



Recognising Rights of Mother Earth: Entrenching Earth Jurisprudence in Uganda

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WHY THE NEED FOR EARTH JURISPRUDENCE IN UGANDA?

Earth Jurisprudence advocates for legal recognition and respect of all species and components of the Earth, integral for maintaining conditions for life as we know it.

ACCRUING ECOLOGICAL CRISES AND CHALLENGES

The global ecosystem has entered into a negative feedback loop, meaning our Earth systems are unravelling – climate change, devastating air and water pollution, vastly accelerated species extinction, and the dramatic loss of food and water systems which are necessary for sustaining all life on the planet.

The defilement of Mother Earth by humans has caused untold damage to the environment, and is especially accelerated by commercial interests driven solely to increase profits by extracting as much as possible from Nature. Short-term human interests, fuelled by an insatiable drive to accumulate money and power, have been enshrined in various laws with total disregard for the well-being of the living Earth Community. For example, most laws permit and legitimise extraction from Nature upon the simple requirement of conducting an environmental impact study and/or assessments.

Western industrial law is used to legitimise destruction of Nature and human communities (Thomas Berry, *The Great Work*, 1999). The growth of capitalism spreading to every part of our planet was facilitated by the legal recognition of corporations as artificial persons capable of holding rights; whereas life-giving species and components of the Earth, such as lakes, rivers, forests and mountains have been systematically denied their inherent rights to be and to flourish.

Something must be done if we are not to leave our children a legacy of disaster.

THE SIXTH MASS EXTINCTION AND ECOSYSTEM COLLAPSE

The industrial period of human domination of the Earth, especially over the last century, has resulted in the sixth mass extinction where the Earth is in the process of losing more than three-quarters of her species in a geologically extremely short interval. In addition, the challenges of climate change and social and economic inequity, further exacerbate the trend. This is a result of the radical breakdown in human principles of governance, where human law has been used to legitimise social and ecological destruction.

The drive for profits leads to increasing consumption which is not only in excess of, but also undermines the biological systems of the Earth. Exploring human pressure on the planet and how it compares across 200 nations, data from the Global Footprint Network, an independent think tank, warns that if humankind continues to use Nature and produce waste at the current rate, “by the mid-2030s we will require the resources of two planets to meet our demands”. In other words, humans are triggering ecosystem collapse and mass-species extinction with their wildly unsustainable consumption and disregard for the rest of the Earth Community.

FAILURE OF WESTERN LAWS TO REGULATE AND MAINTAIN EARTH'S INTEGRITY

A look at Uganda's national laws reveals that they grant legitimacy to human beings and corporations to destroy the environment. The legal system is profoundly human-centred and assumes the rest of the Earth Community is merely property to own, or 'resources' to take for human use. Such human-oriented laws seek to regulate human activities, but fundamentally fall short of expectations and create a distinction between human society and the rest of life. They prioritise humans and subordinate other living entities, wilfully ignoring the mutual interdependence of all members of the Earth Community.

What is Earth Jurisprudence?

Earth Jurisprudence is a philosophy of law and governance that is based on the recognition that humans are part of a wider community along with other living beings, in the web of life. Other living beings include animals, birds, plants and fish as well as components of the Earth such as water bodies, mountains and forests, among others.

Earth Jurisprudence acknowledges that the welfare of each member of the wider community (both human and non-human) is dependent on the welfare of the Earth as a whole. In other words, the health of the communities that live on Earth depends on the health of Mother Earth herself, because all beings derive their lives from Nature. If we comprehend this simple fact, human societies can only flourish if they regulate themselves as part of the wider Earth community. Any attempt to exploit or destroy Mother Earth or other beings or components, will lead to the destruction of humans themselves.

“It is our responsibility to make these principles the foundation of the new legal system all over the world. The time has come when human laws and Earth laws must be brought together.”

(Thomas Berry, *Rights of the Earth*, 2002).

Earth Jurisprudence recognises that the Earth is lawful and ordered and that humans, together with all other life forms, are subject to this order. It encompasses the recognition that every being and component of the Earth has inherent rights to exist. It calls on human beings to restore a mutually enhancing relationship between humanity and Nature. It calls on humans to fulfil their responsibilities to the wider Earth Community by maintaining the health of the Earth as a whole and all the different species living on Earth.

Within this philosophy there are two sources of inspiration – Nature herself and indigenous peoples, who live according to their traditional systems of ecological governance. Indigenous peoples derive their customary laws from the laws of Nature, understanding that their wellbeing depends on the wellbeing of the wider community of life. This has enabled them to live for millennia without destroying the living systems on which they rely.

Earth Jurisprudence calls on all humans to live and to govern ourselves in a manner that respects Nature's laws for the well-being of the whole Earth Community and future generations of all species.

CORE PRINCIPLES OF EARTH JURISPRUDENCE

Earth Jurisprudence is founded on core principles, many of which are still upheld by indigenous communities. These principles serve as a code of ethics to guide personal, professional and collective practices. They encourage us to remember and restore Earth-centred and ecological protection practices. They should be embedded in human governance systems, including law, education, the economy and religion, to transition towards a mutually enhancing presence on Earth.

Wholeness: Earth is a single community with various beings that are woven together through interdependent relationships. The interest of the whole takes precedence over the interests of individuals. For example, humans need water to sustain their lives, air from trees to breathe, insects and birds to pollinate the flowers that make their food, and so on. The well-being of each member of the Earth community is dependent on the well-being of the whole Earth, because all living beings are nurtured by our living Mother Earth.

Lawfulness: By its very nature, the Universe is lawful and ordered. Earth is the primary giver of law, the 'primary text' from which human laws are derived. Law originates from existence, because existence is regulated by the laws which govern life itself. Through the practice of Earth Jurisprudence humans will reconnect with Earth-centred law and the inherent rights of all that exists. Earth Jurisprudence recognises life is sacred with inherent value, and Earth has limits – her many gifts, such as water, forests, oil, gas, minerals, land and wildlife are finite.

Duty of Care: Humans have responsibilities to care for all members of the Earth Community, and to maintain the integrity and well-being of the whole Earth Community and future generations. Human beings should protect and preserve all the elements of the Earth including animals, birds, plants, mountains, watersheds, forests, deserts, oceans.

Rights of the Earth: Earth is a living, self-regulating being, with intrinsic value. Every component of the Earth community has three rights: the right to be, the right to habitat, and the right to fulfil its role in the ever-renewing processes of the Earth community.

Mutual Enhancement: Relationships within the Earth community are reciprocal – a cycle of giving and receiving. For example, plants and trees give out oxygen for any members of the Earth community to breathe in, and humans give out carbon dioxide for plants and trees to take in.

Resilience: This means the inherent quality of all healthy living systems is to be able to grow, to evolve and to adapt to change and disturbance without losing their integrity.



FOUNDING FATHER OF EARTH JURISPRUDENCE – THOMAS BERRY

Thomas Berry, philosopher, theologian and cosmologist, is considered the 'founding father' of Earth Jurisprudence. He grappled with the industrial world's destruction of the Earth and called for the restitution of habitat for biodiversity, not simply as a conservation measure but in recognition of the intrinsic value of Nature. His vision of a flourishing Earth community gave him an unparalleled drive.

As a cultural historian, Thomas Berry explored how civilisation and industrialisation grew rapidly and destroyed the source of life - the land, the seas and the Earth systems. One of his landmark books, *The Great Work*, traces the history of industrial society which is founded on the petroleum era. It calls for the need to transition away from the anthropocentric or human-centred approach that underpins technological, industrial and economic advancement, to one where humans return to the recognition that we are but a part of the Universe on whom we depend for our life.

An outspoken advocate for the Earth, he recognised that, since ancient times, humans have nurtured innate respect towards the mystery of creation and that indigenous legal systems are founded upon the laws of the Earth. He argued that Earth Jurisprudence is the correct term for recognising that the Earth is the primary source of law, and humankind is a constituent part of the Earth community that draws rights from the Earth herself, like any other element of the Earth. Further, that indigenous peoples have been practicing Earth Jurisprudence for millennia, offering us knowledge and practices for the revival and practice of Earth Jurisprudence.

Thomas Berry's call for a profound shift in understanding of who we are as a human species amongst many can be found in his published works, such as *The Dream of the Earth* (1988), *The Great Work: Our Way into the Future* (1999), and *Evening Thoughts: Reflecting on Earth as Sacred Community* (2006).

Earth's Desire (Thomas Berry, 1919-2009)

*To be seen
in her loveliness,
to be tasted
in her delicious fruits,
to be listened to
in her teaching,
to be endured
in the severity
of her discipline,
to be experienced
as the maternal source
whence we come.*

KEY ELEMENTS OF EARTH JURISPRUDENCE

- Understanding that the Universe and Mother Earth are lawful and ordered, and each species, including humans, must comply with these laws to maintain harmony and well-being.
- Acknowledging that the Universe is the source of the fundamental 'Earth rights' of all members of the Earth community; they have an inherent right to exist just as humans do.
- Recognising the roles and rights of all members of the Earth community, and ensuring that humans do not prevent others from fulfilling their roles in the interdependent web of life.
- Acknowledging the reciprocity and maintaining the dynamic equilibrium between all the members of the Earth community, aware that the system as a whole – the living Earth – is greater than the sum of the parts.
- Condoning or disapproving human conduct on the basis of whether or not the conduct strengthens or weakens the bonds that constitute the Earth community.

Currently, the only rights recognised by law are those that are enforceable in a court of law, and these may only be held by human beings or by 'juristic persons' like companies and municipalities. This means that, from the perspective of Uganda's legal system, other species are outlaws and are treated as such, even when the laws are meant to protect designated species and habitats. Regarding national parks, for example, legislation merely restricts some aspects of human behaviour, usually to ensure that humans or corporations can continue to use and exploit Nature for their benefit, at the expense of the well-being of the larger community of life.

THINKING OUTSIDE THE ANTHROPOCENTRIC BOX

Anthropocentrism literally means 'human-centredness', which is what has broken our relationship with the rest of the Earth community. It is a way of thinking which asserts that only humans have intrinsic value, and that the rest of Nature is an instrument for the satisfaction of human interests.

Anthropocentrism is based on two misconceptions; humans separating ourselves from Nature because we have come to believe we are superior; and human mastery over Nature to serve our interests as a priority. These conceptions are at the heart of dominant thinking today where we believe we can find a way to outwit Nature, instead of being a part of her. Contrary to the beliefs of anthropocentrism, the Earth's systems operate in a holistic manner where each member of the web of life plays a vital role in sustaining the whole living system.

The rise of anthropocentrism came with the development of the industrial society, founded on the belief that humans are superior to all other species and in fact the Earth herself. The Earth is seen as dead matter or 'resources' to be exploited for human benefit. This has led to planetary level crises and breakdown in less than a century - from mass species extinction to climate change and ecosystem collapse, as well as growing extremes of massive poverty and wealth amongst humans. The failure of western-derived, human laws to protect the integrity of Mother Earth is testimony that we must re-awaken our hitherto indigenous traditions and ecological governance systems which regulated human behaviour long way before the advent of modern laws.

As Einstein the famous scientist said, *"one cannot solve a problem with the same thinking that created it"*.

Uganda as a country has not escaped the consequences of a way of thinking that leads to violations of humans and the Earth. Uganda's forest cover, for example, has shrunk from 4.9 million hectares (24% total land area) in 1990 to 1.8 million hectares (9% of total land area) in 2015. When we destroy the foundations of life we destroy ourselves.

RECONNECTING WITH MOTHER EARTH

In order to create healthy living systems again, we need to reconnect with Mother Earth, our source of life, so that we re-awaken the reality that without her there is no life. **This understanding is deeply embedded in Africa's traditional and indigenous cultures, which is what sustained our ancestors for millennia.** Now we need urgently to embark upon processes for reviving traditional norms and practices, before elders with this living knowledge pass on. We also need to understand the universality of rights as explained; recognise humans as part of the larger Earth Community; and transform the current legal system as well as the other modern institutions, as Thomas Berry stated.

BACK TO OUR ROOTS - REVIVAL OF TRADITIONS

Across the world there are rich traditions embedded in the ethics of protecting Nature. A review of various ancient cultures in Uganda tells us how communities lived in harmony with Nature, with a tradition of reverence for the elements that constitute ecosystems, drawing their sustenance from Nature; and at the same time protecting the ancestral lands from which they were born and nurtured for millennia. This is clearly manifested in many of the traditional practices, spiritual beliefs, rituals, customary laws, arts and crafts, of Ugandan people from time immemorial. In fact, there is a long tradition and cultural ethos of nature conservation in Africa in general and Uganda in particular.

Reverence for Mother Earth is a universal practice in indigenous cultures across our planet. For indigenous peoples, life was a gift to be celebrated. They believed that Mother Earth was not 'something' to be used, possessed, or an object to be exploited, but a living entity and subject of reverence; and the relationship between humans and Earth was that of sacred trust and love. In Uganda there used to be innumerable festivals, rituals, songs, practices and myths that celebrated the gifts of Mother Earth, revealing the intimate sense of togetherness and harmony that exists between humans and Nature.

Indigenous peoples understand that consciousness and feelings are not only human attributes, but the whole of Nature is alive, animate, imbued with spirit or consciousness - plants, animals, rivers, lakes, mountains, the wind, sun and moon. Respect for Nature is inherent, rooted in their intimate relationship and understanding of Nature's living processes and participants. As Thomas Berry said, indigenous peoples derive their customary laws from Nature, recognising that we humans need to comply with the laws of Nature for the well-being of all.

This worldview of indigenous peoples is reflected in Earth systems science, which recognises the unity of all life on Earth as a living organism and obliges human beings to understand, participate and cooperate with our source of life.

Today, we see the consequences of violating the laws that govern life, since the inception of the industrial period – climate chaos, extreme weather events such as flooding and landslides, ecosystem collapse, mass species extinction and growing hunger and poverty amongst humans. In a very short period, some 70 years, the industrial system has spread across the planet, with life-threatening consequences for all. This is triggering a growing recognition that indigenous ways of life and understanding of our living Universe can help to show us the way forward – that it is possible for humans to live in harmony with Nature again.

Africa's rich cultural diversity gives the continent a wealth of deeply ecologically and spiritually literate knowledge and practices from which to learn and be inspired. What is urgently needed is a commitment to recognise and protect these profound traditions – as called for in the African Charter – and to revive and celebrate Africa's rich bio-cultural heritage.

UNDERSTANDING THE UNIVERSALITY OF RIGHTS

The truth is that rights are universal for all beings (read species) and must be respected across all life forms, including humans as well as for trees, rivers, lakes, mountains, animals, birds, insects, among others. In other words, whatever exists has an inherent right to life by the fact of its existence. One species has no right to decide whether others are useful to it or not, nor to undermine their existence, nor to abuse the rights of other beings which are part of the complex web of life of Nature. Other beings should be viewed as subjects to commune with, rather than objects to be used. This is a recognition of humans as part of a wider Earth community, each one having inherent rights which must be acknowledged and respected.

Within the human community, this also means acknowledging and respecting civil and political rights, as well as communal and cultural rights of indigenous communities. There is a need to recognise that the rights of indigenous peoples have been severely undermined from colonisation until today. This requires encouraging and recognising the importance of indigenous knowledge and practices, and support for reviving these traditions.

Recognition of indigenous communities and empowering them to practice their eco-literate cultures is an important aspect in ensuring the protection of Mother Earth. These communities live in a close relationship with their ancestral land and have profound knowledge, practices, customary laws and governance systems which have enabled them to care for their territory over millennia. They have much to teach us about this world. Their traditions emphasise understanding and respect of sacred relationships with Mother Earth, which is the major determinant of the continued well-being of human beings.

The indigenous worldview recognises that human rights are intricately bound by rights of other members of the Earth community – as an interdependent community the well-being of one depends on the well-being of all. When each member of the Earth community is able to fulfil their role, the resilience of the whole is strengthened.

Human jurisprudence has neither right nor basis to prevent another member of the Earth community from fulfilling their natural, inherent roles. As already stated, every being or component of the Earth has three fundamental rights: the right to be; the right to habitat; and the right to fulfil its role in the ever-renewing processes of the Earth community.

AFRICAN RESOLUTION FOR THE PROTECTION OF SACRED NATURAL SITES

Indigenous peoples see that all of life is sacred, Mother Earth and all her beings. They also recognise places that are especially sacred, where spirits and ancestors are active. These are known as sacred natural sites.

Common to indigenous peoples everywhere, and Uganda is no exception, sacred forests, wetlands, rivers, lakes and mountains were preserved with reverence as places of cultural, spiritual and ecological significance.

ACHPR Resolution 372 (ACHPR/Res. 372 (LX) 2017), calls on States Parties to recognise sacred natural sites and territories, and their customary governance systems, as contributing to the protection of human and peoples' rights.

REFRAMING CURRENT PRACTICES, POLICIES AND LAWS IN UGANDA

The need for Earth Jurisprudence in Uganda is urgent.

The multiple ecological, climatic and social challenges are escalating. The future and legacy we hope leave our children and those of other species are at stake. In order to reverse this trend, we need to deal with the root causes. The presence of strong environmental laws since 1995, has instead led to more destruction of the environment. Our country's heritage is now at stake.

Something profound needs to be done. The laws that govern life and maintain order and well-being for the whole web of life must take centre stage in directing policy and sound ecological governance. This is why Earth Jurisprudence must be entrenched - an inspiration and direction that comes from our own heritage.

For Uganda, this requires creating laws and policies that transform ways of living and can be done in two ways - legislating on Earth Jurisprudence, and transforming the current dominant legal system.

1. LEGISLATION ON EARTH JURISPRUDENCE

a) Given the indigenous and scientific understanding of the Earth as a living organism, there is need to **recognise the rights of Mother Earth and all her components and encode Earth Jurisprudence into our legal and ethical systems.**

This means acknowledging that the well-being of the whole cannot be sacrificed for the interests of one element or species as is currently the case. Once this is done, the inherent rights of all beings on Mother Earth will be enshrined in the legal and ethical system of the country, to treat all members of the larger community of life with reverence and respect. This will serve as a foundation for enabling us to deal with the root causes of our contemporary ecological, social, economic and justice challenges.

b) There is also a need to effectively **recognise indigenous peoples as those who have lived according to Earth Jurisprudence principles since time immemorial.** They exemplify that it is possible for humans to live in harmony with the larger community of life. Those reviving and living their traditions should be understood as advocates for the safety of the Universe and the wellbeing of Mother Earth.

This will require the protection of their rights to their sacred natural sites, ancestral lands and governance systems, which were intact before colonization. These are *a priori* rights, recognised by the African Charter as fundamental to Africa's heritage. Such communities will be enabled to resist land fragmentation and land grabbing in order to maintain their traditions which have sustained the ecological and cultural integrity of their communal ancestral lands for millennia.

c) The third requirement is to extend rights in the Constitution to cover Rights of Nature. In this sense all components and species which are part of the web of life, such as lakes, trees, mountains, animals and forests, will be recognised as having inherent rights to exist and flourish. They would have standing in Courts of law, being represented by traditional custodians. This should not be symbolic, but due processes and due regard must be embedded in the law, policy and our human practices.

2. TRANSFORMATION OF CURRENT DOMINANT LEGAL SYSTEM

Transformation means that the underpinnings of the current jurisprudence and laws must be rephrased to accommodate Earth Jurisprudence, laws of the Universe and Rights of Nature. This shift is necessary because threats to Mother Earth cannot be fixed by the same legal frameworks and perspectives that have caused climate change, ecological destruction and injustices amongst humans in the first place. The Rights of Nature to stand and claim remedy in law must be codified in our legal system.

It would be appropriate if the prologue of the Ugandan Constitution would state, in its preamble, a clear recognition that our own human existence and well-being is dependent on the well-being of the larger Earth community out of which we were born and upon which we depend for our continued well-being. This statement might be followed by a statement that care of this larger Earth community is a primary obligation of the nation.

The Call to Action

NATIONAL GOVERNMENT, SHOULD:

- Amend the preamble to the Uganda Constitution, to recognise that: “our own human existence and well-being is dependent on the well-being of the larger Earth Community out of which we were born and upon which we depend for our continued wellbeing”;
- Enact a law to recognise indigenous and traditional peoples’ sacred natural sites, ancestral lands and custodial governance systems, as called upon to do in the African Commission Resolution 372;
- Reframe laws, policies and institutions to comply with and implement Earth Jurisprudence principles and practice;
- Explore and support the emerging regenerative alternatives to the growth economy in all areas of human life.

LEGISLATURE, SHOULD:

- Through Members of Parliament, whose principle duty is to legislate, enact a law recognising Rights of Nature and the principles of Earth Jurisprudence;
- Extend protection to indigenous communities and sacred natural sites;
- Through the East African legislative assembly, be instrumental and take the initiative to enact protocols establishing Rights of Nature into East African legal system.

LOCAL GOVERNMENTS, SHOULD:

- Recognise and empower indigenous communities and their customary governance systems, and protect their sacred natural sites and ancestral lands;
- Create opportunities and support initiatives and practices for humans to develop and revive innate relationships with Nature.

CIVIL SOCIETY, SHOULD:

- Nurture the further evolution of Earth Jurisprudence – its philosophy and practice – in Uganda, connecting with the African and global Earth Jurisprudence movements;
- Accompany and support indigenous communities and others who are committed to reviving their indigenous knowledge and practices rooted in Earth Jurisprudence;
- Create opportunities and support initiatives to reconnect with Nature and protect Mother Earth.

TRADITIONAL AND INDIGENOUS COMMUNITIES, SHOULD:

- Develop and grow the confidence to revive and enhance their knowledge and governance systems, rooted in practices which protect the Earth and ensure the well-being of future generations of all species.