

## **Submission on legal empowerment to the United Nations Special Rapporteur on the Independence of Judges and Lawyers**

**5 May 2023**

### **1. Brief Description of the Organisation**

Natural Justice is an African non-profit organisation rooted in the struggles of communities in Africa. As a team of lawyers and legal experts, the organisation specialises in human rights and environmental law in pursuit of social and environmental justice. Natural Justice strives to enhance the collective rights of people and protect the sacred relationships of indigenous peoples and local communities with nature. Its work is informed by the values, knowledge, and self-determination of the communities we stand in solidarity with.

Through legal empowerment, research, litigation, and supporting community-led movements, Natural Justice helps communities to know the law, use the law, and shape the law. Natural Justice's focus includes enhancing community access to land and governance of natural resources, contributing to the struggle against harmful extractive and infrastructure developments, strengthening community action on the climate crisis and energy transition, and supporting community rights within conservation and customary use.

Natural Justice operates in three regions on the African Continent, from three Hubs – West African Hub based in Dakar, East African Hub based in Nairobi, and Southern Africa Hub based in Cape Town. It is essential that this submission highlights the different contexts within which the organisation works. Therefore, this submission will highlight the legal empowerment mechanisms and experiences of Senegal and South Africa.

### **2. Our legal empowerment approaches**

A key principle underlying the work of Natural Justice is respect and trust-building with communities to ensure that we stand with communities and work from the mandates provided by Indigenous peoples and local communities. We work with communities over a long period of time and, therefore, are able to understand the complexities and the nuances of the community context which enables us to be both proactive and responsive to communities.

We have developed a set of tools that are used in our day-to-day work which we believe are effective legal empowerment approaches. These approaches include, our paralegal approach, which we refer to as the Community Environmental Legal Officer (CELO) Initiative, rooted in environmental justice and our Biocultural Community Protocol empowerment tool, aimed at assisting communities to articulate their biocultural rights in a manner that enables the community to affirm their rights and respond to external influences. We will expand on these approaches below.

#### **A. Community Environmental Legal Officer (CELO) Initiative**

The CELO initiative is based within communities and ensures ongoing learning and support to communities to take action at both the local and national level. CELOs are grassroots or community paralegals, working with communities to reduce environmental injustices, such as the negative effects experienced from extractives and infrastructure. In addition, CELOs assist communities in participating in decision-making processes with government, the private sector, multilateral organisations, and other key stakeholders. Our CELOs combine their knowledge of their own communities, together with their understanding of the law, skills, and an understanding of local institutions, to help solve justice issues by building the capacity of affected communities

to use the law. They help communities gather and present evidence of injustices to ensure accountability of institutions. The affected communities, through their interactions with the CELOs, learn about their rights, and how to realise them within the parameters of the law.

Our CELOs are connected to the organisation and receive ongoing support from lawyers and staff from the Natural Justice Hubs. We further connect our legal empowerment work with other strands of our work, such as strategic litigation and policy development, thereby ensuring integration of our work streams.

## I. Senegal

In Senegal, this approach is utilised in several localities where there are projects which disrupt or threaten to disrupt the environment and the livelihoods of communities. The CELOs make use of methodologies which allows them to identify cases where environmental injustices occur, highlighting violations of the law, possible remedies, as well as various limitations within the law. The CELO shares this information with communities, assists them in taking action and continuously monitors the progress of the matter.

In this context, several factors make the legal empowerment approach relevant. Firstly, it improves access to the law and legal information. With a low level of literacy, knowledge of rights, particularly environmental rights, by communities is still very limited. This lack of knowledge weakens the quality of affected communities' participation in consultation processes and is often taken advantage of by project promoters. Added to this is a widespread popular belief that "we do not fight with the state". This discourages communities from mobilizing and makes them less inclined to go to the competent courts. There are opportunities within the decentralisation policies of the State, however, not having a good knowledge of these opportunities prevents communities from utilising them. Secondly, in Senegal access to justice is limited, especially in environmental matters, which can be contributed to a number of factors. Many difficulties prevent victims of pollution from having access to environmental information as EIAs are not published, and companies are not open to requests from communities in this respect. In some cases, when environmental information is available, communities are sometimes helpless as they need to provide evidence of damage suffered and the establishment of causation. The taking of evidence requires the mobilisation of expertise that is not only expensive, but remote. Finally, environmental management is only relevant if it integrates local approaches. The State of Senegal has considered environmental protection a competence of local authorities. However, local institutions are unaware of their responsibilities and the possibilities offered by through the law which makes access to environmental justice difficult and weakens the effectiveness of environmental rights.

Through local paralegals supporting communities, the barriers to access to justice as mentioned above, can be addressed. However, in Senegal there are also challenges to the CELO approach. Firstly, there is a lack of recognition of this approach by administrative authorities. Indeed, access to the law is not yet perceived at the state level as a means of making the enjoyment of human rights effective. Thus, the State's efforts to promote access to law and justice are still very limited. It is therefore necessary for the State to encourage legally oriented organisations to contribute to strengthening access to law and justice. Secondly, funding for this legal empowerment approach is required as it involves costs that are not within the reach of communities and certain organisations. Synergy should therefore be found between organisations to advocate for public funding for legal empowerment.

## II. South Africa

Similarly to Senegal, the CELOs in South Africa are from and work in communities which are affected by projects which threaten the environment and their livelihoods such as unsustainable developments in peri-urban areas, iron ore mining, offshore mining and offshore oil and gas extraction. Our CELOs, therefore, have a better understanding of the context of the communities they work with and can address environmental and human rights issues in ways that best suit the needs of communities.

Central to the CELO work is the building and maintaining of relationships with communities. This allows our organisation to build trust with communities and enables us to make the justice system accessible to them. Through this relationship and legal empowerment workshops, the organisation is able to share information with communities around their rights, projects which threaten their communities, and opportunities to comment on these projects and other plans, policies or Bills.

One of these projects which our CELO worked on is the proposed Karpowerships for South Africa – a mobile floating power plant which uses liquefied natural gas or another fuel source to generate electricity. The CELO was able to share information with relevant communities about the project and what it would entail for their livelihoods. Through this, our CELO was able to mobilise community members to attend public participation meetings where they could raise their concerns. Following submissions from community members and various civil society organisations, including Natural Justice, one of the applications for environmental authorisation has been rejected, another has been withdrawn and the other is pending decision by the relevant department. This action indicates the central nature of our CELO work for both community and organisational action, and helped communities assert their right to meaningful participation in processes.

There are several challenges which our CELOs face in South Africa. The first is that CELOs and their communities are often in remote areas with very little infrastructure. This makes communication as well as mobilising communities for workshops or meetings difficult which often means that communities are not well-informed and do not have the opportunity to participate in processes meaningfully. Secondly, our CELOs are targeted and said to be spreading misinformation within communities by those who support projects which threaten community livelihoods. This has a negative effect on the relationships our CELOs hold within communities and can affect the implementation of our work. Finally, our CELOs are often confronted with issues which fall outside of our organisation's scope of work. If we are unable to connect community members to another institution for assistance, it means that community members do not have access to justice. These challenges highlight the need for the State to find mechanisms which make the implementation of paralegal work conducive and ensures that the most vulnerable communities are able to access a justice system which is too often inaccessible.

### B. Biocultural Community Protocols (BCPs)

#### I. South Africa

Indigenous and local communities are impacted by the effects of national policy decisions and development projects. Often, decisions related to these policies and projects are made without meaningful input from communities, and within a culture of bribery and corruption. This

exclusion leads to serious human rights violations. While national legislation and implementation of large infrastructure, extractive, agricultural and other projects can represent the state's view of development, communities have their own visions for development as well. These communities have a cultural heritage that include rich histories, traditions, worldviews, deep connections to their lands and natural resources, and customary rules and procedures to regulate conduct between themselves and others. This cultural heritage is manifested and expressed in many different ways such as oral traditions, dances, carvings and designs.

To meaningfully engage with communities, this heritage must be accounted for but because much of it is undocumented or has been lost over time due to social disruptions such as apartheid spatial planning, the challenge of revisiting, revising and documenting it are numerous. One way of addressing these challenges is through a BCP. A BCP is an articulation, assertion and affirmation of traditional communities' systems of self-governance and management, in a manner that is comprehensible to outsiders, and enables communities to affirm and defend their own rights. Through a consultative process, communities are able to outline their core ecological, cultural and spiritual values, and customary laws relating to their traditional knowledge and natural resources, providing clear terms and conditions to regulate access to their knowledge and resources. The BCP helps external actors understand the community's identity and ways of life, customary values and laws, and procedures for engagement.

Our organisation has a long history of assisting communities to develop their BCPs. Most recently, Natural Justice has been assisting the Vhavenda peoples from villages situated around Thohoyandou in Limpopo, South Africa, to articulate their protocol for their twelve Zwifhos – the closest English language translation would be “sacred natural site”. The Zwifho of these villages are under threat from various sources – mines, developers, commercial farms - thus we are implementing a BCP process, together with Earthlife Africa and local community-based organisation Dzomo La Mupo, focusing on the biodiversity, heritage and cultural practices associated with the Zwifho. This will enable the community to affirm and defend their biocultural rights and the heritage associated with Zwifho – and so protect the Zwifho.

The BCP process has also proved effective in the past in Access and Benefit-sharing (ABS) processes – the most notable published BCP is the Rooibos BCP which was used to prepare communities associated with rooibos in ABS negotiations. Because of the success of this process, Natural Justice has also supported BCPs that will support community negotiations around key indigenous and natural resources.

### **3. Legal empowerment as tool strengthening communities**

Through our approach to legal empowerment, communities are strengthened on a variety of legal processes and issues by which they are impacted, such as fossil fuel exploration, climate change and developments. By simplifying legal and other concepts in an understandable manner, communities' awareness of their rights under national law (including customary law) and international human rights commitments, is strengthened and therefore enables them to affirm their rights and use the law to defend themselves. Transferring knowledge of the law enables communities to find local solutions instead of needing to access areas of the justice system which are expensive and largely inaccessible. The ultimate objective of our legal empowerment work is to enable communities to use their knowledge of the law to defend their rights and to participate in law-making processes which shape the law in a way that considers their way of life, and places women and youth at the forefront of these processes.