

I. INTRODUCTION AND KEY CONCERNS

1. The following submission outlines core human rights issues that CJGEA and partner organizations are directly handling in Kenya and have carried out extensive research on, and which require the intervention of the International Community. It also includes an overview of the current situation of HRDs/ EHRDs in Kenya. The submission has been prepared based on verified information received from independent Environmental Human Rights Defenders (EHRDs), Environmental Rights and Human Rights Organizations working in solidarity with CJGEA. It also highlights the findings of a convening for EHRDs that took place between June 12th and June 14th 2019 that was held collaboratively by CJGEA, OHCHR, UNEP and the LED Coalition.
2. Ever since Kenya's last UPR in 2015, Kenyan authorities have continued targeting human rights defenders (HRDs) in Kenya. Cases of attacks, threats, harassment and executions of Environmental and Human Rights Defenders (EHRDs) with a motive to silencing them have been on the rise. Grassroots environmental movements in Kenya face open hostility for their activism and operate under challenging environment putting their lives at risk. Some HRDs have frequently been targets of criminalization by State and non-State actors, due to the issues they work on, particularly, those who defend Land and Environmental Rights. Criminalization of HRDs and their work in Kenya has been witnessed by use of repressive measures adopted by the police and other state agents in the form of bureaucratic actions, legislation, negative profiling and judicial harassment.
3. In the last review, Kenya accepted [recommendations](#)¹ including those on protection of human rights defenders and the expansion of Civil Society Organizations space as well as fully implementing the Public Benefits Organizations (PBO) Act. The state was to prevent and prosecute cases of threats and harassment leveled against HRDs, launch investigations into reported cases with allegations of threats and harassment of HRDs and prosecuting the offenders as well as enhancing access to information, promoting freedom of expression and the right to privacy. The state also agreed to take measures to guarantee freedom of association and assembly, put up legal policy and administrative measures to protect citizens against forced eviction, and ensuring prior and informed consent from affected local communities before the commencement of any development projects.
4. Kenyan authorities have continued to play a paramount role in shriveling the working space for EHRDs and Civil Society Actors by obstructing their work, attempting to cut off their access to international partners and stakeholders, subjecting defenders and their families to surveillance, harassment, intimidation, public defamation, forced relocation, travel ban, arbitrary and incommunicado detention, inhumane treatment, torture, and violation of their fundamental rights to expression, association, and assembly. Some organizations that support EHRDs in Kenya have similarly been targeted by Kenyan authorities in the recent years.

II. LEGISLATIVE FRAMEWORK AND JUDICIAL PROCESS

5. During the last review the state agreed to recommendations to review all new legislation to ensure consistency with International Human Rights Law and the Constitution and consult broadly to build a national consensus and protect the role of an active civil society. However,

¹ See all <https://www.upr-info.org/database/index.php?>

in the period under review, a series of vaguely defined criminal laws with a vast scope of applicability have been exploited to criminalize EHRDs and the CSOs that support them. EHRDs have been charged, and convicted over unwarranted charges. Since 2015, Kenyan judicial authorities have applied retributive justice on EHRDs and charged them with treason. The crimes are considered crimes against national security and provide a legal basis for strict punitive measures. The offensive legislative charges have brought about prolonged detention sentences for EHRDs, hampered access to legal services, and violation of the rights to a fair judicial process. Trials are frequently rescheduled or held secretly to avoid public observation.

6. Kenya accepted recommendations to ensure that laws enacted to regulate NGOs will not undermine their independence or unduly restrict their activities in defense of human rights. Under the period of review however, legislation has been used in attempts to criminalize human rights work. Various laws including the NGO Coordination Act of 1990(Act No. 19, Laws of Kenya)², the Companies Act Cap 486 (for Companies Limited by Guarantee), Societies Act (CAP 108), Trustee Perpetual Succession Act (CAP 164), and Trustees Act (CAP 167)provide the registration of a diverse spectrum of the Civil Society Organizations (CSOs) that engage in public benefit work. The laws present multiple and overlapping legal and regulatory regimes governing the CSOs leading to difficulties in monitoring their compliance and accountability. Furthermore, these laws do not conform to the 2010 Constitution and have been used to arbitrarily target and criminalize Civil Society Actors and EHRDs. For example, the NGO Coordination Act gives the regulator for the sector, the NGO Coordination Board, excessive administrative powers that they have used to interfere with the CSOs work. The NGO Board for instance, could turn down the registration of an NGO if it feels that its proposed activities or procedures are not in line with the state's interest. A good example is CJGEA which has for a longtime tried to register a coalition purely for EHRDs but the process has been made impossible by the NGO Board citing that the names assigned for the coalition were aimed at inciting violence. NGOS like Save Lamu have been threatened to be deregistered and the state is still tracking their records.
7. During the last review, Kenya accepted recommendations to fully Implement the 2013 PBO Act, and ensure that any amendments to the Act are undertaken in consultation with civil society. This was a follow up to the government's initiative in 2013 whereby it undertook a sector wide consultative process, which led to the drafting and passage of the Public Benefits Organizations Act (2013)³. The Act was hailed by Public Benefit Organizations as the beginning of a new era, in which relations between the Government and non-state actors would be characterized by mutual respect and a spirit of complementarity as opposed to suspicions. However, to date the Act has not been gazetted and has become a point of contention between the Government and CSOs.
8. In the period under review the inadequate implementation of environmental laws has become quite pronounced as most of the legal institutions tasked with administration of environmental law and policy in Kenya tend to be challenged by political influence, corruption and bureaucracy and unclear jurisprudence on matters of the right to sue among

² See full NGO Act here http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/Non-GovernmentalOrganizationsCo-ordinationAct_No19of1990_.pdf

³ PBO Act 2013

<http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/PublicBenefitsOrganisationNo18of2013.PDF>

many others. For instance, public participation in environmental governance in Kenya is still a key issue of concern despite the requirements of the EMCA Act (amended 2105), and the current devolved system of governance which gives provisions for citizen engagement in environmental governance.

9. The state has continued to commission environmentally sensitive developments without the participation of all the involved stakeholders especially the public and has also failed to define the responsibilities of institutions. The rural communities are largely affected as the impacts have a greater effect at the rural level due to the lack of support and understanding of their rights. In as much as the EMCA Act, provides for establishment of County Environment Committees(CECs) as formalized platforms through which EHRDs and Civil Society Actors can participate in environmental governance, very few Counties in Kenya have implemented the CECs and even allowed EHRDs to form part of the sitting members of the Committees.

III. COOPERATION WITH HUMAN RIGHTS MECHANISMS

10. The 1998 UN Declaration recognized in international law; the extreme importance and legitimacy of human rights activity and the need to protect it alongside with those who carry it out. States have a responsibility to implement and respect all the provisions of the declaration and are entrusted with the duty to protect human rights defenders against any violence, retaliation and intimidation as a consequence of their human rights work. However, cases of attacks, threats, assaults, harassment and executions of Environmental and Human Rights Defenders (EHRDs) with a motive to silence them have been on the rise in Kenya. Grassroots environmental movements in Kenya face open hostility for their activism and operate under a challenging environment that puts their lives at risk.
11. The Kenyan government demonstrated the lack of political goodwill towards protection of HRDs when on 25th November 2015, Kenya voted against the passage of the UN General Assembly ([UNGA\) resolution 2015](#)), entitled “Recognizing the role of human rights defenders and the need for their protection”⁴. This resolution called for the state’s accountability for attacks on human rights defenders (including attacks on their family members) and urged states to release defenders who have been arbitrarily detained for exercising their fundamental rights to freedom of expression, peaceful assembly and association.⁵
12. Among the [recommendations](#) from the last UPR cycle was for the state to consider ratifying all outstanding international instruments and continue to domesticate such instruments. In the period under review, Kenya was to prioritize the ratification of the International Convention on Enforced Disappearance and the Optional Protocol to the Convention against Torture and other cruel, inhumane and degrading treatment or punishment. In instances where the various

⁴ See full resolution at http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.46/Rev.1; China and Russia asked for the resolution to be put to a vote during which 117 countries said “yes” in the vote, while 14 states voted “no”. Those that voted “no” include China, Russia, Syria, Burundi, Kenya, Myanmar, Nigeria, Saudi Arabia, Zimbabwe, North Korea, South Africa, Iran, Pakistan, and Sudan. Later, South Africa changed its position and now supports the resolution

⁵ ISHR, “General Assembly adopts important resolution on human rights defenders in face of opposition from China and Russia,” -<http://www.ishr.ch/news/general-assembly-adopts-important-resolution-human-rights-defenders-face-opposition-china-a>

treaty body mechanisms have reviewed Kenya there have been numerous recommendations aimed at improving the human rights situation on the ground including recommendations to ratify the outstanding human rights conventions and the optional protocols. If Kenya ratified these treaties, it would have to report periodically to the committee that monitors how the treaty is working and binds the country under International law. The ratification process however, has to be approved by parliamentarians who really don't take action without the government's approval.

IV. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS ON THE GROUND

- 13. Situation of Human Rights Defenders in Kenya** – The last review saw Kenya accept recommendations by France to ensure that non-governmental organizations and human rights defenders can freely conduct their activities and another recommendation by Sweden to promptly take effective measures to safeguard the work of human rights defenders, including by ensuring that witness protection and the protection of human rights defenders who assist witnesses are a priority for the Government. In the period under review however, EHRDs have continued to be targeted for actions of impunity by state and non-state actors which has witnessed a rise in environmental conflicts. In the Kenyan context, EHRDs are still perceived as chaotic people who stand in the way of development and thus face severe risks and consequential threats due to their activities. A report by protection International Kenya which forms part of this submission goes ahead to highlight the criminalization of rural defenders in Kenya⁶.
- 14.** EHRDs are denied access to fundamental human rights, particularly the right to prohibition from torture; the right to peaceful assembly; the right to liberty and personal security, and the right to participate in environmental decision making. State actors, corporates and private companies have continued to use their power and state connections to carry out unlawful arrests on EHRDs and Civil Society Actors. There have been reported cases whereby state actors and corporates were complicit in the criminalization of EHRDs. **Guddy Birkigt**, an EHRD who resides at Robinson Island within Kilifi County, was on July 8th, 2019 attacked by goons for her activism work⁷ related to advocating against the indiscriminate cutting down of mangrove vegetation by salt mining corporates. The police were not responsive despite her raising an alarm and even informing other CSOs around the area like Malindi Rights Forum. Other EHRDs under threat include Anastacia Nambo; who has in the past dealt with forced exile owing to her activism work, Eric Odera who was targeted by goons for appearing in an exposé done by CJGEA dubbed “*Plague for profit*”, and Julius Fondo whose property was razed by hired goons for his activism among others.
- 15. Abusive policing operations-** During the last review, Kenya accepted recommendations to take effective measures against police violence, in particular by ensuring comprehensive investigations and the prosecution of alleged offenders within the police and security forces. The charging in court of police officers responsible for the enforced disappearance and murder of Human Rights lawyer, Willie Kimani is a great step towards ensuring justice for the HRD Community. However, there have been incidents whereby the authorities have arbitrarily detained EHRDs and protected suspects of human rights violations as opposed to

⁶ https://www.protectioninternational.org/sites/default/files/23102017_PI_Kenya_criminalisation_web.pdf

⁷ http://www.earthisland.org/journal/index.php/magazine/entry/salt_in_an_islands_wounds/

holding them accountable for their actions. Sometimes the corporates hire goons and militias to intimidate the EHRDs. Individual EHRDs working under the umbrella body of CJGEA expressed their concerns during the third annual conference for EHRDs in Kenya held from June 12th to June 14th 2019 collaboratively by CJGEA, OHCHR, UNEP and LED Coalition. **Walid Ahmed**, an EHRD present at the convening spoke of his experience at facing criminalization by authorities⁸.

16. **Right to peaceful assembly and association** – Freedom of peaceful assembly is still severely restricted in Kenya and peaceful protests conducted without the permission of the authorities are termed illegal. Those who attempt to organize peaceful demonstrations to advocate for realization of human rights or which challenge the overarching political system face harassment, detention, arrest or imprisonment. An example is the case of Walid Ahmed, a human rights defender from Lamu County who was arrested alongside a fellow activist Ishaq Abubakar and detained by administrative police during a peaceful demonstration where they were protesting the proposed coal plant in Lamu contrary to article 20 of the UN Declaration on human rights.

17. **Administration of justice** – Litigation cases filed by EHRDs and CSOs seeking redress for violation of environmental human rights have dawdled in court for years and cases of witness intimidation and torture have been constantly on the rise. An example is the Owino Uhuru [class action litigation](#), filed by CJGEA on behalf of the Owino Uhuru Community members and which is supported by the partnership of the Office of the High Commissioner for Human Rights (OHCHR). The litigation suit seeks to challenge the responsibility of the state and non-state actors towards the protection of the right to a clean, healthy and sustainable environment as stated in Article 42, 69 and 70 of the 2010 Kenyan constitution. The Owino Uhuru Community was exposed to massive lead poisoning originating from a state licensed lead smelter that resulted in lead induced health hazards, heavy metal contamination and deaths. The Petitioners want a declaration made stating that their right to life was violated by the actions of the respondents and also want the respondents to cater for the environmental remediation of the area so as to get rid of the lead as well as finance their treatment which is very costly. The litigation suit commenced in 2016 and justice is yet to be served, as 3 years on, the court has not made any ruling⁹. The case has been characterized by delays, uncertainty and postponement of hearing dates which continues to frustrate the plaintiffs, most of whom still suffer the aftermaths of the Lead poisoning.

18. **Witness intimidation and torture** – Kenya accepted the recommendation to effectively implement the recent legislation on police reform and witness protection. In the period under review, however, incidents of witness intimidation and torture have been rampant. CJGEA voices concerns that there have been numerous attacks and intimidation of witnesses that have been carried out by respondents in litigation suits filed by HRDs and CSOs on behalf of the affected Community. The attempts to intimidate witnesses range from abduction, physical and psychological torture, threats, to blackmail. An example is the Owino Uhuru class action suit and smelter proponents whose ownership is linked to the political class. Four environmental activists and members of CJGEA were singled out for leading advocacy

⁸ <https://www.savelamu.org/lamu-break-free-campaign-against-coal-goes-bad-as-2-arrested/>

⁹ <https://cprd.org/2018/05/16/trial-continues-over-lead-poisoning-case-human-rights-defenders-receive-protection-to-witness/>

against the Owino Uhuru Class action litigation in 2017. The houses of the EHRDs were invaded by goons threatening to torch them leaving one member seriously injured as the others managed to flee to safety in time. The number of witnesses that are still under [witness protection](#) is 10 and this means their rights to life, liberty and security are being infringed as they have to go into hiding and live in fear of attempts on their lives.

19. The kidnapping and murder of human rights lawyer Willie Kimani, his client, Josephat Mwenda and a taxi driver outside the Mavoko law courts by administrative police officers is just another case of witness intimidation and torture. This seemingly happened in the period under review. The human rights lawyer was representing his client in a case whereby the client, Josephat Mwenda, a motorcycle rider had [filed a complaint with IPOA¹⁰](#) over an AP officer accidentally shooting him and later on arresting him on fabricated criminal charges. The police officers had threatened him for cooperating with the IPOA before he was kidnapped alongside his lawyer and a taxi driver and later found murdered. The murder was characterized by torture and encompassed around a sequence of gruesome events from the abduction. The three were last seen alive entering the Syokimau AP camp and so far there have been police officers who have been acquitted with the killings but justice is yet to be served as the case is still in court.

20. Right to Health and Access to Health Care - The state has not been keen on medical provision for members of the Owino Uhuru Community that were affected by the lead poisoning and they are charged exorbitant prices in the public hospitals in order to access medication and conduct blood tests. More than 2000 community members exclusive of children have not been tested for Lead poisoning up to date as most hospitals are yet to be equipped to diagnose and treat Lead poisoning; which is misdiagnosed and treated as a common infectious disease all the time. The treatment of Lead Poisoning requires Chelation therapy which is very expensive for Owino Uhuru members who happen to be slum dwellers with no steady income. Community members have died from lead poisoning and more continue to suffer from the effects of lead.

21. Forceful evictions of minorities/marginalized Communities- Forced evictions violate a number of internationally and nationally recognized human rights laws. The evictions are contrary to Article 10 of the United Nations Declaration of the Rights of Indigenous Peoples which clearly states that; “Indigenous peoples shall not be forcibly removed from their lands or territory¹¹. Kenyan authorities continue to evict indigenous Communities to pave way for environmental sensitive projects despite accepting the UPR recommendation to ensure a legal environment that protects ancestral land of indigenous persons. An example raised during the recent convening for EHRDs by a member of the program for the heritage of Ogiek and mother earth, was the case of the Ogiek Community, characterized by forced evictions, deaths and assaults inflicted upon the Community members who have for long accused the authorities and Kenya Forest Service officers, of evicting them with atrocity and

¹⁰ <https://www.nation.co.ke/news/Willie-Kimani-client-Josephat-Mwenda-death-threats/1056-4153088-tag097/index.html>

¹¹ Article 10 of the UN Declaration on the Rights of Indigenous Peoples- Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

cruelty contrary to human rights laws and despite court decisions at the national and regional courts. A case in point being the landmark ruling by the African court for Human Rights and people's rights in Arusha¹² which ruled that through a persistent denial of the Ogieks' land rights, their religious and associated cultural and hunter-gatherer practices were also violated and granted the Ogiek the birth right to ownership of the forest land they reside in.

- 22. CJGEA** would like to voice concerns on cases of forceful evictions happening along the **Magarini Salt Belt** in Kilifi, Kenya. The Magarini Community members have for long accused the salt mining companies of evicting them with utmost cruelty contrary to human rights laws to pave way for the expansion of the salt farms. The members continue to face atrocities, killings and assaults inflicted upon them by the salt corporates. Most community members, who happen to be illiterate, have been tricked into signing documents indicating that they have been living as squatters on their ancestral lands. CJGEA filmed a [documentary](#) that highlighted the plight of the Community members and crimes against humanity brought about by the atrocious deeds of the salt mining corporates and the authorities. The salt corporates have come under scrutiny for flouting labor laws and mistreatment of workers. The salt mining activities have also resulted in contamination of water sources, the diversion of natural river course, mangrove vegetation destruction and environmental degradation. The state has been biased in solving the land rows by ordering the community members to leave the salt farms.
- 23. Enforced disappearances and execution of activists** –In the period under review, the killings of EHRDs and conservationists with a view to silence them have been on the rise. An example is the case for an environmental rights defender, [Jomo Nyanguti](#) , killed in Nyamira as he protested the construction of the controversial Bonyunyu dam. The deceased had confronted police officers guarding a team of surveyors doing mapping at the site where the dam was to be built. A petition on Bonyunyu dam project is currently in court but the works at the dam have been going on regardless.
- 24. Lamu coal powered plant** - The project raises great concerns about its impact on the environment regarding toxic pollution from coal and ash, carbon emissions by the coal power plant and rising sea levels due to climate change. The bigger problem is that the National Environment Management Authority (NEMA) granted an EIA License to Amu Power/Centum Investments together with Gulf Energy to undertake the project. There was insufficient public participation in the EIA Report and only the findings were shared with the affected Community. Besides, the final report did not consider the contents of the Climate Change Act, 2016 and thus ignored Kenya's commitments to international treaties and the Paris Agreement which require a managed decline of fossil fuel production. This decision has been challenged in the National Environmental Tribunal by Save Lamu organization which has also written an open letter concerning their security, given intimidation and interference that the local communities are facing in accessing information about major development projects in the Lamu community such as the Lamu coal power plant. The Energy Regulatory Commission also gave a go ahead for the project to proceed after rejecting objections to the project by Save Lamu. The national tribunal has since cancelled the license for the companies involved and ordered for a fresh EIA process that takes into account public

¹² See full judgement here <http://en.african-court.org/images/Cases/Judgment/Application>

participation and the Climate change Act¹³. The coal powered plant should not be given room to carry out its operations as Lamu, a culturally rich Island and a UNESCO heritage site will be destroyed as the project will have adverse social and environmental impacts. A report published by UNEP and various stakeholders including civil society seeks to show the detrimental effects of the proposed coal powered plant¹⁴.

- 25. Ocean land reclamation and ocean dumping with a focus on the now decommissioned Kibarani dumpsite** – The [reclamation of ocean land](#) along the Makupa causeway remains the epicenter of corruption and impunity as powerful individuals have resorted to grabbing the sea. Despite efforts by the Water Resources Management Authority (WARMA) in the past to stop the reclamation of two sites in Kibarani by Makupa Transit Shade Limited and Multiple Hauliers, encroachment is still going on. A suggestion was even made to mark the riparian land and peg it and put beacons where nobody should go beyond but that is yet to happen. The Kibarani dumpsite decommissioning was a great step towards rehabilitation as the dumpsite had resulted in massive marine pollution and heavy metal contamination of ocean waters and the coastline harboring the dumpsite over the years. Despite the reclamation process of the dumpsite land, ocean dumping still continues and some private investors for instance, Mombasa Cement, have continued with the harmful process. There are also concerns that the remediation process was not appropriate and did not look into restoring the marine ecosystem but instead was aimed at beautifying Kibarani by converting it into an amusement park without taking into account the fact that the land bears hazardous and toxic substances accumulated over the years and a duly process of remediation had to be followed.
- 26. Harmful oil drilling activities by Tullow Oil Company in Turkana** – In the period under review Kenya has taken steps to ensure that the mining Bill is aligned to the UN Guiding Principles on Human Rights and Business. CJGEA notes with concern that the discovery of oil in Turkana County in Kenya has brought about the plight of the Turkana people, a marginalized pastoralist group in semi-arid northwestern Kenya. Oil discovery has ignited considerable new-found interest in this neglected region by non-local Kenyan and foreign actors and has seen a rise in [conflicts related to extractive industries in Turkana](#)¹⁵. Toxic wastes from oil drilling have resulted in contamination of water sources and resource conflicts with the Community. Households in Turkana could go without water for days and channeling of large volumes of water for commercial oil production by Tullow could result in detrimental effects in the long run. The locals already feel the pinch of the project as the drilling has also affected the water table and dumping of toxic wastes in the oil wells has rendered the underground water unfit for human consumption. The construction of Gibe (iii) dam is also a looming issue to the Communities around Lake Turkana. The state entered into a clandestine agreement to divert River Omo to feed into the Gibe reservoir which aims at producing large scale hydroelectric power and supplying water to large scale commercial agriculture without consulting with local communities. Friends of Lake Turkana Organization (FOLT), working in solidarity with CJGEA, raises concerns that the

¹³ <https://www.businessdailyafrica.com/news/Queries-as-court-freezes-Sh200bn-Lamu-coal-plant-project/539546-5176956-m27yblz/index.html>

¹⁴ https://wedocs.unep.org/bitstream/handle/20.500.11822/25363/Perspectives31_ImpactCoalPlantLamu_28032018_WEB.pdf?isAllowed=y&sequence=1

¹⁵ <http://crimeresearch.go.ke/wp-content/uploads/2018/02/Conflict-and-Extractive-Industries-in-Turkana.pdf>

[construction of the Gibe \(iii\) dam](#) will have adverse impacts on the environment and the livelihoods of the Communities that depend on Lake Turkana for survival. The Government has also allowed displacement of locals to pave way for construction of a pipeline linked to the LAPSSSET project that passes through pastoralist land and this has been done without following the right consultative process.

27. Adverse health risks associated with Athi River mining company in Kaloleni – Athi river mining company has for long come under scrutiny and criticisms for posing great haphazard effects on the Community and despite complaints the Company’s license was renewed and gazetted, and continues to operate. There was no public participation and sensitization following the announcement of the gazette notice to engage the Community and get their views as access to information remains a great issue of concern. HURIA has in the past filed a petition and published a [report](#)¹⁶ on allegations of excess emission of dust from mining and processing activities, noise emission from the factory operations, and general vibrations that occur as a result of the business activities at the factory. The Community members have for long suffered grave consequences in terms of health risks ranging from cement dust induced respiratory diseases, tuberculosis, miscarriages, water source contamination and the absorption of industrial chemicals toxins on food crops.

28. Plastic pollution menace choking waterways- Plastic pollution in Kenya has been a chronic environmental menace for a long time. Every year, tons of plastic litter our environment blocking sewer lines and also leak into our oceans smothering coral reefs hence threatening vulnerable marine wildlife. The issue of plastics was raised during the June 12th to June 14th convening for EHRDS by the proprietor of the ban plastics KE movement, James Wakibia¹⁷. For instance, Lake Nakuru, once a UNESCO heritage site now risks losing UNESCO heritage status because of pollution leading to wildlife endangerment. The Government in this case has failed to regulate the plastic industry which has contributed to the deteriorating conditions of Lake Nakuru. Despite the landmark plastic use ban not much effort has been put to ensure recycling of plastic wastes which have significant environmental impacts. CEJAD, which forms part of this submission also raises concerns over plastic wastes pollution¹⁸ and has worked immensely to put an end to plastic pollution in Kenya¹⁹

Recommendations to the Kenyan Government

CJGEA and other NGOs mentioned in this submission call upon the member states of the UN Human Rights Council to urge the Kenyan Government to take urgent action on the following recommendations:

- I. Cease the harassment, arbitrary arrests, and physical attacks on human rights defenders, civil society activists, and marginalized communities by security forces and conduct investigations and prosecution of the perpetrators of such attacks.
- II. Recognize and support the EHRDs and the legitimacy of the work they do and involve them in the decision making process at the national level with regards to the environment and human rights issues.

¹⁶ <https://huria.ngo/wp-content/uploads/2019/01/POLLUTED JUSTICE REPORT.pdf>

¹⁷ <https://medium.com/@jwakibia/pictures-plastic-pollution-in-kenya-bc710673488e>

¹⁸ <http://cejadkenya.org/plastics-and-ocean-pollutants/>

¹⁹ <http://cejadkenya.org/promoting-zero-waste-and-end-to-plastics-pollution-in-kenya/>

- III. The state should address the backlog in sensitive litigation cases and ensure timely judgment is made for victims to be compensated. An example is the case of the Owino Uhuru lead poisoning litigation suit.
- IV. The Government should guarantee the safety of witnesses as per article 24 in the Organized Crime Convention of the United Nations
- V. The state should consult with local Communities and ensure the decommissioning of any plans pertaining to operations of the proposed Lamu Coal plant and revoke the license completely.
- VI. The Government should enact a law on lead contamination control and enforce lead poisoning regulations as well as initiate environmental remediation through a lead clean up exercise on the Owino Uhuru land using modern techniques and set up clean water points.
- VII. The Government should ensure public participation and access to information and follow the duly consultative process to involve Communities in initial Environmental Impact Assessments and the entire process of the project from initiation to closure.
- VIII. The authorities should be held to task for carrying out unlawful arrests and the judiciary should also stop applying retributive justice in order to frustrate and instill fear in HRDs/ EHRDs.
- IX. Prohibit violent and forced evictions until the Government has properly adopted and implemented a strict legislative framework on evictions and resettlement plans for the victims as well as land and housing rights and develop alternate strategies to assist Community members being evicted and ensure they get proper housing and access to basic services, health care and employment, once they have been relocated.
- X. Ensure that the rights of individuals and organizations to defend and promote human rights are protected, including the right to peacefully protest government policies, in accordance with the International Covenant on Civil and Political Rights and the 1998 UN General Assembly Declaration on Human Rights Defenders.
- XI. The plastics industry must be regulated and the Government must invest in recycling plastics and impose a permanent ban on all traditional plastics to replace them with biodegradable plastics.
- XII. Equip Government hospitals with lead screening and testing equipment as well as chelation equipment necessary for treatment and management of lead poisoning and Order Government hospitals to supply free medication to the victims of lead poisoning from the Owino Uhuru Community and anyone charging the members exorbitant prices to access medication face the due course of the law.
- XIII. Effective measures should be taken by the state to counteract marine litter pollution and trans- boundary litter pollution which is a looming crisis greatly affecting the Indian Ocean.