

EARTH JURISPRUDENCE IN AFRICA

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ABSTRACT: If we are to find our way into the future, Earth-centred approaches to governance are the only way forward for Africa and for the world. In the midst of the multiple ecological and social crises of our time, a strong, pan-African Earth Jurisprudence Collective is advocating for decolonised, African, Earth-centred pathways into a flourishing, life-sustaining future for all species. The African Earth Jurisprudence Collective is accompanying traditional and indigenous communities in East, West and Southern Africa as they revive their ancestral knowledge and practices, restore sacred natural sites and associated rituals, re-establish indigenous seed diversity and food sovereignty, and strengthen their customary governance systems, which are aligned with the laws of the Earth. These civil-society-led initiatives are founded on Africa's rich indigenous legal traditions and cultural heritage and inspired by Earth Jurisprudence.

RESUM: Si volem trobar el nostre camí cap al futur, els enfocaments de governança centrats en la Terra són l'únic camí per a Àfrica i per al món. Enmig de les múltiples crisis ecològiques i socials del nostre temps, un fort Col·lectiu Panafricà de Jurisprudència de la Terra advoca per camins descolonitzats, africans i centrats en la Terra cap a un futur florent i sostenible per a totes les espècies. El Col·lectiu Africà de Jurisprudència de la Terra acompanya a les comunitats tradicionals i indígenes d'Àfrica oriental, occidental i meridional en la recuperació dels seus coneixements i pràctiques ancestrals, en la restauració

dels llocs naturals sagrats i els rituals associats, en el restabliment de la diversitat de llavors indígenes i la sobirania alimentària, i en l'enfortiment dels seus sistemes de governança consuetudinària, alineats amb les lleis de la Terra. Aquestes iniciatives dirigides per la societat civil es basen en les riques tradicions jurídiques i el patrimoni cultural indígena d'Àfrica i s'inspiren en la Jurisprudència de la Terra.

RESUMEN: Si queremos encontrar nuestro camino hacia el futuro, los enfoques de gobernanza centrados en la Tierra son el único camino para África y para el mundo. En medio de las múltiples crisis ecológicas y sociales de nuestro tiempo, un fuerte Colectivo Panafricano de Jurisprudencia de la Tierra aboga por caminos descolonizados, africanos y centrados en la Tierra hacia un futuro floreciente y sostenible para todas las especies. El Colectivo Africano de Jurisprudencia de la Tierra acompaña a las comunidades tradicionales e indígenas de África oriental, occidental y meridional en la recuperación de sus conocimientos y prácticas ancestrales, en la restauración de los lugares naturales sagrados y los rituales asociados, en el restablecimiento de la diversidad de semillas indígenas y la soberanía alimentaria, y en el fortalecimiento de sus sistemas de gobernanza consuetudinarios, alineados con las leyes de la Tierra. Estas iniciativas dirigidas por la sociedad civil se basan en las ricas tradiciones jurídicas y el patrimonio cultural indígena de África y se inspiran en la Jurisprudencia de la Tierra.

KEY WORDS: Earth Jurisprudence — Customary governance systems — Customary law — Sacred natural sites and territories — Africa — African Earth Jurisprudence Collective — Earth-centred — Earth's laws — Indigenous governance — Traditional and indigenous communities — Legal pluralism — Decolonisation — Rights of Nature — Seed sovereignty — Food sovereignty — Reweaving the basket of life

PARAULES CLAU: Jurisprudència de la Terra - Sistemes de governança consuetudinària - Dret consuetudinari - Llocs i territoris naturals sagrats - Àfrica - Col·lectiu Africà de Jurisprudència de la Terra - Centrat en la Terra - Lleis de la Terra - Governança indígena - Comunitats tradicionals i indígenes - Pluralisme

jurídic - Descolonització - Drets de la naturalesa - Sobirania de llavors - Sobirania alimentària - Reteixir la cistella de la vida

PALABRAS CLAVE: Jurisprudencia de la Tierra - Sistemas de gobernanza consuetudinaria - Derecho consuetudinario - Lugares y territorios naturales sagrados - África - Colectivo Africano de Jurisprudencia de la Tierra - Centrado en la Tierra - Leyes de la Tierra - Gobernanza indígena - Comunidades tradicionales e indígenas - Pluralismo jurídico - Descolonización - Derechos de la naturaleza - Soberanía de semillas - Soberanía alimentaria - Retejer la cesta de la vida

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I. INTRODUCTION.

1. The Revival of Earth-centred Governance in Africa.

Africa's most iconic ecosystems, from the Okavango Delta to Uganda's Great Lakes, are facing new threats. But a uniquely African hope is also emerging to help navigate towards a better future for the continent and all her peoples and species in the context of climate chaos and ecological collapse. The African Earth Jurisprudence Collective is accompanying traditional and indigenous communities in the revival and enhancement of their Earth-centred customary governance systems. The Collective's work grows from a shared conviction that if we are to find our way into the future, Earth-centred approaches to governance are the only way forward for Africa and for the world.

In Kenya, Uganda, South Africa, Zimbabwe, Benin and Cameroon, communities are reviving and revalorising traditional knowledge and practices, restoring sacred natural sites and associated rituals, re-establishing indigenous seed

diversity and food sovereignty, and strengthening ecological governance systems derived from and aligned with the laws of the Earth.¹ These civil-society-led initiatives to re-establish Earth-centred governance on the continent are founded on Africa's rich indigenous legal traditions and cultural heritage and inspired by Earth Jurisprudence — a legal philosophy and ethical framework conceived of by eco-theologian Thomas Berry in the late twentieth century.²

2. Earth Jurisprudence.

Earth Jurisprudence interrogates the very foundations of our governance systems and invites us to decolonise dominant conceptions of law and to meaningfully embrace legal pluralism. This philosophy of law and living is inspired by ancient and time-honoured indigenous governance systems that recognise Nature as the “primary text”³ from which human laws should be discerned. These sophisticated governance systems have maintained the resilience of ancestral lands and peoples over generations, governing human communities to live in mutually-enhancing relationship with the wider Earth community.

Indigenous traditions remind us that humans have the capacity to live in respectful, and even reverential, relationship with the ecosystems in which they are embedded; indeed this is how we have lived for most of human history. Contrast this with our dominant state legal systems which are destructively decoupled from ecological realities, facilitating the systemic violation of the Earth's capacity to self-regulate and to sustain biodiverse life.

Earth Jurisprudence calls for a radical, Earth-centred transformation of the human-centred economic, legal and governance systems that prevail in many contemporary societies. This is the “Great Work” of the twenty-first century: to transition from a relationship of exploitation with the natural world (conceived of as property, resource, or commodity for human use) towards a mutually-enhancing, respectful human-Earth relationship in which the inherent value and

¹ To find out more about the African Earth Jurisprudence Collective, visit their website <www.earthjurisprudence.africa> [Retrieved on 14 April 2022].

² Thomas Berry, *The Great Work: Our Way into the Future*, Bell Tower. New York, 1999 (1st Edition).

³ Berry, *The Great Work*, cit.

rights of each member of the Earth community are recognised and respected.⁴ The understanding is that each member of the web of life, whether a living being or an element of an ecosystem, has an inherent right to exist, to thrive and to evolve. These rights are not equivalent to human rights; they are species- or role-specific and ensure that each constituent member of our Earth is able to perform its unique role, which is recognised as integral to the wellbeing of Mother Earth as a whole – irrespective of utility to humans or economic value.

As well as recognising rights, and in alignment with indigenous governance systems, Earth Jurisprudence establishes human responsibilities to the wider Earth community and affirms that the wellbeing of the Earth as a whole is primary; after all, it is from Mother Earth that all living beings derive life and health.

Just as the Earth tends to diversity, Earth-centred law takes different forms in different contexts, from the customary laws of Africa to the rights of Pachamama in Ecuador. Earth Jurisprudence does not only relate to law, however; it is holistic in its vision, concerned with all spheres of life from individual consciousness to collective culture, from family and spiritual life to the interlinked social systems of law, economics, education and religion. Earth Jurisprudence offers the guiding vision and cosmological context with which to orient and galvanise the growing global call for transformation of the dominant and destructive industrial growth paradigm.⁵

3. The African Earth Jurisprudence Collective.

The African Earth Jurisprudence Collective is a community of practice dedicated to the revival of eco-centric governance in Africa and comprised of civil society and community leaders from East, West and Southern Africa — trainees, graduates and mentors of a unique, three-year training programme for Earth Jurisprudence Practitioners, co-facilitated by The Gaia Foundation and the Siama Programme. The Collective is formed by six founding organisations: EarthLore Foundation (EarthLore, South Africa/Zimbabwe), Groupe Recherche pour la

⁴ Berry, *The Great Work*, cit.

⁵ To find out more about Earth Jurisprudence, explore this interactive story created by The Gaia Foundation: *De-mystifying Earth Jurisprudence* <<https://www.gaiafoundation.org/interactive-story-de-mystifying-earth-jurisprudence/>> [Retrieved on 14 April 2022].

recherche sur le Bien-Etre (GRABE, Benin), the Society for Alternative Learning and Transformation (SALT, Kenya), the African Institute for Culture and Ecology (AFRICE, Uganda), The Gaia Foundation (UK/Global) and the Siama Programme (Botswana/South Africa).

From Benin to Zimbabwe, from Kenya to Uganda, members of the Collective are adopting a common approach in their work to 'reweave the basket of life' alongside traditional and indigenous rural communities in Africa, comprising:

- elder-centred community dialogues to revive knowledge, practices, cohesion and confidence among communities;
- eco-cultural mapping and calendars, carried out by communities and led by elders, as a visual guide to the original ancestral order of their territories, the present context and the future they are building;
- revival and documentation of customary laws that inherently recognise the rights of Nature by cultivating human-Earth relationships of respect and reciprocity;
- strengthening indigenous seed and food sovereignty and diversity;
- generating public understanding of the importance of sacred lands and waters for biodiversity, food and seed sovereignty, and resilience to climate change;
- advocating for recognition by government authorities of customary governance and sacred natural sites as key to conservation policies.

II. CONTEXT.

1. Colonial Legacy.

Since colonial times there have been waves of oppression and violation of Africa's indigenous and traditional peoples, their customary laws and their ancestral lands. The continued expansion of industrial development and the intensifying scramble for Africa's 'natural resources' — for land, biodiversity, mineral, metal and fossil fuel wealth — puts these communities and their ancestral territories on the frontline. Contemporary Africa is beset with environmental degradation caused by rampant mining, logging and other types of extraction, monocultures, air and water pollution, unfettered development, with

resultant social injustices. Governments compete for investors in search of 'natural resources' to feed the global industrial growth economy and have failed to regulate, let alone stop, the destruction of Nature nor to take adequate measures to preserve the cultural and traditional values that root African peoples.

2. Africa: A Pluri-legal Continent.

Although domestic laws in each African state are generally in the thrall of the modern industrial growth and development paradigm, Africa is a pluri-legal continent. Its law is multi-layered, far more diverse than state law alone, and its legal traditions are rooted in the customary governance systems of its indigenous and traditional communities, which have been practised over millennia on the continent. These governance systems are the original, pre-colonial laws of Africa and are underpinned by a different source from that of the dominant system of state law: they are derived from the laws that govern life, the Earth's laws. Africa's customary laws emerge from generations of acute observation of and relationship with the ecosystems in which communities are embedded.

The African Commission's Working Group of Experts on Indigenous Populations (WGIP) has acknowledged that customary laws are, in today's world, often treated as subordinate to a nation's laws:

This is unfortunate given the wide cross-section of people who still rely on African customary law as a source of law, particularly indigenous communities. Indeed, the fact that most indigenous communities rely on their traditions and customs to seek recognition and protection of their human and peoples' rights and its relegation to the lowest echelons in the hierarchy of applicable law, means that most of these communities have to labour for recognition of their fundamental human rights.⁶

3. Customary Governance Systems.

⁶ African Commission on Human and Peoples' Rights, "Report of the Country Visit of the Working Group on Indigenous Populations/Communities, Research and Information Visit to Kenya 1-19th March 2010", page 56, 2010.

These ancient and complex governance systems provide both the ‘lore’ and ‘law’ that govern inter-human relationships as well as those between humans and the wider Earth community. The cosmology or worldview shared by indigenous peoples worldwide places humans as part of a “communion of subjects” within a living planet, Mother Earth.⁷ Reverence for the bounty of Mother Earth and human’s integral belonging to the wondrous web of life is at the core of traditional governance systems and is emphasised through customs, practices and ceremony. The ethos of indigenous governance systems is for humans to comply with fundamental ecological laws in order to maintain the integrity and wellbeing of Mother Earth. The understanding is that if we disturb her complex living systems we will inevitably suffer consequences, as we are witnessing today across our planet. This recognition that the Earth is lawful and ordered — as evidenced, for instance, in the natural cycles of our ecosystems — is an integral part of indigenous education, health and governance, which are interwoven within a holistic cosmology.

Customary laws derive from the story of origin of how a people came to be in their ancestral lands, commonly describing the tribe or culture’s ancient and mythic origin. These stories of origin are ‘held’ by custodians of the community and shared at key events. The traditional lands in which communities live play a foundational and revered role in the customary law, not only providing the natural features that sustain their lives, but also constituting the essential nurturing ‘mother’ of all human and non-human beings.

The stories of origin impart knowledge of the laws of the land and the consequences of breaking them, guiding communities to live in harmony with the territory. Customary laws underpin the governance systems of communities and are place-based, rooted in the cultures and ecosystems from which they emerge. These laws are guided by ecological principles although the details vary widely within Africa as they do worldwide.

These diverse traditional governance or legal systems are united in a recognition that the wellbeing of the human community depends on the wellbeing of the greater Earth community of which they are a part; and that violation of the Earth’s

⁷ Thomas Berry, *Evening Thoughts: Reflecting on Earth as Sacred Community*, Sierra Club. San Francisco, 2006 (1st Edition).

laws would have consequences for the future generations of all species. This establishes a sense of interspecies and intergenerational responsibility and a culture of care, respect and reciprocity.

4. Sacred Natural Sites.

Sacred natural sites are places of ecological, cultural and spiritual importance, and lie at the heart of traditional customs, values, norms and laws from which customary governance systems are derived.

Covering a range of natural features — from springs, waterfalls and wetlands, to forest groves, outcrops, drylands, salt licks and breeding grounds — sacred natural sites are key places of refuge for animal and plant species. They are recognised internationally as “areas of land or water having special spiritual significance to peoples and communities”,⁸ and as the oldest conservation areas in the world.⁹ Sacred natural sites and territories play a critical role in protecting biodiversity and are essential in maintaining the integrity and resilience of ecosystems, landscapes and seascapes, which is particularly relevant in a context of intensifying climate chaos and biodiversity collapse.

For indigenous and traditional cultures, these are sites where the ancestors and the spirit world reside and are often integral to the stories of origin of the community. They are understood as the symbolic source of life and are protected and maintained as the focal points of the community’s connection with the spiritual world and as places where rituals are practised to express respect and gratitude. They exist as networks connected across landscapes, especially sensitive areas likened to acupuncture points, reaching deep into the body of the Earth, beyond the subsoil, rocks and minerals, and up into the celestial constellations in the sky. Sacred natural sites are potent places for traditional knowledge systems and customary laws, the lynchpin for community cohesion and safeguarding the health and wellbeing of humans as well as other species.

⁸ Robert Wild and Christopher McLeod, *Sacred Natural Sites: Guidelines for Protected Area Managers*, IUCN, 2008 <https://www.iucn.org/sites/dev/files/import/downloads/bp16__sacredsites.pdf> [Retrieved on 14 April 2022].

⁹ Nigel Dudley, Liza Higgins-Zogib and Stephanie Mansourian, “Links between Protected Areas, Faiths, and Sacred Natural Sites” in *Conservation Biology* Vol.23 No. 3, pages 568-577, 2009.

Sacred natural sites and territories are the bedrock of customary governance systems, which are not able to flourish without legal protection. Custodian communities, who have maintained customary governance systems to protect sacred natural sites and territories for generations, play an essential role in preserving the traditional values of Africa, and require legal recognition and support to do so, given their growing vulnerability to increasing pressures from the different forms of land grabbing and extraction.

5. Custodians of Sacred Natural Sites.

The custodians of these sites are spiritual leaders who are recognised by their community as being designated by the ancestors with the responsibility to protect and carry out the required rituals and ceremonies in sacred natural sites and territories as part of the customary governance system. The custodians have the capacity for ongoing communication with the ancestors (the spiritual domain), the land and the human community, and are mediators between these three domains. The custodian community, clan or tribe has the duty to support its custodians in carrying out this role, which maintains the health and balance between the three domains.

The profound relationship of the custodians with their sacred natural sites enables them to read the law in the land, and guides them as to rituals required when justice or balance needs to be restored. This supports them to maintain the integrity of ecosystems by orientating communities' customary governance systems so that they comply with the unwritten laws of Mother Earth. Respecting the rights of sacred natural sites not to be degraded or 'developed' has profound significance for the health of the local ecosystems, and the lives and cultures that depend upon them.

III. STORY OF ORIGIN.

1. The Origins of the African Earth Jurisprudence Collective.

Over the past two decades, a community of Earth Jurisprudence Practitioners has been growing in Africa, dedicated to seeking strategies for reclaiming

indigenous ways of being in partnership with, rather than in dominion over, Mother Earth. They have been working alongside custodians of sacred natural sites and their clans and communities to revive their traditional knowledge and practices and to restore their governance systems.

This vibrant community of practice and network of empowered communities has its origins in the year 2000 when The Gaia Foundation began to consolidate a network of African civil society and community leaders who were committed to tackling the root causes of the many social and ecological crises we face and to exploring developing ‘another way’. In partnership with Gaia Amazonas, an NGO based in Colombia, some of these African leaders travelled to the Colombian Amazon. Participants had the rare opportunity to visit and dialogue with indigenous communities along the Pirá Paraná and Mirití Rivers where Amazonian leaders shared the deep process of revitalizing their cultural identity, claiming their rights and setting out their own ‘life plans’ for resilient futures founded on cultural values and traditional knowledge. The Amazonian leaders shared how this cultural revival was founded on regular elder-centred community dialogues, eco-cultural mapping and seasonal calendars, and the unwavering accompaniment of Gaia Amazonas. The visits also explored the pluri-legal strategies used in Colombia and other South American countries to secure cultural rights and policy change within the dominant state legal framework based on the pre-colonial laws of the territories.

The African civil society leaders returned with a renewed drive and a vision of what was possible and began engaging with communities on their own continent. The Siama Programme offered experiential learning and wilderness immersion processes to reconnect these leaders with their rich African bio-cultural heritage of ecological and spiritual knowledge, which had largely been rejected on the continent as a result of the colonial process.

In total, more than 150 young African change-makers and grassroots leaders have participated in these transformative experiences. Some were inspired to adopt the holistic community dialogue methodologies and mapping ‘talking tools’ first developed in the Amazon.¹⁰ This holistic approach is founded on the

¹⁰ *Reviving Our Culture, Mapping Our Future* is a 12-minute film co-produced by The Gaia Foundation and others documenting a gathering of indigenous leaders from South Africa, the

understanding of indigenous cosmologies where every aspect of life is interconnected and in relationship with the larger ecosystem.

2. Trainings for Transformation.

In response to the growing interest in cultural revival in Africa, The Gaia Foundation developed a three-year training course with colleagues for those wishing to explore the Amazonian holistic community methodology and Earth Jurisprudence in more depth.

Members of the African Earth Jurisprudence Collective are grassroots leaders and graduates of this unique, UN-recognised, three-year training process in Earth Jurisprudence,¹¹ co-facilitated by The Gaia Foundation and the Siama Programme. Participants explore indigenous, Eastern and Western ways of knowing through experiential learning, wilderness immersion and study, and reconnection with their ancestral roots to find healing and identity in Africa's ecological knowledge and spiritual traditions. The trainings are rooted in practices to deepen participants' relationship with Mother Earth and with their own ancestral lineages, to enable participants to learn Earth's laws directly and, as Joanna Macy says, to "come back to life".¹² Graduates are vocal and passionate about restoring our relationship with Mother Earth and reviving biocultural diversity and ecological literacy.¹³

The course comprises an exploration of systemic alternatives; an immersion into traditional African cosmology; a deep-dive into pre-colonial customary governance systems in which the rights of Nature are embedded; critiques of the dominant industrial growth economy; and strategies for the decolonisation of our

Colombian Amazon and the Russian Republic of Altai to explore together the eco-cultural mapping process for sacred natural sites and territories <<https://vimeo.com/9831187>> [Retrieved on 14 April 2022].

¹¹ *United Nations Harmony with Nature A/72/175 Report*, 19 July 2017 <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/175> [Retrieved on 14 April 2022].

¹² Joanna Macy and Molly Brown, *Coming Back to Life*, New Society Publishers. Canada, 2019 (6th Edition).

¹³ See for example this article written by graduate of the trainings, Method Gundidza, for the Daily Maverick, a leading South African news site, published on 7 March 2022: *Respecting the rights of nature is the only way out of climate chaos and biodiversity collapse* <<https://www.dailymaverick.co.za/article/2022-03-07-respecting-the-rights-of-nature-is-the-only-way-out-of-climate-chaos-and-biodiversity-collapse/>> [Retrieved on 14 April 2022].

thinking and actions. The trainings also include advocacy strategies and holistic methodologies for accompanying communities to revive their indigenous and Earth-centred cultures, drawing inspiration from the community processes developed by indigenous peoples in the Amazon.¹⁴

The graduates are now playing a pivotal role in advocacy for recognition of customary Earth-centred laws and policies with traditional communities, from local to pan-African levels.

IV. RESTORING EARTH JURISPRUDENCE IN AFRICA.

1. From Grassroots to the African Commission: a Multiple Legal Strategy.

The re-establishment of Earth Jurisprudence in Africa emerges from the indigenous and traditional communities of the continent for whom Earth Jurisprudence is a living reality inherent in their cosmologies, lifeways and customary laws: reverence for and intimacy with the natural world is alive in ceremonies, practices, traditions, stories and laws. Community governance systems have informed law and policy at district, national and regional level, effecting legislative and societal change from the grassroots upwards. This multiple legal strategy — proactively opening spaces at all levels of state and regional governance for recognition of pre-colonial customary laws — grows from the work of communities to restore their ecologically-enlightened knowledge and practices. This ensures support for the enforcement and implementation of eco-centric precedents because Earth Jurisprudence principles are already embedded in the practices and customs of Africa's traditional and indigenous communities; the 'law is written in the heart'.

2. Regional.

a) Statement by African Custodian Communities.

¹⁴ To find out more about the Earth Jurisprudence Trainings and the remarkable people involved, watch *Gaarú: The Growing African Movement for Earth Jurisprudence*, a 12-minute film produced by The Gaia Foundation <<https://vimeo.com/488184771>> [Retrieved on 14 April 2022].

A fundamental vision of the African Charter on Human and Peoples' Rights, and one which is reflected in popular discourse, is to decolonise Africa and to enable the continent to revert to the "original values of African civilization".¹⁵ Moreover, many constitutions within Africa promote cultural heritage and customary values as well as devolution, self-governance and freedom of religion. Initiatives to promote the vision of the decolonisation of Africa's governance systems have been welcomed at the regional level of governance.

In 2012 and then again in 2015, custodian communities from Benin, Ethiopia, Kenya, South Africa and Uganda met to discuss strategies to protect the continent's sacred natural sites and ancestral territories, to share stories of how they were doing so and to compile their common customary laws regarding sacred natural sites. On 24 March 2015 at Lake Langano, Ethiopia, a *Statement by African Custodian Communities* was drawn together by representatives of custodian communities in Tharaka, Meru, Kamba, Kikuyu and Maasai in Kenya; Buganda and Bunyoro in Uganda; Bale and Sheka in Ethiopia; Venda in South Africa; and Adjarra, Avrankou and Adjohoun in Benin.¹⁶

Together with their allies, they decided to take their voices to the African Commission on Human and Peoples' Rights and seek recognition from Africa's most respected human rights institution. The following are extracts from the statement:

The whole Earth is sacred. Within the body of our Earth there are places which are especially sensitive, because of the special role they play in our ancestral lands. We call these places sacred natural sites. Each sacred natural site plays a different but important role, like the organs in our body. All of life is infused with spirit...

...Sacred natural sites are the source of life. Sacred natural sites are where we come from, the heart of life. They are our roots and our inspiration. We

¹⁵ African Union, *African Charter on Human and Peoples' Rights* <https://au.int/en/treaties/african-charter-human-and-peoples-rights> [Retrieved on 14 April 2022].

¹⁶ *Statement by African Custodian Communities*, 24 March 2015, Lake Langano Custodian Meeting, Ethiopia https://www.gaiafoundation.org/app/uploads/2017/10/CalltoAfricanCommission_summary_Eng.pdf [Retrieved on 14 April 2022].

cannot live without our sacred natural sites and we are responsible for protecting them.¹⁷

b) African Commission on Human and Peoples' Rights Resolution 372.

In response to the *Statement by African Custodian Communities*, in 2017 the African Commission passed ACHPR/Resolution 372 (LX) 2017 drafted in collaboration with the African Commission Working Group on Indigenous Populations/Communities. This landmark policy statement called on State parties “to recognise sacred natural sites and territories, and their customary governance systems, as contributing to the protection of human and peoples’ rights” and to “uphold their obligations and commitments under regional and international law on sacred natural sites and territories and their customary governance systems, and the rights of custodian communities.”¹⁸

Building on a series of policy resolutions and recommendations achieved at IUCN World Conservation Congresses and other international fora,¹⁹ ACHPR Resolution 372 heralded a new chapter in Africa’s acknowledgement of the critical role that sacred natural sites and territories and their associated customary governance systems play in the protection of African ecosystems and in the realisation of African people’s rights. Its successful passage was cause for celebration amongst custodians, civil society groups and Commissioners alike, as it represents an important step towards the decolonisation of African legal systems and conservation practices by strengthening recognition of the original laws that make up Africa’s pluri-legal systems.

While the resolution is not enforceable, the African Commission is in a position to encourage African states to implement the resolution at national level. As a quasi-legal body, the African Commission can also hear cases about the violation of sacred natural sites and territories. The Commission can also refer cases to the African Court to hold violators to account. The resolution provides a basis for

¹⁷ *Statement by African Custodian Communities*, cit.

¹⁸ African Commission on Human and Peoples' Rights, *372 Resolution on the Protection of Sacred Natural Sites and Territories - ACHPR/Res.372(LX)2017* <https://achpr.org/sessions/resolutions?id=414> [Retrieved on 14 April 2022].

¹⁹ Roger Chennells and Carine Nadal, *Submission to the African Commission: A Call for Legal Recognition of Sacred Natural Sites and Territories, and their Customary Governance Systems (2015)* <<https://www.gaiafoundation.org/app/uploads/2015/09/CalltoAfricanCommission-1.pdf>> [Retrieved on 14 April 2022].

developing national policy frameworks and legislation for recognising sacred natural sites and territories and their customary governance systems. So far only Benin has a legislative framework, with a law on Sacred Forests.

3. National.

a) Sacred Forests Act 2012, Benin.

In 2012, civil society and communities successfully lobbied the Benin Government to pass a national law for the sustainable ‘management’ and legal recognition of sacred forests as protected areas. Benin is the first country in Africa to pass a national law that expressly recognises sacred forests and their custodian communities.²⁰ Indeed, the interministerial order is among the few state laws in the world to recognise sacred natural sites and territories and their community custodians. The Act offers an example to other African nations seeking to heed the call of ACHPR Resolution 372 and respond to the growing international law, policies, resolutions and guidelines that urge for the protection of sacred natural sites and territories and their custodian governance.

Arrêté interministériel N° 0121 fixant les conditions de gestion durable de la forêt sacrée en République du Bénin 2012 recognises sacred forests, burial forests and sites where gods, spirits and ancestors reside and provides for communities to protect and govern sacred forests and to implement their ‘management plan’ for the forest. In addition, the order prohibits industrial farming, tree felling, bush clearing and hunting, among other activities, within sacred forests. The Sacred Forest Law builds on Benin’s Constitution, which recognises the right to culture, freedom of religion and customary laws and affirms the State’s duty to safeguard spiritual and cultural traditions.

²⁰ *Benin’s Historic Sacred Forest Law Translated Into English*
<https://www.gaiafoundation.org/benins-historic-sacred-forest-law-translated-into-english/>
[Retrieved on 14 April 2022].

b) National Environment Act 2019, Uganda.

In 2019, Uganda became the first African country to recognise the rights of Nature within national state law.²¹ Section 4 of the National Environmental Act 2019 provides that:

s.4 Rights of nature

(1) Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

(2) A person has a right to bring an action before a competent court for any infringement of rights of nature under this Act.

(3) Government shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.

(4) The Minister shall, by regulations, prescribe the conservation areas for which the rights in subsection (1) apply.²²

This huge achievement reflects the beginning of a paradigm shift in the African nation's ecological governance, in recognition that Ugandans' right to a healthy environment cannot be realised unless the health of Nature herself is protected. It is the result of three years sustained advocacy by Ugandan environmental and legal advocacy group ANARDE (Advocate for Natural Resources and Development), supported by The Gaia Foundation, AFRICE and the Open Society Initiative for East Africa.

The regulations referenced in subsection 4(4) of the National Environmental Act 2019 are yet to be issued. This provision potentially limits the application of the rights of Nature in Uganda. The forthcoming regulations to implement the rights of Nature in Uganda mark a crucial next step in the establishment of Earth Law in Africa and offer an opportunity to reverse the potentially restrictive effect of s.4(4); a broad and inclusive definition of "conservation areas" is crucial so that the rights of Nature apply as extensively as possible.

²¹ *Rights of Nature Gain Ground in Uganda's Legal System*, <<https://www.gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system/>> [Retrieved on 14 April 2022].

²² *The National Environment Act, 2019* [https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20\(1\).pdf](https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20(1).pdf) [Retrieved on 14 April 2022].

4. Local.

a) Custodian Communities.

The regional and national developments in the recognition of Earth Jurisprudence described above are rooted in the ongoing commitment of custodians of sacred natural sites to exercise their rights and uphold their responsibilities to their ancestors – by reviving and renewing traditions in response to the challenges of our time. Communities in Uganda, Kenya, South Africa, Zimbabwe, Benin and Cameroon are at various stages of securing the revival and recognition of their customary governance systems and sacred natural sites and ancestral lands.

b) Stories of Resilience.

These communities are building their resilience in the context of the multiple intersecting crises of our time by deepening their roots in their ancestral territories and decolonising their minds, hearts, practices and places after centuries of subjugation. By protecting, remembering and restoring cultural pride and traditions that enhance Nature's diversity, they are putting their worlds back together again and reweaving the basket of life. They recognise that diversity at all levels of life is the foundation of resilience. The biodiversity in our ecosystems; the cultural diversity that has evolved as peoples have adapted to different places; the diversity of seeds that generations have nurtured to cultivate the foods we eat.

These stories of resilience take many forms. In Benin, villagers are restoring revered river systems and winning new legal protections for the sacred forests that play such a vital role in Vodun culture. In south-eastern Zimbabwe, communities in Bikita are reviving millet varieties and other indigenous crops that are more resilient to climate change and restoring wetlands and sacred natural sites in an area hard hit by drought and flood.²³ In Kenya, indigenous Tharakan communities are recalling their clan governance system and customary laws and,

²³ To learn more explore this interactive story *Grains Of Hope: The Revival Of Seed, Land And Culture In Bikita, Zimbabwe* <https://express.adobe.com/page/TCTrBeg6TZTXN/> [Retrieved on 14 April 2022].

with it, their ancestral responsibilities to protect their territory and cosmology.²⁴ In Uganda, the Bagungu communities have revived and documented their customary laws and have secured legal recognition of their customary governance system to protect their sacred natural sites and ancestral lands.²⁵

In the words of Method Gundidza, an Earth Jurisprudence Practitioner from EarthLore Foundation, Zimbabwe:

the communities of Bikita are realising what resilience and food sovereignty mean to us, remembering how our ancestors lived and reaching back into the past to bring what was good into our future... There is still much to do. In the memories of our elders lies our vision for the future — a future in which Bikitans are food sovereign, secure in our traditions and resilient enough to thrive in unstable times.²⁶

c) Uganda: Case Study.

In 2019, Uganda became the first nation in Africa to recognise the rights of Nature in national legislation under Section 4 of the National Environment Act 2019. Two years later in western Uganda, indigenous Bagungu communities, traditional leaders and Buliisa District Council have gone a step further, passing a bill for an ordinance at district level to protect sacred natural sites and recognise the customary laws of the Bagungu People. These pre-colonial laws have enabled generations of Bagungu People to live in a mutually-enhancing relationship with their ancestral lands and waters, now encompassed by Buliisa District.

At the time of writing, the draft legislation is subject to final review by the Attorney General. The bill provides for the protection of an interconnected network of sacred natural sites (*Mpuluma*) embedded within Bagungu ancestral territory. These sites are places of spiritual, cultural and ecological significance and

²⁴ To learn more explore this interactive story *Coming Back To Life In Tharaka, Kenya* <https://www.gaiafoundation.org/interactive-story-coming-back-to-life-in-tharaka-kenya/> [Retrieved on 14 April 2022].

²⁵ To learn more watch this 15-minute film *Custodians of Life: Reviving Culture and Nature in Uganda's Great Lakes* <https://vimeo.com/373875301> [Retrieved on 14 April 2022].

²⁶ Method Gundidza, *Grains of Hope* <https://www.resurgence.org/magazine/article5663-grains-of-hope.html> [Retrieved on 14 April 2022].

potency. They maintain the energetic balance, health and integrity of the wider ecosystems, as well as the health of all communities that now live in the area. The bill also recognises the rights of custodians of sacred natural sites (*Balamansi*) to continue to access these sites, carry out the required ceremonies for which they are responsible and also protect the sites.

These custodians play a vital role in governing human activity in these highly sensitive ecosystems. Wetlands and lake shores, for instance, are recognised as sacred and off-limits for farming, fishing, hunting or other activities that would damage these vital havens for wildlife and sources of freshwater.

By recognising the existence and importance of Bagungu customary laws and sites, the draft ordinance is an important step towards re-empowering the Bagungu to restore the resilience of their ancestral lands and Earth-centred traditions.

The ordinance provides for the creation of a co-governance body led by Bagungu custodians and district officials which will oversee the implementation of the ordinance, promote and protect the health and well-being of sacred natural sites in Buliisa and safeguard the rights of the Bagungu People by opening a space within district governance to recognise the traditional governance of sacred natural site custodians.

The Buliisa ordinance demonstrates pluri-legal systems in practice, implementing customary laws through district legislation to protect sacred natural sites as well as the rights of Bagungu custodian communities. When passed, it will be the first piece of district legislation in Africa to implement ACHPR/Res. 372 (LX) (2017) and it aligns with the vision of the African Charter on Human and Peoples' Rights, which calls for decolonisation on the continent.

This groundbreaking precedent follows over 5 years of regular intergenerational community dialogues to revive Bagungu traditional knowledge and practices, governance systems, seed diversity, and community cohesion, healing some of the losses suffered in a region badly affected by colonialism and neo-colonialism.

In November 2018, Bagungu clans came together to develop eco-cultural maps and calendars and to document their customary laws and clan constitutions,

supported by their partners AFRICE and The Gaia Foundation. These co-created documents were central to building a dialogue with councillors, and achieving the new ordinance.

Both processes, at local and national level, have made one fact abundantly clear — Africa’s indigenous and traditional Peoples have inherently recognised and respected the rights of Mother Earth for countless generations. Recognising their rights, practices and territories in law is therefore an essential step towards the goal of decolonisation and realising the rights of Mother Earth. Liz Hosken, Director of The Gaia Foundation, comments:

The planetary ecological and climate emergencies and growing injustices we face cannot be solved by the same thinking and systems that created them. Africa’s rich cultural heritage, which sustained the continent’s biodiversity for millennia, is the root from which a viable future can grow. Earth Jurisprudence reminds us that for most of human history we understood that human laws must be derived from the laws that govern life, so that we do not destroy our source of life, Mother Earth. The Bagungu’s story shows that Earth-centred cultures can be revived across Africa.²⁷

Uganda is now well placed to lead the way towards decolonised, eco-centric governance in Africa, founded on the diverse knowledge and governance systems of Africa’s indigenous and traditional communities. Frank Tumusiime, the Executive Director of ANARDE reflects:

The process of recognition of customary governance structures and Earth Jurisprudence that supports sacred natural sites stems from recognising that nature has her own inherent right to exist and flourish. With a progressive law like the National Environment Act, 2019, and the Rights of Nature Regulations that will be developed, we shall soon be standing before courts of law with custodians and traditional leaders to champion the rights of lakes, rivers, trees, and other sensitive ecosystems. We only have to embed these in the law first!²⁸

²⁷ *Uganda Recognises Rights of Nature, Customary Laws, Sacred Natural Sites* <<https://www.gaiafoundation.org/uganda-recognises-rights-of-nature-customary-laws-sacred-natural-sites/>> [Retrieved on 14 April 2022].

²⁸ *Uganda Recognises Rights of Nature, Customary Laws, Sacred Natural Sites*, cit.

V. CONCLUSION.

1. Hope for the Future.

Earth Jurisprudence in Africa is at once innovative and ancient, radical and rooted: a revival and enhancement of time-honoured, Earth-centred cultural traditions offering a fresh orientation with which the continent can navigate its way into a flourishing, life-sustaining future. In the midst of climate and ecological emergency and increasing social injustices driven by the dominant extractive economy, the emergence of a strong, pan-African Earth Jurisprudence Collective advocating for decolonised, African, Earth-centred pathways into resilient futures is a cause for hope.

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