>32</sup>See the “Case Study: The Ogiek Case” for more information.

<sup>33</sup>Human Rights Watch, “South African indigenous community win environmental rights case over mining company”. Available at <https://www.unep.org/news-and-stories/story/south-african-indigenous-community-win-environmental-rights-case-over-mining>

<sup>34</sup>Human Rights Watch, “After Seven Years, Displaced Villagers Might Get Land”. Available at <https://www.hrw.org/news/2020/05/18/after-seven-years-displaced-villagers-might-get-land>



# CHAPTER 4: BRINGING A REGIONAL OR INTERNATIONAL CLAIM

## 4.1 INTRODUCTION

There are several human rights protection frameworks in Africa. The African Charter on Human and Peoples’ Rights (hereafter the “African Charter” or the “Banjul Charter”) contains rights that governments and third parties should uphold. The African system for the protection of human rights consists of the African Commission on Human and Peoples’ Rights (African Commission), which serves as a complaint and reporting mechanism, and the African Court on Human and Peoples’ Rights, which is the judicial arm of the African Union (AU) whose decisions are legally binding on States.

Additionally, there are the regional African courts, which include: the Economic Community of West African States (ECOWAS) Community Court of Justice, the East African Court of Justice and the Southern African Development Community (SADC) Tribunal.

## 4.2 THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

The African Charter is an international human rights instrument that sets standards and establishes the groundwork for the promotion and protection of human rights in Africa.

It was first adopted by the Organisation of African Unity (OAU) in 1981, which has since been replaced by the AU. The Charter came into force 21 October 1986 and has been ratified by all AU Member States to date.

Under the African Charter, AU Member States have a duty to protect the human rights of their populations. If they fail to do so, a complaint (called a ‘communication’) can be filed against the State.



## Relevant Provisions of the African Charter

Within the African Charter, the most relevant rights for environment and land rights defenders include:

### CIVIL AND POLITICAL RIGHTS:

- Article 4 – Right to life and integrity of the person.
- Article 5 – Right to dignity inherent in the human being.
- Article 6 – Right to personal liberty and protection from arbitrary arrest.
- Article 9 – Right to receive information and to freely express and disseminate opinions.
- Article 10 – Right to freedom of association.
- Article 11 – Right to freedom of assembly.
- Article 12 – Right to freedom of movement.
- Article 14 – Right to property.

### ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

- Article 16 – Right to health.
- Article 17 – Education rights, cultural rights and rights to traditional values.

### PEOPLES’ RIGHTS:

- Article 20 – Right to self-determination.
- Article 21 – Right to freely dispose of wealth and natural resources.
- Article 22 – Right to economic, social and cultural development.
- Article 24 – Right to a general satisfactory environment.

### INTERNATIONAL RIGHTS:

- Article 61 – Consideration of human rights standards from other international bodies.

## Other Relevant African Union Conventions, Protocols, and Declarations

### THE REVISED AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES

- This convention was adopted by many AU States to ensure the conservation, utilization and development of soil, water, floral and faunal resources in accordance with scientific principles and regard to people’s best interest.

### THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

- This is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. It covers a full spectrum of civil, political, economic, social and cultural rights that should be afforded to children.

### THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (“MAPUTO PROTOCOL”)

The Maputo Protocol has been ratified by 42 AU States and guarantees comprehensive rights to women. Article 14 (right to health), Article 15 (right to food security), Article 16 (right to adequate housing), Article 18 (right to a healthy and sustainable environment) and Article 19 (right to sustainable development) are particularly relevant for female environment and land rights defenders.



How to File a Complaint

The African system for the protection of human rights consists of the African Commission on Human and Peoples’ Rights (hereafter the ‘African Commission’), which serves as a complaints and reporting mechanism, and the African Court on Human and Peoples’ Rights (hereafter the ‘African Court’), which is the judicial arm of the AU, whose decisions are legally binding on the State Parties.

4.3 THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

The African Commission is mandated with the protection and promotion of human and peoples’ rights in Africa and is responsible for the interpretation of the African Charter. The African Commission acts as a quasi-judicial body, reviewing complaints lodged by individuals, communities, states or NGOs regarding violations of the African Charter. Moreover, it has the power to verify whether countries are meeting their legal obligations to protect human rights, as set out in the African Charter.

The African Commission’s Complaint Procedure

Individuals or NGOs can bring a complaint (also referred to as a ‘communication’) claiming violations of the African Charter by a State. They can also bring a claim arguing that the State has not provided sufficient protection against human rights breaches or environmental violations from the actions of a company or other third parties.

Step 1 - Strategic Considerations

- Is proceeding before the African Commission and filing a communication the best forum to address the issue and achieve your desired goal?
- Are you willing to reach an agreement through amicable resolution?
- Consider the length of time and the costs that may be involved in filing a communication.
- Consider if the State refuses or fails to comply with a favourable ruling of the African Commission.
- Weigh other advocacy strategies that may lead to a favourable resolution and consider if these strategies can be pursued simultaneously with the communication.
- Reflect on whether a communication will increase risks to the victims and what avenues exist to address these risks. Should victims and/or authors be treated confidentially?



Benefits and Limitations of Filing a Communication before the African Commission

- Submitting a communication **MAY**:

Raise awareness of human rights issues and put pressure on the implicated State.

Result in the Commission making a recommendation, including provisional measures, to address the issue.

Result in a settlement between you and the involved State.

Provide a channel of accessing the African Court of Justice.
- Submitting a communication **WILL NOT**:

Result in a legally binding decision that States must comply with.

Provide judicial remedies, such as injunctions, monetary compensation, etc.

Provide a quick remedy (on average the Commission takes 4-8 years).

Step 2 – Preparations Before Filing a Communication

- Consider who the person and/or entity responsible for the rights violations is. The African Commission can only hear communications for violations of rights by State Parties to the African Charter.
- Document exactly how the State is responsible for the human rights violations. Did the State fail to prevent, remedy, investigate or punish those responsible for the violation, or did it support, contribute to, or was it complicit in the violation?
- Determine what human rights have been violated and whether these fall within the African Charter. Verify whether the violation occurred in one of the African States that have ratified the African Charter.
- Check whether all domestic legal remedies have been exhausted. If not, explain why.
- Legal assistance, or the help of an experienced NGO may be required to prepare the communication.





### Step 3 – Drafting the Communication

There are several guidelines for submitting a communication to the African Commission. The communication should include:

- i** The name and details of the complainant(s). Specify if the complainant(s) want their details to remain confidential.
- i** The name of the State and the titles of the government authorities who have committed the violation.
- i** A description of the facts resulting in the violation, including the date, time and place. Be precise and do not base facts exclusively on media reports. Attach further supporting evidence, such as documents, photos or video footage, if available.
- i** If possible, list the provisions of the African Charter that have been violated. If it is unclear, do not mention any.
- i** Provide the names and contact information of witnesses.
- i** Provide evidence that local remedies have been exhausted or an explanation of how domestic proceedings have been unduly prolonged or are unavailable.<sup>35</sup>
- i** Provide evidence that this communication is being submitted within a reasonable time after exhausting domestic remedies.<sup>36</sup>  
Provide information as to whether the communication has been, or is being, considered before any other international human rights body. The African Commission will not deal with cases that have been settled by any other international body.<sup>37</sup>
- i** If the matter is urgent – explain the urgency of the situation.

For more information see: <https://www.achpr.org/guidelinesforsubmittingcomplaints>.

### Step 4 – Filing the Communication

You must submit the communication in writing using one of the official working languages of the African Commission. The communication should be addressed to the Secretary or Chairman of the African Commission on Human and Peoples' Rights and sent to the following address:

**The African Commission on Human and Peoples' Rights**  
**No 31 Bijilo Annex Layout, Kombo North District, Western Region**  
**P.O. Box 673**  
**Banjul, The Gambia**

**Tel:** (220) 441 05 05  
(220) 441 05 06  
**Fax:** (220) 441 05 04  
**Email:** au-banjul@africa-union.org

Upon receipt of a communication, the Secretariat of the Commission will issue a letter of acknowledgement. If more information is required, you will be informed accordingly.

If the African Commission decides to seize itself of the case, the applicant is invited to provide submissions on admissibility. A complaint is considered admissible and hence capable of being heard by the Commission if it meets the criteria laid down in Article 56 of the African Charter.

#### Article 56 provides that, communications relating to human and peoples' rights shall be considered if they: -

1. Indicate the author of the communication, even where anonymity is requested.
2. Are compatible with the Charter of the Organisation of African Unity or with the present Charter.
3. Are not written in disparaging or insulting language directed against the state concerned and its institutions or to the Organisation of the African Unity.
4. Are not based exclusively on news disseminated through the mass media.
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter; and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.

The State has the opportunity to respond and the applicant may file a reply. The African Commission will then issue a decision on admissibility and, if the case is held to be admissible, the parties provide similar submissions and responses on the merits of the case. Decisions on admissibility are usually made based solely on the written submissions, although the African Commission may schedule an oral hearing. Oral hearings are more common at the merits stage, when they may be requested by the African Commission or a party.

At any stage of the communication, the African Commission can offer to facilitate a friendly settlement of the dispute (similar to mediation) at the request of any of the parties involved. If both parties are willing to settle the dispute amicably, a Rapporteur will be appointed. If a settlement is reached, the terms of settlement are presented to the African Commission at its session and the case is closed. If no agreement can be reached, a report is submitted to the African Commission and a decision will be made on the admissibility or merits of the case.



<sup>35</sup>Article 56(5) ACHPR.

<sup>36</sup>Article 56(6) ACHPR.

<sup>37</sup>Article 56(7) ACHPR.



## Step 5 – After the Communication is Filed

The final decision by the African Commission is called a ‘recommendation’. The African Commission’s recommendations are not legally binding on the States involved. There is a significant problem with the enforcement of recommendations as there are no mechanisms to ensure State compliance.

- There are official mechanisms to monitor recommendations issued by the African Commission, including through promotional missions and monitoring of State reports. Rule 112 also requires the parties to report on implementation within 180 days.
- The Secretariat sends follow-up letters to States, asking them to honour their obligations under the African Charter and reminding them to implement their recommendations.
- There is no mechanism that can obligate States to abide by recommendations, although the African Commission can refer the case to the African Court if the State fails to comply with its decision.
- Complainants can use a favourable recommendation to apply pressure on a State to implement the African Commission’s recommendations. It can also be used as a tool for advocacy.

### CASE STUDY: The Ogoni people at the African Commission



A claim was brought on behalf of the Ogoni residents of the Maroko district in Nigeria after the military forcibly evicted and destroyed their community. It was alleged that along with their forceful displacement, the military was directly involved in irresponsible oil development practices, which caused environmental degradation and health problems among the Ogoni people. There was contamination of the environment, destruction of homes, burning of crops, killing of animals and a climate of terror for the Ogoni communities.

The African Commission found violations of Articles 2 (freedom from discrimination), 4 (right to life), 14 (right to property), 16 (right to health), 18(1) (protection of family and vulnerable groups), 21(right to free disposal of wealth and natural resources) and 24 (right to a general satisfactory environment) of the African Charter.

This is a positive decision for Environmental and Land Rights Defenders (ELRDs) as the African Commission stated that the Nigerian government should protect the environment, health and livelihood of the Ogoni and made several recommendations. These included that the government stop the attacks, conduct an investigation into the human rights violations and prosecute the individuals responsible. Further, the victims should be compensated, the pollution from the oil operations cleaned and social and environmental impact assessment should be conducted moving forward. The Ogoni should also be properly informed about possible health and environmental risks.<sup>38</sup>



## 4.4 THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS

The African Court is an international human rights court that was established by the AU to hear cases concerning human rights violations, based either on the rights in the African Charter or any other human rights instrument ratified by an implicated State.

The African Court’s mandate is to complement and reinforce the functions of the African Commission. The African Commission may at any stage refer a communication to the African Court for consideration. Although the African Commission can refer communications to the African Court if a State fails to comply with its decision, the African Commission is often reluctant to do so. Moreover, to date only thirty member-states of the AU have ratified the African Court Protocol (“Protocol”), which allows the Court to have jurisdiction over claims being brought forth against States.<sup>39</sup> This is thus another limitation to accessing the African Court.

Individuals and NGOs can also bring claims directly before the African Court. However, this is limited by the requirement that the implicated State concerned must make a “Special Declaration” under Article 34(6) of the Protocol, which specifically allows the African Court to hear cases brought by these parties.

The only States that have done so this far are: **Burkina Faso, Malawi, Mali, Ghana, Tunisia and the Gambia.**<sup>40</sup> This has been a massive obstacle in gaining access to the African Court and as a result there have been only a limited number of direct access cases since the African Court’s establishment.

### The African Court’s Individual/NGOs Complaint Procedure

Applications to the African Court that are commenced by individuals or an NGO with Observer Status<sup>41</sup> at the African Commission must allege human rights violations under the African Charter or other recognised human rights bodies by one of the five States listed above.

#### Step 1 - Strategic Considerations

- Consider whether the African Court and filing a complaint is the best forum to address the issue and achieve your desired goal.
- Are you willing to reach an agreement through amicable resolution?
- Consider the length of time and the costs that may be involved in filing a complaint.
- Weigh other advocacy strategies that may lead to a favourable resolution and consider if these strategies can be pursued simultaneously with the communication.
- Reflect on whether a complaint will increase risks to the victims and what avenues exist to address these risks. Should victims and/or authors be treated confidentially?

<sup>39</sup>African Union, ‘List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights’ (African Union) [https://au.int/sites/default/files/treaties/7778-sl-protocol\\_to\\_the\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_on\\_the\\_estab.pdf](https://au.int/sites/default/files/treaties/7778-sl-protocol_to_the_african_charter_on_human_and_peoples_rights_on_the_estab.pdf)

<sup>40</sup>Note the following withdrawals: Rwanda (withdrew 24 February 2016); Tanzania (withdrew 14 November 2019); Cote d’Ivoire (withdrew 28 April 2020); and Benin (withdrew 24 March 2020).

<sup>41</sup>According to Article 5(3) of the Protocol to the African Charter, the African Court only accepts direct applications from NGOs with observer status before the Commission. Therefore, NGOs that seek to acquire observer status must lodge an application to obtain observer status with the African Commission.



Benefits and Limitations of Filing a Complaint before the African Court

Submitting a complaint MAY:

- ✓ Result in a legally binding decision which forces the State to comply.
- ✓ Provide judicial remedies including: restitution, compensation, pecuniary/material damages, non-pecuniary damages, rehabilitation, acknowledgement and guarantees of non-repetition.
- ✓ Raise awareness of human rights issues and put pressure on the implicated State.

Submitting a complaint WILL NOT:

- ✗ Be possible for individuals/NGOs wanting to bring a claim against any State that has not made a 'special declaration'.
- ✗ Provide a quick remedy. The African Court is plagued by limited resources and only meets four times a year in periods of two weeks.
- ✗ The level of compliance with the African Court's decisions is extremely low, even though they are binding on States. The Court does not have the police force or executive power to ensure implementation.

Step 2 – Preparations Before Filing a Complaint

- ✍ Consider who the person and/or entity responsible for the human rights violations is. The African Court can only hear complaints for violations of rights by State Parties that have deposited a 'special declaration'.
- ✍ Determine what human rights have been violated and whether these fall within the African Charter. Verify whether the violation occurred in one of the African States that have ratified the African Charter.
- ✍ Document exactly how the State is responsible for the human rights violations. Did the State fail to prevent, remedy, investigate or punish those responsible for the violation, or did it support, contribute to, or was it complicit in the violation?
- ✍ Check whether all domestic legal remedies have been exhausted. If not, explain why.
- ✍ Legal assistance, or the help of an experienced NGO may be required to prepare the communication.



Step 3 – Drafting the Complaint

There are several guidelines when submitting a complaint to the African Court. The application should include:



- i The names and addresses of the person designated as the Applicant's representative.
- i Details about the alleged violation.
- i A summary of the facts of the case and of the evidence that will be adduced.
- i Evidence that local remedies were exhausted or that there was an inordinate delay of such local remedies.
- i The particulars of the Applicant and of the party or parties against whom the Application has been brought.
- i The order or injunction sought.
- i Whether an Applicant on either their own behalf or on behalf of the victims wish to be granted reparations.

For more information and to download the application form see: <https://www.african-court.org/wpafc/how-to-file-a-case/>.

Step 4 – Filing the Complaint

A complaint to the African Court may be submitted by post, email, fax or courier to the Registrar at the seat of the Court in Arusha, Tanzania. The contact details are as follows:

 **The African Court of Human and Peoples' Rights**  
**Dodoma Road**  
**P.O. Box 6274**  
**Arusha, Tanzania**

 Tel: +255 27 297 0430/31/32/33/34  
 Email: [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)

Step 5 – The Proceedings

Cases before the African Court involve a written phase and may also include an oral phase where parties may make submissions, present evidence or call witnesses. The type of proceedings is based on the discretion of the African Court.



## CASE STUDY: The Ogiek People in the African Court



On 26 May 2017, the African Court delivered its long-awaited judgment on the expulsion of the Ogiek Peoples from their ancestral lands in the Mau Forest. This matter was transferred to the African Court in 2012, after the African Commission could not settle the conflict.

This was the first Indigenous rights case before the African Court. There was hope that there would be clarification and operationalisation of the African Charter's "peoples' rights". The African Court followed the African Commission's application and found that the eviction of the Ogiek without consultation amounted to several rights violations: the right to non-discrimination (Article 2), culture (Article 17(2) and (3)), religion (Article 8), property (Article 14), natural resources (Article 21) and development (Article 22).

However, no violation of the right to life was found, as the applicants failed to show that the physical existence of the community was being threatened by the eviction. In a subsequent ruling on reparations delivered on 26 May 2017, the Court awarded reparations for the violations, ordering the Government of Kenya to pay the Ogiek indigenous people compensation amounting to KES 57, 850, 000 for loss of property and natural resources and KES 100,000,000 for moral prejudice suffered by the Ogiek due to violations of their rights to non-discrimination, religion, culture and development.

Once a case has been heard, the Protocol requires that judges issue a decision within 90 days of completing deliberations. If the African Court finds the rights of an applicant have been violated, it can order remedial measures, such as compensation or reparations. Article 27 of the Protocol also allows the African Court to order provisional measures if a case is, "of extreme gravity and urgency, and when necessary to avoid irreparable harm."<sup>42</sup>



## 4.5 SUB-REGIONAL AFRICAN COURTS

Aside from the human rights protection system organised by the AU, African regional Organisations have developed their own systems for protection of human rights.

### The Economic Community of West African States (ECOWAS) Community Court of Justice

In 1975, fifteen West African States formed ECOWAS to promote their economic integration.<sup>43</sup> The ECOWAS Community Court of Justice (Community Court) is the judicial organ of the ECOWAS and is charged with resolving disputes related to the Community's treaty, protocols and conventions.<sup>44</sup> In the area of human rights protection, the Community Court equally applies the international instruments on human rights ratified by any States that are parties in a case.

### ECOWAS' Community Court of Justice's Complaint Procedure

Since 2005, the Community Court has competence to hear complaints of corporations or individuals regarding alleged human rights violations that occur in Member States.

Cases filed before the Community Court require written applications and should be addressed to the Registry. The application should include:<sup>45</sup>

- i** The name of the Applicant, the party against whom the proceedings are being instituted, a brief statement of the facts and the relief sought by the Plaintiff. It is not possible to file an anonymous application.
- i** A statement or proof that the matter is not pending before another international court.
- i** Please note that individuals do not need to pursue national judicial remedies before bringing a claim to the Community Court.<sup>46</sup>

Decisions of the Community Court are not subject to appeal. However, the Community Court can entertain applications for a revision based on new facts. Decisions are binding on Member States, institutions of the Community, individuals and corporate bodies. The Community Court has the power to award remedies, which includes damages and specific orders of actions that must be taken by the implicated party.

<sup>43</sup>ECOWAS comprises 15 West African countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. The Court's decisions on human rights matters are legally binding on its Member States.

<sup>44</sup>The ECOWAS Court of Justice was created pursuant to the Revised Treaty of the Economic Community of West African States of 1993, and is headquartered in Abuja, Nigeria.

<sup>45</sup>Please see the Court's website for more information: <http://www.courtecowas.org/>

<sup>46</sup>See Hadijatou Mani Koraou v. Republic of Niger, Judgment No. ECW/CCJ/JUD/06/08, 27 October 2008.

<sup>42</sup>African Commission on Human and Peoples' Rights v. Republic of Kenya, ACtHPR, Application No. 006/2012 (2017). For a more in-depth analysis see: <https://www.ejiltalk.org/the-ogiek-case-of-the-african-court-on-human-and-peoples-rights-not-so-much-news-after-all/>



## CASE STUDY: Niger Delta oil spill



An NGO, Socio-Economic Rights Accountability Project, brought a claim against the Nigerian government for causing environmental damage in the Niger Delta. The Niger Delta suffered decades of oil spills, which reduced the farming and fishing productivity and had negative health implications on the local community. The NGO attributed the damage to the government's poor maintenance of infrastructure, human error, vandalism, oil theft and conflict leading to poverty. It was argued that the government's failure to adequately address the environmental damage, their failure to monitor the human impact and continued denial of information to the community amounted to violations of international conventions and the African Charter.

The Community Court found that the government violated Articles 1 (state responsibility) and 24 (Peoples' right to environment favorable for development) of the African Charter. The government was ordered to immediately restore the environment, prevent occurrence of further damage and hold perpetrators of environmental damage accountable.<sup>47</sup>



## The East African Court of Justice

The East African Community (EAC) is a regional integration organisation whose Member States are Kenya, Uganda, Tanzania, Rwanda and Burundi. The EAC's goals are free movement of people and goods, economic integration and political union among the Member States.

The East African Court of Justice (EACJ) is a sub-regional court tasked with resolving disputes involving the EAC.<sup>48</sup> It ensures adherence to the application of the law and compliance with the EAC Treaty. Currently, the EACJ does not have the jurisdiction to hear individual human rights complaints but it can give opinions on the application or violations of the African Charter, as well as the EAC Treaty and its protocols.

## CASE STUDY: The East African Crude Oil Pipeline

The French oil company Total and the largely state-owned China National Offshore Oil Corporation plan to build the longest heated oil pipeline in the world through Uganda and Tanzania. The East African Crude Oil Pipeline (EACOP) would displace families, harm drinking water and wetlands, destroy biodiversity and put nature conservation areas at risk of irreversible environmental damage.



A court case was brought before the EACJ in Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda. On 6 November 2020, four civil society Organisations, including Natural Justice, sued the governments of Tanzania and Uganda before the EACJ. It was argued that these governments signed agreements to build the EACOP without proper environmental, social, human rights and climate impact assessments. The case was still pending at the time of publication of this handbook.<sup>49</sup>

While the court system has not offered a timely solution yet, the #StopEACOP campaign was launched and, so far, was successful in deflecting the African Development Bank, Barclays and Credit Suisse from providing financing for the EACOP construction. The movement is now aiming to stop other shareholders and stakeholders from supporting EACOP.<sup>50</sup>



<sup>48</sup>The EACJ was established by Article 9 of the Treaty for the Establishment of the East African Community and is charged with interpreting and enforcing the treaty, which came into force on July 7, 2000. It is based in Arusha, Tanzania.

<sup>49</sup>Reference No. 39 of 2020 Center for Food and Adequate Living Rights (CEFROHT) & 3 others v The Attorney General of the Republic of Uganda & 2 others <https://www.eacj.org/?cases=reference-no-39-of-2020-center-for-food-and-adequate-living-rights-cefroht-3-others-v-the-attorney-general-of-the-republic-of-uganda-2-others>

<sup>50</sup><https://www.stopeacop.net/why-stop-eacop>

<sup>47</sup>Socio-Economic Rights Accountability Project v. Federal Republic of Nigeria 14 December 2012, ECOWAS, General List No. ECW/CCJ/APP/09, Judgment No: ECW/CCJ/JUD/18/12.



## The Southern African Development Community (SADC) Tribunal

The SADC promotes further socio-economic co-operation and integration, as well as political and security co-operation among 15 southern African states. These states are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The SADC Tribunal was originally charged with ensuring Member States' compliance with the SADC Treaty and subsidiary instruments and hearing individual complaints of human rights violations.<sup>51</sup> It had jurisdiction over disputes between SADC Member States, individuals and corporations within its Member States. However, the SADC Tribunal is currently suspended.



## CHAPTER 5: RECOMMENDATIONS FOR SECURING THE FUTURE OF ENVIRONMENTAL DEFENDERS

It appears that the number of cases being brought before regional and international bodies due to environmental human rights violations are slowly increasing. While legal measures are one method of addressing violations, cases such as that of the Ogiek people suggest that it can take years to obtain a court ruling and these rulings are not always implemented. In comparison, the EACOP case demonstrates that environmental and land rights defenders might obtain results more quickly through other means, such as public protests and social media campaigns.

Moving forward, there appear to be several options for environmental and land rights defenders to advocate for their rights, depending on which methods would be most effective for the individual, group or community.

To create a better future for ELRDs, there are several recommendations that actors such as the UN, governments and businesses can implement. These include both legal and non-legal measures, as well as steps that environmental and land rights defenders themselves can take.

### Recommendations for the UN:

- ✓ Formally recognise the human right to a safe, healthy sustainable environment.
- ✓ Implement the recommendations of the Special Rapporteur on the situation of human rights defenders, as well as UN Working Group on Business and Human Rights.

### Recommendations for government:

- ✓ Protect environmental and land rights defenders by protecting the environment, labour rights, land rights, indigenous peoples' rights, cultures and free, prior and informed consent.
- ✓ Ensure access to justice for environmental and land rights defenders and due process by investigating prosecutions.
- ✓ Place greater emphasis and resources on protecting human rights rather than supporting large corporations and generating profit.

### Recommendations for businesses:

- ✓ Adopt a zero-tolerance stance on attacks against environmental and land rights defenders and practice obtaining free prior and informed consent.
- ✓ Provide an effective remedy process for when human rights are violated, the environment is negatively impacted or harm occurs.<sup>52</sup>

### Recommendations for environment and land rights defenders:

- ✓ Learn about the rights awarded to environmental and land rights defenders at the national, regional and international levels.
- ✓ Consider the benefits and drawbacks of achieving your goal through legal means. Consider other or quicker means of raising awareness and achieving results. This could include social media campaigns, public protest and lobbying the government for legislative changes.
- ✓ Find, discuss and unite with other individuals who share similar concerns about the environment and their human rights.

<sup>51</sup>Many of the cases brought before the SADC Tribunal involved human rights violations, particularly regarding expropriation of private property by States. In *Mike Campbell (Pvt) LTD and Others v. Zimbabwe*, Case No. SADC (T) 2/2007, Main Decision of 28 November 2008 (Case no. 2 of 2007), a Zimbabwe national claimed that his basic rights had been violated as a result of the expropriation without compensation of his private property. See also *Barry L.T. Gondo and Others v. Zimbabwe*, Case No. SADC (T) 05/2008, Main Decision of 9 December 2010, (Case no. 5 of 2008).

<sup>52</sup>Global Witness, "Last line of defence". Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>



## CHAPTER SIX: RESOURCES FOR ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

### 6.1 LEGAL AID AND EMERGENCY FUNDS

#### African Environmental Defenders Initiative - Emergency Fund

In 2019, Natural Justice and the International Land Coalition launched this emergency fund, to support African environment and land rights defenders who are threatened by industry development. The funding provided includes: urgent and short-term legal assistance, cost of bail or bond, urgent medical help, the costs for temporary relocation and expenses related to security. Eligibility for the fund requires being a citizen of or residing in an African country, being an active frontline environmental right defender, facing an imminent threat and not having other support.

**Website:** <https://envirodefenders.africa/emergency-fund/>



#### ProtectDefenders.EU

This is an international organisation that protects human rights defenders. The organisation offers emergency grants to human rights defenders that can be used for the protection of individuals, their families and their work. ProtectDefenders.EU also offers a temporary relocation grant for human rights defenders and potentially their family, to relocate in their country or abroad.

**Website:** <https://protectdefenders.eu/protecting-defenders/>



#### Environmental Defender Law Center

The Environmental Defender Law Center (EDLC) is an international, non-profit organisation that protects the environment and land rights defenders from developing countries. Firstly, the EDLC provides grants for legal fees and litigation costs in public interest litigations against harmful resource development projects. Secondly, lawyers provide free services to communities that face environmental damage, individuals who face criminal prosecutions and Indigenous communities fighting for their rights. Thirdly, they advise communities, lawyers and NGOs about strategies and resources.

**Website:** <https://edlc.org/about/about-the-environmental-defender-law-center/>



#### American Bar Association - Justice Defenders Program

The Justice Defenders Program protects individuals that experience retaliation after drawing attention to human rights abuses. In Sub-Saharan Africa they assist activists, including land rights activists that are targeted by governments through law, judicial harassment and violence. They also advocate for the limitation of laws that limit speech in the region, such as defamation laws.

**Website:** [https://www.americanbar.org/groups/human\\_rights/justice\\_defenders/where-we-work/](https://www.americanbar.org/groups/human_rights/justice_defenders/where-we-work/)



### 6.2 GENERAL ORGANISATIONS FOR ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

#### Global Greengrants Fund

Global Greengrants Fund supports grassroots movements to protect environment and land rights defenders. They provide local individuals with funding and resources because they believe locals should take the lead in developing solutions and strategies. The Environmental Defenders Collaborative keeps environmental defenders safe by providing urgent grants, security training and resources, such as volunteers. Other initiatives involve working with women, youth and Indigenous Peoples.

**Website:**

<https://www.greengrants.org/what-we-do/right-to-defend-the-environment/>



#### Front Line Defenders

This is an international organisation that protects UN-defined human rights and believes that environmental rights are an extension of basic human rights. They operate a 24/7 emergency helpline for human rights defenders that can be reached at +353 (0) 1 21 00 489. Their website contains tools for assisting human rights defenders, including handbooks, protection grants, risk analysis and protection training, as well as advocacy resources.

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



#### World Resources Institute - Defending Earth's Defenders Initiative

The World Resource Institute (WRI) is a research organisation that works with governments, institutions, communities and businesses. They recognise that companies enter the traditional lands of Indigenous Peoples to gain resources and this can lead to violence and intimidation of Indigenous communities. The WRI examines the conditions that create dangerous environments, advances regional reforms to protect defenders and reduces risks to defenders through coalitions.

**Website:**

<https://www.wri.org/initiatives/defending-earths-defenders-initiative>



### 6.3 WOMEN-CENTRED ORGANISATIONS

#### Urgent Action Fund Africa

This Pan-African organisation provides rapid response funds to human rights defenders and feminists. The Urgent Action Fund Africa welcomes women of all bodies, sexual orientations, abilities and geographical areas. Their grants focus on solidarity and support, agenda setting and advocacy, knowledge and leadership, as well as fostering cultures of care.

**Website:** <https://www.uaf-africa.org/apply-for-a-grant/>





### Association for Women's Human Rights in Development

The Association for Women's Human Rights in Development ("AWID") is an international organisation that supports women's rights and gender justice movements by influencing, advocating and campaigning. They take a holistic approach to protecting women human rights defenders and support collations, regional women human rights activists, increasing the visibility of this demographic and mobilising urgent responses.

**Website:** <https://www.awid.org/special-focus-sections/women-human-rights-defenders>

AWID also works with young feminists, acknowledges the essential role they play in drawing attention to new feminist issues and helps them be able to make decisions about their rights.

**Website:** <https://www.awid.org/special-focus-sections/young-feminist-activism>



## 6.4 YOUTH-CENTRED ORGANISATIONS

### Child Rights Connect

They are a registered Swiss association that empowers children's rights defenders by providing knowledge, advice and connections. This includes providing information about how the UN human rights system can be used to create change at the national level. They have a Working Group on Children's Rights and the Environment, which discusses how children often are not recognised as holders of environmental rights despite being impacted by environmental harm.

**Website:** [https://www.childrightsconnect.org/working\\_groups/children-and-environment/](https://www.childrightsconnect.org/working_groups/children-and-environment/)



### KidsRights

KidsRights demands the international community pay attention to children's rights. One of these rights, the protection of the environment as a healthy environment, is important for wellbeing and child development. KidsRights runs the Changemakers Program and State of Youth, where they connect youth around the world to create change and improve children's rights.

**Website:** <https://kidsrights.org/childrens-rights/environment/>



## 6.5 INDIGENOUS-CENTRED ORGANISATIONS

### International Work Group for Indigenous Affairs - Land Defence and Defenders

This organisation protects, promotes and defends the rights of Indigenous Peoples. Firstly, they use fact-finding missions and documentation to expose land rights and human rights violations. Secondly, they identify actors, such as corporations, so they can be held accountable and there can be redress. Thirdly, they empower Indigenous communities to achieve land security.

**Website:** <https://iwgia.org/en/land-defence-defenders.html>



### Indigenous Peoples of Africa Co-ordinating Committee

This membership committee consists of 135 Indigenous Organisations across Africa. Environmental and Climate Justice is a priority, as they believe that Indigenous People hold environmental knowledge, can protect the environment and guide national policies during climate change. They also help members understand human rights and promote gender equality.

**Website:** <https://www.ipacc.org.za/>



