MINING AND ITS IMPACTS ON WATER, FOOD SOVEREIGNTY AND SACRED NATURAL SITES AND TERRITORIES

Advocating for Recognition and Protection of Water, Food Sovereignty and Sacred Natural Sites and Territories in Uganda’s Oil Region

July 2014

A publication by the National Association of Professional Environmentalists (NAPE) and the Gaia Foundation.
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Cover photos: The photographs on the cover page show members of the coalition of custodians of Sacred Natural Sites in Kihagya Sacred Forest, some of the seed species found in the Bunyoro region, the now submerged Bujagali Sacred Falls and the gold mining in Karamoja.
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## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEDICATION</td>
<td>vi</td>
</tr>
<tr>
<td>ABOUT THE AUTHORS</td>
<td>vi</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>vii</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>viii</td>
</tr>
<tr>
<td>ACRONYMS</td>
<td>viii</td>
</tr>
<tr>
<td>GLOSSARY</td>
<td>ix</td>
</tr>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>x</td>
</tr>
<tr>
<td>CHAPTER 1</td>
<td>1</td>
</tr>
<tr>
<td>1.0. STUDY FINDINGS ON WATER, FOOD SOVEREIGNTY AND SACRED NATURAL SITES AND TERRITORIES</td>
<td>1</td>
</tr>
<tr>
<td>1.1. Mining in the Bunyoro region</td>
<td>1</td>
</tr>
<tr>
<td>1.2. Water</td>
<td>3</td>
</tr>
<tr>
<td>1.2.1 Status of water in the Bunyoro region</td>
<td>3</td>
</tr>
<tr>
<td>1.2.2 Relationship between Water, Food Sovereignty, Sacred Natural Sites and Territories</td>
<td>4</td>
</tr>
<tr>
<td>1.2.3 Legal Recognition of Water</td>
<td>5</td>
</tr>
<tr>
<td>1.2.4 Legal Recognition of Water</td>
<td>7</td>
</tr>
<tr>
<td>1.2.4.1 National recognition</td>
<td>7</td>
</tr>
<tr>
<td>1.2.4.2 International Recognition</td>
<td>11</td>
</tr>
<tr>
<td>1.3 Food Sovereignty</td>
<td>12</td>
</tr>
<tr>
<td>1.3.1 Status of food sovereignty in the Bunyoro region</td>
<td>12</td>
</tr>
<tr>
<td>1.3.2. Relationship between Food Sovereignty, Water and Sacred Natural Sites</td>
<td>14</td>
</tr>
<tr>
<td>1.3.3 Challenges to Food Sovereignty</td>
<td>14</td>
</tr>
<tr>
<td>1.3.4 Legal Recognition of Food Sovereignty</td>
<td>18</td>
</tr>
<tr>
<td>1.3.4.1 National Recognition</td>
<td>18</td>
</tr>
<tr>
<td>1.3.4.2 International Recognition</td>
<td>21</td>
</tr>
<tr>
<td>1.4. Sacred Natural Sites and Territories</td>
<td>21</td>
</tr>
<tr>
<td>1.4.1 Sacred Natural Sites and Territories in the Bunyoro region</td>
<td>22</td>
</tr>
<tr>
<td>1.4.2 Relationship between Sacred Natural Sites, Water and Food Sovereignty</td>
<td>23</td>
</tr>
</tbody>
</table>
DEDICATION

This work is dedicated to Mother Earth and to the communities and activists uniting to say ‘Yes to life and No to mining.’

ABOUT THE AUTHORS

This Report was developed by the National Association of Professional Environmentalists (NAPE) in conjunction with the Gaia Foundation. NAPE and the Gaia Foundation are committed to building communities’ advocacy capacity to assert and defend their rights and responsibilities to protect biodiversity, ecosystems, their culture, spiritual values and practices, and livelihoods.

National Association of Professional Environmentalists (NAPE)

NAPE is a national Non Governmental Organisation that lobbies and advocates for sustainable management of natural resources. NAPE has worked in areas of natural resources management and human rights for the last 15 years and has conducted various studies in the area of extractive industries and human rights. In 2013, NAPE received a prize from Uganda Human rights Commission for leading in advocating for environmental and human rights protection.

The Gaia Foundation

The Gaia Foundation is passionate about regenerating cultural and biological diversity, and restoring a respectful relationship with the Earth. Together with long-term partners in Africa, South America, Asia and Europe, Gaia has been working for 30 years with local communities to secure land, seed, food and water sovereignty. Through the revival of indigenous knowledge and protection of Sacred Natural Sites, local self-governance is strengthened, enabling communities to become more resilient to climate change and the industrial processes which have caused the many crises we now face. Gaia together with its partners work to address the root causes of today’s most pressing ecological, social and economic injustices.
ACKNOWLEDGEMENTS

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LIST OF FIGURES

Figure 1: Custodians of sacred natural sites and territories
Figure 2: Oil Discoveries in Albertine Graben
Figure 3: Some of the threatened seed species in Bunyoro
Figure 4: Kihagya Forest Sacred Site
Figure 5: Location of some of the Sacred Natural Sites and Territories in Bunyoro Region
Figure 6: Location of Nsonga Ijumika
Figure 7: Location of Nsonga Nyanyama and Nsonga Ntogota
Figure 8: Containerised drilling waste pending disposal
Figure 9: Endangered seeds.
Figure 10: Bujagali falls.

BOXES

Box 1: Case Study of Community Resistance in the Niger Delta, Nigeria
Box 2: The 6 Pillars of Food Sovereignty
Box 3: Case Study of Community Resistance in Buliisa District, Uganda
Box 4: Earth Law Principles
Box 5: Earth Jurisprudence Precedents
Box 6: Potential Legal Arguments for Recognising Water, Food Sovereignty and Sacred Natural Sites

ACRONYMS

ABN  Africa Biodiversity Network
ACHPR African Charter on Human and Peoples’ Rights
CNOOC China National Offshore Oil Company
CSO Civil Society Organisations
DRC Democratic Republic of Congo
EIA Environmental Impact Assessment
FPIC Free Prior Informed Consent
GMO Genetically Modified Organisms
GOU Government of Uganda
HEP Hydro-electric Power
ICE Institute of Culture and Ecology
IUCN International Union for the Conservation of Nature
MEMD Ministry of Energy and Mineral Development
MFNP Murchison Falls National Park
NAPE National Association of Professional Environmentalists
NEMA National Environment Management Authority
PEPD Petroleum Exploration Production Department
SEA Strategic Environment Assessment
SNST Sacred Natural Sites and Territories
UNESCO United National Education, Scientific and Cultural Organisation
UNDRIP United Nations Declaration on the Rights of Indigenous Peoples
ILO International Labour Organisation
GLOSSARY

For the purpose of this Report, the following definitions apply:

**Food Sovereignty**: right of people to define their own food systems, including right to choose what food to produce and consume when and how. Food sovereignty puts the people who produce, distribute and consume food—such as farmers/peasants, pastoralists, fisher-folk, indigenous peoples, women and rural youth at the centre of decisions on food systems and policies, rather than the demands of markets and corporations that they believe have come to dominate the global food system.

**Sacred Natural Sites**: places within ecosystems, such as forests, lakes, rivers, wetlands, mountains and wilderness, which have special ecological, spiritual and cultural significance to communities, and which connect into a larger network of sacred natural sites, embedded in a territory.

**Territory**: encompasses all living and non living entities, including ancestral spirits, on land, water and air, and vertical areas deep into the Earth such as the subsoil, minerals and waters, and up into the sky to the constellations, including the human community born into the territory.

**Social Values**: beliefs and principles which an individual and community consider to be of importance in their social existence.

**Cultural Values**: beliefs, traditional knowledge, religious or spiritual practices, rituals or anything else which come from a community’s culture and which are important to the individual.

**Environmental Values**: beliefs and responsibilities which recognise that ecosystems and natural features provide tangible and intangible qualities for the well being of life as a whole, including humans and other species, and for sustaining the health and functioning of the whole planet for present and future generations.

**Earth Jurisprudence or Earth Law**: a philosophy and practice which understands Earth as the primary source of law, thus, recognising that all human laws and governance systems should be derived from these laws which govern Life on the Earth. This means that humans need to comply with Earth’s laws in order to maintain the well being of the entire Earth community (all living and apparently non living entities, including ancestral spirits and their habitats).

**Land grabbing**: acquisition, whether illegal or legal, of communities’ traditional or customary lands, which undermines their rights and responsibilities to govern and protect, access or use such lands.

**Extractive Activities**: industrial processes, technologies and structures established to extract minerals, metals or fossil fuels from the Earth.¹

**Indigenous**: This includes people, communities, and nations, who claim a historical continuity, cultural affinity and sovereignty to their original territories.

**Bunyoro region**: This is used to refer to the districts of Masindi, Hoima, Buliisa, Kiryandongo and Kibaale.

¹ Note the terms extractive industries and mining are used interchangeably in this Report.
EXECUTIVE SUMMARY

Mining and extractive activities in Uganda, and around the world, are accelerating at an alarming rate. According to the Ugandan Ministry of Energy and Mineral Development (MEMD), mining is expected to play a large role in the future economic development of Uganda. They say that mining will create jobs and is envisaged to be the biggest foreign exchange earner in the coming years. Ugandan oil has attracted the attention of international extractives corporations. Following an agreement with the Ugandan Government in 2012, UK company Tullow, French company Total, and the Chinese National Offshore Oil Company (CNOOC) have been granted access to operate oil mining activities in the Albertine region of Uganda. The Albertine Rift region has an estimated 3.5 billion barrels of oil and gas deposits. To date, 89 oil wells have been drilled in the Albertine Graben region, of which 76 oil wells have proved ‘successful’, that is, to be containing oil/hydrocarbons. More exploration sites are designated for exploration. The extraction of oil and gas is expected to take place by 2017. However, it is not clear how long this mining boom will last. Nor is it clear how many jobs will be created, for how long, and how many other livelihoods will be lost in the long-term as a result of mining and extractive activities. The growing civil society movement are asking critical questions including: what will be sacrificed as a consequence, particularly in terms of water, food, land and climate change – which are the fundamental conditions for life and livelihoods to exist? As the decisions we make today will radically affect the lives of future generations, are we factoring them into our decisions? How will the long-term ecological and social impacts be dealt with when there is no more to mine, and who will be held accountable?

The Bunyoro region, mid western Uganda is celebrated for its rich biodiversity, playing host to several national parks with an abundance of biological and cultural diversity heritage. The region is especially abundant in water, food growing areas and Sacred Natural Sites and Territories. The Albertine rift is a watershed area, the source of numerous rivers and lakes which nourish surrounding ecosystems, on which human communities and their livelihoods depend. The lake system supports not only Uganda but also neighbouring countries Sudan, Democratic Republic of Congo (DRC) and Rwanda, which form part of the watershed. For centuries the region’s rich food production systems have been based on subsistence and peasant farming and fishing, and have successfully been feeding communities and maintaining healthy ecosystems. The relationship which communities have with their ecosystems runs deeply through their cultural and spiritual beliefs and traditions, and has ensured the protection of these systems for generations.

There are several Sacred Natural Sites in the Bunyoro region, known locally as Ihangiro, which are of ecological, spiritual and cultural importance and exist mainly in the form of water bodies (lakes and rivers), caves, rocks, forests and other “wild lands”. Such a network or system of sites is a common phenomenon. Sacred Natural Sites are believed to have been created by God at the time of Creation and are where ancestral spirits reside. The minerals and metals which may be found in fragile ecosystems including water bodies, cultivated land and in areas recognised by communities to be of high spiritual and cultural importance, are there for a reason. Indigenous communities understand the presence of minerals and metals beneath Mother Earth as an integral dimension of Nature which is part of the living system, and must continue to exist and be conserved. However, Governments and mining industries predominantly view these minerals and metals as ‘resources’ for economic gain, rather than as sacred and vital to Earth’s life support system. These are two very different world views – with a very different legacy.

4 See the President of Uganda’s State of the Nation address: http://www.statehouse.go.ug/media/presidential-statements/2014/06/05/state-nation-address-he-yoweri-kaguta-museveni-president-re (last accessed June 2014).
Uganda’s remaining ecosystems and communities are increasingly threatened by multiple pressures, which emanate from a world view of exploiting what one can from Nature, despite the likelihood of irreversible damage and the consequences for generations to come. Threats include commercial and chemical agriculture and the promotion of genetically modified organisms (GMO’s), which further contributes to climate change, and national laws and policies promoting economic ‘development’. The growth of mining and extraction, however, is likely to destroy the health and survival of Sacred Natural Sites and Territories, food sovereignty and water systems on an unprecedented scale. As is already evidenced in other countries, such as Nigeria and Ghana, mining and extraction of Earth’s metals and minerals is having devastating, widespread and long-term impacts on ecosystems and communities’ lives and livelihoods. This is particularly because the scale of mining is increasing, and as areas of concentrated minerals and metals become exhausted, mining threatens to penetrate and destroy other areas across our planet Earth.\textsuperscript{6}

A Report by Uganda’s National Environment Management Authority (NEMA) acknowledges that excavation and exploration installations and associated infrastructure could have significant negative effects on biodiversity and ecosystems in the Albertine Graben region, which has hitherto remained undisturbed by human activities.\textsuperscript{7} Since the discovery of oil in the Albertine rift in 2006, Sacred Natural Sites and Territories, water and food systems in Hoima and Buliisa, and protected areas such as Murchison Falls National Park and Kabwoya Wildlife Reserve, have already been significantly affected, even before extraction activities have begun. Exploration activities, such as the drilling of oil wells and associated noise and vibrations, have disturbed the breeding grounds and migratory patterns of wildlife and the fish in Lake Albert. As a result, fishing has significantly diminished for communities, which undermines a major source of livelihood and food sovereignty for them. Elsewhere, communities have had their access and enjoyment of land and water near oil wells restricted, such as fishing communities in Kaiso and Sebagoro and from Kyehoro to the Kabwoya Wildlife Reserve. Community access to Sacred Natural Sites, such as Nsonga Ijumika in the Kaiso area, has also been restricted, thus undermining the heart of their cultural and spiritual practices and identity.

If mining and extractive activities continue in the Bunyoro region, there is the further threat of water and soil contamination, through oil spills and dumping of waste, which would have an impact far greater than the area of operation, as ecosystems are interconnected. Extraction of vast amounts of water would further reduce water in the lake system, the surrounding ecosystem and thereby for food production. As land speculation and grabbing increases, so too would the displacement of communities and potential abuse of human rights.\textsuperscript{8} As fundamental conditions such as water and food become restricted and scarce, conflict is likely to develop between the communities, the oil companies and their labourers, and the Government. According to the European Parliament’s Directorate General for External Policies, conflicts and social unrest are almost always associated with oil extraction, when looking at global records.\textsuperscript{9}


On the economic front, oil mining is likely to destabilise the economic fabric of the society by creating quick sources of income for only a few, for a short boom, through some employment, markets and infrastructure - all of which are temporary because oil is a non-renewable ‘resource’ and will be depleted at some point, sooner if the current rate of consumption continues. Other livelihoods like agriculture and tourism, which depend on healthy ecosystems, are likely to be devastated by the impacts of mining, now and for next generations.\(^{10}\)

*The choice is stark: either we sustain Sacred Natural Sites and Territories, water and communities’ food sovereignty, or we sacrifice these fundamental conditions of life for present and future generations, in favour of short-term mining and extractive activities and the toxic wasteland left in their wake. Is this the legacy we wish to leave our children?*

This Report by the National Association of Professional Environmentalists (NAPE) and the Gaia Foundation aims to respond to the information gap on the impacts of mining and extractive activities, and serve as an educational and advocacy tool for empowering communities and civil society to ensure the protection of water, food sovereignty and Sacred Natural Sites and Territories in the Bunyoro region and elsewhere.

Contributing to a wider framework of work, supported by the European Union, of strengthening African Civil Society networks (CSO) to respond to the rapid growth of extractive activities, this Report also aims to inspire and support communities, organisations, lawyers and policy makers in other countries to take strong and clear action to halt the destruction of Africa’s precious gifts, and to protect them for generations to come, of all species.

This Report exposes the existing and likely impacts of mining and extractive activities, with a focus on the districts of Hoima and Buliisa in Bunyoro, Uganda. Building on the earlier legal study conducted by NAPE in 2010,\(^{11}\) this Report also examines some of the legal and policy instruments at the national, regional and international levels. It also identifies potential arguments which communities could develop and advocate to push for stronger recognition of Sacred Natural Sites and Territories, water and food sovereignty, and their rights and responsibilities to govern, protect and defend themselves from the impacts of mining and extractive activities. The Report also recommends capacity building, legal and policy measures and advocacy messages for the protection and defence of Sacred Natural Sites and Territories, water and food sovereignty, and the customary governance systems of their custodian communities, to enable communities and civil society to take effective action and influence decisions to prevent and minimise impacts of mining.

Presented in 6 Chapters - Chapter 1 presents findings on the status of, and interrelationships between, water, food sovereignty and Sacred Natural Sites and Territories (SNST), as well as some of the challenges faced in protecting these elements of life. Examining some of the national and international laws and policies, this chapter also analyses the extent of their legal recognition and identifies potential advocacy arguments to use in defending SNST, water and food sovereignty from mining and other extractive activities. Chapter 2 documents some of the Sacred Natural Sites and Territories in the Bunyoro region, describing their importance and threats. Chapter 3 examines the likely impacts of mining on SNST, water and food sovereignty. Chapter 4 explains Earth Jurisprudence or Earth Law, including its principles, practice in the Bunyoro region, and examples of precedents around the world. Chapter 5 concludes with observations. Chapter 6 recommends measures and reforms for the protection and recognition of SNST, food sovereignty and water and the prevention and reduction of the impacts of mining. It also offers advocacy messages for communities and civil society. This is followed by a bibliography of materials used during this Report.

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Some of the Report’s Concluding Observations include:

- **Sacred Natural Sites and Territories, water, food sovereignty are ecologically, culturally and spiritually interconnected and are vital conditions for life and livelihoods.** Accordingly, the destruction of one system could lead to the destruction of the others. The health and integrity of these systems requires the protection of each system as part of a holistic approach.

- **Communities protect ecosystems through customary governance systems based on Earth’s laws,** which prohibit human activities such as mining, extractive activities and “development” in Sacred Natural Sites and Territories and areas for food sovereignty and watershed areas. These areas are part of our common heritage, and should be recognised as No-Go Areas for mining and other destructive activities, as a minimum.

- **Mining and extractive activities are likely to have destructive, widespread and long-term impacts on ecosystems and communities.** Impacts can include land grabbing, water scarcity and pollution, dumping of toxic waste, loss of food sovereignty, and destruction of, and restricted community access to, Sacred Natural Sites and Territories. As ecosystems are interconnected, these impacts would not be restricted locally but could extend miles beyond the mine including to other countries within watershed areas such as Sudan, Rwanda and the DRC, which could lead to further conflicts. The wider footprint of mining on water, food sovereignty and Sacred Natural Sites and Territories is generally overlooked, but at the expense of present and future generations. Accordingly these impacts need to be prevented and minimised.

Underlying challenges include: communities are not recognised as the ‘the people responsible’ or custodians of ecosystems and the minerals and metals beneath the land; mining may occur within Sacred Natural Sites and Territories, and protected areas contrary to conservation policies; and strict regulation and monitoring of mining activities are lacking.

- **Human rights and responsibilities, particularly of women could be undermined.** The impacts of mining and extractive activities could undermine the environmental, social, cultural, political and economic rights of communities. As women play a vital role in the governance and protection of water, food sovereignty and Sacred Natural Sites and Territories, and depend on them for their lives, culture and livelihoods, the impacts of mining, particularly on access to and health of these systems, would threaten the rights and responsibilities of women. This issue needs to be recognised and appropriately addressed.

- **Legal recognition and defence of water, food sovereignty, Sacred Natural Sites and Territories and their customary governance systems are limited.** Their explicit recognition in Ugandan laws and policy is lacking (except the conservation of water), as is their implementation and enforcement. Some laws are pro-development, such as the Mining Act 2003, and based on human-centred/industrial values which do not recognise the interconnections between ecosystems and humans, and the need to comply with Earth’s laws and limits for the well being of life of present and future generations. The future of Sacred Natural Sites and Territories, food sovereignty and water in the Bunyoro region depends in part on their legal status and recognition.

In response this Report calls for stronger protection and legal recognition of Sacred Natural Sites and Territories, water and food sovereignty areas, and prevention and reduction of the impacts of mining and extractive activities. Overall it recommends stronger implementation, enforcement and reform of laws and policies to recognise Sacred Natural Sites and Territories, watershed and food sovereignty areas as No-Go Areas for mining, extractive activities and destructive development, as a minimum; and recognition of communities’ customary governance systems and their rights and responsibilities, which protect ecosystems for present and future generations of all species, in accordance with Earth’s laws.
The Report makes the following priority Recommendations:

For Communities

- Sustain and protect Sacred Natural Sites and Territories, food sovereignty and water systems and their ecological, cultural and spiritual values and interconnections; and document and promote, where appropriate and without disclosing confidential knowledge, their importance for life and wellbeing of all species.

- Revive, strengthen, and practice customary governance systems and traditional institutions, including the role of women, in protecting Sacred Natural Sites and Territories, food sovereignty and water, based on customary laws, founded in Earth’s Laws (Earth Jurisprudence principles), and transfer the knowledge and values to current and future generations.

- Develop community ecological governance or ‘management’ plans which stipulate what can or cannot take place in relation to Sacred Natural Sites and Territories, food sovereignty and water sources and other ecosystems, in accordance with customary laws, and where appropriate with protected area managers, apply and enforce these plans to deter all forms of destruction.

- Establish precedents which secure recognition of Sacred Natural Sites and Territories, food sovereignty and watershed areas, including as protected areas and No-Go Areas for mining, extractive activities and destructive development, as a minimum; and for recognition of the customary governance systems, laws, rights and responsibilities of their custodian communities.

- Build strong community coalitions and national alliances to protect Sacred Natural Sites and Territories, food sovereignty and water, sharing common principles, experiences and lessons and uniting in solidarity with regional and international alliances to say “Yes to life, No to mining.” Encourage collaboration with others nationally and internationally.

For Civil Society

- Support custodian communities to revive, practice, document, and secure legal recognition of their customary laws based on Earth Law principles, and assert their rights and responsibilities to govern and protect Sacred Natural Sites and Territories, food sovereignty and watershed areas, drawing on cross-cutting legal arguments such as the rights and responsibilities of communities to self-governance/determination, free prior informed consent including withholding consent, access to information, participation in decision-making, access to legal redress, and the rights of ecosystems/Nature and future generations.

- Advocate for the implementation, enforcement, and reform of laws, policies and Government institutional arrangements for stronger recognition and defence of Sacred Natural Sites and Territories, Food Sovereignty and water as protected areas and No-Go Areas for mining, extractive activities and destructive development, as a minimum, as well as the rights and responsibilities of communities to govern and protect them. Such laws and policies include; the Ugandan Constitution 1995, National Environment Management Act 1998, Historical Monuments Act 1967, Mining Act 2003, and reform of the Public Order Management Act 2013 among others.

- Establish and nurture platforms or processes for promoting, applying and securing recognition of Earth Law principles in laws and policies to maintain the health and functioning of the wider Earth Community (plants, animals, ecosystems, humans etc) and planet as a whole.

- Monitor (non) compliance of mining and extractive activities with environmental and human rights standards and requirements, and advocate for stronger transparency, corporate accountability and monitoring tools and systems, including a national monitoring framework.
For Government and other institutions

- Recognise and support the protection of Sacred Natural Sites and Territories, Food Sovereignty and water and their custodian communities’ customary governance systems and Clan institutions, based on Earth Law principles.

- Implement and enforce national, regional and international laws, policies and best practice, for the recognition and protection of Sacred Natural Sites and Territories, Food Sovereignty and Water, including as No Go Areas for mining, extractive activities and destructive development, as a minimum; and the customary governance systems, rights and responsibilities of their custodian communities. For example, enforce the African Charter on Human and Peoples’ Rights, and Convention on Biological Diversity, ratify the UNESCO Heritage Convention and ILO Convention No. 169, and endorse and implement the UNDRIP 2007, IUCN Recommendations (especially 2.82 (2000) and 147) and 2013 World Wilderness Congress Resolutions 11 and 12.

- Revise, develop, coordinate and implement cross-sectoral policies, legislation and institutions to recognise and support the relationships between people, Sacred Natural Sites and Territories, food sovereignty, water and other ecosystems, and to address the impacts of mining.

- Develop, apply and enforce strict environmental and social responsibilities for mining and extractive industries through legal, policy and institutional frameworks; legal measures for stakeholder participation, particularly community and civil society, including in decision-making, prevention and mitigation measures, and monitoring compliance; and establishment of a national framework and independent institution for monitoring compliance, transparency and enforcement of mining and extractive industries’ responsibilities.

For Industry

- Respect national, regional and international laws, policies, best practices, and Earth Law principles, particularly the rights and ecological limits of ecosystems, the rights of peoples to self-determination, public participation in decision-making, free prior and informed consent including to withhold consent (say ‘no’), and the respect of Sacred Natural Sites and Territories and other protected areas as No-Go Areas for mining, extractive activities and destructive activities, as a minimum.

- Ensure that any proposed mining, extractive or development activity complies with required, independent and rigorous Environmental Impact Assessments, which adheres to the precautionary principle and assesses the long-term and widespread impacts on agriculture, water and Sacred Natural Sites and Territories.

- Use minerals and metals which have been dumped as ‘waste’, and re-use materials already in circulation, rather than developing new mines to extract more from our finite planet. Transition from finite ‘resources’, such as fossil fuels, to renewable energy.
Figure 1: Custodians of sacred natural sites and territories.
CHAPTER 1

1.0. STUDY FINDINGS ON WATER, FOOD SOVEREIGNTY AND SACRED NATURAL SITES AND TERRITORIES

The findings of the Report are presented in Chapters 1 and 2, and focus on the status of water, food sovereignty, and Sacred Natural Sites and Territories in the Bunyoro region. The information also presents the policy and legal opportunities and challenges pertaining to their recognition and protection as well as an assessment of the likely effects of oil and gas exploration on ecosystems, communities and peoples' livelihoods in the Bunyoro region.

1.1. Mining in the Bunyoro region

The key mining activity in the Bunyoro region is oil and gas exploration. The history of exploration for petroleum in Uganda dates back to the early 1920’s but intensive exploration commenced in the 1980’s with the acquisition of aeromagnetic data in 1983, whose interpretation confirmed the existence of sedimentary basins in the Albertine Graben. This was followed by the enactment of the Petroleum Exploration and Production Act in 1985, and the collection of ground geological and geophysical data and promotion, ultimately leading to licensing of international oil companies, to undertake seismic surveys and drilling.

Today the estimated oil reserves in the Albertine Rift are 3.5 billion barrels with 1.2 to 1.7 billion barrels commercially recoverable/extractable. Approximately 40% of Albertine Graben has been explored and there is additional potential in the unexplored parts of the Graben.

The first commercial oil discovery was made in 2006 by Hardman and Tullow oil company, and since then a number of wells have been drilled in the Albertine Graben, by UK company Tullow, French company Total and the Chinese National Offshore Oil Company (CNOOC). Albertine Graben is subdivided into seventeen (17) Exploration Areas (EAs) out of which, four areas (EA 1 and 1A, EA 2 and Kingfisher Discovery Area) are licensed to these companies. Each of the three companies owns 33.3 percent of the shares in the four exploration areas in the country following a transaction in which Tullow sold 66.6 percent of its shares to the two companies. The oil companies recently signed a memorandum of understanding with the Ugandan Government to develop the hydrocarbon ‘resources’ in the region, and there are claims they will invest more than USD 13.8 billion in oil extraction for 20 years.

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13 See MEMD Government of Uganda (2013) ‘Uganda Refinery Project’, p.10 which states that 60% of the Albertine basin has yet to be explored.
To date, 89 oil wells have been drilled in the Albertine Graben, of which 76 wells have encountered hydrocarbons implying the presence of oil, representing a ‘success’ rate of over an 85%. More exploration sites are designated for exploration. At the time of this Report, 21 fields had been taken for appraisal to establish the quality and chemical composition of oil and gas by Government and oil companies operating in Uganda’s oil region. Applications for production licenses over 9 fields have been submitted. Out of the submitted applications, one production license has been granted, to CNOOC for the Kingfisher Discovery Area, one of the discoveries made seven years ago in Hoima district, western Uganda. The extraction of oil and gas is expected to take place by 2017.

As mining and extractive activities accelerate and expand in the Bunyoro region, and elsewhere across the world, critical questions need to be addressed urgently: What will be sacrificed as a consequence, particularly in terms of water, food, land and climate change – which are the fundamental conditions for life and livelihoods to exist? What will be the long-term ecological and social impacts on future generations? What are the measures and reforms needed, especially advocacy, legal and policy, to strengthen the protection and recognition of Sacred Natural Sites and Territories, food sovereignty and water, and to prevent and reduce the impacts of mining? The following chapters offer some responses.

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21 See the President of Uganda’s State of the Nation address; available at: http://www.statehouse.go.ug/media/presidential-statements/2014/06/05/state-nation-address-he-yoweri-kaguta-museveni-president-re (last accessed June 2014).
1.2. Water

1.2.1 Status of Water in the Bunyoro region

“Lake Albert – also known as Albert Nyanza– is one of the African Great Lakes. It is Africa’s seventh-largest lake, and the world’s twenty-seventh largest lake by volume. Lake Albert is located in the center of the continent, on the border between Uganda and the Democratic Republic of the Congo (formerly Zaire). Lake Albert is the northernmost of the chain of lakes in the Albertine Rift, the western branch of the East African Rift, and is part of the complex system of the upper Nile. Its main sources are the Victoria Nile, ultimately flowing from Lake Victoria to the southeast, and the Semliki River, which issues from Lake Edward to the southwest. Its outlet, at the northernmost tip of the lake, is the Albert Nile, which is known as the Mountain Nile when it enters South Sudan. It is therefore strategically important to three countries.
The water potential of the Albertine area of the Bunyoro region is comprised of ground water, surface water and precipitation (rainfall). The Bunyoro region lies in a rain shadow with an average of less than 875mm/annum. There are two peak rainy seasons between April-May and August-October. The Albertine rift has significant amounts of surface water in the form of lakes and rivers. Rivers originate from elevated grounds above the escarpment and Rwenzori mountain ranges and flows down into Lake Albert. The main rivers arising from this important watershed area are: Sambiya, Victoria Nile, Hohwa, Wambabya, Waki, Waiga, Sionso, Waisoke and Muzizi. Lake Albert is the largest single water body in the region. Due to geological formations, overall, there is less underground water compared to that found as surface water. The underlying basement rocks in the region do not contain sufficient aquifers to store large amounts of water over a long period of time.

The livelihoods of the local populations around Lake Albert are closely linked to the watershed and dependent ecosystems. The inhabitants rely on fishing, cattle breeding and agriculture. Trade in border towns such as Mahagi allows locals to buy and sell goods such as timber, agriculture products and fish. Lake Albert not only provides income to the local population, but also contributes to 15% of Uganda's national fish catch. In addition to being economically important, the Lake Albert region is highly relevant for the Ugandan-Congolese security relations.

1.2.2 Relationship between Water, Food Sovereignty, Sacred Natural Sites and Territories

Water in the Bunyoro region provides life for Lake Albert and surrounding ecosystems, including human communities who have developed rich fishing traditions, adapted to their ancestral territory. Without water, life cannot exist. Every living creature depends on clean water. Livelihoods in this area are dependent on the lake, and include fishing, farming, domestic household activities, tourism and public institutions such as schools and hospitals. Water in the Bunyoro region therefore supports a range of life systems:

a. Agriculture: the diverse agricultural practices adapted to this ecosystem provide most of the food for the communities in this region. Farming in the Bunyoro is mainly rain fed and subsistence based.

b. Wildlife surrounding the Lake Albert ecosystem, as well as the fresh water marine life, such as fish, of the lake itself, which many depend on, including the human communities in both Uganda and the DRC.

c. Cultural and spiritual beliefs and practices associated with water and fishing and the protection of Sacred Natural Sites and Territories.

d. Socio-economic activities e.g. fish farming in waters of Lake Albert and River Nile, and transport connecting to the DRC.

e. Hydropower energy generation, such as the Hydropower Electricity Power Station (HEP) on River Wambabya in Hoima district.

f. Tourism based activities on Lake Albert and the Nile River.

g. Cross- border collaboration for ecosystems conservation, peace and security and regional cooperation between Uganda and the DRC under the auspices of the Nile Basin Initiative.

The communities recognise the interrelationships between water, food sovereignty and Sacred Natural Sites and Territories. Their relationship with water, particularly for fishing, farming and domestic use, in the Bunyoro region, also has a significant gender dimension. Men and youth play a significant role in fishing and providing food and income to their families. Women and youth play a significant role in providing water for domestic use and in agricultural production, being the custodians of the diversity of seed varieties evolved in the region over millenia. Women also play an important role in cultural practices, especially the rituals and ceremonies, associated with Sacred Natural Sites and Territories, including sacred lakes. These practices provide for the protection and maintain the viability of the entire ecosystem, and the communities and families who depend on them for their wellbeing and traditional way of life.

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23 This Report focuses on water quantity. There is inadequate data on water quality.
1.2.3 Challenges to the Protection of Water

a) **Mining** - A significant threat to water in the Bunyoro region is from mining and extractive activities, which threaten to have the following impacts.

i) **Water pollution** - Presently, the main challenge affecting water in the Bunyoro region is the threat of toxification of water by mining activities. According to communities in the Buliisa – Nguedo oil region, there are potentially toxic waste piles generated from oil exploration activities, such as from drilling of oil wells, especially where the oil pipeline is proposed to pass. Oil wells such as Ngassa 11 are located in the middle of Lake Albert (a major water source) and the plan appears to be that oil will be extracted offshore using pipelines. Based on experiences from other oil producing countries like Nigeria and Gulf of Mexico, local communities, especially those living along the shores of Lake Albert, are concerned by the strong likelihood of oil spills during the process of extraction, and the potential for a catastrophic oil pipeline rupture and a large spill that would completely pollute Lake Albert. In the case of an oil spill, the life of the lake, including fish, would be poisoned, and drinking water for humans and other species toxified (see Section 1.3 on food sovereignty). These impacts may not only be limited to Lake Albert, but could affect all the rivers that flow from the lake and the underwater system too, as these water systems are interconnected. Once water systems are polluted the conditions of life would be affected, for generations to come.

ii) **Unpredictability of water** - Mining is likely to involve cutting down of trees and destruction of forests and other flora, which in turn is likely to affect the quality of water due to increasing erosion and siltation of river banks during rainy seasons. Furthermore, excessive deforestation would contribute further to climate change in the Bunyoro region. The Rift Valley has already experienced unpredicted floods, and this is likely to worsen if oil activities intensify. The long dry spells are also likely to lead to drying up of water sources such as rivers and wells.

iii) **Restricted access to Sacred Water Sites** - is likely to increase due to ongoing oil and gas exploration activities. For example, during the drilling of some oil wells in Lake Albert, a section of the lake was closed off from fishing activity. In future, such access may remain or become restricted in some locations. It is also anticipated that upstream huge water use by the refinery will result in reduced water availability downstream thus affecting the river system and communities downstream and also neighbouring countries. The remaining Sacred Natural Sites could be significantly affected along the shores of Lake Albert, but so could others beyond the lake, because they are all connected. Pressure on water availability and quality for humans and ecosystems are likely to heighten with the effects of climate change.29

Water is sacred, food should be clean, and is consumed by flora and fauna, and in any action, it should be protected to the highest level of safety. *Agnes Kirabo, Coordinator, Food Rights Alliance-Uganda*

Lake Albert is my livelihood and the rest of the community. We obtain fish and water that we use in our homes. During the drilling of oil wells in 2009 in our area, we were told that Ngasa II oil well had been discovered in Lake Albert and just a stone-throw from our homesteads. We wonder how oil will be extracted without spilling into the lake. And, in case of an oil spill, we shall be no more!

*We call upon all citizens of Uganda and other well wishers from all over the world to join us in asserting 'No to pollution of Lake Albert'; says Immaculate Businge of Kaiso Tonya-Hoima*

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29 See Barlow, M. (2013) 'Blue Future: Protecting Water for People and the Planet Forever' which explains how the abuse of water is causing climate chaos, and calls for a “new water ethic based on four principles: water is a human right; water is a common heritage; water has rights too; and water can teach us how to live together.”
Box 1: Case Study of Community Resistance in the Niger Delta, Nigeria

**EXTRACT FROM OPENING PANDORA'S BOX REPORT**

**Case Study:**

**Nigeria - Niger Delta Communities say ‘Leave Oil in the Soil’!**

“People are born into pollution, they live in pollution, and they are buried in pollution.”

Nnimmo Bassey, Executive Director of Environmental Rights Action, and Chair of Friends of the Earth International.

Nigeria, in the vast Niger Delta, is the ancestral home of communities who have lived there for centuries. To the Ogoni people their land is sacred and the souls of humans and animals are intertwined. Rituals, often with gam, are performed to honour the land and give thanks for its rich gifts of abundant food and water.

Ogoniland was the home of Ken Saro-Wiwa, a human rights and environmental activist, who campaigned to protect his peoples’ beautiful delta from the violations of the oil industry, until he was assassinated in 1995.

This was one of the many reactions to the fact that in 1993, the Ogoni people united and expelled Shell Oil from Ogoni land. Environmental Rights Action (ERA) (Friends of the Earth Nigeria) work with the Ogoni to help them deal with the devastating impact which Shell Oil continues to have on their homeland and communities. It is hard to imagine, but when people visit the area they leave deeply shocked and outraged. For example, there were two major oil spills in 2008 and 2009, which continued unabated for months. The local community were forced to abandon their homes.

Gas flaring is another major challenge in Nigeria, which is having devastating implications locally and globally. The burning off of associated gas from crude oil extraction is contributing to acid rain, desertification and drying up of rivers such as Lake Chad, and to global warming. These conditions are forcing pastoralists and fishermen to migrate as environmental refugees, which increases pressure on land elsewhere. Diseases, such as bronchitis, from fumes of the gas flaring, are also rife.

In 2011 the United Nations Environment Program (UNEP) Report on their assessment of the environment of Ogoni land confirmed the concerns and claims of the Ogoni people. The Report found that, in over 40 locations tested, the soil is polluted with hydrocarbons up to a depth of 5 metres. Further, that all the water bodies in Ogoni land are polluted. UNEP also reported that the levels of benzene (a chemical known to cause cancer) in approximately 90 of the locations, is more than 900 times above accepted World Health Organisation standards. Yet this contaminated water is the source of drinking water for local communities. The UNEP estimated that it would take 35 years to clean up Ogoni land and water systems, and an estimated one billion US dollars to begin the clean up.

As Nnimmo Bassey (Executive Director of Environmental Rights Action, and Chair of Friends of the Earth International) highlights: “The figure in this report assumes all the funding comes in and the conditions exist to use them effectively. We have estimated that it will take between 300-500 billion dollars to clean the entire Niger Delta, and almost a lifetime to restore Ogoni land.”

ERA has been supporting local communities in their call for ‘leaving oil in the soil’, and they have presented a proposal to the Nigerian government for no new oil fields. ERA have been involved in numerous campaigns and lawsuits to hold corporations to account, including the 2005 landmark ruling by a Nigerian High Court that gas flaring is unconstitutional, damages people and the environment, and must stop. Recently, the Bodo community filed a case in the High Court in London to sue Shell for damages to their ecosystems and community, and, in 2011, Shell admitted liability.

However the struggle to stop oil spills continues – in December 2011 Shell spilled nearly 2m gallons of oil off the coast of Bonga, Nigeria, in the worst spill in Nigeria in 13 years.

For more information:

- Environment Rights Action – http://www.eration.org
- See field studies and testimonials from communities – http://www.eration.org/component/eracontent/?view=categoriesBid-2

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1 For more information see Unrepresented Nations and Peoples Organisation http://www.unpo.org/members/7901

1.2.4 Legal Recognition of Water

1.2.4.1 National recognition

In Uganda, there are laws and policies which provide for the protection of water and water sources, such as wetlands, lakes and the wider environment, as well as regulate its use and activities which may cause pollution. Citizens have a legal right to access clean and safe water, and the protection of water is a legal duty of both the Ugandan State and citizens, on behalf of present and future generations. Clean and safe water is also recognised as linked to a right and responsibility to a clean and healthy environment. Below are some of the legal instruments and provisions which could be asserted for the protection of water.

NOTE: Many of the legal provisions mentioned in this section are multi-functional/cross-cutting and therefore could also be asserted in the context of defending food sovereignty (see Section 1.3.4) and Sacred Natural Sites and Territories (see Section 1.4.4), as they are all interconnected. See Section 6.1 for a summary of cross-cutting legal arguments which could be used to defend water, food sovereignty and Sacred Natural Sites and Territories, and the relationships between them.30


Environmental provisions

The 1995 Constitution of the Republic of Uganda (amended 2005) establishes National Objectives and Directive Principles of State Policy, which should guide the application and interpretation of the Constitution, any other law and policy decision. It provides, for example, that:

The State shall take all practical measures to ensure clean and safe water by promoting a “good water management system at all levels.” (Objective XXI)

Objective XIII concerning the protection of the wider environment states that “The State shall protect important natural resources including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.”

Objective XXVII (ii) requires that “the utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans, and, in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.” Further it provides that the State shall “promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda” (Objective XXVII(iv)(b)).

Article 237 (1)(b) provides for the Government or local government to hold in trust, and to protect, lakes, rivers, wetlands, forest reserves, game reserves, national parks and any other land to be reserved for ecological and tourism purposes.

Article 245(a) also requires Parliament to “provide for measures to protect and preserve the environment from abuse, pollution and degradation.”

Advocacy opportunities: Communities and civil society could lobby for the implementation and enforcement of the above provisions which impose duties on the Government (and Parliament) to protect water ecosystems, including rivers and lakes, on behalf of present and future generations, and to prevent and minimise damage and destruction to water sources.

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30 This Report identifies some of the legal arguments which communities could use in their advocacy to challenge mining. This is by no means an exclusive list but rather an overview of potential advocacy tools for further discussion and development. A detailed analysis of legal, policy and institutional frameworks is beyond the scope of this Report.
Social provisions

Objective XIV recognises that “All Ugandans enjoy rights and opportunities and access to...clean and safe water” and Article 39 recognises that “Every Ugandan has a right to a clean and healthy environment.”

Under Article 17(1)(j) of the Constitution, every citizen has the duty to “create and protect a clean and healthy environment”.

Advocacy opportunities: A clean and healthy environment could be interpreted and asserted as including the protection of water, as well as food sovereignty and Sacred Natural Sites, which are integral to a healthy environment. Furthermore, realisation of a human right to a healthy environment depends on fulfilling the responsibility to protect and maintain healthy ecosystems, and also recognising and respecting the inherent rights of ecosystems to exist, be healthy and fulfill their evolutionary roles (see Section 4 for further explanation).

Article 22(1) also recognises that no person shall be deprived of life intentionally.

Advocacy opportunities: Water as a right to life has been interpreted expansively in international law (see Section 1.2.4.2) and recognised as a “prerequisite for the realisation of other human rights.”

 Governance provisions

Objective X requires that the State shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.

Article 29 recognises the right to freedom of expression and peaceful assembly and association.

Article 38 recognises a “civic right” to participate in the affairs of Government and “participate in peaceful activities to influence the policies of government through civic organisations”.

Minorities are specifically recognised and “have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes” (Article 36). The State shall take affirmative action in favour of marginalised groups to redress the imbalances existing against them (Article 32). For further provisions relating to self-governance and sovereignty, see Sections 1.3.4 and 1.4.4.

Article 41 also recognises the right to access information in possession of the State or agency of the State, except where disclosure would prejudice State security and sovereignty or privacy.

Advocacy opportunities: Communities could assert their right to freedom of expression, and to participate in decisions concerning development plans for mining and extractive activities. They could also assert their views to be taken into account, including concerns about the destructive impacts of proposed mining and extractive activities on water, food sovereignty and Sacred Natural Sites and Territories, and their responsibilities to future generations. As a minimum, communities’ ancestral and traditional lands should be ‘No-Go Areas’ for mining.

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Opportunities

The aforementioned provisions demonstrate that the protection of water is recognised in law, as both a right and responsibility, for the benefit of humans and ecosystems of present and future generations. It could be asserted that the impacts of mining, for example water pollution and abstraction, would toxify water and ecosystems, and thereby contaminate life for present and future generations. This would undermine the Constitutional duty of the State and citizen to protect water and could violate the rights of both humans and water systems, such as rivers, to a clean and healthy environment and indeed the right to life. Constitutional provisions for community participation in decision-making concerning development plans and in influencing law and policy could be asserted for the recognition of community lands as No Go Areas for mining and extractive activities as a minimum.

Challenges

While the Constitution recognises that the State has a duty for the protection of ecosystems including water and land, it does not explicitly recognise that communities have a right and responsibility to protect ecosystems. In addition, advocacy concerning mining may be affected by the recent Public Order Management Act 2013 which puts restrictions on freedom of assembly, particularly public meetings. This Act needs to be challenged and reformed to ensure the freedom of expression and peaceful assembly as protected by the Constitution.

While the Constitution regulates human ‘use’ of natural ‘resources’ for the protection of biodiversity, and not just for human benefit, the prevailing reference to water and other ecosystems as ‘resources’ to own and manage indicates that this law, like many others, is still based on industrial values which do not recognise the inherent value and rights of healthy ecosystems on which healthy communities of all species depend. Furthermore, the Constitutional provisions for a ‘right to development’ (Objective IX) could be used to undermine water and biodiversity protection. However it is obvious that no development can happen without water and biodiversity, on which all life depends.

Water Act 1997

The 1997 Water Act provides for the protection and management of water use and supply, and has important provisions on water rights, protection of water against pollution, water allocation and control of water use.

Challenges: The Act recognises that all rights to investigate, control, protect and manage water in the country for any use are vested in the Government rather than with communities. To protect communities’ rights and responsibilities to access, govern and protect water and ecosystems, this Act should be interpreted and implemented in compliance with the Ugandan Constitution and other laws which recognise the right of citizens to clean and safe water.

33 See Briggs, S. "Welcome to “Frackland”: does a river have the right not to be polluted?" Open Democracy, January 2014; available at: http://www.opendemocracy.net/transformation/shannon-biggs/welcome-to-frackland-does-river-have-right-not-to-be-polluted (last accessed June 2014).
37 Section 11, Article 5 of the 1997 Water Act “All rights to investigate, control, protect and manage water in Uganda for any use is vested in the Government and shall be exercised by the Minister and the director in accordance with this Part of the Act.”
National Water Policy 1999
The National Water Policy promotes an integrated approach to managing water in a sustainable way, recognising the social and economic value of water. Under the National Water Policy, water for domestic needs takes first priority. Domestic needs or uses include non-commercial uses such as cooking, bathing and washing.

Water Resources Regulations 1998
These Regulations require a water permit for certain activities including the following.

a. Using a motorised pump to abstract water from any surface water body or a borehole/ground water wells.
b. Constructing or operating any works for impounding, damming, diverting or conveying any surface water or draining any land.
c. Drilling for water supply in any part of Uganda.
d. Causing or allowing any waste to come into contact with any water or a piece of land without adequate treatment of the waste in question to acceptable levels stated in the National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations, 1999.
e. Accessing a water body for either abstraction or discharge of pre-treated waste through land of a neighbour.

Advocacy opportunity: Mining and extractive activities which engage in the above would therefore be subject to regulation.

The National Environment (Wetlands, Riverbanks and Lakeshores Management) Regulations 2000
These Regulations provide for the protection, conservation and wise use of wetlands, including protection zones for riverbanks and lakeshores. They also provide for an inventory of wetlands, and wetland use permits for regulated activities.

The National Environment (Minimum Standards For Discharge Of Effluents Into Water Or Land) Regulations 1999
These Regulations “prohibit discharge of effluent or waste on land or into the aquatic environment contrary to established standards and without a waste discharge permit and they provide for the general obligation to mitigate pollution.”

National Environment Management Act 1998
The National Environment Management Act is a ‘framework law’ on the environment and establishes the National Environment Management Authority (NEMA) as the overarching body entrusted with the sustainable ‘management’ of the environment and ‘natural resources’. The Act provides for, inter alia, environmental monitoring, impact assessments and audits; environmental restoration orders and improvement notices; environmental easements; licensing and standard setting; sanctions; establishment of a Policy Committee on Environment, a National Environment Fund and a collaborative framework for environmental ‘management’ with lead agencies and other stakeholders.

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The National Environment Impact Assessment Regulations 1998⁴⁶

These Regulations provide the procedures for Environmental Impact Assessments for proposed development activities, and provide opportunities for the public to comment.

The Mining Act 2003⁴⁷

The Act provides for the regulation of mining and mineral development, and vests the ownership and control of all minerals in Uganda in the Government and provides for the acquisition of mineral rights and other related rights.

Advocacy opportunities: According to NEMA, “the Act requires every holder of an exploration licence or a mining lease to carry out an EIA of their proposed operations in accordance with the provisions of the Environment Act. A holder of such permit is also required to carry out an annual environmental audit and to keep records describing how far the operations conform to the approved environmental impact assessment. The Act also provides for environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the Environment Act.”

Challenges: The Act recognises the Government, not communities, as the owner with control of all minerals in Uganda, and more to that, mineral rights and other related rights may be acquired by Government. However, where accessing these minerals and metals would undermine the health and integrity of ecosystems, and thus the possibility of life, the Act should be challenged. As the Constitution and other laws state, the Ugandan Government also has a duty to protect ecosystems, including oil and minerals, together with its citizens, for present and future generations.

1.2.4.2 International Recognition

The protection of water is also recognised in international law and there is growing recognition of a right to water as integral to the right to life and other human rights. Instruments include:

- **Ramsar Convention on Wetlands 1971**⁴⁸ – Governments commit to maintain the ecological character of wetlands of international importance and to ensure the ‘wise use’, or sustainable use, of all of the wetlands in their territories. Status: Signed by Uganda in 1988.

- **African Charter on Human and Peoples’ Rights 1986**⁴⁹ – a right to water is implied through Article 24(a)ii “people shall have the right to a general satisfactory environment favorable to their development.” Status: Signed and ratified in 1986.

- **International Covenant on Civil and Political Rights (ICCPR) 1966**⁵₀ – a right to water is implied through the right to life (Article 6(1)) which should be interpreted expansively beyond the deprival of life to include positive measures to increase life expectancy. Status: Acceded in 1995.

- **International Covenant on Economic, Social and Cultural Rights 1966**⁵² – a right to water is implied through the right to an adequate standard of living including living conditions (Article 11). The UN has interpreted the right to life as “indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights.”

⁵² See http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (last accessed June 2014).
1.3 Food Sovereignty

Food sovereignty can be described as a right of communities to define and determine their own food systems and economic development, agriculture and social development policies and cultural or traditional values in the region that addresses the nutritional needs. According to the Bunyoro communities, ‘food systems’ include: i) access to land for food production ii) making informed choices on food types (crops to grow, livestock to rear, fish types to catch, etc.) iii) controlling food supply and distribution or sharing at community and household levels and iv) sustainable food production systems that not only conserve ecosystems but also sustain soil fertility and overall land production capacity.

1.3.1 Status of Food Sovereignty in the Bunyoro region

Food sovereignty in the Bunyoro region has been described by communities in Bunyoro as the right of communities to define and determine their own food systems and economic development, agriculture and social development policies and cultural or traditional values in the region that addresses their nutritional needs. According to Bunyoro communities, ‘Food systems’ include: i) access to land for food production, ii) making informed choices on food types (crops to grow, livestock to rear, fish types to catch, etc.), iii) controlling food supply and distribution or sharing at community and household level, and iv) sustainable food production systems that not only conserve ecosystems but also sustain soil fertility and overall land production capacity.

For centuries, Buyoro’s food production systems have been based on subsistence and peasant farming which has successfully been feeding farmers, their families and communities, as well as maintaining ecosystems, without resorting to industrialised agricultural strategies which have damaged the environment, reduced biodiversity and led to debt-concentration of land.

In Bunyoro region, food sovereignty has a significant gender dimension, especially to the women and youth. Whilst men and male youth lead in fishing and livestock grazing (pastoralism), the majority of people in the Bunyoro region depend on crop agriculture for food production and income generation, which depends on women’s knowledge and seed custodianship as well as sourcing of wild foods. Young girls and boys also play an important role assisting farming and fishing activities, as skills are passed on intergenerationally.


Food sovereignty includes the right and responsibility of farmers, peasants, pastoralists, fisher folk, indigenous peoples, women and rural youth to define their own food systems and economic development, agriculture and social development policies and cultural or traditional values in the region that addresses their nutritional needs.

There is a need to protect indigenous food systems to the smallest detail. The varieties being eaten are where people get their nutrition from. Food as a social issue and food as being the staple must all be well appreciated!

Agnes Kirabo, Coordinator, Food Rights Alliance.
1.3.2. Relationship between Food Sovereignty, Water and Sacred Natural Sites and Territories

Box 2: THE 6 PILLARS OF FOOD SOVEREIGNTY
Nyéléni European Food Sovereignty Forum, 2011

**Focuses on food for people**: The right to food which is healthy and culturally appropriate is the basic legal demand underpinning food sovereignty. Guaranteeing it requires policies which support diversified food production in each region and country. Food is not simply another commodity to be traded or speculated on for profit.

**Values food providers**: Many smallholder farmers suffer violence, marginalisation and racism from corporate landowners and Governments. People are often pushed off their land by mining concerns or agribusiness. Agricultural workers can face severe exploitation and even bonded labour. Although women produce most of the food in the global south, their role and knowledge are often ignored, and their rights to resources and as workers are violated. Food sovereignty asserts food providers’ right to live and work in dignity.

**Localises food systems**: Food must be seen primarily as sustenance for the community and only secondarily as something to be traded. Under food sovereignty, local and regional provision takes precedence over supplying distant markets, and export-orientated agriculture is rejected. The ‘free trade’ policies which prevent developing countries from protecting their own agriculture, for example through subsidies and tariffs, are also inimical to food sovereignty.

**Puts control locally**: Food sovereignty places control over territory, land, grazing, water, seeds, livestock and fish populations on local food providers and respects their rights. They can use and share them in socially and environmentally sustainable ways which conserve diversity. Privatisation of such resources, for example through intellectual property rights regimes or commercial contracts, is explicitly rejected.
Communities’ food sovereignty is based on traditional knowledge, practices and customary laws which respect and work with ecological processes, seasons and limits. The conservation of water is an important practice, especially as food sovereignty depends on clean and healthy water.

There are many vital aspects to the relationship between Sacred Natural Sites and Territories and food sovereignty. Firstly Sacred Natural Sites and Territories provide refuges for wild relatives of domestic crops to develop and adapt to climate change. Secondly indigenous seed is used in spiritual practices such as rituals and ceremonies which are performed in the Sacred Natural Sites and Territories, to maintain the health of the wider ecosystems, communities, and Sacred Natural Sites and Territories. As community custodians explain, foreign seed, for example industrial or GMO seed is prohibited, because the Sacred Natural Sites and Territories and ancestral spirits do not recognise foreign seed.

1.3.3 Challenges to Food Sovereignty

a) Mining - The influence of oil mining activity has enormous potential to significantly undermine food sovereignty, particularly by contaminating and damaging ecosystems and ecological processes such as water and soil which are integral to agricultural systems, pushing market-driven food production systems, reducing and restricting access to farm land and fishing waters especially for the infrastructure supporting the mining operations, and directly impacting on the traditional knowledge, role and skills of women and men play in food production which have adapted to this region over centuries. Presently, oil exploration, and the associated influx of people in search of oil jobs, threatens fishing livelihoods on the Lake Albert. The communities in Uganda’s oil region fear that the promises of jobs and a short lived boost in household incomes and developments associated with oil and gas production are likely to entice people to work in mining, but that the full impacts of destruction of long-term livelihoods and food production systems are not yet felt but they are accumulating for future generations.

In 2012, we were told by our local leaders that our land –where we stay, grow crops and graze our animals would be taken away for the construction of the oil refinery and we thought they were just words. It came to pass when in January this year (2014) the government started forcing us out of our land. The season for planting is due, but we were stopped from growing any crops. Already people here are suffering serious food shortages and we are not sure of our next destination! Food from the shops is very expensive and most of us cannot afford it!

Kiwedde Geoffrey, one of the oil refinery affected persons.

Builds knowledge and skills: Technologies, such as genetic engineering, that undermine food providers’ ability to develop and pass on knowledge and skills needed for localised food systems are rejected. Instead, food sovereignty calls for appropriate research systems to support the development of agricultural knowledge and skills.

Works with nature: Food sovereignty requires production and distribution systems that protect natural resources and reduce greenhouse gas emissions, avoiding energy-intensive industrial methods that damage the environment and the health of those that inhabit it.

Source: http://www.wdm.org.uk/what-food-sovereignty#sthash.vTcS0PE2.dpuf
Box 3: Case Study

COMMUNITIES RESIST MINING IN BULIISA DISTRICT, UGANDA

Buliisa is one of the oil rich districts located 240km north of Kampala and is comprised of vital ecosystems, particularly for pastoralists, agriculturalists and fisher folk. Despite this vital ecology, below ground lies oil, the presence of which now threatens to undermine the landscape, diversity, and the communities living here. With the discovery of oil in the area and the high demand for land by oil companies and individuals, land conflicts and speculations have become the order of the day. Major oil wells in the area are Kasemene 1 and 11.

Alice Kazimura, who heads a Community Based Organisation-Kakindo Orphans Care in Buliisa district and is also a community educator in NAPE’s Sustainability School programme, has been at the centre in mobilising and sensitising local communities to resist mining. Alice and the communities have been using both reactive and non reactive strategies.

The communities in Buliisa claim that in 2010, the Ugandan Government authorised one of the oil companies to take over 3.5 square kilometers of communities’ land in Kakindo (Buliisa). This is land that belonged to the communities and was being used for grazing, crop agriculture, and it is where communities obtain grass for sale or personal use, firewood, and local herbs. There are also Sacred Natural Sites which are vital for the wellbeing of the communities.

After the decision by the Government, Ms Kazimura mobilised other members of the community to resist the land take over. The community instituted a team led by Alice to approach the Government about their issues. However, the meeting did not yield any fruit.

In response, Alice and the community planned for a demonstration in July 2010 where they successfully deterred officials who had come to survey their land.

“When we heard that surveyors had reached Buliisa town, someone told them that some women had staged a demonstration. They decided to come with police but we did not fear. Police came and asked our demands. ‘We shall not sleep until oil companies leave our land, if it means going on streets we shall go’, said Alice. The surveyors feared touching our land. From that time, the Government has not made a similar decision. I have taken it upon myself to continue sensitising fellow community members so that they do not allow any persuasion of selling off their land to either oil companies or individuals who promise to give them a lot of money”

As part of a long-term strategy to build the advocacy capacity of the mining affected communities, in November 2013, NAPE conducted Participatory Video training with communities in the Bunyoro region. The aim of the workshop, which was conducted in partnership with the Gaia Foundation, was to give the communities a platform to voice their concerns about the impacts of mining. Over 20 participants took part in the hands-on training which equipped them with basic filmmaking skills such as framing, shooting and storyboarding. The trainee filmmakers spent 5 days practicing techniques and honing their advocacy skills.
The participants of NAPE, a Pan-African organization, conducted a series of interviews with the communities affected by oil mining. Many of the participants shared their personal experiences and the impact of oil mining on their lives, livelihoods, and ecosystems. NAPE is now loaning out the cameras to individuals who participated in order to continue capturing footage and developing films to raise awareness about the need to protect and defend Sacred Natural Sites and Territories, water systems, and food sovereignty.

At the end of the process, a film was produced highlighting the impact of oil mining on livelihoods, particularly food, water, and Sacred Natural sites. To view the film, visit: [http://youtu.be/mbgV40fEKfg](http://youtu.be/mbgV40fEKfg)

b) **Commercial agriculture** - Today, food sovereignty is influenced and affected by industrial agriculture, including Genetically Modified Organisms (GMO), and fishing technologies, land grabbing, and the conversion of agricultural land into other forms of land use by private land owners, and changes in food consumption patterns, which are exacerbated by population growth.

c) **Laws and policies** - The status of food sovereignty is affected by laws and Government policies which influence agricultural development, land use, water use, and fisheries, and affect traditional values and practices regulating food production, sharing, consumption, and nutrition. In Uganda, many of the policies promote 'non indigenous-improved Seed Varieties' and undermine local farmers' rights on food. Examples of these laws include the proposed Biotechnology and Biosafety Bill (2012) which will promote Genetically Modified Varieties once enacted, and the Plant Varieties Protection Act (2013) that gives exclusive rights to selected Seed breeders. Furthermore, while there is legal recognition of elements of food sovereignty, for example safe water and healthy ecosystems, and access to land and food security, the implementation and enforcement of relevant laws remain problematic. Therefore the law is limited in being able to defend food sovereignty.

d) **Climate change** - Burning (and extraction) of fossil fuels such as oil and gas is one of the largest contributors to global climate change. The Intergovernmental Panel on Climate Change’s (IPCC) has warned that climate change is having increasingly catastrophic impacts around the world, particularly on food production. Uganda is already experiencing unpredictable weather and challenges to food production and livelihoods from climate change. Accordingly, the Government of Uganda should consider its responsibility to minimise

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climate change to food producers and communities across Uganda. By extracting fossil fuels for burning, we would be condemning farmers to greater challenges, instead of seeking small-scale renewable sources of energy. Increased gas emissions from mining is likely to affect those depending on healthy ecosystems for their livelihoods and financially poor people more than the elite or rich people. The more unstable the climate, the more we will need to depend on the small-scale custodians of seed diversity to strengthen the resilience of ecosystems and communities to climate change.

1.3.4 Legal Recognition of Food Sovereignty

The term food sovereignty is not explicitly recognised in Ugandan law. However, the Ugandan Constitution does recognise a right to food security and nutrition. There is also implicit recognition through its various elements including the state to protect ecosystems, particularly water and land; self-governance, culture, customs and land tenure; and social and economic development. Below are some of the legal provisions which could be asserted by communities and civil society to strengthen recognition and exercise of local food sovereignty.

1.3.4.1 National Recognition

Constitution of Uganda

Governance provisions

Objective II promotes “active participation of all citizens at all levels in their own governance” and “decentralisation and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.”

Article 1 recognises the sovereignty of the people and that power belongs to the people.

Advocacy opportunities: The above provisions could be interpreted and asserted as the right to food sovereignty and governance. See Section 1.4.4.1 relating to governance in the context of marginalised communities.

Article 50 provides for enforcement of rights which have been infringed upon or threatened. Any person or organisation may bring an action before a competent court against the violation of human rights.

Article 51 of the Constitution establishes a Human Rights Commission with duties to, for example, investigate claims by a person or group, or at its own initiative, of human rights abuses, and monitor the Government’s compliance with international legal obligations on human rights. The Commission may order payment of compensation or any other legal remedy or redress where there has been an infringement of a human right.

Advocacy opportunities: These provisions could enable communities and civil society to seek legal redress from a court or the Human Rights Commission for violation of human rights, potentially for violation of a right to a healthy environment, by mining activities. This provision could also be asserted in the context of water and Sacred Natural Sites and Territories.

Social and Cultural provisions

The Constitution recognises that every citizen is entitled to food security and nutrition (e.g. Objectives XIV and XXII).

Objective XIV states that “The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that—
(a) All developmental efforts are directed at ensuring the maximum social and cultural Well-being of the people; and
(b) All Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

Objective XXII requires that the State shall—
(a) Take appropriate steps to encourage people to grow and store adequate food;
(b) Establish national food reserves; and
(c) Encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.
Objective XXIX (b) recognises that it is a duty of the citizen “to engage in gainful work for the good of that citizen, the family and the common good and to contribute to national development”, and “to contribute to the well-being of the community where that citizen lives” Objective XXIX (c).

**Advocacy opportunities:** ‘Gainful work’ could be interpreted as including traditional ecological agriculture, for the wellbeing of ‘family’, ‘common good’ and ‘community’, which would include the wider Earth Community of plants, animals, ecosystems, Sacred Natural Sites as well as humans.

The Constitution also recognises the role of women (Objective XV). For example Article 33(2) requires that “The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.”

**Advocacy opportunities:** Such rights of women, who play vital roles in traditional food systems, as custodians responsible for seed diversity and wild foods, could be asserted in support of the recognition of food sovereignty. Women are especially impacted by destruction of ecosystems and water contamination, as this affects food production as well as Sacred Natural Sites, of which they are often also custodians. Their central role in traditional society relies on their knowledge and skills, through which they reach their full potential and advancement in the community.

As explained further in Section 1.4.4 below, citizens have a right to practice their culture, customs and religious practices.

**Advocacy opportunities:** This could be interpreted and asserted in the context of food sovereignty, whereby seed and food are integral to the cultural and spiritual practices of communities, and Sacred Natural Sites and Territories, in which seed is often used for rituals and ceremonies.

Objective XXVII (iii) states that “The State shall promote and implement energy policies that will ensure that people’s basic needs and those of environmental preservation are met.”

**Advocacy opportunities:** It could be argued that mining and other forms of energy production, which pollute and destroy land, water and ecosystems, upon which agriculture depends, would deny communities of their basic needs and livelihoods, and ecosystems of their health and survival.

**Environmental and Land provisions**

The environmental provisions mentioned in Section 1.2.4.1 in relation to water, could also support the argument that environmental protection, particularly of biodiversity, land and water, is a fundamental prerequisite for food sovereignty as they are interconnected. In addition, that the Constitutional right to a clean and healthy environment includes food.

Article 237 of the Constitution recognises that land belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided in the Constitution, which includes customary land tenure.

**Advocacy opportunities:** It could therefore be argued that mining would violate the rights and responsibilities of communities and undermine their food sovereignty, by displacing communities from their ancestral lands and territories, upon which their lives, identity, cultural and spiritual practices, customary governance systems and livelihoods depend.
Opportunities

Constitutional provisions, particularly those recognising rights and duties to food security and nutrition, ecosystem protection, sovereignty of the peoples, and customary land tenure could strengthen the recognition of food sovereignty for the peoples of the Bunyoro region. The provisions for redress of violated human rights would be equally important in the context of defending water and Sacred Natural Sites and Territories.

Challenges

While the Constitution recognises the right to food security, it does not go as far as explicitly recognising a right to food sovereignty – “rights of people to healthy and culturally appropriate food produced through ecological sound and sustainable methods, and their right to define their own food and agriculture systems”.\(^59\) However this is implicit and it could be argued, that food security is achieved through food sovereignty.

According to the Constitution, land may be subject to acquisition by the Government in the ‘public interest’ (Article 237(1)(a)) and non-citizens may acquire leases in land, which may hinder the ability of communities to exercise their food security or sovereignty, as well as governance and protection of ecosystems, water and Sacred Natural Sites and Territories. However it could be argued that food security is more in the public interest, and a more fundamental need, than the extraction of fossil fuels which undermines life.

The National Environment (Minimum Standards for Management Of Soil Quality) Regulations 2001\(^60\)

These Regulations aim to “establish and prescribe minimum soil quality standards to maintain, restore and enhance the inherent productivity of the soil in the long-term; to establish minimum standards for the management of the quality of soil for specified agricultural practices, to establish criteria and procedures for the measurement and determination of soil quality; and to issue measures and guidelines for soil management.”\(^61\)

Land Act 1998\(^62\)

This Act provides for the tenure, ‘ownership’ and ‘management’ of land, establishes a Land Committee, and aims to consolidate the law relating to land. It recognises that all land is vested in the citizens, and that land tenure includes customary land tenure.

Agricultural Seeds and Plants Act 1994\(^63\)

The Act provides for the promotion, regulation and control of plant and variety release, multiplication, conditioning, marketing, importing and quality assurance of seeds and other planting materials, and for other matters connected therein. The Act establishes bodies including a variety release committee responsible for determining the varieties of seeds to be released, rejected, referred or outclassed. It does not provide for local communities to determine their own seeds.

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Food and Nutrition Policy 2003\(^{64}\)

The policy provides for ensuring food security and adequate nutrition for the people in Uganda, for their health as well as their social and economic well-being. The policy provides for ensuring availability, accessibility, and affordability of food in the quantities and qualities sufficient to satisfy the dietary needs of individuals sustainably.

National Biotechnology and Bio-safety Policy 2008\(^{65}\)

The policy provides a framework for ‘safe’ application of bio-technology in order to contribute to Uganda’s economic growth and transformation. The policy does not clearly state the role of communities in its implementation and also emphasises food security rather than food sovereignty for citizens.

1.3.4.2 International Recognition

Legal recognition of food sovereignty includes:

**African Charter on Human and Peoples’ Rights (ACHPR) 1986**\(^{66}\) - implied through Article 16 right to physical and mental health, Article 24 “right to a general satisfactory environment favorable to their development” and Article 22 “right to economic, social and cultural development with due regard to their freedom and identity.” Status: Signed and ratified by Uganda in 1986.

**Protocol to the ACHPR on the Rights of Women in Africa 2003**\(^{67}\) – Article 15 recognises a right to food security and obliges States to “provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food”; and to “establish adequate systems of supply and storage to ensure food security.” Status: Signed in 2003 and ratified in 2010 by Uganda.

**International Covenant on Economic, Social and Cultural Rights 1966**\(^{68}\) - Article 11 recognises a right to “an adequate standard of living”, including adequate food and continuous improvement of living conditions, a right of everyone to be free from hunger, and need for equitable distribution of food. Status: Acceded by Uganda in 1987.

**UNDRI 2007**\(^{69}\) – Article 24 recognises rights of indigenous peoples to “enjoyment of the highest attainable standard of physical and mental health”, and that they have a “right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.” Status: Signed by Uganda in 2007.

**Nyeleni Declaration 2007**\(^{70}\) – defines food sovereignty as “rights of peoples to healthy and culturally appropriate food produced through ecological sound and sustainable methods, and their right to define their own food and agriculture systems.”

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\(^{64}\) See https://extranet.who.int/nutrition/gina/sites/default/files/UGA%202003%20The%20Uganda%20Food%20and%20Nutrition%20Policy.pdf (last accessed June 2014).

\(^{65}\) See http://www.uncst.go.ug/dmdocuments/BIOSAFETY%20POLICY%2OSEPT%202009.pdf (last accessed June 2014).


\(^{67}\) See http://www.achpr.org/instruments/women-protocol/ (last accessed June 2014).

\(^{68}\) See http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (last accessed June 2014).


1.4. Sacred Natural Sites and Territories

Sacred Natural Sites can be described as ‘‘critical places within ecosystems, such as forests, mountains, rivers and sources of water, which are of ecological, cultural and spiritual importance, and exist as a network embedded within a territory.’’ Territory encompasses all living and non living entities, including ancestral spirits, on land, water and air, and vertical areas deep into the Earth such as the subsoil, minerals and waters, and up into the sky to the constellations. This Report shares a similar understanding and describes Sacred Natural Sites as areas with rich and diverse Nature (biological diversity and bio-physical features), which generally exist as networks, embedded in Territories – that is why they cannot be separated. Sacred Natural Sites have special spiritual values to communities and are widely regarded as sources of life for biodiversity and ecosystems, “places where the Earth rests”, which play a special role in connecting, nurturing and revitalising our planet Earth.

Sacred Natural Sites symbolise the interdependence between human beings and the Earth system, providing a web that links biodiversity and ecosystems with cultural and spiritual values that have existed ever since the world’s creation. Sacred Natural Sites custodians have supported the spiritual wellbeing of ecosystems and communities, through carrying out the required cultural rituals over centuries. Sacred Natural Sites and Territories are recognised as sources of traditional knowledge systems and laws to govern society, maintain community cohesion and the health and wellbeing of humans as well as other species. From experience, those communities who practice their traditional ecological knowledge and Earth-based governance systems of customs, laws and practices for protecting Sacred Natural Sites and Territories are better able to deter and respond to threats to their ecological, cultural, spiritual roles.

1.4.1 Sacred Natural Sites and Territories in the Bunyoro region

In the Bunyoro region, Sacred Natural Sites and Territories are referred to as Ihangiro and share a similar description with the above. While information and literature about Sacred Natural Sites and Territories in the region remain scanty, or is provided in a manner in which confidential knowledge is not disclosed, the brief study did observe that Sacred Natural Sites and Territories in Bunyoro tend to be of more spiritual importance to communities than of cultural and ecological values. They are believed to be locations where ancestral spirits reside, although it is not disclosed how these spirits came into being. For example, there is no official information about the period when these spirits started to reside in the sites although it is believed that their timing is associated with the period when ancestral clans moved into these locations. It is also believed that these sites served as burial grounds for clan leaders or some may have served as locations where important clan events were hosted, such as declaration of war. The study found that both traditional and modern rituals are performed during burials of traditional kings and it is likely that there are different kinds of sites.

73 Nsamba personal communication (Bunyoro cultural leader), September 2013.
Sacred Natural Sites and Territories are integral to and preserve culture, traditions, spirituality and indigenous knowledge. Their importance is recognised for sustaining society and defining communities' traditional or customary norms, practices and cultural identity. Experiences from other partner organisation in Kenya\textsuperscript{74} and Ghana, as well as South Africa, Ethiopia and Benin, affirm that Sacred Natural Sites and Territories are places of spiritual importance where specific cultural practices need to be carried out by custodians who govern and protect these places in accordance with customary (generally unwritten) laws or codes of conduct.

**Custodians of Sacred Natural Sites**

Sacred Natural Sites in Bunyoro are governed by a “custodian” on behalf of the custodian clan. The procedures for appointing or designating a custodian are not fully disclosed. It is well known to the custodian clan and confidential to only the communities responsible for a particular Sacred Natural Site that the outgoing custodian designates a successor. Sacred Natural Sites in Bunyoro have thrived on this customary governance system and have been maintained for their spiritual importance over generations.

It is further understood that Sacred Natural Sites involves governance of the larger ecosystems or landscapes within which they are located according to Earth’s laws (see Section 4). Governance tends to emphasise strict protection of the sites, in which human activities such as mining and other so-called development are prohibited, whereas utilisation of natural ‘resources’ in an ecologically sustainable way may take place within the wider landscape. Governance and protection of Sacred Natural Sites involves the wider community because these sites are valued for the role they play for the whole community of life, not only humans. The responsibility for their protection is passed down generations of custodians.

Sacred Natural Sites provide a source of spiritual connection and play an important role in appeasement, and protection of humans and ecosystems from enemies and evil. Spiritual practices, including rituals and ceremonies, are performed by the community custodians to sustain health and wellbeing of humans, Sacred Natural Sites, the wider territory and all life.

> When one of us suspects that his/her life is under threat or about to be harmed, the caretaker helps us to “connect” to the spirits of Kihagya and appease them for protection.  
> **Nsamba, Bunyoro cultural leader**

**1.4.2 Relationship between Sacred Natural Sites, Water and Food Sovereignty**

Sacred Natural Sites in this region exist as a “fountain” of natural water sources and other ecological features. Through their ecological functioning, Sacred Natural Sites maintain hydrological systems and recharge water supply sources such as rivers and streams. Such an example is Kihagya Sacred Natural Site which is a natural forest in Hoima district and is extremely vital for regulating the micro climate of the area. It is also believed that the forest harbors a water well and it is mandatory that every newly married woman must bathe in it in order to have a successful marriage and children.

The natural ecosystems in which the network of Sacred Natural Sites are embedded, for example forests, land and water, are important sources of food in the form of plants, fungi, animals, birds, insects and fish, among others. Sacred Natural Sites provide protected habitats for important flora and fauna (in their natural or wild state) and keep them safely protected from modified or domesticated environments (Figure 3). The genetic compositions in these flora and fauna play a critical function in maintaining and widening genetic diversity of future generations, as well as for food sovereignty.

\textsuperscript{74} Adam Hussein Adam, personal communication, October 2013.
1.4.3 Challenges to Sacred Natural Sites and Territories

Sacred Natural Sites and Territories are being exploited for economic benefit and advancement of political governance in Uganda, like in other parts of the world, and are at risk of being lost as well as their values and their physical properties destroyed.

In the Bunyoro region, survival and roles of Sacred Natural Sites and Territories are faced with the following challenges.

a) Land grabbing: is a common phenomenon in Bunyoro region, for the expansion of agriculture and human settlements and other social and economic developments, such as infrastructure and tourism, and increasingly for oil exploration. Large chunks of land are being acquired by private land owners whose interest in maintaining Sacred Natural Sites found on those lands is questionable. Land is acquired for purposes of exploiting economic opportunities associated with oil mining in the region, but with no, or little, regard to the importance of Sacred Natural Sites.

b) Mining and extractive activities: their impacts include water, soil and air pollution, loss of biodiversity, contribution to climate change, restricted access to/displacement of communities from water and land and thus their traditional agricultural systems and Sacred Natural Sites and Territories. Some oil exploration and production wells are located within wildlife conservation areas as well as protected areas, which include Sacred Natural Sites and Territories. Already, there is evidence of destruction of some sites e.g., such as the shrine at Nsonga Ijumika and Ekibaale kya Wamala in the Kaiso Tonya area, and there is great danger that other sites will be affected by infrastructure development and associated security measures that will restrict access to Sacred Natural Sites and Territories. Mining activities would greatly affect or undermine the values and functions provided by these Sites and hosting ecosystems or habitats. Communities are increasingly concerned for the survival of Sacred Natural Sites due to the threat of destruction, displacement or limited access and use emanating from oil and gas exploration and development activities. In addition, the Government is legally recognised as owning Uganda’s minerals and metals which could undermine the ability of communities’ to exercise their rights and responsibilities to self-governance/sovereignty, including of their food, Sacred Natural Sites and Territories and water. Another issue is limited regulation and monitoring of mining and extractive activities, and enforcement of their environmental and social responsibilities.

c) De-valuing of Sacred Natural Sites and Territories: Competing values and roles of Sacred Natural Sites and Territories, where the majority of society favors ‘modernity’. The importance of Sacred Natural Sites and Territories in providing for health, food and water systems is increasingly being undermined in favour of technologies which claim to provide medicine, biodiversity, water and food. Likewise, spiritual values associated with Sacred Natural Sites and Territories are being undermined by ‘modern’ religion and beliefs.
d) **Documentation:** As the knowledge is sacred and confidential, little is documented about the Sacred Natural Sites and Territories in the region. Knowledge about the location, values, custodians, as well as customary laws and procedures for use of these sites, is held by a few people (elders). As these knowledge holders pass away, and many youth are not interested in learning the traditional knowledge and practices, there is concern that this knowledge will not pass onto next generations. There is a risk of loss or erosion of the knowledge about these important sites, and resultant distortions and misrepresentation about their existence and importance. It would be strategic if this information is well documented by the community custodians on their own terms, without disclosing strictly confidential knowledge.

There is also a challenge of exposing confidential information about Sacred Natural Sites through legal procedures. Whereas it may be desirable to secure legal recognition and protection, the disclosure of the confidential knowledge should be treated carefully, in order to gain recognition of the values and existence of the sites, without violating sacred knowledge. This paradox implies that ways must be found for securing recognition of Sacred Natural Sites and Territories without disclosing confidential knowledge.

e) **Undermining, abuse and loss of community knowledge systems which govern and protect Sacred Natural Sites and Territories.** Knowledge connected with Sacred Natural Sites and Territories is sacred and living. It is often oral and undocumented, and there is concern that the intergenerational knowledge on the location of these sites, their values and governance systems are not being adequately and accurately passed on from generation to generation of Sacred Natural Sites’ custodians, and is therefore being distorted or lost. This state of affairs could be addressed by communities researching, documenting and passing on their traditional knowledge, subject to strict protocols. Community led research and documentation, with strong safeguards, can prevent the danger of exposing the Sacred Natural Sites and Territories because it increases likelihood of abuse of the knowledge disclosed.

f) **Limited legal system and policies**

i) **Lack of legal recognition of Sacred Natural Sites and Territories and the customary governance systems of their custodian communities** in Ugandan laws, policies and development practices. Hence their protection is weakened and therefore needs to be fully recognised and supported. There is no explicit recognition of Sacred Natural Sites in Ugandan laws and policies and there is limited recognition of communities’ rights and responsibilities to govern and protect ecosystems, land and Sacred Natural Sites and Territories on their own terms, in accordance with their customary governance systems. Another challenge is that the majority of legal systems (except for example, the African Charter for Human and Peoples’ Rights) recognise individual rights rather than collective rights of indigenous and local communities, which is integral to their cosmology and way of life.75

ii) **Pro-development laws and policies:** Some of the provisions in the Constitution pose a challenge for communities seeking to defend their Sacred Natural Sites and Territories from the impacts of extractive activities. For example, Article 244 of the Ugandan Constitution recognises that minerals and petroleum are vested in the Ugandan Government, not in the citizens, and the Constitution also recognises a ‘right to development’ which appears to favour privatisation. This state of affairs renders both a legal and policy challenge for strengthening the protection and defence of Sacred Natural Sites and Territories, as well as food sovereignty and water, from the impacts of the extractive activities and other destructive development.

iii) **Outdated laws which lack implementation and enforcement:** Despite often good intentions of laws and policies, they carry the thinking of years gone by when the state of ecosystems was different, and threats of development and technology were not prominent.76 As a result, the legislation is in many areas, outdated and patchy in dealing with present problems, particularly with Sacred Natural Sites. Many Ugandan laws also lack implementation and enforcement, partly due

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Many international legal instruments which could be used to recognise water, food sovereignty, Sacred Natural Sites and Territories, for example the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007, are non-binding, and at most persuasive. Thus their implementation is subject to the will of the State. Those legal instruments that are binding often lack international enforcement mechanisms.  

iv) Human-centered laws, policies and institutions – many laws and policies take a sectoral approach to protection of Earth’s elements, such as water, food and land, without acknowledging their interconnections and that they contribute to the health of the planet as a whole. Institutions established by legislation are “largely compartmentalised without legal requirement for them to consult or work together on any subject. As a result, they have inadequate linkages, poor communication and coordination between them. This leads to a lack of harmonised and compatible data and contributes to ineffective enforcement.” The majority of current laws and policies are also founded on industrial values that Earth is merely a ‘resource’ or ‘property’ to be exploited and traded, rather than respected as a complex living system and the primary source of law (see Section 4) from which human laws should be derived.

1.4.4 Legal Recognition of Sacred Natural Sites and Territories

1.4.4.1 National Recognition

There are no explicit legal and policy provisions recognising Sacred Natural Sites and Territories in Uganda. However, the Constitution of Uganda 1995 (amended 2005) and other national laws do provide for some recognition indirectly through the protection of cultural heritage, and also elements of community governance systems, including traditional institutions and cultural and religious rights, which are integral to the protection of Sacred Natural Sites and Territories. Further, some legal and policy frameworks for the protection of forests, wetlands, lakes and lake shores, rangelands (wildlife protected areas) implicitly recognise Sacred natural Sites therein as protected areas. The following are some of the legal provisions which communities could assert in support of their governance and protection of Sacred Natural Sites and Territories, and to defend them from the impacts of mining and extractive activities.

The Constitution of Uganda

Cultural and Social provisions

The Constitution recognises culture as a National Objective and Directive Principle of State Policy (Objective XXIV). It recognises cultural and customary values that are consistent with the fundamental human rights and freedoms, human dignity and democracy. The Objective aims at promoting and preserving those cultural values and practices which, among others, enhance the dignity and well being of Ugandans.

Article 37 of the Constitution also recognises “Every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.”

The 5th Schedule Article 178(3) mandates Regional Assemblies under the Regional tier system of governance to handle cultural matters including relating to the traditional or cultural leader, clan and sub-clan leadership; clan, cultural and traditional lands, sites and shrines; cultural, traditional or customary practices (cultural funeral rites); and cultural institutions by establishing specialised committees for them. The traditional or cultural leader of the region and relevant clans should be consulted, and a decision of the committee would not be effective until approved by the traditional/cultural leader.

Objective XXV and Articles 29 and 37 recognise rights to religion - the right to belong, enjoy, practice or profess any religion.

Article 21 recognises that all people are equal before the law and should not be discriminated against for their ethnic origin, religion or other attributes.

Advocacy opportunities: The above provisions could be asserted for the recognition and protection of Sacred Natural Sites and Territories, which are holy places like churches and mosques, and the spiritual practices and customary laws which are integral to a community’s culture and religion.

The Constitution also recognises the right to privacy of the person, home and other property. Article 27 states that:

“(1) No person shall be subjected to:
(a) Unlawful search of the person, home or other property of that person; or
(b) Unlawful entry by others of the premises of that person.
(2) No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.”

Advocacy opportunities: The right to privacy could be asserted to prevent interference of Sacred Natural Sites as a ‘home’ to the ancestors of the custodian communities and also to biodiversity and ecosystems. They should not be interfered with, including by mining, extractive activities or other destructive development.

Governance provisions

As highlighted in Sections 1.2.4.1 and 1.3.4.1, the Constitution recognises the sovereignty of the people, decentralisation of governance and public participation, particularly of minorities, in decision-making concerning development plans (e.g. Objective II and Article 1).

Advocacy opportunities: This could be interpreted and asserted as the right of communities to govern and protect their Sacred Natural Sites and Territories (as well as water and food sovereignty). Accordingly, saying ‘no to mining’ would be an expression of the right to self-determination/governance.

Article 246 of the Constitution also recognises the ‘institution of traditional or cultural leaders’ and its existence in accordance with culture, customs and traditions or wishes and aspirations of the people to whom it applies. It provides for the revitalisation, strengthening and support of traditional/cultural institutions.

Advocacy opportunities: This provision could be asserted for the recognition of customary governance systems of communities which protect Sacred Natural Sites and Territories, and also that Sacred Natural Sites are integral to these customary governance systems.

Environmental and Land provisions

As explained in Section 1.2.4.1, the State and citizens have a duty to protect land and ecosystems and prevent damage and destruction.

Advocacy opportunities: This could be interpreted as including the protection of Sacred Natural Sites and Territories.

Objective XXV encourages the State and citizens to “preserve and protect and generally promote the culture of preservation of public property and Uganda’s heritage.” ‘Heritage’ could be interpreted as natural and cultural heritage, and include Sacred Natural Sites and Territories, water, food and ecosystems.

Objective XXVIII(iv)(a) requires States, including local governments, “to create and develop parks, reserves and recreation areas and ensure the conservation of natural resources.”

Advocacy opportunities: This could be interpreted as recognising Sacred Natural Sites as protected areas.

As explained in Section 1.2.4.1, Article 237 of the Constitution recognises that land belongs to the citizens of Uganda and recognises customary land tenure.

Advocacy opportunities: This provision could be interpreted as including Sacred Natural Sites and Territories on/in the land, and the recognition of community governance systems which protect Sacred Natural Sites and Territories.

Opportunities

The rights to culture, religion, self-governance, environment and customary land provide legal bases for communities to assert their rights and responsibilities to govern and protect Sacred Natural Sites and Territories and to defend ecosystems (including water, and also food sovereignty) from the destructive impacts of mining which risk violating communities’ rights and responsibilities.

Challenges

While the Constitution recognises the sovereignty of the peoples, there is limited recognition of communities’ rights and responsibilities to govern and protect ecosystems, land, Sacred Natural Sites and Territories on their own terms, in accordance with their customary governance systems. The Constitution recognises the State as the protector of ecosystems, rather than the custodian communities who have been governing and protecting Sacred Natural Sites and Territories for centuries, and who still continue to do so.

Recognising Sacred Natural Sites as protected areas established by the State would need to ensure that community governance systems, whereby the custodian community is the one responsible for governing and protecting Sacred Natural Sites and Territories, are recognised and not undermined. Furthermore, recognising Sacred Natural Sites as ‘land’ – even customary land - under the Constitution (see Section 1.3.4.1) could mean it would be subject to acquisition for the public benefit.

Some provisions of the Constitution could pose a challenge for communities seeking to defend their land from the impacts of extractive activities in its recognition that minerals and petroleum are vested in the Ugandan Government, not in the citizens (Article 244(1)). The National Environment Mining Act also recognises this and that mineral rights and other related rights may be acquired. Further more “minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners, local governments and the Government” (Article 244(3)). Objective IX of the Constitution also recognises a ‘right to development’ and states “In order to facilitate rapid and equitable development, the State shall encourage private initiative and self-reliance.” However, the Government should uphold its Constitutional duties to ensure the protection of ecosystems, including land, water and minerals, and protect its citizens’ rights including to life, a healthy environment and self-governance. It cannot be overlooked that a ‘right to development’ depends on healthy ecosystems, and that mining is likely to destroy ecosystems and thus undermine this right.

Despite Constitutional provisions for the respect and protection of ecosystems, culture and institutions, their implementation and enforcement has been lacking in practice. This is evidenced by the encroachment of Sacred Natural Sites, and damage to ecosystems and communities, by mining and other development activities. There is a need to build a critical mass to counter the impacts of mining and extractive activities.

The National Environment Forestry and Tree Planting Act 2003

This Act provides for the conservation, sustainable ‘management’ and development of forests. It provides for the declaration and ‘management’ of forest reserves, including community forests, and protected tree species. The Act also provides for the protection of biodiversity and forest produce.

Advocacy opportunities: Sacred community forests could be recognised by this law, and their defence strengthened through legal recognition.

**The Traditional Rulers (Restitution of Assets and Properties) Act 1993 (Chap 247)**

This Act restores to traditional rulers specified ‘assets’ and ‘properties’ which were previously owned by them or connected with them and which were previously confiscated by the State. The Act provides for the transfer of the same interest in land as was previously held by the Uganda Land Commission to the traditional leaders.

**Advocacy opportunities:** Land containing Sacred Natural Sites could be returned to traditional leaders and governed by their customary systems.

**Challenges:** The returned properties or Sacred Natural Sites would be deregistered from the national list of heritage sites which, in some cases, could threaten their survival. Further more the law mainly focuses on one cultural institution, that is, the Buganda kingdom and partly excludes other Traditional institutions/Kingdoms such as the kingdom of Bunyoro and heritages sites and Sacred Natural Sites therein.

**Historical Monuments Act 1968**

This Act is the central legal instrument for the conservation, protection and promotion of Uganda’s heritage of historical monuments and objects of archaeological, paleontological, ethnographical and traditional interest. The Act provides for punitive measures for the destruction of heritage sites.

**Advocacy opportunities:** Such heritage sites could be interpreted as including Sacred Natural Sites and therefore their protection required by law.

**Challenges:** The Act is limited in its effectiveness in ensuring protection and conservation of Uganda’s heritage. For example, the Act narrows the concept of heritage to immovable heritage (archaeological sites, monuments etc), to the exclusion of movable and intangible heritage such as cultural and spiritual beliefs and practices. The roles of communities and their customary laws and norms in the designation process or protection of heritage are not fully recognised. The Minister’s power to acquire land for the purposes of heritage preservation could undermine community access, governance and protection of Sacred Natural Sites found on that land. Further more, the penalties in the Act are too minimal to deter people from demolishing heritage, for example only a 2000 Ugandan shillings fine is charged to a culprit. In addition, while certain national sites have now attained recognition as a World Heritage site, the Act has not been updated to provide for this status. Secondly, nomination of sites to the World Heritage List (WHL) requires that there should be a national legal framework under which the site is protected, and that a site has a management plan; all of which are not reflected in the Act.

**Witchcraft Act 1957 (Chap 124)**

The Act provides for penalties for those persons practicing witchcraft, including abusing cultural heritage objects for imputation of witchcraft, and threatening others with death, disease or harm. Such witchcraft activities would constitute an offence liable on conviction to imprisonment.

**Advocacy opportunities:** The Act could help deter persons with intentions to abuse Sacred Natural Sites. The Act also provides a distinction between sacred sites and shrines. By doing so, people become aware and appreciate Sacred Natural Sites and the rituals that are performed in these sites.
Challenges: Custodians of Sacred Natural Sites could be perceived as witch doctors and collectors of cultural heritage objects, and thus accused of committing an offence, punishable subject to the Act.\(^{93}\)

National Cultural Policy (1993)\(^{94}\)

This policy provides a framework for the promotion of culture. A core principle is respect for an individual’s culture and for others’ cultures without discrimination. The Policy also refers to Treaties and Conventions on natural heritage to which Uganda is a signatory. These include: the UNESCO World Heritage Convention, and the Universal Declaration of Human Rights which recognises everyone’s right to freely participate in cultural life (Article 27).

Advocacy opportunities: Sacred Natural Sites could be recognised as “cultural sites” and their protection required under this policy by the cultural institutions concerned.

Challenges: The policy does not have mitigation measures to stop rampant degradation of natural heritage sites, and despite the recognition of culture, some Sacred Natural Sites have been destroyed such as Bujagali falls.\(^{95}\) Furthermore, according to the customary beliefs of communities,\(^{96}\) there is a difference between Sacred Natural Sites and cultural sites. Sacred Natural Sites are not human-made, they are governed and protected by custodian communities as holy places which are not for human activities such as mining or destructive development. This compares to human-made cultural heritage sites which are often under the protection of the Government and which may be open to human activities such as tourism. Therefore the potential recognition of Sacred Natural Sites as cultural sites would need to acknowledge this and respect the customary governance systems of the custodian communities.

1.4.4.2 International Recognition

The following are some of the regional and international agreements which recognise Sacred Natural Sites and Territories. There is growing international recognition that Sacred Natural Sites and Territories and other protected areas are ‘No-Go Areas’ for mining, extractive activities and other destructive development.

a) Conventions and Agreements

i) **UNESCO Man and the Biosphere Programme 1970**\(^{97}\) - recognises biosphere reserves including a core zone (no/restricted activities), buffer zone (ecologically compliant activities permitted) and transition zones (for sustainable development). Status: Signed by Uganda.


iii) **UNESCO World Heritage Convention 1972**\(^{99}\) - protects cultural and natural heritage of outstanding value, including natural sites and cultural landscapes formed through interaction between humans and Nature. Status: Accepted in 1987.

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96 Communication with Dzomo la Mupo, an alliance of custodians of Sacred Natural Sites, in Venda, South Africa.
iv) **African Charter on Human and People’s Rights 1982**\(^{100}\) - recognises the collective rights and responsibilities of people including to self-determination, their customary laws and social and cultural development, and recognises that Africa has a plural legal system. Status: Signed and ratified in 1986.

v) **ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries 1989**\(^{101}\) - recognises cultural and spiritual importance of lands and territories, community rights including to self-determination and customary governance systems, and requires States to assess the social, spiritual, cultural and Environmental impacts of proposed development activities. Status: Not yet ratified.

vi) **Convention on Biological Diversity (CBD) 1992**\(^{102}\) - Article 8(j) requires State Parties to respect and maintain traditional knowledge and practices which protect biodiversity, and Article 10(c) to protect and encourage customary use of biodiversity in accordance with traditional cultural practices. Status: Ratified in 1993.

vii) **UNESCO Convention for the Safeguarding of Intangible Cultural Heritage 2003**\(^{103}\) - recognises and protects intangible cultural heritage, including intergenerational knowledge, oral traditions, practices, rituals and places relating with Nature and the Universe. Status: Ratified in 2009.

viii) **Charter for African Cultural Renaissance, 2006**\(^{104}\) - recognises the importance of culture in good governance.

b) Declarations and Resolutions


ii) **IUCN Recommendation 2.82 Protection and conservation of biological diversity of protected areas from the negative impacts of mining and exploration (Amman, 2000)**\(^{106}\) stating that mining should not take place in IUCN category I–IV Protected Areas.

iii) **IUCN Recommendations V.13: Cultural and Spiritual Values of Protected Areas and V.26: Community Conserved Areas** adopted and noted respectively by the Vth World Parks Congress (Durban, 2003).\(^{107}\)

iv) **Resolution 3.049 Community Conserved Areas** adopted by the 3rd IUCN World Conservation Congress (Bangkok, 2004).\(^{108}\)

v) **CBD’s Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (2004).**\(^{109}\)

vi) **Resolution 4.038 Recognition and conservation of sacred natural sites in protected areas** adopted by the 4th IUCN World Conservation Congress (Barcelona 2008).\(^{110}\)

vii) **IUCN World Conservation Congress Recommendation 4.136 Biodiversity, protected areas, indigenous people and mining activities (Barcelona, 2008).**\(^{111}\)

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viii) IUCN and UNESCO Best Practice Protected Area Guidelines No. 16, *Sacred Natural Sites: Guidelines for Protected Area Managers* (2008).\(^{112}\)

ix) IUCN Statement recommending that mining should not take place in World Heritage Sites (June 2012).\(^{113}\)

x) IUCN Recommendation 147 *Sacred Natural Sites – Support for custodian protocols and customary laws in the face of global threats and challenges* (Jeju, 2012).\(^{114}\)

xi) IUCN Best Practice in Protected Areas Guidelines Series No. 20, *Governance of Protected Areas: From understanding to action* (2013).\(^{115}\)


xiii) World Wilderness Congress (WILD) Resolutions:

a. WILD 9 Resolution 36: *Recognition and Conservation of Sacred Natural Sites in Protected Areas* (Mexico, 2009).\(^{117}\)

b. WILD 10 Resolutions 11: *Recognising Networks of Sacred Natural Sites and Territories and the Customary Governance Systems of their Custodian Communities as a Distinct Category of Protected Area* (Salamanca, 2013).\(^{118}\)

c. WILD 10 Resolution 12: *Building a Global Alliance to assert ‘No-Go Areas’ for Mining and other Extractive Industries and destructive activities threatening World Heritage Sites, and Protected Areas, including Indigenous Peoples’ and Local Communities Conserved Areas and Territories (ICCAs) and Sacred Natural Sites and Territories* (Salamanca, 2013).\(^{119}\)

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Chapter 2

2.0. SACRED NATURAL SITES AND TERRITORIES IN BUNYORO REGION

2.1 Examples of Sacred Natural Sites and Territories

Sacred Natural Sites in Bunyoro region exist mainly in the form of: water bodies (lakes and rivers), caves, rocks, forests and other “less disturbed/wild lands”. Nineteen Sacred Natural Sites have been identified.

Figure 5: Location of Sacred Natural Sites and Territories in Bunyoro Region

The map below is an outcome of the eco-mapping exercise done by representatives of oil affected communities and community groups in the Bunyoro region. The maps are being used by communities in advocating for the recognition and defence of their Sacred Natural Sites and Territories.

Source: NAPE, Bunyoro Map Today, 2013
The Sacred Natural Sites and Territories identified are described below.

A: HOIMA DISTRICT

**Kihagya forest**: located in Kakindo village, Bulindi Parish, Kyabigambire sub-county. The site is recognised by Bunyoro kingdom as under the Bafunjo, Abahagya and Abazira clans. Kihagya is a natural forest approximately 1ha, now surrounded by agricultural/settlement land. The forest is valued as a home of “gods”, for worship (spiritual values) and source of herbal medicine.

Presently, the site is under threat by land use pressures (agricultural land use and settlements) and unsustainable extraction of tree products in the form of wood, timber and firewood. In future, pressures for changes in land use will continue. Its recognition as a sacred natural site is being undermined, and the cultural attachment by the present (and future) generation eroded.

**Musaija Mukuru**: situated south of Hoima Town along Hoima - Kakumiro Road. The site belongs to the Baranya and Mugabi clans. It exists in the form of a rock outcrop on a raised ground. The rock is valued for its use by former Kings of Bunyoro as an observatory tower during security operations in war time. The site was used for worshipping and offering sacrifices. The site houses springs that form the source of River Kabaale. The site has a history associated with colonial leaders. It is believed that they used the site to kill opponents. There is limited documented information about the current use of this site as a Sacred Natural Site as well as mining threats. This state of affairs presents a challenge to the respect and recognition of the site by outsiders.

**Katashiha Fort**: situated about 2km west of Hoima town. It exists as a cave. In the past, Banyoro kings used the cave as an armory and garrison. When the colonialist overpowered the king, the cave was used as a prison and torture centre. There is no documented information about the clan owning this site. The immediate threat to the site is ongoing development of tourism infrastructure near the cave. It is suspected that the developer intends to enclose this cave within the premises and offer it as a tourist attraction or facility.

**Buhamba Forest Grove**: exists in the form of a natural forest. There is limited information about the site, although it is believed that the forest was used or continues to be used as a place of worship for rain. The immediate threat to this site is forest degradation in the form of deforestation and/or unregulated forest resources use.

**Ngobya**: situated approximately 8km along Hoima – Masindi Road. There is little information about the site which is presently under a caretaker known as Kibandwa. The site exists as a rocky hill covered with grass dominated vegetation. The site was used for spiritual values and for catching grasshoppers during the full moon. There is no recorded threat to the site.

**Bugoma Central Forest Reserve**: situated to the south west of Hoima district. The forest is believed to belong to the Babyasi Clan. It exists as a natural forest valued for its wide range of ecological, social and cultural roles including food, bush meat, herbal medicine, and other tree/wood products. Presently, the forest is threatened by high levels of forest degradation, mainly in the form of agricultural encroachments and unregulated forms of forest use.

**Nsonga Ijumika**: Situated near Kaiso Fish landing site adjacent to Ngasa 2 well in Kaiso village, Tonya parish of Buseruka sub-county. The Sacred Natural Site has trees that are believed to house the spiritual powers. The site belongs to the Bayaga. This site is valued for its spiritual values and is used for worship and seeking support for increasing fish catch, protecting fishermen against accidents due to strong waves/winds, and protecting fishermen and community against waterborne diseases such as cholera. It is also valued by worshippers who have retrieved bodies of family members who have drowned in the lake during fishing.

The Sacred Natural Site is under threat from Ngasa2 oil well. It is believed that part of the site has been encroached by oil well developments and enclosed within the oil well fence. The communities believe that the spiritual powers of the Sacred Natural Sites and Territories are being undermined, and that incidences of poor fish catch, outbreaks of diseases, immorality and accidents on water are attributed to the displacement of “powers” by the oil well development.
Nsonga Kyawamara: Situated near Kaiso Fish landing Site in Kaiso village, Tonya parish of Buseruka sub-county. The Sacred site has trees that are believed to house the spiritual powers. The site belongs to the Basingo clan. The Sacred Natural Site is valued for its spiritual importance and seeking support for increasing fish catch, protecting fishermen against accidents due to strong waves and winds, and protecting fishermen and community against waterborne diseases such as cholera. The site is also valued for worshippers who have retrieved bodies of family members who drowned in the lake during fishing. However, the spiritual powers are being undermined at this Sacred Natural Site, and no longer protecting the fisher folk as strongly as before. The communities believe this is as a result of oil mining which involved destroying the “house of Ijumika” where the rituals used to be performed by the clan custodian.

Nsonga Nyanyama: Situated near Kijangi Fish landing Site in Kaiso village, Tonya parish of Buseruka sub-county. The Sacred site has trees that are believed to house the spiritual powers. The site belongs to the Basaigi clan. The Sacred Natural Site is valued for its spiritual importance and is used for seeking support for increasing fish catch and protect fishermen against accidents due to strong waves/winds, and protect fishermen and community against waterborne diseases such as cholera. It is also valued when worshippers retrieved bodies of family members who drowned in the lake during fishing. However, the Sacred Natural Site is currently being threatened by oil mining activities.

Kibale-Kyawamara: Situated in Kaiso. The site exists in the form of a rock. The Sacred Natural Site was used for worshipping the spirits housed in the rock. The site is threatened by the establishment of a workers’ camp for one of the oil companies operating in the region.

Kiberekimu: Situated near Kaiso fish landing site. The Sacred Natural Site belongs to the Basingo Clan. The Sacred Natural Site was used for worshipping spirits housed in the trees at the site. There is no Reported threat.

Mwijamboga: Situated at Kaiso, next to Nsonga Ijumika Sacred Natural Site. The site belongs to the Basingo Clan and was used for worshiping spirits housed in the trees at the site. The site is under threat from oil activities at Ngasa 2 well.
B: BULISA DISTRICT

Nsonga Ntogota: Situated near the estuary of river Sonsio and Lake Albert, in Butiaba village, Butiaba Port, Butiaba sub-county. The site belongs to the Basingo clan under caretaker of Muregezi. The site exists as an island or part of the peninsula that was submerged under water about 10 years ago. No reason is given for this occurrence. The site is valued for its spiritual values and is used for worship and seeking support for increasing fish catch, protecting fishermen against accidents due to strong waves/winds, and protecting fishermen and community against waterborne diseases such as cholera. The site is also important for worshippers who have retrieved bodies of family members who drowned in the lake during fishing. The Site is under threat from the oil mining activities at Taitai/Karuka oil well.

Figure 7: Location of Nsonga Nyanyama and Nsonga Ntogota

![Location of Nsonga Nyanyama and Nsonga Ntogota](image)

Kibiro Hot Springs: Situated near the “mouth” of river Kabiga in Kibiro village, Kibiro Parish of Butiaba sub-county. The sacred site exists in the form of a hot spring. The site belongs to the Bazazi/Chwezi clan. The site hosts a minority community group identified by their dialect known as Runyakibiro. The Sacred Natural Site is a source of salt popularly known as Kibiro salt. Salt extraction is mainly by women. In earlier times, salt from Kibiro was used in barter trade as a medium of exchange for food. However, the popularity of Kibiro salt has declined due to the existence of processed salt in the market and shops.

Nyangi Cave: The Sacred Natural Site exists in form of a cave situated along the shores of Lake Albert near Kibiro hot springs in Kyamwana village, Kibiro Parish of Butiaba sub-county. This site is known for its role in defending the kingdom either as a strategic vantage point during inter-clan Wars or between the Kingdom/Banyoro and colonial agents. The site was used by the King of Bunyoro as a “safe haven” for women during inter-tribal or inter-clan wars. Women were hidden in the cave away from possible abduction by enemies. The cave was also used by the Bunyoro kings as a store for ivory and food. Today, the cave is no longer used for the above purposes. The Sacred Natural Site is currently being threatened by crop agricultural practices in the surrounding area.

Murchison Falls: Situated on Gikisi Hill in Murchison Falls National park. The Sacred Natural Site exits in the form of waterfalls, and is believed to house spiritual powers. The Site belongs to the Babwijua and Bakunda people. The Sacred Natural Site was used for worshiping and for protection against

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120 Nsonga means “name of” and Ntogota means name of God/Goddess at the Sacred Natural Site. Nsonga-Ntogota means the site of the God/Goddess Ntogota.
hostile neighbours across the river Nile. The site is no longer used for these purposes because it is inaccessible. The Babwijua and Bakunda clans were evicted from the location in 1954 when the area was gazetted as a national park.

**Nsonga Gagi:** Situated along the shores of Lake Albert near Kibiro hot springs in Nsonga Gagi village, Kibiro Parish of Kigorobya sub-county. The Sacred Natural Site exists in the form of a cave, and belongs to the Bazazi/Chwezi clan. The site was used by the King of Bunyoro as a store for ivory and food. It was also a source of cowry shells that were used for trade with the people from Congo (now, DRC). The Sacred Natural Site is under threat by oil mining at Kyamwana oil well.

**Nsonga Buhuka:** Situated along Lake Albert. The Sacred Natural Site exists in the form of trees, and belongs to the Bahunga and Basambu clans. The site was used for worshipping the spirits housed in the trees. The site is likely to be affected by the oil mining activities near Kingfisher oil well.

**Mugonje:** Situated at the mouth of river Wambabya. The Sacred Natural Site belongs to the Basingo Clan, and was used for worshipping spirits housed in the trees at the site. The site is under threat from oil activities of Waraga 1 and Waraga 2 oil wells.

### 2.2 Importance of Sacred Natural Sites and Territories in Bunyoro Region

The importance of Sacred Natural Sites and Territories in the Bunyoro region is consistent with the importance attached to such sites elsewhere. However, the Bunyoro region has a unique geo-political and social - cultural - economic set up that strengthens the uniqueness of these sites.

- **Bunyoro political history:** the history of Bunyoro is marked with political activism, dating back to the 18th Century when the Banyoro (people) first resisted foreign aggression by the Baganda and British colonialists. It is Reported that some of the Sacred Natural Sites and Territories were indeed used in defence of the Banyoro by invoking the spiritual powers to protect the Banyoro (e.g. the Kihagya forest) or as defence strategic points (e.g. Musaija-Mukuru), armory (e.g. Nyangi) and stores for food. These values have since been displaced by political integration and use of modern weaponry and other forms of defence.

- **Bunyoro culture:** the Banyoro founded their kingdom as far back as the 14th Century. Among the objectives of the kingdom is the preservation of culture. The strong network of Sacred Natural Sites and Territories in the region is the foundation of a rich culture in which Sacred Natural Sites and Territories contribute to community self regulation and cohesion.

- **Bunyoro geographical context:** Bunyoro region’s western border is an international border and shares waters of Lake Albert with the DRC. To the north, the river Nile provided a natural barrier that restricted interaction with the Nilotic tribes north of the Nile. It is probable that these two natural barriers limited free interaction between the Banyoro and neighbors, thus, the Banyoro relied on spiritual powers for defence.

- **Bunyoro and biodiverse ecosystems:** the Bunyoro region hosts vast areas rich in biodiversity. Many areas are recognised as conservation and protected areas. They include Murchison Falls National Park (MFNP), Bugungu, Kabwoya and Karuma Wildlife Reserves, Budongo and Bugoma Central Forest Reserves. This situation implies that prior to gazetting these areas, they were rich in biodiversity, and, it is not a coincidence that the area is home to numerous Sacred Natural Sites and Territories and their custodian communities who protected the biodiversity in accordance with their customary governance systems.
Chapter 3

3.0. Impacts of Mining and Extractive Activities on Food Sovereignty, Water and Sacred Natural Sites and Territories.

Overall, there is a growing concern regarding the impacts of extractive activities, particularly oil mining, in the Bunyoro region and Albertine Rift. A Report by Uganda’s NEMA acknowledges that excavations and exploration installations, and associated infrastructure, have significant effects on the quality of ecosystems, particularly biodiversity, land and water, in the region which has hitherto remained undisturbed by human activities. Oil explorations/extraction produces a lot of ‘waste’ rock, ‘waste’ water, dust and noise which have potential to pollute ecosystems and human beings. In terms of social impacts, oil mining has potential to displace people, undermine people’s human rights including access to water, food and other fundamental conditions, and to cause conflicts and social unrest. On the economic front, oil mining has potential to destabilise the economic fabric by creating quick sources of income through employment and other value chain benefits, but all of which are temporary because oil is a non-renewable ‘resource’ and will be depleted at some point.

With respect to the effects of extractive activities on water, food sovereignty and Sacred Natural Sites and Territories, the following are evident or likely to occur in the Bunyoro region.

3.1 Impacts on Water

a. Water pollution: There are high risks of oil spills, pipe leakages of crude oil and methane gas, dumping of toxic waste and upstream water abstraction to service the oil mining operations. When oil enters into water systems, even a small amount of pollution can render huge amounts of water toxic, undrinkable and poisonous, as experienced in other oil producing countries such as Nigeria. Such impacts would result in limited availability of clean and safe water for agriculture, domestic use, fishing and for biodiversity.

b. Acid mine drainage and heavy metal leaching: Serious consequences are likely for water and agriculture. Rock that is dug up from deep underground contains sulphides, and becomes acidic when exposed to air. This ‘waste’ rock is usually left as piles near the mine site. Rainfall that passes through these rock heaps is turned acidic, and then enters into soil and water systems. This phenomenon is known as “acid mine drainage” (AMD) and is a common impact from mining, which leaves soil and water systems acidic. This acid can also leach or draw out heavy metals, such as iron, nickel, arsenic, lead, copper and aluminum, that are also found in the rock brought from underground. Local water systems would thus become contaminated and soil fertility and food production reduced. The effects can continue long after a mine closes, as has been the case in Johannesburg, South Africa where water is still toxic over a century after a gold mine closed.

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People are born into pollution, they live in pollution and they are buried in pollution. Niger Delta communities say leave oil in the soil!

Nnimmo Bassey, HOMEF, Nigeria

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c. **Restricted access to water** associated with mining, and also private land owners who have fenced off water access routes for mining activities, or livestock and domestic use.

d. **Water use related conflicts** resulting from competition by upstream and downstream users. Oil and gas extraction use large amounts of water for their extraction and processing, with potential to dry up streams, lower the water table, and significantly reduce water availability for ecosystems and local communities, particularly for crop production and livestock.

Figure 8: Containerised drill waste pending disposal  
(Courtesy: NAPE)

3.2 Impacts on Food Sovereignty

a. **Food scarcity**: Impacts of mining, including water, soil and air pollution, loss of ecosystems, land grabbing, displacement of communities, and contribution to climate change would significantly reduce food production and undermine a community’s right to food. For example, oil and gas extraction can lead to a noticeable deterioration in air quality, which could impact on the health and ability of farmers, and thus have a major impact on crop production. Research from Ghana has shown that pollution from diesel machinery used in gold mining resulted in crop losses of up to 40% over a 20km radius.\(^1\) Also, waste from oil and gas activities contain petroleum and hydrocarbons, metals, naturally occurring radioactive materials, salts and toxic chemicals, which have potential to cause soil pollution and prevent growth of any form of vegetation. If communities no longer grow their own food, they will become increasingly dependent on the market for food commodities which they may not afford.

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b. **Marginalisation of food producers and loss of livelihoods:** Farming livelihoods would be lost when farmers can no longer access the land or water that they need for farming. Short-term jobs provided by mining cannot make up for the long-term and widespread loss of agricultural and other livelihoods, which depend on healthy ecosystems. A World Bank study has shown that African countries whose economies were based on mining failed to significantly reduce poverty and that the ‘benefits’ do not reach the poor. Smallholder farmers who constitute the majority of food producers in the region are likely to suffer marginalisation. Such smallholder farmers are vulnerable to displacement from their land and farming activities by oil mining infrastructure or agribusiness. Although women produce most of the food in Bunyoro region, their role and knowledge risk being ignored, and their rights to food and as workers violated. This would undermine their right to food sovereignty, particularly the right of food providers’ to live and work in dignity.

\[\text{I am a fish monger and I derive my livelihood from the sale of fish to support my family. Most women here have been engaged in small-scale trade in fish and others own fishing nets and boats. We have been exchanging fish for other food stuffs for our survival and that of our families but the story is now different! Before oil discovery, fish was available and affordable because there were few people engaged in fishing and government was stricter on the nature of fishing nets used on our Lake. Now very many people have come from all parts of the country and are involved in fishing using bad fishing methods, while they wait for oil jobs. Fish is no longer there and the little that is caught is very expensive and can only be bought by big business men from Kampala and we local fish mongers cannot afford it! Government is focusing on oil and little attention is given to fisheries. Famine is looming and we do not have what to feed our families!} \]

*Betty Bagadira, a fish monger of Kaiso-Tonya fishing village, located along the shores of Lake Albert.*

c. **Loss of food production systems and sources:** food sovereignty emphasises control by local food providers over land, water, seeds, livestock and fish, and respect for their rights. Presently, food production systems depend on indigenous crops and livestock. The traditional food production systems and technologies are affordable by the average person. However, oil extraction in Bunyoro would affect food sovereignty by taking away land and displacing farmers and communities from their farmlands and territories, and damaging the water systems, ecosystems and social networks upon which their farming systems rely. Further, the loss of traditional farming systems and food sovereignty could lead to a loss of regional and national food security, and increased political and economic vulnerability due to rising global food prices. Therefore the impacts of mining on food sovereignty go far beyond the visible losses; the real footprint of mining is less visible, but can be enormous.

d. **Damaged ecosystems:** Food sovereignty depends on healthy biodiversity and ecosystems. However, as explained earlier, mining could lead to damage, contamination and loss of biodiversity, land and water, upon which farming depends. This is likely to exacerbate the loss of indigenous plant and animal genetic diversity and variability, which is already threatened by genetically modified varieties (improved varieties) and their associated problems.

e. **Loss of agricultural land:** due to conversion of current agricultural land into other forms of land use by private land owners such as for mining. The installation of oil production infrastructure would reduce or restrict access to farm land, and contamination of soil and water systems and other fundamental conditions for farming would result in a loss of land for agricultural livelihoods.


3.3 Impacts on Sacred Natural Sites and Territories

The following impacts from mining activities on ecosystems, culture, spirituality, and governance are likely to occur:

a. **Reduction/loss of biodiversity** and undermined health and functioning of ecosystems such as forests, wildlife and rivers. According to NEMA some of the impacts could include ‘water and air pollution, habitat destruction, encroachment and noise or vibrations that may disturb the breeding and migration patterns of wildlife.’\(^{128}\) The latter impact has been observed on fish in Lake Albert, where oil exploration activities are taking place. Mining activities can scare off wildlife, such as elephants, to more than a kilometre’s distance from the operation site.\(^{129}\)

b. **Reduced resilience to climate change** - As biodiversity decreases, the ability of ecosystems and communities to adapt to climate change will also decrease.\(^{130}\)

c. **Destruction of a network of Sacred Natural Sites and Territories** - As Sacred Natural Sites are connected through an ecological, cultural and spiritual network, then the destruction of one Site is likely to lead to the destruction of other Sacred Natural Sites and Territories.

d. **Erosion of cultural and spiritual values** - Mining and its impacts would undermine the cultural and spiritual values of Sacred Natural Sites and Territories, and practices of the communities which respect them as holy places which are No Go Areas for mining.

e. **Undermining of communities’ customary governance systems** - The impacts of mining, such as damage and restricted access to Sacred Natural Sites, would violate the customary governance systems, and legal rights and responsibilities, of communities to govern and protect their Sacred Natural Sites and Territories.

> “When the oil came, they destroyed everything in the community: the land and the water. Our sacred sites have been spoilt, they have fenced off our worshipping places and we cannot go there anymore. Things are spoilt, just spoilt!”
> *Enos Isingoma, Elder from the oil-affected communities Hoima Region, Uganda*

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3.4 Underlying factors

In Bunyoro region, some of the above mentioned impacts are as a result of the following underlying factors:

a. **Ownership of oil**: Uganda’s oil resources are owned by the Government. This gives the Government mandate to take decisions regarding oil exploration and production with or without input and consent (or rejection, that is, saying no to mining) from ‘host’ and impacted communities. This situation creates a risk for decisions that negatively affect the host community.

b. **Mining in protected areas**: some of the oil exploration and production wells are located within wildlife conservation areas as well as protected zones (lake shores, wetlands and river banks). Many Sacred Natural Sites and Territories are found within the same ecosystems encroached by mining activities. While some conservation policies may permit access and use of Sacred Natural Sites and Territories, oil mining imposes restrictions on access.

c. **Lack of capacity to regulate and monitor mining activities**: while oil and other extractive industries should comply with social and environmental standards and requirements, there is limited capacity, by Governments, civil society and communities, to monitor and enforce their compliance with these standards.\(^ {131}\)

Given these multiple threats to water, Sacred Natural Sites and Territories and food sovereignty, this is why the role of NAPE, the Gaia Foundation and other civil society groups is so crucial to assist communities to make informed choices. Once communities are exposed to the true costs of mining, for them and for the children to come, they will be able to make a clear decision to sustain the conditions of life.

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\(^ {131}\) According to the IUCN at least 24% of the 37 African natural and mixed World Heritage sites are currently under threat by mining, oil and gas operations; see IUCN (2012) Statement recommending that mining should not take place in World Heritage Sites. Available at http://www.minesandcommunities.org/article.php?a=11019 (last accessed June 2014).
Chapter 4

4.0 Earth Law (Earth Jurisprudence)

As explained above, communities have been governing and protecting Sacred Natural Sites and Territories, food, water and ecosystems for centuries, through their Earth-based knowledge and customary governance systems. These governance systems have inspired an emerging philosophy and practice known as “Earth Jurisprudence.”

The term Earth Jurisprudence was first proposed by cultural historian Thomas Berry to refer to a philosophy and practice which recognises that Earth is the primary source of law. Human laws and governance systems are derived from and should comply with Earth’s laws which govern life in order to maintain the well-being of the whole Earth Community (plants, animals, ecosystems, Sacred Natural Sites, and all life, including humans) of present and future generations. This is recognised by indigenous and local governance systems across the planet.  

Thomas Berry understood the Earth Community as a “communion of subjects, not a collection of objects.” He challenged us to recognise that every member of the Earth Community has inherent rights that include the right to be, the right to habitat and the right to fulfill their role in the evolution of the Earth Community. “The Great Work ahead is for humans to transform their destructive presence on Earth into a mutually enhancing relationship with Earth and to transform human - centered governance (laws, education, religion and economics) into Earth - Centered governance.” Thomas Berry recognised that the two sources of inspiration for Earth Jurisprudence are Earth herself, and indigenous and local communities, who derive their governance systems from Earth’s laws.

Box 4: Earth Law Principles

These include:

• **Lawfulness** – Earth is the primary source of law which governs life. Human laws should be derived from, and comply with, Earth’s laws, ecological cycles, processes and limits to maintain the health and integrity of life on Earth.

• **Wholeness** – We are all part of an Earth Community (e.g. plants, animals, ecosystems and all life including humans). The well-being of each member is dependent on the well-being of Earth; so we must act in the interest of the whole, and of future generations, over the interests of the individual.

• **Sacredness** – The whole Earth is sacred. Across the planet there are places, such as forests, rivers and mountains, of critical importance for ecosystems, culture and spirituality which are respected as Sacred Natural Sites. Sacred Natural Sites are places where the laws of Earth are most visible, and are interpreted by the Custodian community to guide their governance systems.

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Over the past 10 years, NAPE, Gaia and the African Biodiversity Network (ABN) partners have been encouraging African communities to revive their traditional ecological knowledge, practices and customary governance systems which are deeply rooted in Earth Jurisprudence. They have developed the term “Community Ecological Governance” to describe these indigenous and local governance systems that have been practiced over generations. After much debate, the ABN and other allies agreed to refer to “Earth Law” as well as Earth Jurisprudence to increase accessibility to the principles underpinning those systems, and to reflect that Earth is the primary source of law.

There is now a growing global movement of communities, supported by civil society, lawyers and policy makers, who are reviving, practicing, asserting and securing legal recognition of customary governance systems which comply with Earth’s laws, in order to maintain the health and integrity of the wider Earth Community, and future generations of all species.

4. 1 Earth Jurisprudence in Uganda

The Bunyoro kingdom is one of the ancient traditional institutions in Uganda. Its existence dates since before the colonial era. The kingdom was the custodian of all the traditional governance systems and knowledge which explained the existence of the Banyoro and their territory. It is these traditional governance systems and knowledge emanating from the Earth which would now be known as ‘Earth Jurisprudence’. The kingdom is governed by the king whose power is derived from a network of living beliefs, traditions and practices observed by the entire community. Like any other traditional community, the Banyoro believe in nature as part and parcel of their lives and therefore source of their survival. Sacred Natural Sites in the region are the temples of knowledge, beliefs and understanding of the Banyoro. They are No Go Areas for any unacceptable activities and can only be accessed by the responsible clans.

Mining in the Bunyoro region, with its destructive impacts as outlined above would violate the rights of Sacred Natural Sites and Ecosystems, including the rights to exist, to habitat and to fulfill their role in the Earth Community, and undermine the human responsibility of care to the wider Earth Community of present and future generations. Therefore, there is a need for greater public and legal recognition, and practice, of Earth Jurisprudence principles to strengthen the defence of Sacred Natural Sites and Territories, water and food sovereignty from the threats of mining, extractive activities and destructive development. Promoting Earth Jurisprudence in Uganda would also help strengthen recognition of the Earth based knowledge and customary governance systems which protect Sacred Natural Sites and Territories and the need to sustain and protect their existence.

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135 Extract from Gaia Foundation and ABN leaflet on Earth Jurisprudence, 2013, distilled from discussions with practitioners and advocates of Earth Jurisprudence.
137 The term Earth Law emerged in 2009 from discussions among community practitioners and advocates at the Earth Jurisprudence International Retreat in Schumacher College, UK, which was co-organized with the Gaia Foundation.
Indigenous wisdom reminds us that Earth Jurisprudence is a way of life and therefore may not necessarily be explicitly recognised in national laws. However its principles are implicitly recognised in Uganda through the legal recognition of culture, traditional values, customary laws and some environmental laws. This is equally being supported by a growing movement of communities, civil society and lawyers in Uganda and elsewhere who are advocating for recognition of Earth Jurisprudence in law and policy.

There is need to mark the difference between Earth Jurisprudence and existence of legislation for example; the 1995 Ugandan constitution provides for consistence of every belief with the constitution. There are already principles of earth jurisprudence that qualify man’s relationship with the earth and preservation of ‘natural resources’

Frank Tumusiime – a Kampala based lawyer

The box below highlights some examples of Earth Law precedents and initiatives.139

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**Box 5: SOME EARTH JURISPRUDENCE PRECEDENTS**

**Global**

- **Universal Declaration of the Rights of Mother Earth 2010** recognises Mother Earth as a Living Being with rights to life, to existence and to continue her vital cycles and processes free from human disruption.

- **Proposed United Nations Crime of Ecocide** – would recognise ‘extensive damage, destruction to or loss of ecosystems’ as a 5th international crime against peace.

- **Proposed Universal Declaration on Planetary Boundaries** calls for humans to recognise, respect and live within Earth’s planetary boundaries.

**Africa**

- **Statement of Common African Customary Laws for the Protection of Sacred Natural Sites** developed by custodians of Sacred Natural Sites from Kenya, Ethiopia, Uganda and South Africa at Nanyuki, Kenya in 2012.143

- **Kenya: Recognition of Community Ancestral Land** – in 2010, lobbying by the Institute for Culture and Ecology (ICE) and others led to the Kenyan Constitution recognising community land as including ancestral land – for the first time in Kenya - and the cultural practices, right to self-governance and customary laws of minority and indigenous communities. A 2012 Report by ICE, Gaia and ABN recommended stronger implementation and broader interpretation of these Constitutional provisions to recognise Earth Law principles, particularly in the Community Land Bill.145

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139 For further precedents please see the Gaia Foundation’s Earth Jurisprudence Learning Centre at: http://www.gaiafoundation.org/earth-law-precedents (last accessed June 2014).


141 See http://eradicatingecocide.com/ (last accessed June 2014).


144 See http://www.icekenya.org/ (last accessed June 2014).

South Africa: Recognition of a Network of Sacred Natural Sites in Venda – in 2010 the South African High Court granted an interdict to stop tourism development in a sacred waterfall, and in 2012 three communities, with support of the Mupo Foundation, applied for registration, under South African heritage law, of their Sacred Natural Sites as no-go areas for development and recognition of their Earth-centered customary governance systems, which recognises the Rights of Nature and future generations, and human responsibilities to protect the wider Earth Community.

Ethiopia: Registration for the Recognition of Sheka Sacred Forest – in 2012 the Sheka people, with support from MELCA, secured registration of their sacred forest as an UNESCO Man and Biosphere Reserve, in which certain human activities, such as development, is prohibited in the core zone. The communities continue to secure recognition of their Earth-centred customary laws, and their sacred forests as No Go Areas for mining and extractive activities.

Benin: Legal Recognition of Sacred Natural Sites – in 2012 communities and GRABE-Benin successfully lobbied the Benin Government to pass a Sacred Forest Law at the national and municipal levels - which recognises sacred sites as protected areas, and their communities as the custodians who govern and protect them - the first known precedent in an African country.

Ghana: Defence of Sacred Groves from mining – in 2013 CIKOD and others established a national Coalition to resist mining in Ghana, and are petitioning mining companies to stop the destruction of sacred ecosystems, and to respect the rights of Mother Earth and of indigenous and local communities.

North America

United States: Community Ordinances – e.g. Mora County’s Community Water Rights and Local Self-Government Ordinance recognises the Rights of Nature, denies corporations of legal personhood, and bans extractive activities.

South America

Ecuadorian Constitution – first Constitution in the world to recognise the Rights of Nature. Rights of Nature provisions have been successfully implemented by an Ecuadorian court which recognised the rights of a river not to be destroyed by development, and asserted in a court case to protect the rights of the Gulf of Mexico ecosystem from the impacts of extractive activities.
✓ **Colombia** - Recognition of Intangible Cultural Heritage of Pirá Paraná – as part of the Nation’s Intangible Cultural Heritage, and UNESCO’s Intangible Cultural Heritage List.156

✓ **Bolivia** – Law of the Rights of Mother Earth157 – endorses principles such as non-commodification of Nature and establishes an Ombudsman for future generations.

✓ **Guatemala** - Law Proposal on Sacred Sites158 - aims to secure recognition of Sacred Sites and Territories and their governance, access, and conservation by communities.

**Asia**

✓ **India** – Recognition of Sacred Mountain as a No Go Area for mining – the Indian Supreme Court recognised religious rights of tribal communities to worship a sacred mountain, and communities159 and Indian Government rejected a mining company’s plans to mine.160

**Europe**

✓ **Scotland** - Falkirk Community Charter161 - recognises ecosystems and food sovereignty as part of a community’s ‘cultural heritage’ and therefore to be recognised as a ‘material consideration’ in Environmental Impact Assessments and planning decisions.

**Australiasia**

✓ **New Zealand** – Agreement recognising the Rights of a River162 – between an indigenous community, as the River’s custodian, and the Government.

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157 See http://f.cl.ly/items/212y0r1R0w2k2F1M021G/Mother_Earth_Law.pdf (last accessed June 2014).
CHAPTER 5

5.0. CONCLUSIONS

The Report concludes with the following observations.

Sacred Natural Sites and Territories, water, food sovereignty are interconnected and are vital conditions for life and livelihoods

Bunyoro is rich in biological and cultural diversity and home to several Sacred Natural Sites and Territories, large watershed areas of lakes and rivers, and agricultural land. These ecosystems are vital for maintaining the health and functioning of biodiversity, and communities’ lives, agricultural livelihoods (particularly fishing) and food sovereignty, and their culture, spirituality and governance systems. This is not only for Uganda but also neighbouring countries of Sudan and DRC which form part of the watershed. Sacred Natural Sites and Territories, food sovereignty and water are ecologically, culturally and spiritually interconnected and so the undermining of one system would lead to the undermining of the others. The health and integrity of these systems requires the protection of each system as part of a holistic approach.

Communities protect ecosystems through customary governance systems based on Earth’s laws

Communities play a vital role in governing and protecting water sources, food sovereignty and Sacred Natural Sites and Territories. In Bunyoro, and in many other countries, Sacred Natural Sites and Territories are governed and protected under the guidance of a “Custodian” on behalf of the ‘responsible’ clan, in accordance with customary (unwritten) laws and codes of conduct, based on the laws of the Earth. This governance emphasises strict protection of these sites, as well as areas for food sovereignty and water sources, in which human activities such as mining and “development” of any kind, are prohibited. There are also strict codes of conduct to ensure that any use of natural ‘resources’ within the wider landscape and territory, in which these sites are located, is ecologically sustainable. The responsibility for their protection is passed down from one generation of custodian clans to the next. These areas are part of our common heritage, and should be recognised as No-Go Areas for mining, as a minimum, and their customary governance systems recognised and supported.

Mining and extractive activities are likely to have destructive, widespread and long-term impacts

While there are multiple threats to food sovereignty, water and Sacred Natural Sites and Territories, including by commercial agriculture and climate change, the impacts of mining and extractive activities are another order of magnitude. As mining activity in other oil producing countries such as Nigeria and Ghana has shown, the destruction can be dramatic - from land grabbing, contamination of water and soil systems, damage and loss of ecosystems and Sacred Natural Sites and Territories, air pollution and ill-health, reduction in food production, to climate change. These impacts are not restricted locally but can extend for miles beyond the site of extraction, as ecosystems are interconnected, and can last for generations. The wider footprint of mining on water, food sovereignty and Sacred Natural Sites and Territories is generally overlooked, but at the expense of present and future generations.
In Bunyoro the following impacts are evident or likely to occur:

**Water scarcity and pollution**

Oil and gas extraction use large amounts of water for their extraction and processing, which has the potential to dry up streams, lower the water table, and reduce water availability, especially for crop production and ecosystems. There are high risks of water contamination from leakages of crude oil and methane gas, acid mine drainage and leaching of heavy metals, and dumping of ‘waste’ rock and water. As water systems are interconnected, these impacts would not be limited to one water source such as a lake, but could affect all rivers flowing from the lake and the underwater system, far beyond the site of activity, and could threaten neighbouring countries such as the DRC which are within the watershed area.

**Loss of food sovereignty**

Mining significantly threatens food sovereignty, particularly by contaminating and damaging ecosystems and ecological processes such as water and soil which are integral to agricultural systems, displacing communities and reducing and restricting access to farm land and fishing waters for mining associated infrastructure, and undermining the traditional knowledge, role and skills of women and men in food production which have developed over centuries. Studies have shown that mining can affect crop losses of up to 40% over a 20km radius and that African countries whose economies were based on mining failed to significantly reduce poverty and that the ‘benefits’ do not reach the poor.

**Destruction of Sacred Natural Sites and Territories**

The impacts of mining, such as land and water contamination and noise, can undermine the health and functioning of ecosystems such as rivers, forests and wildlife. Further, the reduction in biodiversity threatens the ability of ecosystems and communities to adapt and be resilient to climate change. As Sacred Natural Sites and Territories are connected through an ecological, cultural and spiritual network, then the destruction of one Site would undermine other Sacred Natural Sites and Territories. As communities’ lives and identities are deeply connected to lands and waters then restricted access to and damage of Sacred Natural Sites and Territories by mining would undermine their culture, spirituality and customary governance systems and thus their protection of these places for present and future generations.

Factors underlying these impacts include: communities are not recognised as ‘the people responsible’ or custodians of ecosystems, and minerals and metals beneath the land, mining may occur within Sacred Natural Sites and Territories, and protected areas contrary to conservation policies, and strict regulation and monitoring of mining activities are lacking.

**Undermining of human rights and responsibilities particularly of women**

The impacts of mining and extractive activities, such as damage to ecosystems and displacement of communities from their lands, could undermine the environmental, social, cultural, political and economic rights of communities. In the Bunyoro region there is a significant gender dimension in the governance and protection of water, food sovereignty and Sacred Natural Sites and Territories. Women play a central role in providing water for domestic use, as custodians of seed diversity and wild food which are at the heart of household food production, and in the spiritual practices, such as rituals, for the Sacred Natural Sites and Territories. By undermining access to and the health of water, food and Sacred Natural Sites and Territories, upon which women especially depend on for their lives and livelihoods, mining would threaten women’s rights and responsibilities.

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Legal recognition and defence of water, food sovereignty, Sacred Natural Sites and Territories and their customary governance systems is limited

Explicit recognition of Sacred Natural Sites and Territories, food sovereignty and community governance and protection of ecosystems is lacking (except the conservation of water) in Ugandan laws and policy. As is their implementation and enforcement, partly due to weak and compartmentalised institutions with limited effectiveness in ensuring clean and safe water, food sovereignty and conservation of biodiversity and ecosystems. Furthermore, there are legal provisions, for example in the 1995 Constitution of Uganda and Mining Act 2003, which could contradict and undermine the protection and defence of water, food sovereignty and Sacred Natural Sites and Territories. For example, the recognition of the State as the owner of minerals and holder of mineral rights in Uganda, and a bias for a ‘right to (economic) development’, through privatisation, could undermine the obligations of the Government and citizens to protect the environment, and therefore the critical conditions for life and livelihoods. Fundamentally, the majority of laws and policies are based on human-centered/industrial values, which do not recognise the interconnections between ecosystems and humans, and the need to comply with Earth’s laws and limits for the well being of life of present and future generations.

This Report therefore calls for stronger protection and legal recognition of Sacred Natural Sites and Territories, water and food sovereignty, and prevention and reduction of the impacts of mining and extractive activities. Overall it recommends stronger implementation, enforcement and reform of laws and policies to recognise Sacred Natural Sites and Territories, watershed and food sovereignty including as No-Go Areas for mining, extractive activities and destructive development, as a minimum; and recognition of communities’ customary governance systems, rights and responsibilities, which protect ecosystems for present and future generations of all species, in accordance with Earth’s laws.
Chapter 6

6.0 RECOMMENDATIONS AND ADVOCACY MESSAGES

6.1 RECOMMENDATIONS

The following measures for protecting water, food sovereignty and Sacred Natural Sites and Territories, and preventing and minimising the likely impacts of mining are proposed.

6.1.1 Strengthening the Linkages between Water, Food Sovereignty and Sacred Natural Sites and Territories

These measures would be particularly suited for implementation by the National Environment Management Authority, Directorate of Water Resources management, Uganda Wildlife Authority and District local government. Civil Societies, working with communities, should lobby for participation in the development of a national compliance monitoring framework.

For Communities

- Document and publicise, where appropriate and without disclosing confidential knowledge, the important roles of, and interconnections between, Sacred Natural Sites and Territories, food sovereignty and water, and expose the impacts of mining.
- Develop community ecological governance or ‘management’ plans, which stipulate what can or cannot take place in relation to Sacred Natural Sites and Territories, food sovereignty, water sources and other ecosystems, in accordance with customary laws, and apply and enforce these plans, where appropriate with protected area managers, to deter all forms of destruction.
- Build strong community coalitions and national alliances to protect Sacred Natural Sites and Territories, food sovereignty and water, sharing common principles, experiences and lessons and uniting in solidarity with regional and international alliances to say “Yes to life, No to mining.” Encourage collaboration with others nationally and internationally.

For Civil Society

- Advocate for the implementation, enforcement, and reform of laws, policies and Government institutional arrangements for stronger recognition and defence of Sacred Natural Sites and Territories, food sovereignty and watershed areas as protected areas and No-Go Areas for mining, extractive activities and destructive development, as a minimum; as well as the rights and responsibilities of communities to govern and protect them.
- Call on the Ugandan Parliament to reform the Public Order Management Act 2013 to ensure freedom of expression and assembly, in line with international human rights standards.165
- Identify, develop and assert legal principles, instruments and advocacy arguments for protecting and defending water, food sovereignty and Sacred Natural Sites and Territories from threats such as mining. See Box below for some examples, including rights and responsibilities of communities to self-governance/determination, free prior informed consent including withholding consent, access to information, participation in decision-making, access to legal redress, and the rights of ecosystems/Nature and future generations.

Monitor (non) compliance of mining and extractive activities with environmental and human rights standards and requirements, and advocate for stronger transparency, corporate accountability and monitoring tools and systems, including a national monitoring framework.

Advocate for, and monitor, effective implementation of these recommended measures.

For Government
- Recognise and support the protection of Sacred Natural Sites and Territories, Food Sovereignty and water and their custodian communities’ customary governance systems and Clan institutions, based on Earth Law principles.
- Implement and enforce national, regional and international laws, policies and best practice, for the recognition and protection of Sacred Natural Sites and Territories, food sovereignty and water, including as No Go Areas for mining, extractive activities and destructive development, as a minimum. Also for the recognition of customary governance systems, rights and responsibilities of their custodian communities. For example, enforce the African Charter on Human and Peoples’ Rights, and Convention on Biological Diversity, ratify the UNESCO Heritage Convention 1972 and the ILO Convention No. 169 1989, and endorse and implement the UNDRIP 2007, the IUCN Recommendations (especially 2.82 (2000) and 147 (2012), the 2013 World Wilderness Congress Resolutions, particularly 11 and 12, and the UN Guiding Principles on Business and Human Rights 2011.
- Revise, develop, coordinate and implement cross-sectoral policies, legislation and institutions to recognise and support the relationships between people, Sacred Natural Sites and Territories, food sovereignty and water and other ecosystems.
- Develop and enforce strict environmental and social responsibilities for mining and extractive industries, including environmental protection, prevention and mitigation, through legal, policy and institutional frameworks, such as licenses, permits, Environmental Impact Assessment (EIA), restoration plans, and Environmental Management Plans, and through institutions of NEMA and the MEMD.
- Strengthen and enforce legal measures for stakeholder participation, particularly community and civil society, in decision-making, prevention and mitigation measures such as restoration plans, and monitoring compliance of mining and extractive activities with environmental standards.
- Develop procedures and mechanisms for monitoring compliance and enforcement, and transparency of mining and extractive industries. Specifically:
  - Develop and enforce measures for accessing and sharing information and providing feedback on information generated from compliance monitoring.
  - Establish a national framework /guidelines for monitoring compliance and enforcement of environmental and social responsibilities of mining and extractive activities.
  - Establish an independent institution to monitor and enforce compliance with environmental requirements.

For Industry
- Commit to upholding national, regional and international laws, policies, best practices, and Earth Law principles, particularly the rights and ecological limits of ecosystems, the rights of peoples to self-determination, public participation in decision-making, free prior and informed consent including to withhold consent (say ‘no’), and the respect of Sacred Natural Sites and Territories and other protected areas as No-Go Areas for mining, extractive activities and destructive activities, as a minimum.
- Ensure that any proposed mining, extractive and development activities comply with required, independent and rigorous Environmental Impact Assessments, which adheres to the precautionary principle and assesses the long-term and widespread impacts on agriculture, water and Sacred Natural Sites and Territories. In particular
  - Adhere to the UN Convention on Biological Diversity’s Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (2004).

Take into account the number of long-term livelihoods & households that will be affected/displaced by a loss of farming, fishing, harvesting, tourism and related activities, due to a loss of land and water, and air and water pollution from mining.

- Assess the impacts on water quality, quantity and ecological processes.
- Use minerals and metals which have been dumped as ‘waste’, and re-use materials already in circulation, rather than developing new mines to extract more from our finite planet. Transition from finite ‘resources’, such as fossil fuels, to renewable energy.169

6.1.2. Sacred Natural Sites and Territories

a. Sustain their existence and values

For Communities

- Revive and practice customary governance systems, and traditional institutions, including the role of women, in protecting Sacred Natural Sites and Territories (and food sovereignty and water) and transfer knowledge and values, to current and future generations.
- Document Sacred Natural Sites and Territories and associated knowledge, on their own terms and without disclosing confidential knowledge. A dual strategy of internal documentation/transfer of confidential knowledge only for the community custodians, and also documentation of non-confidential knowledge for the public, could help ensure their continued existence and recognition.

For Civil Society

- Increase public awareness of the important ecological, cultural and spiritual roles of Sacred Natural Sites and Territories, and their linkages with food sovereignty and water, and expose the impacts of mining.
- Assist communities to distil, document (where appropriate) and promote common principles, experiences and lessons with communities in other countries to inspire similar precedents.
- Publicise the findings and recommendations of this Report at community, national and international levels to raise awareness, particularly of the impacts of mining on food, Sacred Natural Sites and Territories, and water, and strengthen community capacity for advocacy, drawing on the messages in Section 6.2.

b. Recognise community customary governance based on Earth Law principles

For Communities

- Establish precedents to secure ‘formal’ recognition of Sacred Natural Sites and Territories and their Earth-centered customary governance systems and Clan institutions, asserting that they are consistent with the cultural values promoted and protected by the Constitution of the Kingdom of Bunyoro, and other national laws, policies and institutions.

For Civil Society

- Support custodian communities in Uganda to revive, practice, strengthen, assert and secure legal recognition of their customary laws based on Earth Law principles, and their rights and responsibilities to govern and protect ecosystems.
- Strengthen the national CSO Mining Coalition through, for instance: defining the structure and modalities for the Coalition, provision of information, capacity building in advocacy and continued technical and logistical support.
- Establish and nurture platforms or processes for promoting, applying and securing recognition of Earth Law principles in laws and policies to maintain the health and functioning of the planet and wider Earth Community (plants, animals, ecosystems and humans).

For Government

- Recognise and support the protection of Sacred Natural Sites and Territories and their custodian communities’ customary governance systems and Clan institutions, based on Earth Law principles.

c. Recognise Sacred Natural Sites and Territories as No Go Areas for Mining, as a minimum

Communities, traditional cultural institutions and civil society need to work together to advocate and influence the following measures and reforms. These recommendations need to be implemented by Government, particularly the lead Ministry for cultural matters (Ministry of Gender, Labour and Social Development) which is responsible for initiating proposed legal and policy reforms. The role of Parliament in legislating for the recognition of Sacred Natural Sites and Territories is paramount.

For Communities, Civil Society and Government

- Strengthen the recognition, protection and defence of Sacred Natural Sites and Territories through the strengthening/reform, implementation and enforcement of national, regional and international legal and policy frameworks for the countrywide recognition of Sacred Natural Sites and Territories, respecting these sites as No Go Areas for mining, extractive activities and other destructive development; as well as for the recognition of the customary governance systems of their community custodians, which are based on Earth Law principles. The following specific measures could be pursued:

  - Assert, interpret and enforce existing laws and provisions which recognise and support community governance and protection of their Sacred Natural Sites and Territories, in particular:

    i) Ugandan Constitution 1995 - recognises customary governance systems of communities and their rights and responsibilities, including to culture, religion, customary land, a healthy environment and privacy of home, and a citizen’s right to participate in their own governance – all of which are fundamental. Saying ‘no’ to mining could be asserted as integral to the right to self-governance/determination. Articles 50 and 51 could be asserted for the enforcement and redress of human rights which have been infringed/threatened by mining.

    The duties of the State to protect important natural ‘resources’, including land, water, wetlands, fauna and flora and minerals on behalf of present and future generations should also be enforced. (See Section 6.1 for further cross-cutting legal principles and advocacy arguments which could be developed and asserted to defend Sacred Natural Sites and Territories, food sovereignty and water).

    ii) National Environment Management Act 1998 - requires, for example, environmental monitoring, impact assessments and audits, and environmental restoration orders.

    iii) Restitution Act 1993 - could be asserted to recognise that Sacred Natural Sites and Territories are governed by cultural institutions.

    iv) The Mining Act 2003 - requires that any proposed mining must first carry out an EIA and comply with environmental protection standards and environmental restoration plans in accordance with the Environment Act.

- Review existing legislative, policy and institutional frameworks, for example, the Historical Monuments Act 1967 to recognise intangible heritage and requirements of the World Heritage Convention; and consider drafting new frameworks to better recognise communities’ governance systems of Sacred Natural Sites and Territories and the Earth Law principles which underpin them.

- Enforce Government obligations under national, African and International laws for example, the African Charter on Human and Peoples’ Rights, Convention on Biological Diversity and Ramsar Convention, ratify other relevant laws for example the UNESCO Heritage Convention 1972 and the ILO Convention No. 169 (1989), and endorse the UNDRIP 2007, the IUCN Recommendations (especially 2.82 (2000) and 147 (2012)) and the 2013 World Wilderness Congress Resolutions 11 and 12.
6.1.3 Water

These measures would be suited for implementation by the National Environment Management Authority, Directorate of Water Resources Management, Uganda Wildlife Authority and District local government. Civil Societies, working with communities, should lobby for participation in monitoring compliance by mining and extractive industries.

For Communities and Civil Society

- Protect river and interconnected forest ecosystems, for example, through controlling deforestation, tree planting, and natural regeneration according to traditional knowledge, practices and customs.
- Assert ‘No to pollution of Lake Albert by extractive activities’ and recognise the rights of water sources, such as lakes and rivers, including to exist, flow and not be polluted.
- Demand for recognition of citizen’s right to water.

For Government

- Take into account and address, particularly in policies, the likely impacts of mining and other extractive activities on water quality and quantity.
- Implement, strengthen and enforce the existing policies on water.
- Recognise and protect the right to water for all citizens.

6.1.4 Food Sovereignty

These measures should be implemented particularly by the Ministry of Agriculture, Animal Industry and Fisheries, Ministry of Gender, Labour and Social Development, National Environment Management Authority and District Local Governments. Civil Society organisations should advocate for effective implementation of these measures.

For Communities

- Practice agro-ecological farming systems and food production which maintain indigenous plant and animal genetic diversity and variability, and minimise negative impacts on ecosystems; and prevent contamination by banning GMO’s.
- Support women as custodians of seed diversity and wild foods to strengthen their knowledge system and practices.

For Civil Society

- Advocate for recognition of the vital role small farmers play in providing food for the continent, and in the Bunyoro region, especially in conditions of unstable climatic conditions; and for the protection of their rights to produce their own cultural food and to healthy water sources on which they depend for their lives and cultural practices; and rights to live and work in dignity.
- Support communities to strengthen their traditional agricultural practices which contribute to maintaining biodiversity and feeding the communities.

For Government

- Recognise the rights, responsibilities and contribution of traditional farmers, including peasant smallholders, women and youth, in food production and sovereignty, and support their traditional agro-ecological and diversity based practices and systems, on which we will depend even more with climatic instability, through ensuring access to land, grazing land, water for fishing and other natural ecosystems for food production in a sustainable manner.
- Take into account and address, particularly in policies, the likely impacts of mining and other extractive activities on a loss of food production, reduction in regional and national food security, and increased political and economic vulnerability due to rising global food prices.
The following are some of the legal principles and instruments, and advocacy arguments which communities and supporting organisations could further develop and assert to protect and defend water, food sovereignty and Sacred Natural Sites and the relationships between them. An overarching legal principle is the right to self-determination/governance.

- **Right and Responsibility to Self-Determination and Customary Governance Systems e.g. Ugandan Constitution (Article 1), African Charter for Human and Peoples Rights (ACHPR) (Article 20(1) and 22), ILO Convention No. 169 (Article 7), Convention on Biological Diversity (CBD) (Articles 8(j) and 10(c))**

  Advocacy arguments include: Communities have a right to self-determination, which includes ‘ecological self-determination’ to govern and protect water, food sovereignty and Sacred Natural Sites and Territories in accordance with their customary governance systems. These rights are a priori (pre-existing), inalienable (cannot be given away) and imprescribable (cannot be taken away). Communities’ customary laws should be recognised and protected as part of Africa’s plural legal system, as recognised in the African Charter for Human and Peoples Rights. A right to self-determination includes determining one’s priorities and development path, including social, cultural and economic (livelihoods) development, which depend on healthy and functioning ecosystems. Mining would undermine the right to self-determination by damaging the very conditions and processes on which life, livelihoods and cultures depend, particularly water, land, soil, ecosystems and climate. Saying ‘no’ to mining is an expression of the right to self-determination/governance.

- **Responsibility to Protect Ecosystems and Right to a Healthy Environment for Present and Future Generations e.g. Ugandan Constitution (Article 39), ACHPR (Article 24), CBD 1992 (Article 8(a))**

  Advocacy arguments include: Ecosystems should also be recognised as including the biodiversity in the soil, which are important for the health and function of plants, animals and the wider ecosystem. As below-surface and above-surface biodiversity are intertwined, any effects on biodiversity in one habitat will affect the other, and can adversely impact on ecosystems as a whole. A clean and healthy environment depends on clean and healthy water, food, land and Sacred Natural Sites, which are interconnected. Realisation of a human right to a healthy environment depends on fulfilling the human responsibility to protect and maintain healthy ecosystems, and recognising the inherent rights of ecosystems to exist, have a healthy habitat and fulfill their evolutionary roles.

  The impacts of mining would destroy ecosystems for present and future generations and could violate children’s Constitutional rights to a healthy environment. Directors of mining companies could be held liable for environmental damage and non-compliance with environmental laws. The present generations have a duty to protect ecosystems for the children and future generation of all species.


172 Baker and McKenzie LLP cited in the Mupo, Gaia and ABN (2012) ‘Plural Legal Systems Report’, p.31. Disclaimer: Baker & McKenzie (which includes Baker & McKenzie International and its member law firms, including Baker & McKenzie LLP) expressly disclaim all liability to any person in respect of anything done or omitted to be done wholly or partly in reliance upon the whole or part of the contents of these notes.


174 This argument was advocated by the Centre for Child Law at University of Pretoria in their *amicus curiae* (which includes Baker & McKenzie International and its member law firms, including Baker & McKenzie LLP) expressly disclaim all liability to any person in respect of the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or part of the contents of these notes.

• **Right to Life and Adequate Standard of Living including Food, Water and Environment, e.g. Ugandan Constitution (Article 22(1)), International Covenant on Civil and Political Rights (ICCPR) 1966 (Article 6(1)), International Covenant on Economic, Social and Cultural Rights 1966 (Article 11), UNDRIP (Article 24), Nyleni Declaration, Ogiek case Kenya.**

Advocacy arguments include: The United Nations recognises that the right to life is a “prerequisite for the realisation of other human rights.” 176 Food, water and the environment including Sacred Natural Sites and Territories, are fundamental conditions for the lives of humans and of the wider Earth Community. As a Kenyan Court recently recognised in the Ogiek case: ‘The... right to life and socio-economic rights are consequently defined and dependent upon their continued access to the...forest and should be protected’, and held that the forced eviction of the indigenous peoples contravened the right to life.177 The destructive impacts of mining, particularly denial of access of communities to land, would undermine the conditions for life and would violate the right to life.


Advocacy arguments include: Sacred Natural Sites are holy places like churches and mosques, and the associated traditional knowledge, spiritual practices and customary laws are integral to a community’s culture and religion.178 Cultural practice and religious freedom and diversity are Constitutional rights and should be respected. Indigenous seeds are integral to cultural and spiritual practices to maintain the health of Sacred Natural Sites and Territories. The impacts of mining, including restricted access to Sacred Natural Sites and contamination of land, water and seed, would undermine and discriminate against the cultural and religious/spiritual rights and responsibilities of communities.179

• **Right and Responsibility to Land and Privacy of Home e.g. Ugandan Constitution (Articles 27, 237), ACHPR (Article 21), ILO Convention No. 169 (Articles 14 and 15), UNDRIP (Articles 10, 12, 25, 26 and 28), CBD (Article 8)**

- Advocacy arguments include: Land was not made by humans but by the Creator, and therefore cannot be ‘owned’ by people but rather held in trust for present and future generations. Land is inalienable i.e. cannot be given or taken away. Land includes water, food, Sacred Natural Sites and Territories, and the space below the soil, including minerals and metals. Land and Sacred Natural Sites are home to the custodian communities’ ancestors, as well as biodiversity and ecosystems, and their privacy should be respected.180 These places are integral to the lives, knowledge systems, cultural and spiritual relationships and practices, customary governance systems and livelihoods of communities.

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177 See Ogiek case, p.11; text available at: http://www.iwgia.org/iwgia_files_news_files/0938_Elc_Civil_Suit_821_of_2012_Os.pdf. On 17 March 2014 the Kenyan Environment and Land Court found that the Ogiek peoples’ Constitutional rights to life, livelihood and not to be discriminated against had been contravened by their forcible eviction, and ordered for their resettlement. A hearing before the African Court on Human and Peoples’ Rights continues. See for more information: http://www.escr-net.org/node/365429 (last accessed June 2014).

178 Note the African Commission in the Endorois case, Kenya recognised that culture includes the spiritual and physical association with ancestral land, knowledge, belief, morals, values, law, customs and any other practices (paragraph 250). In interpreting Article 8 of the ACHPR, the Commission found that denial of access to a lake, recognised as the ‘spiritual home’ of the Endorois peoples and ancestors, was a restriction on their freedom to practice their religion. See Endorois case (The Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v Kenya, Communication 276/2003, African Commission on Human and Peoples’ Rights, 2010), paragraph 241. For the full ruling see http://www.iwgia.org/news/search-news?news_id=124 (last accessed June 2014).

179 Note in 2013, the Indian Supreme Court recognised a mountain as sacred and the abode of the tribe’s deity. Recognising that the rights of the Dongria Kondh peoples to worship must be protected and preserved, the Court rejected an appeal to allow mining of the mountain. For more information see http://www.survivalinternational.org/news/9155 (last accessed June 2014).

- Communities, as custodians of the land, have a collective right and responsibility to govern and protect land according to their customary governance systems and tenure systems. Mining, by damaging the land and displacing communities from their ancestral lands and territories, would undermine communities’ relationships with their home and thereby undermine their associated rights particularly to self-determination, and cultural and religious practice.

- **Access to Information, Public Participation in Decision-Making and Legal Redress** *e.g. Ugandan Constitution (Articles 36, 38, 41, 50-53), ACHPR (Article 9), ILO Convention No. 169 (Article 15), CBD (Article 8(j)) and Akwe Kon guidelines, Model Law on Access to Information in Africa*\(^{181}\) **UN Guiding Principles on Business and Human Rights**\(^{182}\)

- Advocacy arguments include: Communities have a right to access information, and to participate in decision-making particularly concerning plans for mining, extractive activities and other development. The Constitutional right for views to be taken into account in national plans, and to participate in peaceful activities to influence Government policies could be asserted for the recognition of ‘No-Go Areas’ for mining, as a minimum. The Constitutional right to legal redress, from a court or the Human Rights Commission, could address a violation of the right to a healthy environment, or other human rights, by mining activities.\(^{183}\)

- Prior to potentially destructive activities taking place, particularly ‘resource’ extraction, companies and Governments have a duty to consult and obtain Free Prior Informed Consent (FPIC) of communities. This means that without consent the development should not go ahead.\(^{184}\) Communities are not just stakeholders but right holders and FPIC should be respected as integral to the right to self-determination.\(^{185}\) FPIC should be defined by communities on their own terms, according to their customs and traditions.\(^{186}\) The requirement of FPIC needs to respect a communities’ right to object or withhold their consent (say ‘no’) as an expression of their right to self-determination.

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- Biodiversity and ecosystems including land, water\(^{188}\) and seed\(^{189}\) have rights to live/exist, to habitat and to fulfil their evolutionary processes, free from pollution and destruction. Humans should comply with Earth’s laws, and live within her limits and planetary boundaries for the survival and wellbeing of present and future generations of all species. The destructive impacts of mining would violate the Rights of Nature and be an act of ‘Ecocide’.\(^{190}\)

**No Go Areas** e.g. *IUCN Recommendations 2.82 (2000) and 147 (2012)*, *Statement on Common African Customary Laws for the Protection of Sacred Natural Sites 2012*, *World Wilderness Congress (WILD)’s Resolutions 11 and 12 (2013)*

- Advocacy arguments include: Sacred Natural Sites and Territories, and other protected areas including World Heritage Sites and Local Communities Conserved Areas and Territories (ICCAs), are No-Go Areas for mining, extractive activities and other destructive development. They are also No-Go Areas for foreign and genetically modified seed.\(^{191}\)

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187 For further precedents recognising the Rights of Nature see Section 4 on Earth Law Precedents.
188 See the Vilcabamba river case in Ecuador (see Section 4 Box on Earth Law Precedents).
6.2. ADVOCACY MESSAGES FOR CIVIL SOCIETY AND COMMUNITY

The study recommends the following advocacy messages on the rights and responsibilities of communities and civil society to protect water, food sovereignty and Sacred Natural Sites and Territories and defend them from mining and extractive activities:

6.2.1 Protection of Water, Food Sovereignty and Sacred Natural Sites and Territories

Advocacy messages include:

- Water, Food Sovereignty and Sacred Natural Sites and Territories are interconnected. Earth knows no boundaries between air/climate, land, soil, water and ecosystems.
- Earth and ecosystems have the right to exist, to habitat and to fulfill their functions in the evolution of life.
- It is the duty of all, to our children and future generations, to recognise and comply with the laws of the Earth (Earth Law) which is the a priori (primary) source of law, in order to strengthen the protection of water, food sovereignty and Sacred Natural Sites and Territories in the Bunyoro Region.
- The impacts of mining extend beyond the site and time of activity, as Earth’s elements e.g. air, soil and water move beyond human-defined boundaries and affect other neighbouring ecosystems, and can cause long-term, widespread and irreversible damage for present and future generations.
- Mining for fossil fuels is one of the largest contributors to climate change, and its impacts such as extreme weather conditions of flooding and drought, will affect water systems, food sovereignty and Sacred Natural Sites and Territories.
- Mining would undermine the right to self-determination by damaging the very conditions and processes on which life, livelihoods and cultures depend, particularly water, land, soil, ecosystems and climate.
- Saying ‘No to Mining’ is integral to a citizen’s right to self-governance/determination. The 1995 Uganda Constitution recognises citizens’ participation in their own governance and the sovereignty of the people.
- Mining is a form of ‘Ecocide’ – the extensive damage and destruction to ecosystems and their inhabitants, which includes the human and wider Earth Community.¹⁹²
- Mining would risk irreversible loss of the conditions for life, including water, food sovereignty and Sacred Natural Sites and Territories in the Bunyoro Region. It is our responsibility to generations to come to prevent this.

6.2.2 Water

The following are recommended advocacy messages for ensuring that communities and ecosystems continue to access clean and safe water equitably.

- Water exists in the form of surface and underground water and rainfall. We need to preserve these water sources and ecosystems in order to maintain this fundamental condition for life.
- Water in the Bunyoro region supports ecosystems, peoples’ livelihoods and socio-economic activities (e.g. agriculture, fishing and tourism) in Uganda, DRC and Sudan, and has done so for generations, but it but may not continue to do so if there is mining and contamination.
- Mining and extractive activities severely threaten the availability and health of water systems. The impacts of water pollution from mining would undermine agricultural production and food sovereignty, communities’ domestic water use, and local ecosystems of present and future generations.
- Equitable access and use of clean water by upstream and downstream water users would avoid shortages and conflicts over water use.
- Mining could create a cross border environmental, health and security issue for neighbouring countries, such as Sudan and DRC, which depend on the watershed, if Uganda does not prevent the impacts of mining such as water contamination.
- Assert ‘No to pollution of Lake Albert by mining and extractive activities’.

¹⁹² See for more information on this proposed United Nations 5th Crime against Peace www.eradicatingecocide.com (last accessed June 2014).
6.2.3 Food Sovereignty

The following are recommended advocacy messages for sustaining food sovereignty through strengthening traditional food production systems including access to land, sustaining genetic diversity of indigenous crops and livestock, and environmental protection.

- Food sovereignty depends on: a diversity of indigenous species of crops and livestock, which are resilient to the local weather, soil and diseases/pests, long-term protection of ecosystems, small-scale traditional practices, and sustainable use and uninterrupted access to agricultural land and fishing grounds.

- Don’t risk food sovereignty with exotics and GMOs, or short-term mining infrastructure and unstable cash economy, and a toxic wasteland left behind for future generations.

- Mining threatens food sovereignty and food production by grabbing land, destroying ecosystems, using and toxifying large amounts of water, polluting air and undermining communities’ health and their rights, including to land.

- Mining activities and consequent loss of food sovereignty would result in a loss of livelihoods, vulnerable communities and poverty.

- Job creation from mining is a myth. Mining would only create a few jobs, for a few people, for a few years, and which are culturally inappropriate and at the expense of many, long-term, ecologically sustainable livelihoods which depend on healthy ecosystems for their existence.

- Mining would have disproportionate impacts on women, who play a vital role in maintaining seed diversity and food sovereignty.

- Mining, and its displacement of agriculture, would undermine local, regional and national food sovereignty.

6.2.4 Sacred Natural Sites and Territories

The following are advocacy messages for recognising community protection of Sacred Natural Sites and Territories in accordance with Earth-centered customary governance systems.

- Sacred Natural Sites and Territories are holy places and No-Go Areas for mining, extractive activities and other destructive development.

- It is for communities to govern and protect Sacred Natural Sites and Territories, in accordance with their Earth-centred customary governance systems, and the role of Governments and other stakeholders is to recognise and support this.

- Empowered communities, who practice their customary governance systems, are stronger custodians of Sacred Natural Sites and Territories, as well as water, and food sovereignty.

- The impacts of mining and extractive activities would damage, and risk irreversible loss of, Sacred Natural Sites and Territories. As Sacred Natural Sites and Territories are interconnected as part of an ecological, cultural, spiritual and ancestral network, the destruction of one site could lead to the destruction of others.

- Lack of awareness of Sacred Natural Sites and Territories, and the erosion and restrictions on community governance which protect and defend them, exposes Sacred Natural Sites and Territories to the danger of being lost forever.

- Communities should be supported and empowered to actively participate in the governance of their territories at all levels.
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ENDORSEMENTS

“This is a timely Report when extractive activities are exacerbating the devastation of healthy ecosystems, especially water sources, food chains, land, climate and communities, which are the fundamental conditions for life and livelihoods to exist. Standing for the protection of customary rights, community resilience, Sacred Natural Sites and healthy ecosystems, the African Biodiversity Network fully endorses this Report, recognising the urgent need for collective actions to stop the growing threat of mining and extractive activities in Africa as well as the recognition of Sacred Natural Sites as No-Go Areas.”

Fassil Gebeyehu Yelemtu, African Biodiversity Network (ABN)

“The urgency of the Report is inescapable when we consider the fact that African governments are increasingly relying on mining as a prime income earning base. When a country depends primarily on rents from mineral and other natural resources, they cannot fundamentally defend water, food sovereignty and Sacred Natural Sites and Territories. These must be recognised as No-Go Areas for mining and other extractive activities. This Report is an excellent tool for empowering communities in the line of fire, and provides a template for similar efforts across Africa.”

Nnimmo Bassey, Health of Mother Earth Foundation, Nigeria

“The Mupo Foundation endorses this Report which reminds us that communities, indigenous forests, Sacred Natural Sites, water and food sovereignty are integral to a healthy Earth system. Mining and extractive activities are destroying these fundamental conditions for life, which communities have been protecting for centuries. Those of us living today, we carry a responsibility for deciding the future of our children and their children, and all the children of Earth communities. This Report is a useful tool for communities resisting mining across the world. For the sake of future generations of all species, we join others in saying Yes to Life, No to Mining.”

Mphatheleni Makaulule, Mupo Foundation, South Africa

“This Report comes at the right time when Uganda, like many other countries of Africa, is faced with a daunting challenge of safeguarding ecological sustainability in the face of ‘development’ through mining. It makes useful recommendations for the different institutions of governance in Uganda to strengthen implementation and enforcement of existing laws, and suggests reforms to recognise the rights of communities to food, water and sacred ecosystems, and to defend them from extractive and other industries. This Report is a great contribution to the development and practice of the emerging philosophy of Earth Jurisprudence in Uganda.”

Gathuru Mburu, Institute for Culture and Ecology, Kenya

“For centuries, African communities have protected ecosystems and lived according to ancestral customs deeply rooted in the laws of Nature. As the Report explains, Sacred Natural Sites, food sovereignty and water are increasingly threatened and damaged by human activities, such as mining. Humans appear to have forgotten Earth’s laws and are destroying the sacred, but this will have negative impacts on the whole planet. There is a saying, ‘fight against what is natural and it will quickly come back to you.’ GRABE-Benin fully endorses this Report, which gives strength to communities in protecting Nature and indigenous knowledge for future generations.”

Oussou-Lio Appolinaire, Groupe de Recherche et d’Action pour le Bien-Etre au Benin, Benin
“Mining is a major factor adversely affecting peoples’ lives all over the world. As mining uses non-renewable ‘resources’, it risks permanently destroying ecosystems which would otherwise be transferred from generation to generation, thereby undermining the natural balance and multitude of dependent lives. As this Report shows, mining adversely affects Sacred Natural Sites, food sovereignty and water, thereby compromising the rights and responsibilities of local communities to their culture, land, nature, way of living and traditional governance systems. MELCA-Ethiopia endorses this Report calling for the protection of Sacred Natural Sites and communities’ customary laws, and for a movement against extractive activities.”

Mersha Yilma, Movement for Ecological Learning and Community Action (MELCA), Ethiopia

“This Report from NAPE and Gaia Foundation does an excellent job of considering the threats to ecosystems, land and livelihoods and culture from the potential expansion of fossil fuels within Uganda. It makes sensible, practical recommendations on the right to water, the protection of food sovereignty and sacred sites.”

Andrew Whitmore, Co-chair of London Mining Network, UK

“The Report is apt in painting a picture of how Sacred Sites are under considerable stress from encroachment by investors, and how citizens are struggling against the use and misuse of laws which tend to trust investors and mistrust communities in Uganda. Yet, the communities are rising up irrespective of forces against them. This Report makes very progressive recommendations which require more than simple advocacy but a change of mind set. Such change will need not just lawyers, communities, civil society organisations, but the nation of Uganda and humanity at large.”

Adam Hussein Adam, Consultant on the Right to Nationality at OSIEA, Kenya