

# The Advocate



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By Ms. Faith Odhiambo, President, Law Society of Kenya



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# Mainstreaming ESG Frameworks and Digital Trust: The Legal Imperative in Kenya

By Haggai Okeyo Onguka

## Introduction

As Kenya journeys through a rapid digital transformation and aligns itself with global sustainable development agendas, legal practitioners must embrace a renewed mandate one that places Environmental, Social, and Governance (ESG) principles and digital trust at the core of their practice. ESG, once relegated to corporate social responsibility reports, has now emerged as a central determinant of legal risk, corporate legitimacy, and investment eligibility (KPMG, 2021). Similarly, digital trust, shaped by data governance, cybersecurity, and ethical technology use, has become a critical requirement in ensuring transparency, protecting rights, and building resilient institutions (World Economic Forum, 2020). This article contends that the Kenyan legal profession must evolve from traditional models into an integrated, interdisciplinary, and future-oriented force, capable of steering ESG and digital trust mainstreaming through proactive reform, interpretation, advocacy, and innovation.

## ESG and Digital Trust in Kenya's Legal Framework

Kenya's existing statutory and constitutional frameworks already embed ESG and digital governance principles, albeit in a fragmented manner. The **Constitution of Kenya (2010)** under Articles 10 and 69 emphasizes sustainable development and environmental protection, while Article 31 guarantees the right to privacy, laying a foundational link between environmental justice and data protection. The **Environmental Management and Coordination Act (No. 8 of 1999)** operationalizes environmental governance mandates, providing regulatory standards for pollution control, climate protection, and sustainable resource management.

Furthermore, the **Companies Act (No. 17 of 2015)** incorporates provisions on corporate governance and director duties, which implicitly support ESG principles, especially regarding transparency and accountability in corporate operations. The **Data Protection Act (No. 24 of 2019)** complements this framework by embedding digital rights, mandating data protection officers, and aligning Kenya with international norms such as the **General Data Protection Regulation (GDPR)** (European Parliament and Council, 2016). However, while these frameworks provide a strong starting point, their implementation requires nuanced legal interpretation, institutional strengthening, and capacity building among lawyers.

## The Role of Lawyers in ESG and Digital Ethics

Lawyers are no longer confined to the courtroom or transactional desk. The evolving global legal landscape demands that advocates adopt the roles of sustainability stewards, interdisciplinary advisors, and digital ethics gatekeepers. As ESG concerns increasingly influence investor decisions, procurement requirements, and legal liability, lawyers must guide clients not only on compliance but also on ethical alignment and long-term sustainability integration (Gidwani & Dube, 2023).

In the digital arena, trust is earned through responsible data stewardship, transparent use of algorithms, and respect for user autonomy. Advocates must therefore possess digital literacy sufficient to interrogate surveillance practices, contest algorithmic bias, and advise on data breach protocols. These competencies position lawyers not only as defenders of privacy but also as architects of ethical digital infrastructure.

The importance of this shift is echoed globally. In **Milieudefensie v. Royal Dutch Shell** (District Court of The Hague, 2021), the Dutch court-imposed climate obligations on a private corporation, signaling a new era of ESG litigation. This precedent should awaken Kenyan lawyers to similar possibilities where advocacy could shape jurisprudence around climate justice, social inclusion, and corporate accountability.

## Legal Technology and Professional Innovation

Legal technology is growing quickly in Kenya and around the world, making legal work faster, easier, and more accessible. Tools like artificial intelligence, blockchain, and data analysis are changing how lawyers do their jobs. However, these tools must be used responsibly to ensure fairness and protect people's rights. Lawyers have a key role in making sure new technologies in the justice system are used in a fair and ethical way, especially when it comes to sensitive areas like bail, sentencing, and corporate reporting.

## Legal Education and Institutional Reform

One major challenge to promoting ESG and digital trust in Kenya is that many lawyers lack the necessary knowledge and skills, as legal education has not kept up with changes in sustainability and technology. To fix this, institutions like the Law Society of Kenya and the Council of Legal Education should update training to include ESG law, data protection, cybersecurity, and legal innovation. Practical programs like ethics clinics, legaltech hubs, and ongoing professional training can help lawyers gain the right skills and encourage responsible, forward-thinking legal practice.

## Policy Development and Regulatory Oversight

To operationalize ESG and digital trust mainstreaming, Kenya requires a coordinated policy ecosystem. This involves aligning ESG-related disclosures, procurement regulations, and reporting frameworks with global standards like the **Task Force on Climate-related Financial Disclosures (TCFD)** and the **Sustainable Finance Disclosure Regulation (SFDR)** (Financial Stability Board, 2020).

Similarly, digital trust requires proactive regulation of emerging technologies, including **artificial intelligence, facial recognition, biometrics, and cross-border data transfers**. Kenya's Office of the Data Protection Commissioner (ODPC) must collaborate with legal practitioners, tech companies, and civil society to develop sector-specific guidelines, conduct data audits, and promote privacy awareness. Lawyers, in this regard, can play a strategic role in advising regulators, drafting

policy, and shaping jurisprudence that promotes ethical digitization.

## ESG Litigation and Public Interest Lawyering

As global ESG litigation rises, Kenyan advocates must prepare for a similar wave of rights-based, climate-focused, and governance-driven lawsuits. Legal professionals must not only defend corporate entities but also initiate public interest litigation (PIL) on behalf of affected communities, whistleblowers, or environmental defenders.

## ADVOCATES' PRACTICE STANDARDS CAMPAIGN ALERT:

### Masqueraders, Quacks, Impersonators and Unauthorized/Unqualified Persons



LAW SOCIETY OF KENYA



#### Who is an Advocate of the High Court of Kenya?

01

A person duly entered to roll of Advocates and has a practicing certificate for the current year.

You can check the practice status of such an advocate on [online.lsk.or.ke](https://online.lsk.or.ke) by clicking on **Search Advocate** and entering the name of the advocate. If the Advocate has a valid practicing certificate(PC), it will be **Active**. If not, it will be **Inactive**.

*In case an advocate is practicing without a PC, please report to the Director Practice Standards by email to [practicestandards@lsk.or.ke](mailto:practicestandards@lsk.or.ke) or send a letter to LSK Secretariat.*

*Practicing without a valid Practicing Certificate is professional misconduct tantamount to disciplinary proceedings.*

#### Who is a quack or Masquerader?

02

This is a person who pretends to be an advocate.

They can equally be identified by the above process. If a person is not entered in the LSK Portal, the person is a masquerader and criminal proceedings should ensue.



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