

Solidarity Fund for Defenders of the Commons and ICCAs



A compilation of critical cases and issues from Anglophone Africa in support of the proposed establishment of a Solidarity Fund for Defenders of the Commons and ICCAs

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**The ICCA
Consortium**

1. Introduction

On 10th November 1995, Ken Saro Wiwa was hanged by the government of Nigeria. On 3rd December 2010, Moses ole Mpoie was shot dead by assassins on a motorbike in Nakuru, Kenya. And on 1st April 2015, Chief Victor Velaphi Lekhuleni was shot dead by a lone gunman in Pretoria, South Africa. While the three deaths seem far apart both in time and place, Ken, Moses and Victor share a similar story. They were all murdered for defending their communities' commons.

Are these isolated cases or are there many other such incidences of murder or torture of defenders of the commons in anglophone African countries? Are there any solidarity funds that assist defenders of the commons in their work in the region? Would a new solidarity fund be necessary?

To answer these questions, the Indigenous Peoples' and Community Conserved Areas and Territories (ICCAs)



We will fight to end for our land. Source: BBC news

Consortium,¹ an international association dedicated to promoting the recognition of and support to ICCAs in the regional, national and global arena, commissioned this study to compile *cases of specific occurrences of severe injury or murder in defense of the commons or ICCAs in anglophone African countries*. The study will inform discussions towards the proposed establishment of a *Solidarity Fund for Defenders of the Commons and ICCAs*.

The study is part of an initiative funded by the Christensen Fund to provide the ICCA Consortium with

Crucial assistance to the Global ICCA Support Initiative 2014-2017. The first step in the initiative is an *exploration of the opportunity, feasibility and conditions of effectiveness of setting up a Solidarity Fund for the Defenders of the Commons and ICCAs*.

¹ See the ICCA Consortium at http://www.iccaconsortium.org/?page_id=55

2. Defining “Commons”, “ICCAs” and “Defender(s)”

The Online Free Dictionary defines “commons” as “belonging equally to or shared equally by two or more people;” “joint”, “common interests” or “of or relating to the community as a whole; public: *for the common good*.”² According to the Global Commons Trust, “the commons are our shared wealth without which people cannot survive and thrive. This wealth is comprised of common goods which we have inherited or created, are entitled to use, and are obliged to restore and pass on to our children.”³ It categorizes “commons” to include social, cultural and intellectual commons, which are all replenishable resources. They also include solar, natural, and genetic commons, which may be either replenishable or depletable. A third type of commons is material, which are mainly depletable resources.”⁴

On the other hand, the International Union for Conservation of Nature (IUCN)⁵ defines ICCAs as the “natural and/or modified ecosystems containing significant biodiversity values, ecological services and cultural values, voluntarily conserved by indigenous peoples and local communities, both sedentary and mobile, through customary laws or other effective means. ICCAs can include ecosystems with minimum to substantial human influence as well as cases of continuation, revival or modification of traditional practices or new initiatives taken up by communities in the face of new threats or opportunities. Several of them are inviolate zones ranging from very small to large stretches of land and waterscapes.”⁶



Source: World United News

The Free online dictionary defines a “defender” as a “protector”, “guardian”, “advocate”, “supporter”, or “upholder”, among others. To the Office of the High Commissioner for Human Rights, a defender can be any person or group of persons working to promote human rights. A defender can be of any gender, of varying ages, from any part of the world and from all sorts of professional or other backgrounds including, in some

² The Free Dictionary, Definition of commons at <http://www.thefreedictionary.com/commons>

³ The Global Commons Trust, What are the commons? At http://globalcommonstrust.org/?page_id=11

⁴ Ibid

⁵ For more on IUCN, Please see <http://www.iucn.org>

⁶ IUCN, Indigenous and Communities Conserved Areas, April 2011 at <https://iucn.org/about/union/commissions/ceesp/topics/governance/icca/>

instances, government officials, civil servants or members of the private sector.⁷

In the context of the *Solidarity Fund for Defenders of the Commons and ICCAs*, a defender can therefore be any person or group of persons working to protect or defend the commons or ICCAs of a particular community or group of communities in a country.

A defender of the commons or ICCA may

- belong to that particular community, for example a Maasai defending Maasai land rights in Narok, Kenya.
- be a professional leading the defense of or supporting a community to defend their commons or ICCA. For example, a journalist or blogger who writes on indigenous communities' land rights, a lawyer who sues the government or a corporation over common land or resources.
- be activists generally working on indigenous and local community issues at the national, regional or international level.
- also be a foreigner directly involved in the defense of a commons or ICCA. For example, a Swedish lady currently leading the struggle to defend Maasai land rights in Loliondo, Tanzania.



"White inciter arrested in Loliondo":

Ms. Nordlund supports Maasai Land rights in Loliondo, Tanzania

Source: Susan Nordlund Facebook page



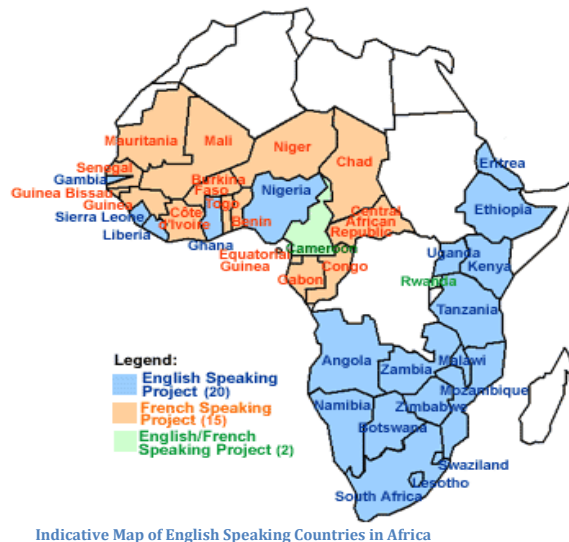
Ole Kaunga and Samburu land rights in Laikipia



An MP mobilizing a community to defend their land in Samburu, Kenya. Source: Mali ole Kaunga

⁷ United Nations Office of the High Commissioner for Human Rights, Who is a defender? Available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

3. Anglophone Africa Countries



Anglophone African countries are those that use English as the official language of communication. They include Sierra Leone, Liberia, Gambia, Nigeria and Ghana in West Africa, South Sudan, Ethiopia, Eritrea Kenya, Uganda and Tanzania in Eastern Africa, Zambia, Malawi, Zimbabwe, Botswana, Namibia, Lesotho, Swaziland and South Africa in Southern Africa. Cameroon is half English - half French.

According to the Encyclopedia of Earth, Africa's land mass is more than 3,025.8 million hectares (ha) comprised of a rich and dynamic mosaic of resources, which includes 650 million ha of forests and woodlands, 630 million ha of arable land, 1,274 million ha of deserts, mountains, coastal lands and freshwater systems.⁸ Mineral resources are also present throughout the continent in all countries.⁹

Most of this land and resources are in indigenous and local community territories. In Kenya, for example, community land comprises 67 % of the total land area.¹⁰ Land and natural resources lie at the heart of social, political, and economic life in much of rural Africa. They represent fundamental assets—primary sources of livelihood, nutrition, income, wealth, and employment for African communities—and are a basis for security, status, social identity, and political relations. For indigenous and local communities, land and resources such as water, trees, and wildlife also have significant historical, cultural, and spiritual significance.¹¹

In *Securing Africa's Land for Shared Prosperity*, the World Bank notes that more than 90 percent of Africa's rural land is undocumented, making it highly vulnerable to land

⁸ The Encyclopaedia of Earth, Land resources in Africa, 19th June 2008 at <http://www.eoearth.org/view/article/154145/>

⁹ Mineral Resources, Mineral Resources for Africa at http://www.africaminerals.com/mineral_resources.htm

¹⁰ Interview at the National Land Commission on 12th October 2015.

¹¹ Peter Velt, Shedding Light on Land Tenure in Africa, World Resources Institute, 15th November 2013 at <http://www.wri.org/blog/2013/11/shedding-light-land-tenure-africa>

grabbing and expropriation with poor compensation.¹² The anglophone African countries where land grabbing is a serious issue include Ethiopia, Kenya, Liberia, Nigeria, Sierra Leone, South Sudan, Tanzania and Uganda.¹³ In Ethiopia, for example, the UN Food and Agriculture Organization (FAO) reports that over 602,760 hectares was leased out to investors between 2004 and 2008. 471,660 hectares was leased out to investors in Sudan during the same period.¹⁴

Peter Velt summarizes the tensions that arise from such land grabs as follows: -

“Many African countries are responding to the global demand for food, fuel, and raw materials. In recent years, there has been an uptake of large-scale land acquisitions by foreign governments and agricultural investors, principally for the production of food and biofuels. Governments are allocating new oil, mining, and logging concessions for large-scale industrial production, as well as acquiring land for much-needed infrastructure, such as roads, rails, and ports. Many countries have also expanded their network of protected areas in order to conserve biodiversity, store carbon, and safeguard ecosystem services.

In other words, competition for access to Africa’s land and natural resources is increasing. This situation can lead to the displacement and resettlement of many rural people and create insecure tenure situations for those who still remain on their land under weak tenure circumstances.”



and prosperity, World Bank, 2013 at

<http://openknowledge.worldbank.org/bitstream/handle/10986/12927/780950B1B0EFD0011C00pubi>
Protests against Herakles Farms plans to create large palm oil plantations in South West Cameroon - Mongabay

¹³ Stop Land Grab at <http://www.stoplandgrab.com>

¹⁴ Lorenzo Cotula, Sonja Vermeulen, Rebeca Leonard and James Keeley, Land grab or development opportunity? Agricultural investment and international land deals in Africa, FAO, IIED and IFAD, 2009 at http://www.ifad.org/pub/land/land_grab.pdf

4. Increasing violations against indigenous peoples over land and natural resources in their territories in Anglophone Africa.

The new scramble for Africa is resulting in the rapid increase of occurrences of violent injuries and deaths of defenders of the natural commons and ICCAs in Anglophone Africa. In its report, *Deadly Environment*, Global Witness documents the increasing murders of activists as the demand for commodities like timber, beef and palm oil intensifies.¹⁵ According to the report, companies and criminals are staking their claim on new land with little regard for the people who live on it.¹⁶ In a follow up report titled “*How Many More?*” Global Witness indicates that killings of environmental activists are on the increase with indigenous communities hardest hit.¹⁷

Of the 116 environmental activists killed in 17 countries globally in 2014, two were from Uganda and one from South Africa.¹⁸ The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) also projects an increase in physical harm to activists in Africa as a result of increasing efforts at resource extraction. According to EHAHRDP, the recent discoveries of oil, gas and other minerals in Africa present enormous economic opportunities for the countries where the resources are found. However, the exploitation of these resources is also raising deep concerns for sustainable environmental

governance, revenue management, public health, community compensation, and intergenerational justice.



Human rights defenders have organized to fulfill crucial advocacy and monitoring roles. But the extractive sector is resistant to monitoring and criticism. Human Rights defenders therefore find themselves increasingly under attack by state and non-state actors in the extractive sector.¹⁹ Violence against defenders of the commons could therefore be greater than currently reported in Africa due to lack of public records, significant under-

¹⁵ Global Witness, *Deadly Environment*, April 15, 2014. Available at <https://www.globalwitness.org/campaigns/environmental-activists/deadly-environment/>

¹⁶ Ibid

¹⁷ Global Witness, *How Many More*, April 20th, 2015. Available at <https://www.globalwitness.org/campaigns/environmental-activists/how-many-more/>

¹⁸ Ibid fn 3.

¹⁹ East and Horn of Africa Human Rights Defenders Project, *Only the Brave Can Talk: Human Rights Defenders and the Resource Extraction Industries in Uganda and Tanzania*, December 12, 2013. Available at <https://www.defenddefenders.org/only-the-brave-talk-about-oil/>

reporting, prohibited or restricted human rights reporting and remoteness of the scenes of violence.²⁰

The following paragraphs provide a snapshot of violence against defenders of the commons, at the individual and community levels, in Anglophone Africa.

In **Uganda**, the International Service for Human Rights reports that Non-Governmental Organizations work in an unsafe and hostile environment. “An NGO with a particular focus on transitional justice and land rights was targeted on numerous occasions in 2013 and 2014. This harassment included an attempted shooting of two staff members, trespass on the office premises as well as the coordinator’s private residence, and threats via anonymous phone calls and indirectly through law enforcement agents.”²¹ A February 2014 Human Rights Watch report on the impact of mining on human rights in Uganda found that ‘the government’s increased focus on seeking foreign investment has been marked by increased hostility to civil society working on environmental, land, and corruption issues.’ The report documents a range of attacks against NGOs, such as the Uganda Land Alliance, and concludes that ‘NGOs seeking to educate the public about the value of their land, community processes, and compensation rights face a variety of problems from government officials, including threats of deregistration, accusations of sabotaging government programs, and arrest.’²²

The **Tanzania** Human Rights Defenders documents various incidences of arrest, torture and murder especially of journalists.²³ Indigenous and local communities also continue to face atrocities from the government. The Maasai in Loliondo, for example constantly experience evictions to give room for Arab hunting or other farming interests.²⁴ A documentary “*Operation Maasai Removal*” delves into the case of the Maasai in Kiteto district as they struggle against farming interests.²⁵ Maasai community members who oppose such evictions are regularly threatened or arrested. This may eventually lead to torture or even deaths of the activists.

In **Sudan**, conflicts continue between African farming communities and Sudanese-government sponsored nomadic Arab tribes. According to the United Human Rights

²⁰ Ibid fn 3

²¹ International Service for Human Rights, Submission to 56th session of the African Commission on Human and Peoples’ Rights on the situation of human rights defenders, April 2015. Available at https://www.ishr.ch/sites/default/files/article/files/uganda_-_achpr_briefing_paper_on_hrds_april_2015.pdf

²² As quoted by the International Service for Human Rights. See more at: <http://www.ishr.ch/news/end-attacks-human-rights-defenders-who-protest-against-business-operations-and-development#sthash.Pow40Mr8.dpuf>. The full report by Human Rights Watch is available at <https://www.hrw.org/report/2014/02/03/how-can-we-survive-here/impact-mining-human-rights-karamoja-uganda>

²³ Onesmus Ole Ngurumwa, Position Paper on the State of HRDS in Tanzania and the Status of the established security mechanisms, 27th September, 2012. <http://www.thrd.or.tz/uploads/17.pdf>

²⁴ Thomas Reuters Foundation, Tanzania Condemned for Violence Against Maasai, 26th March 2015. Available at <https://www.google.com>

²⁵ IC Magazine, Operation Maasai Removal, 24th May 2015. Available at <https://intercontinentalcry.org/operation-maasai-removal/>

Council, “the genocide in Darfur has claimed 400,000 lives and displaced over 2,500,000 people. More than one hundred people continue to die each day; five thousand die every month. The conflict began in 2003 when the African farming communities complained about the marginalization of their area and the failure by the government to protect them from attacks by the Arab nomads.”²⁶

In **Ethiopia**, the International Service for Human Rights reports that the state uses legislation and other state apparatus to severely restrict freedom of expression and assembly as well as independent human rights monitoring and promotion. These actions provoke fear and self-censorship by activists and human rights defenders. Human rights defenders frequently face threats, acts of intimidation, judicial harassment and arbitrary arrest.²⁷ With a strong dictatorship, the human rights record of the Ethiopian government and security forces remains poor in all parts of the country but especially in rural areas. This has forced many activists to flee the country for fear of torture or death.²⁸ Large infrastructure projects like dams and associated land grabs for plantations threaten the tribes of the Lower Omo River.²⁹



²⁶ United Human Rights Council, Genocide in Darfur at <http://www.unitedhumanrights.org/genocide/genocide-in-sudan.htm>

²⁷ The International Service for Human Rights, the situation of human rights defenders in Ethiopia, available at http://www.ishr.ch/sites/default/files/article/files/ethiopia_-_ishr_briefing_on_hrds.pdf

²⁸ East and Horn of Africa Human Rights project, The current situation of Human Rights Defenders in Ethiopia, Kenya, Somalia and Sudan, June 2008. Available at <http://www.icc-cpi.int/iccdocs/doc/doc796894.pdf>

²⁹ Survival International, The Omo Valley tribes at <http://www.survivalinternational.org/tribes/omovalley>

In **Botswana**, the Government does not recognize indigenous rights with groups not belonging to the Tswana being disadvantaged.³⁰ In particular, the San (also known as Bushmen or Basarwa) suffer frequent beatings, harassments and evictions as documented by Survival International, an NGO based in the UK. The cases include those of Mogolodi Moeti who was beaten with the butt of a gun on 4th January, 2014, Nkemetseng Motsoko who was beaten by a Special Support Group officer allegedly for possessing bush meat and Bantloetse Motsoko who on 22nd September, 2007 was arrested and his arm was cut “to make him talk” among many others. The full report that includes pictures of the victims is available online at <http://assets.survivalinternational.org/documents/1287/they-have-killed-me-bushman-report.pdf>.

In **Liberia**, communities report being beaten, threatened and arrested for taking a stand against the rapid expansion of the palm oil industry in the south eastern parts of the country.³¹ Global Witness indicates that “State officials are said to be helping the palm oil company Golden Veroleum (GVL) harass communities into signing away their land and crush dissent”.³²

In **Cameroon**, reports by Human Rights Watch and Amnesty International indicate that



www.ipsnews.net

there are a raft of abuses including unlawful killings and torture by the authorities using the criminal justice system to clamp down on political opponents, human rights defenders and journalists.³³ Security forces torture, beat, harass, otherwise abuse and even kill citizens.³⁴ While lesbian, gay and transgender activists have borne the brunt of torture and murder, defenders of the commons are also increasingly being arrested as community land is targeted for mega projects. For example, Nasako Besingi, the director of the local NGO Struggle to Economize the Future,

explains how he was arrested for leading opposition against a 73,000 acre palm oil plantation by Herakles Farms, a US Company.

³⁰ Embassy of France in Botswana, LOCAL STRATEGY FOR BOTSWANA TO IMPLEMENT EU GUIDELINES ON HUMAN RIGHTS DEFENDERS, downloadable at <http://www.ambafrance-bw.org/Support-to-Human-Rights-Defenders>

³¹ Global Witness, THE NEW SNAKE OIL? The violence, threats, and false promises driving rapid palm oil expansion in Liberia. July 23, 2015. Available at <https://www.globalwitness.org/reports/new-snake-oil/>

³² Ibid fn 5.

³³ Amnesty International, Cameroon: End impunity for grave human rights violations, 23rd January, 2013 at <https://www.amnesty.org/en/latest/news/2013/01/cameroon-end-impunity-grave-human-rights-violations/>

³⁴ United States Department of State, Country Reports on Human Rights Practices for 2013, Bureau of Democracy, Human Rights and Labor at <http://www.state.gov/documents/organization/220302.pdf>

“We were told we were required for questioning at the police post, and were detained for a day without charge. But it was only following international and local pressure that we were released (on bail) under the condition that we must appear before the authorities whenever we are (asked).” Without such international pressure, Besingi may have been tortured or even killed.

5. Specific examples of severe injury or murder in defense of the commons or ICCAs

A. *The Murder of Kenule Benson Saro Wiwa and eight other Movement for the Survival of Ogoni People (MOSOP) leaders*



Perhaps the most widely publicised murder of community rights activists in Anglophone Africa was that of Kenule “Ken” Benson Saro Wiwa, Saturday Dobe, Nordu Eawo, Daniel Gbooko, Paul Levera, Felix Nuate, Baribor Bera, Barinem Kiobel and John Kpuine from the Ogoni tribe in the Niger Delta, Nigeria. Ken Saro-Wiwa was a son of an Ogoni chief and head of the Movement for the Survival of the Ogoni people (MOSOP). The Ogoni are an ethnic minority in Nigeria. From 1990, Ken Saro-Wiwa, writer, producer and environmental dedicating his time to human rights

television activist, began and environmental causes in Ogoniland which had suffered extreme environmental damage from petroleum waste dumping resulting from crude oil extraction by Royal Dutch Shell company. The military regime ruling Nigeria then was uncomfortable with Ken Saro Wiwa’s activities. Saro Wiwa was regularly jailed by the military regime in the early 1990’s.

<http://movimento5stellescafati.it/>

In May 1994, Saro Wiwa, together with eight MOSOP leaders, was arrested and charged for the murder of four Ogoni chiefs killed in a pro-government demonstration. A specially convened military tribunal found them guilty and sentenced them to death. The trial was shoddy, with witnesses later admitting receiving bribes to implicate the MOSOP leaders in the death of the Ogoni chiefs. Some defence lawyers even resigned to protest against the alleged rigging of the trial by General Sani Abacha’s regime. It is reported that Gen. Abacha ordered the execution of the MOSOP leaders to settle the Ogoni issue “once and for all, and to make it clear to Nigerians and the world that the authoritarian

regime was no weakling.”³⁵ On 10th November 1995, Ken Saro Wiwa and the eight other MOSOP leaders were hanged by the military regime. The killing of Ken Saro Wiwa and the eight MOSOP leaders was condemned internationally. In 1996, with the support of human rights organizations³⁶ and lawyers, Saro Wiwa’s family instituted a series of cases in a New York district court against Shell Corporation for human rights violations in Ogoni land and for its role in the execution of Ken Saro Wiwa and eight MOSOP leaders.³⁷ Shell agreed to pay US \$ 15.5 million in an out of court settlement. US \$ 5m went to setting up a trust to support educational and other initiatives in the Niger delta. ³⁸

The case was filed under the Alien Tort Statute, 1789³⁹ - a US law under which US district courts shall have original jurisdiction in any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.⁴⁰ The statute provides opportunities for victims who cannot get justice at home to approach US courts for justice. However, *Kiobel v. Royal Dutch Shell Petroleum*,⁴¹ the US Supreme Court ruled that the statute does not provide an avenue to justice for Nigerian victims who suffered human rights abuses when Royal Dutch Shell aided and abetted the Nigerian government in attacking them and their family members. The Court based its decision on the fact that the petitioners were foreign nationals, the atrocities were committed abroad and that Royal Dutch Shell is not sufficiently connected to the US.

MOSOP continues its work that includes promoting democratic awareness, protecting the environment, seeking social, economic and physical development, protecting cultural rights and practices and seeking appropriate rights of self-determination for the Ogoni



Source: mrbayer.weebly.com

³⁵ Sahara Reporters, Abacha Memo Sanctions Killing Of Ken Saro-Wiwa and Others - Premium Times, 30th December, 2012. Available at <http://saharareporters.com/2012/12/30/abacha-memo-sanctions-killing-ken-saro-wiwa-and-others-premium-times>

³⁶ Center for Constitutional Rights (<https://ccrjustice.org>) and EarthRights International (<http://www.earthrights.org>)

³⁷ *Wiwa et al. v. Royal Dutch Petroleum et al.*, (S.D.N.Y.) (No. 96 Civ. 8386). Available at <http://ccrjustice.org/files/3.16.09%205th%20Amended%20Complaint.pdf>

³⁸ The Guardian, Shell pays out \$15.5m over Saro-Wiwa killing, 9th June 2009. Available at <http://www.theguardian.com/world/2009/jun/08/nigeria-usa>

³⁹ 28 U.S. Code § 1350

⁴⁰ Legal Information Institute, 28 U.S. Code § 1350 - Alien’s action for tort, Cornell Law School. Available at <http://www.law.cornell.edu/uscode/text/28/1350>

⁴¹ 133 S.Ct. 1659 (2013)

people.⁴²

B. The murder of Maasai land rights activists in Kenya



Moses ole Mpoe Source: Daily Nation

On 3rd December 2010, Moses ole Mpoe, Parsaayia ole Punyua and Joseph ole Mpoe, Maasai land rights activists, were driving to Nakuru from their home in Mau Narok, Kenya. A few kilometers from Nakuru town, two assassins on a motorbike sprayed their car with bullets, killing Moses and Parsaayia on the spot and severely injuring Joseph.

Ole Mpoe had been advocating for Maasai land rights around ownership of a 2,000-acre farm in Mau Narok. Mau Narok constitutes

part of the ancestral land of the Maasai. However, the Colonial government dispossessed them and granted the land to colonial settlers. Upon independence, a politically connected family from a mainstream community took over the land. Ole Mpoe led the Maasai struggle in and out of court for 15 years, to regain the land.⁴³ After the 2007 electoral violence, the government sought to purchase the land to settle internally displaced persons. The 4,200- acre Muthera Farm in Mau Narok was identified as one of the farms to settle 10,000 IDPs from a mainstream, dominant community. However, Ole Mpoe led Maasai resistance to the purchase urging the government to purchase the land and restore it to the Maasai- the rightful owners.⁴⁴

Seven people including two members of the powerful family were arrested and charged before the High Court in Nakuru, for the murder of Moses ole Mpoe and Parsaayia Ole Punyua. Unfortunately, the accused were acquitted. The Court ruled, “Evidence provided by the state was based on suspicion and contained several loopholes which the prosecution failed to cover”.⁴⁵ The Director of Public Prosecutions immediately ordered fresh investigations into the killings but was silent on whether they would appeal the

⁴² See MOSOP webpage at http://www.mosop.org/about_us.html

⁴³ The writer, Kanyinke Sena and Ole Mpoe are from the same Narok County.

⁴⁴ Daniel Branch, Kenya: Between Hope and Despair, 1963-2011, Yale University Press, 201, page 286.

⁴⁵ Bizna News, Mbiyu Koinange’s widow acquitted for killing Moses Ole Mpoe, December 14, 2014 at <http://bizna.co.ke/mbiyu-koinanges-widow-acquitted-killing-moses-ole-mpoe/>

Court decision.⁴⁶ The Kenya Television Network produced an investigative documentary titled “Case files: Who gunned down face of a community’s agitation for land rights Moses Ole Mpoe?” The video is available at <http://www.standardmedia.co.ke/ktn/video/watch/2000086565/-case-files-who-gunned-down-face-of-a-community-s-agitation-for-land-rights-moses-ole-mpoe>. Muthera Farm has not reverted back to the Maasai. However, the government also abandoned the initial plans to settle 10,000 IDPs on the farm.



Maasai/Samburu Land Rights meeting in Laikipia, Kenya.

Source: Mali ole Kaunga

As state and corporations increasingly target resources in indigenous peoples’ lands and territories, communities are also becoming increasingly vocal in the defense of their commons.

Torture and/or murder of defenders will definitely also increase.

⁴⁶ Joseph Muraya, DP orders fresh Mpoe killing probe, mulls appeal, Capital News, December 17th, 2014 at <http://www.capitalfm.co.ke/news/2014/12/dpp-orders-fresh-mpoe-killing-probe-mulls-appeal/>

C. Murder of Victor Velaphi Lekhuleni in South Africa



On 1st April 2015, Chief Victor Velaphi Lekhuleni was gunned down by a lone gunman in Mamelodi West, Pretoria in Guateng province, South Africa.⁴⁷ Chief Lekhuleni had filed a land claim to most of Pretoria on behalf of the Bakgatla Ba Lekhuleni communities.⁴⁸ In his claim, Chief Lekhuleni claimed that forced removals of the Bakgatla Ba Lekhuleni communities by the apartheid government from 1958 to 1960 robbed

the communities of their right to land ownership, habitation, grazing, crop farming, burial sites and tradition.⁴⁹

A young man later surrendered himself to the police in connection with the killing and was charged with murder and kidnapping.⁵⁰ An initial attempt by Chief Lekhuleni to lodge the land claim in 1996 were rejected by the land commission, forcing Chief Lekhuleni to approach the Land claims court in August 2014 to force the commission to address his land claim.⁵¹ Despite Chief Lekhuleni's murder, the Bakgatla Ba Lekhuleni communities have vowed to continue with the land claim and they will elect a representative to do this.⁵² The regional land commission vowed to continue processing the land claim on behalf of the Bakgatla Ba Lekhuleni communities despite Chief Lekhuleni's death.⁵³

⁴⁷ Patricia Visagie, Family, friends pay tribute to Chief Velaphi Lekhuleni, SABC News, 9th April, 2015.

Available at <http://www.sabc.co.za/news/a/9191098047f420868555f74405f77b26/Family-friends-pay-tribute-to-Chief-Velaphi-Lekhuleni-20150904>

⁴⁸ Notice Number 1113 of 2004. Available at

http://www.gov.za/sites/www.gov.za/files/38290_gen1113.pdf

⁴⁹ Kennedy Mudzuli, Tshwane land claim chief killed, IOL News, 2nd April 2015. Available at

<http://www.iol.co.za/news/crime-courts/tshwane-land-claim-chief-killed-1.1840402#Vf6Fp3hTPds>

⁵⁰ Stephen Selaluke, Man held for Pretoria land claimant's murder, The Citizen, 9th April, 2015.

Available at <http://citizen.co.za/359561/man-held-for-pretoria-land-claimants-murder/>

⁵¹ Stephané Bothma, Pretoria Land Claim may be invalid, The Citizen, 19th February, 2015. Available at <http://citizen.co.za/330175/pretoria-land-claim-might-be-invalid/>

⁵² Patricia Visagie, Family, friends pay tribute to Chief Velaphi Lekhuleni, SABC news. Available at <http://www.sabc.co.za/news/a/9191098047f420868555f74405f77b26/Family-friends-pay-tribute-to-Chief-Velaphi-Lekhuleni-20150904>

⁵³ The Citizen, Pretoria land claim continues despite chief's murder, 2nd April, 2015. Available at <http://citizen.co.za/355275/pretoria-land-claim-continues-despite-chiefs-murder/>

6. Some existing support avenues and/or funds

“As pressure on natural resources increases, land and environment rights defenders have become among the most vulnerable groups in terms of killing. These defenders...must be protected. They must be empowered because they are not only fighting for their lives but also for ours.”

- Antoine Bernard, CEO of the International Federation for Human Rights (FIDH) as quoted by Global Witness.

i. Swedish International Development Agency (SIDA).

- SIDA is a government agency working on behalf of the Swedish parliament and government, with the mission to reduce poverty in the world.

- It is based in Stockholm, Sweden but with offices in Ethiopia, Kenya, Sudan, Tanzania, Uganda, South Africa, Liberia, Zambia and Zimbabwe.

- It is already supporting the National Coalition of Human Rights Defenders – Kenya (<http://nchrdk.org>)

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ii. HIVOS

- An international organization that seeks new solutions to persistent global issues. HIVOS opposes discrimination, inequality, abuse of power and the unsustainable use of the planet's resources.
- Hivos headquarters in the Hague, Netherlands and has two regional offices in Africa. The Eastern Africa Office is based in Nairobi (<https://east-africa.hivos.org/about-hivos>) and the Southern Africa office is based in Harare, Zimbabwe (https://southern-africa.hivos.org/?_ga=1.15219510.1090925341.1442842878).
- HIVOS also supports the work of the National Coalition of Human Rights Defenders – Kenya (<http://nchrdk.org>)
- **Contacts** Raamweg 16
2596 HL, The Hague
The Netherlands
T +31 (0) 70 376 55 00

F +31 (0) 70 362 46 00

E info@hivos.nl

Twitter: [@hivos.org](https://twitter.com/hivos.org)

iii. **European Commission Democracy and Human Rights Emergency Fund.**

- The emergency fund for human rights defenders at risk managed under the EIDHR allows the Commission to give direct small grants of up to 10,000 euro per grant to Human Rights Defenders (HRD), be it individuals or organizations, which are in need of urgent support.
- **Contact:** europeaid-eidhr@ec.europa.eu

iv. **US Department of State**

- **Human Rights Defenders Fund** is a US \$ 1.5 million emergency fund to support human rights defenders globally. The fund provides assistance to activists who are facing extraordinary financial, legal or medical needs as a result of government repression.
- **The Embattled NGOs Assistance Fund** - The US Department of State, together with Australia, Benin, Canada, Chile, the Czech Republic, Denmark, Lithuania, the Netherlands, Norway, Poland, Sweden, and the United Kingdom, launched the Lifeline: Embattled NGOs Assistance Fund. Together they have seeded the Lifeline Fund with almost \$5 million to begin a multi-year effort.

The programs of the Fund are to:

- Provide emergency assistance to embattled NGOs for needs including: legal representation, appeals, and trial monitoring; medical bills arising from abuse; transportation costs for prison visitation of incarcerated members; and replacement of equipment damaged or confiscated as a result of harassment
- Support discrete advocacy initiatives that raise awareness of the difficult, often hostile environments in which NGOs and civil society operate and to address the barriers to their freedom of association.

v. **Sigrid Rousing Trust**

- Funds projects that support human rights defenders including from detention, torture and the death penalty.
- It is currently funding diverse human rights programs in all anglophone countries (<https://www.sigrid-rausing-trust.org/Grantees/Regions/Sub-Saharan-Africa>).
- Contact Email: - info@srtrust.org

vi. Oak Foundation

International Human Rights Programme supports activist organizations involved in documentation, evidence collection, campaigns and strategic litigation that address their priorities. They also support those who empower human rights defenders, by improving their physical and digital security and enhancing their effectiveness through a range of technology tools. They provide core, project and seed funding in multi-year grants. Based in Geneva but has an operations office in Ethiopia.

Contacts

Oak Philanthropy Ltd, Case Postale 115, 58, Avenue Louis Casai, 1216 Cointrin, Geneva, Switzerland

Further contacts can be found at <http://www.oakfnd.org/node/20>

vii. Agir Ensemble pour les Droits de l'Homme

- An emergency fund for situations that meet three criteria: a request concerning a human rights defender (member of a field association, but also a journalist, a lawyer, a union organizer...), the person in danger is threatened because of his/her work protecting human rights, and the situation presents itself as an emergency.
- Based in France
- Focuses on the global south
- **Contacts** – AEDH - 16 avenue Berthelot 69007 Lyon - France - Tel: +33 (0) 4 37 37 10 11.

viii. The Finish NGO Foundation for Human Rights KIOS

- KIOS promotes human rights in developing countries by granting funding to human rights projects targeting especially vulnerable groups.
- KIOS is based in Helsinki, Finland.
- **Contacts**
The Finnish NGO Foundation for Human Rights KIOS
Lintulahdenkatu 10
00500 Helsinki, Finland
E-mail kios@kios.fi
www.kios.fi

ix. Ford Foundation

320 East 43rd Street
New York, N.Y. 10017
USA

Embassies/Missions of EU countries in all Anglophone Africa countries are participating in the EU strategy to implement EU Guidelines on Human Rights Defenders. The Embassies can therefore be the first contact point for defenders of the commons and ICCAs in Anglophone Africa.

Tel.
+1 212 573 5000
Fax
+1 212 351 3677

x. Open Society Foundations

224 West 57th Street
New York, NY 10019
United States
Phone: +1-212-548-0600
Fax: +1-212-548-4600

7. Recommendations on a “new” Fund

- As already mentioned, investments in extractive industries, agriculture, renewable energy conservation and forest plantations for carbon projects are on the increase in all anglophone countries in Africa.
- Defenders of the commons are also becoming increasingly vocal in their opposition to the exploitation of resources in their territories without consultation, benefit sharing and the free, prior and informed consent of indigenous communities.
- In most, if not all, anglophone African countries, the space for defenders of the commons is shrinking through legislation, harassment, arrests, torture and murder.
- However, there are some support channels for human rights defenders in most countries in Anglophone Africa. Most of the funds currently benefit journalists and other professionals working on human rights issues generally.
- Despite the existence of these human rights defenders initiatives, it is never enough given the magnitude of potential torture or murder of defenders of the commons in the foreseeable future.
- In view of these, a *Solidarity Fund for the Defenders of the Commons and ICCAs* will be a necessary and welcome addition to complement existing funds and enable more effectiveness in the defense of the commons in anglophone African countries.

As an Indigenous Peoples Human Rights Defenders fund exists in Asia (<http://www.iphrdefenders.net/index.php/request-for-assistance-form>), the solidarity fund could focus on Africa and Latin America.

8. Organizational option(s) for the functioning of the Fund

- **Legal form** – In my view, rather than establishing a new entity, the solidarity fund should be a program of the ICCA Consortium. The

advantage of such an arrangement would be that the ICCA Consortium is already leading the discussion; the Consortium has a global outreach and has well-established structures to operationalize such a fund within a short time. It could be in the form of an endowment fund with the principal amounts being invested with only the interest going towards solidarity with defenders of the commons. Such an approach will guarantee the existence of the fund into the future. An endowment fund might also attract more support, as it is tax deductible.

- **Location** – Since it will operate in various regions, it should ideally be based in a European country, for example, Switzerland. As opposed to a third world country, the staff of the fund will be able to fundraise more easily when located near potential donors. Further, interference from the state may be difficult in a European country.
- **Objectives** – the objectives of a solidarity fund would be to provide both preventive support and solidarity in the event of torture or murder of a defender of the commons. “Preventive support” could be restricted to publicizing threats to a defender(s) and enabling safe passage in situations where there is demonstrable, imminent threat of torture or murder of a defender of the commons. The term “solidarity support” should be applied broadly and not restricted to only specific types of support. In my view, “solidarity support” would ideally be determined on a case-by-case basis and informed by the request made. However, broad parameters for support should be agreed on at the outset of the fund but must exclusively benefit indigenous and local communities’ defenders of the commons or ICCAs who are under threat or have experienced torture or murder in their work.
- **Frequency and mechanism of allocation** - Incidences of torture or murder are not predetermined. The solidarity fund should therefore be operational throughout the year. This would require a system that ensures a quick flow of information between defenders of the commons and internally, quick decision making processes and quick disbursement of funds. The solidarity fund could be accessed through direct application by the defender or defender’s organization or family or through nominations by other credible interested parties, for example, national and regional indigenous peoples’ organizations and ICCA Consortium Members.

9. Criteria for allocation

The criteria for allocation of the solidarity fund flows from its title. So essentially, it will benefit

- *Indigenous and local communities’ activists and their families and in some cases their organizations to pursue justice*
- *From the global south*

- *Who are under threat of imminent torture or death*
- *Or who have suffered torture or death*
- *While defending commons or ICCAs*
- *Such torture or death or threat of torture or death must be as a result of the victim's defense of the commons and/or ICCAs*
- *A geographical balance must be ensured in the allocation of the solidarity fund.*

10. Types of support offered

The solidarity fund could offer the following types of support: -

i. Preventive

- Enabling publicity through the media
- Providing safety to a defender in danger or his family, for example, though enabling the defender to leave the area

ii. Solidarity support

- Helping offset medical bills
- Helping with funeral expenses
- Enabling access to justice through supporting research/investigations, linkages with pro bono lawyers, etc.
- Supporting the defender's family to manage the loss

11. Feasibility of the fund

Due to the objectives of the fund “solidarity support for defenders of the commons and ICCAs”, several challenges might be experienced in its establishment. These include: -

- Opposition by governments focused on exploiting resources in indigenous and local communities' territories, especially if it is linked to any UN agency.
- Potential opposition by the private sector engaged in the exploitation of the commons in indigenous and local communities' territories.
- Seeking financial contributions on a scale that would enable the fund to provide solidarity support in all cases involving threats or murder of defenders of the commons and ICCAs might also be a challenge.
- Access to the solidarity fund by defenders of the commons working in remote areas in most anglophone countries would also be a challenge.

Possible responses to the challenges could include

- Sensitizing states on their duty to respect human rights including by ensuring access to justice. This would also serve as a preventive measure for the defenders of the commons. Similarly, the private sector could be constantly reminded of their responsibility to respect human rights.
- Fund raising will be challenging. However, several organizations already offering such support could be the first contact points. The list of potential partners will be provided below.
- Access to the solidarity fund could be ensured through close collaboration with regional and national organizations of indigenous and local communities or those working closely with them.

12. Potential Partners

I. Donors

i. European Union

Support for human rights defenders is an established element of the European Union's human rights external relations policy.

Contacts

European External Action Service

1046 Brussels

Belgium

Telephone: +32 2 584 11 11

http://www.eeas.europa.eu/human_rights/index_en.htm

ii. Ford Foundation

Purpose: Securing equal rights and opportunity for all by supporting efforts to help vulnerable populations gain access to the social, political and cultural institutions that govern their rights by strengthening organizations and mechanisms that enforce human rights, monitoring the policies and practices of institutions that affect the well-being of individual citizens, supporting legal and advocacy efforts to establish and retain basic civil, economic and social rights and ensuring civil and criminal justice systems are fair, effective, accessible and nondiscriminatory.

Contacts

320 East 43rd Street

New York, N.Y. 10017

USA

Tel. +1 212 573 5000

Fax +1 212 351 3677
<http://www.fordfoundation.org>
[Follow @FordFoundation](#)

iii. Open Society Foundations

Purpose: The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens.

Contacts

224 West 57th Street
New York, NY 10019
United States
Phone: +1-212-548-0600
Fax +1-212-548-4600

iv. Oak Foundation

Purpose: Commits its resources to address issues of global, social and environmental concern, particularly those that have a major impact on the lives of the disadvantaged.

Contacts

Oak Philanthropy Ltd
Case Postale 115
58, Avenue Louis Casai
1216 Cointrin
Geneva
Switzerland

v. Swedish International Development Agency (SIDA)

Purpose: A government agency, SIDA works on behalf of the Swedish parliament and government, with the mission to reduce poverty in the world.

Contacts

Valhallavägen 199
105 25 Stockholm
Sweden
Office hours:
Mo - Fr 08.00 - 16.30
Phone: +46 (0) 8 – 698 50 00

Fax: +46 (0) 8 – 20 88 64
E-mail: sida@sida.se

vi. Norwegian Agency for Development Cooperation (NORAD)

Contacts

Ruseløkkveien 26,
0251 Oslo
POSTAL ADDRESS
Pb 8034 Dep. 0030 Oslo
E-mail: postmottak@norad.no
Phone: +4723980000

vii. UK AID

Purpose: The UK government supports various organizations focused on human rights defenders. It has also offered assistance to defenders in need on various occasions.

Contacts

E-mail: enquiry@dfid.gov.uk
Telephone (UK only) 0300 200 3343
Telephone (from outside UK) +44 (0) 1355 84 3132

viii. Ministry of Foreign Affairs, Finland

Purpose: The Ministry also supports several human rights and natural resources related programs in various parts of the world.

Contacts

P.O.Box 176, FI-00023 Government, Finland
Switchboard: +358 295 350 000
24/7 service: +358 9 1605 5555 (calls will be recorded)
24/7 media enquiries service: +358 40 551 6571
Registry office:
Visiting address: Merikasarmi, Laivastokatu 22 C 2 (open on working days 8.00 - 16.15)
E-mail: kirjaamo.um@formin.fi
Telephone: +358 295 351 861

II. Organizations that support indigenous peoples' rights

i. Minority Rights Group International

Mission: MRG campaigns worldwide with around 130 partners in over 60 countries to ensure that disadvantaged minorities and indigenous peoples can make their voices heard. MRG provides training and education, legal cases, publications and the media. MRG supports minority and indigenous people as they strive to maintain their rights to the land they live on, the languages they speak, to equal opportunities in education and employment, and to full participation in public life

Contacts

54 Commercial Street

London E1 6LT, UK

E-mail: minority.rights@mrgmail.org

Telephone: +44 (0) 20 7422 4200

Fax: +44 (0) 20 7422 4201

ii. International Working Group for Indigenous Affairs (IWGIA)

Purpose: IWGIA works at local, regional and international levels to further the understanding and knowledge of, and the involvement in, the cause of indigenous peoples through documentation and dissemination of information, international and regional human rights advocacy and local projects.

Contacts

Classensgade 11 E

DK 2100 Copenhagen

Denmark

Phone no. (+45) 35 27 05 00

Fax no. (+45) 35 27 05 07

E-mail: iwgia@iwgia.org

iii. Forest Peoples Programme (FPP)

Purpose: FPP supports the rights of peoples who live in forests and depend on them for their livelihoods. FPP works to create political space for forest peoples to secure their rights, control their lands and decide their own futures.

Contacts

Forest Peoples Programme

1c Fosseway Business Centre

Stratford Road

Moreton-in-Marsh
GL56 9NQ
England
Tel: +44 (0) 1608 652893
Fax: +44 (0) 1608 652878

iv. Survival International

Purpose: Supports tribal peoples around the world to defend their lives, protect their lands and determine their own futures.

Contacts

Survival International
6 Charterhouse Buildings
London, EC1M 7ET
United Kingdom
T +44 (0) 207 687 8700
F +44 (0) 207 687 8701
info@survivalinternational.org

v. Cultural Survival

Mission: Cultural Survival has advocated for indigenous peoples rights and supported indigenous communities' self-determination, cultures and political resilience, since 1972.

Contacts

2067 Massachusetts Avenue,
Cambridge, MA 02140,
USA
E-mail: culturalsurvival@culturalsurvival.org
Phone: +1 (617) 441 5400

vi. Rights and Resources Initiative

Mission: RRI is a partnership of collaborating organizations directly engaged in land and forest policy reforms in close to 20 countries throughout Africa, Asia and Latin America. RRI works to encourage greater global commitment and action on pro-poor tenure, policy and market reforms.

Contacts

1238 Wisconsin Avenue NW, Suite 300

Washington, DC 20007
United States of America
Telephone: +1 202 470 3900
Fax: +1 202 944 3315
E-mail: info@rightsandresources.org.

vii. Member organizations for the Conservation Initiative on Human Rights

The initiative is a consortium of international conservation NGOs that seek to improve the practice of conservation by promoting integration of human rights in conservation policy and practice. Members include

- IUCN,
- Birdlife International - <http://www.birdlife.org>
- Conservation International - <http://www.conservation.org>
- Fauna & Flora International - <http://www.fauna-flora.org>
- The Nature Conservancy - <http://www.nature.org>
- Wetlands International - <http://www.wetlands.org>
- Wildlife Conservation Society - <http://www.wcs.org>
- WWF - <http://wwf.panda.org>

viii. Amnesty International

ix. National Human Rights Institutions in all countries

All anglophone countries have national human rights institutions that could be great partners in the Solidarity Fund for Defenders of the Commons and ICCAs. The institutions are usually autonomous and mandated to further the promotion and protection of human rights in their respective countries. For example, the Kenya National Human Rights and Equality Commission is an autonomous national human rights institution established under article 59 of the Constitution of Kenya 2010.

x. Africa Medical Research Foundation (AMREF)

Purpose: AMREF's Charity Evacuation Programme transports patients free of charge from the most remote locations in Kenya, flying them to medical facilities where their lives can be saved.



AMREF flying a Samburu Land Rights activist to hospital. Male Ole Kaunga

Contacts

+254 20 6992299/6992000
/3315454/3315455/6002492
+ 254 (0) 733 639 088/736 359 362/722 314 239
+254 20 3344170/6000665

xi. The National Coalition of Human Rights Defenders Kenya

Some anglophone countries, for example, Kenya also have human rights defenders organizations that the proposed solidarity funds could partner with.

xii. East and Horn of Africa Human Rights Defenders Project

- May not provide funding but linkages to funding opportunities.
- Based in Kampala, Uganda but supports human rights defenders in Uganda, Kenya, Tanzania, Burundi, Rwanda, South Sudan, Ethiopia, Somalia, Eritrea and Djibouti.
- Has an advocacy and protection/security program.
- Human Rights House
Plot 1853 Lulume Rd
Nsambya
PO Box 70356
Kampala, Uganda
+256-414-510 263 (General)
+256-3932 65820/1/2
Website: <https://www.defenddefenders.org/about-ehahrdp/>

III. Some indigenous peoples' organizations in Anglophone Africa

Indigenous Peoples of Africa Coordinating Committee (IPACC)

IPACC is a regional network of over 160 indigenous peoples' organizations in 22 countries in Africa. IPACC member organizations are constantly in touch with the Secretariat based in Cape Town and this could provide a useful communication channel for defenders of the commons and ICCAs.

Contacts: ipacc.africa@gmail.com
www.ipacc.org.za

Kenya

- Manyoito Pastoralist Integrated Development Organization - <http://mpido.org>
- Ogiek Peoples Development Program - <http://www.ogiekpeoples.org>
- Kivulini Trust - <http://www.kivulinitrust.org>
- Samburu Women Trust - <http://www.samburuwomentrust.org>

- IMPACT-Kenya

Tanzania

- Pastoralists Indigenous Non Governmental Organizations' Forum (PINGOs Forum) - <http://www.pingosforum.or.tz>
- Association for Law and Advocacy for Pastoralists (ALAPA) - <http://alapa.or.tz/alapa/>

Nigeria

- Movement for the Survival of the Ogoni Peoples - <http://mosop.org>

Southern Africa

- Working Group of Indigenous Minorities in Southern Africa (WIMSA) - <http://www.osisa.org/education/regional/working-group-indigenous-minorities-southern-africa-wimsa>

13. Individuals fitting to be part of an eventual “Management Board” of the Fund.

At the moment, it might not be possible to list the names of individuals that could be part of the management of the fund. What might be reasonable at this time is to discuss the criteria, skills and qualities of potential members and the organization that will eventually decide on the board. Once this is agreed on and a fund established, recruitment to the board should be through a competitive, inclusive process.





Kanyinke Paul Sena is an Ogiek lawyer (law degree from the University of Mysore in India) from the Narok District of Kenya. In 2013, Kanjinke was the first African to serve as Chair of UNPFII. A champion of environmental issues across Africa. Kanyinke has led UNPFII's involvement in the WIPO Intergovernmental Committee negotiations towards the formulation of an international instrument on Traditional Cultural Expressions and Traditional Knowledge also in relation with Genetic Resources. He has written extensively on REDD+ and indigenous peoples and served on the World Bank Technical Advisory Committee reviewing REDD applications by African States.