EAST AFRICA PUBLIC INTEREST ENVIRONMENTAL LAW AND LITIGATION WORKSHOP AND SEMINAR

HERON PORTICO HOTEL, NAIROBI, KENYA
21st-22nd JUNE 2013
WORKSHOP REPORT

EAST AFRICAN PUBLIC INTEREST ENVIRONMENTAL LAW
AND LITIGATION WORKSHOP & SEMINAR

HERON PORTICO HOTEL, NAIROBI 21st-22nd JUNE 2013

Organized By:

INSTITUTE FOR LAW & ENVIRONMENTAL GOVERNANCE (ILEG)
And
ENVIRONMENTAL LAW ALLIANCE WORLDWIDE (ELAW)

In partnership with

Greenwatch Uganda, and Lawyers’ Environmental Action Team (LEAT)

July 16, 2013
EXECUTIVE SUMMARY

Global attention is increasingly turning to Africa and in particular East Africa as an investment destination in the wake of increasing discoveries of significant mineral and oil deposits. This has led to a discourse on the role and impact of oil and the extractive industry on the livelihoods of local communities and the environment. An important part of this discourse revolves around the role of public interest law and litigation in securing human, social and economic rights. The East Africa Public Interest Law and Litigation (PIEL) workshop and seminar provided a forum to start a dialogue and strategize on how best to use the law to respond to the myriad challenges facing local communities in the wake of these developments.

There is need to build an army of public interest advocates through continuous mentoring of young lawyers and recruitment of more people into the PIEL movement. One way of achieving this is by PIEL organizations conducting environmental law fora in law schools and training interns in their organizations. Unity of purpose should be nurtured among environmental organizations in East Africa and among public interest groups including other professionals and scholars with interests in the environment such as environmental economists. Public interest groups in the region should push for reforms in the policy, legislative and institutional framework in relation to land and the extractive sector. Such laws should cover among other things provisions for the management of cross border resources and projects as well as the issue of costs. Mineral Development Agreements (MDAs) should also be adequately addressed including pushing for a public disclosure of existing contracts. The respective bar associations in the region should push for harmonization of law syllabuses in the region’s universities in view of the new realities of cross border practice.

PIIL groups in the region should adopt a tactful and proactive approach in their work. This includes: investing in thorough research and preparation before taking cases to court; and using other tools including the media, protests and demonstrations to compliment their work. Others are alternative dispute resolution mechanisms where they are appropriate; profiling interventions; going out to the communities to look for cases rather than waiting for cases; and submitting a prayer for costs before the court.
# TABLE OF CONTENTS

**EXECUTIVE SUMMARY** .......................................................................................................................... ii

**TABLE OF CONTENTS** ............................................................................................................................. iii

**LIST OF ABBREVIATIONS** ...................................................................................................................... v

1. **INTRODUCTION** ................................................................................................................................. 1

   1.1 **SESSION I: OPENING REMARKS AND INTRODUCTIONS** ......................................................... 2

       1.1.1 Benson Owuor Ochieng, Executive Director, ILEG .............................................................. 2

       1.1.2 Jennifer Gleason, Staff Attorney, ELAW .............................................................................. 3

       1.1.3 Mr. Apollo Mboya, CEO and Secretary, Law Society of Kenya ......................................... 4

       1.1.4 Maurice Makoloo, Ford Foundation ....................................................................................... 5

       1.1.5 Mr. Eric Mutua, Chairman, Law Society of Kenya ............................................................... 6

   1.2 Keynote Address, James Aggrey Mwamu, President, East Africa Law Society ......................... 6

   1.3 Participants’ motivations and expectations from the workshop ...................................................... 9

2. **SESSION II: PUBLIC INTEREST ENVIRONMENTAL LAW AND LITIGATION IN EAST AFRICA** ................................................................................................................................. 9

   2.1 Public Interest Law and Litigation in East Africa: Status and Trends, *Dr Collins Odote* ........... 9

   2.2 Strategic Public Interest Litigation in Uganda, *Justice Kenneth Kakuru* ................................. 13

3. **SESSION III: LEGAL STRATEGIES IN MANAGING THE EXTRACTIVE INDUSTRY IN EAST AFRICA** ...................................................................................................................................... 16

   3.1 Anatomy of the Mining Industry: What do lawyers need to know? *Dr Rugemeleza Nshala* .... 16

   3.2 Organizing Litigation and Engagement for the Public Interest: Raising an Army of Public Interest Lawyers, *Gertrude Angote* ...................................................................................... 19

4. **SESSION IV: SECURING THE PUBLIC INTEREST IN LAND AND ENVIRONMENTAL MATTERS IN EAST AFRICA: ISSUES FOR CSOs AND LAWYERS** ............................................................................. 23

   4.1 Gender Imperatives in Public Interest Litigation in East Africa, *Caroline Khasoa* ............... 23

   4.2 Harvest Aplenty: Social Justice in the Land and Environment Sector, *Patrick Ochieng* ........ 25

   4.3 Raising funds to advocate on behalf of communities impacted by the extractive industries, *Ellen Sprenger* ........................................................................................................................................... 29

   4.4 Networking - Legal and scientific resources available to lawyers and CSOs; and mentoring young lawyers, *Jennifer Gleason* .................................................................................................. 31

5. **SESSION V: GLOBALIZATION AND GEOPOLITICS OF THE OIL AND EXTRACTIVE SECTOR** .................................................................................................................................................. 32
5.1 Globalization and geopolitics of the oil and extractive sector: the case of oil and gas in Turkana, *Dr Ekuru Aukot* ................................................................. 32

5.2 Country delegates reports on Strategic Issues for PIEL ......................................................... 35

5.3 The role of the bars in Public Interest Environmental Litigation, *Apollo Mboya* .................. 36

6. AGENDA FOR ACTION AND WAY FORWARD ................................................................. 39

ANNEXES ................................................................................................................................. 41

Annex A-1 Workshop Programme ......................................................................................... 41
Annex A-2 List of participating organizations ...................................................................... 43
Annex A-3 List of Participants ............................................................................................. 44
Annex A-4 List of main speakers ......................................................................................... 49
Annex A-5 Full text of the keynote address by Mr. James Aggrey Mwamu ......................... 50
Annex A-6 Snapshots ............................................................................................................ 54
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternate Dispute Resolution</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>EACJ</td>
<td>East African Court of Justice</td>
</tr>
<tr>
<td>EALS</td>
<td>East Africa Law Society</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EITI</td>
<td>Extractive Industry Transparency Initiative</td>
</tr>
<tr>
<td>ELAW</td>
<td>Environmental Law Alliance Worldwide</td>
</tr>
<tr>
<td>EMCA</td>
<td>Environmental Management Coordination Act</td>
</tr>
<tr>
<td>EPA</td>
<td>Environmental Protection Agency</td>
</tr>
<tr>
<td>FoLT</td>
<td>Friends of Lake Turkana</td>
</tr>
<tr>
<td>ICSID</td>
<td>International Center for Settlement of Investment Disputes</td>
</tr>
<tr>
<td>IDPs</td>
<td>Internally Displaced Persons</td>
</tr>
<tr>
<td>ILEG</td>
<td>Institute for Law and Environmental Governance</td>
</tr>
<tr>
<td>LAPSSET</td>
<td>Lamu Port South Sudan Ethiopia Transport corridor</td>
</tr>
<tr>
<td>LEAT</td>
<td>Lawyers Environmental Action Team</td>
</tr>
<tr>
<td>LSK</td>
<td>Law Society of Kenya</td>
</tr>
<tr>
<td>LVBC</td>
<td>Lake Victoria Basin Commission</td>
</tr>
<tr>
<td>MDAs</td>
<td>Mining Development Agreements</td>
</tr>
<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
</tr>
<tr>
<td>NEMA</td>
<td>National Environmental Management Authority</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NLC</td>
<td>National Land Commission</td>
</tr>
<tr>
<td>PIEL</td>
<td>Public Interest Environmental Law and Litigation</td>
</tr>
<tr>
<td>PIL</td>
<td>Public Interest Litigation</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>SPIEL</td>
<td>Strategic Public Interest Litigation</td>
</tr>
<tr>
<td>VOYA</td>
<td>Volunteer Advocate of the Year Award</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

Global attention is increasingly turning to Africa as an investment destination in the wake of increasing discoveries of significant minerals and oil deposits. Uganda, South Sudan, Tanzania, Ghana and Kenya are all poised to join the hallowed ranks of oil producing countries. Significant deposits of gas and coal have recently been discovered in Tanzania and Kenya, respectively. Kenya also recently discovery oil in Turkana County as well as other minerals such as niobium, titanium and coal in other parts of the country. These developments have led to a discourse on the role of oil and extractive sector in socio-economic development of East Africa as a region as well as on socio-economic development of the individual countries. In Kenya for instance, the government is keen to promote the oil and extractive industry as a key engine of growth towards achieving its long-term development programme, Vision 2030\(^1\) as well as the pursuit of the Millennium Development Goals (MDGs). Similar scenarios obtain in Uganda and Tanzania. To facilitate growth of the oil and extractive sector in the region, huge infrastructural developments are expected. For instance, the Lamu Port South Sudan Ethiopia Transport (LAPSSET) corridor project has already been launched in March 2012.\(^2\) Moreover, many of these developments are taking place on communal lands which are characterized by insecure tenure systems.

But serious concerns remain. Stakeholders are very worried about the likely impacts of oil, gas and mineral exploitation and the infrastructural developments generally on the livelihoods of local communities. This is mainly because of the legal, policy, institutional and governance challenges well known to the Eastern Africa region. The oil and mineral finds that should bring excitement and pride to these countries also come with considerable anxieties, if not fear, of the proverbial “African resource curse”. Many are expressing concern that exploration and extraction of oil and minerals may lead to further impoverishment of local communities, serious environmental degradation and resource-based conflicts. This brings to the fore, debate on the

---

\(^1\) Kenya’s Vision 2030 is a long term development blue print which aims at transforming the country into “a newly industrializing, middle income country providing a high quality of life to all its citizens in a clean and secure environment by the year 2030. See Republic of Kenya, 2007. *Kenya Vision 2030*

\(^2\) The LAPSSET project involves the development of a new transport corridor from the new port of Lamu through Garissa, Isiolo, Mararal, Lodwar and Lokichoggio to branch at Isiolo to Ethiopia and Southern Sudan. It will comprise of a new road network, a railway line, oil refinery at Lamu, oil pipeline, Isiolo and Lamu Airports and a free port at Lamu (Manda Bay) in addition to resort cities at the coast and in Isiolo. See, *Kenya Vision 2030* [http://www.vision2030.go.ke/index.php/pillars/project/macro_enablers/181](http://www.vision2030.go.ke/index.php/pillars/project/macro_enablers/181) Internet accessed July 3, 2013
role of law and lawyers in promoting sustainable development. An important part of this debate revolves around the role of public interest law and litigation in securing human, social and economic rights.

It is against this backdrop that the U.S. office of the Environmental Law Alliance Worldwide (ELAW) and its East African partners – Institute for Law and Environmental Governance (ILEG), Greenwatch Uganda and Lawyers’ Environmental Action Team (LEAT) organized a workshop and seminar to start a dialogue and strategize on how best to use the law to respond to the myriad challenges facing local communities in the wake of these developments. Supported by the Ford Foundation, the event brought together a blend of experienced and young lawyers from Kenya, Uganda and Tanzania to share their experiences and learning and to strategize for effective public interest environmental litigation in East Africa. The workshop involved PowerPoint and paper presentation along with plenary discussions and recommendations. Altogether 54 participants attended the seminar

1.1 SESSION I: OPENING REMARKS AND INTRODUCTIONS

1.1.1 Benson Owuor Ochieng, Executive Director, ILEG

Key highlights
The East African Public Interest Environmental Law and Litigation (PIEL) is a product of a dialogue that started years back. The dialogue saw ILEG host the first ever All Africa Public Interest Litigation conference for lawyers in 2006. The conference brought together lawyers from the African continent with interest in public interest litigation and served to inspire more Kenyan lawyers to take up the cause for the environment. Another conference on Public Interest Litigation for lawyers took place from the 2nd-4th August 2008. The East Africa Public Interest Law and Litigation comes at a time when so many issues involving land and natural resources are going on in East Africa. These include the recent oil, gas and mineral discoveries and expected infrastructural developments which are expected to impact local communities in myriad

---

3 The phrases Public Interest Environmental Law and Litigation (PIEL) and Public Interest Litigation (PIL) are used interchangeably in this report.

4 For more on ILEG’s work, visit www.ilegkenya.org
ways including loss of livelihoods and destruction of natural resources. The overall objective of the workshop and seminar is to reflect on the current position and preparedness of East African Public Interest Institutions to respond to the many challenges posed by these recent developments. The specific objectives are to:

- Learn about technical and legal issues related to mineral and petroleum exploration and extraction;
- Share experiences related to effective litigation in the region;
- Strategize together about new legal theories and new cases that could be filed;
- Mentor young lawyers; and
- Strengthen the capacity of NGOs that use the law to protect the rights of local communities.

The workshop was organized by the Environmental Law alliance Worldwide (ELAW) and its East African partners, the Institute for Law and Environmental Governance (ILEG), Green Watch Uganda and Lawyers Environmental Action Team (LEAT) of Tanzania. Despite being a legal matter, issues of Public Interest Environmental Litigation (PIEL) affect the whole society. For this reason, participants of the workshop were drawn from both lawyers and other Civil Society Organizations (CSOs). They comprised the bar associations in Kenya, Uganda and Tanzania; the umbrella body of lawyers in East Africa, the East African Law Society (EALS); and several CSOs working around the issues of land, human rights and the extractives sector.⁵

### 1.1.2 Jennifer Gleason, Staff Attorney, ELAW

**Key Highlights**

The PIEL workshop and seminar was made possible by the hard work of ELAW partners in East Africa. Much thanks to the Institute for Law and Environmental Governance (ILEG) for the logistical work, and Greenwatch and LEAT for partnership. Partnership and financial support from Ford foundation made the workshop possible. The Environmental Law Alliance Worldwide (ELAW) is a global alliance of attorneys, scientists and other advocates collaborating across borders to promote grassroots efforts to build a sustainable and just future. ELAW helps

---

⁵ The full list of participants is given in the annexure
communities speak out for a clean and healthy environment, and is focused on strengthening Civil Society Organizations (CSOs) in order to achieve this.

ELAW partners in East Africa have done commendable work in terms of public Interest Environmental Litigation (PIEL). Justice Kenneth Kakuru, Benson Ochieng, Collins Odote and their teams have all done great work in this area. They and other senior lawyers should reach out and mentor young lawyers in order to make PIEL effective. ELAW will continue to do everything possible to move PIEL forward. In this regard, ELAW will continue to help in strengthening organizations e.g. in building their annual budgets etc. Finally, ELAW is looking forward to listen to what participants are doing in their countries and ideas on how to move forward. This will help us to think together and chat the way forward. Workshop participants should voice out their crazy ideas of how to take PIEL forward.

1.1.3 Mr. Apollo Mboya, CEO and Secretary, Law Society of Kenya

Key highlights

The law Society of Kenya (LSK) is repositioning itself to pay more attention to public interest litigation especially on the issues of environment and land. In Kenya, the recent legislations on land including the creation of the Environment and land Court, much as it presents progress, has also created confusion. For instance, since its creation, most matters touching on land are increasingly being taken to the Environment and land Court including those that can be handled by magistrate’s courts. LSK will be training its members on how to handle this confusion. There is Public interest unit at the LSK called the Public Interest and Legal Aid & Human Rights Committee. One of the key mandates of the committee is to advice the Council of the LSK on matters of public interest litigation that can be undertaken by the Society. The committee was formerly known as the Environmental Law Committee. LSK values sharing and learning from experiences from other countries, and working together with other stakeholders/partners in order to use PIEL to enhance sustainable development in our region.
1.1.4 Maurice Makoloo, Ford Foundation

Key Highlights

The East African Public Interest Law and Litigation (PIEL) attracted an impressive mix of young and experienced lawyers including Justice Kenneth Kakuru, Rugemeleza Nshala and others, as well as a remarkable gender representation. Past PIEL workshops have often been dominated by men. The importance of environmental preservation cannot be gainsaid. Several lessons in relation to PIEL can be drawn from the Peter K. Waweru case. First, Public interest litigation requires hard work involving sufficient research and good planning, because in PIEL, what you put in is what you get. Hence lawyers must invest in the quality of work they put in. Secondly, involving players from different fields in PIEL issues can give clear dividends. The case also teaches us to build strong institutions in order to be able to succeed in PIEL efforts.

In summary, to whom a lot is given, a lot is expected. Lawyers have been given a lot and must do that which falls in their docket. This includes speaking for the voiceless because they have a right to be heard. It is also important to mention that PIEL should be done in a coordinated manner because this is the only way to ensure that the gains we make in PIEL are not taken back away. Now is the time to take PIEL to the next level. Ford applies PIEL in all its initiatives, and will continue its partnerships and association with PIEL. PIEL is practice unusual.

---

6 In the case, the applicants were charged with discharging raw sewage into a public water source and the environment contrary to the Public Health Act (cap 242 Laws of Kenya) and failure to comply with the statutory notice from the public health officer requiring them to remedy the nuisance. They sought the orders of the High court under section 84 of the then Constitution of Kenya, and rule 3 of the same Constitution (Protection of fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, for the quashing of the criminal proceedings against them. The Judge granted the orders sought by the applicants. The case thus started as criminal charge under Public Health Act, then to a judicial case then to constitutional matter. See, Peter K. Waweru v Republic [2006] eKLR http://www.kenyalaw.org/CaseSearch/view_preview.php?link=51646334621357351283598&words= Internet accessed July 4, 2013
1.1.5 Mr. Eric Mutua, Chairman, Law Society of Kenya

The organizers of the workshop - ELAW, ILEG, Greenwatch, LEAT, LSK, East Africa Law Society etc did a great thing by bringing people together to discuss issues of PIEL. The timing of the workshop couldn’t have been more appropriate. This is because of what is going on in the region in terms of recent oil, gas and mineral discoveries and the ongoing cross border infrastructural development projects. With these developments, issues of environmental degradation and of rights of communities and individuals will intensify and lawyers will be called upon to address them. Indeed, the developments have already started causing conflict. For instance, communities are facing relocation from the Mui Basin in Kitui to give room for coal mining. Such displacements from ancestral homes especially at old age can really be traumatic.

But there are even more pertinent issues relating to the Mui coal mining project. In 2012, a local liaison committee was formed to represent the local community during negotiations. Although the committee’s role was to link with the government to ensure that local interest were protected, the committee was sidelined by senior government officials, and locked out of the contract drafting process. The knowledge from the PIEL workshop will be very useful moving forward with regard to PIEL. LSK will continue to play its role in PIEL issues both here in Kenya and also in East Africa. Already, LSK is partnering with the bar association of South Sudan, and engaging them in education on what is involved in common law. Kenyan lawyers will be called upon from time to time to help with these engagements.

1.2 Keynote Address, James Aggrey Mwamu, President, East Africa Law Society

**Highlights of the speech**

The African continent, and particularly Eastern Africa, has not been spared the adverse effects of climate change and global warming. In a region whose Gross Domestic Product is largely tethered on agriculture, the impact of climate change, environmental degradation and fluctuating agricultural production have caused adverse impacts on the society. Such impacts include forced relocation of communities without adequate compensation by the state, increased income poverty, and conflicts as communities scramble for scarce resources. The contest has not been confined to communities, as was evidenced by the contest over Migingo Islands by Kenya and
Uganda; and in Tanzania, where the government wants to relocate thousands of Maasai from their traditional lands in Loliondo, to pave way for a hunting ground for foreign Arab companies. Violent conflicts over water and grazing land for cattle have become the norm between the border communities of the Karamajong and the Turkana along the Uganda Kenya border.

Of particular concern to the EALS is the water hyacinth weed that has enveloped large parts of the Kenyan portion of Lake Victoria, disrupting the lake’s ecosystem; and adversely affecting the economic and social lifelines of the communities that draw a living from the lake. Despite the fact that Kenya suffers the smallest portion of the commonly shared lake, the Kenya government’s commitment to eradicate the weed pales in comparison to that of Uganda. A number of interstate agreements on sustainable use of natural resources, regulation of carbon emissions, trade in ivory, and fishing quotas among others, have been concluded at international and regional levels to try and arrest the situation. The East African Community (EAC) partner states have taken cognisance of the fact that development activities may lead to degradation of the environment and depletion of natural resources; and agreed to, among others; take concerted efforts to ensure the efficient management and sustainable utilization of natural resources within the region. The EAC has followed this up by establishing a sectoral Committee on Natural Resources and the Environment, which will ensure that issues of sustainable use of natural resources remain high on its agenda.

Despite these efforts, a number of intervening factors still render states unable to honour their obligations under these agreements. These factors include: limited information on the details of international and regional environment related agreements amongst the legal profession in East Africa; multiple municipal legal and policy environment protection regimes within the EAC partner states; marginal inclusion of the legal profession in environmental conservation and sustainable resource utilization processes. This is coupled with the fact that the profession does not possess the requisite advocacy and litigation skills to effectively handle environmental related cases in courts of law. The lawyers in the region lack comprehensive information on environmental laws as it is a relatively new area with emerging jurisprudence at the national and regional level.
There is presently a case at the East African Court of Justice challenging the decision of the Government of the United Republic of Tanzania to construct a high way through the Serengeti game reserve because of the possible adverse effect that it will have on the annual wildebeest migration. The fact that the case was filed by a Kenyan environmental action group against the Tanzanian Government emphasizes the potential lack of an interactive regional platform, in which legal environmental activists can continuously discuss and negotiate strategies for promoting sustainable resource utilization.

In view of the above shortcomings, EALS is proposing to implement a project that will see lawyers equipped with the requisite advocacy and litigation skills to take up their role in supporting the drive towards sustainable utilization of natural resources; monitor and enforce EAC partner states compliance with international and regional environment protection obligations; and provide an interactive platform for sustained policy and legal engagement on environment and natural resources discourse, to ensure the preservation of ecosystems within East Africa. EALS is also preparing to file two or three Litigation cases that will go towards dealing with some environmental problems in East Africa, and is in the process of looking for partners to work with in order to achieve these goals.

The PIEL workshop came at the most opportune moment to build on the gains that have been made since the days of Wangari Maathai case in the 1989\(^7\). The cases presented a clear example of government interests being at cross purposes with the wider public interest. It is important for public interest litigators to understand the Science and politics of litigation, drafting proper pleadings and doing thorough research in order to put up a credible case. Cases often fail due to poor preparation and lack of commitment by counsel. Lawyers should also consider the impact of litigation because public interest cases may fail a number of times but they create tremendous

\(^7\) In the case, Wangari Maathai v. Kenya Times Media Trust Ltd, Maathai took the Kenya Times Media Trust Ltd to court in order to prevent the latter from constructing a high-rise building in a public park in Nairobi called Uhuru Park. Maathai alleged breach of local government laws and brought a representative suit on behalf of the public. The court ruled that she did not have the legal standing (locus standi) to bring a representative suit on behalf of the public and that under the Constitution only the Attorney General could institute suits on behalf of the public.
impacts. Therefore, PIL lawyers should not be discouraged by failure because public interest cases properly done with advocacy skills never fail and never die.8

1.3 Participants’ motivations and expectations from the workshop

Participants shared their motivations and expectations from the workshop. They mostly wanted to learn especially from the experienced lawyers how to handle PIEL issues. They also wanted to Share Knowledge and experiences from the different individuals as well as the different organizations and countries represented. Some participants wanted to gain new friends and establish networks and inter-organizational as well as regional collaboration on issues of PIEL. Some wanted to think together in identifying effective ways of going about PIEL while others wanted to better understand the constraints facing PIEL including litigation costs and how to deal with them. Increasing the participation of lawyers and civil society organizations (CSOs) in PIEL was also a key motivation, as were strategies to get communities to support PIEL initiatives. Others wanted to get insights on how to approach PIEL issues touching on cross-border projects.

2. SESSION II: PUBLIC INTEREST ENVIRONMENTAL LAW AND LITIGATION IN EAST AFRICA

2.1 Public Interest Law and Litigation in East Africa: Status and Trends, Dr Collins Odote

Key Highlights

A contradiction exists in East Africa in which there is poverty amidst natural resource abundance. East Africa faces a number of key sustainable development challenges. Among these are balancing environmental conservation and development imperatives especially because natural resources are the basis of livelihoods and development. There are the traditional environmental challenges including pollution, water scarcity, deforestation and wildlife management and also emerging challenges such as climate change, trans-boundary natural resource management, and the extractive industry. In the context of environmental management

8 The full speech is given in the annexure (annex A-6)
the challenges facing law and litigation include lack of rational and sustainable management of natural resources in the region, mainly driven by high population pressures; and ineffectiveness of legal framework to address the impact of the pressure on the environment. This is coupled with weak institutional arrangements for monitoring compliance. Environmental law and litigation have the potential to widen people’s options for earning a sustainable livelihood and prohibiting over-exploitation of resources.

Public Interest Law and Litigation (PIEL) raise matters of broad public concern and of common good and impact especially on disadvantaged or marginalized groups in society. PIEL refers to litigation on behalf of the larger public, by a public spirited entity, addressing public wrongs. PIEL can be undertaken on any sector of society and human rights be it social, economic or human rights. It focuses on environmental rights and guaranteeing of environmental sustainability. PIEL differs from acting pro bono or from pauper briefs. The latter two address the lack of means on the part of the litigant or client while the former looks at the nature of the rights being litigated (private or public?) and not just the pecuniary status of the parties. PIEL is characterized by certain key elements. It involves multiple parties; it is predicated upon doctrines of legal standing permitting individual/ interest group to challenge activities and decisions that can actually or potentially cause injury to members of the community; it is often not rigidly bilateral but sprawling and amorphous; and relief is not always conceived as compensation for past wrong, i.e. it’s more of remedial rather than compensatory. In summary, the key issues in PIEL are the litigation parties, the basis of action, the causation, the rule of locus standi, and the available remedies.

Traditional position at Common law was that one could only bring an action to enforce private interest. The only way for public action was through a relator action. For environmental matters at common law, the avenues available were to bring an action based on trespass, negligence and nuisance. There were limited remedies, and there were restrictions on who could bring suit. One had to demonstrate proprietary interest and personal injury and harm as a result of the complained activity. PIL evolved in India during the post-emergency era, when it was noticed that the benefits gained from constitutional protection were being lost due to the lack of standing.
PIL was used to mitigate the excesses of traditional litigation against vulnerable groups. Justice Bhagwati P.N (in the case of G S Gupta v Union of India), noted thus:

“Where a legal wrong or injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such a person or determinate class of persons by reason of poverty, helplessness or disability or social or economically disadvantaged position unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order, or writ in the high court”

PIL has undergone significant development over the last 20 years and has provided many people with access to justice and effective protection of fundamental rights and freedoms. PIL is a powerful means, which has been used to convert constitutional gains into reality, and as a tool for social change in numerous countries such as India, Pakistan, Bangladesh and the Philippines. The objectives of the East African Community (EAC) treaty include attainment of sustainable growth and development amongst partner states. Chapter 19 of the treaty details the framework for environment management. In addition, the treaty has programes and strategies on several areas including climate change. The national level constitutions and framework environmental laws also have provisions for environmental justice.

Uganda was the first EAC country to treat Environment in its Constitution. Under the National objectives and Directives of State Policy “The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda”. Although the Tanzanian Constitution only provides for a right to life, this can be seen

---

9 G S Gupta v Union of India


to mean right to clean and healthy environment. In the Kenyan Constitution, Sustainable Development is part of the Principles of Governance. The Constitution also provides for a right to clean and healthy environment and a right to go to court if that right is violated. This is important for PIEL. Article 70 of the Constitution states that:

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

Section 3 of Article 70 states that an applicant does not have to demonstrate loss or injury suffered by any party.

PIEL is a fairly recent phenomenon in East Africa, started slightly over a decade and a half ago. Its growth is attributable to *inter alia*, legislative and constitutional reforms; increasing awareness of environmental issues; emergence of environmental champions like Wangari Maathai, a movement of Public Interest Advocates and organizations like LEAT, Greenwatch, ILEG etc. Tremendous steps have been made in PIEL. In Kenya for example, EMCA and the Constitutional provisions have relaxed the rules on *locus*. However, although there is an increase in PIEL cases, the numbers are not sufficient because environmental problems are so many. There should be a lot more Wangaris, Mitikilas and Kakurus in East Africa today.

In order to take PIEL forward, the key issues to note are: take more cases to court; link with other interest groups; lobby for law societies to take up more PIEL cases; engage regional bodies such as the East African Court of Justice (EACJ), Lake Victoria Basin Commission (LVBC) and the East African law society (EALS); create linkages and networks with other lawyers in the region and internationally; expand the knowledge-base; act as agents for change; and collaborate with other in-country stakeholders. While doing these, and in order to succeed certain issues must be taken very seriously: choice of cases as well as of parties; expert evidence and scientific research; avoid over-focus on technicalities rather focus on substantive justice. The words of the
Constitutional Court in KENYA BANKERS ASSOCIATION –V- MINISTER OF FINANCE (NO. 4) [2002] 1KLR 61, captures the correct approach of PIEL rather well:

“…like human rights cases, public interest litigation, including lawsuits challenging the constitutionality of an Act of Parliament, the procedural trappings and restrictions, the preconditions of being an aggrieved person and other similar technical objections cannot bar jurisdiction of the Court or let justice bleed on the altar of technicality....”

The other issues that should be seriously considered are: advocacy strategies; legal reform; avoiding lone-ranger tactics; and realizing that PIEL is not always about winning. A PIEL lawyer should go out and look for cases and not just wait for cases to come to him. PIL lawyers and other public interest groups should realize that PIEL has greater role than just the adversarial nature of winning and losing. While there is need to increasingly take up PIEL cases, lawyers should also realize the limits of the law and of litigation. As such, adoption of multi-faceted tactics including media highlight and advocacy strategies will have clear dividends.

2.2 Strategic Public Interest Litigation in Uganda, Justice Kenneth Kakuru

Key Highlights

Public Interest Litigations (PILs) are meant to enforce or protect rights enjoyed by the public or large parts of it. The matter must affect a significant number of people, and not just the individual litigant. PILs must raise matters of broad public concern or impacts on the disadvantaged or marginalized groups and must require to be addressed for the common good. Articles 50(2) and 137(2) of the Constitution of Uganda, and Section 72 of the National Environment Statute, provide that any person or organization may bring an action against the violation of another person’s or groups’ human rights. Issues that have hindered the progress of PIL in Uganda include the reluctance of the Courts to accept removal of locus standi, and


13 Republic of Uganda, National Environment Statute (Number 4 of 1995)
confusion between representative suits and PIL. PIL as a new strategy allows civil society to constructively engage the Judiciary in the process of societal change. In addition to research, consultancy, workshops and conferences, civil society organizations can now seek and obtain a judicial pronouncement on matters of public concern.

PILs are mainly public interest suits, and litigants in PILs do not have to prove their personal interests. PIL suits should be filed under constitutional law rather than under administrative law because the latter requires proof of locus. Strategic Public Interest Litigation (SPIL) entails focus and strategy, and litigants should look at the broader picture by focusing on cases that will have impact. The success of PILs depends very much on the choice of parties. Therefore, lawyers should consider very carefully their plaintiffs, defendants, courts, evidence and the burden of proof.

**Key Highlights of Session II plenary**

There are four key things that are important for the success of PIL: costs, strategy, sustainable development and enforcement. No lawyer would want to be slapped with costs especially when they are not prepared for it. Therefore, PIL lawyers should be cushioned against costs. Experiences from other jurisdictions can provide pointers as how the issue of costs can be approached. For instance in the United States, Federal statutes give the judge discretion to make the other party pay the costs when one wins a PIL suit. If one loses they don’t have to pay the cost. However, even in the US, this situation is under threat. There is need for the Chief Justice (CJ) to step in on the issue of costs for example by setting aside a PIL fund. Generally, the law on costs is on discretion of the Judge. However, it is important to have a clear definition of PIL as was done by the Supreme Court of India, to facilitate the judges’ decisions on costs. It is also important that PIL lawyers submit a prayer on costs before the Court, and that judges apply one of the rules on costs which is that of the award at the instance.

The other key issue is the strategy adopted by PIL lawyers in their public rights advocacy and litigation. First it is important to get the public to know what you are doing and wrap in their support. The press is very crucial in this aspect as a strategy to highlight PILs. However one needs to be careful with the media as they may over-politicize issues. Secondly before going to
court, Alternative Dispute Resolution (ADR) mechanisms should be considered so that litigations are only used as a last resort. When PIL is instituted, the choice of parties is very critical. For instance PIL lawyers should identify the softest but most effective targets. PIL lawyers should also consider laws on preventive issues and accountability. Cases should be thoroughly researched and lawyers well prepared. It is dangerous to rely on judicial activism alone because judges may only rely on good cases brought before them that are well researched and presented. PIL lawyers should however not fear losing because many a times PIL is about impact. If a person brings a case in good faith and loses the case, they should not be condemned as lost because the impact of the case may go a long way in protecting public interest. Finally, institutions should work together whenever common good dictates. For instance, Greenwatch Uganda works with NEMA-Uganda on many issues but can also bring PIL suits against them when the need arises.

There is need to seek a balance between economic development and environmental protection. In litigating for environment it is important to consider the imperatives of economic development. However, PIL lawyers should emphasize on environmental rights because sustainable development is about environmental conservation hence the Government should comply with its own laws which require sustainable development. You cannot protect one right by violating another. The third issue is that of enforcement. However successful a PIL case may be, it amounts to nothing without enforcement. This calls for good and constant follow-up for the cases after the rulings. Good governance and democratic principles, and political good will are also very important in this front.
3. SESSION III: LEGAL STRATEGIES IN MANAGING THE EXTRACTIVE INDUSTRY IN EAST AFRICA

3.1 Anatomy of the Mining Industry: What do lawyers need to know? Dr Rugemeleza Nshala

The World Bank (WB) published in 1992 the Strategy for African Mining\footnote{The World Bank, 1992. \textit{Strategy for African Mining}. Mining Unit, Industry and Energy division. World Bank Technical Paper Number 181. Africa Technical Department Series. http://www-wds.worldbank.org/servlet/WDSContentServer/WDSContentServer/WDSP/IB/1999/10/21/000178830_98101904142281/Rendered/PDF/multi_page.pdf. Internet accessed July 8, 2013.} which required African countries to liberalize the mining sector and create necessary incentives to foreign mining companies.\footnote{The wisdom of this was that the foreign mining companies have the required capital, technical and management know-how, and are integrated in the global minerals market.} The incentives included generous tax incentives, a stable fiscal regime, Mineral Development Agreements (MDAs) and mechanisms for international dispute resolution. The overall aim of the strategy was to assure foreign investors that a developing country Government will not change the rules of the game once investors put in their money and the investment starts bearing profit. It offered the investors investment guarantees by minimizing the investment risk over large periods of time. While there are very many mining companies, the industry is controlled by just a few of them, which are vertically and horizontally integrated. The companies are affiliated with one another yet presented as independent. They trade with each other and engage in transfer pricing. As such they do not trade at arm’s length. They often trade in ways that enable them to minimize or evade paying taxes in countries where they operate, and to transfer their profits to “tax havens”.

The WB made sure that 40 Sub-Saharan African countries adopted the Strategy. In many of the African countries\footnote{E.g. the Minerals and Mining Law of 1986 (Ghana), the Mines and Minerals Act of 1995 (Zambia) and the Mining Act of 1998 (Tanzania).}, enormous discretionary powers are vested in the Minister responsible for minerals. The Ministers have the power to give mining rights - mining licenses for exploration, exploitation, processing, and smelting. They also have power to waive or defer payment of royalties, and to negotiate and sign MDAs, among others. These powers often make them...
vulnerable to corruption. Ministers and mining officials grant generous incentives for personal gain, while government officials hold concessions and shares in mining companies. MDAs are awarded administratively and in secrecy without bidding or tendering, with severe punishment meted out on whistle-blowers. The MDAs guarantee fiscal stability; prevent expropriation and right to prompt, adequate and effective compensation; and limit the discretionary powers of the ministers; guarantee assignment right without payment of capital gains tax; recourse to international arbitration; and legal enclaves. Another challenge is that the mining industry in Africa is characterized by high production costs with miniscule revenue. This disparity has caused huge losses in gold trade in Ghana and in Tanzania, and Copper trade in Zambia. Moreover, the mining laws are not supported by strong and effective mining regulating institutions.

Often, the MDAs cover a wide range of issues some of which are not covered by the general laws of the country: taxation, immigration, exercise of ministerial discretions, settlement of disputes, waiver of sovereignty, exchange control, environmental matters infrastructure; barring change of law. This implies that once the MDA was signed it superseded the provisions of the law as all discretionary powers given by the Acts are restricted by the terms of the MDA. This resulted in difficulty to reconcile with the notion that an agreement or subsidiary legislation should not violate the provisions of the principal legislation. The fact that MDAs traverse a myriad of issues makes it clear that their powers should go beyond the purview of a single Minister.

As an example, in 2003 the Government of the Republic of Ghana entered into an MDA with Newmont Ghana Gold Limited (NGG), Rank Mining Company Limited (RMG) and Golden Ridge Resources Limited (GRR). The companies were all affiliates of Newmont Mining Corporation of Denver Colorado, United States of America. Save for some references to the Minerals and Mining Act\textsuperscript{17} and other laws the MDA is a law in itself. It relaxed the employment and immigration restrictions, and gave the companies power to determine the number of foreign employees they employ. In order to attract investors with the requisite capital, skill and

technology, and enhance the viability of the Mineral projects, Ghana made financial and other concessions. For instance, all the three companies are treated as one investor and are allowed to commingle their books of account. There is no ring-fencing meaning that profits from one mine are not eaten away by expenditures or losses in another mine, thus enabling the country to obtain some revenue from its non-renewable resources.

According to the MDA, interest means net cash flow of operations after the companies have recovered fully the amounts they advanced to finance the projects, set aside the reasonable working capital reserve, paid taxes and duties, paid operations costs, all other outstanding principal loans and management fees. These exceptions are not found in the principal legislation and the MDA literally repealed section 8(1) of the Minerals and Mining Act 1986. The government lost the right to acquire interest in the operations of these mining companies given the many years required for the mining companies to finish recovering their capital expenses and pay their loans. Although the MDA requires mining companies to conduct EIA, disputes are referred to the Center for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The Minerals and Mining Act, 1986 requires mining rights to be given to incorporated and unincorporated bodies in Ghana. However, Section 27.2 of the MDA circumvents this requirement by conferring the three companies and their affiliates United States’ nationality for the purposes of the arbitration before ICSID. This confers mining companies’ different treatment under the law where on the one hand they claim Ghanaian citizenship when there is no dispute and foreign nationality when there is.

Furthermore, in case the tribunal issues an award in favor of any of the companies or all of them then they shall be “exempt from any taxes and duties imposed by the Government.” This is generally contrary to the rule that all income is taxable which includes income derived from lawsuits, and that if the income were taxed in Ghana at the same US’s taxable rate it would not have been taxed. Lastly, the Government of Ghana waived all defenses available to it as regards the jurisdiction of ICSID. This was in line with the decision of the Ghanaian government to sign and ratify the ICSID Convention and agree to be sued by nationals of other countries before the ICSID Tribunal. According to Article 25(1) of the ICSID Convention once the parties accede to
the jurisdiction of ICSID they are prohibited from withdrawing that consent unilaterally. This means that the state waived its sovereign immunity. Ghana did not insist on the exhaustion of local remedies, an option that is recognized by Article 26 of the ICSID Convention.

In summary, there should be fundamental philosophical shift to embrace the fact that minerals belong to the countries where they occur and they must be primary beneficiaries, not the foreign mining or oil corporations. On their part, the countries should establish strong oil and mining institutions which are able to oversee the industry along the value chain, and strong laws that criminalize transfer pricing and tax avoidance mechanisms. African countries must be major shareholders in oil exploration, exploitation, processing and selling and should learn and internalize the lessons of Arab and Latin American Countries. They should take advantage of obsolescing bargain, and cancel all prior MDAs. There should be enacted new laws that enable countries to effectively regulate the industry, form joint ventures and promote small-scale and medium scale mining in the countries by citizens and promote value addition activities in the countries.

3.2 Organizing Litigation and Engagement for the Public Interest: Raising an Army of Public Interest Lawyers, Gertrude Angote

In order for PIL to meet its objective of influencing policy, creating legal reforms and creating jurisprudence, practitioners should have skills and knowledge to successfully litigate cases in domestic, regional and international bodies. They should employ a hands-on, holistic approach that will empower lawyers to shape the determinants of each case, rather than merely inherit a set of facts. Whereas litigation should be a last resort, PIL litigators need to know that strategic litigation is one of the key strategies to achieve social change. Other requirements are publicity campaigns, community mobilisation, highlighting issues through the media, and engagements with the political arms of government. Other needs include case selection, client care, forum choice, and advocacy strategies to raise awareness on how to implement a successful judgment. The report of November, 2009 by The Atlantic Philanthropies lay down four strategies to be used in combination towards achievement of social change. They are public information campaigns that inform ordinary people of their rights, advice and assistance in order to enable people to claim their rights, social mobilization and advocacy, to assert rights both inside and outside the
courts and PIL to enable poor and/or marginalized groups to achieve impact and success that would not otherwise be available to them.

For PIL to succeed, the approach and strategy of litigation must be right from the pre-litigation stage up to the court room. The litigation objective must be clear. Litigators should study the merits of the case. The case should have reasonable prospects of success and potentially impact on a wider class of persons. The problem should be defined, the legal issues narrowed down, and the plaintiffs and correct defendants identified. PIL lawyers should map out collaborators – Partner organisations and other stakeholders.

For instance, Kituo cha Sheria has in the past partnered with the Kenya National Human Rights Commission in some cases including a successful petition on behalf of a minority clan in Garissa (Bula Fot), *Musa Mohammed Dagane and 25 others v the Attorney General Petition No.56 of 2009, Embu High Court*. In this case, the Commission was *Amicus Curiae* and it carried out investigations and did a report to support the case. Kituo cha Sheria has also partnered with the UN Special Rapporteur on the Right to Adequate Housing, as an Interested Party and Prof. Yash Pal Ghai, as a petitioner in the case, *Satrose Ayuma and others v The Attorney General and others Petition No.65 of 2010 High Court at Nairobi*. Kituo also partnered with experts, such as Mr. Davinder Lamba, a long serving expert on resettlement and assessment of damages following evictions and had the Executive Director of Kituo cha Sheria as a co-petitioner. Kituo also holds monthly public interest caucuses with Lawyers from the Law Society of Kenya (LSK).

Many lawyers should be mobilized to file PIL cases, and to attend court on such matters. For example Kituo cha Sheria uses Volunteer/Senior Advocates to be lead counsel. There is also need to incentivise lawyers to get actively involved in PIL cases e.g. through LSK profiling. In this regard, Kituo cha Sheria holds a Volunteer Advocate of the Year Award (VOYA) to recognise its *pro bono* lawyers. It also sponsors, in partnership with NITA and the Kenya School of Law, its Volunteer Advocates to attend Trial Advocacy Trainings to sharpen their litigation skills. Other strategies include mapping out the field by getting to know who is doing what, partner organisations and how to partner in achieving the objectives. It is also important to understand what the potential solutions to the issue are, whether it would be litigation, advocacy,
engaging with Parliament or the Executive arms of government. Also important is to engage in Advocacy initiatives such as meeting the concerned Ministries or government departments or Parliamentary Committees relevant to the issue before filing cases.

For PIL cases to succeed, it is also important to humanise the problem e.g. by engaging the affected community through participation, preparation and education. It is also important to foresee and be prepared for any backlash from the community/media and the public. For instance, in the Dandora dumpsite case in Kenya, despite Kituo cha Sheria holding several meetings, caucuses with lawyers in regard to filing the case, the communities living around the Dandora dumpsite were not completely willing to support the case. Kituo resorted to advocacy. Thus issues of undertakings, clients’ fees, confidentiality, correspondence, holding meetings with the clients and involving them in every step of the case are important in strategic PILs.

There are seven essential factors to ensuring that PIL succeeds and achieves maximum social change. These are inter alia, proper organization of clients by the Lawyer; overall long-term strategy through a series of cases brought on different but related issues over a substantial period; and co-ordination and information sharing between multiple organizations with similar aims. Others are proper timing e.g. when the climate is right and until the relevant evidence is in place; detailed research of the case; ensuring that the case is brought under the appropriate law/right and is correctly pitched to the court; and proper follow-up and enforcement after the litigation in order to ensure practical benefits for those not directly involved in the litigation. Key to organising litigation is to know what remedies you are seeking/ with prayers clearly drafted. Litigators should have multiple objectives, for the specific clients or focus on a remedy that would resolve a systemic problem. They should seek a declaration e.g. recognising violation, which is the less intrusive and vindicates the victim, though it has the least impact as it is merely a declaration. Remedies and prayers should include for example pecuniary damages, adequate compensation, restitution or reparation, amendments to legislation, guarantee of non-repetition etc.

For judgements to translate to justice for victims and to deal with systemic violations, implementation should be given prominence. Activities that can support implementation should
be identified e.g. policy change/ legal reforms or advocacy with the relevant institutions or government departments. Others are the use of reporting mechanisms under the African Charter on Human and People’s Rights or the Universal Periodic Reviews, grassroots campaigns/ mobilising communities and use of media to highlight the decision and in the end pressurise the state to implement the judgement.

Challenges to PILs include the slow pace of the judicial process; legal personnel requirements; complexity of matters which are also time consuming; and funding requirements and the risks of being slapped with costs. Others are lack of “Judicial Activism”, challenges in implementation, lack of comprehensive legislation, clients’ cooperation and costs involved in litigation. Despite these challenges, there are opportunities in PIL. These include the Constitution which now recognises international law. Article 2(5) and (6) of the Constitution of Kenya recognises applicability of international law and treaties that Kenya has ratified. The Constitution has broadened protection of rights. Article 22 and 258 of the Constitution allows any person to present a petition in court regardless of not having been a victim of a violation.

**Key Highlights from Session III plenary**

Three issues came out strongly during the plenary: land acquisition and compensation, rights of communities, and the nature of MDA signed in Kenya. Participants sought clarification on the issue of compensation in relation to land on which mining will take place. In particular, there were questions on how community land will be valued and compensated given the fact that it is invariably dry land and pasture land (with grass) at different times. Concerns were also raised on the possibility of communities investing in the mining companies. Still on the right of communities, some participants wanted to know the overall objective of Kituo cha Sheria in the Dandora dump site case, and the role of Kenya’s newly created Environment and Land Court in PIL, clarified. On MDAs, participants wanted to know if it’s possible to know what contract the Government signed with Tullow Oil on oil exploration and extraction in Turkana. They also wanted to know what the contract meant and whether communities are doomed or whether the situation can be salvaged. In fact some participants wondered whether going to the streets should be considered.
Communities should be compensated as per legislations and many things should be put into consideration when the Government takes over community land over mining. Communities should value their land highly when Government wants to acquire it for mining. Natural resources/mining agreements are renegotiated with emerging concerns. Lawyers should not strictly adhere to the sanctity of contracts in the past mining contracts if they don’t take into consideration the interests of local communities. On communities investing in the mining companies, yes communities have right but they should proactively demand it. Countries can demand investment funds from the mining companies in their countries. Lawyers and other PIL players should understand the dynamics of valuation e.g. the value the community attaches to the land, e.g. how many cattle use the land? Communities should take proactive role in valuing land highly. Is it time for revolution against mining agreements? May be yes. However, renegotiation of the contracts should be considered first. The time when new governments come to power may be good time to ask for renegotiation. Don’t believe in sanctity of contracts. The overall objective in Dandora dumpsite case is to remove it from there and this objective stands. Unfortunately, interference by politicians has hindered the process.

4. SESSION IV: SECURING THE PUBLIC INTEREST IN LAND AND ENVIRONMENTAL MATTERS IN EAST AFRICA: ISSUES FOR CSOs AND LAWYERS

4.1 Gender Imperatives in Public Interest Litigation in East Africa, Caroline Khasoa

Majority of East African countries are currently undergoing Constitutional and Legislative changes. This presents a great opportunity of mainstreaming gender representation at the Constitution/legislation making stage in all national issues dealing with land, environment and natural resources. For a country like Kenya that has already undergone Constitutional change, constitutional obligations should be benchmarked on international best practices in legislation and policy. There are a number of avenues through which this can be done.

The National Land Commission Act requires the National Land Commission (NLC) to observe adequate and quality gender and youth representation in its land allocation from the National level all the way to the village level. As such, any land policy that tends to be discriminative or
ignore gender should be rendered illegal. The Kenyan Constitution is very clear on gender equity and inclusivity. Other east African countries can borrow from this input in the legislation and policy and do serious public interest advocacy and litigation on it. Another avenue for PIL in east Africa is for lawyers to take PILs to the grassroots where majority of members of communities who cannot access justice lives. It is important to have local communities to own and be part of the litigation for their environment.

PIL should also target legal education including public awareness campaigns to ensure local community interests as women, men and youth are catered for in environmental investment activities. For instance, where natural resources like minerals are found like has happened recently in East Africa including the oil discovery in Turkana by Tullow Oil, PIL lawyers should demand for: investment proposals for evaluation; investment agreements; and Environmental Impact Assessment (EIA) reports. These should be studied and benchmarked on relevant laws, and the community educated on the issues, including gender representation requirements. In case of any breach then PIL lawyers have a duty to intervene including through court application.

The fifth avenue for PIL with regard to gender is in land administration and security of title. In any translocation or transfer of land, women bear the greatest brunt. Women also provide up to 80% of labour in domestic work production. Yet the income and resources are held by the male heads. While this is not wrong, it is imperative that women get sufficient returns for the labour they put in the farms. Indeed, the realization of this made the drafters of the Kenyan Constitution 2010 to recognize spousal overriding interest in property. This is also captured in Kenya’s Land Registration Act and the National Land commission Act. This is a key area to litigate not only in Kenya but also in other East African countries to ensure that women voice/presence in land transactions is no longer a luxury but a statutory requirement.

The sixth avenue for PIL is in security, resources and the environment. There is need to avoid cross border and inter-community fights over pasture, water, cattle etc. The government should be held accountable to have clear guidelines on community land administration to improve

---

18 E.g., Articles 27(4), 40(2)b, and 60(1)f of the Constitution of Kenya 2010
security as well as land protection. The communities should also be involved in collection and sharing of revenue e.g. from national parks, reserves, mines etc. this is an area that should attract PIL lawyers. The other avenue is integrity and accountability of licensing and monitoring institutions like the National Environmental Management Authority (NEMA) in Kenya. PIL lawyers should put these institutions on toes to ensure that all licenses granted amount to environmental safety requirements. The eighth space for gender enforcement is for PIL lawyers to ensure gender equity in procurements and appointments, in order to ensure sustainable use of the environment. While substantial progress has been made in Kenya in this front, the key challenge is trophy appointments of people who do not understand the issues hence end up failing to address them leading to poor enforcement. Thus the push for inclusivity should also pay attention to the caliber of knowledge, interest, proximity, commitment and relevance to ensure substantive representation and intervention.

The other avenue that PIL lawyers should pursue with regard to gender involvement particularly in Kenya is the newly created County Governments. These governments and perhaps the District governments in other East African countries should not only ensure sustainable use of natural resources but also adequate gender and youth representation in the management of the resources. Finally, PIL lawyers should also watch out for population growth with regard to the environment. Male and female alike must all take up their responsibilities in ensuring sustainable population growth. All the PIL lawyers in East Africa and beyond should engage at grass root-district/County to make a difference in our generation.

4.2 Harvest Aplenty: Social Justice in the Land and Environment Sector, Patrick Ochieng

A number of politico-economic issues have taken place in the extractive industry in east Africa in the recent past. There is increasing global demand for minerals, oil and natural gas especially from China, Brazil and India. There have also been technological changes that allow the extraction of such dispersed ores as well as of hard to access hydrocarbons. Policy and institutional changes have provided favourable tax, royalty and regulatory environments for investors. In particular, legislations have been passed that are typically characterized as “neoliberal” that favors investment (and investors) in the sector through creating favorable tax
and royalty regimes; offering tax and royalty holidays, through issuing special decrees allowing foreign companies to operate close to national borders; and promotion of self-regulation by the industry. For instance, an attempt to impose such “neoliberal” law by the President of Peru in 2008 resulted in a conflict between the government and indigenous people in which 33 people were killed.

A lot of uncertainties mark the intersection between the rapid expansions of extractives with local economies. For instance, maps of mineral /hydrocarbon concessions are quite different from (and more extensive than) maps of actual operations. While activists and researchers use concession maps in their public information and advocacy work, the extractive industries protest that the maps bear no resemblance to areas ultimately affected by mines, wells /pipelines.

This lays bare the secrecy with which the concessions were given. Residents only come to know that a concession has been given on their land when geologists begin exploring, companies come to initiate negotiations over access to the surface rights, or when land markets begin to operate in strange ways. Uncertainty is even greater when exploration finds minerals beneath the communities as their sense of the future changes forever, and they incur huge losses. Communities lose livelihood assets such as land, water, forest, pasture and even ways of living. There is also loss of ability to control space, as the main actor in territorial governance shifts from the community or even municipality to the extractive company. Visible indications of this loss of control are fences, armed guards or even road signs with company logos, as well as the everyday visibility of others (workers, professionals, drivers) living and working in former community spaces. Financial compensation is often less resilient than physical assets, leaving rural households decapitalized.

Expansion of the extractives also creates uneven opportunities. For instance, while the discourse around extractives emphasizes employment benefits, these are limited as capital is increasingly substituted for labor. Besides, fixed employment opportunities are concentrated in skilled sectors and generally employ workers who are not local and who sometimes live in camps separate from local centres, triggering dissatisfaction and failure to excite local economies. Furthermore, if skilled labor resides locally its purchasing power leads to price inflations, particularly in the
property market, as well as an increasing segmentation among local consumers. Moreover, the employment opportunities, which are concentrated in the construction phase, tend to privilege men over women and typically younger men over older men. Another challenge is that few jobs become full time. A second set of opportunities derive from Corporate Social Responsibility (CSR) and community development programs and funds which sometimes end up being used to placate movement leaders or have chiefs push for expansion.

In addition, opportunities provided to local service providers often foster new forms of differentiation and relationships of power in the local and regional economy, as well as constant maneuvering to win sub-contracts with the extractive industry company. The most significant opportunity created by the extractive economy derives from the tax and royalties paid by companies. However, the amount of such payments and how they are distributed (geographically and socially) hinges on national tax and royalty rates as well as company-specific agreements. These lead to significant inequalities if central government takes it all or distribute it in a skewed manner.

What emerges from the complexes of uncertainty, loss and opportunity are the inevitably unequal and unequalizing nature of their effects. There are inequalities between territories deriving from both geological differences and fiscal arrangements that produce geographic unevenness in redistribution. There are also inequalities within territories in which the new inequalities of power that accompany the arrival of extractive industry lead to new inequalities in exposure to uncertainty and vulnerability, access to resources and labor markets among others. The range of motivations, anxieties, grievances and incentives create conditions for different forms of conflict. The combination suggests that the juxtaposition of “greed or grievance” in explanations of conflicts around extraction is an unhelpful simplification. Water is omnipresent in the conflicts because many mining concessions are located in headwaters. Other community protests are motivated by annoyance at actual dispossession, low payments for land, drying up or contamination of water courses and loss of territorial autonomy and authority of local elite.

Other sets of conflicts are led by mine workers, or populations hoping for employment while others appear to be orchestrated by local and regional entrepreneurs demanding contracts (or
protesting the loss of a contract), or even communities demanding compensation of some sort to force industry hands. Some mobilizations are facilitated by political authorities as a way of enhancing their electoral prospects, and in others of increasing the revenue that these authorities derive from extraction.

There are a number of ways that can be used to address this complex relationship between extraction and local development. There should be a multiplier effect of an extractive industry’s presence in a territory (such as demand for labour, services and products). Extractive companies can implement community and socio-economic development initiatives as part of their broader programmes of corporate social responsibility. Tax and royalty incomes should target the regions in which extraction occur. Extraction should positively influence institutional arrangements, incentives, expectations and perceptions of risk and opportunity.

Communities often negotiate extraction via direct action, violence, roundtables, direct intervention of central government authorities, legal defense, policy advocacy, cultivation of ties with parliamentarians and advocacy in the public domain, among others. Direct intervention by high level central government teams seems particularly prone to fail, and furthermore encourages protestors in other conflicts to refuse to negotiate with anyone but a Minister or Prime Minister. Direct action does occasionally lead to withdrawal of extractive industry in the short/medium term, but does not lead to regulatory change by itself and also runs the risk of accentuating repression and violence. Legal defense is clearly a source of concern for the extractive sector – as witnessed by the direct pressure born by the Canadian government on Canadian Lutheran World Relief to withdraw all support to legal defense NGOs. Regrettably, Public Interest Litigation (PIL) in this region has short legs because unlike the Rio Blanco experience in Peru where actors Fedepaz (for legal advocacy), Cooperación (for technical and informational support), rondas campesinas in the region for direct action, the pastoral social of the Church and members of the Peruvian Congress complemented each other hugely.

The civil society has largely been caught by surprise by the rapid increase in investment in the sector, and lacks the informational and analytical instruments to respond quickly. If the civil society is going to be playing catch-up, then the extractive enterprises will be poorly regulated by
society, and society will turn to denunciation and conflict as a mode of regulation in the absence of adequate information. There is need for anticipatory conflict monitoring, water monitoring, fiscal monitoring information to engage effectively.

**Highlights of the plenary**

Women and other marginalized groups suffer the biggest brunt of the adverse impacts of the extractive sector in East Africa. PIELs should also look for ways of empowering these groups other than delivering justice. Lawyers should always consider the plight of their clients mostly women and other less privileged when in Court, and think of them as the most important people in the scenario. The social movement in the region needs to have a proper direction of what it needs to achieve. Kenya’s Constitution and even the Mining Bill (Section 17(3)) have adequate protection of gender rights in relation to land and the environment. The challenge is only their full implementation. There is however need for massive training on gender including on the rights of both men and women. This should include use of local radio and other media towards ensuring the community understands their fundamental rights. Women in East Africa should also come in front on PIL suits, and even be the faces of PIL suits.

**4.3 Raising funds to advocate on behalf of communities impacted by the extractive industries, Ellen Sprenger**

**Key highlights from presentation and plenary**

Raising money is a challenge for several NGOs and civil societies, as confirmed by a number of them who attended the workshop. This can be attributed to a number of reasons. Many NGOs do not know how to write funding proposals in a way that captures the attention of the donor. Such difficulties relate for example to raising money to work on behalf of communities, by lawyers in private practice, and by starter organizations. There is also the issue of raising funds by profit organizations to work for the community. It is often difficult for many NGOs to know what donors think. Such knowledge would help the NGOs to tell their story in a way that is easy for the donors to understand. In short, many NGOs do not know how to ask for what they need even when talking to donors.
On the other hand, some donors have been accused of feeling like demi gods as they sneer and intimidate prospective grantees. This has made some organizations to equate fundraising to begging, especially when coupled with matters of integrity on the part of the grantees. Some also argue that there is donor pretense and that donor funds are part of a conspiracy to maintain the status quo in the communities that they purport to help. The story is complicated by the fact that majority of the donor organizations come from Western countries and may not be in touch with the real situations on the ground in the countries where the funding is needed.

Surmounting these challenges should start from the understanding that sustainable fund raising is a question of how to get funds, how to budgeting for the funds as well as preparing good progress reports for donor evaluation. Besides, organizations must think about having financial reserves, besides having a proper and clear objective and mission. NGOs should think of their work as a bicycle where the front wheel is the strategic plan and mission. The back wheel is like a slow punctured tire that must not be forgotten. The back wheel has to be pushed to advance the progress of the NGO. It is important to draw up a clear and detailed budget including annual budgets. NGOs should be clear what they want funding for because the nature of the donor’s job makes them difficult to work with. Exchange of ideas and information between the donor and grantee are important in order to know what either party think. It is however of utmost importance to note that donors want to see impacts in exchange for any money offered.

A typical way of surmounting the issue of securing donor funds for community good by private (or for profit) organizations is by such organizations aligning themselves with NGOs or forming a corporate social responsibility arm of their operations. On the issue of donors coming from outside Africa, the situation has started to change as there are African organizations like the Mo Foundation that supports organizations in the African continent. However, there is need for East Africans to build organizations to fund local NGOs. Donors should also think about alternative ways of reaching the communities other than by waiting for proposals. There is need to change tact.
4.4 Networking - Legal and scientific resources available to lawyers and CSOs; and mentoring young lawyers, Jennifer Gleason

Key highlights from presentation and plenary

A key part of ELAW’s work is to help communities speak out for a clean and healthy environment. Networks and partnerships are very useful tools as part of efforts to achieve this, and to promote sustainable use of natural resources. ELAW is focused on strengthening Civil Society Organizations (CSOs) through partnerships with lawyers and Bar Associations worldwide. Some of the key roles of ELAW are networking; supporting environment related cases e.g. through looking out for precedence; supporting law reform; international financing; background check of organizations; and defending CSO’s when they get into trouble for pursuing a good course. ELAW partners with Ghana on gold mining concession agreements review. There is also room for working with other countries including those in East Africa. ELAW also has scientists who can share with PIL stakeholders in East Africa the scientific aspects of PIL such as reading and interpreting scientific reports. Perhaps there is need to recruit or involve more environmental scientists in PIL work. PIL lawyers should be strategic and must seek better ways of fundraising and attracting donor funds towards success of their objectives.

Environmental Impact Assessment (EIA) is a very useful tool in promoting sustainable utilization of natural resources. ELAW has participated in analyzing EIA laws in several countries where it works. The responsibility of doing and of supervising EIAs varies from country to country, and majority of countries have a list of approved contractors for EIAs. But importantly, it is not so much about who does the EIA but rather the laws and standards for EIA. For instance, Kenyan laws do not require hydrological surveys as part of EIAs by oil and gas companies. There is need to reexamine EIA laws in order to include that. Sustainable environmental management also calls for proper and effective coordination between national and sub-national governments. This is particularly important in Kenya which only recently adopted the devolved structure of governance involving the National and County governments. A typical way of achieving this is by having the national government to regulate the sector through laws and policies, and leaving the implementation to County governments. The inter-county issues can be dealt with by the national government as happens in the United States.
5. SESSION V: GLOBALIZATION AND GEOPOLITICS OF THE OIL AND EXTRACTIVE SECTOR

5.1 Globalization and geopolitics of the oil and extractive sector: the case of oil and gas in Turkana, Dr Ekuru Aukot

Africa and in particular East Africa is arguably the biggest and most promising economic frontier/theatre for competition for the exploitation of natural resources in the world today. The competition is not just by Global Corporations but also by their governments who accompany them, fueling fears of a rebirth of imperialism. The competition pits East Africa’s traditional political partners in Europe and North America v. new partners in China and other Eastern countries. These corporations come with big money which if not watched may just turn into killer money. This is perhaps a question that lawyers should converse. The competition is complicated by global trends which indicate change in relationships of these countries with Africa. Whereas the West used to moralize Africa, today there is a willing partner in China who does not really care about internal processes.

Being a new phenomenon in Kenya, hydrocarbon exploration requires an integrated approach from a policy, legal, economic and social perspectives. Unfortunately, it finds weak institutions, laws, policies, and policy makers. The pleasant surprise announcement of oil discovery in Block 10BB (popularly known as Ngamia 1) came when prospecting license/land had long been laundered. What’s interesting is that Turkana and the area formerly known as Northern Frontier District (NFD) has been a relegated people/region from the colonial through post colonial Kenya. In 1920 a colonial administrator said that Turkana is not of any economic value and should be transferred elsewhere. Only now with the discovery of oil, everybody loves Turkana and yes, it’s a high potential area.

In order to protect local communities, there should be a clear framework for engagements with clear terms and conditions predicated upon certain principles. Currently the process of tendering is shrouded in secrecy and key stakeholders especially in relation to land have been relegated. This is partly fueled by a fallacy that these communities have no capacity to enter into contracts.
and that oil is a national resource that does not belong to the local people. In addition, the parties to the agreements and their mandates should be very clear. If unchecked, there are so many IDPs in the making given that the prospecting covers over 80% of the land mass in Turkana County.

Another challenge of oil exploration in Turkana is disregard for the constitution. Article 69 of the Constitution provides for sustainable exploitation, utilization, management and conservation of the environment and natural resources. It also envisages equitable sharing of accruing benefits, public participation in the management, protection and conservation of the environment and utilization of the environment and natural resources for the benefit of all people of Kenya. There is also continued flouting of procedure and non-disclosure against the principles of land management spelt out in Chapter V and Article 71 of the Constitution. Moreover, the Turkana people still largely practice a nomadic/pastoralist way of life and the economic and social way of life and ecosystems will be impacted negatively by exploration/production of oil and gas. Constitutional rights like use of migratory routes and interests need to be protected and preserved. Learning from other countries, there should be desire and determination to ensure that oil and gas exploitation does not bring conflict of any kind. In order to achieve this, there should be clearly defined principles of engagement with members of communities in counties before exploration of resources starts. These include transparency and accountability; mutual respect, trust and good faith; regular consultations; and structured dialogue.

A good structure of engagement could take the form of a central body to coordinate other committees including a Turkana national Liaison Committee, County committee and District Committee. A tripartite committee should then be established that comprises the central coordination committee, the National Government and Tullow Oil. Also as a way forward and in the context of Article 10 and 35 of the Constitution, there should be full disclosure and information sharing on all processes, agreements and negotiations that preceded any grant. In addition, deriving from the meaning of the Constitution generally and in particular Chapter V, all procedural and substantive issues relating to access, procession and use of land for exploration and production should be addressed. The constitutional rights of the Turkana people should also be respected in all the transactions.
The ministry should endeavor to adopt best practices in the managing of the extractive sector in relation to communities. Parties should partner, collaborate and work closely with CSOs and other interest groups within Turkana County to develop and roll out an elaborate civic education programme for the communities. Corporate Social Responsibility (CSR) should be approached very cautiously as they are for the better part, traps that exploit vulnerabilities of the poor. They should be based on local needs and priorities, and equitable benefit sharing across the entire Turkana County. A fund could also be established in respect of CSR. The oil companies should engage in ethical and sustainable practice. This could be done by observing legislation, policies and regulations in the places where they were registered including those in the UK, USA, European Union, European Commission and OECD. The terms and conditions of Mining Agreements should not be final instead should be subject to review from time to time in order to accommodate emerging issues and concerns.

The Mining agreements should be governed and construed within the Kenyan law and the companies should fully submit to the jurisdiction of Kenyan courts in case of disputes. Any arbitration should be predicated on signing of agreements that outlines the responsibilities of all stakeholders. Public Interest Litigation (PIL) is a useful tool for keeping the government and the oil companies in check. There is also need to strengthen the legal framework and to avoid remote lawyering in which contracts are drawn by people who hardly understand the issues. East African countries could also join the Extractive Industries transparency initiative (EITI).

Comments by Ikal Angelei

Poverty is a major setback for communities in Turkana, as it makes them vulnerable to maneuvers by exploration firms, which take advantage of the poverty situation to dish out freebies like bottled water. Such freebies sometimes make the communities to turn against CSOs who fight for community rights. Another challenge relates to how land is valued. The value of land including the surface and sub surface value should be brought into the discourse on land and oil exploration, as they are not covered in ongoing discussions. There is also the issue of migratory roots for pastoral communities. The oil exploration and extraction have started and will continue to affect communities’ access to water and pasture. These challenges call for need to reexamine and review the terms of reference of the mining agreements. It is also important to
review the framework for Environmental Impact Assessment (EIA) as the existing framework is weak. In particular a Strategic Environmental Assessment (SEA) should be done for the oil mining process in Turkana. Lastly a clear framework for engagement should include the penalties to be imposed on companies which violate environmental and human rights.

5.2 Country delegates reports on Strategic Issues for PIEL

In Tanzania, there is a body called Land Compensation Fund which administers land compensation for people moved out of their land to give way to national development projects. Challenges in Tanzania include the President through the responsible Minister, having too much power over access, possession and use of land. Such powers are prone to abuse and delegates thought it is not a good thing for the country’s laws. There is also the problem of the government withholding critical information relating to land such as those on Environmental impact assessments (EIAs).

Kenyan delegates raised a number of strategic issues for PIEL in their country. There is a weak framework for implementing court orders, judgments and rulings which often impedes the success of PIEL. Another issue is the secrecy on the part of the government and mining companies, surrounding the mining agreements. Insufficient engagement of communities in mining and exploration agreements including in protected areas also came up. Kenyan delegates also raised the issue of legal and institutional weaknesses in the country. The Mining Laws in Kenya are outdated and needs review or enactment of fresh laws. For instance, while the Minister can be faulted for the Mining Agreements in Turkana, most of his actions are in accordance with the Petroleum Exploration Act of 1986. The newly created institutions relating to land and environment are grappling with a number of challenges. The National Land Commission (NLC) has issues of capacity including resources. The Environment and Land Court was formed eight months ago. But the challenge is that any matter that has the word land including succession is now taken to that court. Over 90% of matters in the court are land matters meaning the court attracts very few environment related cases. Kenya also lacks a detailed master plan of where mining and exploration is going on. Lastly, despite many challenges facing community land, the community land law has not been enacted.
From Uganda, issues raised included existence of oil explorations in areas of ecological importance, and the attendant issues of relocation of communities and of compensation. Communal land is also an issue in Uganda as people do not have title deeds yet some ‘big shots’ bought the land and acquired title deeds. In addition, the Uganda Government makes it hard for Civil Society Organizations (CSOs) to visit communities in exploration areas. In a recent public address, the president said that CSOs are against development.

5.3 The role of the bars in Public Interest Environmental Litigation, Apollo Mboya

Environmental degradation can be attributed to social factors such as population growth, urbanization and poverty. There are also economic factors which include non-existent or poorly functioning markets for environmental goods and services; market distortions created by price controls and subsidies; and intensive resource and energy use in the manufacturing sector. Institutional factors such as lack of awareness and infrastructure may also make implementation of most of the laws relating to environment, extremely difficult. Kenya’s constitution provides the framework for sustainable management of the environment. There is also a vast array of laws that govern land tenure and use. The legislative framework on land also includes relevant sessional papers on environmental matters, like Sessional Paper No. 6 of 1999 which elucidates on the connection between environment and development, highlighting the key environmental challenges.

There are two types of Environmental Impact Assessment (EIA) models - the statutory model which makes the assessment of impact compulsory under an enacted law or a delegated legislation, and the administrative model under which an administration exercises its discretion.

---

19 Article 10- Sustainable development (National Values), Article 22 - Fundamental Rights, Article 42- Right to clean & healthy environment, Article 69 – Obligation of State, and Article 70-Enforcement of environmental rights.


to find out whether an impact study is necessary. Relaxation of the locus standi rules offers lawyers an avenue to promote Public Interest Litigation (PIL) which is a characteristic feature of the implementation of various environment laws. In addition, the increased environmental awareness and capacity building of lawyers offers the opportunity to further ground environmental law in our jurisdiction. As such, the Bar should build capacity of its members to monitor proper conduction and implementation of EIAs and projects. It should adopt “litigation-driven implementation” of environmental administration, and spearhead the isolation of specific environmental law principles through interpretation of Statutes and the Constitution.

Where there are issues, the Bar must step in to coordinate PIL when it is required, including investing in the research work for PIL, designing programs for advocacy and drawing strategies to handle the politics that come with PIL. The Bar is also critical in guiding the Judicial Officers to mainstream environmental conservation within the judicial decisions. Policy Statements of the government, which otherwise are not enforceable in Courts, has to be used as aids by the Lawyers and Judges for interpreting environmental statutes and for spelling out obligations of the Government. There are a number of principles of environmental management that can be evolved by Courts with the assistance of lawyers. They include the Public Trust Doctrine\textsuperscript{22}, the Precautionary Principle, Polluter Pays Principle\textsuperscript{23}, Absolute Liability Principle, and the principle of Sustainable Development.

**Key highlights of Session V plenary**

The questions and comments during plenary covered issues of gaining and sustaining community support in fighting for their fundamental rights. Of particular concern was the role of East Africa Law Society on PILs relating to cross border projects. Questions were also raised on whether it is

\textsuperscript{22} The public trust doctrine is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the public’s reasonable use. For instance, in cases of use of waters of river - that State and its instrumentalities as trustees have a duty to protect and preserve natural resources. In cases of city development, the principle may require preservation of areas of historical and national importance.

\textsuperscript{23} The object of this principle is to make the polluter liable for the compensation to the victims as also for the cost of restoring of environmental degradation. The principle can be litigated for a declaration as part of environmental law of the country.
still possible to reverse the irregularities in mining contracts, the role of PIL in such a process, and how to deal with corruption. There were also issues of how to protect PIL lawyers against the mining companies and their big money. Participants also sought clarification on any possible effect of mining on for example Rift Valley’s tectonic plates, and on biodiversity. Issues of legal and policy framework governing the extractive sector also came into focus including the need to review and strengthen EIA laws. The challenges bedeviling the extractive sector can be attributed in part to the fact that serious mining is a relatively new phenomenon in Kenya. Insurance also came out as a major issue.

Moving away from the culture of secrecy that currently characterizes mining in Kenya, to a more open policy of consultation and information sharing can have clear dividends. Despite the poverty situation, there is need for communities to consider long term decisions regarding the mining situation in Turkana. Indeed, the extractive industry should be seen as an avenue for long term development of the wider society. Community investment funds might be a good way of addressing the issue of poverty. Of particular relevance to this workshop, the existing irregularities in the oil sector particularly in Turkana present a good opportunity for PIL. For instance, a petition can be filed at the High Court to rule on how individuals acquired community land in Turkana. Even more important is the need for CSOs to establish stronger glue in order to work together and ensure sustainable practice in the extractive sector. It is time to work as an “army of lawyers”.

In Kenya, EMCA and the Constitution have tremendously relaxed the rules on locus. The Constitution, at Article 22, also provides for procedure of going to Court under fundamental human rights. In fact people can now move to court just with a letter. However PIL lawyers must prepare well and arm themselves with proper information and data. This will avoid the current scenario where there is an avalanche of PIL cases in court some of which are not well researched. EALS has done well on PILs and runs programmes in partner states on various issues. There is need for consumer rights groups and lawyers should have strong advocacy programmes to protect community and environmental rights.
6. AGENDA FOR ACTION AND WAY FORWARD

A number of actions towards improving and popularizing Public Interest Litigations (PILs) and using them to protect community and environmental rights were suggested. There is need to build an army of PIL lawyers and other public interest groups, and to continuously recruit more members into the army. In this regard, young lawyers should continue to be mentored and trained with effective litigation skills. For instance, ELAW has a fellowship programme that trains young lawyers in the United States. Such a model should be pursued with the help of ELAW to train young lawyers in East Africa. ELAW will maintain e-mail communications with young lawyers in attendance with a view to continue the conversation and share information on any future opportunities for partnership, mentorship or training. Participating organizations need to organize environmental law fora in law schools, and to invite and train interns in their organizations.

There is also need for unity among environmental organizations in the region to bring on board their different expertise. Unity should also be nurtured among all public interest groups including non lawyers. In particular, lawyers should seek the input of professionals and scholars with interests in the environment such as environmental economists in their advocacy, research and litigation. This will strengthen their course as well as promote evidence based advocacy and PIL.

There is need to advocate for the review or enactment of new laws relating to land and the extractive sector in order to protect the environment from degradation and communities from exploitation. The laws should also cover the management of cross border resources and projects as well as resolution of cross border disputes. There is also need to push for the reopening and interrogation of existing Mining Agreements with a view to reviewing or even cancelling them in cases where they violate community or environmental rights. The laws should also cover the issue of costs including cushioning PIL lawyers. PIL lawyers and groups also need to advocate for strong institutions in the region in relation to environment and land. The participants, particularly through their respective bar associations should push for harmonization of law syllabuses in the region’s universities in view of the new realities of cross border practice.
PIL lawyers and other Civil Society Organizations (CSOs) in the region need to adopt a tactful and proactive approach in their work. They should go out to the communities to look for cases rather than waiting for cases to come to them. They also need to invest in thorough research before taking cases to court. PIL groups in the region need to put in place a mechanism of profiling interventions for regional approaches especially on issues of cross border projects or resources. PIL groups also need to package their environmental conservation message in a way that also addresses poverty in order to secure community support. Use of other tools including the media, protests and demonstrations should be considered to compliment PIL. Lastly, PIL practice in the region should look out for and emulate best practices from other regions or countries like Botswana which has arguably done well in the extractive sector.
## Annex A-1 Workshop Programme

<table>
<thead>
<tr>
<th>Date/ Time</th>
<th>Activity</th>
<th>Lead</th>
</tr>
</thead>
<tbody>
<tr>
<td>20th June 2013</td>
<td>Arrival of participants at Heron Court Hotel, Nairobi</td>
<td>ILEG</td>
</tr>
<tr>
<td>21st June 2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.30-8.00Am</td>
<td>Registration of participants</td>
<td></td>
</tr>
<tr>
<td>8.00-10.30Am</td>
<td>Introductions, welcoming remarks &amp; Overview</td>
<td>Benson Ochieng’</td>
</tr>
<tr>
<td></td>
<td>- Benson Ochieng’, Executive Director ILEG</td>
<td>Eric Mutua</td>
</tr>
<tr>
<td></td>
<td>- Eric Mutua- Chairman , Law Society of Kenya</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Key note address</strong></td>
<td>Aggrey James Mwamu</td>
</tr>
<tr>
<td></td>
<td>- Aggrey James Mwamu-East Africa Law Society.</td>
<td></td>
</tr>
<tr>
<td>10.00-10.20Am</td>
<td>Health break</td>
<td></td>
</tr>
<tr>
<td>10.00-11.00Am</td>
<td>Presentation about the importance of Public Interest Law East Africa, with a note about its important role related to the extractives industries</td>
<td>Dr. Collins Odote</td>
</tr>
<tr>
<td></td>
<td><strong>PLENARY</strong></td>
<td></td>
</tr>
<tr>
<td>11.00-1pm</td>
<td>Presentations by lawyers from each country discussing cases or laws from their countries that could pave the way for successful litigation on behalf of organizations or communities concerned about impacts of the extractives</td>
<td>Each organizing partner</td>
</tr>
<tr>
<td>1.00-2.00pm</td>
<td>Lunch break</td>
<td></td>
</tr>
<tr>
<td>2.00-3.00pm</td>
<td>Overview of the extractive industry in the region</td>
<td>Rugemeleza Nshala</td>
</tr>
<tr>
<td><strong>PLENARY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.00-3.10</td>
<td>Tea Break</td>
<td></td>
</tr>
<tr>
<td>3.00-4.00pm</td>
<td>Strategic Litigation and Engagement for the Public Interest: Raising an Army of Public</td>
<td>Getrude Angote</td>
</tr>
<tr>
<td>Time</td>
<td>Event</td>
<td>Details</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4.00-4.30pm</td>
<td>PLENARY</td>
<td>Facilitator</td>
</tr>
<tr>
<td>5.00Pm</td>
<td>Cocktail</td>
<td>All</td>
</tr>
<tr>
<td></td>
<td><strong>5.00PM Break and end of day 1</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Day 2: 22nd June, 2013</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 8.00-10.00 am | Strategic Issues for PIEL in East Africa: Emerging Opportunities and Challenges | Harriet Bibangambah  
Rugemeleza Nshala  
Anthony Mulekyo |
|            | 1. Oil and Gas in Uganda                                              |                                                                         |
|            | 2. Mining and Gas in Tanzania                                         |                                                                         |
|            | 3. Coal, Oil and Gas in Kenya                                         |                                                                         |
|            | **PLENARY**                                                           |                                                                         |
| 10.00-10.20am | Tea Break                                                           |                                                                         |
| 10:30-12.00pm | Globalization and the Extractive Sector: the Case of Oil and Gas in Turkana | Dr. Ekuru Aukot |
|            | **PLENARY**                                                           |                                                                         |
| 12.00-1.00pm | Resources for PIEL                                                   | Ellen Sprenger  
ELAW |
|            | 1. Fundraising –                                                     |                                                                         |
|            | 2. Networking                                                       |                                                                         |
|            | 3. Mentorship for PIEL                                              |                                                                         |
|            | **Lunch 13.00pm**                                                    |                                                                         |
| 2.00-3.00pm | The Role of the Bars in PIEL                                        | Apollo Mboya                                                           |
|            | **3.00-3.30pm Tea Break**                                            |                                                                         |
| 3.30-5.00pm | Agenda for Action                                                    | Facilitator                                                            |
|            | ELAW/ILEG Framework                                                  |                                                                         |
| 5:00pm     | Closing session and departure                                       | ILEG                                                                   |
Annex A-2 List of participating organizations

<table>
<thead>
<tr>
<th>No</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Law Society of Kenya</td>
</tr>
<tr>
<td>2.</td>
<td>Kituo cha Sheria PIL Committee</td>
</tr>
<tr>
<td>3.</td>
<td>Lawyers’ Environmental Action Team</td>
</tr>
<tr>
<td>4.</td>
<td>Greenwatch Uganda</td>
</tr>
<tr>
<td>5.</td>
<td>Katiba Institute</td>
</tr>
<tr>
<td>6.</td>
<td>National Legal Aid Awareness Programme</td>
</tr>
<tr>
<td>7.</td>
<td>East African Centre for Human Rights (EACHRights)</td>
</tr>
<tr>
<td>8.</td>
<td>Advocates Coalition for Development on Environment (ACODE)</td>
</tr>
<tr>
<td>9.</td>
<td>East Horn Human Rights Defenders</td>
</tr>
<tr>
<td>10.</td>
<td>Global Rights Alert</td>
</tr>
<tr>
<td>11.</td>
<td>Environmental Law Alliance Worldwide (ELAW)</td>
</tr>
<tr>
<td>12.</td>
<td>Law Development Center</td>
</tr>
<tr>
<td>13.</td>
<td>Institute for Law and Environmental Governance (ILEG)</td>
</tr>
</tbody>
</table>
Annex A-3 List of Participants

1. George Eshuchi
   Ekuru Kabage Advocates
   Litigation Associate
   0722208439
geshuchi@yahoo.com
   Nairobi.

2. Agnes Olusese
   Ekuru Kabage Advocates
   Commercial Associate
   0721255980
kolusese@gmail.com
   Nairobi

3. Harold Ayodo
   Law Society of Kenya
   Programme Officer
   0721990923
harold.ayodo@lsk.or.ke
   P.O BOX 72219-00200 Nairobi

4. Lillian Orieko
   Law Society of Kenya
   Programme Officer
   0733799227
   P.O BOX 72219-00200 Nairobi

5. Gilbert S. Wamalwa
   c/o Law Society of Kenya
   0729177464 / 0735504060
   gilswama@yahoo.com

6. Jennifer Gleason
   Environmental Law Alliance
   Worlwide
   Staff Attorney
   15416878454
   jen@elaw.org
   1877 den Ave, Eugene OR USA

7. Korir Sheila Jebet
   Ekuru Kabage Advocates
   Advocate
   0722291261
   korirsheila@gmail.com

8. Irene Ndegwa
   W. Ndegwa & Associates
   Advocate
   020223168/0721575338
   indegwa@yahoo.co.uk
   P.O BOX 32852-00600 NAIROBI

9. Christine Menya
   Katiba Institute
   Litigation Associate
   0725812763
   christinemena@yahoo.com
   26586-00200, Nairobi

10. Angote Gertrude
    Kituo cha Sheria
    Executive Director
    angote@kituochasheria.or.ke
    Nairobi

11. Collins Odhiambo
    Law Society of Kenya
    Deputy Secretary
    0722865265
    collins.h@lsk.or.ke
    P.O BOX 72219-00200 NAIROBI

12. Irene Fugara
    Lawyers Environmental Action
    Team
    Legal officer
    255712455716
    irenefugara@gmail.com

13. Pauline Makutsa
    Institute for Law and Environmental
    Governance
    0721351901
    p.makutsa@ilegkenya.org
    P.O BOX 9561-00100 NAIROBI

14. Sylvia Kooke
    Law Society of Kenya
Program assistant
0724354429
sylviakooke@lsk.or.ke
P.O BOX 72219-00200 NAIROBI

15. Khadija Mrisho
Lawyers Environmental Action
Team
Legal Officer
0717975176
mrishodija@ymail.com
P.O BOX 12605-DAR

16. Osoro Laban
Kituo cha Sheria
Deputy Director
osoro@kituochasheria.or.ke
P.O BOX 21838-00100 NAIROBI

17. Mutesi Jolly
Law Development Centre
Student
+256 782416411
jollymutesi@gmail.com
P.O BOX 40332 KAMPALA

18. Mwamu James Aggrey
East Africa Law Society
President
72021631/728879614
mwamu@mwamuadvocates.com
P.O BOX 1013 KISUMU

19. Nakayenga Marion
Greenwatch
Lawyer
0775605663
marionnakayenga@gmail.com
P.O BOX 8728 KAMPALA

20. Deogratias William Ringia
Lawyers Environmental Action
Team
Member
255-713280795/ 255-22-2124036/7
safaririch@yahoo.com

21. Ekuru Aukot
Ekuru Kabage Advocates
Partner
0720438347
eaukot@gmail.com
P.O BOX 4781-00100 Nairobi

22. Rugemeleza Nshala
Lawyers Environmental Action
Team
Executive Director
25522278059
255756391040
rugemeleza@gmail.com
Mazingira House, Mazingira Street

23. Patrick Ochieng'
Ujamaa Centre
Executive Director
41476637
0722706800
ochieng@ujamaakenya.org
P.O BOX 517 80100 MSA

24. Caroline Khasoa
Law Society of Kenya/ Public
Interest Litigation Committee
Member
0728203453
khasoa08@gmail.com
P.O BOX 2584 KAKAMEGA

25. John Chigiti
Chigiti & Chigiti Advocates
Partner
0714744444
chigiti1@yahoo.com
P.O BOX 27460-00100 NBI

26. Benedette Mutuku
Institute for Law and Environmental
Governance
Project Officer
0727 457 773
b.mutuku@ilegkenya.org
27. Joseph Gitonga  
NALEAP  
Deputy Legal & Coordination  
0721 415984  
gitmadvocate@gmail.com  NAIROBI

30. Morris Peter Kinyanjui  
Gitonga, Kinyanjui & Co.  
Managing Partner  
0202372769  
0721231446  
morris@gitongakinyanjui.com  
P.O BOX 26128-00100 NAIROBI

31. Dalma Auma  
Institute for Law and Environmental Governance  
Accounts Assistant  
0202349141  
d.auma@ilegkenya.org  
P.O BOX 9561-00100 NAIROBI

32. Eric Omondi  
Institute for Law and Environmental Governance  
Research Assistant  
0202349141  
0729617001  
eriomd@yahoo.com  
P.O BOX 9561-00100 NAIROBI

28. Musa Munasizu  
Lawyers Environmental Action Team  
Legal officer  
0716092030  
musamnasizu@yahoo.com  
P.O BOX 12605 DAR

29. Edna Tibaijuka  
Lawyers Environmental Action Team  
Environmental Officer  
0782820082  
edinatibaijuka@hotmail.com  
P.O BOX 12605 DAR

33. Deborah Omuchinia  
Institute for Law and Environmental Governance  
Administration Assistant  
0727357874  
d.omuchinia@ilegkenya.org  
P.O BOX 9561-00100 NAIROBI

34. Cynthia Sakami  
Institute for Law and Environmental Governance  
Research Assistant  
0202349141  
c.sakami@ilegkenya.org  
P.O BOX 9561-00100 NAIROBI

35. Velma Mashedi  
Institute for Law and Environmental Governance  
Accountant  
0721279035  
v.mashedi@ilegkenya.org  
P.O BOX 9561-00100 NAIROBI

36. Angelani Kayumba  
Institute for Law and Environmental Governance  
Research Assistant  
0202349141  
0708344125  
angelani01@yahoo.fr  
P.O BOX 9561-00100 NAIROBI

37. David Njuguna  
R. M Mugo & Co. Advocates  
Advocate  
0722987941  
davynjosh@yahoo.com  
P.O BOX 2215 Embu

38. Elifuraha Laltaika  
Association for Law and Advocacy for Pastoralists
Executive Director
255785526526/255754088899
alapapastrolists2010@gmail.com
P.O BOX 16686 Arusha

39. Kate Mavuti
Law Society of Kenya
0736169845
kate.mavuti@lsk.or.ke
P.O BOX 72219-00200 NAIROBI

40. Collins Odote
Institute for Law and Environmental Governance
Director
0733712842
c.odote@ilegkenya.org
P.O BOX 9561-00100 NAIROBI

41. Apollo Mboya
Law Society of Kenya
Chief Executive Officer/Secretary
0722725482
mboya@lsk.or.ke
P.O BOX 72219-00200 NAIROBI

42. Ngabirano Sostine
Kasirye Byaruhanga & Co. Associates
256707E+11
0782000404
nashsostine@gmail.com
Plot 33 Clement Hill Road

43. Hellen Mutellah
East African Centre for Human Rights
Programme Officer
0701670090/0735670090/07251264
83
ehellen@eacrights.or.ke
P.O BOX 19494-00100 NAIROBI

44. Harriet Bibangambah
Greenwatch
Research Officer
256414344613/256712959535
harrietb@greenwatch.or.ug
P.O BOX 10126 KAMPALA

45. Lourdel Twinomugisha
Greenwatch Uganda
Legal Assistant
0700861441
lourdelt@greewatch.or.ug

46. Christina Arrumm
Law Society of Kenya
Intern
0723475996
christina.arrumm@lsk.or.ke

47. Duncan Okowa
Institute for Law and Environmental Governance
Programme Officer
0722634647
duncanokowa@gmail.com
P.O BOX 9561-00100 NAIROBI

48. Belinda Katuramu
Global Rights Alert
Legal officer
256415E+11
256783E+11
bkaturamu@globalrightsalert.org
P.O BOX 27977 KAMPALA

49. Amumpire Anna
ACODE
Researcher
256 782527626
aamumpire@acode-u.or
Kanjobya street, Uganda

50. Runyoro Adolf,
Lawyers Environmental Action Team
255 222780859
0714 607973/0752354045
adolf2a@yahoo.com
P.O BOX 12605 DAR
51. Justice Kenneth Kakuru  
JA, Court of Appeal Uganda  
Executive Director  
Greenwatch Uganda  
kenneth@greenwatch.or.ug

52. Antony Mulekyo  
Law Society of Kenya  
mulekyoadvocates@gmail.com  
Nairobi

53. Benson Ochieng  
Institute for Law and Environmental Governance  
Executive Director  
b.ochieng@ilegkenya.org

54. Ellen Sprenger  
Consultant  
Just Associates  
ellen@springstrategies.org  
Nairobi.
Annex A-4 List of main speakers

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name</th>
<th>Title and Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Apollo Mboya</td>
<td>Secretary and CEO, Law Society of Kenya</td>
</tr>
<tr>
<td>2</td>
<td>Caroline Khasoa</td>
<td>Council Member, Law Society of Kenya (LSK) and FIDA</td>
</tr>
<tr>
<td>3</td>
<td>Collins Odote</td>
<td>Director, ILEG and Senior Lecturer University of Nairobi</td>
</tr>
<tr>
<td>4</td>
<td>Ekuru Aukot</td>
<td>Partner, Ekuru Kabage Nyamathwe &amp; Co. Advocates &amp; Chairman, JLUAT University Council</td>
</tr>
<tr>
<td>5</td>
<td>Ellen Sprenger</td>
<td>Consultant</td>
</tr>
<tr>
<td>6</td>
<td>Gertrude Angote</td>
<td>Executive Director, Kituo Cha Sheria</td>
</tr>
<tr>
<td>7</td>
<td>Hon Kenneth Kakuru</td>
<td>Judge of the Court of Appeal, Uganda, Formerly Senior Partner, Kakuru and Co., Advocates, and Executive Director, Greenwatch Uganda</td>
</tr>
<tr>
<td>8</td>
<td>Ikal Angelei</td>
<td>Executive Director, Friends of Lake Turkana (FoLT)</td>
</tr>
<tr>
<td>9</td>
<td>Jennifer Gleason</td>
<td>Staff Attorney, ELAW</td>
</tr>
<tr>
<td>10</td>
<td>Patrick Ochieng</td>
<td>Director, Ujamaa Centre</td>
</tr>
<tr>
<td>11</td>
<td>Rugemeleza Nshala</td>
<td>Executive Director, LEAT</td>
</tr>
</tbody>
</table>
Annex A-5 Full text of the keynote address by Mr. James Aggrey Mwamu

The Chairman of the Law Society of Kenya Mr. Eric Kyalo Mutua

The Executive Director of ILEG Mr. Benson Ochieng

The regional representative Ford Foundation, Eastern Africa, Maurice Odhiambo Makoloo

Dear Participants. All protocol observed.

The African continent, and particularly Eastern Africa, has not been spared the adverse effects of climate change and global warming, symbolically immortalized by the receding ice caps of both the Kilimanjaro Mountain in Tanzania and the Ruwenzori Mountain in Uganda; and the declining water levels and fish stocks within the region’s Lake Victoria. Inconsistent weather patterns have birthed unpredictable agricultural output, once begetting demonstrations in Uganda and Kenya against the resultant high agricultural commodity prices. In a region whose Gross Domestic Product is largely tethered on agriculture, the impact of errant weather patterns, environmental pollution from industrial activity such as the mining industry in Tanzania, and fluctuating agricultural production have resulted into forced relocation of communities without adequate ample compensation by state increased income poverty, and resulted into conflict as communities scramble for scarce resources. But this contest has not been confined to communities, as was evidenced by the contest over Migingo Islands by Kenya and Uganda in what some analysts attributed to the strategic location of the island as an outpost in the lucrative lake Victoria fishing business. As is the case in Tanzania, where the government wants to relocate thousands of Maasai from their traditional lands in Loliondo, to pave way for a hunting ground for foreign Arab companies. For example, violent conflicts over water and grazing land for cattle have become the norm between the border communities of the Karamajong and the Turkana along the Uganda Kenya border.
Of particular concern to the East Africa Law Society is the water hyacinth weed that has enveloped large parts of the Kenyan portion of lake Victoria, disrupting the marine ecosystem within the lake and its immediate environs; and adversely affecting the economic and social lifelines of the communities that draw a living from the lake. The commitment of the Kenyan government to eradicate this weed pales in comparison to that of Uganda that had a similar challenge about a decade ago; and yet Kenya suffers the smallest portion of the commonly shared lake.

A number of interstate agreements on sustainable use of natural resources, regulation of carbon emissions, trade in ivory, and fishing quotas, among others, have been concluded at international and regional levels to try and arrest the situation. At the East African Community Treaty level, the EAC partner states have taken cognisance of the fact that development activities may lead to degradation of the environment and depletion of natural resources; and agreed to, among others; take concerted efforts to ensure the efficient management and sustainable utilization of natural resources within the region. The EAC has followed this up by establishing a sectoral Committee on Natural Resources and the Environment, which will ensure that issues of sustainable use of sustainable resources remain high on its agenda.

Be that as it may, a number of intervening factors still render states unable to honour their obligations under these agreements, including:

Limited information on the details of international and regional environment related agreements amongst the legal profession in East Africa.

Multiple municipal legal and policy environment protection regimes within the EAC partner states, some of which are not consistent with the states’ international obligations with regard to sustainable utilization of natural resources. This is despite the partner states have expressly committed to respect the principles of international environmental law and honour their commitments in respect of international agreements which relate to environmental management.”
Marginal inclusion of the legal profession in environmental conservation and sustainable resource utilization processes. This is coupled with the fact that the profession does not process the requisite advocacy and litigation skills to effectively handle environmental related cases in courts of law. The lawyers in the region lack comprehensive information on environmental laws as it is a relatively new area with emerging jurisprudence at the national and regional level. There is presently a case at the East African Court of Justice challenging the decision of the Government of the United Republic of Tanzania to construct a high way through the Serengeti game reserve because of the possible adverse effect that it will have on the annual wildebeest migration. The fact that the case has been filed by a Kenyan environmental action group against the Tanzanian Government emphasizes the potential lack of an interactive regional platform in which legal environmental activists can continuously discuss and negotiate strategies for promoting sustainable resource utilization.

In view of the above shortcomings, the East Africa Law Society is proposing to implement a project that will see lawyers equipped with the requisite advocacy and litigation skills to take up their role in supporting the drive towards sustainable utilization of natural resources; monitor and enforce EAC partner states compliance with international and regional environment protection obligations; and provide an interactive platform for sustained policy and legal engagement on environment and natural resources discourse, to ensure the preservation of ecosystems within East Africa.

We are also preparing to file two or three Litigation cases that go towards dealing with some environmental problems in East Africa. We’re in the process of looking for partners to partner in achievement of these goals..

I therefore want to thank the organizers of this workshop because it is timely and comes at the most opportune moment to build on the gains that has been made since the days of Wangari Maathai case in the 1989.

In the 1989 High Court case of Wangari Maathai v. Kenya Times Media Trust Ltd, Maathai took the Kenya Times Media Trust Ltd to court in order to prevent the latter from constructing a high-
rise building in a public park in Nairobi called Uhuru Park. Maathai alleged breach of local government laws and brought a representative suit on behalf of the public. The court ruled that she did not have the legal standing (locus standi) to bring a representative suit on behalf of the public and that under the Constitution only the Attorney General could institute suits on behalf of the public. This was a clear example of government interests being at cross purposes with the wider public interest.

Public litigators must understand the Science and politics of litigation. The science of litigation commands that we understand the case, draft proper pleadings and do thorough research to put up a credible case. Most of the times cases fail due to poor preparation and lack of Commitment by Counsel. Secondly, the Lawyers must also understand the politics of litigation. The politics of litigation talks to the impact. A number of times public interest cases fail but they achieve tremendous results. Don't is discouraged by failure because public interest cases properly done with advocacy skills never fail or never die.

I will end by quoting Sagnik Dutta in his Article ‘Public Interest Litigation and environmental law in India’

“"The instrument of Public Interest Litigation in the realm of environmental law had emerged as a means of securing social justice for the deprived sections of society through a creative interpretation of the Constitution. While the emergence of the PIL leads to the integration and appropriation of international legal principles in Indian environmental law, it increasingly compels the Supreme Court to negotiate with complex questions of conflicting class interests, sustainable development and livelihood concerns.”"
Annex A-6 Snapshots

East Africa Law Society President Hon James Aggrey Mwamu (standing) delivering the keynote address. Seated from left are Ford Foundation's Maurice Makoloo, LSK Chairman Mr. Eric Mutua and ILEG's Executive Director Benson Ochieng.

Group photo taken during the PIEL workshop