

GUEST ESSAYS CIVIL SOCIETY & THE PRIVATE SECTOR

LAND RIGHTS AND ENVIRONMENTAL ACTIVISM: A CASE STUDY FROM KENYA

– PHYLLIS OMIDO,
CENTRE FOR JUSTICE, GOVERNANCE
AND ENVIRONMENTAL ACTION

INTRODUCTION: CIVIL SOCIETY CHALLENGES IN PRESENT-DAY KENYA

The past few years have been the most trying period for the civil society movement in Kenya. In 2014 the Kenyan parliament attempted to pass into law a bill restricting civil society organisations (CSOs) from receiving more than 15 per cent of their resources from international sources. Civil society rose to challenge this and the bill was defeated at the parliamentary stage. Kenya was also among the 14 states that voted in 2015 against the United Nations (UN) General Assembly resolution on the protection of human rights defenders.

These are very trying times for Kenyan activists, particularly those working in the area of the environment and human rights. Most human rights defenders working on issues of the environment and human rights are not professional activists, such as lawyers; the majority of them work at the very grassroots level and are people who rise up because of encroachment into their territories or environment. They respond to issues of pollution, displacement or limited access to natural resources such as rivers and land.

The Centre for Justice, Governance and Environmental Action (CJGEA), a community-based CSO, was formed to advocate for the rights of communities affected by toxic chemical poisoning and for people suffering negative environmental health impacts caused by extractive industry pollution in Kenya. The challenges being faced by marginalised communities led to the need to address socio-economic rights, policy change and environmental governance issues. Our focus is on mainstreaming a human rights-based approach to the environmental protection of marginalised and excluded communities around the extractive industries.

EXPLOITATION OF LANDS AND PEOPLE

Economic growth is necessary but not sufficient for development. Without redistribution of income and wealth, inequalities are not going to be reduced, and there is enough evidence of inequalities that hurt both people and societies in general. Development must be regarded as synonymous with enhancing human rights and welfare, so that enhancing self-esteem and self-respect and improving entitlements become central concerns of the development agenda, rather than just growth.

However, it is no secret that virgin lands in Africa are becoming more and more lucrative to corporations that pursue exploration and mining. More lucrative still for exploitation are the marginalised and uneducated communities that live on these lands. As the search and demand for mother earth resources increases, communities around the Kenyan coast in particular are consistently being threatened. Indigenous territories are marked for mineral prospecting and mining without prior informed consent from communities. Developers take advantage of high illiteracy levels and existing marginalisation, with communities given half-baked information that does not allow them to make the best decisions.

In coastal areas, particularly where historical land injustices have been ripe, communities have paid very heavy prices for having limited or no knowledge of their property rights. Corruption and weak regulation by state actors do not help the situation.

In Kwale in Kenya, for example, titanium mining by Base Titanium caused communities to be evicted. Community members were given Kshs 80,000 in compensation, equivalent to US\$800: a meagre sum that is not enough to buy a fresh parcel of land or rebuild a home and restore disrupted livelihoods. When this happens, it sets back by decades communities that are already struggling against the scourge of poverty. We are talking about families struggling to educate their younger generations that can no longer do so because of the uprooting of families from the area they had considered home and created livelihoods around.

It has to be appreciated that the culture of Ubuntu in Kenya - the belief in a universal bond of sharing that connects all humanity - still underpins the survival of many communities. At the grassroots, many people survive on a trust basis. For example, parents over time will build trust to the point that even when they do not have money, their children will be kept in school until the parents receive their monthly salary and can make payments. These kinds of agreement translate even to grocery shopping based on community structures. Disrupting this sets these communities miles back in terms of development. Such setbacks mean that the struggle for emancipation from poverty becomes just a pipe dream.

In response to these challenges, community members form civil society groups, which are met with violence and force that they did not anticipate, funded by corporate power and backed by state machinery. Their freedoms of association, assembly and expression are constantly infringed upon by the local authorities, serving the interests of corporations.

ATTACKS ON ACTIVISTS

Even though the freedom of association, assembly and expression for civil society are guaranteed in the Kenyan Constitution – in Chapter Four, Articles 24, 36 and 37 – infringement has been happening for several decades. Meanwhile the revenue that corporations generate enables them to downplay the damage they cause to the environment. This means that when environmental rights defenders and CSOs try to advocate for the rights to a clean, healthy and sustainable environment, they are met with undue force, such as intimidation, judicial harassment, threats to their families and even killings.

I experienced this first hand when I was arrested for demanding that a corporation stop exposing a community to lead poisoning. I was charged with “inciting violence and illegal gathering.” Joel Ogada was another who experienced harassment. He was charged with a heap of criminal charges ranging from arson to threatening to kill. His wife, while seeking to stop the demolition of her homestead and a forceful eviction, was charged with arson. Such cases are rampant, with many defenders having to relocate or go into hiding in fear for their lives.

These attacks happen even though public participation is assured in the Kenyan Constitution – in Article 69(1)(d) and Article 27 – while the National Environmental Management Authority (NEMA) is mandated to ensure that communities are included in decision-making on environmental matters during the Environmental Impact Assessment process set out by the Environmental Management and Coordination Act (EMCA) of 1999. This is meant to ensure that communities experience minimal disruption.

CJGEA recognises that ensuring public participation and access to environmental information is the role of NEMA. Unfortunately, in the 17 years since the institution was established, these procedural rights have been eroded and their value ignored. Many communities remain excluded during the impact assessment process or are not given information in a manner that would encourage effective participation. [Obligations](#) towards fulfilling the rights to access information on environmental matters include:

- provision of free, easy to access, information concerning the environment in a form that is understandable to the public, in such a way that it addresses their concerns in order to enable the public, including women and other vulnerable persons, to give an informed opinion and input;
- provision of prior, timely notification and relevant information to potentially affected states;
- establishing appropriate means for collection, and dissemination methods suitable for the state in the lives of local people and other recipients.

WHEN ENVIRONMENTAL RIGHTS DEFENDERS AND CSOS TRY TO ADVOCATE FOR THE RIGHTS TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, THEY ARE MET WITH UNDUE FORCE

GUEST ESSAYS

CIVIL SOCIETY & THE PRIVATE SECTOR

CJGEA has dealt with land cases and worked with the affected communities; one such case is that of [Owino Uhuru](#), a slum area that sits on 13.5 acres of potentially prime land in Mombasa. The community was threatened with eviction after seeking its right to a clean environment, even though the community could trace its presence on the land to the early 1900s. The residents, however, did not know that they were supposed to acquire land ownership documents. We mobilised the community to pay the land rates that had been accumulating in the Lands Department for many decades and defended the community's right to ownership, using Article 2 of the Law on Ownership and Other Real Rights, which states:

“The right to ownership can be acquired by all domestic and foreign natural persons and legal entities, including the state and the units of the local self-government, under conditions and in a manner stipulated by this and other laws and adverse possession which is the occupation of the land of another person against his wish and in opposition to his title.”

The law also states that, where possession continues without the interruption of an eviction for a period of over 12 years, the squatter becomes legally entitled to the land by the operation of the doctrine of adverse possession.

Not so lucky are the [Magarini](#) community, located in Magarini sub-county, Kilifi County, on the coast of Kenya, which hosts seven salt companies along the coastal belt. Despite the heavy presence of CSOs, many community members were forcefully evicted from their ancestral land. Many illiterate community members were given documents to sign, written in English, indicating that they were squatters on the land. They were mostly coerced to do so to avoid receiving jail terms.

One family that resisted had numerous court cases brought against them, extending even to uncles who stepped in to take care of the family after the mother and father were placed under arrest. The family testified how they were rendered homeless at gunpoint at 3 am, exposing the children to cold temperatures that caused the death of one child.

Other community members were shot and killed protecting their land. The people of Magarini testified that they witnessed their neighbours and friends being shot in front of them by the police, on the order of the police commander, for no crime at all. They said the police came to their community that day not to maintain peace or protect them, but for war. This made many community members afraid of the authorities, who supposedly were employed to protect them but instead inflicted fear on them.

In the land cases above, CJGEA intervened with advocacy strategies to address the socio-economic impacts in the communities where rights were not being realised. We also used the media to document people's stories and struggles of how their ancestral land was unlawfully taken from them, and aired these on national television and social media. The media impact greatly supported our advocacy for the right to a clean,

healthy and sustainable environment for the Owino Uhuru community, and this enabled us to work with a wider range of civil society groups to promote these rights in Kenya. After our media advocacy work on lead poisoning in Owino Uhuru, NEMA shut down 17 smelters and we have seen improvement on the workings of the remaining smelters. Chloride Exide in Nairobi for example, are following the procedure laid out for the protection of their workers and the environment. They test their workers' blood lead levels after every three months and ensure that they wear protective gear while working. They have also purchased a large piece of land to keep their activities away from residential areas.

We have worked with other CSOs on our project to make better use of the media, including with Friends of Lake Turkana, Human Rights Agenda and Human Rights Watch, along with 10 media practitioners from different media houses and the UN Office of the High Commissioner for Human Rights on advocacy.

RAISING AWARENESS OF RIGHTS

It is vital to create awareness of human and environmental rights in affected communities, including not only of people's right to defend their land but also their rights to health and a clean, healthy and sustainable environment. In Magarini, for example, the community's land was unlawfully taken from them by corporations to set up extractive industries, which led to pollution and environmental degradation. The lives of these people were disrupted, as they had nowhere to live and lost their means of livelihood, because they were dependent on natural resources as the source of their day to day income.

We initiated a project called 'Kurunzi la Matumaini', meaning 'Light of Hope', which aims to empower the Magarini community to hold the local authorities and other service providers to account for the injustices committed. Our approach includes improving the community's participation in environmental decision-making forums, which helps to reduce the tensions and conflicts that exist between the community, salt-mining companies and local authorities.

THEY HAD NOWHERE
TO LIVE AND LOST
THEIR MEANS
OF LIVELIHOOD,
BECAUSE THEY
WERE DEPENDENT
ON NATURAL
RESOURCES

THE NEED FOR ACCESS TO INFORMATION

The importance of access to information, public participation and access to justice in environmental issues was highlighted 25 years ago at the UN Conference on Environment and Development, held in Rio de Janeiro, Brazil in 1992. Today, there is growing recognition by civil society and governments that access to information and public participation on environmental issues are essential to advancing towards environmental protection and sustainable development.

However, CJGEA's interaction and work with communities that host mining and extractive industries since 2009 has led to the realisation that there is still a major gap in access to environmental information.

To address this, we are continuously working to expand CJGEA's work geographically to reach more rural and marginalised communities and to educate them about their procedural rights, including access to information, public participation and access to justice. Increasing local communities' access to information in environmental matters will be a cornerstone to achieving effective participation. In addition, CJGEA aims to empower local communities to litigate their cases both before the court and in the media, by incorporating human rights law discourse.