They Protect the Forests. Who Protects Them?

THE INTERSECTION OF CONSERVATION, DEVELOPMENT, AND HUMAN RIGHTS OF FOREST DEFENDERS

Lessons from Kenya, Peru and Sri Lanka

International Human Rights Clinic Report
International Law and Organizations Program

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Dedication

We dedicate this report to all individuals and collectives who put themselves at great risk to protect the world’s forests and the natural resources within them. We hope that their concerns regarding forest protection will be respectfully heard and that they are provided the space to safely voice their opinions. As such, we call on governments, non-State actors, and international institutions to respect the rights of all environmental human rights defenders.

Furthermore, we wish to dedicate this report to those who have been killed for protecting the environment. The Goldman Environmental Prize was established to honor individuals who defend and protect their land and the natural environment at great personal risk. We dedicate this report to Isidro Baldenegro López, second winner of the Goldman Award and indigenous activist, who was killed this year. Throughout his life, he continuously protected ancient forests through nonviolent campaigns and his legacy serves as a reminder of the immense dangers these individuals face to protect their land. We further dedicate this report to Berta Cáceres, who was murdered in 2016, and never stopped her fight to protect her community despite ceaseless threats and intimidation.
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# Acronyms

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<td>ACHR</td>
<td>American Convention on Human Rights</td>
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<td>ADB</td>
<td>Asian Development Bank</td>
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<td>AIDESEP</td>
<td>Asociación Interétnica de Desarrollo de la Selva Peruana</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>BCIS</td>
<td>Bandaranaike Centre for International Studies</td>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CEA</td>
<td>Central Environmental Authority, Sri Lanka</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<tr>
<td>CEJ</td>
<td>Centre for Environmental Justice, Sri Lanka</td>
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<tr>
<td>CEMIRIDE</td>
<td>Center for Minority Rights and Development</td>
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<tr>
<td>CFA</td>
<td>Community Forest Association</td>
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<tr>
<td>CGIAR</td>
<td>Consultative Group for International Agricultural Research</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<td>EFL</td>
<td>Environment Foundation (Guarantee) Limited, Sri Lanka</td>
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<td>EHRD</td>
<td>Environmental Human Rights Defender</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EMCA</td>
<td>Environmental Management and Coordination Act</td>
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<td>FAO</td>
<td>United Nations Food and Agriculture Organization</td>
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<td>FCPF</td>
<td>Forest Carbon Partnership Facility</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FECONAU</td>
<td>Federacion de Comunidades Nativas del Ucayali y Afluentes</td>
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<td>FIP</td>
<td>Forest Investment Program</td>
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<td>FPIC</td>
<td>Free, Prior, and Informed Consent</td>
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<td>FPP</td>
<td>Forest Peoples Programme</td>
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<td>GHG</td>
<td>Greenhouse Gases</td>
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<td>HIRB</td>
<td>Johns Hopkins University Homewood Institutional Review Board</td>
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<td>HRC</td>
<td>United Nations Human Rights Council</td>
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<td>HRD</td>
<td>Human Rights Defender</td>
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<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>IAChHR</td>
<td>Inter-American Court of Human Rights</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICMRW</td>
<td>International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families</td>
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<tr>
<td>ICPPED</td>
<td>International Convention for the Protection of All Persons from Enforce Disappearance</td>
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<td>IDP</td>
<td>Inter-American Development Bank</td>
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<tr>
<td>IDEHPUCP</td>
<td>Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Peru</td>
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<tr>
<td>IDL</td>
<td>Instituto de Defensa Legal</td>
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<td>IDLO</td>
<td>International Development Law Organization</td>
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<tr>
<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>IEE</td>
<td>Initial Environmental Examination</td>
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<td>IIAP</td>
<td>Instituto de Investigaciones de la Amazonia Peruana</td>
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<tr>
<td>IIDS</td>
<td>Instituto Internacional de Derecho y Sociedad</td>
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<tr>
<td>IIILS</td>
<td>International Institute on Law and Society</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>INAFOR</td>
<td>National System of Forestry and Wildlife Management</td>
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IUCN  International Union for the Conservation of Nature
KFS   Kenya Forest Service
KNHRC  Kenya National Human Rights Commission
LLRC  Lessons Learnt and Reconciliation Commission, Sri Lanka
LTTE  Liberation Tamil Tigers Eelam
MDG   Millennium Development Goals
MINAGRI  The Ministry of Agriculture, Peru
MINAM  The Ministry of Environment, Peru
MRG   Minority Rights Group
MRTA  Túpac Amaru Revolutionary Movement
NCHR-K  National Coalition of Human Rights Defenders-Kenya
NEC   National Environment Council
NEMA  National Environmental Management Authority
NGO   Non-governmental Organization
NRMP  Natural Resource Management Project
OAS   Organization of American States
OAU   Organization of Africa Unity
OHCHR  Office of the High Commissioner for Human Rights
OSINFOR  Organismo de Supervisión de los Recursos Forestales
OPDP  Ogiek People’s Development Program
PDU   Plantaciones de Ucayali
PDP   Plantaciones de Pucallpa
PELIS  Plantation Establishment and Livelihood Scheme
PROFONANPE  Peruvian Trust Fund for Natural Protected Areas
RSPO  Roundtable on Sustainable Palm Oil
SAIS  Johns Hopkins University School of Advanced International Studies
SDGs  Sustainable Development Goals
SPDA  Sociedad Peruana de Derecho Ambiental
SERFOR  Servicio Nacional Forestal de Fauna, Peru
UDHR  Universal Declaration of Human Rights
UN   United Nations
UNDHRD  UN Declaration on Human Rights Defenders
UNDP  United Nations Development Programme
UNECE  United Nations Economic Commission for Europe
UNEP  United Nations Environmental Program
UNESCO  United Nations Educational, Scientific and Cultural Organization
UNFF  United Nations Forum on Forests
UNDRIP  United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC  United Nations Framework Convention on Climate Change
UNFF  United Nations Forum on Forests
UNGA  United Nations General Assembly
UNGPI  United Nations Guiding Principles on Business and Human Rights
UN-REDD  United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation
UNSPF  United Nations Strategic Plan for Forests
USAID  United States Agency for International Development
WBG   World Bank Group
WNPS  Wildlife and Nature Protection Society
WRI   World Resource Institute
WWF   World Wildlife Fund
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Executive Summary

In 1217, King Henry III of England issued the groundbreaking Carta de Foresta (The Charter of the Forest), a companion document to the Magna Carta. As one of the first statutory environmental laws, it restricted the power of the King and provided free men access to the Royal Forests – a necessity for many commoners to survive. In recognizing the shared use of the Royal Forests, it also established the groundwork for the shared responsibility of forest management. Eight hundred years later, the world continues to struggle with how to manage access to forests and their resources.

Modern-day forests are center stage in the discussion of how to balance economic development, conservation goals, and human rights. There is much dependence and potential in the world’s forests - from economic development activities, such as mining, logging, and eco-tourism, to management and conservation goals that mitigate climate change, ensure proper watershed management, and protect endangered species, to locals and communities that have traditionally lived in or subsisted from forestland. With so many competing interests, it is unsurprising that tensions exist. However, it is not a zero-sum game. Economic development and conservation goals can be met while respecting human rights. Indeed, they are all interconnected.

Environmental human rights defenders (EHRDs), including those protecting forestland, arise against this backdrop. Whether forest-dependent communities protecting traditional access to forests for sustenance or livelihood activities, or indigenous leaders protecting their land from encroachment by a large-scale development project, or a wildlife officer protecting the animals in the forest from poachers, forest defenders are a broad group with varied goals, but they all share the same interest in protecting environmental and land rights. Because of their activities, EHRDs have faced threats to their human rights and challenges to their advocacy work. From restrictions on freedom of speech and assembly to harassment, beatings, and assassinations, being an EHRD can be dangerous.

For the 2016-2017 academic year, the SAIS International Human Rights Clinic, in commemoration of the 800th anniversary of the Carta de Foresta and in recognition of the heightened struggles of EHRDs around the world, studied the human rights situation of forest defenders in Kenya, Peru, and Sri Lanka through both desk and field research. The study sought to analyze the root causes which lead individuals and communities to advocate for the respect, protection, or fulfillment of environmental and land rights, as well as the major aspects that impinge on the realization of these rights. The study further sought to understand the respective social, economic, political, cultural, and legal landscapes in which forest defenders operate, as well as the threats and challenges to their human rights because of their work. Finally, the study aimed to provide suggestions for improving the human rights situation of forest defenders, as well as address underlying causes that lead to violations of their rights.

Part I of the report provides an overview of challenges to human rights defenders (HRDs) generally and to EHRDs specifically. Environmental human rights defenders may face particular challenges in accessing their human rights due to limited knowledge of the issue and lack of resources. Moreover, indigenous communities are particularly impacted, as projects on or near their traditional lands compel them into the role of EHRDs, where they may face unique challenges to their work as a marginalized group, including language barriers and access to basic social services. This section further frames the international and regional human rights law regime with a specific emphasis on human rights issues that may arise in the EHRD context (e.g., freedom of speech, right to life), as well as a discussion of the rights that defenders may be fighting to protect, including the right to a clean environment and indigenous rights. Further, this section makes the connection between human rights and the environment as interdependent and indivisible.

A healthy environment is key to the full realization of many human rights. Finally, this section provides context to the area of international environmental law, conservation, and development goals to help better understand the impetus for some state action in forest management.
Part II of the report presents the situation of three case study countries: Kenya, Peru, and Sri Lanka. Each case study features the relevant historical, legal, and environmental contexts, frames the issue of EHRDs generally, as well as those specifically defending forested areas. Moreover, each case study discusses and analyzes the complex network of actors operating at the intersection between environmental and human rights issues, including multilateral organizations, NGOs, and indigenous communities. All three case studies incorporate the results of interviews and desk research with analysis. Highlights from the country case studies include discussions of:

- in Kenya,
  - the Ogiek community in and around the Mau Forest – and in the forests surrounding Mount Elgon;
  - the Chuka community in the southeastern slopes of Mount Kenya, adjacent to the Mount Kenya National Park; and
  - the Sengwer community, indigenous to the Cherangany Hills region, located in the Western Highlands of Kenya;

- in Peru
  - the Ucayali region, on the inland Amazon Rainforest, bordering Brazil;

- in Sri Lanka
  - the Knuckles Mountain Range in the Central Highlands in the south-central area of Sri Lanka;
  - the Wanniyala-Aetto, a traditional forest dependent community; and
  - the relocation efforts in Wilpattu in the northwestern part of Sri Lanka.

Each case study concludes with policy recommendations to improve the situation of EHRDs in the respective countries.

Part III of the report elucidates four cross-cutting themes in the research. First, this section reflects on the understanding, the impact, and the challenges in the conceptualization of individuals and communities being viewed as environmental human rights defenders. In the case studies, there was often a lack of familiarity with the terminology or a limited view of who was an EHRD. Second, this section discusses the role and perception of international organizations (IOs) and non-governmental organizations (NGOs) with analysis on how to improve the work of these organizations to better align with the interests of affected individuals and communities. Specific attention is paid to issues surrounding World Bank Group (WBG) projects. Third, this section addresses the central role of forest officials in protecting the environment, as well as how to mitigate some of the challenges to the profession, especially the fight against corruption. Last, this section will discuss the tension between human rights, economic development, and environmental conservation. Human rights are paramount, but countries should be able to balance different priorities and needs to the benefit of their entire populations. The Sustainable Development Goals (SDGs) are an important focal point of this discussion.
Part IV of the report offers a conclusion summarizing the more common themes and policy recommendations. All of the case study countries could benefit from better enforcement of existing laws, including human rights and environmental protections. With respect to environmental protection, illegal logging is of particular concern in all studied countries. In a related matter, all the forest service agencies suffered resource constraints – which inherently inhibits law enforcement activities. The Peru and Sri Lanka case studies speak to the need for more field personnel in forest agencies to meet law enforcement needs. Further, the Sri Lanka and Kenya case studies speak to allegations of corruption among forest officials, as well as the potentially linked issue of poor compensation and benefits for a risky job. The Peru case study also speaks of alleged corrupt practices at the regional authority level, which plays a crucial role in the protection of the forest areas and of the communities living in them. Forest field officers are critical to the protection of the world’s forests and their training, resources, compensation, and benefits need to reflect the importance and risks of their jobs. Traditionally marginalized indigenous communities also require greater protections. Whether enforcing existing legal commitments or adding new ones, indigenous communities need to be involved in decision-making processes - free, prior, and informed consent is a touchstone. In a similar vein, environmental impact assessments need to be completed in a fair and independent manner to ensure the health of the forests and those that rely on them. Finally, given that business enterprises often play a significant role in the EHRD context, it is imperative that domestic and multinational firms adopt and adhere to the United Nations Guiding Principles on Business and Human Rights (UNGP). All of these issues are critical for environmental protection and to guard the human rights of those who depend on the world’s forests.
Methods

Design and Sampling

The report is the culmination of a year-long academic research course through Johns Hopkins University – Paul H. Nitze School of Advanced International Studies (SAIS). The research team is composed of ten graduate student researchers with concentrations or minors in international law and organizations, international economics, development, international relations, and energy, resources, and environment, as well as one professorial lecturer in the SAIS International Law and Organizations Program. The study design is exploratory, using qualitative methods including in-depth interviews and in-field observations to examine, understand, and describe the situation surrounding the human rights of forest defenders. Three case studies in developing countries in Africa, Asia, and Latin America provide insight into focal points of the situation of forest defenders and their interaction with development. Along with the literature review, the interviews and field research from these case studies provide the evidence for the findings, cross-cutting themes, and policy recommendations put forward in this report.

During the Fall of 2016, the team began studying the situation of environmental human rights defenders (EHRDs), specifically those protecting forestland globally. Introductory research involved scanning a wide array of relevant literature and documents on the topic from international organizations, governments, NGOs, advocacy groups, indigenous organizations, and environmental human rights defenders, among others. After a month of initial research, the team discussed and identified key cross-cutting parameters on which to focus when choosing the regional case studies. These parameters included substantive criteria such as active or past issues with the human rights of forest defenders, a developing country, and involvement of indigenous populations. Logistical criteria were also considered, such as political stability, cost, accessibility, and personal security of the researchers. Team members were then split into groups based on potentially applicable language skills in the given region, and these groups conducted additional research to choose a fitting case study. Two weeks later, case studies in Kenya, Peru, and Sri Lanka were selected as best fitting the research parameters.

The three case study teams then began performing literature and historical review of the respective country cases. The desk research included background interviews with experts, identifying relevant actors, attending local events on the issue, speaking with country representatives at the respective embassies in D.C., and participating in class discussion on the issue. In-class presentations were given by Ms. Juanita Cabrera Lopez of the Mayan League and Marselha Gonçalves Margerin, Advocacy Director for the Americas at Amnesty International USA. Meanwhile, the clinic launched a website on the project to provide ongoing updates on the research and to secure additional funding. By November, the team developed terms of reference and multiple questionnaires meant to guide semi-structured interviews in the field. Through December and January, the teams planned their in-country fact-finding missions, establishing local contacts and arranging interviews with key stakeholders.

The groups traveled to their respective locations for one week from on or around January 22 to 28, 2017. Due to resource and academic schedule restraints, the teams could not spend more than one week in their locations. As stated, the groups used a purposive sampling method to arrange interviews with key stakeholders, although snowball method was used for some contacts as well. These interviews followed a strict ethical protocol described in the “Sample Description” section below. In-depth interviews, guided by the clinic questionnaire, were conducted during the week, generally lasting between one and three hours. Some interviews in Kenya and in Sri Lanka required the use of a translator for speaking to local groups. Field notes were gathered by the researchers as well regarding their observations of the environmental and political situation.
Clinic members then returned to Washington to analyze the data collected in the fact-finding missions. Case study groups gave presentations summarizing their data to improve cross-study understanding within the clinic. Throughout the Spring semester, the teams continued to conduct research and follow-up interviews with stakeholders. Teams then wrote case study reports, which were cross-edited. Literature review and documentary evidence was provided in each of the case studies. To ensure credibility and accuracy, drafts of the case study reports were sent out to research participants and additional experts for comments and certification of citations. The team then made further edits to the case studies, formed the cross-cutting thematic sections, and drafted the final report.

Sample Description

In total, the researchers conducted over fifty interviews with experts in the field. The sample represented a wide array of key stakeholders including government officials, NGOs, indigenous community members, independent researchers, environmentalists, and international human rights lawyers. Being non-probabilistic purposive samples, the results found assume no transferability across all other situations of EHRDs. That being said, the case studies and cross-cutting analytical sections demonstrate connections between the struggles of the groups interviewed in the different countries and the wider international subject of the human rights of forest defenders.

Several interviews were scheduled in the month between IRB approval and the in-country mission; others, and specifically those completed by Skype after the visits to Kenya and Sri Lanka, were organized thanks to recommendations from other interviewees and e-mails sent while in country. The project, the researchers’ roles, and the goals of the study were described in all electronic communications. At the beginning of every interview, the researchers obtained informed consent. In the cases where interviews were audio recorded, researchers also obtained informed consent. Specific requests made by interviewees, including their wish to remain anonymous or to distinguish their current professional affiliations from their past affiliations, were honored.

In the Kenya case study, there were fifteen interviews total. A few of the interviews were conducted in group style with people in the same organization or community. In two cases, elders from the communities needed translation to English from others in the community. Still, almost all the interviews were conducted in English without the need for translation. In Peru, eighteen total interviews were conducted throughout the week. A few of the interviews were done in group style as well, however, most were one-on-one interviews. About half the interviews were in Spanish and half in English which was not an issue since the members of the case study team are each proficient in both languages. In the Sri Lanka case study, almost all the fifteen interviews were in English. Two interviews needed translation which was provided by the research team’s driver, Fahim. Several of the interviews were done in group style as well, but most were one-on-one.

Research Limitations

While the research team attempted to be as comprehensive as possible, it faced some limitations throughout the process. Language represented a minor barrier in some instances in Sri Lanka and Peru and translators were needed in only a few cases. Most importantly, resource constraints limited the in-country fact-finding missions to one week, which the groups utilized to gather as much qualitative data as possible. Due to this time constraint, teams were also limited geographically, especially with reaching remote forested regions of the selected countries. As is the case with research endeavors, interviewing all important actors is difficult. This section does not present an exhaustive list of all stakeholders, but includes a few key individuals or organizations that provide helpful insight to inform the aforementioned policy recommendations. While these findings are not globally generalizable, the insights gathered from this research provide a sample of the difficulties faced by environmental human rights defenders.
Terminology

Who is a Human Rights Defender?

Human Rights Defender

“[W]e can all be defenders of human rights if we choose to be.”

– Office of the United Nations High Commissioner for Human Rights

The overarching term human rights defender (HRD) is described by the Office of the United Nations High Commissioner for Human Rights (OHCHR) as “people who, individually or with others, act to promote or protect human rights.” An HRD can literally be anybody, regardless of profession, age, gender, or whether the work is paid. Moreover, an HRD is *peacefully* working to protect or promote any human right(s), which includes civil, political, economic, social or cultural rights. As no country is immune from human rights abuses, HRDs can be found in all corners of the world, regardless of a country’s governance structure or stage of development. Most HRDs work at the local and national levels to ensure human rights at home. Yet, some HRDs work on more widespread regional or international human rights issues. Given that there are regional or international human rights mechanisms that can be used to improve domestic human rights situations, there may also be a mixed nature to the work of HRDs.

To provide some context, the OHCHR offers a non-exhaustive list of activities that HRDs may be participating in, including investigating and reporting on human rights violations; providing support to victims of human rights violations, such as legal or medical services; advocating for accountability of perpetrators of human rights violations; monitoring State implementation of human rights obligations; providing the underlying framework for the realization of human rights standards, such as development activities; and offering education and training in human rights.

Environmental Human Rights Defender

A subset of human rights defenders can also be classified as environmental human rights defenders (EHRDs). EHRDs are described as those, in their personal or professional capacity, individually or collectively, who undertake *peaceful* actions to achieve the full realization of “rights and fundamental freedoms as they relate to the enjoyment of a safe, healthy and sustainable environment.” The UN Special Rapporteur on Human Rights Defenders’ recent report further elaborates that environmental protection includes that of “water, air, land, flora and fauna.” Because of the often indivisible nature of environmental and land rights, both types of activists can

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1 In this report, the terms human rights defender, environmental human rights defender, and forest defender are not intended to be exclusive labels. Individuals and collectives may or may not self-identify in this manner. These terms are intended to be descriptive of the types of activities that individuals or collectives are involved in, not necessarily who they are personally or professionally.


3 Ibid.

4 Ibid.

5 Ibid.


be categorized as EHRDs. EHRDs have especially been recognized as a heterogeneous subcategory of HRDs, from farmers to lawyers, from indigenous communities to prominent NGOs, it is an inclusive and diverse group.

As with HRDs, the most defining characteristic of an EHRD is not who they are, but what they do. Therefore, examples are varied. As this report’s authors either work or study in the United States (US), we would be remiss not to acknowledge recent prominent examples of EHRDs in the US to illustrate the breadth of the concept. Recent examples include: 1) the plight of indigenous water protectors at Standing Rock in North Dakota protesting to protect their right to clean water from the Dakota Access Pipeline (DAPL); 2) a mother exposing lead polluted water in Flint, Michigan; and 3) the former Badlands National Park (a US National Park located in South Dakota) employee who tweeted facts about climate change both contrary to the Trump administration’s temporary media blackout from select government agencies, which included the US Department of the Interior that houses the National Park Service, as well as President Trump’s well-known view on climate change. In sum, the causes, the actors, and the peaceful methods can be diverse, but all of these individuals and groups fighting on the micro and macro level to protect the environment or land are EHRDs.

**Forest Defender**

The focus of this report, in commemoration of the 800th anniversary of the *Carta de Foresta* (1217), is on those working to defend or protect forestland, including both land and environmental rights. Despite the fact that such individuals and collectives would also be considered HRDs, and in particular EHRDs, for the purposes of this report, we will also refer to them as “forest defenders.” The reason for the further subcategorization is that in our field research, the term EHRD did not seem well understood overall, whereas the idea of a forest defender or protector resonated more with some interviewees.

Examples of the activities of forest defenders also vary. A forest defender may be someone fighting to prevent a gold-mining company from expropriating forestland; a forest ranger fulfilling his or her duty to defend protected areas from wildlife poaching; a researcher willing to publish the results of an independent investigation about the negative impacts of industrial palm oil plantations; or even a journalist publishing ‘hot takes’ on illegal logging activities causing the destruction of vast primary forest areas. This report will highlight specific examples of forest defenders working in Kenya, Peru, and Sri Lanka.

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8 Ibid., para. 4.
9 Ibid., para. 53.
10 Ibid., para. 8.
11 On March 9, 2017, the SAIS International Human Rights Clinic co-hosted an event titled “Water is Life: Energy Policy, Environmental Stewardship and Human Rights.” The event featured moving testimonies from water protectors on the frontlines of Standing Rock. The event may be viewed here, https://www.youtube.com/watch?v=EnrNNAgcV1w.
PART I: Background

Photo taken in Sinharaja Forest, Sri Lanka
General Challenges to Human Rights Defenders

Ironically, in an effort to promote and protect human rights, human rights defenders (HRDs) themselves may become victims of human rights violations. HRDs around the world have been subjected to harassment, threats, restrictions on free speech and assembly, arbitrary arrest, and most concerning beatings, torture, and assassinations. Generally, such incidents would violate both international and domestic law. However, in some cases, domestic law itself is used to violate the human rights of defenders, such as anti-terrorism legislation used to suppress activism and free speech. Thus, HRDs may face a number of impediments to accomplishing their work, as well as personal risks, including bodily harm or even death.

Environmental Human Rights Defenders under Threat

“I am extremely worried and appalled by the growing number of attacks and murders of environmental defenders, but also by the continuous resistance of States to act in front of egregious human rights violations.”

– Michel Forst, UN Special Rapporteur on the Situation of Human Rights Defenders

Increasing demands for natural resources have brought environmental defenders to the forefront as they seek to protect human rights, conserve the environment, and promote sustainable development. Being an environmental human rights defender (EHRD) can be especially dangerous. EHRDs are often vilified and labeled “anti-development” for their opposition to development projects that are not environmentally sustainable. In this unwelcoming landscape, EHRDs have been harassed, threatened, and even assassinated. A report by Global Witness documented 185 deaths of EHRDs in 2015 with most of the cases in Latin America and Southeast Asia. Beyond threats to personal physical security, EHRDs face threats and attacks against family members, are subjected to blackmail, enforced disappearances, illegal surveillance, and restrictions on freedom of movement. They also face obstacles to freedom of expression and association. Indeed, EHRDs are often arrested and detained for their opposition to development projects. Taking into account that the aforementioned threats to human rights and obstacles to advocacy are by no means exhaustive, it is clear that EHRDs face an array of challenges.
Indigenous peoples are particularly impacted by the threats to EHRDs and constitute close to 40 percent of the 185 deaths documented by Global Witness in 2015. Indigenous peoples are especially vulnerable given their traditional connections and dependence on the environment. As a result of this connection, environmental damage puts them in direct confrontation with development projects or other changes in land use and environmental policies. They may also face more systemic challenges such as language barriers, institutionalized racism, and lack of access to basic social services.

Women EHRDs are another vulnerable group as they are more likely to be subjected to gender-based violations, such as sexual violence. There are also unique challenges to their work, which may include patriarchal societies, gender discrimination, and exclusion from consultations or decision-making processes. Given some of the systemic issues that vulnerable groups face in defending environmental rights, it is important to take a holistic approach to improving their situation.

It is the duty of States to ensure that the human rights of EHRDs are protected and promoted. Promoting respect for human rights and deterring violations is a major issue in countries with a culture of impunity. Indeed, the Special Rapporteur on Human Rights and the Environment, John H. Knox has posited that addressing impunity is one of the most important steps a government can take in protecting EHRDs. By investigating, prosecuting, and punishing perpetrators of violations against EHRDs, the State may deter future perpetrators, destigmatize EHRDs as a group, and promote respect for human rights and the rule of law.

Human rights violations are perpetuated by both State and non-State actors. In addition to State obligations to respect human rights, they also have a duty to guard against human rights abuses by non-State actors. Although only States are legally bound to international human rights law, non-State actors still have a duty to respect human rights. The business community plays a major role in many of the issues impacting EHRDs, for example, in the context of extractive industries, agri-businesses, dam projects, and logging. In this regard, the United Nations Guiding Principles on Business and Human Rights (UNGP), to be discussed further in the international law section, is an instructive framework. Business practices and operations must respect human rights. Although EHRDs should be protected by human rights law, there may be barriers to accessing those rights. Outside of general rule of law issues, there may also be hindrances based on capacity and public awareness of human rights. As the former Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya observed EHRDs “are particularly disadvantaged due to the often limited knowledge they have

26 Ibid., para. 54.
27 Ibid., para. 54.
28 Ibid., para. 54 – 55.
29 Ibid., para. 57.
about their rights and lack of information on how to claim them, scarce resources and weak organizational capacity.”

EHRDs also may not be familiar with the idea of an environmental defender, or know that they are acting in that capacity. Consequently, more promotional activities may be needed to raise awareness regarding basic human rights, including the concept of an EHRD, as well as how to report violations.

**Carta de Foresta (Charter of the Forest)**

As mentioned, the focus on forest defenders was inspired by the 800th anniversary of the *Carta de Foresta* (Charter of the Forest), an English law that was a product of the *Magna Carta* of 1215. The *Carta de Foresta* was initially issued in 1217 and is considered one of the first statutory environmental laws. The charter limited the power of the King and provided free men access to the Royal Forests. For forest management, the charter has been revolutionary in that it established “the foundation for the modern concept of common stewardship of resources.”

Indeed, Chapter 12 of the charter states that “[e]very free man may henceforth without being prosecuted make in his wood or in land he has in the forest a mill, a preserve, a pond, a marl-pit, a ditch, or arable outside the covert in arable land, on condition that it does not harm any neighbour.” Free men were now responsible for consulting their communities regarding any development, not just the King. Moreover, the charter is significant for its impact on the rule of law, as “it defined the legal space within which competing rights could be contested and through which social order could be sustained.”

Limits of government, issues of environmental stewardship, resolution of competing claims, and access to the commons all continue to resonate in debates over modern-day forest management. As such, we should recognize and celebrate the lessons of the *Carta de Foresta* while considering how these lessons apply to current struggles over forest resources.

**Forests, Human Rights, and Survival**

“Let us make no mistake on this matter – the health of the world’s forests is fundamental to humanity’s place on this planet,”

– H.E. Peter Thomson, President of the United Nations General Assembly

Healthy forests remain as vital as ever: both to Mother Earth and to the full realization of basic human rights. Globally, about 1.6 billion people rely on the forests for their livelihood; of which almost 4.4 percent (70 million) are considered

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36 *Situation of Human Rights Defenders - Report of the Special Rapporteur on Human Rights Defenders*, para 8, (observing that even though EHRDs “may work as journalists, activists or lawyers who expose and oppose environmental destruction or land grabbing, they are often ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental human rights defenders.”).


39 The Charter of the Forest of King Henry III (1217), Chapter 12, http://info.sjc.ox.ac.uk/forests/Carta.htm (emphasis added).

40 Harris, “Blog: The Charter of the Forest.”

41 Ibid.


Beyond direct links of individuals to the world’s forests for basics, like food and timber, humanity depends on healthy forests to prevent environmental problems. For example, forests act as a “carbon sink,” absorbing carbon dioxide (CO2) from the atmosphere and mitigating climate change. Climate change mitigation is a collective benefit, which helps to further illustrate the collective human right to a healthy environment. The world’s forests also house over 80 percent of all land-based animal, insect, and plant species, the conservation of which is necessary to protect our natural heritage, biodiversity, and in some cases, cultural traditions and indigenous medicines. Forests also present opportunities for economic development. With all of this reliance on the world’s forests, it begs the question of how to best harmonize conservation and development goals with respect for human rights?

As the case studies will illustrate, there are many threats to the world’s forests, as well as to the people who live in or around them - both of which engender the activities of forest defenders. Unsurprisingly, illegal logging is a repeating theme across all three of our case studies. According to the World Wildlife Fund (WWF), illegal logging is the leading cause of forest degradation globally. Other issues that cause concern for forest management include, illegal wildlife poaching, development projects, and agri-businesses. The encroachment on land rights and access to forest resources also frame much of the tension between local communities and the State and/or private sector. From access to firewood, to livelihood activities, like beekeeping and agriculture, to living on traditional lands - for some, forest management and land use policies have come at a grave cost.

Environmental rights are human rights, and human rights are interdependent. Reflecting on forest-dependent communities, who may live, work, and/or subsist off the forests, a healthy environment is a necessary precondition for fully exercising many of their human rights. To illustrate, if poor forest management leads to soil degradation and farmers in the area are deprived of their traditional livelihoods, then the negative impacts have the potential to be far-reaching. Livelihoods beget opportunities – the ability to obtain the means to both survive and thrive (i.e., food, water, education), and ultimately, to fulfill the right to health, education, development, and even life. As such, the forest is truly life itself, and it is imperative to protect those who defend it.

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46 “Goal 15: Sustainably manage forests, combat desertification, halt and reverse land degradation, halt biodiversity loss.”
Goldman Environmental Prize

Another source of inspiration for this report is the Goldman Environmental Prize. The winners of the prize are announced annually in April. This award honors environmental activists from across the world for their heroic efforts to protect and promote the natural environment, despite the many challenges and risks they face. Many of the recipients of this award continue their positive and impactful work undeterred from threats, harassment, or intimidation. The scope of environmental work for this award focuses on environmental justice, promoting sustainability, combating destructive environmental projects, protecting endangered species and ecosystems, and influencing public policies to ensure the safeguarding of the natural environment. Recipients of this award are internationally recognized and provided financial support, which enhances their work and its visibility. The prize not only seeks to continue the work of the incredible individuals it recognizes, it hopes to inspire other individuals to work toward protecting the natural environment.48

List of Recipients from Case Study Countries:49

### Peru

<table>
<thead>
<tr>
<th>Name</th>
<th>Year Received</th>
<th>Focus Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaristo Nugkuag</td>
<td>1991</td>
<td>Forests</td>
</tr>
<tr>
<td>Maria Elena Foronda Farro*</td>
<td>2003</td>
<td>Sustainable Development</td>
</tr>
<tr>
<td>Julio Cusurichi*</td>
<td>2007</td>
<td>Forests</td>
</tr>
<tr>
<td>Ruth Buendía</td>
<td>2014</td>
<td>Rivers and Dams</td>
</tr>
<tr>
<td>Máxima Acuña</td>
<td>2016</td>
<td>Oil and Mining</td>
</tr>
</tbody>
</table>

*currently under threat as of 5/3/2017

### Kenya

<table>
<thead>
<tr>
<th>Name</th>
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<th>Focus Area</th>
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<tbody>
<tr>
<td>Michael Werikhe</td>
<td>1990</td>
<td>Wildlife &amp; Endangered Species</td>
</tr>
<tr>
<td>Wangari Maathai</td>
<td>1991</td>
<td>Forests</td>
</tr>
<tr>
<td>Ikal Angelei</td>
<td>2012</td>
<td>Rivers and Dams</td>
</tr>
<tr>
<td>Phyllis Omido</td>
<td>2015</td>
<td>Toxic &amp; Nuclear Contamination</td>
</tr>
</tbody>
</table>

There are no recipients from Sri Lanka.

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International Human Rights Law

This section describes selected international and regional human rights laws relevant to the protection and work of EHRDs. Illustrating the current human rights legal regime will help to analyze any legal or enforcement gaps, as well as the need to strengthen existing laws. Given the nature of EHRDs, laws governing human rights, the environment, land rights and land titling, and indigenous persons are of particular importance.

Core International Human Rights Instruments

The Universal Declaration of Human Rights (UDHR), signed in 1948, is the beginning of modern international human rights law. Though aspirational and not legally binding as such, many provisions are considered to be customary international law or codified elsewhere. Selected UDHR provisions of particular significance to the situation of environmental defenders include: the right to life (Article 3), the prohibition of torture or to cruel, inhuman or degrading treatment (Article 5), the right to equal protection before the law (Article 7), the right to an effective remedy (Article 8), prohibition of arbitrary arrest, detention or exile (Article 9), prohibition on arbitrary deprivation of property (Article 17(2)), freedom of expression, including the freedom to seek, receive and impart information (Article 19), the right to peaceful assembly and association (Article 20(1)) and the right to an adequate standard of living (Article 25(1)).

Regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” all individuals are afforded a set of basic human rights under the UDHR. As such, all environmental and land defenders, protectors, activists, regardless of name, should be guaranteed those universal rights.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) together with the UDHR form the International Bill of Human Rights. Unlike the 1948 Declaration, the ICCPR and ICESCR are legally binding instruments. All of the aforementioned UDHR principles are reflected in the ICCPR or the ICESCR with the exception of the prohibition on arbitrary deprivation of property. By way of background, negotiating the right to property under the UDHR proved to be controversial, resulting in a text vaguer than many of the country proposals. However, the controversy over the right to property did not end with the drafting of the UDHR. The right to property as such was excluded from the binding international human rights treaties that followed partially due to the failure to agree on the language itself.

51 Ibid., articles 3, 5, 7, 8, 9, 17(2), 19, and 20(1).
52 Ibid., article 2.
55 ICCPR, articles 6(1) (right to life), 7 (prohibition on torture or to cruel, inhuman or degrading treatment), 26 (right to equal protection of the law), 2(3)(a) (the right to an effective remedy) 9(1) (prohibition of arbitrary arrest or detention), 19(2) (freedom of expression, including the freedom to seek, receive and impart information), 21 (right to peaceful assembly), 22(1) (freedom of association); ICESCR, article 11(1) (right to an adequate standard of living).
57 Ibid., 1007 – 1008.
Although the right to property is not present in the two 1966 Covenants, it does manifest itself in a limited form by way of non-discrimination provisions in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (Article 5 (d)(v)), providing that State Parties prohibit and eliminate racial discrimination in the enjoyment of “the right to own property alone as well as in association with others,”\textsuperscript{58} and in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Article 16 (h)), providing that State Parties eliminate discrimination against women with respect to “[t]he same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”\textsuperscript{59} Moreover, as will be discussed in the section on regional systems, the right to property is found in the American Convention on Human Rights (ACHR) (Article 21)\textsuperscript{60} and the African Charter on Human and Peoples’ Rights (Banjul Charter) (Article 14).\textsuperscript{61}

Additional selected articles from the two 1966 Covenants that resonate with the situation of EHRDs, include: Common Article 1 of the ICCPR and ICESCR, which establishes the right to self-determination, providing that peoples have the right “to determine their own political, economic, social and cultural opinions and aspirations.”\textsuperscript{62} Article 1 further provides that peoples have “for their own ends, [the right to] freely dispose of their natural wealth and resources . . . ”\textsuperscript{63} Moreover, Article 12 of the ICESCR establishes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,”\textsuperscript{64} which includes “[t]he improvement of all aspects of environmental and industrial hygiene.”\textsuperscript{65} Beyond these two covenants, there are several other core international human rights treaties which form the broad framework surrounding human rights and national obligations to respect, protect, and fulfill said rights. Ratifying these treaties signals that State Parties are legally bound to the obligations set forth in said treaties, which are listed below:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)\textsuperscript{66}
- Convention on the Rights of the Child (CRC)\textsuperscript{67}
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)\textsuperscript{68}

\textsuperscript{60} American Convention on Human Rights (ACHR), 1969, article 21.
\textsuperscript{61} African Charter on Human and Peoples’ Rights (Banjul Charter), 1981 article 14.
\textsuperscript{62} ICCPR, article 1(1); ICESCR, article 1(1).
\textsuperscript{63} ICCPR, article 1(2); ICESCR, article 1(2).
\textsuperscript{64} ICESCR, article 12(1).
\textsuperscript{65} Ibid., article 12(2)(b).
• International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED)\textsuperscript{69}
• Convention on the Rights of Persons with Disabilities (CRPD)\textsuperscript{70}

### Table of Treaty Status\textsuperscript{71}

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Kenya</th>
<th>Peru</th>
<th>Sri Lanka</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICERD</td>
<td>R</td>
<td>R</td>
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</tr>
<tr>
<td>ICCPR</td>
<td>R</td>
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<tr>
<td>ICESCR</td>
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<tr>
<td>CEDAW</td>
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</tr>
<tr>
<td>CAT</td>
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<tr>
<td>CRC</td>
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<td>CMW</td>
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<tr>
<td>CRPD</td>
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</table>

**Key:** R = ratification  S = signatory  N = no action

With regards to redress for violations, all of the above-listed core international human rights treaties provide individual complaint mechanisms such that individuals may bring forth alleged violation(s) of the rights set forth in the respective treaties, if certain conditions are met. Any individual may bring forth a claim under one of the nine above-listed treaties, provided that the alleged violating State has: 1) ratified the treaty which provides the right(s) allegedly violated; and 2) the State has recognized the competency of the monitoring body of the respective treaty through declarations to the specific article referencing the competence of the monitoring body or through ratification of the optional protocols which set forth the competency of the monitoring body.\textsuperscript{72}


Not all countries who ratify the treaties accept the individual complaint mechanisms. The chart below depicts the three countries in this report and their status of individual complaint procedures, respective to the treaties they ratified.

### Table of Complaint Procedures

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Procedure Type</th>
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N= no action  Y = accepted  A=article  OP=optional protocol

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73 Compiled from information in footnotes 73, 74, 75, and 76.
74 Individual Complaint Procedures under the United Nations Human Rights Treaties - Fact Sheet No. 7/Rev. 2
Special Procedures of the United Nations Human Rights Council

The situation of EHRDs has prominently been addressed by three UN Special Rapporteurs, namely the Special Rapporteur on Human Rights and the Environment, the Special Rapporteur on the Situation of Human Rights Defenders and the Special Rapporteur on the Rights of Indigenous Peoples - though issues related to EHRDs certainly fall under and have been addressed by other mandate holders. Special Rapporteurs, under the mandate of the UN, are independent experts on a given subject and lead thematic or country-focused working groups, whom report back to UN bodies and provide insight and recommendations. The UN has delegated many thematic issues to Special Rapporteurs who constitute an integral aspect of the UN, as well as to specific human rights focused UN bodies such as the OHCHR and the United Nations Human Rights Council (HRC). In the case of Special Rapporteurs, these are especially relevant to the focus of this report as their work converges to form the discussion of EHRDs and the international standards on these issues.

In particular, the Special Rapporteur on the Situation of Human Rights Defenders was created in 2000 to support the UN Commission on Human Rights, now the UN Human Rights Council, and specifically the implementation of the 1998 UN Declaration on Human Rights Defenders (DHRD). The Special Rapporteur has the authority to promote the implementation of the DHRD, to report and recommend on said implementation, and to monitor the rights of any individual in their effort to promote the Declaration.87

Secondly, the Special Rapporteur on the Rights of Indigenous Persons, created in 2001, holds the mandate to ensure the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).89 This Declaration provides for the exercise of rights by indigenous peoples without discrimination, the recognition of collective rights by indigenous groups, and reaffirms many of the rights set forth in the UDHR as pertaining to indigenous peoples.89 The Special Rapporteur promotes the implementation of the Declaration, reports on the situation of indigenous peoples, and recommends strategies to better promote and ensure the rights of indigenous peoples.81

Finally, in 2012, the HRC established the Special Rapporteur on Human Rights and the Environment to analyze this relationship, specifically concerning the right to enjoy a healthy and safe environment.82 In this respect, the link between human rights and the environment is increasingly recognized by the international community, as all humans depend on the environment.83 This Special Rapporteur complements the work of the Special Rapporteur on the Situation of Human Rights Defenders with an environmental perspective, and thus builds upon the promotion of human rights through an analysis of the connection between human rights and the environment.

81 Ibid.
83 Ibid.
United Nations Declaration on Human Rights Defenders (DHRD)

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms otherwise known as the Declaration on Human Rights Defenders (DHRD) (General Assembly Resolution 53/144)\(^84\) is a non-legally binding instrument that frames how to realize basic rights in the HRD context.\(^85\) While the DHRD is not legally binding, the principles and human rights set forth in it are based on rights enumerated in other legally binding instruments, including the ICCPR.\(^86\) The DHRD was passed with a strong consensus in the General Assembly and thus bears political weight and symbolizes the willingness of States to uphold the principles set forth in the Declaration and to implement those principles through adoption in national legislation.\(^87\)

The DHRD is intended to be a practical document. Rather than establish new human rights, it elaborates on existing rights such that they may be easily applied to the work of human rights defenders.\(^88\) For example, Article 12(1) provides that “[e]veryone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.”\(^89\) Thereby putting the fundamental right of freedom of association in the context of the work of HRDs.

Structurally, the DHRD discusses the rights and protections of human rights defenders in Articles 1, 5 - 9, and 11 - 13. Although States have a duty to respect all of the aforementioned articles, the declaration itself makes specific reference to State duties in Articles 2, 9, 12, and 14 - 15. Notably, the declaration not only addresses the rights of HRDs and the duties of States, but speaks to the duties of everyone. Articles 10 –11 and 18 discuss the responsibilities that we all have towards human rights.\(^90\) For example, Article 18(2) provides that “[i]ndividuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.”\(^91\) Therefore, we all have a responsibility to be HRDs.

Indigenous Rights

Given the intersection between environmental human rights defenders (EHRDs) and indigenous peoples, it is important to examine the international legal regime for indigenous rights. The International Labour Organization’s (ILO) Convention 169: Indigenous and Tribal Peoples Convention of 1989 (ILO 169)\(^92\) provides indigenous people with the rights to the land and resources that they have traditionally occupied and used.\(^93\) According to ILO 169, indigenous territories are constituted by the total areas occupied by indigenous groups.


\(^86\) Ibid.

\(^87\) Ibid.

\(^88\) Ibid.

\(^89\) Ibid., article 12(1).

\(^90\) Ibid., article 18(2).

\(^91\) Ibid., article 18(2).


The traditional meaning associated to their presence in the referred territories encompasses the lands where indigenous groups have lived over time and wish to live in the future. As stated by ILO 169, the traditional occupation lays out the basis for the recognition of land rights that are both individual and collective. Hence, State Parties to ILO 169 have the obligation to establish mechanisms to clearly identify indigenous peoples’ lands and to respect, protect, and fulfill indigenous’ rights. This, according to ILO 169, can be fulfilled by land demarcation and titling, as well as by providing mean to address potential complaints. Finally, ILO 169 establishes that, from a general standpoint, indigenous peoples have the right to dispose of the natural resources located on their territories. Yet, this general provision may be excepted when the State Parties are entitled to the ownership of mineral, sub-surface or other resources. In this specific case and in any decision that may affect the relationship of indigenous peoples with their lands, ILO 169 provides that indigenous peoples affected are actively involved in consultations and participate to the relevant decision process.  

In particular, ILO 169 is the first international framework which established the notion of “free, prior, and informed consent” (FPIC) and specifically attributes this right to indigenous populations and relocations of said peoples. FPIC is the principle wherein communities (e.g. indigenous communities) have the right to provide or withhold consent on issues relating to their land that they use, reside or otherwise own. For example, indigenous communities retain the right to provide or withhold consent on construction or development projects that affect or may impact their land. Unfortunately, ILO 169 is not widely subscribed to with only 22 ratifications, mostly in Central and Latin America. Of the countries covered in this report, Peru is the only State Party, having ratified ILO 169 in 1994 and its principles remain in force under Peruvian law.

Another fundamental instrument in relation to indigenous rights is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP, adopted by the UNGA in 2007, further elaborates on indigenous peoples’ rights to equality and non-discrimination, as well as their rights to be different and respected as such. In relation to this research, UNDRIP recognizes “that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.”

This Declaration is fundamental in not only establishing the rights of indigenous peoples, but also the connection between indigenous peoples and conservation of the environment. Article 29 of UNDRIP states, “[i]ndigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.” Peru and Sri Lanka both voted in favor of UNDRIP and Kenya abstained from the vote. Although UNDRIP is not a legally binding instrument, with 143 States in the General Assembly voting in favor, it bears significant political weight and demonstrates a willingness of the international community to protect indigenous peoples’ rights.

94 Ibid.
96 Indigenous and Tribal Peoples Convention, 1989.
98 Ibid., article 29.
United Nations Guiding Principles on Business and Human Rights

At times, the activities of business enterprises have negatively impacted the environment and human rights. In the EHRD context, this may manifest with tension between extractive industries or agri-businesses and local communities. In 2011, the UN Special Representative on Business and Human Rights drafted the United Nations Guiding Principles on Business and Human Rights (UNGP), later adopted by the UN Human Rights Council the same year. These guidelines help businesses and States prevent human rights abuses in their business operations, and provide guidance on addressing and remediating such abuses if and when they occur. Additionally these principles provide guidance for business enterprises and States to fulfill their obligations to protect and respect human rights in their State capacities as protectors of human rights and in corporate responsibility to respect those rights. These guiding principles are the first corporate responsibility framework supported by the UN and created the corporate standard through which human rights must be viewed both by States and businesses.

The UNGP calls upon businesses to have a stand-alone human rights policy to address human rights abuses across their supply chain and operations, while additionally suggesting that business conduct thorough environmental impact and other risk assessment, throughout the life of their activities. These principles expand upon the consideration of human rights for groups or individuals who face specific obstacles, such as indigenous peoples, women, minorities, children and individuals with disabilities. Moreover, these principles reiterate the legal barriers that certain groups face, specifically indigenous peoples or communities receiving the same standard of legal protection as other individuals.

Regional Human Rights Systems

Inter-American System

The American Convention on Human Rights (ACHR) is the foundational document for the Inter-American regional human rights system. It espouses many of the same civil and political rights reflected in the UDHR and ICCPR, e.g., the right to life (Article 4(1)), freedom from torture or to cruel, inhuman, or degrading punishment or treatment (Article 5(2)), freedom from arbitrary arrest or imprisonment (Article 7(3)), the freedom of thought and expression, including the right to seek, receive, and impart information (Article 13(1)), the right of assembly (Article 15), freedom of association (Article 16(1)), the right to equal protection (Article 24), and the right to judicial protection (Article 25(1)). The ACHR does contain a right to property in Article 21, but that right may be limited. Subsections 1 and 2 of Article 21 reads as follows: 1) “Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society”; 2) “No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.” The application of property rights will be discussed further in the section on indigenous rights in the context of the Saramaka People v. Suriname case.
With respect to economic, social, and cultural rights, notably the San Salvador Protocol to the ACHR expressly recognizes a right to a healthy environment (Article 11). Considering the right to a healthy environment as such is absent from the core international human rights treaties, the inclusion of this right can be seen as a positive step. Unfortunately, the right to a healthy environment is not justiciable through the individual complaints procedure of the Inter-American System.

The Organization of American States (OAS) has specifically recognized the threats to human rights defenders in the Americas. Resolution AG/RES. 1671 (XXIX-O/99) approved by the OAS General Assembly on June 7, 1999 addresses “Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas.” With this resolution the General Assembly resolved, inter alia, to “recognize and support the work carried out by Human Rights Defenders, urge member states to persist in their efforts to provide Human Rights Defender the necessary guarantees and facilities to carry out their work, and to deplore acts that directly and indirectly prevent or hamper the work of Human Rights Defenders.”

**Indigenous Rights in the Inter-American System**

In 1972, the Inter-American Commission on Human Rights (IACHR) clearly affirmed that States have a “sacred duty to provide special protection to indigenous peoples.” According to the IACHR, this duty follows both from historical reasons and from moral and humanitarian principles. Therefore, to raise the status of issues affecting indigenous peoples in the Inter-American System and to devote special attention to the widespread violations of indigenous rights in the Americas, in 1990 the IACHR created the Office of the Rapporteur on the Rights of Indigenous Peoples. The Rapporteur’s mandate includes promoting the Inter-American human rights system and the advancement and consolidation of the system’s jurisprudence on indigenous rights, participating in the analysis of individual petitions, supporting the preparation and realization of visits to the OAS Member States to analyze the status of indigenous peoples’ rights, and collaborating with the OAS Permanent Council’s Working Group on the preparation of the Draft American Declaration on the Rights of Indigenous Peoples.

However, since the early 1980s, the IACHR has repeatedly reaffirmed the importance to promote and protect the rights of indigenous peoples to their land and resources, since doing so means to promote and protect the human rights of hundreds of communities that have historically based their economic, social, and cultural development on the relationship they have with their land. In this regard, the Commission has promoted the advancement of indigenous peoples’ rights by publishing special reports on the issue, specific country reports, guidelines for preventive measures, as well as by requesting orders and provisional measures via the Inter-American Court of Human Rights (IACtHR).

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109 Ibid., article 19(6).
112 Ibid.
114 Ibid.
In particular, in 2001 the adoption by the IACtHR of a decision regarding the relationship between indigenous communities and their land, constituted a watershed for indigenous rights’ recognition in the Inter-American system. In this respect, with the Awas Tingni v. Nicaragua case, for the first time the Court established that a particular native community, the Mayagna people, had a right to their collective land by the very fact of being indigenous people. This decision has paved the way to subsequent recognitions by the Court about the right of indigenous peoples to the lands in which they have historically lived and enjoyed for their subsistence. As a result, these rulings have had important implications on States’ decisions about carrying out or authorizing third parties’ exploration or extraction of natural resources located on indigenous lands. Specifically, the Court’s decisions emphasized the importance of the above mentioned free, prior, and informed consent (FPIC) with regard to any possible concession over natural resources allocated within their territories.\(^\text{115}\)

The FPIC principle was reaffirmed in 2007 when, in Saramaka People v. Suriname, the Court recognized Suriname’s failure to consult and obtain consent from the Saramaka people when conceding their land for logging and mining purposes. In doing so, the Court highlighted the right of tribal and indigenous communities to own their natural resources and the land they have used and occupied for centuries. Moreover, the Court acknowledged that both the traditional natural resources and lands of tribal and indigenous peoples are an essential element for their existence.

However, while the Court upheld the importance of the right to property under Article 21 of the Convention, the Court also recognized the potential for certain limitations and restrictions to the enjoyment of the right to property, as well as to the right to dispose of natural resources. Specifically, the Court reaffirmed that Article 21 of the Convention clearly affirms that “law may subordinate [the] use and enjoyment [of property] to the interest of society.”\(^\text{116}\) Furthermore, the Court highlighted the possibility for the state in question to limit and restrict the above referred rights under specific circumstances, provided that the restrictions are “a) previously established by law; b) necessary; c) proportional, and d) with the aim of achieving a legitimate objective in a democratic society,”\(^\text{117}\) as well as they do not put the survival of the indigenous or tribal group at risk. Finally, the Court highlighted that any consultation involving indigenous peoples must be culturally appropriate, compliant with the traditional methods of decision-making, executed at every stage of the project, and informative on the environmental and health risks.\(^\text{118}\)

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\(^{116}\) Case of the Saramaka People v. Suriname, para. 127.

\(^{117}\) Ibid.

\(^{118}\) “A Deadly Shade of Green - Threats to Environmental Human Rights Defenders in Latin America.”
African System

“[t]he intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities.”


On June 28, 1981, in Nairobi, the then Organization of Africa Unity (OAU) - or African Union (AU) since 2001 - adopted the African Charter on Human and Peoples’ Rights (hereinafter: Banjul Charter).120 The Banjul Charter was subsequently ratified by the absolute majority of OAU member states, it came into force on October 21, 1986, and by 1999 it was ratified by all the member states of the OAU – including Kenya.121

As recalled by the African Commission on Human and Peoples’ Rights (hereinafter: the Commission), established on November 2, 1987, the Banjul Charter presents certain unique features that confers its particular prestige among the regional and international human rights instruments. These features include the recognition of the indivisibility of all rights and of all generations of rights, including socio-economic rights, the right to development (Article 22), the right to free disposal of natural resources (Article 21), and the right to a satisfactory environment (Article 24). Noteworthy as well is the inclusion of the right to property, though the right is not absolute. Article 14 provides “[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”122 Moreover, two other specific features of the Banjul Charter are the imposition of duties on both states and individuals, and the impossibility to derogate any of the Charter’s rights and freedoms.123

However, two other aspects resulting from the adoption of the Banjul Charter deserve special mention. First, on June 9, 1998 the adoption of the Protocol on the Establishment of an African Court on Human and Peoples’ Rights established such a court (hereinafter: African Court), whose mandate has been to reinforce the protective mandate of the Commission. Yet, its jurisdiction is limited to the countries that have ratified the Protocol, which, as of May 2017, are twenty-four.124 The African Court’s main role is to adjudicate cases and disputes with regard to the interpretation of the Banjul Charter, the Court’s protocol, and all the other human rights instruments which state parties have ratified.

Second, the Commission has established more than fifteen special mechanisms with related special rapporteurs, and several working groups to investigate human rights violations to promote the respect of human rights by Member States. Particularly relevant for the situation of EHRDs in Africa are the working groups on indigenous populations, communities and on economic, social, and cultural rights, and extractive industries, environment and human rights violations established respectively in 2000, 2004 and 2009, as well as the Special Rapporteur on Human Rights Defenders established in 2004.125

120 Banjul Charter.
122 Banjul Charter, article 14.
**Indigenous rights in the African System**

In order to ensure member states’ compliance to the Banjul Charter, the Commission employs, among others, a mechanism known as a communication that allows complaints about alleged human rights violations from States against another State, or from individuals and NGOs against one or more States. In this regard, the Commission has adopted some decisions, which have been seminal moments in the Commission’s history, and with relevance to the context of EHRDs.\(^126\)

In particular, in *SERAC v. Nigeria*, the Nigerian government was accused of causing severe environmental degradation to the Ogoni people – an indigenous peoples living in Southeastern Nigeria – through the implementation of a large-scale oil project, and to have violated their rights to enjoy the best attainable state of physical and mental health, clean environment, property, natural resources, and adequate housing. In this case, the Commission established that Nigeria had violated the rights and urged the government to suspend all the attacks on the Ogoni people and to undertake the necessary environmental and social impact assessments for any future oil project.\(^127\) Of additional importance, the Commission proclaimed “[c]learly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective.”\(^128\) As such, all rights in the Banjul Charter are justiciable.

Another landmark decision by the Commission resulted from the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* case in 2009. In this circumstance, Kenya was accused of having forcibly removed the Endorois indigenous community from their ancestral lands without prior consultation or subsequent compensation. Following an investigation, the Kenyan government was found in violation of the Charter and was requested to compensate the Endorois community for all its losses and to establish benefits sharing mechanisms from the economic activities carried out on its land. With this decision, the Commission largely pronounced both on the right to development and on the rights of indigenous peoples under the Charter.\(^129\)

In particular, in giving meaning to the right to development (Article 22), the Commission explained that there was both a procedural and substantive component that needed to be satisfied.\(^130\) The Commission found that the procedural component requires that “any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions,”\(^131\) thereby, recognizing FPIC. With regard to the substantive component, the Commission found that the Endorois “have faced substantive losses - the actual loss in wellbeing and the denial of benefits accruing from the game reserve. Furthermore, the Endorois have faced a significant loss in choice since their eviction from the land.”\(^132\) The Commission further agreed “that the Endorois, as beneficiaries of the development process, were entitled to an equitable distribution of the benefits derived from the game reserve.”\(^133\) As such, the Commission found a violation to the right to development in Article 22.\(^134\) This case will be addressed further in the Kenya case study section.

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126 Ibid.
127 Ibid.
128 *SERAC*, para. 68.
131 Ibid., para. 291.
132 Ibid., para. 297.
133 Ibid.
134 Ibid, para. 298.
United Nations Economic Commission for Europe (UNECE)

The Aarhus Convention

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) entered into force on October 30, 2001. The Aarhus Convention only has parties in Europe and Central Asia, as membership is limited by Article 17 to Member States of the Economic Commission for Europe (ECE), to States with consultative status with the ECE and to regional economic integration organizations made up of Member States to the ECE. Although the Aarhus Convention has no direct impact on any of our country case studies in Kenya, Peru, and Sri Lanka, a discussion on the legal landscape for EHRDs would be incomplete without a brief tour through Europe. Indeed, former UN Secretary General Kofi Annan recognized the global importance of the Aarhus Convention, noting that “[i]t is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen’s participation in environmental issues and for access to information on the environment held by public authorities.” Thus, the Aarhus Convention can serve as an inspiration for other regions and States regarding environmental justice.

The framework of the Aarhus Convention falls under three general themes: access to environmental information (Articles 4-5), access to justice (Article 9), and public participation in environmental decision-making (Articles 6-8). The Convention’s objective in Article 1 requires Parties to guarantee the aforementioned rights “in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being . . . .” Therefore, the Aarhus Convention is both an important instrument to protect the rights of EHRDs and to contribute to their ability to effectively advocate for positive environmental developments.

Conclusion

The combination of core international human rights treaties, protocols, Human Rights Council resolutions, “soft law” instruments, and regional human rights law provide the framework with which to evaluate the human rights of EHRDs. Furthermore, the three case study countries are participants and signatories to a myriad of these treaties and thus have made commitments to protect human rights. Given their obligations under any subscribed to treaties, forest defenders in Kenya, Peru and Sri Lanka may have recourse to address human rights violations outside their nations and under the international mechanisms, or in the cases of Kenya and Peru in regional mechanisms as well.

138 Ibid.
139 Aarhus Convention, articles 4, 5, 6, 7, 8, 9.
140 Aarhus Convention, article 1.
International Environmental Law and Development Goals

Background

There are a myriad of international organizations that deal with all aspects of international forestry and forest conservation – from field research like the Consultative Group for International Agricultural Research (CGIAR) to the creation of formal international instruments on forests such as the United Nations Forum on Forests (UNFF). Forests play an increasingly important role in climate change mitigation and economic development, which explains why governments have renewed and increased their interest and investment in forests. Within the environmental legal framework, one can distinguish binding and non-binding instruments; both, however, aim to protect the environment, promote the equitable use of natural resources and encourage sustainable development.

Non-binding Environmental Agreements

The UN Strategic Plan for Forests 2017-2030 (UNSPF), created in January 2017, is a global framework for promoting sustainable forest management and halting deforestation and forest degradation. The UNSPF is a guideline for coherence among forest-related UN bodies and partners - providing a framework on forest-nations’ contributions towards the 2030 Agenda for Sustainable Development (SDGs), the Paris Agreement, and other international forest-related instruments, processes, commitments and goals. The UNSPF was forged with the aim to expand the world’s forests by 120 million hectares by 2030, an area roughly the size of South Africa. This Agenda, set in September 2015 by the UNGA, features a set of six Global Forest Goals and associated targets to be reached by 2030, which are voluntary and universal.

Though alike to the UNSPF in its global coordination of environmental commitments by world leaders, the Bonn Challenge is uniquely focused on forest restoration. Founded in Bonn, Germany in 2011 with the goal of restoring 350 million hectares of degraded and deforested land by 2030 - by May 2017, 150 million hectares had already been pledged from 44 countries (including Kenya, Peru, and Sri Lanka). Bonn represents a departure from previous global commitments as its goals are twofold: (i) to unify existing environmental commitments by member states under the Convention on Biological Diversity (CBD), UNFCCC REDD+, and Rio+20 and (ii) achieve land degradation neutrality, while contributing to combatting global climate change, biodiversity protection, and degradation commitments.

Binding Environmental Agreements

Multinational Environmental Agreements (MEAs) are legally binding instruments that must conform to international public law pursuant to the Vienna Convention on the Law of Treaties (VCLT). They have flourished since the 1972 International Stockholm Conference - the first international action plan for the environment - to address the growing concern and awareness of environmental problems. These agreements fall under five main categories: biodiversity, land, seas, chemicals and hazardous waste and atmosphere. The ‘land’ category is of particular interest to this report and focuses on the protection of land from deforestation and degradation. The main land conventions include: the Convention on Wetlands of International Importance, called the Ramsar Convention (1975); the Convention on

\[\text{142 Ibid.}\]
\[\text{143 Ibid.}\]

Binding environmental agreements that include forest conservation include: the UN Framework Convention on Climate Change UNFCCC which framed the Kyoto Protocol (2005) and the Paris Climate Agreement (2016). The Paris Agreement entered into force on November 4, 2016 with the unifying goal to bring all nations together towards combating climate change and adapting to its effects.148 The agreement is led by 162 Intended Nationally Determined Contributions (INDCs) from 189 countries with plans to reduce emissions and enhance resiliency to climate impacts, offering increased support to developing countries to do so.149 The MEAs, though binding, do not guarantee action on the part of Member States. States suffer from diverse challenges or political unwillingness to meet their contributions, this could be due to a lack of financial resources, the complexity and number of treaty obligations, capacity to implement commitments, and a general lack of political will.

2030 Agenda: Sustainable Development Goals

The 17 Sustainable Development Goals (SDGs), adopted by world leaders in September 2015 at a UN summit, followed the previous Millennium Development Goals (MDGs) and aim to go further in poverty reduction. The SDGs are composed of 17 universal goals and 169 targets that apply to all.150 The framework focuses on reducing global poverty while encouraging sustainable development, economic growth, and environmental protection (among others).151 In particular, Goal 13 (Climate Action) has received commitments by all three countries discussed in this report and contributes to the global fight to combat deforestation and forest degradation. Though implementation of the 17 SDGs is not legally binding - countries are expected to lead in the implementation of their own national commitments, with enhanced technical and financial assistance from developed countries.

The SDGs and the Paris Climate Agreement, though two separate frameworks, are together integral components in achieving a climate-resilient and environmentally-equitable future. It is recommended that countries should seize on the synergies of these two agreements to harness international trends for climate finance (through funds under UN-REDD+ and the Green Climate Fund) to develop integrated approaches to ensuring a sustainable future.

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<td>2016: 5.1 million hectares by 2030</td>
<td>2014: 3.2 million hectares by 2020</td>
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SDGs: All three countries have contributed Nationally-Determined Commitments towards SDG 13: Climate Action

Key for Bonn Challenge: Year committed: hectares committed by deadline

149 Ibid.
151 Ibid.
PART II: Country Case Studies

Photo taken in Hunas Falls, Sri Lanka
Kenya

“You can’t protect a tree and fail to protect somebody who has been living where that tree is. And you can’t protect that person and expect them not to protect that tree.... Why would you choose to protect a tree or the forest and violate the rights of women, violate the rights of children - violate every other right, just for one tree.”

Photo taken in Chuka, Mt. Kenya, Kenya.
**Kenya**

**Case Study Summary**

In Kenya, the lasting legacy of British colonialism has propagated deep-seated residual effects on the current state of the environment, government conservation efforts, and forestland management systems. With over 40 different indigenous groups spread across the country, the division of land rights following independence fostered tension among the different communities, who asserted ancestral claims to certain lands, and the government, which sought to section off nationally-owned land for protection. In contrast with Peru and other regions, where the title of environmental human rights defender (EHRD) generally belongs to a particular champion of the cause, the situation of such advocates in Kenya is heavily based on community action. Centered on information gathered during in-person and remote interviews with multilateral organizations, governmental bodies, non-governmental organizations, and individual communities, the Kenyan case study sheds light on the cross-cutting issues of deforestation, environmental conservation, development goals, land rights, and EHRDs. In promoting the balance of collective environmental rights and individual human rights, this section specifically explores the evolution of the situation of forest defenders in Kenya and the stories of indigenous groups from the Ogiek people of the Mau Forest, the Chuka people of the Mt. Kenya region, and the Sengwer people in the Embobut Forest of the Cherangany Hills.

**Background**

Kenya is renowned for its beautiful landscapes and natural resources on which the country’s economy relies. The forest provides livelihoods and resources for local communities and also sustains Kenya’s five water towers that supply water, energy, and food for the whole country. The five main water towers are spread over 2 percent of the country and include the Aberdare Mountains, the Mau Forest Complex (the largest water tower), Mount Kenya, Mount Elgon, and Cherangany Hills. However, the water towers are under attack due to environmental degradation and unsustainable use of the forest, which threaten the wealth of natural resources, and therefore the country’s potential for growth. In particular, deforestation plays a major role in environmental issues in Kenya. The forest area in Kenya consists of three different types of land including indigenous forests, open woodlands, and plantations. According to the World Bank Group (WBG), deforestation has eroded forest cover from approximately 8.3 percent of the land area in 1990 to 7.5 percent in 2015. This severe reduction in forestland has forced Kenya to a critical juncture point; forest cover must be restored for the needs of the communities that depend on its resources and the long-term sustainability of the water towers.

The tremendous growth of the country over the last century has brought more economic and social prosperity, but also lead to increased depletion of forestlands. The main drivers of deforestation are a result of human activity and include: 1) extensive and intensive agriculture; 2) increased commercial exploitation; 3) poor governance and management; 4) climate change; and 5) political decisions and changes in societal needs (e.g. industrialization).

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156 Ibid.

The majority of the deforestation in Kenya occurred between 1990 and 2000 due to agricultural expansion. Particularly in the Mau Complex region, agriculture damaged the forest’s ability to capture rain clouds and redistribute water, especially in the dry season, which led to a loss of a quarter of the forest acreage in the area.\(^\text{158}\) According to journalist Fred Pearce,\(^\text{159}\) those responsible for this environmental degradation were mainly farmers, pastoralists (who allowed unmonitored grazing), illegal loggers, and corrupt politicians. During this period, Kenya lost an estimated 12,600 hectares per year,\(^\text{160}\) and this phenomenon heavily impacted the water towers.\(^\text{161}\) During this time, it was common for politicians to give sections of public forestlands to individuals, in exchange for political favors. This process is known as degazettement of forests, where the titles of protected, public forestlands are handed over to individuals – primarily for agricultural or development use.\(^\text{162}\) As a result of degazettement, large portions of forestland are cleared for other profitable activities. Deforestation corrodes the environment and produces negative externalities for the surrounding communities, like the loss of access to income-generating resources.

**Historical Context**

In 1895, the British government created the East African Protectorate and, in 1920, Kenya was declared a British colony until the country obtained independence in 1963.\(^\text{163}\) The British used forest resources from their colonized countries to sustain development and warfare, and Kenya was not an exception. The East African Forestry Regulations were then published in 1902, which designated the gazetted areas as well as granted use rights over fallen timber.\(^\text{164}\) In 1911, the Forest Ordinance replaced the Forestry Regulations and established the creation of proper forest officers. The authorities declared forestry development a fundamental component of the country’s national development plan. Following this statement, the British created a non-residential cultivation program – the *shamba* system\(^\text{165}\) – in order to develop forest plantations like maize and bananas – on natural forestland. They also introduced fast growing conifers and exotic softwood species in order to provide timber\(^\text{166}\) and sustain industrial development. This excision of lands from indigenous forestland deeply impacted the fauna, flora, and the water towers. Only foreign settlers were permitted to participate in the exploitation of forest resources. The *shamba* system was banned in 1986 to protect native forests, reinstated in 1994, and then banned again in 2003 - leading to evictions of farmers.\(^\text{167}\)

\(^{158}\) Pearce, “In Kenya’s Mountain Forests, A New Path to Conservation.”

\(^{159}\) Contributing writer for *Yale Environment 360*.


\(^{161}\) The main water catchments for nearly all the main Kenyan rivers.

\(^{162}\) Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.


\(^{165}\) A piece of ground under cultivation.


In 2005, Kenya established the Forests Act as “[a]n Act of Parliament to provide for the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socio-economic development of the country.” The Act was later implemented in 2007 in order to develop and maintain conservation management, policies, and rational utilization of the forest resources. The Forests Act was designed to preserve and maintain the socio-economic development of the country by acknowledging the role of forests in soil and water regulation, but also in greenhouse gas absorption. The law also set forth that “sustainable forest management would be better carried out by a semi-autonomous entity, the Kenya Forest Service. This new institution will be charged with forest administration, policy development, forest regulation, training, extension and protection of natural forests.”

Moreover, the Act was intended to implement a system of inclusive, joint management for the involvement of forest-adjacent communities and other stakeholders. The Community Forest Associations (CFAs) were created as “a group of local persons who have registered as an association or other organisation established to engage in forest management and conservation jointly with the Kenya Forest Service (KFS) or any other forest owners.” CFA leaders are democratically elected. Members form functional groups for different interest areas, including: grazers, fuel wood collectors, beekeepers, Plantation Establishment and Livelihood Scheme (PELIS) farmers (a new form of the shamba system), tree seedling producers, fish farmers, and herbalists. In particular, PELIS still enables forest adjacent communities to cultivate crops in forests. KFS does not provide substantive funding to CFAs but their co-management relationship is written in the 2010 Constitution. Since 2007, 325 CFAs have been created. Finally, the enforcement chapter of the Act establishes a legal framework of preservation and protection of the resources.

Due to pressure and incentives from the private sector, international organizations, and other stakeholders, the Kenyan government has committed to replanting the lost forest cover with help of tree-based landscape restoration maps. Consequently, between 2000 and 2010, the amount of gazetted and non-gazetted forest areas have increased. In 2016, Kenya pledged to restore its forest cover to nine percent of its total land

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171 The nomenclature of these communities is contentious and itself indicative of the greater debate: “indigenous peoples” (preferred by the communities) transmits the benefits of international recognition but the problems of the ‘hunter/gatherer’ distinction in Kenyan law; “forest dwellers” implies the community lives primarily within the forest and without reliance on modern amenities, which they typically are not; and “forest dependent” is most likely true, but could also be true of many other non-traditional communities. For the purposes of this report, we will use the term “forest dependent” to denote the 34 traditionally marginalized communities that descendant from forest dwellers.
172 See section: “Relations between the Government and Forest Defenders” for more nuanced discussion of the challenges in implementing the CFA structure.
area by 2030, the surface equivalent of Costa Rica (5.1 million hectares). This commitment is reflected in the goals of the Bonn Challenge, implemented in 2011, which seeks to restore 150 million hectares of degraded and deforested land worldwide by 2020 and 350 million hectares by 2030. Furthermore, this goal also contributes to Kenya’s long term development agenda, Vision 2030, and for Judy Wakhungu, Cabinet Secretary for Environment and Regional Development Authorities, the project also “provides us with the opportunity to reduce poverty, to improve food security, to address climate change and to conserve our valued biodiversity.”

Legal Framework

International and Domestic Human Rights Obligations

Kenya acknowledges in its 2010 Constitution that all international obligations are binding and form part of Kenya’s laws. The country’s inherited legacy with common law-style dualism was transformed by its new Constitution into (what academics often deem as) a ‘somewhat’ monistic system for incorporation of international law. This is an improvement and a clarification to the relationship between Kenya’s domestic laws and international law compared to the previous Kenyan Constitutions. Central to the 2010 Constitution, Articles 2(5) and 2(6) provides that treaties, once ratified, become part of Kenyan law. Yet, the country suffers from harmonization issues: article 94(5) stipulates that only Parliament has the legislative authority to create law, thus “placing international law under check by the domestic legal system.” In practice, Kenyan courts often afford high regards for international law – leaving the country’s exact classification open for interpretation. Kenya has ratified many of the core international human rights conventions – including the ICCPR, ICESCR, CAT, CERD, CEDAW, CRC, and CRPD – thus it has made binding international commitments to adhere to the standards of the international community and report to the corresponding UN treaty bodies. However, Kenya has not accepted the individual complaint procedures of the core international human rights treaties that it has ratified.

The government is also obligated to comply with various AU conventions, including the Banjul Charter. The African Commission has responded favorably to the claims of EHRDs in Kenya. On May 22, 2003, the Centre for Minority Rights and Development (CEMIRIDE) and the Minority Rights Group (MRG) lodged a complaint – on behalf of the Endorois community around Lake Bogoria – to the Secretariat of the African Commission. The complaint addresses the violations resulting from the displacement of the Endorois from their ancestral lands, the failure to adequately compensate them for the loss of their property, and the lack of protection afforded to their traditional way

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180 “The Challenge: A Global Effort,” Bonn Challenge, accessed May 14, 2017, http://www.bonnchallenge.org/content/challenge. The Bonn Challenge is a global effort to restore 150 million hectares of the world’s deforested and degraded land by 2020 and 350 million hectares by 2030. It is an implementation vehicle for national priorities such as water and food security and rural development while contributing to the achievement of international climate change, biodiversity and land degradation commitments
181 Katy Migiro, “Kenya to Plant a ‘Green Dress’ the Size of Costa Rica.”
184 Ibid.
of life. In a landmark decision adopted by the African Union on February 2, 2010, the African Commission decided that Kenya was in violation of Articles 1, 8, 14, 17, 21 and 22 of the Banjul Charter. It was ordered that Kenya recognizes the communities’ claim to the ownership and access to ancestral land, adequately compensates for their losses and lack of economic activity, and engages in a dialogue with the community. It was the first time “that an African indigenous peoples’ rights over traditionally owned land have been legally recognized.” However, Kenya has yet to take sufficient steps towards the implementation of the ruling in this case.

The Kenya National Commission on Human Rights (KNCHR) is the main national agency in the promotion and protection of human rights, created by Article 59 of the 2010 Constitution. The KNCHR was later implemented in 2011 through the Kenya National Commission on Human Rights Act and has two mandates. The Commission has two mandates, the first one is to act as a “watch-dog over the Government in the area of human rights” and the second one is to provide “key leadership in moving the country towards a human rights state.” In particular, the Commission is the main national institution in charge to verify Kenya’s compliance to its international and regional human rights obligations, notably in the case of minorities and marginalized people.

Environmental Conservation Obligations

Climate change disproportionately affects developing countries like Kenya – a particularly devastating trend for Kenyan citizens who rely on land and natural resources for their livelihoods. Recognizing these concerns, the Kenyan government has placed environmental concerns at the forefront of Kenyan legislation and its 2010 Constitution. The latter document enshrines a number of environmentally-based rights, including: the right to a clean and healthy environment (Article 42), the obligation of the government to respect the environment (Article 69), and a mandate for enforcement of environmental rights (Article 70). While there is still work to be done, the 2016 Climate Change Act – which mainstreams climate change responses into development plans, promotes low carbon technologies, and establishes a National Climate Change Council – has helped to signal that Kenya is willing to mobilize its resources for concrete action.

188 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, Decision No. 276/03, African Commission on Human and Peoples’ Rights.
189 “Kenya: Protecting the Endorois’ Right to Land.”
193 “Establishment.”
In 1999, Kenya enacted the Environmental Management and Coordination Act (EMCA), which for the first time, established an appropriate legal and institutional framework for managing the environment.\(^{197}\) The EMCA provided for the creation of the National Environmental Management Authority (NEMA), the National Environment Council (NEC), the Provincial and Districts Environment Committees, and the Public Complaints Committee.\(^{198}\) Section 4(1) of EMCA established the creation of the NEC which determines policies and priorities for the protection of the environment as well as “promote[s] cooperation among public departments, local authorities, private sector, non-governmental organizations and such other organizations engaged in environmental protection programmes.”\(^{199}\) In 2002, the EMCA created NEMA, meant to be the “general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.”\(^{200}\) NEMA’s main operations include “building resilience to climate change and adaptive capacity of vulnerable communities, environmental management and technical assistance and natural resource management.”\(^{201}\) The Provincial and Districts Environment Committees are “responsible for the proper management of the environment within the province or district in respect of which they are appointed”\(^{202}\) and “contribute to decentralization of environmental management and enable participation of local communities.”\(^{203}\) The Public Complaints Committee provides the public administrative mechanism to denounce environmental harm.\(^{204}\) Kenya’s environmental obligations therefore help conservation goals by establishing mechanisms and organizations to enforce them and make sure that they are respected.

**EHRDs in Kenya**

In contrast to their counterparts in other parts of the world, most EHRDs in Kenya are not individuals fighting against international conglomerates, but rather groups seeking land rights from the government. This is not to say that Kenya does not suffer from the global phenomenon of international land grabbing or environmentally unsustainable actions by the private sector. In fact – it is quite the opposite. Across East Africa, poor farmers and cattle herders are being forcibly removed from their lands with little to no regard for historical or cultural rights in favor of high-paying international actors, such as wealthy nations, corporations, and individuals. Several EHRDs are working hard to combat this issue in Kenya.

**The Human Rights Situation of EHRDs**

Kenyan EHRDs face grave circumstances in their fight to protect their land. Joel Ogada, for example, was sentenced to seven years imprisonment, on fabricated charges, for his opposition of salt mining on the coast.\(^{205}\) Phyllis Omido – winner of the 2015 Goldman Environmental Prize for her activism against a lead smelting plant near Mombasa\(^{206}\)

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198 Ibid.
204 Ibid.
Respect for human rights in Kenya has been particularly strained by the ongoing counter-terrorism operations against al-Shabaab, a radical jihadist organization. Forest defenders, like the Awer community of the Boni National Reserve on the eastern coast of Kenya, have become caught in the crossfire of the Global War on Terrorism. The Awer have long inhabited the forest as its indigenous protectors, but the community has been increasingly pushed out of that role as the forest has become a battleground. In February 2017, it was reported that American Special Operations forces had joined Kenyan troops in their search for insurgents hiding within the Boni forest. Awer leaders have confirmed that al-Shabaab militants have used the forest as a base for planning terror attacks in Kenya, forcing the community to provide food, medicine, and shelter for them. However, the threat of violence comes from both sides of the conflict: the Awer’s connection to the forest has pegged them as terrorist sympathizers, and community members claim that Kenya Defense Forces have burned their homes and forced them to evacuate. Reports of violent interrogations and forced disappearances of local people have highlighted the human rights violations of these EHRDs, all with little accountability for Kenyan authorities.

Yet, certainly some progress has been made. Kenya’s long history of land grabbing by colonial and post-colonial political elites has inspired political reform. New legal frameworks surround property rights and tenure relations, particularly within the 2010 Constitution, help signal the government’s intentions to correct past injustices and prevent new ones. Kenya, along with many other developing nations, struggles to balance the rights of its citizens, economic development goals, and the long-term need for environmental protection of natural resources.

207 Meeting (Conference Call) with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on March 2, 2017.
209 Meeting with Representatives from the National Coalition of Human Rights Defenders-Kenya on Jan 23, 2017 in Nairobi, Kenya.
213 Meeting with Representatives from the National Coalition of Human Rights Defenders-Kenya on Jan 23, 2017 in Nairobi, Kenya.
215 Ibid.
216 Ibid.
**Forest Defenders: Forest-Dependent Communities**

Within Kenya’s forest context, the relative dearth of international actors and corporations both simplifies the story and complicates the oft-cited ‘David and Goliath’ narrative of local community against a multinational corporation. According to Dr. Liz Alden Wily, an international land tenure specialist, Kenya’s 34 forest-dependent communities mainly live in five primary clusters: “the Ogiek of Mau Escarpment Forests, the Ogiek of Mount Elgon, the Sengwer of the Cherangany Forests, and two much smaller groups, the Yaaku of Mukogodi Forest and the Boni who traditionally occupy two coastal forests.”

Most indigenous forest dwellers have lived intermittently on the land since colonial times, due to changing government priorities. Since the 1930s, the government’s interaction with these communities has often been dictated by its need for the forestland – whether primarily for timber (like the colonial government), as farmland to annex for political favors (like the Moi government), or for conservation of the water towers (as it is currently). Most communities have been evicted from their forest homes and returned dozens of times.

With forest access comes water, timber, wildlife, vegetation, ancestral homelands and livelihoods. Thus, these communities frequently seek either enhanced capacities to manage the forest or a transfer of land tenure (from the government to the community). They believe their historical incentives for preservation and indigenous knowledge of the land make them best suited to conserve the forest. Their verifiable claims of mismanagement under KFS-dominated forest control, including the persistence of illegal logging, poor planning of plantation and *shamba* systems, and high rates of forestland excisions for economic and political gains, bolster their demands for community-based forest management.

The Kenyan government is generally careful to avoid the term “indigenous community,” mentioning it only once in the 2010 Constitution as: “marginalized community means... (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy.” The government retains two primary objections to using this term. On one hand, this narrow definition allows the government leeway to disregard indigenous-based claims owing to modernization and the non-retention of traditional lifestyles. In other words, the government defines indigenous communities as solely hunters and gatherers and also insists that hunters and gathers no longer exist; therefore, there are no indigenous communities in Kenya. On the other hand, as opposed to the Kenyan definition, the international legal definition is far broader. This presents difficulties...

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218 Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.

219 Ibid.

220 Meeting (Conference Call) with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on March 2, 2017.


222 This is the government’s primary argument for carrying out evictions. They maintain that communities have modernized beyond their potential to live within the forest sustainably, arguing instead that rehabilitation of forests necessitates that they are completely free of human inhabitants.

223 Meeting with Representatives from Kenya Forest Service Nairobi Headquarters - Forest Conservation and Management Office and Enforcement Office on Jan 24, 2017 in Nairobi, Kenya.

224 While there is no universal definition of ‘indigenous communities,’ they are generally self-identifying and recognized by the ILO as those who “retain some or all of their own social, economic, cultural and political institutions” and have done so based on “their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries” regardless of the legal status they hold. *Indigenous and Tribal Peoples Convention C169*, International Labour Organization (ILO), June 27 1989, http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314.
in differentiating which ethnic communities in Kenya can identify with the term, as many qualify. As Charity Muthoni Munyasya, Forest Conservation and Management Officer at KFS, explained: “Before colonization, before going to school came about, we were all hunters and gatherers, all Kenyans. That is why in our new constitution we do not have anything like indigenous peoples, because all Kenyans are indigenous.”225 Thus, the argument for avoiding the term “indigenous community” cuts two ways as all Kenyans and no Kenyans are indigenous.

Relations between the Government and Forest Defenders

While relations between the government and forest-dependent communities have run the gamut since colonial times, the 2005 Kenya Forests Act represented a paradigm shift towards greater community involvement.226 The law calls for participatory forest management through the formation of CFAs that work with KFS officials to jointly manage the forest.227 In theory, this represents a devolution of power to communities and a system of checks and balances to prevent potential corruption. Tensions that have long plagued relations between the government and forest defenders over land rights, forest resources, and environmental conservation could now be jointly resolved through an institutional structure, hopefully eliminating flash points over these issues. Currently, approximately 325 CFAs have been created with varying levels of success.

In most instances, the KFS has come to dominate the joint management relationship.228 While in some instances, the CFA system has been successful in implementing community-based conservation, it has strengthened the hands of the elites. CFA leadership positions are elected and voluntary – thus they are often either dominated by wealthy local business owners with divergent interests from the majority community, as the Chuka case study will illustrate infra, or leaders of marginalized communities with little political or economic agency to challenge KFS authority, as the Ogiek case study will highlight. Together, the joint management committee drafts a ten year forest management plan that outlines plans for conservation and community livelihood development (often including the potential for tourism, farming, and tree harvesting). Then, they oversee the sustainable use of the forest, including “preventing illegal activity in them, managing and raising fees for grazing of livestock and firewood cutting in the forest, and starting new economic activities based on forest resources.”229 For participatory forest management to be effective, it is therefore essential that the CFA-KFS relationship is equal and the interests represented are reflective of the community as a whole.

225 Meeting with Representatives from Kenya Forest Service Nairobi Headquarters - Forest Conservation and Management Office and Enforcement Office on Jan 24, 2017 in Nairobi, Kenya.
226 This relationship has also been assisted by Kenyan NGOs working on forest issues, namely: The Green Belt Movement (founded by Nobel Peace Prize winner Wangari Maathai, the grassroots organization focuses on community development through environmental conservation) and Kenya Forest Working Group (a forest advocacy group focused on policy reforms and implementation).
228 Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.
229 Pearce, “In Kenya’s Mountain Forests, A New Path to Conservation.”
Photo taken in Giraffe Center, Nairobi, Kenya
Findings

Ogiek Community:

The Ogiek population is composed of 30,000 members who live in clans in the Mau region – in and around the Mau Forest – and in the forests surrounding Mount Elgon. This section focuses on the Ogiek in the Mau region. They are some of the last remaining forest-dwelling hunter-gatherers in Kenya, but the majority of them grow vegetables and own livestock. They have been living in these region for hundreds of years and the survival of this indigenous community relies on their right to live in the forest in order to pursue their beekeeping activities, as well as access it for resources such as timber, firewood, fodder and medicinal plants. The Mau Forest constitutes a fundamental part of the Ogiek’s livelihood, identity and traditions.

Historical relationship with land

Since colonization, the Ogiek have been fighting for the right to live on their ancestral land, first, against the British and then against the Kenyan Governments. The Ogiek lost their lands following the development objectives of the British authorities and the gazettlement of their forests for “conservation objectives.” Indeed, the British considered the Ogiek as a barbaric community that was degrading the forest.

The British deprived the Ogiek from the trees they were using for beekeeping and for honey production – a very important tradition and source of income for the Ogiek people – and to feed animals. In 1933, the Carter Land Commission was implemented to examine the question of land and the Ogiek did not appear on the list of indigenous communities allowed to live within the forests. The Ogiek were then evicted from the forests and in 1938 the Kenya Land Commission removed the Ogiek’s indigenous status, denying them their ancestral lands and declaring them squatters on their own territories. Moreover, these colonial policies assimilated the Ogiek into neighboring communities, which significantly impoverished them and took them even more away from their ancestral land.

Nothing improved for the Ogiek after independence came in 1963 and today, the Kenyan Government’s conservation goals keep the Ogiek outside of their ancestral land.

Land Rights and Legal Ownership:

The Ogiek wish the government to enact an Ogiek Land Act that would grant them the right to live within the Mau Forest. They have also demanded the right to manage the forest through traditional means. When asked what they need, they answer “we need land and leadership.” Indeed, the Ogiek have always been able to preserve and respect the forest, hunting only when needed, keeping livestock and growing their own vegetable,}

232 Ibid.
233 Joseph Towett, “Ogiek Register 2017,” accessed on May 7, 2017. The “Ogiek Register 2017” was provided by Ms. Laetitia Zobel, of UNEP in Nairobi, via email following the in-person meeting on January 26, 2017 in Nairobi, Kenya.
234 Meeting with Members of the Ogiek Community, on Jan. 24, 2017 in Nakuru, Kenya.
235 “Background to the Ogiek Case.”
236 Ibid.
237 Towett, “Ogiek Register 2017.”
238 “Background to the Ogiek Case.”
239 Meeting with Members of the Ogiek Community, on Jan. 24, 2017 in Nakuru, Kenya.
and have been called “the Caretakers.” The chairman of the local CFA we met in the Mau Forest, William Daloso, explained that the relationship between the Ogiek and the KFS was formed in 2005. The goal then was to incorporate the surrounding communities into forest protection. However, the lack of forest management policies from the KFS has compromised the Ogiek’s ability to protect and conserve adequately the forest.

The Ogiek’s CFA has voluntary forest scouts – members of the Ogiek community who though not paid by the KFS, still contribute to the arrests of illegal settlers and loggers. They need facilities, vehicles, and technology to do their job, but have only limited quantities. The Ogiek therefore demand more technological support from the KFS.

**Major Issues**

Today, the Ogiek are facing three main issues: lack of land rights, non-respect of their indigenous rights and finally environmental degradation of the Mau Forest Complex by illegal settlers and loggers.

The Ogiek people have never been adequately involved in the protection and conservation of the Mau Forest and they have been in negotiation with several Kenyan governments to address their land issue. The Ogiek have been fighting for land ownership recognition and asked the government to take into account the needs of indigenous communities – to be able to earn a living with and to be able to “participate meaningfully in policy-making processes that may affect their future.” The Ogiek people are supported by several NGOs specializing in human and indigenous rights such as the Ogiek People’s Development Program (OPDP), Minority Rights Group International (MRG), and the Center for Minority Rights Development (CEMIRIDE).

In 1997, the Ogiek went to the Kenyan High Court to protest against their continuous evictions and to stop the Government’s decision to allocate their land to other communities. The Ogiek lost the case - they did not obtain the right to legally live in the forest, but only to obtain their livelihood in the forest - on the ground of environmental conservation and ecological management.

**African Commission of Human and Peoples’ Rights v. Kenya (The ‘Ogiek Case’)**

In 2009, the Kenyan government issued an eviction notice towards the Ogiek, giving 14 days to leave the Mau Forest. Consequently, the OPDP, CEMIRIDE and the MRG brought the case of the Ogiek community before the African Commission against the Kenyan Government. This was the first case on indigenous people’s rights to be considered by the African Court and one of the first cases of a Commission referral in a communication brought by NGOs.

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241 Ibid.
242 Ibid.
In 2012, the African Commission confirmed that the Kenyan Government perpetuated human rights violations against the Ogiek and referred the case to the African Court. On March 15, 2013, the Court issued an historic ruling in favor of the Ogiek people, requiring the Kenyan Government to:

“(i) immediately reinstate the restrictions it had imposed on land transactions in the Mau Forest Complex, and (ii) refrain from any act/thing that would/might irreparably prejudice the main application, until the African Court gives its final decision in the case.”

This was the first time since its creation in 2006 that the African Court, has intervened to protect the rights of an indigenous community. Up until now, Kenya has not respected the provisional measures and the Ogiek are still waiting for the final judgment from the African Court.

**Chuka Community**

On the southeastern slopes of Mount Kenya, the small town of Chuka lays adjacent to the Mount Kenya National Park, a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site and home to one of Kenya’s five main water towers. A group of community members there – who self-identify as indigenous peoples – are fighting for ownership of their ancestral lands, a 24,000 acre stretch of the forest known as Magundu Ma Chuka. According to the community, the area was erroneously classified as part of the forest reserve when the park was gazetted. The colonial and Kenyatta governments allowed the community limited cultivation within the forest, but this access was completely cut in 1990 when the government ended the *shamba* system in public forests. The community is now seeking a program of “community-based forest management,” a variation on joint management that would transfer ownership to the people and give the community the “upper hand” over the KFS. The KFS maintains that this community is, in fact, not forest-adjacent, as their distance from the forest - over the maximum of five kilometers - disqualifies them from participation in the CFA structure and that their claims are based in false historical ties to the land. The contentious relationship between the KFS and this community has elicited issues related to illegal logging, patrolling of the forest, ownership of land, and participation in decision making processes.

**Major Issues**

**Illegal Logging**

The community’s fight for land rights stresses the current exploitation of the forest. The KFS contends that it actively combats the practice of illegal logging of indigenous trees and has mostly contained the issue. Both sides acknowledge that wealthy loggers will pay local youth to go deep into the forest at night, cut down indigenous trees, and carry them out by hand. The community further alleges that KFS officials and local leaders are complicit in the scheme – that it would otherwise be impossible for the trees to be carried out undetected or sold at market without the proper certification. “Illegal logging practices are financed by the rich people. One of those rich people is even the chairman of the Community Forest Association,” said Wendy Mutegi, a lawyer representing the Chuka

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248 Ibid.
250 Meeting with Representative from the Kenya Forest Service Chuka Extension Services, Benjamin Kinyili, on Jan. 27, 2017 in Chuka, Kenya.
251 Ibid.
252 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.
community. Ms. Mutegi has received death threats in relation to her advocacy, demanding that she “withdraw the court case [against illegal logging] if she wanted to live.” The government has not taken action to investigate these threats, contrary to its duties to protect its citizens and provide effective remedies under international human rights obligations. Ms. Mutegi now continues her work escorted by international NGOs for her protection. In Chuka, the stakes are high; Ms. Mutegi contends that approximately 60,000 acres of indigenous hardwood trees have already been destroyed, leaving patches of the forest bare. The KFS refutes these allegations, claiming that deforestation does not exist outside of designated plantation areas and that the accusations against them are exaggerated by the self-interested community. Nonetheless, KFS and local authorities should, therefore, launch a full investigation into these allegations of corruption and intimidation and act swiftly on any negative findings. The Kenyan government should also legislate overarching protections for whistleblowers, including EHRDs such as community members or fellow KFS officers, who can highlight corruptive practices within the organization.

Legality of Patrolling the Forest

The KFS has given conflicting responses as to whether illegal logging exists in the Mount Kenya region. The government should support community-led efforts to combat illegal logging, including the training of voluntary scouts to monitor the forest. While unrestrained access to the forest is illegal, courts granted the Chuka community temporary authorization to patrol. It was only then that the community discovered the true extent of deforestation, finding large pockets of the forest destroyed deep within the forest. In December 2014, the orders for community-based patrol were vacated, leaving Magundu Ma Chuka once again susceptible to illegal logging. Following the ruling, several community members decided to illegally camp in protest and protection of the forest. After nearly a month, they were arrested on the charge of “being in the forest without a permit.” The community has continued their efforts to patrol at great costs. According to the environmental news outlet Mongabay, three voluntary scouts were shot, one fatally, while patrolling deforested areas of the forest. None of the current KFS officers stationed in Chuka are from the area. The community believes this fact is vital to the perpetuation of corruption; local scouts, with ancestral ties to the forest, are necessary if Kenya is to stem illegal logging in Chuka.

Ownership of Land

The demands and claims of the Chuka community are, at times, divergent. They rally against legal plantation harvesting and decry the lack of environmental impact assessments (EIAs), while simultaneously demanding first

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253 Ibid.
257 Meeting with Representative from the Kenya Forest Service Chuka Extension Services, Benjamin Kinyili, on Jan. 27, 2017 in Chuka, Kenya.
258 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.
259 Ibid.
261 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.
priority for purchasing trees to harvest. They were able to block the construction of two tourist hotels, but had plans to be at the helm of their own. In many ways, this perspective is understandable: the Chuka community believes they ‘own’ this section of the forest and should be able to derive the same economic benefits that the government and wealthy individuals currently take from it. They are forced to buy the firewood and food that they should be able to take from the forest for free. Most villagers do in fact enter the forest illegally and gather firewood, but at risk of punishment from KFS. The community acknowledges the difficulties in convincing poor villagers that not collecting wood is in the long-term interest of the reduction of GHG emissions. The lack of access to the forest, in the eyes of the community leaders, is analogous to the colonial government’s appropriation of resources – the direct consequence is the peoples’ poverty. Thus the arguments for community-based forest management are two-fold and at times difficult to reconcile: to allow a forest-dependent community their birthright and potential for livelihood improvement, and the need for conservation of the forest through community control.

### Participation in Decisions

The legal avenue for the inclusion of marginalized communities in forest conservation practices is the Participatory Forest Management system, provided for by the 2005 Forests Act. The KFS maintains that this community does not qualify for CFA participation because they now live too far from the forest. From the Chuka community’s perspective, the CFA system has failed them. Believing that the aforementioned CFA chairman (the wealthy individual accused of funding illegal logging) does not represent their wider interests, the community feels they are left with no opportunities to engage in management decisions. The KFS should be cognizant of communities’ access to participation in the CFA system, particularly smaller communities with less agency. While community demands for the alteration of forest boundaries may be unpalatable to the government, empowering community participation is the very least that can be done. As Ms. Mutege said, “until our rights are recognized, then we will keep agitating and we will keep pressurizing for the recognition of our rights. So the pressure is on.” Thus the government must take substantive steps to ensure that the voices of the community are heard to satisfy the mandate of the 2005 Forests Act. Empowering community participation in forest management may decrease the potential for conflict, threats to defenders, and enhance conservation efforts.

### The Sengwer Community of the Cherangany Hills

The Sengwer community, indigenous to the Cherangany Hills region, is located in the Western Highlands of Kenya. Historically, the Sengwer people owned and lived on their ancestral lands as hunter-gatherers, subsisting off a community bartering system based on honey, meat, and other crops. During the colonial era, the Sengwer were forced from their land in order to allow for government-sponsored agricultural production in the area, and they resettled in highland areas including the Embobut Forest of the Cherangany Hills. In the 1930s, the government attempted to create a registration system for members of indigenous groups and distributed

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263 Ndungu, “Fight Over Mt Kenya Forest Strip Goes to Court.”
264 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutege, on Jan 27, 2017 in Chuka, Kenya.
266 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutege, on Jan 27, 2017 in Chuka, Kenya.
identification cards based on community affiliation. Through this process, community members state that the true “Sengwer” identity disappeared as many individuals were forced, by the government, to register as affiliates of other groups including the Kalenjin, Pokot, Marakwet, Nandi, and Sabaot.\(^{269}\) As a result, the Sengwer assert that they were no longer recognized as a distinct group and the majority of their land had been titled to other communities and eventually transferred to the state as government-owned forestland after independence.\(^{270}\) Members of the Sengwer community, therefore, find themselves concurrently defending their traditional land practices—and sources of livelihood—and seeking to ameliorate their land rights situation. The forest defenders of the community specifically request to obtain equal use and access of their ancestral lands and make decisions in tandem with the intergovernmental organizations and the government arm in charge of the area, the KFS.\(^{271}\)

**Major Issues**

The Sengwer community has faced obstacles regarding their status as an indigenous group throughout history in their fight for equal use and access of their ancestral land. Today, the Sengwer people still face major issues of recognition, participation in decision-making processes, the consequences of development projects, and forced evictions by the government. Consequently, this situation has led the community to pursue legal action against the government for their land rights and partner with NGOs and advocacy groups to make their voices heard.

**Recognition by the Kenyan Government**

Since the early days of colonial settlement in Kenya and the inception of the land allotment system, the Sengwer community has fought to be recognized as an indigenous group by the Kenyan government; their lack of recognition has created obstacles for them to claim ownership of their ancestral lands. Articles 61–64 of the 2010 Kenyan Constitution outline the definitions of three types of land including community, public, and private.\(^{272}\) The idea of “community land” incorporates “ancestral lands and lands traditionally occupied by hunter-gatherer communities.”\(^{273}\) The Sengwer request that Article 63 (2)(d)(ii) be implemented.\(^{274}\)

The mandate to preside over the allocation of land resources among communities resides solely with the Kenyan National Land Commission, a government agency. As communication any significant improvement of the Sengwer people’s land situation, the community has preferred to try legal avenues to obtain recognition by the government and fight forced evictions.\(^{275}\)

**Participation in Decision-Making Processes**

Without recognition, the Sengwer face difficulties in participating in decision-making processes, especially those that affect them. The Forests Act of 2005 was designed to involve community members in the care and preservation of national forestland. According to Yator Kiptum, a leader of the Sengwer Community, the CFA structure assumes that local groups live outside the forest and does not take into consideration that some groups, like the Sengwer, live in the forest. Therefore, the CFA co-management system considers all lands, even community lands, as public

\(^{269}\) “Sengwer Ethnic Minority: Indigenous Peoples.”


\(^{273}\) Ibid.

\(^{274}\) Ibid.

\(^{275}\) Ibid.
land in which communities are not allowed to live and practice traditional lifestyles. Additionally, the Sengwer people ask for the right to practice their traditional ways of living, which include beekeeping and hunting and result in minimal damage to the environment. The Sengwer people believe that the Kenyan government does not recognize their role in the proper conservation of the forests. In practice, this system creates a government-run arrangement that allowed for little input from indigenous groups although it is designed for collaboration. As a result, the Sengwer people do not believe they fit within the boundaries of the CFA system structure and would rather take on sole responsibility for the forest as a local community that knows the area well.

The Consequences of Development Projects

Under the auspices of the Natural Resource Management Project (NRMP) that sought to promote forest and water conservation, the World Bank Group (WBG) embarked on a land appraisal in Kenya in 2007, deeming that “Kenya had one of the most degraded natural resource bases in the region, while nearly 70% of the population was living on 12% of total land area classified as medium to high potential for agriculture and livestock production.” Eventually, by 2014, NRMP considered the ancestrally-claimed land of the Sengwer people relevant to its conservation objectives, and the community was asked to relocate and would be compensated for their hardship.

After the Sengwer community launched an official complaint regarding their treatment under the NRMP program in 2013, the World Bank Group’s Inspection Panel investigated the situation. According to the Panel’s May 2014 report, the WBG did not properly consult the Sengwer people in the process and informed community members of decisions after the fact. To local communities such as the Sengwer people, consultation is especially important in development projects that may lead to altered use of the land and even forced resettlement, which affects the communities directly. The WBG released a statement saying that the organization would work with members of the Sengwer community to come to an agreement. In response, the Sengwer community wrote a letter directly to President Kenyatta requesting that the government entrust the communities with the responsibility of caring for the forestland in order to prevent the continuation of the project. Despite these efforts, the KFS was ordered to evict members of the community that did not comply with the regulations after obtaining free prior and informed consent (FPIC) from those involved, leaving many homeless and landless.

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276 Ibid.
277 Ibid.
283 Ibid.
The WBG’s discontinued NRMP program is a great example of the complex role that international financial institutions (IFIs) play in development projects in Kenya. The sentiments surrounding the project were focused on boosting Kenya’s agricultural productivity and improving the country’s overall level of development. The WBG did not intend to commit human rights violations or threaten the environment in the process; however, communities like the Sengwer people were treated like collateral damage and forced to leave their homes as the project prioritized the economy over the country’s citizens.285

**Forced Evictions and Treatment**

In recent years, one of the major sources of contention between the Sengwer community and the government is with regard to forced evictions. The international legal framework concerning the right to adequate housing in the context of forced evictions is outlined in the ICESCR and the United Nations Conference on Human Settlements, which states that, “major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made.”286 In Kenya, much of this tension stems from ideological differences regarding community groups’ use and access of the land. The KFS’s mandate is to conserve the forest and protect it from degradation resulting from unsustainable indigenous community practices while local groups believe in their unequivocal right to ancestral land.287 The KFS maintains its stance regarding the forced evictions under the aforementioned NRMP World Bank Group project as the government compensated communities in exchange for leaving the area. 288 The KFS argues that much of the Sengwer community left their homes in the forest after this process.289

The Sengwer community refutes this claim, citing that many individuals are still subsisting off the forestland. Milka Chepkorir, a member of the Sengwer community, alleges that many of the group’s settlements inside the forest were burned down by the KFS.290 As described by Mr. Kiptum, a prominent figure in the Sengwer community, when the Sengwer community tried to prove to the government the existence of such structures by encouraging a helicopter to fly over the area to inspect for anybody living in the forest, the helicopter avoided the areas where people were living and reported no cases of forest-dwelling people.291

For the Sengwer people, this process has resulted in reflection on their situation and treatment. Mr. Kiptum alleges that several human rights violations have taken place as a result of, or during, the evictions and that several of them have been videotaped by members of the community; for instance, he mentions that several community members have been beaten, women have been mishandled, children have been denied the right to attend school, and the right to food and property have not been respected.292 Despite the evictions, Ms. Chepkorir states that the “Sengwer area stubborn community” and that they believe their right and dependence on the forest makes them want to stay in the forest.293 Additionally, Ms. Chepkorir calls into question the role, purpose, and duty of the National Land Commission and other authorities in these issues as they allow such human rights violations to take place under their watch.294

285 Ibid.
287 Meeting with Representatives from Kenya Forest Service Nairobi Headquarters- Forest Conservation and Management Office and Enforcement Office, Charity Muthoni Munyasya, on January 24, 2017 in Nairobi, Kenya.
288 Ibid.
289 Ibid.
290 Meeting with Members of the Sengwer Community, Milka Chepkorir, on Jan. 25, 2017, in Nairobi, Kenya.
291 Ibid. Several organizations and individuals interviewed referenced this event but had differing remarks, including Professor Karanja, who mentioned that the surveyors sent to scan the land went to the area in question to find settlements but that nothing was found.
292 Ibid.
293 Ibid.
294 Ibid.
Keeping in mind the statements of Sengwer community members regarding human rights violations, it is also important to note the widespread testimonies made by international NGOs, especially those catering to western online media outlets. Several sources have focused primarily on the human rights impacts of forced evictions; however, many of these statements have been flagged as recycled photos or descriptions of past evictions. In analyzing the reality of the situation, misreported events obfuscate the exact details of the eviction process and consequently seem to pit the government’s word against that of the community’s, potentially damaging the credibility of such human rights movements.

Implications for Ongoing Legal Battles

In 2013, the evictions of the Sengwer people motivated leaders of the community to address the issue in Kenyan court. The community’s mission was to stop the evictions and ensure the security of their people. The Sengwer lost the case and evictions continued, but they prolonged the legal battle by filing a contempt of court. Mr. Kiptum cites that during the legal process, the community asked the court to transfer the Sengwer case to the National Land Commission, which possessed the mandate to cease evictions. Dr. Liz Alden Wily, who has worked closely with the Sengwer community, confirms that the Sengwer people appealed to the National Land Commission through petitions but that nothing moved forward. Consequently, the case has not, to-date, been heard by the National Land Commission, even though they still have the responsibility to correct historical land injustices.

In the future, the community may consider going back to court for two main reasons. According to Mr. Kiptum, these are to “challenge the constitutionality” of the 2005 Kenya Forests Act and revisit the interpretation of the Constitution’s Article 63(2)(d)(ii) that concerns claims to ancestral lands. Although the Sengwer people were not successful in their first attempt to secure land rights, the treatment of community members under the evictions, continuous media coverage of the court cases, and similar court cases of other communities like the Ogiek people, have brought the issue of indigenous communities’ land rights to the forefront in Kenya.

Partnerships with NGOs

The Sengwer people work closely with NGOs, including the Forest Peoples Programme (FPP), which has actively shared the struggles of the Sengwer evictions with the world through online correspondence. The organization is based on the principles of FPIC and “self-determination” for which communities like the Sengwer strive. The work of advocacy organizations like FPP allows the Sengwer community to have an extensive outreach network and media coverage for Western audiences.

295 Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.
296 Meeting with Members of the Sengwer Community, Yator Kiptum, on Jan. 25, 2017 in Nairobi, Kenya.
297 Ibid.
298 Ibid.
299 Meeting (Conference Call) with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on March 2, 2017.
300 Meeting with Members of the Sengwer Community, Yator Kiptum, on Jan. 25, 2017 in Nairobi, Kenya.
301 Ibid.
302 Ibid.
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Analysis

The protection of Kenya’s forests is essential to its survival as a nation. The water towers housed in the forest are the country’s lifeline; without them, Kenya will become desert. And history has not always shown the government to be the best protector of the forest. Under KFS control, mismanagement, excisions, and other illegal activities have sometimes run rampant. When the goals of forest-dependent communities and the KFS are fundamentally misaligned, the system can entirely fall apart. Both sides often believe themselves to be the best conserver of the forest and the opposition its destruction. Communities maintain the joint relationship is so unequal that they are entirely unable to hold KFS accountable to its stated goals. Thus transferring ownership to communities, under the precondition of maintained conservation, would increase accountability and checks on power. This is the argument of the Sengwer community in the Cherangany Forests, for example, who have held so firm to this belief that they continue to return to the forest – even after dozens of violent evictions. They believe the government infringes upon their human rights as forest defenders. As Sengwer activist Milka Chepkorir states, “You can’t protect a tree and fail to protect somebody who has been living where that tree is. And you can’t protect that person and expect them not to protect that tree…. Why would you choose to protect a tree or the forest and violate the rights of women, violate the rights of children - violate every other right, just for one tree.”

Conversely, the government argues that the water towers are so vital to Kenya’s future that no one group should be able to claim ownership of these areas. “You ask yourself, a group of people within the forest and then all other Kenyans left to die – which is the best option? … Do you condemn the majority of Kenyans just to save a group of people that call themselves hunters and gatherers? And if you meet them, you see that they have technology. They are not hunters and gatherers,” asks Ms. Munyasya of KFS. This tension between environmental conservation and human rights make the situation of forest defenders in Kenya one that is particularly difficult to assess. The question of who is the best protector of the forest is impossible to answer definitively, as both sides make valid arguments. Maintaining the status quo joint management system neglects the very real need for greater checks on KFS power and the potential of harnessing greater community involvement (beyond the current, inconsistent checks through the CFA system) for such a purpose. If properly formulated, Kenyan law can promote a compromise between these two seemingly disparate viewpoints.

Policy Recommendations

As previously discussed, the definition of “indigenous community” in Kenya has evolved to have various meanings to different groups of people. The main category of people included in this description, according to the Kenyan government, are hunter-gatherers. Self-identified indigenous groups include forest-dependent communities and traditional hunter-gatherer groups that have begun to assimilate to more peri-urban lifestyles. The stories of the Ogiek, Chuka, and Sengwer people and their treatment based on their relationship to the land has sparked many questions about how this definition can continue to evolve as the country undergoes economic, social, and political development. Additionally, the best methods for conserving the environment seem to be debatable along with who might be the best caretaker of forestland—whether that is the government, indigenous communities, or a joint-management system. To promote a balance between collective environmental rights, including overall forest conservation efforts, and human rights, such as indigenous claims to ancestral land, this section respectfully suggests the following ten policy recommendations that can be directed towards various stakeholders, such as: the indigenous communities themselves, NGOs working within the sector, and government entities including the KFS, the National Land Commission, and policymakers in charge of legal reform in order to respect the rights of forest defenders:

304 Meeting with Members of the Sengwer Community, Milka Chepkorir and Yator Kiptum, on Jan. 25, 2017 in Nairobi, Kenya.
305 Meeting with Representative from the Kenya Forest Service Chuka Extension Services, Benjamin Kinyili, on Jan. 27, 2017 in Chuka, Kenya.
306 Meeting with Representatives from Kenya Forest Service Nairobi Headquarters- Forest Conservation and Management Office and Enforcement Office on January 24, 2017 in Nairobi, Kenya.
1. **Implement Existing Constitutional Values to Protect Human Rights Defenders:**

By labeling HRDs as “Terrorists,” the government delegitimizes the requests of these groups and pegs them as ‘the enemy.’ In general, the enforcement of the current Constitutional framework limits their freedoms of expression and assembly—specifically relating to Constitutional Amendments 33 and 37—and criminalizes the work of such advocates. For example, in November 2016, ten activists, meeting at a registered human rights organization in Taveta County, were arrested on the charge of unlawful assembly for protesting illegal allocation and occupation of their land by other individuals. Additionally, as media houses face fines for releasing information about the activities of HRDs, the impact of their voice is reduced. Thus, HRDs are unjustly targeted by the authorities for their actions. While the Kenyan legal framework includes protections for these rights, Kenya has ratified several core international human rights law conventions, which should be applied domestically as per Articles 2(5) and 2(6) of the Kenyan Constitution. Policymakers can focus on respecting existing laws and implementing the values of the Constitution. In this context, the work of HRDs in Kenya can more easily flourish without the threat of arrest.

2. **Recognize All Marginalized Communities and Employ the Community Land Act for Forest-Adjacent Lands:**

The government initiative in the 1930s to register indigenous communities lacked accuracy and legitimacy as it excluded large portions of society. Many traditional forest-dwelling communities were asked to provide proof of their affiliation with a particular indigenous group, but they lacked the means to acquire proper identification. As such, many people, including members of the Ogiek, Sengwer, and other communities, were left out of the land allocation process. Small tribes, who were not initially allotted reserves (later ‘land trusts’), were forced to assimilate into larger communities and live on the reserves allotted to them. Some of the land ancestrally-claimed by these smaller communities was assigned to other communities while other portions were distributed to settlers, but the majority was transferred to government-controlled reserves. In 1941, the land reserve titles were converted into trusts, and to this day, the Kenyan government has not taken action to correct this misallocation of land. Many members of communities such as the Sengwer, Ogiek of Mau, Ogiek of Mt. Elgon, Aweer, and Yaaku people live illegally on their once ancestral—now forest reserve—land. The Kenyan government can take measures to employ the Community Land Act, passed in September 2016, which recognizes both individual and collective rights to the community land, and affords land rights to the indigenous communities that were excluded from the initial forest-adjacent land allocation. Recognizing that allocation of ancestral land is dependent upon community affiliation, such aforementioned groups need to provide proper identification, which may prove difficult and also allow “free-riders,” who are not part of a particular community, the opportunity to claim portions of the land. For recognized communities with previously allocated land, their titles should ideally not change, but rather, this action would be a transfer of land titles from government trusts to communities denied their traditional land claims. Additionally, this action would provide EHRDs, from communities seeking recognition as well as use and access to land, more equal footing to advocate for their rights.

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307 Meeting with Representatives from the National Coalition of Human Rights Defenders-Kenya on Jan 23, 2017 in Nairobi, Kenya.
308 Ibid.
309 Ibid.
310 Email Correspondence with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on April 5, 2017.
311 Ibid.
313 Email Correspondence with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on April 5, 2017.
3. **Afford Forest-Adjacent Communities Conditional Land Rights to National Forest Reserve Land:**

Kenya’s legal framework allows for the transfer of public land to community land, including the provisions stipulated in the Community Land Act, 2016; furthermore, Dr. Liz Alden Wily suggests that the government can also implement the Forest Conservation and Management Act, 2016, as under this law, “the status of these areas…would not change, only ownership: they would become Community Forests on community land.”\(^{314}\) In addition to the transfer of forest-adjacent land, one option in re-evaluating the role of communities in ownership of national land reserves (gazetted lands) would be to grant communities conditional land rights, thereby entrusting them with the responsibilities of being both the owners and conservers of the forest.\(^{315}\) This process would invariably involve supervision by the KFS to ensure the conservation and maintenance of the forest.\(^{316}^{317}\) Policymakers and members of the National Land Commission may advocate for the use of conditional land rights in a particular area as a trial to test if the system works and can be more widely applied to other national reserve lands under the auspices of a Constitutional amendment.\(^{318}\) This would provide communities an opportunity to implement their own traditional and sustainable practices to promote forest cover growth and safeguard the water towers. Conditional land rights would provide forest defenders with the agency needed to ensure environmental and collective rights of the forest are being upheld and prove that traditional ways of life can still thrive and be practiced in harmony with the modern landscape.

4. **Empower Local Volunteer Forest Scouts:**

As part of many Community Forest Associations (CFAs), local forest scouts from the community volunteer their time and energy to monitor illegal activity and care for the forestland. This work is in addition to the activities already carried out by paid KFS forest scouts. For volunteer scouts in more rural areas, this work can be particularly taxing if the community is unable to financially support them with adequate equipment and training, or if the scouts have no other sources of income.\(^{319}\) To resolve some of the underlying forest management issues, the KFS should pay local forest scouts for their work and potentially provide food and lodging for them within the forest.\(^{320}\) This systemic policy change would afford local forest scouts a livelihood that would allow them to perform their duties more effectively. Forest defenders would then have a community representative with whom they can cooperate and lobby for environmental rights without fear of backlash, and local forest scouts themselves can act as defenders.

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314 Ibid.
315 Ibid.
316 Ibid.
318 Dr. Liz Alden Wily, “The National Constitution and Forest Dweller Land Rights in Kenya,” Forest Peoples.org, last modified December 2015, accessed December 20, 2016. http://www.forstpeoples.org/sites/fpp/files/publication/2016/01/liz-alden-wily-dec-2015-constitution-tfd-kenya.pdf. As a caveat, this suggestion should be considered solely a trial option given to a small group of people to test as the results may depend on the community and location within Kenya. The idea of granting communities the status of “owner-conservator” has been successfully used in Tanzania and could be a starting point for a system in Kenya, according to Dr. Alden Wily. Conditional land rights could potentially pave a path to permanent ownership of land should the system work.
319 Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njorge, on Jan. 23, 2017 in Nairobi, Kenya.
320 Meeting with Logoman Forest Scouts in Mau Forest on Jan 24, 2017 in Nakuru, Kenya.
5. **Strengthen Local Institutions to Foster Participation of Marginalized Communities in Community Forest Associations:**

Regarding the KFS-CFA joint management of forestland, some forest-dependent communities do not see their traditional governance structures reflected in this system and believe that it is designed so that the KFS has a dominant role in decision-making and enforcement.\(^{321}\) Consequently, when communities feel that they do not have an equal standing in the joint management system, there are fewer benefits to CFA participation. To foster such participation, the government can devolve some of KFS’s roles in the joint management system and work with communities to ensure their engagement. For example, KFS can prioritize the hiring of local forest scouts from the communities as paid KFS scouts who have a vested interest. Fostering training programs for local crafts and traditions like beekeeping and agroforestry can generate revenue and encourage more communities to commit to the CFA system by increasing the marginal benefit to the community. Additionally, adhering to a system of conditional land rights (see: policy recommendation 3) would address the issue that communities often have with CFA participation -- that they do not include land tenure. Another way to strengthen local institutions would be by involving a third-party, such as an NGO or consulting group, to facilitate planning and monitor actions of the joint management system, thus helping mitigate conflict and foster cooperation between the government and local communities.\(^{322}\) This system change would allow independent groups to assess the balance of power and ensure forest-adjacent communities are provided an equal say in managing forestlands. The use of third-party actors would add a witness on the ground who is knowledgeable of both government and community work and could potentially vouch for the rights of forest defenders.

6. **Regulate “Land Grabbing” Practices and Institute a Grievance Mechanism:**

In Kenya, overlapping programs instituted by different agencies and organizations regarding conservation, land rights, and development projects often conflict. At both the national and community levels, these multiple plans for land use propagate the risk of powerful actors engaging in misappropriation of land, highlighting the importance of transparency and multi-stakeholder mechanisms for land policy and allocation.\(^{323}\) “Land grabbing” of forest and forest-adjacent areas by the government or other multilateral organizations is a common issue through which land is often either sold to individuals or large companies in exchange for political support.\(^{324}\) The people living on the lands in question are not usually consulted in this process and should be informed before any allocation process is carried out. When local groups are pushed off their land, the role of communities in participating in their own governance through the CFA system is undermined. The government can avoid this situation by consulting with the affected communities and enforcing a singular land policy that clearly defines the use of land by particular agencies or organizations. Additionally, regulation of “land grabbing” practices is imperative and can be done by auditing land titles and requiring proof of legitimate transactions approved by parliament. Although the parliamentary approval process has reduced “land grabbing” in forest areas, the practice is still an issue in unprotected areas.\(^{325}\) In addition, the government can also institute an independent grievance mechanism that allows at-risk populations or groups who have been threatened with forced eviction a space to raise their issues and seek a fair resolution that takes into account basic human rights.\(^{326}\) From there, the two sides can follow dispute settlement procedures to solve the issue in the most equitable manner possible. Together, these changes can empower forest defenders to speak out and report issues of “land grabbing” and corruption.

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\(^{321}\) Meeting with Members of the Sengwer Community, Milka Chepkorir and Yator Kiptum, on Jan. 25, 2017 in Nairobi, Kenya.

\(^{322}\) Email Correspondence with UNDP Sustainable Development Cluster Senior Policy Advisor, Josep Gari, on April 5, 2017.

\(^{323}\) Ibid.

\(^{324}\) Ibid.


\(^{326}\) Email Correspondence with UNDP Sustainable Development Cluster Senior Policy Advisor, Josep Gari, on April 5, 2017.
7. **Uphold Human Rights in the Eviction Process:**

Recognizing that forced evictions can be considered human rights violations, socioeconomic realities in Kenya make it a common occurrence.\(^{327}\) Should conditions arise when lawful evictions are deemed necessary, they must “be carried out in a manner that respects the dignity, right to life and security of those affected,” as recognized in the Land Laws Amendment, passed in 2016.\(^{328}\) To ensure that all evictions comply with such human rights standards, the government should prioritize the passage of legislation similar to the Evictions and Resettlement Bill of 2012, which has yet to be passed.\(^{329}\) Kenyan policy makers could also follow the example set by the South African case of *Government of the Republic of South Africa vs. Grootboom* from May 2000. In that case, local individuals, evicted from their land, successfully requested that the government uphold the right to housing by providing them with basic housing accommodations until they found permanent residences.\(^{330}\) Kenya should apply appropriate aspects of the South African case to the eviction of local groups. In addition to conducting lawful evictions in a humane manner, the government should have an additional responsibility to provide adequate housing.\(^{331}\) Such legislation would ensure the protection of human rights.

8. **Improve Enforcement Measures against Illegal Logging:**

The practice of illegal logging on government land is an ongoing problem even though enforcement programs exist. One issue with the present system is that resources allocated to combatting small-scale illegal logging activities do not seem to be targeting the source of the problem.\(^{332}\) Enforcement against illegal logging is often focused on the *de minimus* actions of forest-adjacent communities who cut down trees and use small amounts of firewood for their daily activities. Instead, the enforcement division of the KFS should bolster night and air patrol programs to catch people sneaking into the forest and illegally felling trees to sell for profit. Such unregulated operations in the Mt. Kenya region and the Aberdare Forest have caused approximately 20 billion Kenyan Shillings in losses to the KFS;\(^{333}\) therefore, these perpetrators should be subjected to heavier fines or prison time to discourage the practice as current fines have clearly not deterred their actions. Additionally, members of the KFS allegedly facilitate illegal logging; the government should take seriously the call to investigate these corruptive practices (see: policy recommendation 9). Any misdeeds committed by KFS agents should be severely punished accordingly. This policy would help officials identify the perpetrators and enforce appropriate measures against illegal logging, furthering the greater conservation of the forest.

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327 Kenya has had a history of several evictions of local communities that have gone to court including the Sengwer and the Ogiek cases. The aforementioned cases have not yet reached favorable decisions for these forest-adjacent communities.


329 Meeting (Conference Call) with Field Program Manager-Kenya of the International Development Law Organization, Felix Kyalo, on Feb 8, 2017.

330 Ibid.

331 As part of the current eviction process, communities are provided with monetary compensation, which has proven has been ineffective as communities are sometimes unsure what to do with the money and move back into the forest. This suggestion replaces this practice with physical housing structures.

332 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.

9. **Address Issues of Corruption:**

The government should take seriously the call to investigate the allegations that members of the KFS, including forest scouts, fail to enforce measures against illegal logging and permit the unlawful acquisition of licenses. As insufficient pay, training, and resources drive corruption, KFS officers and forest scouts—who often lack basic supplies, life insurance, and ties to the communities they serve—could be more susceptible to corruptive practices. Providing such social protections could be a step in the right direction. Corruption is not limited to these few KFS forest scouts but is found at every level including dealers, traders, transportation companies, businesses, and government officials. Concerted action against such practices is needed to address this systemic issue that undermines the legitimacy of the government. Another strategy for combatting corruption is a comprehensive law on whistleblower safety at the national level. If the government is to detect and prosecute such crimes, it should institute a secure, confidential platform for individuals to report corruptive practices on all levels of the illegal logging chain. The Kenyan government could follow the recent example set by the Rwandan government, which has pledged to provide financial rewards and protection to whistleblowers through draft legislation. The overarching, recurrent issues of corruption affects rule of law, when whistleblowing is not followed by legal action. For example, in 2014-15, the Ethics and Anti-Corruption Commission investigated 5,551 cases of corruption, of which only one resulted in a conviction. The work of EHRDs is affected by corruption at every level, and to not address these impediments is a violation of their human rights.

10. **Prioritize Conservation of Indigenous Forests:**

In Kenya, there is a contentious debate over whether the government or forest-dependent communities are the best guardians of the forest. While KFS has a conservation mandate, there has still been significant degradation of indigenous forests under its protection. On one hand, for example, several community members in the Mt. Kenya region allege that KFS forgoes conservation of indigenous forests in favor of commercial forestry practices including converting the lands into farms or plantations; therefore, they believe that the community should be charged with conservation of the forests. On the other hand, the government contends that communities’ agricultural practices have changed and that assimilated groups no longer practice traditional hunter-gather lifestyles once associated with environmental conservation. This change in lifestyle is cited by the KFS as one of the driving factors for evictions instead of negotiations with forest-dependent communities.

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334 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.
337 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.
338 Meeting with Representatives from Kenya Forest Service Nairobi Headquarters- Forest Conservation and Management Office and Enforcement Office on January 24, 2017 in Nairobi, Kenya.
339 Ibid.
A balance must be found between these opposing viewpoints. The government can provide access to education for local communities to learn more environmentally sustainable practices that they can incorporate into their daily lives. While it is important to educate forest-dependent communities, the government must recognize the value of effective local conservation methods that can be incorporated into KFS practices. To help find this balance, the government can support NGOs that already work with local communities -- including the International Union for Conservation of Nature, Nature Kenya, World Wildlife Fund, and East Africa Wildlife Society -- to highlight best practices from both parties. This shift will represent a change in relations between local communities and the government, demonstrating that the government recognizes that local groups do not only harm the environment. While the onus of education requires action from both sides, the uneven balance of power in forest management should shift to bring communities onto a level playing field with the government. For forest defenders, this will validate the importance of an inclusive joint-management system and will highlight the benefits of traditional lifestyles, for which they advocate.

Photo taken in Chuka, Mt. Kenya, Kenya

Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.

This argument could be extended to educating the communities about human rights and law in general to ensure they understand their rights.

Meeting with Representatives from the Kenya Forest Working Group including Coordinator, Jackson Bambo, on Jan 24, 2017, in Nairobi Kenya.
Peru

“When we die, it is only a statistic.”

Photo taken in Cusco Region, Urubamba Province, Machupicchu District, Peru
Peru

Case Study Summary

Peru is rich in natural resources and bears a strong cultural history with deep ties to the environment. The remains of the Incan Empire exemplify Andean traditions born from a flourishing environment and a resource-abundant landscape. In modern Peruvian society, there exists an evident distinction between the rural and urban populations along ancestral lines. Rural populations sustain indigenous traditions and practices tracing back centuries, while people living in urban centers have closer ties to Spanish colonization and global trends. Cultural, economic, and social lines have been shaped by decades of political uncertainty, strides towards democratization, and an immense desire for development. In Peru, 51 indigenous groups represent over 45 percent of the entire population, the Quechuan population alone reaches nearly eight million people. Indigenous communities in Peru are among the groups most affected by environmental degradation, resource extraction, and development infrastructure projects. Indigenous communities are also the most prominent champions of environmental preservation and as such, are subjected to human rights violations. Through meetings with leaders of indigenous communities, prominent legal organizations, universities and research institutions, NGOs, and sectors of the government, the Peruvian case study illustrates the intersecting themes of forest defenders, development, and indigenous communities. In Peru, the Amazon Rainforest and its defenders are challenged by illegal logging activities, increasing deforestation by small agricultural actors, regulatory gaps in law enforcement and policing, an internal conflict over conservation and development, and a prioritization problem concerning solutions to various problems.

Background

Peru’s Internal War and Continued Divides

Peru’s vibrant cultural history resonates throughout modern society. From Lima to the Amazon, the food, languages, and textiles of Peruvian traditions unite diverse regions still divided by a tumultuous political past. It is imperative to understand Peru’s violent political history that began in the 1980s and continued through the 2000s, to fully understand the environmental challenges the country faces today and how the political environment creates obstacles for modern-day environmental human rights defenders (EHRDs).

In 1968, General Juan Velasco Alvarado ousted the democratically-elected government in a military coup, introduced populist land reform, and nationalized many large industries including energy and finance. The nationalization of Peru’s extractive and banking sectors, combined with rising inflation, deepening debt, and protectionist policies, expanded Peru’s economy and created unsustainable economic conditions that led to the rise of dissenting groups who sought to monopolize on Peru’s weakened leadership.

One such group included the Shining Path (Sendero Luminoso or SL), organized by Abimael Guzmán in the 1960’s. The organization’s goal was to replace Alvarado’s current regime with a “New Democracy” through a cultural

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revolution employing militarist doctrine and armed conflict. Simultaneously, the Túpac Amaru Revolutionary Movement (MRTA), splintered from the Revolutionary Left Movement and sought to institutionalize a Marxist regime within Peru. Both organizations were deemed guerilla movements—as they used military tactics sought to displace the current regime—but never worked in tandem. In response to strong public pressure, Peru transitioned towards civilian rule, following the ratification of the 1979 Constitution. After the May 1980 national elections, Shining Path and MRTA launched formal guerilla wars against the government, resulting in what is now referred to as the Peru Civil War. The war lasted through 2000, during which it is estimated that over 69,000 people died, most of whom were indigenous. The decades-long war left deep scars in Peruvian society, which only began to reconcile since 2005.

The political upheaval, coupled with economic crisis, left Peru with soaring inflation and deepening debt. Rocky political transitions left democratic principles like human rights and environmental protection in the margins. Only economic development and the extraction of Peru’s rich natural resources promised a way to overcome economic stagnation. The Amazon Rainforest, one of the most biodiverse and natural resource-rich regions on the planet, steadily degraded and shifted from primary forest to mines and plantations. Rural communities (often indigenous) who depended on the forest for their livelihoods, were both disproportionately affected by the economic crisis of the 1980s and excluded from the economic development of the late 1990s. The vast majority of development projects were contracted by international companies, with ties closer to Lima than the communities they displaced.

**Major Deforestation and Conservation Issues in Peru**

Peru is home to the fourth largest area of tropical rainforest in the world. Forest covers over half of Peru’s land area, approximately 74,140.6 square miles. Approximately 90 percent of the Peruvian Amazon is classified as primary forest, the healthiest and most biodiverse type of forest. According to the 2014 UNEP National Biodiversity Strategy and Action Plan, Peru is home to more than 20,375 plant species, 515 mammal species, 1,834 bird species and 418 reptilian species. Of these, 267 plant species and 186 animal species are considered critically endangered. In addition to the tremendous diversity in wildlife, nearly 330,000 people depend on the forest’s ecosystems for their basic livelihoods and countless more depend on it for its products and ecosystem services.

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347 Ibid.
348 Ibid.
350 Gomez, “Peru’s Debt Crisis and Subsequent Shock Economy.”
351 Primary Forest refers to “untouched” areas with no human cultivation and ecological processes are undisturbed.
352 Meeting with Juan Luis Dammert Bello on January 26, 2017 in Lima, Peru.
355 Biodiversity: the variability among living organisms and the ecological complexes of which they are part.
Despite being protected by domestic and international law, since 2009 the Peruvian Amazon has faced rising deforestation rates (though relatively low at 0.2 percent). The main drivers of deforestation include small-scale agriculture, commercial mining and related road construction, while the main driver of forest degradation is primarily illegal logging. Of the roughly 1,100 square miles of forest cut down every year, 80 percent is cut down illegally. Thousands of indigenous peoples still live in the forest and are thus disproportionately affected by forest loss. According to Amazon Watch, “for indigenous peoples who depend on fishing, hunting, and forest products, this loss of control over ancestral territories threatens to end their traditional ways of life.” Indigenous peoples are thus, more likely to fight to protect the forest on which their very identity depends. In 2014, a study by the World Resources Institute (WRI) showed that “annual deforestation rates in the tenure-secure indigenous forestlands are significantly lower than on other similar lands in all three countries [studied], suggesting that securing tenure contributes to reducing deforestation.” Unfortunately, the lack of land tenure in the Peruvian Amazon is a major challenge to reducing deforestation. In rural areas far from the capital, there is little land ownership and even less authority to enforce it. This enables small-scale agriculture and logging operations to move into the forest, build roads, cut down trees, plant crops, and move on when the lumber or soil is depleted. The Ministry of the Environment (MINAM) was only created in 2009 and has yet to develop effective collaboration across ministries, regional governments, and the private sector.

Deforestation is not only bad for the communities and wildlife that depend on the forest directly, but also for global climate change. Globally, deforestation and degradation are the largest emitters of CO2, in Peru deforestation accounts for about 71 million tons of CO2 emissions per year. Per the UN, from 2017 to 2021, Norway has committed to contributing up to $240 million for results on reduced deforestation. In response to this, Peru has committed to achieve zero net deforestation by 2021. To achieve zero deforestation, MINAM is in the process of public sector management reform, named the Forest Carbon Partnership Facility (FCPF). The Fund’s development team does not currently include any representation by indigenous peoples, a problematic promise for the future of combating deforestation and climate change. If strengthening indigenous land rights reduces local deforestation, including indigenous communities in the planning and implementation of a national framework to combat deforestation in Peru should is an absolute necessity.

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359 Deforestation: Conversion of forest to another land use or the significant long-term reduction of tree canopy cover. This includes conversion of natural forest to tree plantations, agriculture, pasture, water reservoirs and urban areas; it excludes logging areas where the forest is managed to regenerate naturally or with the aid of silvicultural measures. Smith and Schwartz, “Deforestation in Peru: How Indigenous Communities, Government Agencies, Nonprofits and Businesses Work Together to Stop the Clearing of Forests.”

360 Degradation: Changes within forests that negatively affect the structure or function of the stand or site over many decades, and thereby lower forest capacity to supply products and/or ecosystem services. Smith and Schwartz, “Deforestation in Peru: How Indigenous Communities, Government Agencies, Nonprofits and Businesses Work Together to Stop the Clearing of Forests.”


365 “Peru, Germany, Norway launch climate and forest partnership.”

International Legal Framework

International

Peru’s legal and constitutional structure is a monist legal system as provided by the 1993 Constitution. With regard to the legal and constitutional interpretation of international treaties and international human rights laws, the current Peruvian Constitution states:

“Treaties formalized by the State and in force are part of national law.”

“Treaties must be approved by the Congress before their ratification by the President of the Republic, provided they concern the following matters: human rights . . . .”

“Once all legal resorts provided for by national legislation have been used and denied, the party deeming itself injured in terms of the rights granted by the Constitution may appeal to international courts or bodies established by treaties or agreements to which Peru is bound.”

“Rules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements regarding those rights that have been ratified by Peru.”

The above excerpts from the Peruvian Constitution indicate that once treaties have been ratified by Peru, the principles and laws therein become part if Peruvian national law. This is fundamentally imperative for human rights, HRDs, and EHRDs, as the treaties Peru has ratified provide fundamental human rights protections. Beyond human rights protection, Peru must provide remedies for violations of these rights. The Fourth Article of the Final and Transitory Provisions in Perú’s Constitution explicitly states the government’s intention to adhere to the UDHR, and, more broadly, their obligations under the international treaties that it has ratified through Articles 55, 56 and 205. In this respect, Peru is a State Party to each of the core international human rights treaties which signifies that national law should be in harmony with the treaties. Perú’s observation of and commitment to these treaties, as exemplified above, is further expanded through Perú’s Constitutional Court determination that human rights issues must be interpreted in adherence and consistently with decisions by the IACHR. Moreover, Peru is a State Party to ILO 169.


Furthermore, the government of Peru has demonstrated its intention to comply with the obligations foreseen by the international human rights treaties that it ratified through the acceptance of the majority, albeit not all, of the individual complaint procedures to them associated. The acceptance of the individual complaint procedures provides EHRDs and all HRDs with a further instrument to guarantee the protection, respect, and fulfillment of their fundamental human rights. Particularly relevant for the promotion and protection of EHRDs rights is the acceptance of the individual complaint procedures associated with the ICCPR and the ICERD. However, considering the relevance of economic, social, and cultural rights’ violations as underlying causes of EHRDs’ protests in Peru, it is regretful that the government of Peru did not accepted the individual complaint procedure associated with the ICESCR.

**Regional**

**Inter-American System**

On the regional level, victims have legal recourse for violations under the auspices of the Inter-American system. In this respect, the Inter-American system for the protection of human rights includes various declarations, conventions and protocols as well as two organs. Specifically, the two main human rights documents of the Inter-American system are the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Furthermore, the Inter-American system includes the Inter-American Convention against Torture, the additional protocols to the American Convention on economic, social, and cultural rights and on the death penalty, as well as the Inter-American Conventions on violence against women, forced disappearance of persons and discrimination against persons with disabilities.373

Peru, as a member state of the OAS, has either ratified or accessed the majority of the mentioned conventions, and, as such, it has agreed to abide by their provisions as well as to observe the recommendations and the rulings of the organs mandated to supervise and guarantee the implementation of the conventions. In this respect, the two referred organs are the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). In particular, the IACHR’s mandate is to promote the observance and defense of human rights in the Americas, which entails, among other, receiving, analyzing, and investigating “individual petitions that allege violations of human rights, with respect to both the Member States of the OAS that have ratified the American Convention, and those Member States that have not ratified it,” fostering public awareness of human rights, making recommendations to the OAS Member State to protect human rights and suggesting the adoption of “precautionary measures” to prevent irreparable harm of human rights. Moreover, the IACHR’s functions entail the possibility to request advisory opinions and submit cases to the IACtHR. In this regard, the IACtHR constitutes an autonomous judicial institution mandated to apply and interpret the American Convention on Human Rights, and its functions entail both a judicial and advisory role. With respect to the judicial function, only the Commission and the States Parties to the convention have the possibility to file a case to the IACtHR. Therefore, individuals who aim to file a case concerning a potential violation of human rights must file the case to the IACHR, which, as mentioned above, may then submit the case to the IACtHR.374

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374 “Basic Documents in the Inter-American System.”
Regional OHCHR Office

The OHCHR provides additional levels of regulation through regional OHCHR offices (Regional Mechanisms and Civil Society Section), and through the support of National Human Rights Institutions which in Peru is represented by the Defensoría del Pueblo. Furthermore, the OHCHR conducts reporting missions to individual countries on the basis of several priority issues. In 2007, Peru voluntarily subjected itself to one such mission entitled the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination” where in the complementary report indicated that Peru lacked measures to protect human rights and those defending human rights.

The Working Group is concerned at the conflation of legitimate social protest by communities in defense of their lands and environmental rights with criminal or terrorist activities and at the elimination, indictment and intimidation of community leaders, as well as intelligence agencies’ surveillance of protesters. It is also concerned at the lack of any effective system of protection for human rights defenders. Those responsible for these unlawful acts seem to enjoy a degree of impunity inasmuch as, in many cases of police or judicial complaint, no charges are brought against the perpetrators or else those responsible remain at large.

The conclusion of the Human Rights Council mission in Peru reveals Peru’s lack of national frameworks to protect human rights and HRDs, specifically those protecting their lands in 2007. As of 2014, it was documented that over 400 protestors were arrested and charged for criminal violations, and 57 EHRDs were killed between 2002 and 2014. Increasing expansion of extractive sectors including logging and mining have been coupled with declining protection of human rights in Peru including the passage of impunity legislation and legislation restricting human rights.

National

The Government of Peru has demonstrated a pattern of prioritizing economic development over protecting its peoples’ rights. Beginning in 2011, Peru began issuing new legislation that effectively simplified the procedural and administrative processes towards granting land concessions and environmental impact assessments (EIAs). Specifically, Peru passed Laws No. 30230 and No. 30327 (Leys Nº 30230 and Nº 30327), which promote economic development through streamlining the permitting process, therefore opening the opportunity for weakened environmental protections. Furthermore, these laws have been interpreted as accelerating the land grabbing process for large-scale companies and jeopardizing land ownership, specifically for farmers and indigenous communities.

Private Security Forces

In 2006, the government of Peru passed Law No. 28879 (LEY N° 28879) which allowed the government to regulate private security forces hired by companies. Following this act, the government issued the Decreto Supremo (Supreme Decree) N° 004-2009-IN, which allows companies to make agreements with security forces (including local police) and exchange payment for security. Not only does this 2009 decree blur the separation of public and private interests, it essentially demonstrates that local security forces work to protect the interests of the companies rather than the interest of the public. The 2006 and 2009 laws illustrate a continually greying line between the expansion and contraction of human rights and the Peruvian government’s role in said protection.

Indigenous Rights

Peru committed itself to the notion of free, prior and informed consent (FPIC) through ratifying ILO 169 and furthermore through national legislation to incorporate the principles set forth therein. In 2002, the government of Peru passed Law No. 27811 (LEY N° 27811) which introduces the notion of FPIC for indigenous peoples in national legislation through the following,

_Prior informed consent’ means authorization given under this protection regime, by the representative organization of the indigenous peoples possessing collective knowledge and in accordance with provisions recognized by them, for the conduct of a particular activity that entails access to and use of the said collective knowledge, subject to the provision of sufficient information on the purposes, risks of implications of the said activity, including any uses that might be made of the knowledge, and where applicable on its value._

The government further expanded its commitment to FPIC through the passage of Law No. 29785 (LEY N° 29785) titled Law of the Right to Prior Consultation of Indigenous or Originating Peoples, as Recognized by the Convention 169 of the International Labour Organization. This law expanded on the FPIC law by providing indigenous communities the right to initiate or request the consultation process. It also requires the corresponding government agency to ensure the full realization of rights afforded to indigenous communities in Convention 169.

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**EHRDs in Peru**

The Nature and Scope of the Problem

Whether the inhabitants of remote areas of the Andes, the leaders of an indigenous community in the Amazon Rainforest, journalists, lawyers, NGO activists, or independent researchers in Lima, EHRDs come in many different forms. Even more important than identifying all the possible kind of EHRDs, we must recall that in Peru, as in several other countries of the world, EHRDs have increasingly faced killings and arbitrary detentions, threats and intimidations, or stigma and criminalization from State and non-State actors (e.g., business enterprises). This has happened as a result of the struggle to defend their land, the environment, or the rights of the indigenous people, and it has happened despite the international, regional, and national laws clearly stating the obligations and the responsibilities of the States and other non-State actors to protect and respect the rights of EHRDs.388

In 2014, according to a report published by Global Witness389 Peru was the fourth deadliest country in the world for EHRDs after Brazil, Honduras, and the Philippines. Between 2002 and 2014, at least 57 EHRDs were killed in Peru, and according to more recent data, this number has increased, being close to 70 at the end of 2015.390 Of these assassinations, more than 50 percent have occurred since 2010. Moreover, in 2015 almost half of the killings involved indigenous people, which just in the Peruvian Amazon, is more than 300,000 and has long claimed the property of more than 20 million hectares of forestland.392

According to the available data, the majority of the EHRDs' killings involving both indigenous and non-indigenous people in Peru have been caused by disputes related to mining projects.393 In this respect, one of the most symbolic and tragic events involving EHRDs occurred in Bagua, in the Amazonas region, in June 2009. Thousands of indigenous people protesting against the government’s decision to authorize the firm PetroPeru to carry out extractive activities in their lands were violently confronted by state authorities and dozens of people lost their lives or were injured. Several years after the Bagua accidents, various Peruvian civil society organizations (CSOs) denounced the widespread indifference surrounding the case and the slowness of the Peruvian state to provide a clear answer to the Bagua events. As of June 2016, only four people were tried for the events and various indigenous leaders are still living in anonymity even though it was demonstrated that they were not responsible for the brutal attacks against some police officers.394

Moreover, in 2012, in the highlands of the Cajamarca region, five protestors were killed during a confrontation with the local police stemming from the fear that a mining project would negatively affect the local water supply.395 Furthermore, in 2015, various farmers living in the Apurimac region on the Peruvian Andes opposed an alleged environmentally-invasive copper-mine project by a Chinese multinational. The protestors confronted the police,

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391 Ibid.
392 Ibid.
393 “El Ambiente Mortal de Peru – El Aumento de Asesinatos de Defensores Ambientales y de La Tierra.”
395 “El Ambiente Mortal de Peru – El Aumento de Asesinatos de Defensores Ambientales y de La Tierra.”
and during the confrontations, four protestors were killed, and fifteen protestors and eight police officers suffered severe injuries. Such violent outcomes often stem from the devious agreements between the National Police and the extractive companies which, as noted above, allow Peruvian police officers to provide private security services to the extractive companies. Despite important Peruvian CSOs denouncing the unconstitutionality of these agreements, the Peruvian government has not taken concrete steps to eliminate the establishment of these kinds of agreements which threaten the constitutional mandate to the National Police of protecting every Peruvian citizen.

However, the battles of Peruvian EHRDs have not gone unnoticed. In 2016, Maxima Acuña de Chaupe, a native farmer from the Peruvian northern highland of Cajamarca, was awarded the most prestigious environmental recognition, the Goldman Environmental Prize. Such recognition has been assigned in light of Ms. Acuña’s determined, strong, and fearless opposition to a US-Peruvian gold-copper mining project which has severely threatened the existence of two highland lagoons, the supply of freshwater for several farmers in the region, and the right for Ms. Acuña and her fellow native farmers to live on the land of their ancestors and freely develop their own personalities. Despite the several traumas and death threats suffered by Ms. Acuña and her family, Ms. Acuña’s commitment has been determinant in preventing the gold-copper mining project from continuing, and her courage to face a multinational company has contributed to further inspire other Peruvian and Latin American EHRDs to keep fighting for their individual and collective rights.

Forest Defenders in Peru

During the last decade, the disputes over natural resources have increasingly involved the rainforest. In this respect, the insufficient measures to contrast illegal logging and the uncertainty revolving around property rights have triggered an increase in the disputes between indigenous communities, the State, and the private companies, as well an increase in the violence against indigenous communities in various regions of the Peruvian Amazon.

In the early 2010s, the indigenous community of Tres Islas, living in the region of Madre de Dios, tried to defend itself from the invasion of its inhabited area by miners and illegal loggers. These groups, in turn, destroyed the barriers that the indigenous community created for their self-defense. However, after bringing the claims to the justice system, the Peruvian Constitutional Court issued a historical sentence which recognized the right of the community of Tres Islas to self-determination, autonomy, self-government and jurisdictional functions, territorial property, and previous consultation in relation to any project affecting its territories. Yet, Peruvian CSOs have denounced the non-implementation of the sentence, underlining that the problem affecting the community of Tres Islas seems resolved de jure but not de facto.

Similarly, in 2014, following a dispute between the indigenous community of Kukama del Marañón and the Peruvian authorities over the impact of a hydroelectric project on the rainforest in the Loreto region, the Regional Tribunal ordered the Agencia de Promoción de la Inversión Privada (Proinversión) and the Ministry of Transport and Communications to suspend the Hidrovia Amazonica project and to realize a proper previous consultation with the indigenous communities living the areas affected.

Despite these positive legal developments, episodes of threats and brutal violence continue to occur in the Amazon regions of Peru. For instance, in 2013 and 2014 the focus-region of this case study, Ucayali, witnessed the assassination of various indigenous leaders who had strongly opposed the illegal logging activities carried out in the areas inhabited by their communities for centuries, and who had advocated for government recognition of property titles for their lands. In light of the great clamor raised by the 2014 deadly events, the Peruvian authorities, under national and international spotlight, announced the realization of a detailed investigation to shed light upon the brutal crimes committed in Ucayali. With regard to this, at the end of 2014, Peru announced the arrest of two illegal loggers suspected of being involved in the killings of the mentioned indigenous leaders, and it guaranteed the continuation of the investigation until full clarity on the assassinations would be completed.

Moreover, in 2015 a community forestry worker serving in the Madre de Dios region was killed for his role as a leader of a movement resisting the invasion of the forest by the illegal gold miners. Despite his repeated decries of threats, the authorities did not take any action to protect him. Finally, in the same year anonymous people repeatedly attacked the offices and threatened the employees of the Organismo de Supervisión de los Recursos Forestales (OSINFOR), the Peruvian institution that monitors the forest crimes.

Yet, a systemic approach to solve and prevent forest defenders from being threatened by illegal loggers, narco-traffickers, or other parties interested in exploiting the rainforest, seems to have been absent. Indeed, the repeated and well-known death threats received by the indigenous leaders in the Ucayali region and in other Amazonian regions should have served as early warnings for potential escalations and as incentives to adopt preemptive actions to protect forest defenders. In this regard, as the fact-finding section will show in further details, death threats, intimidation, and other forms of violence against indigenous leaders and inhabitants have not decreased in Ucayali in 2015 and 2016. Furthermore, the recognition of property titles concerning indigenous community land rights is a greatly unresolved issue. Hence, for its gravity and sensitivity, this situation has attracted the attention of the local and international civil society, media, and researchers of various fields and disciplines, all intending to raise awareness about the problem and hold the Peruvian government and other non-State actors accountable for the respect, protection, and fulfillments of international human rights concerning forest defenders.

403 Agency for the Promotion of Private Investment (translated from Spanish)
404 Amazon waterway (translated from Spanish)
406 “El Ambiente Mortal de Peru – El Aumento de Asesinatos Defensores Ambientales y de La Tierra.”
409 Supervisory Body for the Forestry Resources.
The Actors Involved

Due to the complexity of the situation of EHRDs generally in Peru and the connection of the issue to several aspects including environmental protection, good governance, human rights, indigenous rights, and agricultural use of lands, this research involved various and relevant actors that are directly and indirectly engaged with the protection of the environment and the human rights of forest defenders.

In particular, while investigating the current situation of forest defenders, the Peru team studied and analyzed the role of key governmental actors dealing with agricultural and environmental aspects related to forestland, other state institutions engaged in scientific research about rainforest issues, associations representing several Peruvian indigenous communities, and non-governmental organizations defending human rights and indigenous rights. Moreover, we engaged with investigative journalists, independent researchers studying the impact of deforestation in Peru, multilateral organizations, and universities raising awareness about deforestation and violation of fundamental human rights, as they relate to the enjoyment of a safe, healthy, and sustainable environment, and to entitlements of the forest defenders.

First, with regard to the Government and other key institutional authorities, the Ministry of Environment-Climate Change Division (MINAM), the Servicio Nacional Forestal de Fauna Silvestre (SERFOR),411 the OSINFOR, and the Instituto de Investigaciones de la Amazonia Peruana (IIAP)412 play a crucial role in the protection of the environment, and in particular of the rainforest. The Climate Change Division of the Ministry of the Environment promotes environmental conservation to ensure the sustainable, responsible, and ethical use of natural resources and the environment. Specifically, concerning the rainforest, MINAM has initiated a transfer program to sustain local and indigenous communities to preserve about four million hectares of rainforest. The main goal of the program is to reduce deforestation and degradation of the forest areas. As part of the program, communities have received financial transfers on a results-based criterion.413

Secondly, SERFOR, under the authority of the Ministry of Agriculture and Irrigation, is the Peruvian National Authority for Forest and Wildlife, as well as the principal entity of the National System of Forestry and Wildlife Management (SINAFOR). SERFOR’s mission is to promote participatory and sustainable forest resource and wildlife management, using their ecosystem services, to provide quality services that contribute to the citizens’ well being.414

Thirdly, established with the Legislative Decree No. 1085 on June 28 2008, OSINFOR is the national authority responsible for the supervision of the sustainable use and conservation of forest resources and wildlife as well as environmental services from the forest areas granted by the state for diverse forms of exploitation.415

Finally, the IIAP is a research institute established to develop knowledge and technical tools to benefit from the biodiversity of the Amazon resources and to favor the sustainable development of the Amazon populations. In particular, the IIAP specializes in the conservation and correct use of natural resources in the Amazon region. Its activities are conducted on a decentralized basis across the Amazon, and they promote the participation of local institutions and CSOs to which they transfer the knowledge developed.416

411 The National Wildlife and Forestry Service (Translated from Spanish).
412 Research Institute of the Peruvian Amazon (Translated from Spanish).
413 Meeting with MINAM on January 27, 2017 in Lima, Peru.
416 Meeting with IIAP on January 24, 2017 in Pucallpa, Peru.
However, in investigating the situation of forest defenders in Peru, the main actors that need to be considered are the associations representing the indigenous communities living in the Amazon regions. In particular, the research’s focus has been on the role played by the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP),\(^{417}\) and, considering the emphasis on the Ucayali region, on the Federacion de Comunidades Nativas del Ucayali y Afluentes (FECONAU).\(^{418}\) The former, AIDESEP, is the representative organization of indigenous communities of the Peruvian Amazon, and it serves as a voice for promoting and protecting indigenous collective rights. Furthermore, AIDESEP promotes alternative forms of development based on indigenous communities’ lifestyles and their interpretation of the world.\(^{419}\)

Before AIDESEP’s foundation, indigenous communities living in the Amazon were internally organized according to their own traditional schemes, objectives, and various functions. The first attempts to organize as an autonomous association stemmed from the need to protect themselves from the arrival of settlers from other regions and from the enterprises exploiting their natural resources. In this respect, the socio-economic context of the 1970s was particularly favorable to the development of an organization of indigenous people, and the 1974 law of native communities represented the beginning of a process that eventually culminated in the creation of AIDESEP in 1980.\(^{420}\) The organization FECONAU, in addition to being one of the founding member of AIDESEP and the first indigenous organization established in Ucayali, is the representative indigenous organization of the native communities settled in the basins of the rivers Calleria, Utuquinia, Aguaytia, and the middle part of the Ucayali River in the Ucayali region.\(^{421}\)

Furthermore, a crucial role in the promotion and protection of the human rights of forest defenders is played by several CSOs which operate both in the Amazon regions of Peru and in the Peruvian capital, Lima. In the Ucayali region, a major role in promoting and protecting fundamental human rights, is played by the Frente de Defensa de Ucayali. This organization groups together different CSOs of the Ucayali region such as local communities’ associations, workers’ unions, and indigenous organizations. In particular, the Frente de Defensa de Ucayali\(^{422}\) focuses its intervention on promoting the respect of economic, social, and cultural rights (i.e., access to electricity, access to water and sanitation services, and access to adequate housing). Moreover, to strengthen the struggle for indigenous community rights and the rights of EHRDs, FECONAU joined the Frente de Defensa de Ucayali in 2015.\(^{423}\)

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417 Inter-Ethnic Association of Peruvian Forest Development (Translated from Spanish).
418 Federation of the Indigenous Communities of Ucayali and Tributaries (Translated from Spanish).
420 Ibid.
422 Defense Front of Ucayali (Translated from Spanish).
423 Meeting with Abel Vásquez Panduro on January 25, 2017 in Pucallpa, Peru.
In the Ucayali region, the Frente de Defensa plays a central role among the CSOs committed to the promotion and protection of human rights. In Lima there are several local and international civil society organizations that contribute to the promotion and protection of forest defenders and indigenous rights. Among these, the Instituto de Defensa Legal (IDL), the Instituto Internacional de Derecho y Sociedad (IIDS), and the Environmental Investigation Agency stand out. With regard to the IDL, the institute carries out analysis, follow-up, and policy proposals, having as a main objective the promotion and protection of human rights, democracy, and peace in Peru and Latin America. Moreover, the IDL offers direct protection of indigenous rights, facilitating access to justice systems for indigenous communities, monitoring the respect of the previous consultations procedures, and advocating for the recognition of indigenous’ property titles over territories and natural resources. Finally, IDL promotes public knowledge and public debate regarding the violation of indigenous rights with a specific focus on indigenous women.

Another prominent Peruvian CSO is the IIDS. The IIDS promotes critical reflection, training activities, investigative actions, and legal defense on topics related to the Peruvian state, law, and society. Specifically, IIDS focuses its intervention on topics related to legal pluralism, indigenous peoples’ rights, access to justice, social transformation, and regional legal systems. Moreover, IIDS defends paradigmatic cases with the objective of developing jurisprudence and institutional changes to transform the structural situations that cause the violations of the rights of indigenous people.

Finally, a major contribution towards the promotion and protection of EHRDs and indigenous rights is given by international CSOs including the Environmental Investigation Agency, which focuses its work on spreading knowledge and raising awareness on issues such as environmental crime and governance, ecosystem and biodiversity, and climate change.

Besides associations representing indigenous communities and other CSOs, universities and independent researchers also play a substantial role in promoting knowledge about EHRDs and indigenous rights as well as the major issues related to the protection of the Peruvian Amazon Rainforest. In particular, we examined the role of the Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú (IDEHPUCP). Since 2004, IDEHPUCP’s main objective is to strengthen democracy and the realization of human rights in Peru through academic and professional training, applied research, and the promotion of public debates and public policies involving Government and CSOs. In particular, the IDEHPUCP’s priority areas are: post-conflict transitions, human mobility, rights of disabled people, indigenous rights, business and human rights, and anti-corruption. With regard to indigenous rights, IDEHPUCP’s efforts focus on academic research on indigenous rights, training programs for good governance practices in favor of indigenous peoples, and promotion of public policies and norms. Furthermore, concerning the role played by independent researchers, a former officer of the Sociedad Peruana de Derecho Ambiental (SPDA) acts as a relevant contributor to raise awareness about the most critical issues on rainforest protection. In particular,

424 Institute of Legal Defense (Translated from Spanish).
425 International Institute of Law and Society (Translated from Spanish).
428 Meeting with Álvaro Masquez Salvador on January 26, 2017 in Lima, Peru.
429 Instituto Internacional de Derecho y Sociedad, Strategic Litigation of Indigenous People’s Rights - Paradigmatic Cases, n.d.
430 Meeting with Raquel Yrigoyen on January 27, 2017, in Lima, Peru.
432 Meeting with Julia Urrunaga on January 26, 2017 in Lima, Peru.
433 Institute for Democracy and Human Rights of the Pontifical Catholic University of Peru (Translated from Spanish).
435 Peruvian Society of Environmental Law (Translated from Spanish).
the mentioned researcher independently carries out activities to promote environmental policies in favor of the Peruvian rainforest, and to support public and private management of environmental problems in sustainable manners.436

Finally, with regard to the role played by the multilateral organizations in Peru, the work of the World Bank Group (WBG) concerns the promotion and implementation of projects affecting the Peruvian rainforest areas. From a general standpoint, the WBG Peru office has the obligation to ensure that the Bank’s social and environmental safeguard-related instruments are effectively and timely prepared and implemented throughout the realization of WBG funded projects concerning water and sanitation, protected areas, renewable energies, and forests issues.437 In particular, the WBG finances the agencies working on protected forest areas in Peru, and it has been one of the main funders of the Peruvian Trust Fund for Natural Protected Areas (PROFONANPE) since its creation in 1992. Moreover, the WBG administers trust funds such as the Forest Investment Program (FIP) and the Forest Carbon Partnership Facility (FCPF).438 In this way, the FIP specifically includes a dedicated grant mechanism for associations representing indigenous groups, among which AIDESEP stands out as a beneficiary of the mechanism.

Clearly, among the actors involved in the protection of the environment and the rights of forest defenders in Peru, it is possible to identify other CSOs both in the Ucayali region and in other regions of Peru, various independent researchers, journalists, entities affiliated with Peruvian universities, other multilateral organizations (e.g. several UN agencies and the OAS). Moreover, in addition to the WBG, other actors promoting public policies for economic growth, such as the Inter-American Development Bank (IDB), play an important role in shaping the discussion about environmental protection, and the social impacts of the development projects. Finally, it is fundamental to consider how both national and international private firms impact the environment and respect the rights of EHRDs.

Such an overview of the main actors involved in this research who are committed either with the promotion and protection of EHRDs and indigenous rights, or with the protection of rainforest areas, is fundamental to understanding the institutional and organizational framework within which EHRDs’, and particularly forest defenders’, actions take place. Moreover, it is crucial to identify possible corrective actions to promote and protect EHRDs in light of the findings of our research.

436 Meeting with Juan Luis Dammert Bello on January 26, 2017 in Lima, Peru.
437 Regarding forests, the specific safeguard policy is the Operations Policy/Bank Policy 4.36 (email correspondence with WBG representatives on April 22, 2017).
438 Meeting with WBG representatives on January 26, 2017 in Lima, Peru.
Photo taken in Pucallpa, Ucayali Region, Peru
Findings

Immediate Threats to Forest Defenders in Ucayali, Peru

In the remote Ucayali region of Peru, threats to the lives, land, and human rights of forest defenders are abundant. Ucayali lies in the inland Amazon rainforest of Peru, bordering Brazil, and is home to some of the most densely forested portions of the country. Vast resources and a plethora of indigenous communities throughout has led to conflict over natural resource extraction and ancestral land, particularly in regard to illegal logging. In fact, evidence provided by indigenous organization leaders, CSOs, and HRDs demonstrates various offenses in Ucayali against indigenous peoples and community members. Moreover, as resource extraction for economic development increases in Peru, these testimonies point to a larger trend of environmental human rights violations across the country, particularly against indigenous communities.

Indigenous activists in the field are most exposed to human rights abuses as they battle to protect their ancestral rights. Robert Guimaraes identifies as part of the Shipibo indigenous community and has fought for indigenous rights for years as President of Federacion de Comunidades Nativas del Ucayali y Afluentes (FECONAU). He contends that the State has simultaneously lowered the protections for the environment and for protestors. At the same time, large companies come into the region to extract both legally and illegally, which leads to clashes with the local population. According to Guimaraes, the stories which gain international attention, such as the murder of indigenous environmental defender Edwin Chota that was featured in National Geographic in 2014, are just a small portion of the abuses that occur in the region. He contends that four of his personal friends were murdered in January of 2015 under mysterious circumstances and also stated that “when we die, it is only a statistic.” Furthermore, uimaraes and others from the community have been personally threatened and have faced public defamation. On multiple occasions he received anonymous death threats and was pictured on posters around Pucallpa, Ucayali with the label “Persona Non-Grata” along with other indigenous activists in the area.

Guimaraes’ experiences are not isolated in the Ucayali region. Lizardo Cauper is President of the Ucayali branch of the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP). He is similarly engaged in promoting and protecting the collective rights of indigenous communities across the Peruvian Amazon. Cauper also faced anonymous death threats as a result of his activism against companies clear-cutting on indigenous territory. These threats are not uncommon and, in fact, several activists remain in hiding due to death threats against them and could only give testimony by phone to share their unfortunate experiences. The source of the intimidation remains up to speculation, although Guimaraes and Cauper suspect people associated with logging companies are behind the calls.

Indirect threats exist as well, including government denouncement and lack of access to justice for indigenous community members. Protestors are often vilified and labeled as terrorists by government forces. In addition, according to Cauper, the obligation to obtain FPIC before the adoption of legislation and/or undertaking of projects...
that affect indigenous peoples is routinely ignored. However, with a divided and underrepresented community, it is difficult to hold corporations, illegal loggers, and the government accountable when indigenous rights are not respected. Cauper and Guimaraes are among many indigenous community leaders who believe more action is necessary at the national government level to enforce regulations protecting indigenous peoples and preventing international corporations, in collusion with local government, from appropriating ancestral land.446

The Wider Community

The testimonies of these indigenous activists are just a fraction of those in Pucallpa who claim their rights have been violated. Abel Vasquez is another community member who has been threatened as a result of his civic activism. As President of the organization Frente de Defensa de Ucayali, he is a leading community activist and protests against resource extraction and the violation of indigenous rights. Although he does not identify as part of the indigenous community, he works with them to fight what he calls pervasive corruption in the government and in the judicial system.447 In the past, Vasquez led protests in Pucallpa, Ucayali, which lasted for days before local police dispersed protesters.448 Vasquez was detained for leading the protests and denounced by local government officials. He claims that if it were not for the support of the local community in demanding his release, he would have surely been jailed.449 Still, Vasquez continues to fight on behalf of underrepresented communities of Pucallpa. He believes that through exposing the corruption in government, popular support will mobilize to replace the structures of local government corruption that allow the community to be abused.

Beyond Pucallpa, reporters, researchers, and CSOs in Peru corroborate the unfortunate stories of community members in the region. According to the Instituto de Defensa Legal, indigenous groups in Ucayali cannot count on their territorial rights. Although the government has ratified ILO 169 and a host of other conventions guaranteeing human rights,450 national laws have not been properly implemented and enforced to prevent companies from appropriating and logging the ancestral land of indigenous communities. Since remote communities often have almost no knowledge of their legal situation, they lack access to the proper mechanisms to hold companies accountable for appropriating indigenous land.451 Researchers at the Instituto de Investigaciones de la Amazona Peruana (IIAP) described situations where companies are able to “legally” offer individuals from an indigenous community low prices for portions of indigenous community land. These transactions occur even though the particular indigenous seller may not be authorized by the community leadership to sell community territory.452

Cristina Blanco from the Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú (IDEHPUCP) contends that, while prior consent is generally obtained before environmental impact assessment (EIA), indigenous communities are not consulted at any point after the EIA in the land appropriation process. This is

447 Meeting with Abel Vasquez on January 25, 2017 in Pucallpa, Peru.
449 Meeting with Abel Vasquez on January 25, 2017 in Pucallpa, Peru.
450 See “Legal” Section.
451 Meeting with Alvaro Masquez Salvador of the IDL on January 26, 2017 in Lima, Peru.
452 Meeting with IIAP on January 24, 2017 in Pucallpa, Peru.
because there is no strong regulatory framework surrounding prior consultation that would ensure these rights are respected. In fact, a large portion of the environmental human rights violations in Peru seem to revolve around a similar issue of lack of enforcement. As mentioned previously, Peruvian law also allows police to be hired by companies as security forces who wear their official state uniforms but work on behalf of the companies, not the citizens of the region. Although issues surrounding this situation were not observed in Ucayali, the EHRDs section above clearly lays out many situations where police forces abused environmental protectors and indigenous peoples. This situation presents a clear conflict of interests as police officers are incentivized to selectively protect and serve those who can pay.

Environmental Protection versus Economic Development

As Peru looks to utilize its vast natural resources for economic development, the tension between priorities of business ventures and environmental protection are stoking many of the conflicts between environmental defenders, the extractive industry, and the government. While mining is the largest sector of growth, a recent boom in activities such as timber extraction and clear-cutting for palm oil production have expanded throughout the Peruvian Amazon. Both timber extraction and agricultural production in the forest are often illegal or are carried-out using loopholes in the system. For instance, Julia Urrunaga of the Environmental Investigation Agency contends that up to 90 percent of Peruvian timber exports, many of which come from the Ucayali region, are harvested illegally through a system of fake permits. Such high levels of illegal logging compromise the environment through deforestation and destruction of natural habitats. Indigenous groups with ancestral land in the Amazon are most vulnerable to these offenses. As stated by Alvaro Masquez Salvador of IDL, indigenous problems and environmental problems are often paired.

The cases of companies clearing forest under questionable legality for extraction in Ucayali present pervasive issues in the system of land concessions. Plantaciones de Pucallpa (PDP) and Plantaciones de Ucayali (PDU) are two operations run by an international corporation called the Melka Group. The Group specializes in palm oil extraction and was even listed as part of the Roundtable on Sustainable Palm Oil (RSPO) until late 2016. However, the company removed itself from RSPO and backed away from its commercial ventures near Pucallpa leading up to 2017 due to the efforts of the Shipibo indigenous community of Santa Clara de Uchunya. The situations around PDP and PDU represent the problematic commercial exploitation of indigenous land in Peru, however, they also highlight how the indigenous organizations successfully advocated and fought to protect their collective rights.

453 Meeting with Cristina Blanco of the IDEHPUCP on January 26, 2017 in Lima, Peru.
457 Ibid.
458 Meeting with Alvaro Masquez Salvador of the IDL on January 26, 2017 in Lima, Peru.
As explained by researchers and journalists in Peru, the Melka Group was able to appropriate and clear-cut indigenous ancestral land through both illegal squatting where enforcement is thin and by finding loopholes in the land titling system. In the case of PDU, the Melka Group ignored the system of land titling completely. 460 It claimed that the PDU land was freely available land, owned by the regional government, which could be bought at a low price like any other private entity. The company ignored the fact that the rainforest is part of “el patrimonio cultural” or the national heritage, which means that the forest requires a lengthy process of evaluations and regulations to be conceded. Still, these regulations are not always adhered to as shown by those administering concessions in the SERFOR. 461 The PDU process was overtly illegal by acquiring the land without the proper environmental impact survey and eventually shut down after many years of extraction due to the actions of indigenous groups in the areas.

The establishment of PDP highlights a critical loophole in Peru’s land titling system. According to both independent sources and the national body administering land titles in the Amazon (SERFOR), there are relatively less restrictive systems for purchasing small plots of rainforest for cultivation than compared to the requirements for purchasing expansive, thousand-hectare plantations for large-scale extraction. Unlike small concessions, large-scale plots require extensive EIAs with strict requirements for cultivation. 462 This differentiation in permit regulation is intended to allow small-scale agriculturalists in the region to develop their livelihoods without bearing the high cost of regulation. On the other hand, the process for owning large plantations that have the ability to clear-cut large swaths of rainforest is held to a higher standard. To get around the restrictions, PDP simply acquired many small plots of land next to one another over time, clear-cut the land, and consolidated the plots into one giant, 5000 hectare plantation. 463 464 PDP also purchased areas that completely surround indigenous communities so that they would not be able to leave nor access their land if they wished to leave.

In 2015, PDP was ordered by the Ministry of Agriculture to cease its production of palm oil pending investigation of these practices; however, researchers found that PDP continued to produce eight months after the order. 465 Then, the regional department of agriculture continued to issue land titles in areas nearby the plantation, furthering PDP’s ability to deforest and expand. These methods were eventually protested by native community organizations and led to the ousting of PDP after years of clear-cutting and cultivation the same loopholes for avoiding EIAs and other requirements could potentially be used by other corporations since the regulatory agencies have not changed the titling code.

Curbing Environmental Degradation

International Organizations and the central government have attempted to curb these examples of illegal logging and forestland acquisition through regulatory measures. The World Bank Group boasts its environmental and social safeguards, as well as policies on respect for indigenous people. However, NGOs in Peru and abroad criticize the Bank for supporting policies and projects that have led to increased deforestation in the Peruvian Amazon. 466 In the end, while the WBG projects in Peru may prioritize sustainable development, they are not

460 Meeting with Julia Urrunaga of the EIA on January 26, 2017 in Lima, Peru. See also: Deforestation by Definition. Environmental Investigation Agency. 2015.
461 Meeting with Juan Luis Dammert Bello on January 26, 2017 in Lima, Peru.
462 Ibid.
463 Ibid.
464 Meeting with Julia Urrunaga of the EIA on January 26, 2017 in Lima, Peru.
solely conservation efforts, which may be what is needed to adequately defend the rights of indigenous groups with ancestral land in the Amazon. Additionally, the WBG is currently moving from its current environmental and social operational safeguards to an Environmental Management framework that, while including social and environmental standards, will not include any standards on the protection of human rights.467 This new framework was subject to a three-year consultation process in more than thirty countries. Still, the lack of an institutional commitment to the protection of human rights as a distinct area sends a clear message about priorities of the WBG and member-countries like Peru but also across much of the developing world.

In Pucallpa, efforts have been taken by scientists at the IIAP to preserve primary forest, regulate the carbon levels and overall health of the soil, and maintain biodiversity in the region surrounding Pucallpa. However, even these environmental experts recognize the difficulties in working with indigenous communities to conduct soil samples and preserve the forest. Many communities are divided and not strictly centralized, which leads to difficulties in terms of defining community land and respecting their boundaries.468 IIAP forest supervisors also contend that illegal logging is often done out of ignorance in the administrative processes that need to be completed in order to be approved. These illegal loggers also often do not know the implications of the crime, since contractors may not realize which trees are appropriate to cut down. Still, they recognize that information has been disseminated by other sources claiming that up to 90 percent of the wood transported is covered by illegal documentation justifying the extraction of the timber from that area.469 These issues stem from the government’s lack of capacity to supervise and enforce land policies, especially in remote regions that would require regular supervision and possibly aircraft oversight.470

In terms of oversight, the Ministry of the Environment (MINAM) and Ministry of Agriculture (MINAGRI) share responsibilities for protection of the Amazon which, according to members of both organizations, has led to confusion and misdirection at the regulatory level. Representatives for the Ministry of the Environment concede that the best protectors of the environment are indigenous groups and that it is these very groups that are often at odds with the state and extractive industry for precious natural resources in the Amazon. Yet, while the efforts of MINAM are to promote national protection of the forests to prevent its degradation, the Ministry of Agriculture ultimately controls the process of titling and land management in the Amazon because “…we (Peruvians) look at the issue as that of maximizing productive use of land instead of maximizing its conservation.”471 Tensions between the ministries are apparent and bleed into the regulatory issues across Peru.

MINAGRI, particularly under its independent sub-organization SERFOR, is the national authority which regulates land ownership and natural resources in Peru. Representatives from the organization expressed that they see the forest as national property for which they give small concessions out of the large swaths of available land for business development. While they also care for protecting the rights of indigenous groups, they need to take all the country’s needs into account, including the needs for economic development and growth that will lift millions out of poverty. SERFOR representatives also admit that, despite their immense power to give land concessions for companies and individuals in the Amazon, regulations are often meaningless in remote regions where limited extraction is difficult to monitor, yet alone enforce.472 They point out a need for enforcement and funding at the regional levels for policies that are enacted in Lima.

467 Meeting with WBG representatives on January 26, 2017 in Lima, Peru.
468 This analysis is corroborated by Lizardo Cauper, Robert Guimaraes, and other indigenous leaders in their respective interviews.
469 Meeting with Forest Supervisors from IIAP on January 24, 2017 in Pucallpa, Peru.
470 Ibid.
471 Meeting with representatives from the Ministry of Environment on January 27, 2017 in Lima, Peru.
472 Meeting with SERFOR on January 27, 2017 in Lima, Peru.
Photo taken in Pucallpa, Ucayali Region, Peru
Analysis

In the first set of interviews with representatives of indigenous communities in Ucayali, they stressed national government responsibility to create laws that enforce and adequately protect indigenous land rights and the rights of forest defenders. Ironically, after speaking with members of indigenous communities in Ucayali, researchers, NGOs, and then government officials, the blame for the troubles with protection of indigenous land and violations of the rights of forest defenders has come full circle back to the regional level. This pattern of blame shifting seems rampant and removes government accountability that is necessary to incentivize change. However, all parties agree that a primary cause of these land issues is the nationalization of policy and regionalization of enforcement. In general, regional governments do not have the means to enforce national regulations and avoid corruption of the lucrative extractives industry. Therefore, authorities in Lima can blame the provincial governments for not enforcing indigenous land rights and environmental protection. Meanwhile, regional governments can claim they do not have the resources and support to realize the directives handed down to them from Lima. While the levels of government struggle over enforcing national laws, forest defenders, including many indigenous communities, are illegally forced from their land and face violent threats when they protest.

Furthermore, the central government is not adequately following through on their commitments to international conventions regarding the environment and indigenous rights. Realization of these conventions could put a halt on development projects throughout the country and hinder private investment needed for economic growth, which is essential as Peru climbs middle-income status. This tension between environmental protection and development policies appeared throughout the case study. Even researchers and environmentalists partial to protection for indigenous land and to the environment recognize Peru’s need for development. Forest defenders are often justified in protecting the Amazon, demanding prior informed consent, and fighting criminalization for their protests per the Peru’s international convention commitments. Yet, Peruvian development policy has taken precedent in the eyes of indigenous activists, researchers, and even some government officials on the ground.

Still, indigenous community leaders and volunteers and lawyers from the IIDS rebuff the development versus environmental protection debate completely. This group represented indigenous communities in land disputes across Latin America since 2002 pro bono. They present an important point: that tensions between energy policies and environmental protection come second to respecting human rights according to UNDRIP and according to ILO 169 guaranteeing prior informed consent. As stated by international lawyer and President of IIDS, Raquel Yrigoyen “[p]olicies are completely different than human rights.” As mentioned previously, the Fourth Final and Transitory Provision of the 1993 Peruvian Constitution states that “[r]ules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements regarding those rights that have been ratified by Peru.” Since Peru has ratified these international conventions, they are a part of Peru’s national law. Therefore, while development may be important for Peru as a whole, international human rights, including indigenous rights to their ancestral land, are inherent and should always be respected as per the Constitution of Peru.

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473 Meetings with Lizardo Cauper and Robert Guimaraes in Pucallpa, Peru on January 24, 2017.
474 Meeting with Raquel Yrigoyen of the IILS on January 27, 2017 in Lima, Peru.
475 Peru Constitution 1993 (rev. 2009) [Constitution], Fourth Final and Transitory Provision.
476 Peru Constitution 1993 (rev. 2006) [Constitution], Article 55.
This position presents the ideal standard for promotion and protection of international human rights through international law. Unfortunately, it is not entirely realistic within the current framework in Peru. While Peru’s commitment to international human rights standards looks exemplary on paper, the country’s will and capability to enforce environmental human rights protections is lacking. Additionally, the right to development is also an international human right which may conflict with collective land rights of certain groups. While solutions for development that do not include abusing the rights of these groups should be available, there is an argument to be made for balancing priorities of poverty alleviation and human rights protection since development can indirectly give millions of people the chance at a longer and better lives.

Still, one must recognize the value of human rights as a fundamental pillar on which democratic society is built. Development policies must respect human rights above financial gain. This process begins with enforcing the laws already in place. For one, limiting the abuses of legal and illegal land concessions which harm indigenous communities by expropriating the land they have held since before colonists arrived in the Americas. The denouncements, death threats, and marginalization of groups fighting to protect the forests of Peru must also be put to an end if the human rights of forest defenders are to be fully respected. In the event that development project may impact local communities, prior informed consent from these communities must also be respected. These efforts are difficult to achieve, as they require work from both sides. The government must work to improve enforcement capabilities and the communities must work to unify and create a more centralized body from which to negotiate matters regarding ancestral land.

Finally, as heard in testimonies from those living in the heart of the Peruvian Amazon and those of people the national capital, it is difficult to describe the problems affecting forest defenders and indigenous communities in Ucayali without connecting them to similar issues across Peru. The evidence presented is not meant to be fully generalizable to Peru as a whole. However, as shown in the Peru case study background earlier in the report, the tension surrounding deforestation in Ucayali is one small fight taking place against a national backdrop of civil violence and protest related to displacement and pollution caused by large mining, logging, and agriculture companies. In fact, mining projects in Cajamarca, Cusco, and Madre de Dios regions have gained more international attention than the Ucayali case as protestors were tortured and killed in confrontations with police and private security forces. NGOs such as IDL, IIDS, and AIDESEP working on indigenous issues across Peru purported that these conflicts stem from the same problems with enforcement at the regional level. The issues include corruption and lack of political will and capacity to fully protect land rights in Peru in favor of development projects. While this case study focuses specifically on forest defenders and indigenous land rights in one province of Peru, this research is part of a larger movement that is necessary to highlight understand systemic deficiencies and formulate sustainable solutions for national and regional policy.

Policy Recommendations

1. **Implement Protection Policies for HRDs:**

   This research revealed that policies to protect victims of harassment, abuse, human rights violations, threats and other instances of violence, are inadequate, not implemented or enforced, or are entirely nonexistent. In 2004, the government of Peru enacted the Código Procesal Penal (Criminal Procedure Code) under Legislative Decree 957. This piece of legislation provided methods and procedures for the protection of witnesses in criminal proceedings; however, this legislation does not extend the incorporated witness protection program for other witnesses or victims. More specifically, legal protections for witnesses do not extend to EHRDs unless they pertain to criminal issues. EHRDs bringing forth civil proceedings, for example suing for land title, are therefore not protected under this witness protection legislation. This research revealed that EHRDs, who are targets of harassment, intimidation and violence, are not afforded proper legal and physical protection. We recommend the Government of Peru, at both national, local, and regional levels, expand witness protection programs so individuals (EHRDs) are better protected from human rights violations.

2. **Increase Capacity for Regulatory Enforcement at the Regional Levels:**

   As highlighted in the previous sections, there is a clear gap between the regulatory framework for the protection of rainforest areas designed by the central government and enforced at the regional level. Various obstacles hinder the proper implementation of the regulatory frameworks at the regional level, including the lack of sufficient tangible and financial resources, an insufficient presence of enforcement personnel (i.e. forest rangers, police officers), and the alleged widespread diffusion of corrupt practices affecting regional institutions. Currently, enforcement of conservation or protected areas is the responsibility of local authorities who are under economic constraint given lack of sufficient resources and therefore cannot devote ample funds to effectively regulate said areas. This includes the inability to hire the appropriate number of forest rangers per hectare of protected land and demonstrates a lack of priority by the central government towards enforcing the protection of said areas. Therefore, we recommend that the central government provide more national funds to regional governments earmarked for environmental regulation enforcement, establish more effective accountability mechanisms to ensure the transparency of the regional institutions, and assure better compensation and accountability of regional police forces to prevent corruption. Increased support from the central government should enhance regional capacity to reduce deforestation and protect the rights of local landholders and forest defenders by spending more on the quantity and capacity of local forest rangers. Increasing regulatory authorities surrounding forest protection and conservation will also have secondary effects on the capacity to observe activities of forest defenders and violations therein.

3. **Include Proportionate Representation of Indigenous Community Members in the FPIC Process and Improve Current FPIC Implementation:**

   FPIC is not consistently applied according to many indigenous community representatives and third-party researchers across all indigenous communities given community power and size differences. This research demonstrated an inadequate implementation of the FPIC process. FPIC should seek inclusivity and transparency with regard to development projects. Inadequate implementation is resulting in insufficient information for the indigenous communities to allow a full and proper assessment of the project prior to development. The current FPIC process does not adequately inform communities in a manner that supports due diligence notions to ensure complete transparency in projects that directly affect surrounding communities.

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The government needs to maintain a more comprehensive registry of indigenous communities and leadership to ensure their participation in the FPIC process. Specifically, this research highlighted the issue of companies using indigenous community member(s) to “represent” entire communities irrespective of community power structures in order to fulfill due diligence clauses in a deceptive manner. Furthermore, current implementation of FPIC does not provide a follow-up mechanism to inform communities of updates to development projects, which leaves communities detached from development projects once underway. It also does not provide valuable recourse mechanisms in instances where communities do not consent to the initiation of a project.

4. **Define and Fully Protect Ancestral Land as Guaranteed in ILO Convention 169 and as Determined by the Inter-American Court of Human Rights:**

Each of the interviewees identified land rights disputes in the rainforest areas as both a primary issue arising in conflict and as a key element to solve and prevent disputes between indigenous communities and third parties, government included. Having ratified the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), Peru has formally accepted the notion of ancestral lands belonging to the indigenous communities living in those areas, as per Article 14 of the Convention. However, researchers uncovered opposing views over land ownership between indigenous communities, amongst different CSOs advocating on behalf of indigenous rights, and government officials with regard to rights to the land in certain areas. In essence, the rights under ILO 169, including the right not to be removed from ancestral land and the right to determine development priorities for that land, are contested in Peru by government and corporate interests looking to increase land development and thus indigenous communities are compelled to fight to ensure their land rights. This provision, having been ratified by Peru and concerning human rights, is directly implemented into the Peruvian Constitution and must be upheld. Still, the government and other CSOs embrace an interpretation of the Peruvian constitution that recognizes the belonging of lands to the State or the Peruvian people as a whole (*El Patrimonio*).

Discrepancies over land rights and legal authorities of determining land rights are primary and fundamental sources of conflict that create hostile environments for indigenous communities who seek to protect their land and the forests. Peru’s Constitutional Court determination that Peruvian courts must interpret human rights issues in a manner consistent with IACtHR decisions guaranteeing the ancestral land rights of indigenous groups. Therefore, the government must require proper adherence to decisions of the IACtHR and the provisions of ILO 169 which have set forth determinations and land ownership. Indigenous communities in Peru are the primary defenders of the forests and in order to eliminate or at least reduce conflict that leads to human rights violations, the precursors to said conflicts must be addressed. To solve and prevent future disputes, the parties should begin a mediation process to build the common ground to overcome these disputes and prevent others. Another possibility is to established sovereignty between the indigenous community and the State over the lands.

5. **Improve the Clarity of Land Rights Regulations, Especially in Regards to Titling and Environmental Impact Assessment:**

Structurally, the Ministry of Agriculture (MINAGRI) needs to improve the land titling process to reconcile existing conflicts of interest. It also must enhance the screening and transparency process to the benefit of indigenous communities. At present, the MINAGRI is the government entity that issues land titles based on federal government criteria defined by land use, land capacity, and environmental impact assessments (EIAs). The Ministry of the Environment (MINAM); however, is the primary government entity responsible for the promotion of sustainable use and conservation. Ideally, all land titles issued by MINAGRI would have approved EIAs as authorized by MINAM; this delineated of authority

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482 Indigenous and Tribal Peoples Convention, 1989, Articles 7 and 14.
483 President of the Lima Bar Association v. Ministry of Defence.
and checks and balances does not currently exist in the titling process within Peru. An additional issue present in Peru’s titling process is the lack of independent EIAs and an oversight mechanism to ensure unbiased or “bought” reports that largely benefit private enterprise. The government of Peru does not conduct EIAs, rather, parties seeking to purchase land must hire a third party to conduct the EIA, which is then registered with MINAGRI without a subsequent approving or clearance process for said EIA. In essence, individuals or private enterprises can hire third parties to conduct EIAs with findings that reflect their interests rather than provide an accurate or truthful assessment of environmental impacts. Clear conflict of interests typically favor private businesses rather than individuals who may be affected by development or construction projects such as indigenous communities.

Until clear property titles are well-defined, conflicts over interpretation and implementation of these laws will recur and it will be difficult to achieve a solution. This means eliminating the loopholes that exist for companies to avoid getting EIAs when cultivating large portions of forestland. One such loophole, utilized by Plantaciones de Pucallpa, allowed them to purchase many adjacent small plots of land to later merge into one vast stretch of forestland for palm oil production. Another loophole is the “best use land capacity” (BULC) determination which solely looks at soil capacity for determining primary forest and ignores the number of standing trees, making it easier for primary forest to be conceded for agricultural production. When determining the BULC of the rainforest, these companies can also hire their own experts to conduct an EIA as part of gaining the land concession.

6. **Repeal Presidential Decree 004-2009-IN:**

Several interviewees expressed concern regarding Peruvian law as provided in Presidential Decree 004-2009-IN, which allows private companies to hire off-duty police officers to provide security to their operation sites. According to evidence from the fact-finding mission and reports from NGOs and CSOs in the past years, it is very common for private companies involved in sensitive activities entailing the use/exploitation of natural resources to hire the off-duty police officers. These private companies utilize third party security guards (e.g. off-duty police officers) to guarantee that local protestors are kept away from the working sites. Moreover, it has been reported that, in providing this service, the off-duty police officers use the uniforms and weapons provided by the state to use in their capacity and performance of their regular duties of state’s public officials. This procedure leads to creation of perverse incentives which harm the integrity of the public officials and state institutions. In this regard, the clear separation between public and private interests is blurred given competing interests of police officers hired and receiving income by/from the private companies and their responsibility to promote and protect public interest in their state policy capacity. Furthermore, private businesses hire off-duty police officers that are protected or provided impunity under the Presidential Decree and thus, bear no responsibility for violations of human rights. In the past years, this situation has created various clashes and accidents, and it has weaken the role of the state in respecting, protecting, and fulfilling the human rights of all citizens. Hence, we recommend repealing the Presidential Decree 004-2009-IN, the law supporting this inappropriate practice. Furthermore, poor living standards and insufficient incomes incentivize off-duty police to seek alternative sources of income to provide an adequate quality of life for them and their families. Thus, it is imperative for the government of Peru to reassess and increase compensation and benefits for police officers to prevent them from needing additional sources of income.

7. **Increase Oversight and Regulation of Legal and Illegal Logging Operations:**

The Peruvian government has made international commitments to reduce deforestation driven by illegal logging. However, significant resource constraints prevent forest authorities from tracking and responding to illegal activities deep in the forest. An initial recommendation is to increase federal support for tracking and responding to illegal logging activities by increasing forest agency budgets and hiring more forest rangers to patrol more of the forest. The presence of more federal authorities in the forest would deter illegal actors from building new roads and scaling large-
scale operations, as well as reinforce the activities of forest defenders who currently stand largely alone in forest protection. Furthermore, the Peruvian government should partner with the UN and Brazil to increase remote sensing and satellite imagery to more quickly monitor deforestation hot spots, road construction, and illegal activity. Given the high cost of satellite imagery, it would be more cost effective for Peru to collaborate with other Amazonian nations to extend the existing real-time satellite imagery over Brazil into neighboring Peru (and others). With real-time satellite imagery, Peru could better track forest change, respond to illegal logging activity, and arrest those responsible. Implementing cost-saving cross-border technological partnerships could better protect the cultural history and biodiversity of the Amazon, as well as reduce forest loss and CO2 emissions contributing to climate change.

8. **Address the Tension between Human Rights and Development to Prioritize Human Rights:**

Certain initiatives that move towards prioritizing environmental and social principles in development projects, specifically the World Bank Group’s new Environmental and Social Framework (ESF) in World Bank Group-invested projects, are welcome advancements in protecting people and the environment in the name of development. It must be noted; however, that the current WBG framework neglects to incorporate protections for human rights in Bank-funded projects, which is imperative to reconciling the imbalance in priorities between development and human rights. It is essential to avoid weighing the potential benefits of certain public policies against violations of human rights and environmental impacts as provided in international, regional, and national human rights law. The research highlighted the detrimental effect to the respect, promotion, and fulfillment of human rights caused by comparing the costs and benefits of development projects against human rights principles and norms. Human rights principles and norms, protected under international, regional, and national laws, constitute the backbone of any democratic society and are endorsed by Peru’s Constitution. As such, it is impossible to equate human rights principles against the financial benefits of development projects. This means that policy makers must prioritize human rights standards above development policies.

9. **Mend the Cultural and Physical Separation between Rural and Urban Populations:**

The research verified the existence of significant cultural and physical barriers between rural and urban populations, particularly with regard to Amazonians and non-Amazonians inhabitants, and additionally between indigenous and non-indigenous communities. We suggest the Peruvian authorities promote domestic interchange to improve knowledge of local and indigenous communities living in the Peruvian Amazon areas. This is especially important considering the major natural barriers that separate the Amazon region from the Andes region and from the coastal areas of Peru. One form of this domestic exchange is domestic study abroad programs for high school or university student for six month or one year durations to facilitate cultural exchanges and create opportunities to learn from and about various cultures within Peru. In turn, this may serve different communities across the country to understand and empathize over reciprocal problems and demands concerning the environment, thus facilitating the creation of a stronger and positive public opinion on forest defenders committed to protect the Amazon. Moreover, these programs will allow to identify common grounds and common interests across different communities in Peru, thus facilitating inclusive and peaceful discussions around the use of natural resources which may benefit and improve the well-being of all Peruvians.

A further recommendation to bridge the gap between indigenous and non-indigenous communities is state-sponsored and state-facilitated programs that will serve to enrich and empower indigenous communities through education. The regional governments should facilitate educational programs in remote or rural areas of Peru where local communities will receive reading, writing and oral communication skills first in their native languages and secondarily in Spanish. In the region of Ucayali, it was apparent from this research that despite Spanish, Quechua, and Aymara being the official languages of Peru, the primary language taught in schools is Spanish. Students
whose primary language was not Spanish performed poorer in school and as a result, significant numbers of students in rural and indigenous communities either did not attend school or dropped out within the primary education phase. It would greatly benefit indigenous communities to learn their languages in written form and then secondarily learn Spanish as Spanish is the primary language of official business in Peru. Furthermore, to facilitate greater appreciation for indigenous customs and traditions, it would benefit the population of Peru if programs existed to increase the learning opportunities of indigenous languages, also in written form.

10. **Encourage Multilateral Organizations to Act as Mediators between Conflicting Parties:**

Multilateral organizations operating in Peru should use their presence and their leverage to mediate between parties with different interests and goals (i.e. indigenous communities, government authorities, private companies). These organizations are uniquely positioned to expand the zone of possible agreements between the different parties, and facilitate the conclusion of participated, inclusive, and transparent agreements concerning development projects in the rainforest under the overarching international, regional, and national human rights framework. This will benefit both the indigenous communities by reaching agreements consistent with the respect of their rights, and will benefit EHRDs by reducing their need to protest against rights violations and risk violence for their activism. Expanding the channels through which indigenous communities can use their voice and the channels that businesses can appropriately and diligently communicate with indigenous leaders will reduce the opportunity for conflict and thus also reduce the window for rights violations.

11. **Continue Supporting the Implementation of the United Nations Guiding Principles on Business and Human Rights:**

It is necessary for Peruvian and non-Peruvian CSOs and advocates to continue supporting the adoption by national and multinational firms of the UN Guiding Principles on Business and Human Rights when carrying out projects in Peru. This research, along with reports from other international NGOs, identified that ethical businesses and human rights principles were applied to businesses in extractive industries more than in forest and logging industries in Peru. The same standard levels should be applied to businesses, both domestic and multinational, in all industries and sectors in Peru. These standards are not appropriately applied to all industries, specifically the logging industry, which presents a serious ethical concern in addition to opening the door for human rights violations of forest defenders.
Sri Lanka

“When one’s livelihood is dependent on one’s job, and his/her family depends on it for their livelihoods as well, it is but natural that these officers have to comply with political requests, even if these requests are illegal and a violation of the laws governing the wildlife sector.”

Photo taken in the Knuckles Range, Matara District, Sri Lanka
Sri Lanka

“Oh! Great King, the birds of the air & the beasts have an equal right to live & move about in any part of this land as thou. The lands belongs to the peoples & all other beings & thou art only the guardian of it, said Arahat Mahinda to King Devanam Piya Tissa, the famous ‘Deer Hunter’ (307-266 BC).”

Case Study Summary

In Sri Lanka, the state of the environment, human rights defenders, conservation efforts and management of forestlands bear burden of the legacies left by British colonialism and the civil war. The breakup of land rights following independence fostered tension between the different communities spread across the country and the government, the former whom asserted claims to certain lands and the latter which sought to section off nationally-owned land for protection. Unlike in Peru, the term “environmental human rights defenders” (EHRD) has not yet taken hold in public discourse in Sri Lanka. However, when the research team used the terminology “human rights of people protecting forests,” interviewees certainly understood the subject. Several themes emerged through the course of fact-finding, including the intersection of the environment, human rights, and sustainable development, the politicization of environmental issues, minority rights, and the interplay between industrialization and globalization. Politicization refers to the substantive impact that politics have played on conservation and environmental protection. It includes, but is not limited to the ministerial positions held by the President and the Prime Minister of Sri Lanka, the constant movement of the Departments of Forest Conservation and Wildlife Conservation (hereafter “Forest Department” and “Wildlife Department”) under various ministries, the pressures faced by department officials, and land rights issues that persist following the decades-long civil war between the Sri Lankan government and the Liberation of Tamil Tigers Eelam (LTTE), otherwise known as the Tamil Tigers. Minority rights comprise language barriers as well as the problems faced by indigenous peoples, specifically the Wanniyala-Aetto. Finally, industrialization and globalization focus mainly on the post-conflict period with the influx of foreign investment and the government’s desire to expand its economic output; this can be understood hand-in-hand with the effects of an increasingly global presence.

The research team travelled between Sri Lanka’s capital and home to the headquarters of the majority of the country’s NGOs, Colombo, government ministries, and multilateral organizations; Kandy, a city in the central hills, surrounded by rainforest and most importantly close to the Knuckles Mountain Range; and the Knuckles Conservation Forest, a UNESCO protected area that makes up part of the Central Highlands in the south-central area of Sri Lanka. A subset of the research team also toured the Sinharaja Forest Reserve, a UNESCO World Heritage Site. The Sri Lanka research team met with individuals and groups from NGOs, including Rainforest Protectors, Environmental Foundation Limited (EFL), multilateral organizations, including UNDP, the World Bank Group (WBG), and the United Nations Food and Agriculture Organization (FAO). The team also conducted interviews with the government of Sri Lanka, including the Human Rights Commission, the Department of Forestry, and the Department of Wildlife and Conservation; and academics from the University of Peradeniya, the Bandaranaike Centre for International Studies (BCIS), and the University of Wisconsin. A detailed schedule is provided in the Annex.

The conversations, insights, and advice from Sri Lankans working to protect forestland form the backbone of this analysis of the country’s forests defenders. The following chapter sheds light on the historical, political, legal, and social contexts of human rights issues facing forest defenders, with a focus on politicization of the environment, ethnic tensions, and economic development.

**Background**

**Brief History of Sri Lanka**

The conflict between the Sri Lankan government and the LTTE marks one of the world’s longest civil wars. After nearly three decades, the conflict culminated in a brutal and controversial end in May 2009. As any discussion of modern-day Sri Lanka would be incomplete without the historical context of its civil war and post-conflict environment, we offer a brief overview below.

**Colonial Period and Independence**

In 1796 the British began to take over Sri Lanka, then known as Ceylon. In 1815, the Kingdom of Kandy was conquered by the British, who also started to bring in Tamil laborers from southern India to work in tea, coffee, and coconut plantations. By 1833, the entire island came under the rule and administration of the British. Sri Lanka gained independence from British rule in 1948. However, this did not mark the end of its struggles.

Shortly after independence, Tamil plantation workers started to disenfranchise, and many were also denied citizenship. The Sinhalese majority started to marginalize the Tamil population, responding to British favoritism towards Tamils during colonial times. In 1956, following a wave of Sinhalese nationalism, Solomon Bandaranaike was elected. Further ethnic tensions increased when the Sinhala Only Act of 1956 was introduced, making Sinhalese the official language and replacing English as the common language. The hard push for Sinhalese nationalism led to anti-Tamil riots in 1958, killing at least 200 people and leaving thousands of Tamils displaced. Additionally, the island’s name was changed from Ceylon to Sri Lanka in 1972, and Buddhism was adopted as the primary religion of the State. These measures were primarily introduced to bolster Sinhalese and Buddhist feelings, and more than 100 Tamils were killed in widespread violence when the Tamil Parliamentarians protested these new laws. In 1976, under the leadership of Velupillai Prabhakaran, the LTTE, a terrorist organization, was formed as tensions increased in Tamil-dominated areas of north and east.
Civil War

In 1983, what the LTTE called the “First Eelam War” began. It was marked by the killing of 13 soldiers in a LTTE ambush, sparking anti-Tamil riots leading to the deaths of several hundred Tamils.\(^{499}\) By 1990, the violence between the Sri Lankan army and separatists escalated, marking the beginning of the “Second Eelam War.”\(^{500}\) Thousands of Muslims were expelled from northern areas by the LTTE.\(^{501}\) Following the assassination of President Premadasa by an LTTE bomb attack in 1993, President Kumaratunga came to power in 1994 pledging to end the war.\(^{502}\) Peace talks opened with LTTE, however in 1995 the “Third Eelam War” began when rebels sunk a naval craft.\(^{503}\) In the period between 1995 and 2001, the war raged across the northern and eastern regions of the country.\(^{504}\) The LTTE bombed the Temple of the Tooth, the country’s holiest Buddhist site, and also carried out a suicide attack on the international airport in Colombo, destroying half of the Sri Lankan Airlines’ fleet.\(^{505}\) Following 2001, the war continued, intensifying LTTE’s stand for an independent state, Tamil Eelam. In 2005 Mahinda Rajapaksa, prime minister at the time, won the presidential election, an election where most Tamils in areas controlled by the LTTE did not vote.\(^{506}\) After countless ceasefires, deaths of hundreds of thousands of people, and human rights concerns raised by international bodies, the Sri Lankan government killed LTTE leader Velupillai Prabhakaran and claimed victory following a fierce and controversial military offensive in May 2009.\(^{507}\)\(^{508}\) The conflict left hundreds of thousands of people displaced, most of whom were Tamil and Muslim minorities.\(^{509}\)

Post-Conflict

Shortly after the war ended, calls to investigate alleged war crimes by both parties were led by the United Nations (UN) and the European Union (EU).\(^{510}\) Indeed, former United Nations High Commissioner for Human Rights Navi Pillay accused both sides of war crimes.\(^{511}\) Amnesty International and Human Rights Watch, along with other watchdog groups also reported many violations of humanitarian laws and human rights abuses in the conflict period. In 2010, the EU suspended Sri Lanka’s preferential trade status because of concerns over its human rights record.

In April 2011, the UN confirmed that both sides in the Sri Lankan Civil War, that is the government and the LTTE, committed atrocities against civilians calling for an international investigation into possible war crimes; however, the Sri Lankan government claimed that the report was biased.\(^{512}\) Further, in 2012 the UN Human Rights Council

\(^{499}\) “Timeline.”
\(^{500}\) Ibid.
\(^{501}\) Ibid.
\(^{502}\) Ibid.
\(^{503}\) Ibid.
\(^{504}\) Ibid.
\(^{505}\) Ibid.
\(^{506}\) Ibid.
\(^{507}\) Glatz, “Almost Five Years of Peace.”
\(^{508}\) “Timeline.”
\(^{509}\) Glatz, “Almost Five Years of Peace.”
\(^{510}\) Ibid.
\(^{511}\) “Timeline.”
\(^{512}\) Ibid.
(HRC) adopted a resolution urging Sri Lanka to investigate alleged war crimes committed by both parties during the long lasting conflict with the Tamil Tiger rebels, following which the Sri Lankan government claimed that this move would seek to seize their sovereignty.\textsuperscript{513} After no action from the government, in 2013, the HRC passed an exceedingly critical resolution urging Sri Lanka, once again, to conduct an independent and credible investigation into the alleged war crimes committed during the Tamil insurgency.\textsuperscript{514} Shortly after, Navi Pillay accused the Sri Lankan government of eroding democracy and the rule of law following her visit to the country.\textsuperscript{515} Following the boycott of the Sri Lanka hosted Commonwealth Heads of Government Meeting, by the leaders of India, Canada and Mauritius in lieu of Sri Lanka’s human rights records, and Sri Lanka’s rejection of a UN call for international involvement in an investigation into war crimes, the government finally agreed to co-sponsor an HRC resolution calling for special judicial mechanisms to prosecute war crimes.\textsuperscript{516} In June of 2016, the government, for the first time, acknowledged that nearly 65,000 people were missing as a result of its 26 year-long civil war with the Tamil rebels.

The government’s post-war development efforts have been hardware and infrastructure specific, aimed at economic growth, minimizing attention to social capital and to the rehabilitation and resettlement of internally displaced persons (IDPs) in terms of improving livelihoods, and protecting and promoting their civil and political rights.\textsuperscript{517} Sri Lanka’s growth pattern during the period from 2006-2012 is one that has been compelled by an ambitious public investment led infrastructure program.\textsuperscript{518} Sri Lanka currently relies on heavy foreign borrowing, international and bilateral, putting its economy at the risk of increased external shocks. However, investment in sectors such as health and education has been greatly neglected raising concerns of the payoffs of Sri Lanka’s investments.\textsuperscript{519} Unless the government focuses equally on social capital and rehabilitation, there will arise a significant gap in the skills of its youth to reap and use the benefits of the ongoing infrastructure push.

\textbf{Legal Framework}

The Constitution of Sri Lanka does not guarantee the right to a healthy environment as a fundamental right, nor does it explicitly guarantee the right to life as a fundamental right as such.\textsuperscript{520} Article 27(14) of the Sri Lankan Constitution, however does say that “[t]he State shall protect, preserve and improve the environment for the benefit of the community.”\textsuperscript{521} Commensurate with this provision in the Constitution is a fundamental duty under Article 28(f), on every person in Sri Lanka to “protect nature and conserve its riches.”\textsuperscript{522} The people of Sri Lanka also enjoy the right to information, guaranteed by the 19th Amendment of the Sri Lankan Constitution, which is essential to public participation in decision-making as well as in monitoring and evaluating projects and policies. It is particularly

\textsuperscript{513} Ibid.
\textsuperscript{514} Ibid.
\textsuperscript{515} Ibid.
\textsuperscript{516} Ibid.
\textsuperscript{517} Glatz, “Almost Five Years of Peace.”
\textsuperscript{519} Weerakoon, “Sri Lanka’s Post-Conflict Economic Development.”
\textsuperscript{521} De Mel and Sirimanne, “Environmental Challenges,” 36.
\textsuperscript{522} Ibid.
important to the work and rights of EHRDs. Sri Lanka also established the Human Rights Commission under Act No. 21 of 1996, to give force to the commitment of Sri Lanka as a member of the UN in protecting and promoting human rights, as well as to ensure it performs the duties and obligations imposed by various international treaties and covenants. Further the Commission works to maintain the standards set out by the Paris Principles of 1996.

However, despite the Constitution and other rights enshrined in Sri Lankan history and culture, the protection promotion, and conservation of the environment remains a challenge. Sri Lanka is currently working on a new constitution, for which the Commonwealth Secretariat along with the Parliament of Sri Lanka drafted a chapter on human rights, which will potentially enshrine into law strengthened protections for all Sri Lankans, given its controversial and questionable human rights history. Whether this draft and the new Constitution will include a dialogue on a right to a clean, safe, healthy and adequate environment remains unknown at this time. Dr. Deepika Udagamma of the Human Rights Commission states that the “right to an adequate environment should no doubt be enshrined in the constitution.”

Sri Lanka is a dualist country with regards to incorporating international law into domestic law. The current Sri Lankan Second Republican Constitution from 1978, does not specifically comprise any definite provisions laying out the relationship between international and domestic law. There are three landmark cases before the Supreme Court of Sri Lanka that underline the Sri Lankan perpectivity of international law. First, the Leelawathie vs Minister of Defence and External Affairs case, where the Supreme Court ruled that the application of the Universal Declaration of Human Rights (UDHR) cannot be made to domestic as it not a legally binding instrument. Second, the Sepala Ekanayake case further exemplifies the relationship between Sri Lankan domestic law and international law and obligations. Third, the most prominent case that outlines the relationship between international and domestic law in Sri Lanka is the Singarasa vs Attorney General case. In the instance of this case the Supreme Court found that while Sri Lanka had ratified the International Covenant on Civil and Political Rights, these rights could not have direct recourse when the domestic implementation of them lacked. This judgment explains the current Constitution’s favoritism towards dualism. Further, Prof Deepika Udagama states that it seems there is a firm recognition by the judiciary and political system that the post-colonial legal system was and is dualist. As such, international law is subject to parliamentary approval to be part of domestic law in Sri Lanka.

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525 “Establishment.”
530 Ibid.
531 In this case, Sepala Ekanayake, a Sri Lankan national, had hijacked an aircraft that was registered in Italy. While Sri Lanka had ratified the Tokyo, Hague and Montreal Conventions on matters pertaining to offences against aircraft, there was a gap in the domestic legislation to make such offences punishable. To this end the authorities did not have any legal instruments to push for legal actions against Mr. Ekanayake.
533 Ibid.
534 Ibid.
535 Ibid.
Sri Lanka has ratified the ICCPR, and its first Optional Protocol as well as the ICESCR. Further, Sri Lanka is a State Party to other core international human rights treaties such as CEDAW, CAT, ICERD, CRC, ICCPDED, and the CRPD. Although Sri Lanka has signed the ICESCR, it refused to accept the covenant’s individual complaints procedure and has not accepted the inquiry procedure for Sri Lanka. Individuals thus cannot file complaints and the committee responsible for the convention’s oversight cannot investigate alleged human rights violations. The international human rights treaties provide a wide framework surrounding human rights and national obligations to protect, promote and ensure said rights. The ratification of these core human rights treaties by Sri Lanka implies that Sri Lanka is legally agreeing to be held accountable for its obligations set forth in said treaties. While the above treaties reflect upon Sri Lanka’s willingness and commitment to respect human rights, it is noteworthy that Sri Lanka is not a signatory of the Indigenous and Tribal Peoples Convention, 1989 (ILO No.169), the only international treaty open for ratification that deals with the rights of indigenous and tribal peoples. Sri Lanka has been home to the Wanniyala-Aetto community of indigenous peoples for more than 28,500 years. Further, the Sri Lankan Constitution does not specifically mention indigenous people nor have any provisions for the protection of the rights of its indigenous people, raising questions about the collective rights of this community.

These legal frameworks shall further be discussed in greater detail, in different contexts to better understand their application and importance in safeguarding the human rights of EHRDs, and forest defenders.

**Human Rights Defenders in Sri Lanka**

Under the regime of President Mahinda Rajapaksa, from 2006 to 2015, the situation of human rights defenders (HRDs) remained critical. Some HRDs’ activities include fighting for accountability of war crimes during and after the civil war, while other HRDs’ activities included seeking justice and accountability against corruption and enforced disappearances under the repressive regime that limited freedom of speech as well as association and assembly. Under the broader category of HRDs is a subset of people who defended against the damages posed to the forests during the war, as well as poaching of wildlife and illegal logging. Violations faced by these defenders included death threats, use of force under the strict security laws, judicial harassments, torture and even enforced disappearances and assassinations to keep them silent. The regime restricted the role and operations of national and international NGOs as well as the media, while also failing to demilitarize the area of conflict leading to an increase in human rights violations cases in these regions. President Rajapaksa’s loss in the presidential election of 2015 to former Health Minister Maithripala Sirisena has helped to significantly change the landscape of HRDs by paving the way for peaceful protests, freedom of speech, assembly and association. It is important to note, however, that the focus and understanding of EHRDs appears to lag behind other types of HRDs given the intense focus on redressing social, economic and political rights’ violations that occurred during the war.

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540 “#Sri Lanka.”
541 “#Sri Lanka.”
For example, one great stride for human rights in Sri Lanka is the implementation of the 2016 Right to Information Act that provides for a “right of access to information” regarding the “possession, custody, or control of a public authority” and applies to national and local agencies as well as to government-funded non-governmental organizations.\textsuperscript{542} As Transparency International Sri Lanka states, citizens have the “right and responsibility to question authorities and hold the state accountable.”\textsuperscript{543} The new law mandates that each government agency appoint an information officer to receive, respond to, and document public information requests for any question of public interest, except for certain information that is exempt such as health records or defense information.\textsuperscript{544} The Ministry of Parliamentary Reforms and Mass Media is responsible for overseeing effective implementation of the Act.\textsuperscript{545} The Act states that as “the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.”\textsuperscript{546} This Act is very helpful in the context of EHRDs, as the right to information is critical to their rights and work.

\textit{The Context of Land and Property Rights in Sri Lanka}

A brief discussion of the complex history of land and property rights issues in Sri Lanka helps provide the context in which some forest defenders operate. During the war, the LTTE forced Muslims to flee territory in the North and East.\textsuperscript{547} Many Sinhalese fled these areas as well.\textsuperscript{548} Indeed, most people who lived in the North were eventually forced to leave their homes and villages for safety.\textsuperscript{549} Additionally, the LTTE was known for using northern Sri Lanka’s dense forest cover as a defensive tactic, shielding their visibility from the air and land.\textsuperscript{550} In other cases, the LTTE cut down Palmyrah trees for housing and fuel.\textsuperscript{551} When the government forces moved north to fight the LTTE, the total destruction of forest cover by both sides totaled over five million trees, including 2.5 million Palmyrah trees, according to some estimates.\textsuperscript{552} Since the war, the government has instituted efforts to resettle displaced people of all ethnic and religious backgrounds. However, politicization, party politics, and electoral politics bogged down the resettlement process. Furthermore, CSOs accused some government agencies of illegal forest land-grabbing for development projects or personal property, where the latter were found liable for issuing illegal permits or pressuring public officials.\textsuperscript{553} Today, the particular cross-cutting issues of land rights, deforestation, and resettlement are coming to a head at a resettlement site in Wilpattu to be discussed below.


\textsuperscript{544} “Use Your Right to Information.”


\textsuperscript{546} Right to Information Act, Parliament of the Democratic Socialist Republic of Sri Lanka, August 4, 2016


\textsuperscript{549} Imtiyaz and Iqbal, “The Displaced Northern Muslims.”

\textsuperscript{550} Panel at Bandaranaike Centre for International Studies (BCIS) with Nalin Niruthan on January 26, 2017 in Colombo, Sri Lanka.


\textsuperscript{552} “Land rights and wrongs.”

\textsuperscript{553} Meeting with the Embassy of Sri Lanka, Dr. Gamini Keerawella, Deputy Chief of Mission, on December 2, 2016 in Washington D.C.
History of Major Deforestation and Conservation Issues in Sri Lanka

Sri Lanka is a relatively small country extremely rich in forests: it is 65,610 square kilometers (25,332 sq miles)\textsuperscript{554} with 26.6 percent forest cover\textsuperscript{555} and 29.2 percent if plantations are included.\textsuperscript{556} As of 2015, the Department of Wildlife Conservation of Sri Lanka website listed 26 national parks,\textsuperscript{557} which make up the terrestrial protected area that is approximately 23.19 percent of the country’s total land size.\textsuperscript{558} Sri Lanka has a robust history of environmental preservation, partially due to its majority Buddhist population, its role as a global biodiversity hotspot, and its agrarian history.\textsuperscript{559} According to Dr. Gamini Keerawella, Deputy Chief of Mission of the Sri Lankan Embassy to the United States, 200 years ago the island had almost 90 percent forest cover.\textsuperscript{560} During the colonial period, the British established plantation agriculture for tea and rubber, which led to the loss of most of then-Ceylon’s forest cover: nearly 30,000 square kilometers of forest cover disappeared between 1881 and 1956, amounting to 47.5% of total island area deforested.\textsuperscript{561} Illicit felling by small and large scale timber merchants started in late 1970’s and the corrupt political culture gave rise to this illicit and highly environmentally vulnerable activity, said Professor Weerakkody of the Center for Environmental Studies and the University of Peradeniya in Kandy.\textsuperscript{562} In the mid-1990s, Sri Lanka’s northern evergreen and dry zone forests\textsuperscript{563} became prime grounds for conflict\textsuperscript{564} and eventually became the site of post-war efforts to protect forestland. Simultaneously, rapid post-war development posed serious problems for Sri Lanka’s biodiversity and forest conservation.\textsuperscript{565} From the start of the civil war in 1983 to 1992, the island lost 41,116.51 square kilometers of forest cover.\textsuperscript{566} Between 1990 and 2010, Sri Lanka lost 920 square kilometers (1.467 percent of total land area) of forest cover,\textsuperscript{567} and between 2000-2004 the country lost 740 square kilometers (almost 1 percent of total land area) in just four years.\textsuperscript{568} During the period from 1990-2005, the country had one of the highest primary forest deforestation rates in the world: an 18 percent loss of total forest cover and a 35 percent loss of its old-growth forest cover.\textsuperscript{569} Currently, there is 24 percent forest cover\textsuperscript{570} left in Sri Lanka; of that, only 8 percent is considered primary forest.\textsuperscript{571}
Preserving primary forest cover is crucial to regional and global biodiversity as it is “the most biodiverse and carbon-dense form of forest.”\textsuperscript{572} Sri Lanka has a longstanding history of laws protecting the environment dating back to British colonization.\textsuperscript{573} The country’s agrarian history laid the foundation for much of the nation’s relationship to its natural resources.\textsuperscript{574} For generations, Sri Lankans lived in harmony with the monsoons, coastal plains, and inner highlands for food and energy resources.\textsuperscript{575} Then in 1885, the Forest Department instituted the first Forest Ordinance, which “made provisions for the declaration of reserved forests.”\textsuperscript{576} In 1894, the British Colonial Government founded the Ceylon Game Protection Society to protect game species from extinction by British hunters.\textsuperscript{577} The organization, whose mission is to protect wildlife and their habitats, is now known as the Wildlife and Nature Protection Society (WNPS) and is housed in the Forest Department.\textsuperscript{578} Significant forest cover was lost during the colonial era when the British cleared forestland for tea, rubber, and coffee plantations.\textsuperscript{579} What became one of Sri Lanka’s largest export industries with up to 49 million pounds of tea exported annually by 1890 caused widespread deforestation.\textsuperscript{580} The landscape has felt the repercussions ever since. In 1938, Sri Lanka passed the Fauna and Flora Protection Act No. 2 to “make provisions for the protection of fauna and flora in national reserves and sanctuaries, in certain cases including private lands.”\textsuperscript{581} Since then, environmentalists from the public, non-profit, and private sector have heralded these laws and continue to conserve and protect Sri Lanka’s natural resources that make the country the jewel of the Indian Ocean.

In an effort to protect forests and biodiversity, there are a multitude of conservation projects implemented at national, regional, and village levels.\textsuperscript{582} Some projects are initiatives of NGOs, like the Centre for environmental Justice (CEJ) and Rainforest Protectors of Sri Lanka. CEJ, for instance, implements forest governance projects in Nilagala and Bogahapalessa where they work closely with the Forest Department and communities to produce Forest Management Plans and to create protection groups with a running revolving fund.\textsuperscript{583} Other conservation efforts, including a successful temporary community forestry project, are public sector projects led and supported by government ministries often in partnership with international and foreign national organizations such as the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD),\textsuperscript{584} UNDP,\textsuperscript{585} The Asia Foundation,\textsuperscript{586} EFL,\textsuperscript{587} Australian Aid,\textsuperscript{588} and the WBG.\textsuperscript{589}

\textsuperscript{573} Meeting with the Embassy of Sri Lanka, Dr. Gamini Keerawella, Deputy Chief of Mission, on December 2, 2016 in Washington, D.C.
\textsuperscript{574} Ibid.
\textsuperscript{575} Ibid.
\textsuperscript{578} “History of the WNPS.”
\textsuperscript{580} Rosenfeld, “Tea.”
\textsuperscript{581} “Legislations.”
\textsuperscript{582} Meeting with the Embassy of Sri Lanka, Dr. Gamini Keerawella, Deputy Chief of Mission, on December 2, 2016 in Washington, D.C.
\textsuperscript{583} Email correspondence with the Centre for Environmental Justice, Hemantha Withanage, on May 1, 2017.
\textsuperscript{585} Meeting with United Nations Development Program, Ramitha Wijethunga, on January 27, 2017 in Colombo Sri Lanka.
\textsuperscript{586} Rebert, “Deforestation.”
\textsuperscript{587} Ibid.
\textsuperscript{588} Meeting with The World Bank, Ms. Darshani De Silva, on January 23, 2017 in Colombo, Sri Lanka.
\textsuperscript{589} Ibid.
Take the case of cardamom, for example. What was previously a great driver of deforestation in national parks is now banned and regulated. Cardamom cultivation was banned from certain national forest reserves in the early 2000s, and officially banned in the Knuckles Mountain Range in 2010, a crowning achievement during the tenure of the former Conservator General of Forests, H.M. Bandaratillake in order to preserve forestland and to bolster Sri Lanka’s international reputation as an eco-tourism destination. Another example is an action that CEJ led in coordination with several environmental organizations and Buddhist monk communities to ordain 1,000 trees to protect them from deforestation in 2014 at three different sites in Sri Lanka. Further evidence of the government’s commitment to environmental conservation is that the President of Sri Lanka, a former agriculturalist from the rural inner highlands, sits as the Minister of the Department of the Environment. Dr. Keerawella explained that partially due to the Buddhist influence in Sri Lanka, environmental stewardship, and a respect for all living things is engrained in Sri Lankan culture and history.

Today, there is still deforestation within protected conservation areas due to corruption, poor land management, and misaligned incentives for stakeholders. For example, in 2014 the Commission to Investigate Allegations of Bribery or Corruption found a forest officer guilty of accepting bribes for “demarcating the boundaries of the land in favour of an external party.” There are also cases where public officials illegally owned private residences within national park borders. Corruption undermines respect for the rule of law and corresponding forest protection and human rights protections, and as such, needs to be addressed. This section focuses on a few of the conservation challenges within protected areas, but it is critical to note that there are significant forest conservation challenges that cut across protected and unprotected areas, too. The main drivers of deforestation are attributable to commercial agriculture cultivation of annual or semi-perennial crops, and conservation efforts in these areas are undermined by a lack of accountability from local authorities.

Across the entire country, national conservation areas are under threat. In the north, significant deforestation occurred during the civil war in the 1990s as part of a counter-strategy by the Sri Lankan government in response to the LTTE tactic of hiding amongst the dense forests. Today in the north, there are allegations of religious and ethnic-fueled tensions regarding resettlements near the Wilpattu National Park and surrounding forest area. In the Eastern region, nearly 520 square kilometers of ancestral forestland were taken from the native Wanniyala-Aetto community...
through government land-grabs to institute a national park in the 1990s. In the south, there are reports of villagers encroaching on land and poaching protected trees from the Sinharaja Forest Reserve, a massive 8,864 hectare forest and UNESCO World Heritage Site that is a great source of pride for the country. In the central part of the country, deforestation threatens another UNESCO World Heritage Site, the Knuckles Range of the Central Highlands.

The Knuckles Mountain Range is a protected conservation area surrounding a national park that is covered by dense, tropical forests and sprinkled with breathtaking waterfalls. The research team focused on the Knuckles Range while in Sri Lanka, with the hope of uncovering human rights issues of the actors who protect the forest. While there, researchers learned of land mismanagement within Knuckles including cases of villagers engaging in illegal felling for firewood and livelihood activities, and cases where public officials are forced to provide illegal logging permits in the face of political pressure and sometimes due to material threats. Owning property and cultivation of any kind is illegal within the protected areas of Knuckles, but it is unsurprising that some illicit activity goes unnoticed or ignored with only three forest officers tasked with protecting more than 10,000 acres of mountainous forest. Furthermore, due to the risky nature of and unsatisfactory compensation scheme for Forest and Wildlife Officer positions, it is not uncommon for Forest and Wildlife Officers to succumb to political pressures from bureaucrats or to threats from poachers to provide illegal permits for felling, property ownership, and hunting throughout the nation’s conservation areas, not just in Knuckles. The government, civil society, and local communities recognize the value of forest reserves and are taking action to protect them against the vast deforestation occurring across the country.

While Sri Lanka strategically leverages the extreme density of its UNESCO World Heritage Sites for tourism and economic development purposes, the island has a history of executing development projects at the expense of deforestation and environmental degradation of unprotected forestland. Today, one of the most contentious environmentalism-versus-development debates is over the Chinese deep sea port in the south as part of the broader Southern Economic Zone development project. In 2017, the government preliminarily agreed to lease 80 percent of the Hambantota region for 99 years to China in exchange for a $1.1 billion debt reduction. However, the project was recently put on an indefinite hold as China backed out due to Sri Lankan political strife and violent protests against the project. Civil society organizations and religious communities passionately protested the construction of part of the Southern Economic Zone and their efforts bore fruit.
In addition to the deforestation impacts from corruption and mismanaged lands, one of the greatest challenges to national forest conservation within the already protected forests is illegal logging, according to public officials and civil society groups. Unpermitted felling and transportation of timber is fairly common throughout the government-protected wildlife and forest conservation areas, as well as outside of protected areas. Forest Department officers occasionally grant illegal or fake logging permits to private persons or timber traders, often in the face of political pressure or a verbal threat. In other instances of illegal felling, villagers and rural communities that depend on the forest’s natural resources, such as timber for fuel or particular plants for indigenous medicine, enter protected forest areas and illegally cut down trees. According to the forest officers at the Knuckles Forest Department Office at Matara, the impact of illegal felling is minimal if even noticeable. On the other hand, the Rainforest Protectors considered such cases of corruption and illegal felling to be serious problems illuminating government inaction, corruption, and coercion.

At the root of the main drivers of deforestation, development projects, and illegal felling lies a tension between the right to economic development and the right to a clean environment. While timber traders and villagers occasionally engage in illegal logging for fuel, medicine, or additional income, this activity degrades the natural resources that provide Sri Lanka with watershed management and other vital environmental services. On the other hand, big development projects such as the Deep Sea Port contribute to more large-scale instances of deforestation or environmental degradation, but also promise jobs and economic support to the entire country. The tension between economic development and forest conservation is only growing. After the war devastated Sri Lanka, the newly united government thrust Sri Lanka into a phase of rapid development with support from the private sector and foreign investments. The nation is still coping with these issues today as the government and CSOs simultaneously aim to achieve the SDGs, which marry environmental conservation, respect for human rights, and economic development, among other principles. This will be discussed in the thematic section on industrialization and globalization below.

### Indigenous Peoples

This section will examine Sri Lanka’s relationship with its indigenous people, focusing specifically on the Wanniyala-Aetto, a historically forest-dependent group. ILO 169 refers to indigenous people as those whom “retain some or all of their own social, economic, cultural and political institutions” and have done so based on “their descent from...”

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617 Meeting with Forest Department Officers of Knuckles Conservation Forest, Mr. Kapila Bandara and Ms. Chithra Ramatunge, on January 24, 2017 in Knuckles, Sri Lanka.


619 Meeting with the Embassy of Sri Lanka, Dr. Gamini Keerawella, Deputy Chief of Mission, on December 2, 2016 in Washington, D.C.
the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonialization or the establishment of present state boundaries” regardless of the legal status they hold.\(^{620}\) ILO 169 also states that the application of the convention and its protections necessitate self-identification as an indigenous group.\(^{621}\) Other characteristics may include an insistence of collective rather than individual rights, self-determination to continue and pass on their culture, and prior rights to land—though they may not always be respected by non-native peoples—that they have inhabited for centuries and that may be resource rich.\(^{622}\) Sri Lanka is not a State Party to ILO 169 and therefore does not recognize certain ethnic minorities under international law, who have lived on the island for thousands of years, as indigenous people.\(^{623}\) However, we must recognize that Sri Lanka voted in favor of UNDRIP, thereby demonstrating a willingness to respect indigenous rights.\(^{624}\)

Domestically speaking, Sri Lanka’s Constitution also does not specifically mention indigenous peoples nor does it have any provisions for the protection of the rights of indigenous peoples, which number between 1,229 and 4,510 people,\(^{625}\) or less than 1 percent of the population.\(^{626}\) Population numbers are estimated, as the country census does not distinguish native people as their own ethnic group.\(^{627}\) The National Development Policy Framework of 2011-2016 and the ILO Decent Work Country Programme 2013-2017, similarly to the constitution, do not mention Wanniyala-Aetto or indigenous peoples.\(^{628}\) In the current drafting of its new constitution, however, the Government of Sri Lanka has sought to hold consultations representative of the Sri Lanka population at a provincial and district level. The consultations include Wanniyala-Aetto.\(^{629}\)

Wanniyala-Aetto, as they call themselves, means forest-dwellers or forest beings; indeed, they have been living in the dry-zone monsoon forest areas of Sri Lanka for more than 28,500 years—long before the colonization of Ceylon and the creation of Sri Lanka as an independent country. The researchers found that the terms Veddah were often used; however, due to its pejorative connotation,\(^{630}\) the term Wanniyala-Aetto is used in this report. Veddahs, the name often used by non-native people, can mean “hunters” or “to be excluded.”\(^{631}\) However, Veddah “is more of a classification than a name,” eliciting images of backwardness and barbarity.\(^{632}\)

\(^{620}\) Indigenous and Tribal Peoples Convention, 1989.
\(^{621}\) Ibid.
\(^{625}\) Jasinghe, Fernando and Samarasuriya, “Update 2011.”
\(^{627}\) Jasinghe, Fernando and Samarasuriya, “Update 2011.”
\(^{628}\) Kumar Dhir, “Indigenous Peoples.”
The Wanniyala-Aetto are traditional hunter-gatherers, and, before the creation of national protected forests, used the forests to carry out their traditional practices and to sustain their livelihoods. The forest provided the Wanniyala-Aetto with not only harvest foods, but also medicine, tools, shelter and clothes.\footnote{Stegeborn, “The Disappearing Wanniyala-Aetto.”} Their dependence on the future productivity and health of the forest translated to the sustainable utilization of the land’s resources,\footnote{“Sri Lanka’s Forests.”} which in turn reflects the complexity of the forest’s ecology.\footnote{Stegeborn, “The Disappearing Wanniyala-Aetto.”} They invested in future, healthy populations by practicing sustainable hunting methods, including predominantly targeting males.\footnote{“Sri Lanka’s Forests.”}

This traditional way of life began to come to an end in the 1950s for most Wanniyala-Aetto with the creation of the Backward Communities Welfare Board, whose aim was to re-settle the indigenous population to make way for non-native people who would use their land for rice paddies.\footnote{Ibid.} The Gal Oya Scheme implemented by the government, which built Sri Lanka’s biggest reservoir between 1951 and 1955, forced the Wanniyala-Aetto off their traditional lands by flooding the land they used for hunting, gathering, and cave dwelling.\footnote{Stegeborn, “The Disappearing Wanniyala-Aetto.”} The Mahaweli Accelerated Development Project of 1977 sought to achieve two distinct goals: to set aside forestland for the purpose of wildlife conservation and nature more broadly, and to put land in the hands of industrial and investment interests. Water from the Mahaweli Ganga River system was diverted for irrigation and electricity, land that was used for hunting and beekeeping was razed to become living space for the country’s majority non-native population, and infrastructure projects and rice paddies were created on traditionally native lands.\footnote{“Sri Lanka’s Forests.”} The creation of the Maduru Oya National Park in 1983, with funding from UNEP, took almost 52,000 hectares of land away from the Wanniyala-Aetto.\footnote{Stegeborn, Wiveca, “Understanding Human Rights: Barriers in Understanding and Communication between the Wanniyala-Aetto of Sri Lanka and the International Community,” Nomadic Peoples 8, no. 2 (2004): 241-59, accessed March 24, 2017, http://www.jstor.org/stable/43123736.} They were not consulted on the project, were not given any say in the resulting consequences, and were forced out. While it drove some members of the community further into the forest, others had no choice but to comply. It effectively turned native people who sought to continue to live in their homeland and to carry out their traditional livelihoods into criminals. Although some community members have modernized and integrated into mainstream society, others still lack basic human rights, including quality health and education, identification, and freedom from discrimination.\footnote{Stegeborn, “The Disappearing Wanniyala-Aetto.”} It is unclear whether the poor outcomes they face are the result of a lack of understanding about Sri Lanka’s legal and organizational system or an unwillingness to participate in the infrastructure provided to them in their settlements.\footnote{The team was unfortunately unable to meet with members of the Wanniyala-Aetto community or with the government. The team is therefore not making conclusive remarks on the reasons for the gap in basic rights.} The remaining effects of these actions will be discussed in the thematic section on minority rights, specifically regarding Wanniyala-Aetto.
EHRDs in Sri Lanka

Environmental Human Rights Defenders (EHRDs), better known as Forest defenders in Sri Lanka, include national and international NGOs advocating for sustainable development, such as Rainforest Protectors; local communities promoting the protection of natural resources and the environment through collective participation; organizations promoting environmental equality and justice through legal means, such as the CEJ and EFL; and government officials working on the ground to protect the environment and ecosystems from encroachment and harm. All of these actors work daily to protect the environment and to advocate to ensure that rainforests, wildlife and nature are conserved. In Sri Lanka, forest defenders working to protect the environment, land, flora and fauna are particularly disadvantaged due to the lack of knowledge they have about their rights, and the legal system in general, as environmental advocates and the limited information and resources at their disposal to claim such rights.643

Wildlife and forest officers are assigned territories and regions to guard. Their duties include monitoring of the protected areas, preventing trespassing, and engaging with the larger community to promote conservation of the environment.644 Mr. Lalanath De Silva, one of the founding members of EFL as well as founder of Public Interest Law Foundation, mentions having worked on several cases in the 1990s for and on behalf of Wildlife and Forest Department officers who had rightfully fulfilled their duty but were mistreated, or assaulted and violated by people in power or superior officers from the army and police force in the process.645 Some officers have even been killed in line of duty by poachers and encroachers.646 As such, wildlife and forest officers take great risks in protecting the environment.647

Lakmali Jayaratne and Kishan Ratnayake, from the Rainforest Protectors of Sri Lanka, mention advocating for forests in the form of protests with villagers and other NGOs, as well as through advocacy letters to the government. They have been called in for meetings with officials and the Prime Minister, whom in no way intend harm upon anyone protesting and agree to cooperate and fulfill protestors’ wishes, several times to discuss matters peacefully, a sign of the current government’s approach as an advocate of freedom of speech and assembly; however, very little of that actually gets translated into action on part of the government.

644 Meeting with Forest Department Officers of Knuckles Conservation Forest, Mr. Kapila Bandara and Ms. Chithra Ramatunge, on January 24, 2017 in Knuckles, Sri Lanka.
645 Remote interview with Lalanath de Silva, in his personal capacity, on February 26, 2017 via Skype.
646 Ibid.
Findings

Politicization

Post-conflict, the government of Sri Lanka has been working extensively to transform Sri Lanka into a global player. Much of what the government does, and intends to do circles around party politics and political agendas. The mini-hydro projects in Sri Lanka, foreign Chinese investments for development projects in the southern part of the country, the declaration of various UNESCO Heritage Sites as well as the prioritization of infrastructure development over social development are some examples of a political angle on the activities of the government. Allegations of deforestation at Wilpattu have also taken on a political dimension divided along ethnic and religious lines; however, several stakeholders insist that the situation should instead be seen from an environmental perspective. This section elaborates on the politicization surrounding environmental advocacy and the protection and conservation of forests.

Under the current regime, the Ministry of Environment falls under the purview of the President, who used to be in charge of various environmental development projects. Mr. Tissa Jayatilaka, in his personal capacity, states that the President, an advocate of the environment himself, is increasingly challenged by environmental issues in a world that faces threats of global warming, climate change, deforestation and the current drought in Sri Lanka.

However, in a fast-paced environment, where governments change every few years, the politicization of sustainable development is inevitable. Mr. Lalanath De Silva, said "every time there is a change in regime, portfolios such as environment and wildlife are moved from one ministry to another, moved among agencies, and under ministers that have little to no relevance in regards to this matter."

Further, while the President wants to enforce changes in law and push for more accountability on the environment front, his hands remain tied due to party politics and campaign promises. Kishan Ratnayake of Rainforest Protectors emphasized that the President has certain executive powers that he does not use, and due to the collaboration between main political parties, administrative offices fall under the purview of the Prime Minister.

He adds that the Prime Minister has been pushing to release land for commercial agriculture from forest reserves, and is eager to bring in Chinese and Indian investors for projects. His goal is to create one million jobs—to do this, he wants to clear forestland to push for industrialization. “The Forest Department is like a rubber stamp,” he concludes. Kishan also points out that the declaration of forest reserves and protected areas as UNESCO World Heritage Sites, are basically tools for election campaigning--a sort of feather in the cap.

Former Director General of Wildlife Conservation, Mr. Sumith Pilapitiya, summarizes the political interference further. Mr. Pilapitiya, having worked in the World Bank Group for 23 years, made his first attempt at working with the government in March 2016 when he was appointed Director General of Wildlife Conservation. However, shortly into his tenure, Mr. Pilapitiya learned that government officials are not allowed to freely carry out their duties. It is the senior politicians who decide what must be done, and officials at the director level, such as Mr. Pilapitiya himself, are responsible for carrying out what the politicians want. He believes that the politicians should not be telling the professionals how to do their jobs, rather they should give policy directions and let the professionals carry out their duties to the best of their expertise. Further, Mr. Pilapitiya said that the professionals need to be given room,

648 Politicization is the action of causing an activity or event to become political in character.

649 Meeting with Tissa Jayatilika, Executive Director of the United States-Sri Lanka Fulbright Commission, speaking in his personal capacity, on January 26, 2017 in Colombo, Sri Lanka

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652 Ibid.
and if the bureaucrats fail to perform, the politicians should investigate and take action. However, “for the last 30 years the public sector in Sri Lanka has been gradually politicized,” he claims. Mr. Pilapitiya remained Director General of Wildlife Conservation for precisely two months, as he resigned shortly due to his disagreement with the workings of the government and refusal to carry out certain tasks he did not feel were appropriate for his job.653

While Mr. Pilapitiya was a World Bank Group retiree with a guaranteed pension before he joined the government and had that to fall back on after his resignation, most public servants lack the financial security, and rely solely on their government job for their livelihood and survival. Mr. Pilapitiya himself said “if I didn’t have a World Bank pension, I don’t know if I would have taken that decision.”654 Forest and wildlife officers, posted in national parks and protected areas, work long hours and put their lives at risk, be it from attack by wild animals or when preventing poachers from entering. A forest officer in Knuckles Range, on being asked whether the government and the Forest Department assign enough officials in protected areas mentions that, “there are three officials in charge of overlooking the 10,000 hectares of protected land that form the Knuckles Range.”655 This speaks volumes about the lack of manpower within protected areas and the increased burden upon officials in fulfilling their duties. Many times, Mr. Pilapitiya says, officers have lost their lives in the line of duty succumbing to injuries from crossfires between poachers and officials, from attack by animals and sometimes due to the fragile conditions of their postings. When one’s livelihood is dependent on one’s job, and his/her family depends on it for their livelihoods as well, it is but natural that these officers have to comply with political requests, even if these requests are illegal and a violation of the laws governing the wildlife sector.656

Further, wildlife officers and forest officials have often been arrested and charged on allegations of taking bribes in exchange for allowing external parties access into the protected areas.657 To elaborate, in July 2014, a wildlife official was arrested and charged with extortion after attempting to seek bribes in exchange for refraining from taking legal action against individuals caught illegally mining sand.658 As briefly mentioned above, in another case from 2014, a forest officer was caught accepting a bribe of 15,000 Sri Lankan rupees (approximately USD100) for demarcating the boundaries of the land in favor of an external party.659 While no direct connection was made between the government salaries and insurance schemes and the acts of bribery, the trend of developing countries often correlates with corruption within government structures, to compensate meagre salaries with bribes.

According to Ms. Sashikala Wijesiriwardane, a Sri Lankan public interest lawyer, many forest officers witness breaches of laws, but because of their precarious positions in a complex and corrupt bureaucratic system, cannot openly report violations for fear of losing their job.660 Instead, they often make anonymous reports to non-governmental public interest organizations in hopes that the non-governmental actors can follow up on claims. The Sri Lankan state system is crippled by a lack of protections for whistleblowers, claimed Ms. Wijesiriwardane,

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653 Remote interview with Sumith Pilapitiya in his personal capacity, on February 11, 2017 via Skype.
654 Ibid.
655 Meeting with Forest Department Officers of Knuckles Conservation Forest, Mr. Kapila Bandara and Ms. Chithra Ramatunge, on January 24, 2017 in Knuckles, Sri Lanka.
656 Remote interview with Sumith Pilapitiya in his personal capacity, on February 11, 2017 via Skype.
657 “Corruption Report.”
658 Ibid.
659 Ibid.
and so people do not speak up for fear of risking their reputable public sector jobs, their income stability, and their economic security. Most Forest and Wildlife Department officers share the values of the society at large with respect to the public sector, which is that the public sector jobs are the most valuable, while non-profit jobs have worse benefits and would not provide enough income for people to support a family. Given the idealistic perception of public sector employment, it is no surprise that public servants who depend on their jobs for their livelihood would not want to speak up, or blow the whistle, on relevant authorities for fear of retaliation. Part of this issue is that many public sector workers are not used to a government that is friendly to whistleblowers. However, this might change sooner than later, as the first draft of a new national policy for whistleblower protection is still in its very early stages, and is currently being reviewed for constitutionality.

As mentioned previously, cardamom cultivation is known to cause degradation of soil and damage to forests. Within the Knuckles protected area, cardamom cultivation is illegal. However, senior officials have been reported to obstruct and threaten district forest officers who attempt to evict cardamom farmers from the protected areas. Further, senior government employees and officials have recently been criticized and come under scrutiny from the media for building controversial holiday homes and villas within the protected Knuckles Range. Whether the officials are right in claiming that these buildings and constructions are legal, or whether there is truth in the claims by environmental advocates and the media that these are illegal establishments bought by power and influence, further consideration and investigation is needed along with proactive involvement by the government. Thus, the political climate in Sri Lanka governs, to a great extent, the capacity for environmental protection and conservation.

**Wilpattu**

The issue of deforestation in Wilpattu was well-known across the interview sample. Wilpattu Forest Complex, contains five forests including Wilpattu National Park (hereinafter “Wilpattu”), the area under controversy, and is located in the northwestern part of Sri Lanka. Media coverage and accounts of the issue at Wilpattu focus on the clearing of 3,400 acres of forest to provide lands for Muslims displaced during the civil war. One environmentalist states that Sri Lanka’s Central Environmental Authority (CEA), with the help of UNDP, the UN Environment Program, and the Ministry of Disaster Management, “mapped out and identified this area as suitable for settlement.” Forest officers then incorrectly gazetted part of the forest outside Wilpattu that had grown between the time a group of Muslims were evicted from their homes and the end of the civil war in 2009.

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661 Ibid.
662 Whistleblowing is “Whistleblowing – the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action” according to Transparency International.
When the state realized its mistake, over 1000 acres of the land were released and subsequently logged by the State Timber Corporation. Hemantha Withanage, Executive Director of the Centre for Environmental Justice (CEJ), clarifies that the overlapping area was small and that the villages where people lived were not gazetted. The forest destruction that has been occurring since 2012 is not in the national park protected by the Fauna and Flora Protection Ordinance but in the areas brought under the purview of the Forest Department in 2012.

Other environmentalists also denounce the framing of the issue at Wilpattu as a religious one, instead emphasizing the importance of seeing it as an environmental issue and warning that politicians sometimes “use caste, creed and religion to strengthen not only their businesses but their vote base.” Ms. Sashikala Wijesiriwardane of EFL explained that some environmentalists have misinformed the public, stating that the area being cleared and settled is in the protected area. It is in the larger forest complex, she clarified; however, it has been shown that there were no settlements in the area now being “resettled” since 1984. EFL, along with the Wildlife and Nature Protection Society (WNPS), has filed several cases concerning the illegal housing scheme and the two roads allegedly built through the national park during the war. Currently, the cases are in the judicial pipeline, mired in legal battles.

CEJ has filed cases against Minister Rishad Bathiudeen in 2015 for land grabbing, and Mr. Withanage agrees that IDPs deserve to return to the lands from which they were forcibly removed; however, this process and any development or environmental projects should adhere to the country’s laws. No environmental impact assessment (EIA) or initial environmental examination (IEE) was submitted for the areas that were cleared. Mr. Bathiudeen, a Muslim Parliamentarian argues that land originally belonging to certain individuals was incorrectly marked as protected forest area, and that all of the families who have returned to their lands provided authenticated deeds to the proper authorities. Furthermore, he explained, that the Lessons Learnt and Reconciliation Commission (LLRC) had allocated this land back to IDPs following the erroneous demarcation of protected forest. Other environmentalists argue that Mr. Bathiudeen and other politicians had forced the Forest Department’s hand in giving them 280 acres of national park land, upon which they have brought people from other areas and claimed resettlement. Mr. Withanage explained that the Forest Department cannot legally release land without de-gazzetting them through a parliamentary process.

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669 Email correspondence with the Centre for Environmental Justice, Hemantha Withanage, on May 1, 2017.
670 Ibid.
671 Nizham, “Wilpattu.”
674 Nizham, “Wilpattu.”
677 Email correspondence with the Centre for Environmental Justice, Hemantha Withanage, on May 1, 2017.
Another aspect of deforestation and environmental degradation is the work to construct housing projects, funded by the EU and the UN in the Wilpattu Forest that is not being carried out according to environmental laws.\textsuperscript{678} It is clear from these accounts that there are various perspectives on the deforestation occurring in or near Wilpattu, and that the legacy of Sri Lanka’s civil war appears to play a significant role in some accounts of it. Mr. Ramitha Wijethunga, however, believed political interference was behind the deforestation in the area; he conceded that there are not enough facts to determine the outcome of the issue, and that it is rather an emotional debate. Dr. Udagamma, Chairperson of the Human Rights Commission, described the situation as fraught from ethnic perspectives, and suggests that the answer lies in scientific evidence. One can determine whether settlements existed before the war by utilizing technology and examining maps. Looking at the controversy from either a human rights or environmental lens without the aid of such evidence will not help resolve the controversy.

In March 2017, the President signed close to 100,000 acres of land adjacent to Wilpattu into the larger conservation forest reserve to prevent further clearing of the area and to protect the land under the Fauna and Flora Ordinance. Any purchase or clearing of trees will require parliamentary and presidential approval.\textsuperscript{679} It would seem that this problem of deforestation has taken on an ethnic dimension or aspect that divides certain groups and further complicates its analysis; however, a geographic or environmental assessment would clear up the argument of whether settlements existed before the war. If they did, re-settlement of the population would require adhering to conservation best practices. As demonstrated by the President’s recent action, however, the approach toward the situation at Wilpattu leans primarily towards protecting the forest.

**Minority Rights**

As described in the history section above, Sri Lanka’s civil war only recently ended and its legacy is present in society’s attempts to move past cultural divisions. The National Unity Government that came into power in 2015 was supported by the majority of communities in the country and has taken steps to address grievances and to move toward reconciliation and unity by setting up national institutions for these purposes.\textsuperscript{680} Chairperson of the Human Rights Commission in Sri Lanka, Dr. Deepika Udagama, pointed out that in an ethnically diverse country such as Sri Lanka, many land and environmental issues are framed, more often than not, in the political climate of the country, including ethnicity.\textsuperscript{681}

**Wanniyala-Aetto**

Since the establishment of the national parks, anyone wishing to enter a park required a written permit from the Colombo office of the Department of Wildlife Conservation. In addition to the physical barrier of distance, many of the Wanniyala-Aetto do not read or write, rendering the process of applying for permits more difficult.\textsuperscript{682} The National Conservation Strategy adopted by Sri Lanka under the World Charter for Nature, which was accepted as a condition of UN funding for the conservation project,\textsuperscript{683} originally included a principle that called countries...
to recognize the indigenous peoples of their countries, to promote their livelihoods, and to integrate indigenous knowledge into education systems. However, when the charter was incorporated into UNEP, this clause was removed and the focus remained solely on the protection of flora and fauna.684 “This government policy…changes the very nature of the forest that Sri Lanka is attempting to preserve since the forest looks the way it does because of the Wanniyala-Aetto.”685 The policy also does not reflect an understanding of the mutually beneficial relationship between native people and the forest.686 Thus, the creation of the national forest, especially around Maduru Oya, may have long-term consequences for biodiversity if its traditional caretakers are no longer involved in its preservation.

While the majority of Wanniyala-Aetto were resettled outside the protected forest boundaries into camps with buildings for houses and schools, there were unintended consequences of government policies and actions since some indigenous people moved further into the forest.687 The resulting impact of forcibly moving native groups and attempting to integrate them into the larger society and economy without acknowledging their differences from non-natives is multi-faceted: the Wanniyala-Aetto live in poverty and have poor health outcomes688 and they face difficulties in accessing legal and basic social services due to geographic and linguistic barriers.689 Moreover, the judicial system is not compatible with their traditional ways, and is therefore difficult to understand even though it is imposed on them.690 Lalanath De Silva, speaking only in his private capacity as a lawyer with past experience in human rights in Sri Lanka, explained that without being legally recognized as an indigenous people, Wanniyala-Aetto are not granted prior and informed consent and are dealt with for entering the forest to gather wood or bees. “These are people who in many ways have been the traditional protectors of that forest (now Maduru National Park), and now to be put out of it and treated like criminals is really not the solution to the problem.”691 Furthermore, Mr. Pilapitiya explained that members of this community often do not meet the education qualifications required to become game guards -- positions they have sought from the Wildlife Department. With these positions, they could positively impact the department’s efforts, given their “extensive practical knowledge about wildlife and nature because of their lifestyle.”692 Game guards are responsible for patrolling the forest and managing tourists who visit the sites.693 It is difficult to determine the exact reasons why certain individuals who have applied for these jobs do not have the requisite educational attainment; however, it is plausible that these are related to the fact that government schools they attend take an assimilatory approach, teaching Sinhalese and Buddhism694 to indigenous people rather than their traditional culture. The Wanniyala-Aetto have fought for a long time to establish their rights, including a delegation who went to the UN in 1998,695 and to receive what they claim as their customary lands, a struggle which continues to this day as demonstrated by their strict exclusion from their traditional livelihoods and resettlement in unfamiliar lands.696

684 Stegeborn, “The Disappearing Wanniyala-Aetto.”
685 Ibid.
686 Stegeborn, “Understanding Human Rights.”
687 Stegeborn, “The Disappearing Wanniyala-Aetto.”
688 Jasinghe, Fernando and Samarasuriya, “Update 2011.”
689 “Seize the momentum.”
690 Stegeborn, “The Disappearing Wanniyala-Aetto.”
691 Remote interview with Lalanath de Silva, in his personal capacity, on February 26, 2017 via Skype.
692 Remote interview with Sumith Pilapitiya in his personal capacity, on February 11, 2017 via Skype.
693 Ibid.
696 Remote interview with Lalanath de Silva, in his personal capacity, on February 26, 2017 via Skype.
A special provision introduced in 1990 dictates that the Wanniyala-Aetto may carry out limited activities within a 1500-acre enclave declared as a “sanctuary” in Maduru Oya National Park. They are allowed to enter wildlife national protected areas for non-timber product harvesting, but not for hunting. They also may not collect honey or engage in agricultural cultivation. Mr. Sumith Pilapatiya, former Conservator General of the Department of Wildlife said that they are allowed into the conservation area near Maduru, where they live. He also explained that “the chieftains of the Veddah community” have access to the Wildlife Department in such a capacity that they can call the Director General of the Wildlife Department directly to discuss any issues. There have been some positive developments in terms of government responses. In 2011, a Memorandum of Understanding (MOU) was signed between the Department of Wildlife Conservation and Wanniyala-Aetto custodians. It seeks to provide some support in Wanniyala-Aetto’s use of forest resources, but does not include hunting. The Wildlife Department has also issued a limited number of permits for the utilization of forest resources and for fishing in the protected area to youth members of Wanniyala-Aetto. However, the government continues to address indigenous issues in a piece-meal manner rather than enacting comprehensive legislation that protects their rights. Sri Lanka would therefore benefit from ratifying ILO 169 and granting the Wanniyala-Aetto the afforded rights, respecting their indigenous institutions, cultural heritage, and traditional livelihoods, recognizing the positive impact they have had on the country’s forests for thousands of years.

Language Barriers

The national languages of Sri Lanka are Sinhala and Tamil, with English as a third language to “link” the former two. Sinhala is the dominant language spoken and written in the majority of government institutions and representative bodies, and by law enforcement and the military throughout the country. Tamil speakers are, therefore, at a disadvantage compared to the majority. For example, local authorities in the area of Wilpattu, which comprises 97 percent ethnic Tamils, circulated documents that attempted to clarify the dispute over settlements only in Sinhala. United Nations Special Rapporteur on Minority Issues, Rita Izsák-Ndiaye, after her visit to the country in the fall of 2016, said that inclusive and sustainable governance must include consultation with minorities and representation by these groups. Without these two components, they face difficulty in accessing legal and social services. The situation is such that language adds to the barrier of even accessing complaints mechanisms. As stated by Chairperson Udagamma of the Human Rights Commission, until 1987 Sinhala was the only official language of the country. A constitutional amendment adopted that year recognized Tamil as an official language. There are few resources available for proper translations despite the best of efforts and intentions. The Human Rights Commission has 10 regional offices around the country, and each speaks the language spoken by the predominant group in that region but translation services are still weak. This institution has received complaints about police authorities recording statements in a language different from the person bringing forth the complaint, resulting in misinformation and errors. These language barriers add to the difficulty of submitting complaints or reporting violations of both deforestation and human rights, therefore exacerbating the marginalization of minority populations and preventing proper protection of people and the forest.

698 Remote interview with Sumith Pilapitiya in his personal capacity, on February 11, 2017 via Skype.
699 Jasinghe, Fernando and Samarasuriya, “Update 2011.”
700 Kumar Dhir, “Indigenous Peoples.”
701 “Seize the momentum.”
702 Rebert, “Deforestation.”
In terms of the conservation community specifically, Ms. Darshani De Silva of the World Bank Group (WBG) elucidated the complexity of effectively making change throughout the country. With most conservationists and NGOs focusing on forest protection located in Colombo, interventions to educate communities and improve environmental conservation are typically one-time events and therefore difficult to sustain. If the project is not created by people from that region or community, it tends to be less successful.\(^{705}\) It would therefore suggest that language differences may add to this burden of forming lasting relationships between national forest defenders and local communities. Moreover, there are language discrepancies that may inhibit individuals from speaking up with or against CSOs and NGOs in forums created by the WBG and encouraged by the government regarding development projects. Ms. De Silva stated that one of the main reasons people do not express themselves in these forums is an issue of language. “I feel that they might feel intimidated; we have strong NGOs within Colombo who prefer to communicate in English and not the local language. So if someone else comes in [to an event organized by Colombo-based NGOs] being more comfortable with [the] local language, there is a kind of barrier and reluctance.”\(^{706}\) The government, though it typically conducts such discussions in local languages, produces certain reports such as EIAs and action plans in only one language.\(^{707}\) Greater efforts should be made to provide language services where there are minority groups. This may require additional training to strengthen translation services, to hire additional staff in complaint-receiving institutions and law enforcement, and to encourage the learning of a second language by existing staff. The Government of Sri Lanka seems to have these goals in mind, as demonstrated by the Constitution consulting process carried out throughout the country in 2016. Zonal Task Forces responsible for gathering input from Sri Lankans represented all ethnicities, religions, and regional languages.\(^{708}\)

**Industrialization and Globalization**

The tension between Sri Lanka’s increasing globalization, its path toward industrialization, and its forest conservation goals is a focal point in the struggles to protect the country’s natural resources. As mentioned previously, tensions between environmental protection and development frame much of the debate surrounding forest conservation. Three particular economic development issues are consistently referenced in contrast to forest conservation efforts by public and private sector stakeholders. The first is the government and private sector’s desire to attract foreign direct investment (FDI), especially from India and China.\(^{709}\) The second regards a massive mini-hydroelectric project mostly in the northern, more arid regions (the mini-hydroelectric projects are also referred to as mini-hydros).\(^{710}\) The third is the changing public appetite for CSOs.\(^{711}\) Each of these three development projects represents a larger trend in Sri Lanka’s modern economic development that must be harmonized with environmental protections for the island’s forests.

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\(^{706}\) Ibid.

\(^{707}\) Ibid.

\(^{708}\) Smriti, “Sri Lanka is Creating a New Constitution.”


\(^{711}\) Panel at Bandaranaike Centre for International Studies (BCIS) with Sashikala Wijesiriwardane, Environmental Foundation Limited, on January 26, 2017 in Colombo, Sri Lanka.
UN officials, public servants, and civil society activists all referenced the demand for investment in Sri Lanka and the global appetite to supply such investments in the post-war trading port island that is having a negative effect on the environment. After the war, the Chinese government was the largest financier of Sri Lanka’s reconstruction. During the previous regime, former President Rajapaksa signed a deal giving China access to the southern deep seaport, previously mentioned, in the Hambantota region where China is now constructing what will become Sri Lanka’s Southern Industrial Zone. Just prior to this research mission in Colombo, there was a massive protest in Hambantota where monks, local community members, and civil society rallied against the Chinese investment and development project. Hambantota is a dry and arid zone which means that water is a highly valued resource. However, due to the construction of the Southern Industrial Zone, many trees were cut down, depleting their watershed service capacity and creating an oversupply of water for locals. The protest was not solely about saving the environment or about protecting rural livelihoods, but also about party politics. Former President Rajapaksa, who is allegedly hoping to regain power, organized the protest as a way to win over the environmentalist, anti-development, and pro-farmer voters on his side. The protest erupted in violence from the current government. This is an example where the demand for foreign investment in Sri Lanka’s post-war context and the supply of foreign finance challenge the country’s efforts to protect forestland.

In a similar vein, Sri Lankan and international organizations are funding the construction of mini-hydroelectric dam projects throughout the country that, while providing renewable energy for the country, have some negative impacts on eco-system services such as natural watershed management. Throughout our time in Sri Lanka, policy makers highlighted the controversial mini-hydroelectric projects as a site of conflict between deforestation and economic development. According to the Sunday Times, in order to be granted a permit for each mini-hydro project, there must be an EIA done by a third party organization with public comments, but few EIAs were legitimate, public comments were not taken into account, and field investigations often did not occur. The widespread development of mini-hydros throughout the country has allegedly caused nearly 1,000...
kilometers of streams and rivers to dry out, although this number has not been verified. As a result of this unexpected aridity, downstream agriculture irrigation suffers, endemic and native fish are dying off or threatened, and there are unusual landslides because much of the newly cleared lands are being overexposed to rainwater. Some farming villages near Adam’s Peak no longer have access to water they once depended on for drinking and subsistence farming because of mini-hydroelectric projects in the area. These hydro projects are being funding by UNDP, the Government of Japan, the Asian Development Bank (ADB), other regional banks, and previously by the World Bank Group, to name a few. While Sri Lanka stands to benefit from increased FDI and projects that develop sustainable, renewable energy according to the United Nations Sustainable Development Goals, the government and developers must act in accordance with the codified laws regarding due diligence requirements such as those related to EIAs and public comments in the approval process of project permits.

One of the organizations developing the mini-hydroelectric projects is the Mini Hydro Developers Association that represents the business community. This association recently accused the Rainforest Protectors, one of the CSOs speaking out against the mini-hydro projects, of being funded by foreign entities representing anti-Sri Lankan goals. This accusation is significant because of the general public’s views of non-profits, non-governmental organizations, CSOs, and other civil society organizations as pro-Western and anti-Sri Lankan. Still, thanks largely to the process of information sharing that accompanies increased globalization, Sri Lanka has experienced growth in their civil society sector especially in the post-conflict era. However, this positive development has had negative pushback from the public. Activists and lawyers alluded to a decrease in trust between citizens and CSOs because citizens think that these organizations represent western values and an attempt to westernize Sri Lanka. This makes it more difficult for CSOs to conduct activities that might ultimately help Sri Lankan society. In this light, lawyers and activists who are trying to protect forestland outside of traditional public sector channels face misjudgment and discrimination by many of those who stand to benefit from such activism.

The aforementioned issues exemplify one of the largest problems facing Sri Lanka’s sustainable development: the conflict between industrialization, globalization, environmentalism, and human rights. Sri Lanka is a member of the UN Guiding Principles on Business and Human Rights (UNGP); under this “soft law” instrument, the government has a duty to protect human rights. Also under the UNGP, businesses operating within Sri Lanka have a duty to respect the human rights of those affected by any business operations such as the rights of local communities displaced by development projects.

720 “CEA Permits Mini-Hydro Projects.”
721 Email correspondence with the Centre for Environmental Justice, Hemantha Withanage, on May 1, 2017.
723 Ibid.
726 “CEA Permits Mini-Hydro Projects.”
Photo taken in the Sinharaja Forest, Sri Lanka
Policy Recommendations

Actions taken by the government of Sri Lanka demonstrate its commitment to the Sustainable Development Goals (SDGs) and its international legal obligations under various human rights treaties. However, in order to grow in a sustainable, ethical manner that respects the rights and interests of all stakeholders from all ethnic and religious backgrounds, the government must work more cooperatively with local, regional, and national private, public, indigenous, and civil society actors.

1. **Implement Protection Mechanisms for Human Rights Defenders:**

   Given the context of human rights in Sri Lanka, the research revealed that policies to protect victims of harassment, abuse, human rights violations, threats and other instances of violence, are inadequate and oftentimes not implemented or enforced sufficiently. The Human Rights Commission of Sri Lanka was set up in 1996 with an aim to uphold Sri Lanka’s commitment to protecting the human rights of its citizens. However, many people remain unaware of the Commission and its procedures and mechanisms to protect and defend human rights. Further, the Commission has not yet received any cases of violations of EHRDs’ rights. This may correlate to the lack of knowledge of the concept of EHRDs and that people who defend the forest and environment do not categorize themselves as defenders, or even lack of knowledge of basic human rights. Additionally, EHRDs, who are often targets of intimidation, harassment or any kind of abuse, are not aware of the legal mechanisms and remedies in place to assist them in their work. Therefore, the Government of Sri Lanka should expand, at the national, regional, and local levels, human rights protection and promotion programs such that all Sri Lankans, including EHRDs, enjoy better access to human rights protections.

2. **Revise the Governance Structure in the Ministry of Environment:**

   The government of Sri Lanka has made great strides in terms of prioritizing environmental issues, as evidenced by the President also serving also as the Minister of the Environment. As mentioned above, portfolios such as the Forest and Wildlife Departments are moved around and placed under different ministries, sometimes ones to which they have no relevance, when governments change. They should therefore be permanently combined under one broad ministry, such as that of the environment, that is headed by the President—to demonstrate the importance of environmental initiatives—and that has deputy ministers to lead each particular sub-department. This will strengthen the cohesion of environmental efforts and allow for collaboration, co-learning, and knowledge sharing across departments. It will in turn make policy implementation more effective for Sri Lanka to promote the SDGs and eco-tourism destinations.

3. **Recognize the Wanniyala-Aetto as Indigenous Peoples and Promote their Inclusion in Planning and Policy Making:**

   One must applaud how Sri Lanka has emboldened a more tolerant society for all linguistic and ethnic groups in the short time since the end of the civil war. One obstacle that detracts from the vision of a comprehensively tolerant Sri Lanka is how the state treats the Wanniyala-Aetto. The Wanniyala-Aetto must become a recognized indigenous group and Sri Lanka should sign and ratify ILO 169 on indigenous peoples. Ratification of ILO 169 would ensure the Wanniyala-Aetto’s collective rights.
The Forest and Wildlife Departments should also collaborate with communities and/or native peoples to participate in leadership and policies governing forestland, as they have a wealth of traditional and/or ancestral knowledge about their traditional lands. These same departments should also work with Wanniyala-Aetto community leaders or forest specialists to include them as part of the planning, policy, and implementation process as forest or wildlife officers or game guards. Recognizing the educational barriers to this community and the value that Wanniyala-Aetto would bring to conservation and environmental protection, strict educational requirements could be replaced with an apprenticeship program. This will increase the efficacy of forestry programs by incorporating indigenous/traditional/community knowledge into conservation efforts, provide alternative livelihoods for Wanniyala-Aetto and likely mitigate some of the land tenure and property rights issues between the Wanniyala-Aetto and the general Sri Lankan society.

4. **Ensure Independent and Legal Environmental Impact Assessments (EIAs) before Sanctioning Development Projects:**

It is imperative to ensure that EIAs are carried out legally with independent oversight committees and proper documentation as the law already states. Community input is also mandated by law, and should be a continuous, iterative part of the project process throughout the planning, execution, and monitoring stages. In addition, before any development project is signed, funded, constructed, and implemented by a foreign entity, the relevant ministries must ensure via contractual obligations that independent environmental and social impact assessments are carried out, and are accompanied by financial or other forms of sanctions or penalties for fraudulent or otherwise insufficient assessments.

5. **Change Perception of Civil Society Organizations (CSOs) through Engagement, Awareness and Support:**

The civil society sector in Sri Lanka has grown exponentially since the start of the new regime with groups for reconciliation, justice, reconstruction, and social inclusion advocating for changes in policy. However, some activists and staff of NGOs explained that in Sri Lanka, working for social issues, especially as part of a non-profit or social organization, is often not considered as prestigious as working for the government or the private sector. The government cannot sustainably achieve its goals without allowing space for citizen-based organizations to thrive and may find it difficult to solve public policy problems without partnering with civil society. The government should help to encourage civil society advocacy on social issues, which would help to change public opinion regarding NGOs in Sri Lanka. Currently, it is generally held that NGOs and activist organizations are Westernized concepts. The government should undertake public education efforts to spread awareness about domestic and international NGOs that are working to support the people and environment of Sri Lanka.
6. **Increase Capacity to Guard Forests and Addressing the Lag in Insurance Schemes:**

The Forest and Wildlife Departments must work towards increasing manpower on the ground. As mentioned above, in the Knuckles Region only three officers were in charge of guarding 10,000 hectares of protected forestland. Given this information, it is no surprise that officials sometimes lose their lives in the line of duty when fighting illegal poachers and encroachers from entering. They are simply outnumbered, and it is only natural for these guards to fear losing their lives. This lack of manpower correlates with accusations of forest officials accepting bribes in exchange for access to outside parties who seek to carry out illegal activities within the forest. When one fears for his or her life and when the government insurance schemes and protections for officers are inadequate to compensate for such dangerous duties, one may resort to means that not only protect the individual’s own life but that also best provide for his or her family. It is therefore crucial for the Wildlife and Forest Departments to increase the sheer number of officers in charge of guarding forest areas. This would allow for improved watch and protection of forest areas, as well as strengthened commitment of duty from officials. Due to the lack of manpower, officials are at times on duty for up to 24 hours. A larger workforce would ease the burden of responsibility with more officials to carry out fair and equal shifts. Further, this capacity increase should be complemented with a revised government insurance scheme in order to mitigate cases of bribery and encroachments into protected areas. Most officials do not have a second source of income, which may make the appeal of bribes in exchange for even seemingly innocuous, but illegal, activities more enticing. Remunerating officials substantially would help to avoid this kind of corruption, fill the workforce gap required to adequately protect the forests, and increase the willingness of officers to uphold and enforce the law, and to realize their potential to be EHRDs as well.

7. **Ensure Continuity of NGO/Environmental Programs:**

Projects that effectively support environmental and forest protection efforts, such as the community forestry program mentioned above sponsored by Australia Aid, are beneficial for Sri Lanka. Nevertheless, many of them lack continuity due to the nature of donor-funded projects and that they are implemented by NGOs based in Colombo. The lack of continuity brought about by temporary projects leaves communities to pick up the pieces after a project ends, and often results in project outcomes returning to their pre-project status, or worse. It is vital that NGOs and international institutions or entities undertaking projects in areas in which they are not located partner with local organizations or communities to ensure sustainability and continuity after the project term ends. This can be done by mandating that project proposals and contracts contain explicit commitments that clearly detail an exit strategy for the project and how to hand the project over completely to local organizations and community ownership.

8. **Promote Freedom within Political Structures and Hierarchy to Allow Officials to Conduct Independent Duties without Political Interference:**

The Government of Sri Lanka needs to contain elected officials’ scope over the work streams of other civil servants and implementing branches of ministries. Politicians should be limited in their ability to micromanage and dictate the activities of other bureaucratic agents to increase governance capacity, efficiency, accountability, and transparency. Bureaucrats on the ground implement policy directives from politicians by utilizing their own technical knowledge, and should be given the freedom to carry out their responsibilities. If they fail to do their assigned job, politicians may step in and sanction the bureaucratic agent. Ultimately, a better system of checks and balances across the government structure should be established to ensure individuals’ ability to perform their responsibilities without political pressure that may undermine their best efforts.
9. **Incorporate a Whistleblower Policy/Protection by Law:**

Corruption in Sri Lanka poses several obstacles to improving environmental, development, and human rights efforts. The country currently ranks 95th out of 176 countries on the Transparency International (TI) Index. As has been reflected in the report, officials and government employees may fear losing their jobs, if they speak against the interests of the government or speak up against any wrongdoings. There is a need for a whistleblower policy and protections to enable not only disclosure of information on illegal and unethical activities within the government, but also to foster a more transparent democratic society that guarantees freedom of speech and expression to government workers. Whistleblower protections are crucial to EHRDs because “many environmental violations and crimes are difficult to detect absent help from knowledgeable insiders,” according to Transparency International. Cases from the United States demonstrate the effectiveness and importance of whistleblower protections. Public servants who were removed from their positions at environmental agencies after speaking up about violations they witnessed won back their jobs back after appealing in the courts. While a new piece of legislation is being drafted, to protect whistleblowers, it remains uncertain whether it will pass through the Parliament or not. If it passes, it will reflect a great stride for human rights at large in the country, and will be particularly impactful for forest defenders. With robust and comprehensive whistleblower protections, Sri Lanka would not only be combatting corruption writ-large, but also Forest and Wildlife Officers would be empowered to officially report violations instead of making anonymous reports to non-governmental public interest agencies.

10. **Encourage Sustainable Development and Business Practices:**

It is worth celebrating that Sri Lanka is a signatory to the UN Guiding Principles for Business and Human Rights (UNGP). This is a step in the right direction. However, these soft-law commitments must be upheld throughout the logging and other natural resource supply chains in Sri Lanka. Harm to humans must be minimized at all costs and companies must respect the human rights of all actors and stakeholders in their supply chains. The UNGP also outlines clear obligations the State has, namely the duty to protect its citizens when businesses might be operating in a manner that is harmful or infringing on human rights. Sri Lanka should continue its efforts to mainstream human rights principles throughout its FDI projects, development efforts, and domestic business operations especially related to the human rights of people defending the forests, like forest officers and NGOs.

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730 A whistleblower is someone who “discloses information on misdeeds such as exposing corruption, fraud, mismanagement and other wrongdoing that threaten public health and safety, financial integrity, human rights, the environment, and rule of law. They help save countless lives and billions of dollars in public funds while preventing emerging scandals and disasters from worsening. (Source: International Principles for Whistleblower Legislation. Berlin: Transparency International, 2013.)


732 “Whistle Blowing.”

733 Hettige, “Sri Lanka Is (Finally) Drafting.”
Photo taken in Huma Falls, Sri Lanka
PART III: Comparative Analysis

Photo taken in Chuka, Mt. Kenya Region, Kenya
Comparative Analysis

The three country case studies revealed four important cross-cutting themes: 1) the meaning of environmental human rights defenders (EHRDs) in context; 2) the role and perception of international and non-governmental organizations; 3) tensions between economic development, conservation, and human rights; and 4) the role of forest officials. These cross-cutting themes weave together the three case studies and the discussion of EHRDs with a focus on forest defenders.

The Meaning of Environmental Human Rights Defenders in Context

Situation in Brief

Environmental human rights defenders (EHRDs) is a relatively new term that, although gaining traction, is not fully engrained in the international human rights discourse and often underutilized in domestic contexts. Generally, EHRDs are described as those – in their personal or professional capacity, individually or collectively – who undertake peaceful actions to achieve the full realization of “rights and fundamental freedoms as they relate to the enjoyment of a safe, healthy and sustainable environment.”734 Part of the emphasis behind the creation of the term was to delineate and raise awareness among human rights defenders (HRDs) and the connection between human rights and the environment.735 In the context of this study, the varying interpretations and applications of the term EHRDs, as it applies to environmental and land activists or forest defenders, as well as mischaracterizations of EHRDs, among different stakeholders, leads to difficulties in discerning the objectives of environmental defenders. As highlighted in the report, the term elicits reoccurring questions, such as: which groups or individuals are viewed or self-identified as EHRDs, and what are the implications for the landscapes in which they work? This section focuses on the gap between the international definition of the term EHRD and its application on the ground in Kenya, Peru, and Sri Lanka.

Misunderstandings

This research revealed a lack of understanding and misinterpretations of the term EHRD – who can be found in all three case studies, but represent themselves in various ways. The scope and focus of the work of EHRDs in Kenya, Peru and Sri Lanka varies such that the term implies a different meaning depending on the country.

Environmental human rights defenders, which include ‘forest defenders,’ is a broad categorization. For example, forest defenders in Kenya are generally community groups who primarily focus on obtaining land rights to gain access to and use the forest. On the other hand, the work of forest defenders in Peru is largely individualized behind indigenous protest leaders, with the principal goal of ending large-scale extractive projects that degrade the land and forest. While such environmental activism exists in Kenya too – Joel Ogada’s work in opposition to the salt mining off the Kenyan coast is one such example of organized efforts against extractive corporations736 – it is primarily outside of the forest context. As the majority of remaining forestland in Kenya has been taken under state control and protection, claims of degradation are done under government watch and thus Kenyan forest defenders direct their demands towards the state.

734 “Environmental Human Rights Defenders – Call for Inputs.”
Many EHRDs in Kenya also feel their work is restricted by the government’s implication that they are entangled in the global war on terror. The Boni Forest, for example, has long been the home to its traditional protectors, the Awer people, but has also become a refuge for al-Shabaab terrorists. The Kenyan government has often been undifferentiating in its classification of all forest-dwellers as ‘terrorists,’ resulting in arbitrary detentions and disappearances of local community members. If the government and civil society create linkages between terrorist activities and forest defenders, there are potentially serious implications for the status and lives of the Awer People. Such a link is especially dangerous as the term EHRD is not well known in Kenya and the identity of those associated with the term is still being formed.

Similar to Kenya, the use of EHRDs to describe environmental and land activists or forest defenders is not widespread in Peru; however, for many, the idea is directly associated with indigenous communities. During the 1980s, the Peruvian economic crisis left the government searching for ways to spur economic growth through the exploitation of its natural resources such as Amazon resources including timber and minerals. The government’s developmental aspirations directly impacted those living in the forest regions, e.g., indigenous communities, as these regions have traditionally been heavily populated by indigenous peoples. These communities have always resisted the external development of their land, and a result of the continued development, several individuals (primarily members of indigenous communities) have tried to defend their land through protests and other actions. In this respect, indigenous communities are therefore associated with the work of EHRDs as they seek to defend the environment. Considering the majority of these extractive development activities are carried out on the land of indigenous communities, those opposed to the projects were often members of indigenous communities. Many indigenous community members are indeed EHRDs as their work defends their land and the environment, yet the nature of Peruvian EHRDs extends beyond indigenous groups. There are many types of EHRDs in Peru, ranging from NGOs to independent individuals.

In Sri Lanka, the term EHRD and its connotations were entirely absent from the discussion surrounding environmental protection and human rights. While EHRD is not a term commonly used to discuss environmental protection in Sri Lanka, there are many different groups of defenders who protect or promote environmental rights – whether fighting illegal wildlife poaching and logging or protesting the construction of mini-hydro dams. However, in the research, interviewees tended to mention the efforts of the government and the Forest Department when asked about EHRDs in Sri Lanka. Forest defenders in Sri Lanka also include national and international NGOs advocating for sustainable development, local communities organizations promoting environmental equality and justice through legal means, and government officials working on the ground to protect the environment and ecosystems from encroachment and harm. The problem in the Sri Lankan context is that the work of NGOs, particularly on social issues, is generally seen as less legitimate than government work – a trend that carries into the arena of forest defending. All groups associated with environmental protection in Sri Lanka could benefit from the promotion of the term EHRD. Recognition and awareness of the term would help defenders in Sri Lanka classify themselves and provide knowledge of applicable legal and human rights mechanisms.


Question to Consider

What is the value added by promoting the term EHRDs?

The further promulgation of the term EHRDs on an international level would serve to connect actors defending environmental human rights transnationally. This would increase the legitimacy of the work of EHRDs and strengthen their support network. Additionally, augmented adoption of the term would help make defenders aware of the existing international and domestic legal instruments that would eventually assist in their activities. All groups involved in the protection of the environment could benefit from association with a legitimate, UN sanctioned, classification of those who work to protect the environment. An international EHRD community would bolster transnational networks to assist in the fight for the work and rights of environmental defenders through the dissemination of best practices and expansion of support.

Implications for EHRDs

Misunderstandings and misapplication of the term EHRDs to describe the work of forest defenders in this research present both negative and positive implications for forest defenders moving forward. At first, the terminology seems esoteric and foreign, which can invoke a negative reaction on local community levels. Yet, because the term EHRD is new and not yet commonly used in the conversation of environmental defenders, the term can still be applied to designate the proper individuals and groups and address the full scope of work these individuals or groups focus on. Further, oftentimes EHRDs are mischaracterized as people with anti-development sentiments, or as eco-terrorists, as mentioned in the Kenya case study. Spreading more awareness about the concept of EHRDs and adopting a term would make it difficult for opposing parties to wrongly characterize and classify the work of EHRDs.

The Role of Forest Officials

Situation in Brief

By definition, forest officials enforce laws against clearing forests. Whether as part of ministries of agriculture, environment or interior, their aim is to conserve indigenous plant and animal life, usually within national park systems. The biggest challenges most forest officials face, especially in the context of forest management, are limitations in personnel, corruption, and balancing the needs of local communities with conservation. Most forest department budgets are small, leading to an insufficient number (of mostly underprepared) rangers patrolling the forest; this is particularly challenging in areas deep into forestland, where illegal activity often goes undetected. Despite the low pay, dangerous conditions, and physical isolation, most forest officials choose to work in conservation because they enjoy being close to nature—whether that be endangered species like elephants in Kenya and Sri Lanka, or natural heritage like the Amazon Rainforest in Peru. That said, forests are rich in natural resources and draw investment from both large multinational firms and wealthy locals, who can pay forest officials much more to look the other way than local governments can pay for rangers to risk their lives.

Finally, most forest officers respond to alerts of illegal deforestation activities through voluntary reports from local communities; without collaboration with local communities, forest officials would be unable to track and arrest illegal logging. The perilous work of forest officers – opposing poaching, logging, and natural resource extraction – is vital for the continued existence of global forests and the biodiversity, including the people that depend upon it.

**The Challenge of Capacity in Peru**

Peru’s National Forest and Wildlife Service (SERFOR) is a new institution created by the Forestry Law of 2015. SERFOR provides policy guidance to 25 regional governments regarding forest control and management. Decentralized management, however, remains a challenge for the national conservation agenda. Subnational, or regional, governments are responsible for forest management within their territories, which can be large, densely forested, and hard to patrol. While forest officials are responsible for protecting the forests upon which indigenous peoples depend, they are simultaneously charged with protecting the natural resources that Peruvian extractive industries rely upon and promise to pull many thousands out of poverty. Forest officers have a massive mandate and limited resources. As referred to earlier in this report, SERFOR officials admit that even where land titling is clear and logging is illegal, regulations can be impossible to enforce in remote regions where small-scale extraction is difficult to monitor. Officials point to a need for better enforcement and funding at the regional level. New technology, including satellite monitoring for deforestation and drones to conduct inspections of hard-to-reach forest concessions, can improve the monitoring and response time for forest officials on the ground. Challenges in Peru stem from the absence of the state and enforcement mechanisms within isolated forest communities, who need enforcement of land tenure rights to protect their traditional lands and livelihoods.

**The Challenge to Combat Corruption in the Forest Service in Sri Lanka**

In Sri Lanka, forest and wildlife officers are assigned territories and regions to protect. Their duties include safeguarding the protected areas, preventing trespassing, and engaging with the larger community to promote conservation of the environment. Some forest field staff from the Forest and Wildlife Departments fall prey to political pressure (from bureaucrats) or financial pressure (from timber poachers) and allow illegal access to the forest and extraction of timber. Due to low salaries, irregular pay, and insufficient insurance, many Forest and Wildlife Department officials do not feel they are provided with adequate equipment and security to protect their own lives and provide for their families. Some may choose instead to make money breaking laws that are not well enforced than be killed protecting them.

**The Challenge to Collaborate with Local Communities in Kenya**

In 2005, the Kenya Forests Act created the Kenya Forest Service (KFS) and Community Forest Associations (CFAs); the law envisioned a system for co-management between the government and forest-adjacent communities, while strengthening the boundaries of protected forestland. Well-organized communities create their own CFAs and identify their own leadership who, together with KFS leadership - jointly establish management rules for nearby forested areas (which appear to emphasize conservation over sustainable use). KFS and CFA leadership together draft a ten-year joint forest management plan outlining forest conservation and sustainable development of community livelihoods. Such programs, where governments hand over natural resources to be managed by communities, are called community-based conservation (CBC). Most scholars agree that the success of a CBC...
system hinges on the extent to which they (i) improve community livelihoods and (ii) allow for community ownership of program design and management. Expanding sustainable livelihoods through CBC in Kenya has focused on mainly (wildlife) ecotourism, intensified agriculture surrounding and cultivation within (through the PELIS program) national forests, sustainable tree harvesting, planned livestock grazing paths, and other ways for communities to profit from ecosystem services. Though one community mentioned in this report, the Ogiek, have license to patrol the forest and assist in the arrests of illegal loggers, they lack sufficient vehicles and technology to be effective. Other communities, like the ones surround the Chuka forest, are not permitted into protected forestlands at all, though most have little opportunity to engage in management decisions. Challenges to Kenya’s KFS-CFA partnership mainly stem from the fact that forest scouts are rarely assigned to protect forestland near their own villages, but are rather sent to areas with illegal logging, leading to a lack of commitment by KFS scouts.

Analysis

In most countries, the enforcement of forest laws depend on voluntary reporting of deforestation; this is changing with real-time monitoring of forests through satellites, which can almost automatically identify hotspots of deforestation and trigger alerts to law enforcement officials, so they can catch illegal loggers in the act. Though advanced technology could sharply lower response time for forest rangers on the ground, rangers themselves must be better supported by their governments. According to the Thin Green Line Foundation, worldwide about two rangers are killed every week. Forest ranger offices are often located in non-remote areas, closer to communities but further from illegal activity, thus they should focus both on building community partnerships and improving remote technology, to more quickly respond to threats to protected areas and species. The KFG-CFA partnership in Kenya is a good example of a starting point for an effective CBC program for forest protection. In order to increase effectiveness and cut costs, forest officers might engage in training programs for CFA (community) members to better monitor and respond to threats in the forest themselves. Additionally, cash-strapped nations should search for ways to partner regionally to invest in technology to make tracking and responding to illegal activities easier.

The Role of International and Non-Governmental Organizations

Situation in Brief

Kenya, Peru, and Sri Lanka all have international organizations (IOs) and non-governmental organizations (NGOs) pursuing work related to the human rights of forest defenders. Depending on the context, these organizations often play different, mutable roles to assist each country in achieving overall development objectives, shed light on conservation practices and concerns of deforestation, and advocate for the rights of individuals and communities. In Kenya, a major regional hub for United Nations organizations and NGOs focused on conservation and advocacy, the roles of these types of organizations paradoxically seem to exist in harmony and conflict, especially against the backdrop of opposing development program goals and community land rights. In Peru, issues with the human rights of forest defenders arise concerning the development projects of IOs as well. Additionally, while several NGOs in Peru work to improve the lives of indigenous peoples, they have also been criticized for emphasizing their own goals over those of the communities. In Sri Lanka, local groups and the government challenge the work of NGOs and intergovernmental organizations as spreading western ideals, creating a difficult background to continue their efforts. This section seeks to compare and contrast the role of international organizations and NGOs across the country case studies and consider how the motivations, perceptions, and goals of these organizations impact the situation of EHRDs.

Multilateral Organizations and International Financial Institutions

In all three countries, multilateral organizations and international financial institutions (IFIs), including UN subsidiary bodies and the World Bank Group (WBG), have had a history of environmental projects related to forest protection. In the Peruvian and Kenyan contexts, international development projects often seem to overlook conservation and human rights at the expense of development. Additionally, in Sri Lanka, NGOs and IOs are often perceived as being associated with spreading western ideals, challenging the workings of these organizations. Further, the perception that working for social issues and causes (through IOs and NGOs) is not a financially sound option leads to difficulties in recruiting people to work for these organizations. Also, the policy guidelines of such institutions affect the treatment of EHRDs in all three countries. As of 2016, the updated WBG policy framework does not include obligations to uphold human rights but rather view them as a non-binding commitment. This lack of accountability shown by the WBG provides a definite source of concern for forest defenders as their actions may be countered with unchecked responses by international organizations, potentially resulting in human rights violations. Moreover, such involvement of IOs raises the question of who is an unbiased source of information in understanding the treatment of forest defenders.

In Kenya, international organizations that work on the situation of forest defenders include UNDP, UNEP, IDLO, and the WBG, with each having portfolios related to different aspects of environmental conservation, development, and human rights issues. UNDP works on the intersection of climate change, energy and the environment, democratic governance, and in collaboration with the UN-REDD+ forest program. UNEP’s breadth of work includes departments on international law and issues concerning indigenous peoples. Another organization, the International Development Law Organization (IDLO), works on issues of justice, sustainable development, and rule of law in Kenya as well, including participating in the drafting of the National Land Commission Act and the Commission for the Implementation of Constitution to Develop Evictions and Resettlement Procedures Bill (2012). The WBG, in conjunction with UNDP, implemented the aforementioned Natural Resource Management Project (NRMP) that sought to take advantage of arable farmland and promote economic growth in Kenya. Only after onset of this development project did the complexity of land rights issues in Kenya become apparent as “resettlement action plans” were imprecisely executed. Consequently, taking into account the WBG’s lack of commitment to upholding human rights, this project allegedly made the WBG complicit in the human rights violations associated with forced evictions. Furthermore, the work of each of these organizations can be considered as parts of a whole concerning the situation of EHRDs in Kenya. However, the extent and effectiveness of their work depend on cooperation with the national and local governments. For example, while the international community can suggest actions to improve the treatment of EHRDs, the national government must agree and create such policies on the ground in order to effect change. As a result, this situation elicits the ever-burning debate of where to draw the line between national sovereignty and international intervention.

748 Meeting (Conference Call) with Field Program Manager-Kenya of the International Development Law Organization, Felix Kyalo, on Feb 8, 2017.
750 Kushner, “The World Bank’s Broken Promise to ‘Do No Harm’.”
In Peru, two of the main international organizations involved in issues related to the human rights of forest defenders are the Inter-American Development Bank (IDB) and the WBG. Multilateral organizations like the UN and OAS as well as financial institutions like the IDB focus on fostering economic growth, which creates a setting more conducive to the work of forest defenders by promoting social and environmental policy reform. The WBG has a duty to ensure that social and environmental safeguards are implemented in projects related to water and sanitation, delineating protected areas, promoting renewable energy sources, and protecting forestland. Additionally, the WBG has instituted the Forest Investment Program, known as SAWETO that is dedicated to administering trust funds and strengthening the capacity of organizations working with indigenous groups. Through such programs, international organizations in Peru help push for the preparation of accurate environmental research and advocacy projects to foster policy-making. Therefore, the mandate of international organizations in Peru revolves around ensuring the processes necessary for development without a specific emphasis on human rights. Similar to the Kenyan case, human rights violations remain an issue for the WBG’s projects in Peru, which highlights the need for EHRDs to continue their work and uphold individual and collective environmental rights.

In Sri Lanka, the perception of international organizations as implementers of western values heavily influences their strategies. For example, three of the major international organizations that work on EHRD-related issues are the WBG, UNDP, and the UN FAO-REDD. Each of these organizations works closely with Sri Lankan government agencies to design and implement relevant programs. The WBG creates development projects that incorporate agencies of other governments as well as other intergovernmental organizations. For instance, the WBG has worked with the Australian Agency for International Development on community forestry projects. UNDP, along with other financial institutions such as the WBG and Asian Development Bank (ADB), funded a controversial mini-hydroelectric project that has caused rivers to dry up and fish species to die. Although the WBG has divested from the project, UNDP still funds this problematic program. Further, in Sri Lanka, there seems to be a dearth of public sector lawyers working on social and environmental issues. For example, in a meeting with UNDP Sri Lanka, Mr. Wijethunga mentioned having advertised for an environmental lawyer position at UNDP; however, the organization only received two applications. Although the cause for such a result could be a simple issue of advertising, it could also reflect more serious issues, such as an unwillingness to work for the public sector outside of the government. Additionally, the work of UNFAO-REDD revolves around carrying out the country action plan with the help of the Sri Lankan government. Consequently, the role of international organizations in Sri Lanka depends on how the government recognizes and promotes their projects. While they primarily act as development project implementers, at times certain projects they fund tend to harm the environment. Under such circumstances, the work of forest defenders becomes even more important to highlight questionable practices employed by international organizations and the government.

752 Meeting with World Bank Group representatives on January 26, 2017 in Lima, Peru.
753 Ibid.
754 Ibid.
755 Ibid.
756 Remote interview with Lalanath de Silva, in his personal capacity, on February 26, 2017 via Skype.
757 Meeting with Dr. Gamini Keerawella on December 2016 in Washington, D.C.
762 Meeting with Nalin Munasinghe, Sri Lanka - National Programme Manager at Sri Lanka UN-REDD Programme on January 27 2017 in Colombo, Sri Lanka
Overall, multilateral organizations and IFIs play similar roles in Kenya, Peru, and Sri Lanka. In each case, development projects supported by organizations, like the WBG, seek to promote economic growth. At the same time, the lack of regulatory framework and commitment to upholding individual and community rights clearly emerges in the implementation of these projects. As a result, human rights violations go unnoticed and unaccounted for; therefore, the work of forest defenders is impacted by having to mitigate the residual effects of these economic programs. In each country, there is an important connection between the role of international organizations and the national government. Ultimately, the administration of development projects depends on how well the international organizations can cooperate with the government and whether the national government is open to international intervention.

**International and National Non-Governmental Organizations**

International and national NGOs also play a role in the human rights of forest defenders in Kenya, Peru, and Sri Lanka. As larger organizations, international NGOs have mandates that extend across different contexts, which makes their work less tailored and specialized in all three countries. In contrast, national NGOs are able to get to the root problems facing local and indigenous communities to help solve them, albeit with some obstacles.

In Kenya, national NGOs usually fit within either the paradigm of conservation or advocacy of local groups. The Kenyan NGOs focused on conservation include the Kenya Forest Working Group, which works in relation with the Kenya Forest Service and government authorities. In addition, the Green Belt Movement, works with forest-adjacent communities and other local groups as well as the government to promote conservation and sustainable practices. Even though these organizations work with government authorities, it is difficult to implement the conservation practices that they suggest through policies. Organizations focused on advocacy for local groups include those working directly with communities such as the Ogiek People’s Development Program (OPDP) that works in the city of Nakuru and helps publicize the needs of community members. Local advocacy NGOs face challenges to their work including the fact that the government and international organizations often see them as radical groups. International NGOs also play a role in Kenya, including the Forest Peoples Program (FPP), which reports on the human rights violations of communities, including the situation of the Sengwer people. While these online updates provides visibility for the community in the international sphere, it is important to qualify that western media sources and other international NGOs have sensationalized the eviction process through the alleged use of photos from past evictions, making the situation unclear. Therefore, in the Kenyan context, international and national NGOs play a complicated role because their work both advocates for the causes of conservation and protecting the human rights of forest defenders and also skews the facts, impacting the effectiveness of their work.

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763 Meeting with Representatives from the Kenya Forest Working Group including Coordinator, Jackson Bambo, on Jan 24, 2017, in Nairobi Kenya.
764 Meeting with Representatives from the Green Belt Movement NGO on January 25, 2017 in Nairobi, Kenya.
765 Meeting with Representatives of Ogiek People’s Development Program (OPDP), on January 24, 2017 in Nakuru, Kenya.
766 Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.
In Peru, international NGOs such as Amazon Watch, Amnesty International, and Frontline Defenders work on issues related to the human rights of forest defenders. While their work is well-intentioned, some of these international NGOs are criticized by communities for seeking to promote their own image instead of focusing on protecting the rights of indigenous communities. As a result, some international NGOs are seen as inhibitive to the work of communities. At the local level, many NGOs work directly with indigenous communities including FECONAU, AIDESEP, and Frente de Defensa de Ucayali. These organizations act as representatives of specific local groups and help lend a voice to their promotion of collective rights. Many of these organizations work together; for instance, as of 2015, FECONAU joined the Frente de Defensa de Ucayali, and the two organizations work in partnership to develop economic, social, and cultural rights of the community. Other local NGOs include Sociedad Peruana de Derecho Ambiental (SPDA), Instituto de Defensa Legal (IDL), Environmental Investigation Agency, and Instituto Internacional de Derecho y Sociedad (IIDS) that work on environmental policy reform, indigenous rights, environmental crime, and structural change to the violations of indigenous rights. Overall, when considering the impact of the work of international and national NGOs on the work of EHRDs in Peru, both types of organizations work with indigenous people, but international NGOs may risk not being sufficiently in touch with the needs of local groups. Therefore, EHRDs must work closely with the national NGOs to make sure their voices are heard.

In Sri Lanka, working for an NGO is perceived as an undesirable job as public sector employment provides more security and benefits. Additionally, the work of NGOs is viewed as spreading western ideals and is often seen as anti-nationalist or anti-Sri Lankan. Therefore, the role of international NGOs in issues related to the human rights of forest defenders is hindered. One local organization, the Rainforest Protectors of Sri Lanka, works on conservation issues through various methods. For example, Rainforest Protectors purchases plots of untouched forestland in order to protect these areas from development projects. The organization also runs media campaigns to highlight deforestation issues and promotes political advocacy to improve legislation and enforcement of forest–protecting laws. Another organization, a non-profit public interest law firm known as Environmental Foundation Limited (EFL), files lawsuits on behalf of the public to protect the environment and those who actively work to protect the environment. As a non-partisan, non-political organization, they have developed a good working relationship with the government; however, as a non-profit, they still continue to seek and gain the respect that other lawyers and legal specialists have in Sri Lanka. International and national NGOs working on environmental and human rights issues in Sri Lanka face pushback due to public perception of NGOs in general, which impacts the work of EHRDs by creating a limited space in which they can work.

Across the board, international and national NGOs focused on environmental conservation and human rights issues are involved in Kenya, Peru, and Sri Lanka. In Kenya, local organizations face the challenge of ensuring that their voice is heard; however, at the same time, western media and international organizations have skewed reports of human rights violations. In Peru, national NGOs work more closely with communities; international NGOs have conservation and advocacy mandates, but they risk being trapped by their own interests. In contrast, in Sri Lanka, the work of local and international NGOs is under scrutiny by the government and the public.

770 Ibid.
771 Remote interview with Lalanath de Silva, in his personal capacity, on February 26, 2017 via Skype.
Questions to Consider

What is the best model for IFIs to work in a country?

The fact that IFIs such as the World Bank Group have implemented development projects in Kenya, Peru, and Sri Lanka allows for points of comparison. The overarching theme relates to the WBG neglecting a full commitment to human rights. In Kenya, human rights violations include above all forced evictions. In Peru, human rights come second to environmental conservation and development goals based on large-scale projects. In Sri Lanka, the mini-hydro dam project has caused insufficient access to water. The human rights violations that have occurred in all three countries highlight major weaknesses in the structure of development project models and their implementation. Clearly, the WBG policy guidelines do not prioritize human rights, which poses a contradiction since these development projects are essentially for the benefit of the communities involved and the environment. Moreover, implementing development projects without consulting the local communities seems to exacerbate the problem. In the future, the WBG should work in conformity with international and national human rights norms and it should involve local and indigenous communities in decision-making processes to fully address the objectives of its programs and achieve more than “moderately unsatisfactory” outcomes.772

How well do the goals of international organizations and international NGOs align with interests of the community?

In all three country case studies, aligning the goals of an organization with those of the community seem to pose an issue regarding the human rights of forest defenders. International organizations and international NGOs intervene in these countries based on an overarching mandate. Applying projects or initiatives to the local context can prove mismatched, creating friction between local and indigenous communities and the international organizations and NGOs. Local NGOs have a more specialized approach, which allows them to accurately advocate for joint solutions to human rights issues of community members and conservation. At the same time, international institutions and NGOs bring funding and create global awareness of issues facing local groups, so their work is extremely important to the overall development and growth in the country. Therefore, it is important for IOs, international NGOs, and national NGOs to keep working together to address different aspects of the treatment of forest defenders and to promote the work of EHRDs.

Are the perceptions of these organizations barriers to their work?

The perception of an organization’s work in a particular country can affect its actions, methods, and outcomes. Comparing the situation of NGOs in Kenya, Peru, and Sri Lanka, NGOs are seen as part of civil society in Peru, and advocacy organizations are common entities. In contrast, the situation of NGOs in Sri Lanka is improving as the current government has actually allowed for more NGO’s to exist compared to the previous regime when freedom of speech was very restricted. Similarly, in Kenya the radical image of some NGOs has caused the government to take their work less seriously. Thus, they must overcome barriers and defend two causes: proving their true intentions to help people and actually pursuing their advocacy work.

772 “ICR Review, Report Number: ICCRR14893.”
Implications for EHRDs

The promotion and protection of the human rights of forest defenders depend considerably on the support and awareness created by international organizations, international NGOs, and local NGOs. Without development programs, the country and its population, including EHRDs, would not see overall improvements in quality of life. Without the work of NGOs, concerns over human rights issues, overlooked by the projects of larger international financial institutions and multilateral organizations, would not be voiced. Therefore, IOs, international, and national NGOs affect the outcome of the treatment of EHRDs. In order to improve the treatment of forest defenders, international organizations can incorporate human rights norms into their “safeguards” or operational policies, in addition to social and environmental policies, so that the programs uphold basic legal, social, and ethical responsibilities concerning local groups. International NGOs can continue their work of promoting global awareness of EHRD issues, but it is important to involve fact-checking mechanisms and goal-auditing procedures to ensure that the organizations are following their mandates and disseminating quality information. Finally, local NGOs can cooperate more with international organizations and NGOs to procure resources and improve the effectiveness of their work on the ground.

Tension between Conservation, Economic Development and Human Rights

Introduction

Throughout the course of the research in Kenya, Peru, and Sri Lanka, tensions were apparent between environmental conservation and economic development, in all levels of policy and program issues. Respecting the challenges that developing countries face, this section analyzes the seeming tension between a right to a clean and safe environment and a right to development, or development goals. This conflict is at the crux of the Sustainable Development Goals (SDGs), the successor to the eight Millennium Development Goals (MDGs) that aimed to overcome economic and social hurdles such as global poverty, hunger and environmental sustainability. Unlike the MDGs, criticized by the international community for being too broad and unattainable, the SDGs outline seventeen specific, concrete goals to help shape a future for global economic development that is in harmony with international human rights and environmental conservation conventions.

The SDGs make progress on reconciling the tension between various generations, or categories, of human rights that include civil, political, social, economic, and collective rights. For example, Goal 7 is to “ensure access to affordable, reliable, sustainable and modern energy for all,” which reconciles the perceived tension between the right to a clean and safe environment and the right to development. Goal 7 exemplifies the harmonization of environmental protection and economic development by emphasizing the need for energy resources to be affordable for all people (including those at the bottom of the pyramid), while also highlighting the necessity for energy resources to be environmentally sound. This is one example of how policy goals can reconcile environmental protections and development prospects, such that they do not create a false choice between conservation and development.

776 “From MDGs to SDGs.”
779 “Goal 7 Sustainable Development Knowledge Platform,”
There is a long-standing history of legal, technical, and academic discourse on the issue of sustainable development and human rights (uniting environmentalism, economic development, and human rights). A prominent issue with mandating sustainable development in low or even middle-income countries is that they may not have the resources to invest in the development of green industries.  

Kenya, Peru, and Sri Lanka are all middle-income countries according to the World Bank Group Development Indicators (ranging from low-middle to upper-middle classifications), but historically have not had the financial reserves and investments to match the booming green economies of northern Europe. The leading green economies, according to the Global Green Economy Index, include Denmark, Germany, and Sweden. These countries have GDP per capita ranging between $41,000-$53,000 USD while Kenya, Peru, and Sri Lanka’s range of GDP per capita is from $1,300-6,000 USD, all in 2015 U.S. dollar terms. Many green economies, particularly the Western European countries, have also historically benefited from a type of imperialism and colonization that extracted natural resources from countries like Sri Lanka and Kenya. Thus, it is unsurprising that developing countries such as these are struggling to balance the need to “catch up” economically with the need to develop sustainably and ethically.

**Economic Development**

One must first understand the drivers of economic growth in the regions, in order to understand how development efforts come into conflict with environmental conservation and human rights. Peru’s contemporary development is fueled largely by the mining, timber, and palm oil industries. While these sectors drive economic development for the country, they are also environmentally degrading. On the other hand, economic development in Kenya is mostly carried out via international development projects led by partnerships between national ministries and international financial or development organizations. Kenya subscribes to the MDGs and SDGs; however, putting these goals into practice occasionally necessitates the re-organization of land use, which may require displacing local communities. Agencies charged with meeting development goals understandably seek to take advantage of Kenya’s fertile land for expanding commercial agricultural production, but this occasionally turns communities into collateral damage. For example, the World Bank Group’s NRMP project sought to restructure use of land for conservation purposes and led to forced evictions of the local Sengwer community by the Kenya Forest Service. Re-structuring land use is not unique to Kenya or to the developing world. Eminent domain policies are implemented throughout the United States.

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790 Kushner, “The World Bank’s Broken Promise to ‘Do No Harm’.”


Similar to Kenya, Sri Lanka’s rapid economic development was inspired by a need for post-war unity coupled with the need to rebuild, as evidenced by Prime Minister Ranil Wickremesinghe’s 2015 campaign promise to create one million new jobs.\footnote{793 Bilesha Weeraratne, “Do we really need that many new jobs?” \textit{Daily Financial Times}, August 17, 2015, accessed April 30, 2017, http://www.ft.lk/article/458505/Sri-Lanka-s-election-pledges--Do-we-really-need-that-many-new-jobs.} Development projects provide jobs for Sri Lankans, and these projects are recreating the country as a destination for tourism, industry, and transportation. However, too many of these projects have adverse environmental and social impacts that are often ignored, resulting in displacement and evictions of local communities. Countries should promote and strive for economic development projects that are just and sustainable.

\textbf{Environmental Forest Conservation Issues}

In addition to national economic development goals, the three countries also face different environmental conservation problems with respect to protecting forestland. In Kenya, illegal logging by companies and individuals mainly for the train system has contributed to vast deforestation.\footnote{794 Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on Jan. 23, 2017 in Nairobi, Kenya.} Kenyan organizations including government agencies, local forest-adjacent communities, and conservationists launched the national movement for forest conservation after the nation’s independence by creating national reserve lands.\footnote{795 Forestry Policies in Selected Countries in Africa, FAO, 1999.} However, forest conservation goals have been impeded by conflicts of interest between traditional communities’ agricultural livelihood practices\footnote{796 Meeting with Members of the Sengwer Community, Milka Chepkorir, Jan. 25, 2017, Nairobi, Kenya.} and the government’s strategies for conservation.\footnote{797 Meeting with Representatives from Kenya Forest Service Nairobi Headquarters- Forest Conservation and Management Office and Enforcement Office on January 24, 2017 in Nairobi, Kenya.} Similarly, in Peru, researchers found that forest roads built by illegal loggers\footnote{798 Julia M. Urrunaga et al., “The Laundering Machine,” \textit{Environmental Investigation Agency}, 2012, Pp. 4} for access to small-scale agriculture and commercial mining are the leading drivers of deforestation and degradation.\footnote{799 “Deforestation by Definition,” \textit{Environmental Investigation Agency}, 2015, https://s3.amazonaws.com/environmental-investigation-agency/assets/2015/04/Deforestation_By_Definition.pdf.} Illegal permits for commercial mining and palm oil sourcing continues to threaten the Ucayali forest in the Peruvian Amazon, but local communities, national agencies, and international organizations are working together to protect the forest.\footnote{800 Ibid.} Finally, in Sri Lanka, current threats to forest conservation include illegal timber logging, small-scale agriculture, and development projects.\footnote{801 Meeting with Rainforest Protectors of Sri Lanka, Lakmali Jayaratna and Kishan Ratnayake, on January 26, 2017 in Colombo, Sri Lanka.} Like Kenya and Peru, various actors are working to preserve Sri Lankan forest cover including non-governmental organizations and public sector officials from the Forest and Wildlife Departments.

In all three cases, the issue of insufficient or illegal Environmental Impact Assessments (EIAs) surfaced as catalysts for negative effects of some development projects. In Peru, palm oil plantation agri-businesses skirted legal EIA requirements\footnote{802 Ibid. Juan Luis Dammert Bello and Julia Urrunaga.} while in Kenya certain legal plantation schemes do not require EIAs despite having significant negative impacts on local communities\footnote{803 Meeting with Chuka Community and Human Rights Lawyer, Wendy Mutegi, on Jan 27, 2017 in Chuka, Kenya.} and in Sri Lanka there were reports of EIAs either not being conducted or being falsified in spite of legislation requiring third party auditors to provide EIAs for development projects.\footnote{804 “CEA permits mini-hydro projects sans IA: RPSL,” \textit{The Sunday Times Sri Lanka}, accessed April 09, 2017, http://www.sundaytimes.lk/170402/news/cea-permits-mini-hydro-projects-sans-eia-rpsl-235068.html.}
EIAs are an important tool in achieving sustainable development because, if done correctly, they can properly identify and address any potential environmental issues that may result from a development or construction project.\(^{805}\) If EIAs are not being carried out effectively, then there is an increased risk of negative environmental impacts from such project. The Food and Agriculture Organization (FAO) claims that EIAs are vital to development projects because they allow for the opportunity to “to avoid adverse impacts and to ensure long term benefits led to the concept of sustainability.”\(^{806}\)

**Human Rights Climate**

The intersections of colonial history, corrupt institutions, and economic growing pains shape the human rights situation in all three countries - Kenya, Peru, and Sri Lanka. Forest defenders in Kenya face abuses, such as illegal land-grabs of indigenous ancestral lands and evictions that lead to a lack of water, shelter, and food.\(^{807}\) Often, the work of forest defenders and human rights defenders (HRDs) is met with retaliation.\(^{808}\) Forest defenders in Peru are criminalized, mistreated, and threatened for attempting to protect the Ucayali Forest.\(^{809}\) This is partially due to the fact that there is a weak normative framework around the protection of HRDs and, according to the OHCHR, MNCs in Peru have dangerous leeway to hire private security forces that often come into direct conflict with HRDs.\(^{810}\) Finally, in Sri Lanka, the situation is slightly better as the country seeks to rectify its past repression of HRDs and whistleblowers.\(^{811}\) Previously, there were rampant cases of forced disappearances, murder, and restrictions on freedom of speech and assembly for people who spoke up against the government during the war.\(^{812}\) Today, forest defenders in Sri Lanka face threats from foreign investors, illegal loggers and poachers, political pressure, and lack of redress mechanisms.

One of the most salient human rights problems facing forest defenders in each country is the corruption within bureaucracies that prevents the effective implementation of well-drafted policies. Out of 176 countries (with Denmark ranking highest and Somalia ranking the lowest of 176 countries), Sri Lanka ranks 95th, Peru at 101st, and Kenya at 145th on Transparency International’s Corruption Perception Index of 2016.\(^{813}\) These rankings represent the high barrier for seeking justice on behalf of those speaking out against human rights abuses. Corruption undermines a State’s duty to fully realize human rights.\(^{814}\)


\(^{806}\) Ibid.

\(^{807}\) Meeting with Members of the Sengwer Community, Yator Kiptum, Jan. 25, 2017, Nairobi, Kenya.

\(^{808}\) Ibid.


\(^{812}\) Ibid.


\(^{814}\) “Human Rights and Anti-Corruption.”
Protection for Environmental Human Rights Defenders

Environmental defenders are under material threat around the world. Global Witness, an international NGO, measures the number of people murdered while protecting the environment. In their rankings, Peru stands out among the three country cases as the most dangerous for environmental human rights defenders given their EHRD mortality rates. This fact is likely related to the country’s economic dependence on the mining sector and its booming timber and palm oil industries throughout the Peruvian Amazon. Peru lost 12 environmental defenders in 2015 alone and more than 50 environmental defenders in the last five years. There was only one EHRD murder reported in Sri Lanka in 2015, and no reports of this type in Kenya from 2010-2016 according to Global Witness. The researchers hope that this report will help decision-makers better implement policies that protect environmental human rights defenders in Kenya, Peru, and Sri Lanka.

Comparative Political Analysis

The three main comparative political approaches are the rational actor perspective, the comparative historical perspective, and the rational choice institutionalist perspective. Projects oftentimes cause environmental or human rights abuses, such as by displacing local communities without proper environmental impact assessments. Governments, international financial institutions, and intergovernmental organizations are entrenched institutions with sticky rules that are almost impossible to change; therefore, when these institutions engage in harmful practices, it is a long, upward battle towards change.
Broadly, the comparative political approaches help researchers, policy drafters, and decision makers understand the different powers at play and the various perspectives that ought to be considered when drafting new legislation or designing new programs for sustainable, rights-based development.

The rational actor or rational choice approach examines individuals as the level of analysis under the assumption that individuals are rational and seek to maximize their self-interest. There are an innumerable amount of actors throughout all of the stakeholder groups identified in this report from community leaders to government officers. A clear trend across these cases is that each country had or has corrupt or self-interested officials that seek to maximize their personal gains at the cost of the broader polity. On the other side of the coin, there were other rational actors working for government agencies that sought to maximize their self-interest, but in those cases their self-interest aligned with their duty to protect the environment from timber poachers or encroachers. Similarly, each case also highlighted individual forest conservationists who fought for their self-interest, which in the Peru and Kenya cases also aligned with the larger communal self-interest of cultural and community preservation. Misaligned incentives for stakeholders and influential actors is a key trend that led to unsatisfactory outcomes for the human rights of forest defenders.

The comparative historical approach is rather useful in this analysis because of the post-colonial context in which Kenya, Peru, and Sri Lanka exist. The key trend from the historical angle is undoubtedly the colonial history of extraction of natural resources from Peru, Kenya, and Sri Lanka. The British and Spanish imperial powers disrupted the natural landscapes of the countries long before any of the environmental issues arose that are discussed in this report. The colonial powers industrialized at the expense of human rights and of the environment in each country, so it seems unreasonable to expect that developing post-colonial countries would be able to “catch up” without their own process of resource extraction and industrialization. Furthermore, the legacy of British colonialism changed the course of Kenyan and Sri Lankan history and in particular left the British governance structures in place without an exit strategy, leaving Kenya and Sri Lanka to reconcile imperial government institutions with newly independent nationhood. Another notable historical trend is the history of civil war in Peru and Sri Lanka that delayed the progress of human rights and sustainable development as detailed in the above case studies.

Finally, from the rational comparative institutionalist perspective, two main trends are clear regarding the role of formal and informal institutions that span norms, codified laws, and government bureaucracies. First, government institutions, which include codified laws and customary norms, as well as public agencies are crippled by corruption and weakened by political pressures. For example, occasionally the Sri Lankan Forest Department representatives cannot accomplish their goals because of the interference of party politics or in Peru where loopholes in property rights laws regarding plantation agriculture defeat the purpose of such laws. The second trend regarding institutions is that the same IFIs and IOs that are charged with funding or implementing development
PART IV: Conclusion

Photo taken in Pucallpa, Ucayali Region, Peru
Conclusion

As this report details, there are many threats to the health of the world’s forests, the people who depend on them, and those that fight to protect them. Healthy forests are essential to the full realization of a myriad of human rights. The globe relies on the forests’ health as a bulwark against climate change; local communities rely on them for food, water, and livelihoods; and flora and fauna rely on them to thrive. From the atmosphere to the soil, from the air we breathe to the plants that grow, we all depend on the health of the world’s forests. So, when forest defenders sound the alarm about development projects, illegal logging operations, or land use policies, all actors involved should take pause. As we all depend on healthy forests, we all depend on a safe and welcoming landscape for forest defenders to express and remedy their concerns.

Based on the three case study countries, there were several common themes or policy recommendations to improve the landscape for forest defenders. A recommendation common to all three cases was to increase enforcement and promotion of human rights laws. In Kenya, restrictions on freedom of speech and assembly have impacted human rights defenders, leading to arrest, fines, and inherently have had a chilling affect on their activities. Kenya, being a State Party to many of the core international human rights law treaties, should align their laws and enforcement with international standards consistent with Articles 2(5) and 2(6) of their 2010 Constitution. In Peru, EHRDs subjected to harassment, threats, and violence do not have sufficient avenues for protection. EHRDs involved in civil proceedings, typically regarding issues such as land titles, are not offered witness protection. As such, Peru should expand witness protection programs as well as fulfilling their responsibility to provide effective remedies to all EHRDs that are being threatened, harassed, or abused. In Sri Lanka, more promotional activities are needed to ensure that the public is aware of the idea of EHRDs, along with the mechanisms available for redress, including promoting the procedures and mechanisms of the national Human Rights Commission.

As indigenous leaders and communities are often at the forefront of advocacy for environmental and land rights, another common recommendation was to fully recognize the rights of marginalized communities. In Kenya, because of a faulty land allocation process, communities such as the Sengwer, Ogiek of Mau Forest, Ogiek of Mt. Elgon, Aweer, and Yaaku people reside illegally on their once ancestral, now forest reserve land. As such, Kenya should employ the Community Land Act, passed in September 2016, which recognizes both individual and collective rights to the community land, and affords land rights to the indigenous communities that were excluded from the initial forest-adjacent land allocation. In Peru, deficiencies in the free, prior, and informed consent (FPIC) process were present. There were instances of companies using member(s) of the indigenous group to represent the entire community without consideration of the power structure in that particular community, such that due diligence clauses were fulfilled in a deceptive manner. Thus, it is necessary to have a proportionate presence of indigenous representatives on FPIC boards to ensure that the participatory process is effective, inclusive, and transparent in determining the sustainable use of the natural resources. In Sri Lanka, the Wanniya-Aetto, a traditional forest-dwelling people, must become a recognized indigenous group to fully ensure their rights as indigenous peoples. As such, Sri Lanka should sign, ratify, and implement ILO 169 on Indigenous Peoples.

On a related issue, the lack of fair environmental impact assessments (EIAs) was a repeated theme in two of the case studies. In Peru, EIAs are outsourced to third parties, which are then registered with the Ministry of Agriculture without a subsequent approval process for the EIA. Consequently, individuals or private enterprises can hire third parties to conduct EIAs with findings that reflect their interests rather than a fair assessment of the environmental impacts. As such, Peru needs to close this oversight gap to ensure that EIAs are fairly conducted. In Peru, there are also loopholes that allow companies to avoid obtaining EIAs for cultivating sizeable areas of the rainforest. For example, Plantaciones de Pucallpa purchased many adjacent small plots
of land, rather than one large plot, to avoid triggering a required EIA. Therefore, Peru must close this loophole and enforce EIA requirements. In Sri Lanka, there were barriers to accessing EIAs; although government discussions were in local languages, certain documents like EIAs, were only available in one language. Further, there were reported issues with the legitimacy of EIAs, not taking into account public comments, and not conducting field investigations. Consequently, Sri Lanka must ensure that EIAs are carried out legally with independent oversight committees and proper documentation as per its law. Community input is also required by law, and should be a continuous process throughout the planning, execution, and monitoring stages of the project. Proper EIAs are fundamental to protecting the health of forests and those who depend on them.

Another common issue throughout the case studies was that of illegal logging. Illegal logging is the main driver of forest degradation in the Peruvian Amazon. Peru has made international commitments to reduce deforestation driven by illegal logging, but significant resource constraints impede progress. Forest authorities do not have adequate resources for tracking and responding to illegal activities deep in the forest. As such, Peru should increase the budget of forest agencies and hire more forest officers to increase patrolling capacity. The presence of more federal authorities may deter illegal actors from building new roads and scaling up large-scale operations, as well as reinforce the activities of forest defenders who currently stand largely alone in forest protection. In Kenya, the fight against illegal logging has often focused on small actions of forest-adjacent communities, who cut down trees for firewood, rather than on more egregious offenders. Therefore, the Kenya Forest Service (KFS) should increase night and air patrol programs to look for individuals unlawfully felling trees for profit, along with increasing fines and prison sentences for illegal logging to bolster deterrence. In Sri Lanka, illegal logging is a significant challenge to forest conservation. Forest officers sometimes issue illegal or fake logging permits for a variety of reasons, including political pressure, threats, or even corruption. Local villagers also engage in illegal felling for firewood or livelihood activities. So, like their counterparts, Sri Lanka should increase their law enforcement capacity with a focus on serious offenders.

An issue that often goes hand-in-hand with illegal logging and other illicit activities is corruption. All the case studies sought to address corruption along with the underlying issues in the respective forest services. Forest officers often have high risk jobs without adequate equipment, training, compensation, or benefits, which may incentivize corruption or decrease job performance. In Kenya, the government should investigate allegations that members of the KFS, including forest scouts, have failed to enforce measures against illegal logging and permitted the unlawful acquisition of licenses. Moreover, Kenya should ensure that forest rangers have basic supplies and benefits, such as life insurance. In Peru, the central government should promote the establishment of more effective accountability mechanisms at the regional levels, as well as better compensation mechanisms for regional law enforcement officers, to guarantee the transparency of the regional institutions and prevent corruption. Similar recommendations for Sri Lanka with regards to providing adequate insurance schemes and increasing personnel to match on the ground needs, in the hopes of improving job performance and deterring corruption. Corruption inhibits the work and human rights of forest defenders. Moreover, it is important to recognize the capacity that forest officers have to be EHRDs themselves, given the nature of their work. States should provide them with the necessary tools to fully realize their potential as defenders of the forest.

As business enterprises are involved in a significant amount of the activities impacting EHRDs, it is necessary for all domestic and transnational companies to adopt the United Nations Guiding Principles for Business and Human Rights (UNGPs). This recommendation was most prominent in the Peru context, given the impact of extractive industries, logging, and agri-businesses. Therefore, it is necessary for the government and civil society organizations to advocate for the adoption of the UNGP when carrying out projects in Peru.
To answer the premise of the report title, who protects forest defenders? It primarily rests on the shoulders of States. States are responsible for promoting, protecting, and fulfilling human rights, which includes regulating other actors, such as businesses on their territory. Businesses, other non-State actors, and multilateral institutions also have a responsibility to respect the rights of forest defenders. Development projects cannot be rushed through without due regard for the human rights of those affected. Finally, we - you and me - have a responsibility to forest defenders. As Article 18(3) of the Declaration on Human Rights Defenders reminds us, we all “have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.” Thus, on this shared Earth, we all have a role to play in promoting human rights, including the right to a clean environment and the rights of those who defend it.
Bibliography


Email Correspondence with the Centre for Environmental Justice, Hemantha Withanage, on May 1, 2017.

Email Correspondence with Center for Environmental Studies University of Peradeniya, Professor Palitha Weerakkody on May 16, 2017.

Email Correspondence with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on April 5, 2017.

Email Correspondence with UNDP Sustainable Development Cluster Senior Policy Advisor, Josep Gari, on April 5, 2017.


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Meeting with Abel Vásquez Panduro, on January 25, 2017, in Pucallpa, Peru.

Meeting with Alvaro Masquez Salvador of the IDL, on January 26, 2017, in Lima, Peru.

Meeting (Conference Call) with Field Program Manager-Kenya of the International Development Law Organization, Felix Kyalo, on February 8, 2017.

Meeting (Conference Call) with Independent International Land Tenure Expert, Dr. Liz Alden Wily, on March 2, 2017.

Meeting (Conference Call) with UNDP Sustainable Development Cluster Senior Policy Advisor, Josep Gari, on March 3, 2017.

Meeting with Chairman for the Center for Environmental Action and Karura Forest Community Forest Association, Professor Karanja Njoroge, on January 23, 2017, in Nairobi, Kenya.


Meeting with Cristina Blanco of the IDEHPUCP, on January 26, 2017, in Lima, Peru.


Meeting with Forest Department Officers of Knuckles Conservation Forest, Mr. Kapila Bandara and Ms. Chithra Ramatunge, on January 24, 2017 in Knuckles, Sri Lanka.

Meeting with Forest Supervisors from IIAP, on January 24, 2017, in Pucallpa, Peru.

Meeting with the Embassy of Sri Lanka, Dr. Gamini Keerawella, Deputy Chief of Mission, on December 2, 2016 in Washington, D.C.

Meeting with Herath Bandaratillake, Ex-Conservator General of Forest Department, on January 17, 2017 in Colombo, Sri Lanka.


Meeting with IIAP, on January 24, 2017, in Pucallpa, Peru.
Meeting with Juan Luis Dammert Bello, on January 26, 2017, in Lima, Peru.

Meeting with Julia Urrunaga of the EIA, on January 26, 2017, in Lima, Peru.

Meeting with Lizardo Cauper of AIDESEP-ORAU, on January 23, 2017, in Pucallpa, Peru.

Meeting with Logoman Forest Scouts in Mau Forest, on January 24, 2017, in Nakuru, Kenya.


Meeting with Members of the Sengwer Community, Milka Chepkorir, on January 25, 2017, in Nairobi, Kenya.

Meeting with MINAM, on January 27, 2017, in Lima, Peru.


Meeting with Raquel Yrigoyen of the IILS, on January 27, 2017, in Lima, Peru.

Meeting with Representative from the Kenya Forest Service Chuka Extension Services, Benjamin Kinyili, on January 27, 2017, in Chuka, Kenya.

Meeting with Representatives from the Green Belt Movement NGO, on January 25, 2017, in Nairobi, Kenya.

Meeting with Representatives from Kenya Forest Service Nairobi Headquarters - Forest Conservation and Management Office and Enforcement Office, on January 24, 2017, in Nairobi, Kenya.

Meeting with Representatives from the Kenya Forest Working Group including Coordinator, Jackson Bambo, on January 24, 2017, in Nairobi Kenya.

Meeting with Representatives from the Ministry of Environment, on January 27, 2017, in Lima, Peru.


Meeting with Representatives from United Nations Environmental Program (UNEP) – Indigenous Peoples and International Law sections, on January 26, 2017, in Nairobi, Kenya.

Meeting with Representatives of Ogiek People’s Development Program (OPDP), on January 24, 2017, in Nakuru, Kenya.


Meeting with SERFOR, on January 27, 2017, in Lima, Peru.


Remote interview with Lalanath de Silva, in his personal capacity, on February 26, 2017 via Skype.

Remote interview with Sumith Pilapitiya in his personal capacity, on February 11, 2017 via Skype.


Appendix

See following pagea for meeting schedule by country.
## Kenya

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<td>01/23/2017</td>
<td>Ms. Yvonne Owino-Wamari and Ms. Gloria Madegwa, Program Officers, National Coalition of Human Rights Defenders - Kenya (NCHRD-K)</td>
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<td>01/23/2017</td>
<td>Prof. Njoroge Karanja, Karura Forest CFA Chairman and Center for Environmental Action Director, Karura Forest</td>
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<td>01/24/2017</td>
<td>Mr. Daniel Kobei, Executive Director, and Ms. Eunice Chepkemoi, Gender Officer, Ogiek People’s Development Programme (OPDP); Logoman Forest Volunteer Scouts; and Ogiek Community Visit</td>
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<td>01/25/2017</td>
<td>United States Agency for International Development (USAID) Environment (ENV) and Democracy, Governance, and Conflict (DGC) Offices, United States Embassy Complex Annex, Nairobi</td>
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<td>01/25/2017</td>
<td>Ms. Judy Ndichu and Mr. David Githaiga, United Nations Development Programme (UNDP)/UNREDD+, United Nations Office Complex, Nairobi</td>
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<td>01/25/2017</td>
<td>Ms. Aisha Karanja, Executive Director, and Teresa Muthoni, Wycliffe Matika, and Lilian Theru Muchungi, Green Belt Movement</td>
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<td>01/25/2017</td>
<td>Mr. Yator Kiptum and Ms. Milka Chepkorir, Members of the Sengwer Community</td>
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<td>Mr. Jackson Bambo, Coordinator of Kenya Forest Working Group, Nairobi</td>
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<td>Ms. Charity Muthoni Munyasya, Forest Conservation and Management Officer, and Enforcement and Compliance Division, Kenya Forest Service, Nairobi</td>
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<td>01/26/2017</td>
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<td>Mr. Benjamin Kinyili, Director, Kenya Forest Service Chuka Extension</td>
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<td>02/08/2017</td>
<td>Mr. Felix Kyalo, International Development Law Organization, Skype Interview</td>
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<td>Dr. Liz Alden Wily, Independent Land Tenure Specialist, Skype Interview</td>
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<td>Mr. Josep Gari, United Nations Development Program (UNDP) Geneva, Skype Interview</td>
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### Peru

#### Pucallpa, Ucayali Region

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<td>Lizardo Cauper, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP) &amp; Organización Regional de AIDESEP Ucayali (ORAU)</td>
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<td>Abel Vasquez Panduro, Frente de Defensa de Ucayali</td>
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#### Lima

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<td>Álvaro Masquez Salvador, Instituto de Defensa Legal (IDL)</td>
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<td>Raul Tolmos, World Bank</td>
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<td>01/26/2017</td>
<td>Julia Urrunga, Environmental Investigation Agency</td>
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<td>01/27/2017</td>
<td>Mariá Angélica Rondón Mestanza, Ministry of the Environment – Climate Change Division</td>
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<td>01/27/2017</td>
<td>Raquel Zulma Villa, International Institute on Law and Society</td>
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<td>01/27/2017</td>
<td>Gaston Chucos Lazo and Elmer Medina Landa, Ministry of Agriculture – SERFOR</td>
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## Sri Lanka

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<tr>
<td>01/22/2017</td>
<td>Visit to Sinharaja Forest Reserve</td>
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<td>01/23/2017</td>
<td>Mr. Herath Bandaratillake (Ex-Conservator General of Forestry Department)</td>
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<td>01/23/2017</td>
<td>Ms. Darshani De Silva, World Bank</td>
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<td><strong>Colombo</strong></td>
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<td>01/24/2017</td>
<td>Professor Palitha Weerakoddy, Professor Mallika Pinnawala of the University of Peradeniya</td>
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<td>01/24/2017</td>
<td>Professor Savitri Gunatilleke, Professor Thilanka Gunaratne of the University of Peradeniya</td>
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<td><strong>Matara District, Knuckles Range</strong></td>
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<td>01/25/2017</td>
<td>Mr. Kapila Bandara and Ms. Chithra Ramatunge, Forest Officials at the Matara District Department of Forestry Office</td>
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<td><strong>Colombo</strong></td>
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<td>01/26/2017</td>
<td>Kishan Ratnayake, Lakmali Jayaratne of Rainforest Protectors</td>
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<td>01/26/2017</td>
<td>Dr. Ananda Mallawatantri and Shamen Vidanage of IUCN, Shashikala Wijesiriwardane of EFL at BCIS</td>
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<td>01/26/2017</td>
<td>Tissa Jayatilaka of the Fulbright Commission Sri Lanka</td>
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<td>Meghal Perera and Piyumi Kalyanawansa of Environment Foundation Ltd.</td>
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<td>01/27/2017</td>
<td>Ramitha Wijethunga of UNDP Sri Lanka</td>
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<td>01/27/2017</td>
<td>Nalin Munasinghe of FAO and UN-REDD Sri Lanka</td>
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<td><strong>Remote</strong></td>
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<td>12/02/2016</td>
<td>Dr. Gamini Keerawella, Deputy Chief of Mission, Embassy of Sri Lanka</td>
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<tr>
<td>02/11/2017</td>
<td>Sumith Pilapitiya of the World Bank</td>
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<td>02/17/2017</td>
<td>Professor Sumudu Atapattu of the University of Wisconsin</td>
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<td>02/26/2017</td>
<td>Lalanath de Silva, former attorney in Sri Lanka</td>
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or the SAIS International Law and Organizations Program’s website at https://www.sais-jhu.edu/content/international-law-and-organizations#overview