



New Report
November 2015

A Call for Legal Recognition of Sacred Natural Sites and Territories, and their Customary Governance Systems

A new report aims to provide the African Commission on Human and Peoples' Rights with persuasive and substantive arguments relating to a core element of original African traditions, namely sacred natural sites and their customary governance systems. It calls for a decisive policy and legislative response.

Sacred natural sites are places of ecological, cultural and spiritual importance, embedded in ancestral lands. They are recognised as such by indigenous peoples around the world, and Africa is no exception. Furthermore, custodian communities of sacred natural sites and territories are the foundation of Africa's identity and heritage, which is at the core of the vision of the African Charter on Human and Peoples' Rights.

A Statement and Call to Action, by custodian communities from six African countries, forms the nucleus of the report. In their own collective voice, they describe firstly how they are determined to maintain and protect their ancestral traditions and territories and, secondly, why this is so important. The report provides a body of legal and policy support for the custodians' statement, drawn both from the African Charter as well as from international and domestic law. It reminds us that the African Charter commits member states to respect and maintain plural legal systems, and recommends that African countries should recognise *a priori* legal systems as part of their commitment to a proud African identity, to better navigate a development path where the integrity and heritage of the continent is maintained. Annexures provide practical examples of custodian communities who have sought legal recognition for their sacred natural sites and territories; relevant international and regional legal instruments; and statements by the African Commission, which support the objectives of the report.

Key points that emanate from the report are:

- Sacred natural sites and territories play a critical role in protecting biodiversity, essential for building climate change resilience for the ecosystems on which food systems depend.
- Custodian communities, who maintain customary governance systems to protect sacred natural sites and territories, play an essential role in preserving the traditional values of Africa, and require legal recognition and support to do so, given their growing vulnerability to increasing pressures from the different forms of land grabbing and extraction.
- Sacred natural sites and territories are the bedrock of customary governance systems, which are not able to flourish without legal protection.
- Recognition of customary governance systems as part of plural legal systems forms an essential component of respecting the essence of Africa, as set out in the African Charter.
- Sacred natural sites and territories should be recognised as no-go areas for mining and other destructive or extractive activities, in alignment with growing international recognition and threats.

The report calls for the recognition of sacred natural sites and territories, and their customary governance systems. Since the colonial era, sacred natural sites and territories have been systematically undermined and violated. With the continued expansion of industrial development and a renewed scramble for Africa's 'natural resources' - land, mineral, metal and fossil fuel wealth - sacred natural sites and territories, and their custodian communities, are at the frontline. The African Commission is called on to invoke the African Charter in order to defend them against this onslaught.

STATEMENT BY AFRICAN CUSTODIAN COMMUNITIES

The Recognition and Protection of Sacred Natural Sites and Territories, and Customary Governance Systems, in Africa

24 March 2015, Lake Langano Custodian Meeting, Ethiopia

This Statement and Call to Action was drawn together by African custodian communities of sacred natural sites from the following areas: Tharaka, Meru, Kamba, Kikuyu and Maasai in Kenya; Buganda and Bunyoro in Uganda; Bale and Sheka in Ethiopia; Venda in South Africa; and Adjara, Avrankou and Adjohoun in Benin. It is based on the 2012 Statement of Common African Customary Laws for the Protection of Sacred Natural Sites and Territories, drafted in Nanyuki, Kenya, 28th April 2012.

Preamble

We, a coalition of custodian communities of sacred natural sites from six African countries, are working together to revive our traditions and to protect our sacred natural sites and territories. We are deeply concerned about our Earth because she is suffering from increasing destruction despite all the discussions, international meetings, facts and figures and warning signs from Earth.

The future of our children and the children of all the species of Earth are threatened. When this last generation of elders dies, we will lose the memory of how to live respectfully on the planet, if we do not learn from them now. Our generation has a responsibility like no other generation before us. Our capacity to stop the current addiction to money from destroying the very conditions of life and the health of our planet, will determine our children's future.

Africa is a plural legal continent, currently recovering from generations of colonial and post-colonial cultural, social and economic devastation. Sacred natural sites and territories are central to the cultural values, morals and traditions and customary laws which we need to revive our customary governance systems.

We call on the African Commission, governments in Africa, as well as corporations, law and policy makers, and civil society, to recognize that Africa has sacred natural sites and territories and custodian communities who are responsible for protecting them in accordance with our customary governance systems. We call for this in order to protect the well-being of our continent, and of the planet.

Sacred natural sites and territories

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

Sacred natural sites are embedded in territories, which relate to the horizontal, vertical and energetic domains. A territory includes plants, animals, the ancestors' spirits, all life in the land, including

humans, and reaches deep into the Earth including and beyond the subsoil, rocks and minerals, and up into the celestial constellations in the sky.

Sacred natural sites and territories exist everywhere, including in Africa. They are spiritual places created by God at the time of the Creation of our Earth, where our custodian communities have been praying and giving offerings since time immemorial. Our responsibility is to protect God's Creation, and to ensure that these especially sacred places are not disturbed in any way. Their role and significance cannot be replaced.

Sacred natural sites and territories are sources of law. They are centres of knowledge and inter-generational learning. Our customary governance systems are established through our relationship with and responsibility for sacred natural sites and territories. Our customary laws are derived from the laws of the Earth, as interpreted from and applied at our sacred natural sites and territories. As custodians, we have a responsibility to ensure that our governance systems comply with the laws of the Earth, the laws that govern life. Our common customary laws that apply to all our sacred natural sites and territories are stated as follows.

Our Common Customary Laws

- Sacred natural sites are the source of life. Sacred natural sites are where we come from, the heart of life. They are our roots and our inspiration. We cannot live without our sacred natural sites and we are responsible for protecting them.
- Sacred natural sites are places where spiritual power is potent. They are energetic points in the landscape. They are places where God, spirits and ancestors are present. The sacredness of the sacred site reaches deep into the Earth and up into the sky. They are places of worship, like temples, where we custodians are responsible for leading prayers and offering rituals with our clan and communities.
- Sacred natural sites are natural places in our ancestral territory, such as sources of water, rivers, crossing points, wetlands, forests, trees, and mountains which are home for plants, animals, birds, insects and all of life. Our sacred natural sites protect the diversity of plants and animals and all the life which belong in our ecosystem. Because of the threats from the outside world, they are now the last safe places for God's creation.
- Sacred natural sites are the home of rain, which falls for all communities, our land, and all of life. When there is drought, for example, we carry out rituals in our sacred natural sites, which bring rain. The potency of our Sacred natural sites and our practices are able to stabilize some of the local climatic changes. However this is increasingly disturbed due to industrial society's destructive beliefs and behaviour towards sacred natural sites and the Earth as a whole.

- Each sacred site has a story of origin, of how they were established by God at the time of the creation of the Universe. Sacred natural sites existed before people. They are not made by humans. Sacred natural sites were revealed to our ancestors who passed on the original story and law of creation of how they came to be in our territory.

- Sacred natural sites are places where we pray and perform rituals to our God through invoking the spirit of our ancestors and all of creation. Rituals strengthen our relationship amongst ourselves as a community, with our land, our ancestors and our God. Our offerings, such as indigenous seed, milk, honey, and sacrifices of goats, sheep or cows, are our way of sharing and giving thanks to God and God's creation, our Earth.

- These rituals and prayers maintain the order and health of our communities and our territories. As custodians we are responsible for ensuring that we carry out the required rituals during the year, such as before we plant our seeds or reap our harvests. They cleanse and potentise our people and our sacred natural sites.

- Sacred natural sites are places of healing, peace and justice. When our communities have problems, for example with ill health or lack of rain, we do a specific ritual to deal with the challenges. After we receive the blessing, we perform a thanksgiving ritual. Sacred natural sites are places free from corruption, theft and lies. They are places where we can resolve conflict and maintain harmony among people and all beings. There are different rituals for different needs.

- Each sacred site has custodians chosen by God at the time of creation. Not everyone is a custodian of sacred natural sites. Custodians lead the rituals for our clans and communities. There are men and women custodians with different roles. Custodians have to lead a disciplined life following certain customs, restrictions, times and protocols, according to the ancestral law, in order for our rituals to be acceptable and to have effect.

- Sacred natural sites are sources of wisdom. This wisdom and the knowledge gained by our ancestors over generations, is passed on from generation to generation. We are responsible for ensuring that our ancestral knowledge of how to live respectfully on Earth is passed on to the next generation of custodians. This knowledge cannot be learnt through writing and books, but is earned through life-long experience and rigorous practice with our elders.

- Sacred natural sites are connected to each other and function as a network or system. If one is damaged it affects all the others. Together we, as custodians of different countries, are protecting networks of sacred natural sites across Africa.

- Sacred natural sites give us the law of how to govern ourselves so that we maintain the order and wellbeing of our territory. Cutting of trees, taking away water or disturbing sacred natural sites in any way is prohibited. These laws are non-negotiable.

- We are responsible for protecting our sacred natural sites and territories through our customary governance systems, which are based on our ancestral law of origin. Our sacred natural sites and our governance systems need to be recognised and respected

on their own terms, so that we are able to maintain our cultural and ecological integrity and continuity. We are responsible to our ancestors, who have nurtured our traditions for generations, and to the children of the future, to ensure that they inherit a healthy Earth.

- Sacred natural sites are no-go areas – sacred natural sites are places which need to be respected by everyone, so that they remain the way God made them – in their diversity of life forms. We are responsible to ensure their continuity and wellbeing. This means they are out of bounds for any other activities:

- i) **Not for relocation** – no one can remove a sacred natural site from its original natural place and locate it elsewhere. Sacred natural sites are created by God and embedded in the territory. Our ancestral heritage, traditional knowledge and customary governance systems, and our future life path are rooted in our sacred natural sites and ancestral territory.

- ii) **Not for tourism** – as these are holy places which are not for entertainment. There are many other places where tourists can go.

- iii) **Not for other religious activities** – just as we do not do our rituals in churches and mosques, or criticise other religions, because we respect the diverse ways in which humans pray to God, others should respect our indigenous ways.

- iv) **Not for research and documentation** – because sacred natural sites are our holy places with related spiritual knowledge and practices, and cannot be written down by others. We are the only ones who can write down what we wish to communicate to others, because it is our sacred knowledge.

- v) **Not for mining or extractive activities** – because these are our holy places, our temples, and they play a vital role in maintaining the health of our Earth – as sources of water, rain, plants, animals, regulating climate, and maintaining energetic stability.

- vi) **Not for any industrial 'development' or 'investments', meaning land- grabbing in all its forms** – because sacred natural sites are not for making money. Our children need a healthy planet with clean air, water and food from healthy soils. They cannot eat money as food or breathe money or drink money. If there is no water, there is no life.

- vii) **Not for foreign law** – because sacred natural sites give us the Law of Origin, which existed since creation of the Universe, before humans. The dominant legal system should recognize our customary laws, which are based on the laws of life.

- viii) **Not for foreign seed** – our rituals and prayers require only indigenous seeds which custodians have planted themselves, as this is what our ancestors and the territory recognise as acceptable. Genetically modified (GM) seed is strictly prohibited and our territories are GM free areas.

- ix) **Not for any other activities which may undermine the Law of Origin and the life of our sacred natural sites and our Earth.**

The work of the custodian communities in Africa is accompanied by the African Biodiversity Network (ABN) through its partners MELCA-Ethiopia, Mupo Foundation, National Association of Professional Environmentalists (NAPE), GRABE-Benin, Institute for Culture and Ecology (ICE), Centre for Indigenous Knowledge and Organisational Development (CIKOD) and The Gaia Foundation.

CALL TO ACTION – We call upon:

1) The African Commission to:

- ✓ Develop legislation and policy for the recognition of sacred natural sites and ancestral lands and the customary governance systems that protect them.
- ✓ Pass a resolution recognising sacred natural sites and territories, and their customary governance systems, as contributing to the protection of human and cultural rights.
- ✓ Adopt our statement and this report and use the principles within it as a guide for interpreting the African Charter, namely to recognise customary governance systems which protect sacred natural sites and territories as part of Africa's plural legal systems.
- ✓ Take into consideration African practices and precedents when interpreting the African Charter, as required by Article 61 of the Charter, to further develop a body of African jurisprudence which recognises customary governance systems and sacred natural sites and territories as no-go areas for any form of destructive or industrial development such as mining and extractive activities.
- ✓ Recommend that governments should recognise:
 - The vital role that sacred natural sites and ancestral lands play in protecting biodiversity, ever more essential for building climate change resilience for the ecosystems on which food systems depend;
 - Customary governance systems which protect sacred natural sites and territories as part of Africa's plural legal systems;
 - Indigenous and local communities as custodians of sacred natural sites and territories who govern and protect these areas in accordance with their customary governance systems;
 - Sacred natural sites and territories as no-go areas for mining and other destructive or extractive activities.

2) African governments to:

- ✓ Uphold their obligations and commitments under African and international law to recognise sacred natural sites and territories and their customary governance systems, and the rights of custodian communities in law and in policy.
- ✓ Recognise and respect, at all levels of governance, the intrinsic value of sacred natural sites and territories and that these places are no-go areas for industrial development.
- ✓ Recognise and enforce the African Charter on Human and Peoples' Rights, in particular provisions relating to the rights to social and cultural development, self-determination and participation in governance, and respect of customary laws.

A Call for Legal Recognition of Sacred Natural Sites and Territories, and their Customary Governance Systems

The full report can be downloaded from:
www.africanbiodiversity.org/CalltoAfricanCommission
www.gaiafoundation.org/CalltoAfricanCommission

We invite you also to watch the film “Revival” (celebrating customary law and sacred natural sites in Bale, Ethiopia - <https://vimeo.com/143994002>), developed by African custodian communities and a useful accompaniment to this report.



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