



RIGHTS AND RESOURCES INITIATIVE | FEBRUARY 2021

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*Paying the Price: A Study on Criminalization of Land  
and Environmental Rights Defenders in East Africa*

Executive Summary

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and the Open Society Initiative for Eastern Africa  
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## Summary

As the demand for land-based investments in East Africa rises, alongside unprecedented growth in population sizes in some of the fastest-growing economies on the African continent, pressure on and conflicts over land and the environment are likely to increase. Indeed, land-related conflicts are now a common feature in the region, with disputes pitting governments, multinational companies, and local private sector actors against Indigenous Peoples, local communities, and citizens generally.

Land and environmental rights defenders are often the first line of defense in pushing back against land grabbing, destruction of the environment and other forms of rights violations. For that, they sometimes pay the ultimate price. Others are criminalized by the state and sometimes by private actors. This is not helped by the shrinking civic space and democratic rollback across the continent, particularly in Tanzania, Kenya, and Uganda.

A confluence of these dynamics makes it vital to investigate and document the victimization of land and environmental rights defenders in the region. It is against this backdrop that the report, ***Paying the Price: A study on Criminalization of Land and Environmental Rights Defenders in East Africa*** was commissioned by the International Land Coalition (ILC) and the Rights and Resources Initiative (RRI).

The report presents a comprehensive review of regional and international instruments for the protection of Land and Environmental rights defenders (LERDs) in Kenya, Tanzania, and Ghana, with data on cases of violence/criminalization in each country. It conducted in-depth interviews with 28 LERDs, civil society actors and government officials, and documents existing strategies and resources to address victimization of LERDs. It further maps the organizations working on this issue at local, regional, and national levels. Ultimately, the study aims to understand and address the steps leading to violence against or criminalization of human rights defenders.

## Who are LERDs and how are they targeted?

Global Witness defines land and environmental rights defenders (LERDs) as people who take a stand and peaceful action against the unjust, discriminatory, corrupt, or damaging exploitation of natural resources or the environment. A community-based understanding of land and environmental rights defenders views them as members of “a collective.” Ultimately, the role of LERDs in the consolidation of democracy, the rule of law, peace and control of institutions, and environmental sustainability cannot be overstated. They are able to identify project impacts, often have a sustainable development vision that benefits communities, and if their voice is heard, help avoid unnecessary conflicts and risks. Their role also involves the defense of collective rights, which include the right to development; the right to a clean and healthy environment; and the right to access natural resources which include forestry, wildlife, and water.

Criminalization of LERDs takes many forms in East Africa. This includes being accused of serious crimes without foundation or evidence; being subjected to distorted and lengthy criminal proceedings and illegal arrests; misuse of counterterrorism, national security, and defamation laws; criminalizing

the rights to free speech and peaceful protest; and labeling the defenders who receive foreign funding or support as anti-development and working for sinister imperial interests.

The report shows that criminalization and victimization of LERDs across East Africa is on the rise. The Human Rights Centre of Uganda, for instance, observed in its most recent report that defenders are especially at risk in the oil-rich Albertine region. One example is the Zoka Central Forest Reserve in the Northern Uganda district of Adjumani, the last natural forest along the belt of Albertine. The forest hosts a significant portion of the world's bird and insect species, and is inhabited by the Madi community, which has benefitted from and protected the forest for decades. Tensions rose when some Madi members began challenging illegal logging and lumbering in the forest by businesses protected by Uganda's security organizations and government officials. In interviews with the report's author, community members related the violence, trumped up legal charges, and intimidation—punishments for trying to protect their forest as it continues to be depleted—that have become commonplace for them in the last five years.

The situation in Kenya is no different. In December 2018, Human Rights Watch and the National Coalition of Human Rights Defenders in a joint report noted that Kenyan police and the military were harassing and intimidating environmental rights activists in Lamu county, coast region. The report noted that at least 35 activists campaigning against the region's mega infrastructure and transport projects under the Lamu Port-South Sudan-Ethiopia Transport Corridor Project had faced threats, beatings, arbitrary arrests, and detentions. Another example is the Sengwer community in the Embobut forest in the western highlands of Kenya. International human rights organizations and the Kenya Human Rights Commission recognize the Sengwer as Indigenous Peoples native to Embobut, but since Kenya got independence from British colonial rule, the government has labelled them as "squatters," even branding them as a militia to justify their forceful evictions by the Kenyan Forest Service.

In Tanzania, Indigenous communities such as the Maasai continue to be criminalized for defense of their land rights. The Indigenous Maasai of East Africa have inhabited parts of what are now Kenya and Tanzania for centuries. When the Serengeti National Park was gazetted in 1959, many Maasai lost grazing rights in much of the Serengeti and Ngorongoro Crater, and at least 50,000 have since been evicted or displaced. The report also notes an important gender dimension to the criminalization of the Maasai and other LERDs in Tanzania, given that the lived experiences of women and men in the land rights space are different, entrenched in structural dynamics of society, politics, and customary, religious, and formal laws.

## Key Findings of the Report

1. Criminalization of LERDs in East Africa involves two main layers of power; those wielding or protected by the power of the state and corporate/business power, usually multinational projects. Infrastructure projects, as well conservation efforts by governments in the region, are also fueling land conflicts in the region, resulting into criminalization of LERDs who raise questions.
2. There is a pattern of instrumentalization of the law and weaponizing justice and law and order sector institutions in Uganda, Kenya, and Tanzania to crack down on LERDs, and includes private commercial interests having those institutions at their disposal.
3. The collective rights of ethnic minorities and Indigenous Peoples in the three countries are constantly under attack from both the state and business interests and parliaments. Judiciaries in the three countries appear incapable of defending them, leaving most of their defense to civil society organizations.
4. Although state organs and institutions (especially the judiciary) are active and vibrant in mediating between aggrieved LERDs and the state/business interests, they appear to be generally nonresponsive to the urgent needs of LERDs in distress.
5. While strategies and civil society efforts to support LERDs exist in the region, many human rights defenders find themselves helpless with limited resources and often lacking capacity to sustain efforts geared at asserting their rights. This situation prevails despite the fact that the forces they are fighting are usually monied and have plenty of human and technical resources at their disposal.
6. As land-based investments in the region increase and pressure on land resources rises, partly due to population growth and urbanization in East Africa, tensions will keep rising between states/business interests and communities/Indigenous Peoples. These challenges are not matched with equal growth in resources for LERDs, which will increase pressure on the few LERDs and organizations in that space.
7. On the whole, this report's findings underscore the reality that land and environmental rights defenders can only continue safely when states, companies and investors take action to tackle the root causes of conflict, safeguard defender rights and ensure accountability when attacks occur.

## Recommendations

The report recommends a three-pronged approach. Firstly, governments in East Africa, civil society organizations and companies should clearly identify and address the root causes of tensions between LERDs, communities and Indigenous Peoples on the one hand and governments/business interests on the other. This is largely dependent on the facts and circumstances of each case. Secondly, efforts should be geared by all stakeholders at protection of the rights of LERDs. Thirdly, governments must ensure that accountability mechanisms work and deliver justice when violations of LERDs' human rights occur. Below are specific recommendations for each of the above actors:

- a) Governments in East Africa should resolve outstanding land claims and formally secure the land rights of endangered communities and Indigenous Peoples.
- b) Governments should address land inequality including in the context of gender and ethnic minorities in line with their constitutions as well as international legal instruments and conventions.
- c) Governments and civil society should ensure that all businesses comply with the concept of free, prior, and informed consent of Indigenous communities at all phases of the project cycle or operation.
- d) Governments and civil society should insist on environmental and social impact assessments of proposed business operations in line with the relevant laws of the countries concerned and the results of any assessment made public and used to mitigate against adverse impacts experienced by communities.
- e) To protect the rights of LERDs among Indigenous Peoples and local communities, governments should legitimize the role of these defenders and publicly condemn any threats against them, with specific attention to gender-based violence and attacks. This must include the following efforts:
  - 1) Ensure national policies safeguard the rights of defenders to free assembly and speech, as well as potential recourse to civil disobedience.
  - 2) Provide effective accountability mechanisms at every level that deliver tangible results in defenders' lives, in line with international law and practice of civilized nations.
  - 3) Bring to justice those responsible for ordering or carrying out any threat or attack against a land or environmental defender.
  - 4) Prevent, investigate, punish, and redress corruption, human rights abuses and environmental damage through effective policies, legislation, and reparations, including holding businesses accountable to local communities when operating projects or sourcing land-based goods, both at home and abroad.
  - 5) Make foreign aid and investment in projects conditional upon whether specific measures for the security of land and environmental defenders are in place or not.
  - 6) Companies should cooperate with, assist, and in no way hinder investigations by state authorities into instances of attacks on land and environment defenders.
  - 7) Provide for or cooperate in remedial measures and reparations for defenders, organizations and communities affected by threats and attacks.
  - 8) Take immediate action to suspend business projects and relationships with business partners in situations where defenders have been threatened, until robust measures are taken to protect those at risk and prevent further harm.