



Protecting Biodiversity  
From Harmful Financing:  
No Go Areas For  
The International  
Banking Sector

Briefing Paper

02

Nationally and  
Sub-Nationally  
Recognized  
Areas

December 2022

# Contributing authors and reviewers

Friends of the Earth US would like to thank Raena Garcia (Friends of the Earth US) for contributing to this paper. We also extend appreciation to Douglas Norlen and Elizabeth Sprout for their help in reviewing.

## ABOUT FRIENDS OF THE EARTH US

Friends of the Earth United States, founded by David Brower in 1969, is the U.S. voice of the world's largest federation of grassroots environmental groups, with a presence in 75 countries. Friends of the Earth works to defend the environment and champion a more healthy and just world. We have provided crucial leadership in campaigns resulting in landmark environmental laws, precedent-setting legal victories and groundbreaking reforms of domestic and international regulatory, corporate and financial institution policies. Visit [www.foe.org](http://www.foe.org) to learn more. Any errors or omissions in this report are the responsibility of Friends of the Earth U.S.



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Cover image caption:  
Oil development in Yasuní  
National Park, which is in the  
western Amazon and contains  
the greatest biodiversity per  
square meter on the planet,  
has led to recurring cases  
of legal conflicts with Indi-  
genous Peoples and local  
communities.

# About the Banks and Biodiversity Briefing Paper Series

The Banks and Biodiversity Initiative advocates that banks and financiers strengthen their biodiversity policies and practices. In order to halt and reverse biodiversity loss, the Initiative calls on banks and financiers to adopt eight proposed No Go areas as an important step towards improving their biodiversity policies and practices. This briefing paper series aims to explain the importance of why banks and financiers must exclude harmful direct and indirect financing to industrial, unsustainable, and extractive activities which may negatively impact these critical areas. **This briefing paper discusses No Go area 2 on nationally recognized areas, which is Paper 02 of the series.**

# Proposed Banks and Biodiversity No Go Areas<sup>1</sup>:

*In order to safeguard the rights of Indigenous and local communities (IPLCs) in formally, informally, or traditionally held conserved areas – such as Indigenous and community conserved areas (ICCA), Indigenous Territories (ITs) or public lands not yet demarcated – as well as to better address and reflect the current crises of climate change, biodiversity loss, and emergence of zoonotic diseases, the Banks and Biodiversity campaign calls on banks and financial institutions to adopt a No Go policy which prohibits any direct or indirect financing related to unsustainable, extractive, industrial, environmentally, and/or socially harmful activities in or which may potentially impact the following areas:*

**AREA 1: Areas recognized by international conventions and agreements** including but not limited to the Bonn Convention, Ramsar Convention, World Heritage Convention and Convention on Biological Diversity, or other international bodies such as UNESCO (Biosphere Reserves, UNESCO Global Geoparks, etc) or Food and Agricultural Organization (vulnerable marine ecosystems), International Maritime Organization (particularly sensitive areas), IUCN Designated Areas (Categories IA – VI)

**AREA 2: Nature, wilderness, archaeological, paleontological and other protected areas that are nationally or sub-nationally recognized and protected by law or other regulations/policies;** this includes sites which may be located in or overlap with formally, informally, or traditionally held conserved areas such as Indigenous and community conserved areas (ICCA), Indigenous Territories (ITs) or public lands not yet demarcated

**AREA 3: Habitats with endemic or threatened species, including key biodiversity areas**

**AREA 4: Intact primary forests and vulnerable, secondary forest ecosystems,** including but not limited to boreal, temperate, and tropical forest landscapes

**AREA 5: Free-flowing rivers,** defined as bodies of water whose flow and connectivity remain largely unaffected by human activities

**AREA 6: Protected or at-risk marine or coastland ecosystems,** including mangrove forests, wetlands, reef systems, and those located in formally, informally, or traditionally held areas, Indigenous Territories (ITs), or public lands not yet demarcated, or Indigenous and community conserved areas (ICCA)

**AREA 7: Any Indigenous Peoples and Community Conserved Territories and Areas (ICCAs), community-based conservation areas, formally, informally, traditionally, customarily held resources or areas, Indigenous Territories, sacred sites and/or land with ancestral significance to local and Indigenous communities' areas where the free, prior, informed consent (FPIC) of Indigenous and Local Communities have not been obtained**

**AREA 8: Iconic Ecosystems, defined as ecosystems with unique, superlative natural, biodiversity, and/or cultural value which may sprawl across state boundaries,** and thus may not be wholly or officially recognized or protected by host countries or international bodies. Examples include but are not limited to the Amazon, the Arctic, among other at-risk ecosystems

*Other international bodies have already recognized the value of developing No Go Areas, such as the World Heritage Committee and the UN Environment's Principles for Sustainable Insurance Initiative (PSI). The Banks and Biodiversity No Go Policy also aligns with banks and financial institutions' current practice of following institutional Exclusion Lists for sensitive industries or areas, as well as global goals of preventing further biodiversity loss. Projects that do not fall within Exclusion Lists should still be subject to rigorous environmental and social due diligence, assessment, screening, planning, and mitigation policies and procedures.*

<sup>1</sup> Learn more at: <https://banksandbiodiversity.org/>

# Nationally and Sub-Nationally Recognized Areas

Briefing Paper

# 02



# Introduction

National parks and other sub-nationally recognized areas are well established mechanisms for protecting places with high biodiversity or conservation value. In many cases, nationally and sub-nationally recognized areas are also powerful symbols for cultural or national pride. For instance, the Atewa Forest in Ghana is commonly recognized as the country's "crown jewel" and crucial symbolism of heritage for the people of the Akyem Abuakwa Traditional Area<sup>1</sup>, and in China, Huangshan National Park is infamous for its impact on shaping Chinese literature and art<sup>2</sup>. Consequently, many national parks and sub-nationally recognized areas overlap with international designations, such as the Great Barrier Reef in Australia (World Heritage site); Yasuni National Park in Ecuador (Man Biosphere Reserve and IUCN category site)<sup>3</sup>; and the Tsambagarav Uul National Park in Mongolia (Ramsar site)<sup>4</sup>.

However, even if recognized and protected under local laws, nationally or sub-nationally recognized areas often remain vulnerable to harmful financing. Past experiences demonstrate how financiers and project developers are likely to face significant backlash and reputational impacts for sponsoring harmful, unsustainable activities impacting these areas. These risks are further exacerbated if such areas are also recognized under international soft law.

The Banks and Biodiversity Initiative considers that any nationally or sub-nationally recognized area should be off limits to harmful activities. These include but are not limited to parks, reserves, memorials, monuments, preserves, recreation areas, or others. In addition, it is important for banks and financiers to prohibit harmful direct and indirect financing to activities which may be located outside the formal boundaries, but may still negatively impact nationally recognized areas due to potential trans-boundary, downstream, and cumulative impacts.

**This paper aims to explain the risks of supporting harmful, unsustainable projects and activities which may impact nationally and sub-nationally recognized areas.** In examining key cases, it will explore common challenges associated with financing controversial activities impacting nationally recognized areas, even if the financed activities are not located in the area's formal boundaries. Ultimately, this paper will demonstrate why a precautionary approach of prohibiting financing to nationally and sub-nationally recognized areas, including those which overlap with Indigenous lands and community conserved areas, can instead help insulate banks and financiers from exposure to public controversy and increased risk.

# The challenge of over-relying on approved permits and licenses as a proxy for legal compliance

There is an unfortunate record of host country governments of ignoring or violating their own laws by issuing permits and licenses for harmful activities or projects.

Due to pressures for economic development, local authorities may grant or fast track illegal or invalid permits and licenses. For banks and financiers, this means that the granting of such approvals may not be a reliable proxy for legal compliance. It also suggests the need for banks and financiers to view legal compliance as more than a “checkbox” exercise, but to actually confirm and verify the *validity* of such relevant permits and licenses.

Failing to verify the validity of permits and licenses in due diligence systems (which is a separate issue from whether the permits or licenses were obtained) may thus expose financiers to serious compliance consequences or penalties. The lack of due diligence in this regard may in turn lead to delayed (and thus costlier) projects, lawsuits, negative reputational impacts, and even allegations of human rights conflicts.

The problem of invalid or illegal permits is a particularly salient issue for nationally recognized areas and protected areas.

These areas can contain rich, natural resources which thus far may have been insulated from extraction due to local protections. At the same time, there are increasingly fewer untapped resources and areas left in the world. With more than 75% of the world’s land mass significantly altered<sup>5</sup>.

Industrial, development, and human pressures have shrunk the amount of the “undeveloped” areas for resource extraction. This in turn has intensified pressures on nationally recognized and protected areas as targets for resource development. For instance, one study found that “one-third of global protected land is under intense human pressure”<sup>6</sup>, and another study found that “more attention should be paid to economic development pressures from the areas surrounding Pas [protected areas] to sustain their biodiversity protection over the long run”<sup>7</sup>.

The following cases explore these dynamics, and aims to show how **invalid or illegal permits should be viewed as major red flags for precluding finance to harmful activities which impact nationally recognized or protected areas**. The following examples also help to demonstrate how banks and financiers can play a stronger role in dis-incentivizing the development of harmful activities near or in nationally recognized areas by withholding finance to harmful activities impacting those areas.

For instance, one example of how the obtainment of relevant project approvals should not be used as a proxy for legal compliance is the case of bauxite development in Ghana's Atewa forest. The Atewa Range Forest is an upland forest ecosystem and one of Ghana's last remaining intact forests. It is home to numerous endemic and critically endangered species such as the White-naped Mangabey and Afia Birago Puddle Frog<sup>8</sup>. Due to its high levels of biodiversity and endemic species, it was first recognized as a National Forest Reserve in 1926<sup>9</sup>. Designated as a Special Biological Protection Area and Hill Sanctuary in 1994 and 1995, respectively, it was later named as one of Ghana's 30 Globally Significant Biodiversity Areas (GSBAs)<sup>10</sup> and an Important Bird Area<sup>11</sup> in 1999. Widely considered Ghana's "crown jewel"<sup>12</sup>, the Atewa forest ecosystem is a critical source of water for over five million Ghanaians, being vital for maintaining healthy watershed functions<sup>13</sup>. However, bauxite mining will likely pollute this vital water source with toxic heavy metals<sup>14</sup>.

In 2018, the Ghanaian government and Sinohydro recently agreed upon a USD 2 billion infrastructure deal<sup>15</sup>; according to the Master Project Support Agreement (MPSA), the mining would be financed by "Chinese or other international financial institutions" and repaid with "receipts from the transfer of refined bauxite to its strategic partner"<sup>16</sup>. As a result of the planned deal, Ghanaian groups communicated concerns to China's Ambassador to Ghana, as well as notified Chinese banks of the negative environmental, social, and biodiversity impacts of financing the bauxite project<sup>17</sup>.

In an open letter to the Chinese ambassador, the groups stated that in addition to observing Ghanaian laws, Chinese green finance policies also applied: "The mandatory 'Green Credit Guidelines' of the China Banking and Insurance Regulatory Commission will be compromised if China's banks are in any way associated with bauxite mining in Atewa Forest because this will violate Ghana's Constitution and forest laws and the country's national and international nature protection statuses"<sup>18</sup>.



Forest communities have been clear in rejecting bauxite mining as it would pollute their water, land, and clean air, and cause loss of livelihoods<sup>19</sup>. The open letter to the Chinese Ambassador added that: "Atewa Forest communities are very aware they will lose their forest, farms and lands they rely on for subsistence, food security and livelihoods, and an important source of cultural significance. The few jobs brought by bauxite mining may never replace even the number of livelihoods that would be lost in cocoa farming and other sustainable forest activities. Atewa communities have visited the Awaso bauxite mine, seen the destruction caused and heard first-hand the communities' grievances over the lack of jobs and development. Led by the 'Concerned Citizens of Atewa Landscape', Atewa communities have lobbied government to rescind its decision to mine the forest"<sup>20</sup>.

Ghanaian groups are demanding that Atewa Range Forest be excluded from sites targeted for the bauxite mining development project and all project agreements, and for the protection status of Atewa Forest to be upgraded to that of National Park<sup>21</sup>. Notably, Ghana's own Forestry Commission has even publicly called on the government to safeguard the Atewa Forest from mining development<sup>22</sup>. Sadly in 2019, the state agency responsible for developing Ghana's integrated aluminium industry fast-tracked and approved a prospecting license that led to over 70 hectares of the forest being mowed down by heavy duty machines. According to local organizations, the destruction of the forest was illegal under national guidelines on mining in forest reserves in Ghana<sup>23, 24</sup>.

As a result, local group A Rocha Ghana, together with six other civil society organizations and several individual citizens of Ghana, are now suing the Ghanaian government over its drilling of 53 exploration wells across the Atewa Range Forest and its proposed bauxite mining plans for the forest<sup>25</sup>. According to A Rocha Ghana, the mining violates Ghana's Forest Act (1927), Ghana's Operational Guidelines Regulating Mineral Exploration in Forest Reserves for Selected Companies, and Ghana's Environmental Guidelines on Mining in Production Forest Reserves. In response to the lawsuit, the Attorney General in September 2020 denied all the key claims. Currently, the case is now waiting for a hearing date at Ghana's High Court of Justice.

Projects like the proposed bauxite mining in Atewa forest reveal how the granting of permits does not always indicate proof of legal compliance, which is especially salient in cases where project developers are actively approaching banks in securing financial support.

Another example of this dynamic is the proposed Sombwe Dam in the Democratic Republic of Congo. In June 2019, PowerChina and the Congolese Company, Kipay Investments Sarl, signed a joint venture for the construction of the 150 MW Sombwe hydropower plant in the Democratic Republic of Congo<sup>26</sup>. The proposed \$400 million USD Sombwe hydroelectric power complex includes a dam, reservoir, and road works.



However, the dam was proposed to be located inside Upemba National Park, one of the country's oldest national parks famous for lions, endemic zebras, leopards, buffalo, elephants, among other charismatic megafauna<sup>27</sup>.

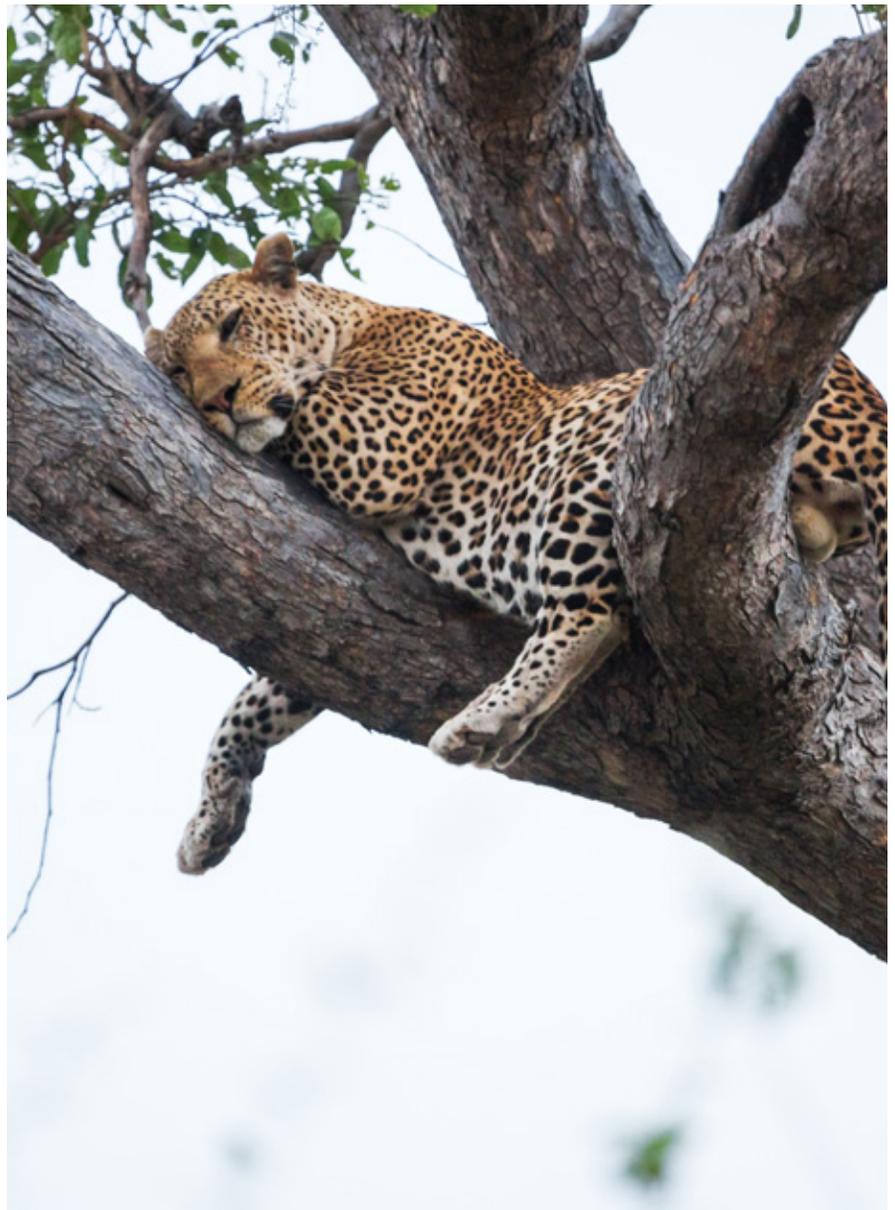
Construction of the dam would create a 40 Km long deep reservoir, which would have far reaching effects on the Lufira's delicately balanced ecosystem known for its high endemism, especially during the construction and filling<sup>28</sup>. In particular, the siltation will change the turbidity and pH of the water, which will have a great effect on its productivity. The dam would also impede fish migration in the Lufira River<sup>29</sup>.

Because the dam is located inside a Congolese Protected Area, the project would violate the Law N° 14/003 of February 11, 2014, relating to nature conservation<sup>30</sup>. This law states that "any activity incompatible with the objectives of conservation is prohibited in protected areas"<sup>31</sup>. Although the project developers have insisted the dam is not located in the park, the coordinates of the dam indicate it would be located inside the park boundaries<sup>32</sup>.

Furthermore, any degradation of Lake Upemba's natural ecosystem could trigger a food crisis, impacting nearly 80,000 fishermen who are settled with their families in the conservation area. The changes in flow rate and sediment load in the extensive network of lakes into which the Lufira runs will also negatively affect local downstream communities' livelihoods, as they depend on the fishing resources for their survival. Compounding the situation is the project developer's failure to design a consultation process based on free, prior, and informed consent, per international best practice.

According to Amnesty International, human rights violations associated with environmental degradation have been linked to conflicts related to Upemba National Park<sup>33</sup>. Even beyond the Sombwe Dam, DRC activists have reported increasing threats and intimidation for voicing concerns regarding harmful development in nationally protected areas<sup>34</sup>.

Although no bank has yet to be tied to the project, international and local groups expressed concern that the involvement of Sinohydro implicated potential support from Chinese banks, as Sinohydro was reportedly looking for financial support for the dam and has received Chinese bank financing in the past. This in turn prompted DRC groups to communicate concerns to Chinese banks such as China Export Import Bank and the Chinese Ambassador to the DRC regarding the implementation of significant Chinese green finance policies such as the Green Credit Guidelines, which obligate Chinese banks to meet international standards and norms in their overseas investments<sup>35</sup>.



In 2022, the joint venture between PowerChina and Kipay was not renewed, which currently leaves the project in much uncertainty. In spite of this, as well as international and local concerns that the project would violate local laws, the DRC government expressed its full approval of the dam project during a Minister Council in June 2022<sup>36</sup>.

This case reveals how a host country may be clearly unwilling to enforce its own laws, and in the case of DRC, the government's support of harmful development projects reflects a dangerous precedent for protecting the integrity of other protected areas in DRC. For instance, just a few weeks after the Minister Council meeting, the Congolese government authorized the lease of oil concessions in protected areas, again including Upemba National Park and others like the iconic Virunga National Park<sup>37</sup>. Due to the location of the oil leases in national parks, it is likely that any involved developers or financiers may face public intense backlash and scrutiny.

Both of these examples demonstrate the challenges of over-relying on permits or licenses as proof of legal compliance, especially in cases where project developers may be approaching banks for financial support. In order to avoid being connected to controversial projects, these cases illustrate why banks should promptly respond to local concerns and confirm or deny their involvement in controversial projects.

In the case of Chinese banks in particular, the failure to respond to affected stakeholders creates a negative public perception, as it suggests a disregard for listening and responding to impacted communities' concerns. Notably, both examples involved local groups referencing China's innovative bank regulations, such as the Green Credit Guidelines, which obligates Chinese banks to comply with host country law and meet international norms and best practices in overseas investments. The Green Credit Guidelines<sup>11</sup> represent some of the most progressive green finance policies in the world; however, the lack of response from Chinese banks who were contacted by local groups raises questions as to whether Chinese banks are able and willing to fully implement Chinese government policies<sup>38</sup>.



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<sup>11</sup> In June 2022, the Green Finance Guidelines were published by Chinese bank regulators, which reinforced and expanded many key obligations of the Green Credit Guidelines, such as complying with host country law and international norms and best practices.

# Compounding Risks: Providing Finance to Clients with a Record of Human Rights and Environmental Conflicts

As seen in the above cases, financing activities located in or which may negatively impact locally recognized or protected areas can be a lightning rod for controversy. At the same time, **the risks posed by financing activities in nationally recognized and protected areas, even if all permits or licenses are obtained, can be compounded and intensified when projects are developed by clients with a longstanding record of human rights and environmental failings.** The aforementioned Ghanaian and Congolese cases show how even if a bank may not be formally tied to the project, they may still face scrutiny if project develop-

pers themselves are controversial, especially if banks and financiers have provided financing to those clients or developers in the past.

The following cases expand on this dynamic in exploring how the record of clients can pose additional risks for banks. As a result, it is worthwhile for banks and financiers to consider the historic environmental and human rights records of clients as a potential screening tool for financing, and as a result, to also reflect on thresholds for decisions related to blacklisting clients from future financing due to a repeated, documented pattern of violating environmental and social obligations.



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*The Murchison Falls-Delta Albert wetlands system in Uganda is a critical area for providing shelter to rare, vulnerable, and threatened species, including elephants and cranes. However, it is being threatened by oil development within the Murchison Falls National Park.*

Developed by Total Energies (Total) and China National Offshore Oil Company (CNOOC), the Tilenga Oil project in Uganda offers a useful example. The Tilenga Oil Field is located in Uganda's Murchison Falls National Park (MFNP), which is a critical component of the East African Crude Pipeline. MFNP is an iconic savannah ecosystem, rich in biodiversity and home to an array of endangered mammals, birds, and plant species. Established in 1952, MFNP is the country's largest national park and famous for its spectacular waterfall, where the Nile River bursts through a narrow gorge into Lake Albert<sup>39</sup>. MFNP is one of the main tourist attractions and recreation areas in Uganda, and is a major site of social and cultural importance for local communities. Notably, the Tilenga oil project also extends into the Ramsar classified Murchison Falls-Delta Albert wetlands system, which are considered wetlands of international significance. The Murchison Falls-Delta Albert wetlands system is a critical area for bird conservation, known to provide shelter to rare, vulnerable and threatened species.

However, MFNP and the entire Murchison landscape is under massive pressure from oil threats from the Tilenga Oil project<sup>III</sup> – over 70% of the 400 oil wells of this project are located in Murchison Falls National Park<sup>40</sup>. Because the Victoria Nile River flows through the natural park, the river effectively bisects the Tilenga oil project in two; as a result, an oil pipeline is proposed to be constructed under the river. The construction of well pads, pipelines, roads, oil workers' camps, noise, dust, river crossing, and other oil infrastructure will irrevocably impact the integrity of the park and falls, in addition to the biodiversity and people who live in the area<sup>41</sup>.

Uganda has adopted international conventions and local laws to protect its biodiversity and protected areas. In 1992, Uganda signed the Convention of Biological Diversity (CBD), which obligates the country to protect its conserve and sustainably use its biodiversity resources. In 2002, the country developed and adopted a National Biodiversity Strategy and Action Plan (NBSAP), providing a clear framework to guide implementation of the various Articles of the CBD and mainstreaming biodiversity into sectoral policies and plans at the national and

local level<sup>42</sup>. **Uganda has also promulgated laws to promote conservation of biodiversity in the country, including the 1995 Constitution<sup>43</sup>, the 2019 National Environmental Act<sup>44</sup>, the Wildlife Act, the National Forestry and Tree Planning Act, and others<sup>45</sup>. Based on these laws, opening MFNP for oil development should in principle be prohibited.**

In addition to the project's lack of legal compliance, both CNOOC and Total have developed a record of engendering human rights abuses and environmental conflicts<sup>46</sup>. Their negative record in this regard has prompted concerns about their commitment and ability to effectively manage environmental and social risks associated with their activities. CNOOC has been accused of human rights violations associated with its activities in MFNP and the East Africa Crude Oil Pipeline (EACOP)<sup>47</sup>, as well as assets in Myanmar<sup>48,49</sup>. In Total's case, reports and research has shown a repeated pattern of violation of human rights of communities impacted by their activities, including in Myanmar, Russia, Uganda, and Tanzania. In Myanmar, Total's Yadana project in the 1990s allegedly triggered extrajudicial killings, forced labor, and dispossession, in which the company faced longtime criticism for supporting the country's military junta<sup>50,51</sup>.

The company has also been condemned for continuing to hold stakes in Russian energy projects despite the war in Ukraine, in which civil society groups have argued that "Total and its managers may be criminally liable for violations of the criminal code, particularly around war crimes and crimes against humanity" for failing to terminate ties with projects contributing to Russian aggression<sup>52</sup>.

In Uganda and Tanzania, Total has allegedly committed violations including impeding the right to property, degrading living conditions, ignoring free, prior, informed consent, and disregarding the freedom of expression and the right to demonstrate peacefully, particularly as a result of oil development associated with MFNP and EACOP<sup>53</sup>. These allegations reached a fever pitch in a flurry of lawsuits against Total, including claims of misleading the public on net zero claims<sup>54</sup>, failing to assess the human rights and environmental impacts caused in MFNP and EACOP<sup>55</sup>, and enabling Russian war crimes<sup>56</sup>.

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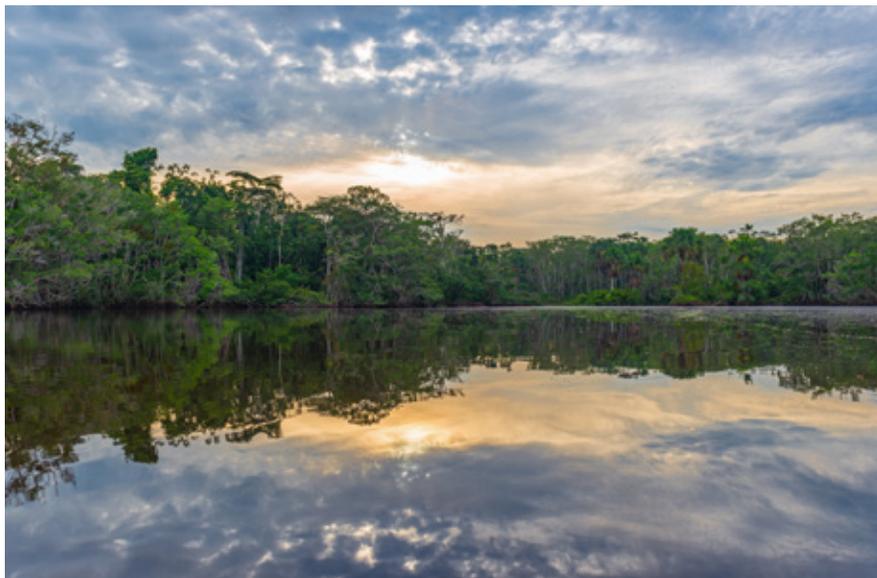
III The Tilenga Oil project is part of the East African Crude Oil Pipeline, a massive 1443 km heated oil pipeline which aims to extract oil in Uganda for export in Tanzania.

In addition to the Tilenga oil fields being located in MFNP, Total's longstanding record of driving human rights or environmental violations has itself become a source of controversy which may impact the ability of the oil development in MFNP to move forward, as evidenced in the active lawsuits against Total in French courts. As a result, banks and financiers tied to such clients may be exposed to the reputational, operational, and climate risks of both the project and clients.

For instance, an international campaign has already called on banks and financiers to divest or distance themselves from Total, CNOOC, and EACOP<sup>57</sup>. At the same time, banks who have provided financing to Total and CNOOC face pressure for failing to hold their clients accountable to repeatedly negative environmental, social, and climate impacts<sup>58</sup>. For example, civil society organizations have denounced at least twelve banks which were found to have provided \$8 billion USD to Total for oil and gas activities<sup>59</sup>.

Significantly, the European Parliament has even recognized Total's flawed environmental and human rights record. In 2022, it noted that: "since 2019, Total has faced legal action in France over allegations that it failed to put in place an adequate vigilance plan covering health, safety, environment, and human rights risks as required by French law on the 'duty of vigilance', related to the Tilenga and EACOP projects and their impact on human rights; whereas as Total's appeals were rejected by the French Court of Cassation in December 2021, the case is now due to be heard on its merits and the ruling is still pending". The findings further added that Total and CNOOC must "take into account all the above-mentioned risks,..and to explore alternative projects based on renewable energies for better economic development"<sup>60</sup>.

Oil development in MFNP has clearly attracted tremendous international, regional, and local backlash for its potential, adverse climate, environmental, biodiversity, and social impacts, which has only been heightened by the involvement of Total and CNOOC.



It is important for banks and financiers to consider the record of clients in managing environmental and social risks in order to anticipate both the client's ability and credibility to manage such risks in current and future activities. Failure to do so may in turn expose banks to the risk of actively supporting clients who repeatedly violate human rights and drive negative environmental and climate impacts, and the negative reputational impacts associated with it.

**The Tilenga Oil project in MFNP points towards how banks should consider a client's environmental and human rights performance record as a potential criteria in screening out low quality projects and clients, as well as develop processes for blacklisting clients from future financing for poor environmental and social performance records.**

# Financing harmful, high risk sectors preempts alternatives for financing sustainable development

Due to their beauty, as well as cultural and in-situ conservation values, internationally and national recognized areas tend to have significant potential for more sustainable development options, such as tourism, community based conservation, among others. However, the financing of harmful sectors such as fossil fuels, industrial mining, large hydropower dams, industrial agriculture, and others associated with high environmental and social risks, tend to limit if not preclude opportunities for more sustainable alternatives. This is because the environmental, social, and/or biodiversity impacts of those activities may lead to significant negative if not irreversible impacts. In addition, the long-term values of protecting natural ecosystem functions and the resulting positive climate, biodiversity, economic impacts are often under-valued and thus overlooked.

For instance, in the case of MFNP, oil development is an inherently destructive activity which will devastate the park's natural beauty

and biodiversity values, characteristics which make it a prime area for a sustainable tourism industry. At the same time, the region's natural ecosystem is critical for regulating climate and supporting important ecosystem functions related to water, soil erosion, carbon sequestration, provisioning services, among others<sup>61 62</sup>. In 2017, Uganda's National Environmental Management Authority (NEMA) and other development partners conducted a study of the economic valuation of Murchison Falls Conservation Area and nearby Budongo Central Forest Reserve. The study found that when excluding the value of oil reserves in the area, Murchison Falls and Budongo forest still have an economic value of over USD 60 billion<sup>63 64</sup>. In contrast to oil, in which reserves are anticipated to last just 20 years, the biodiversity and climate values will last forever if well protected through conservation<sup>65 66</sup>. The following government study<sup>67</sup> excerpt highlights the following economic values of the Murchison and Budongo biodiversity:

Biodiversity of Murchison and Bundongo landscape	Economic value
Value of timber stock	146 billion
Non-timber products (mainly wood)	4.81 billion per year
Non-wood forest products	5.5 billion per year
Medicinal and pharmaceutical value	2.2 billion per year
Soil erosion control	132 billion per year
Tourism value	110.4 billion per year
Carbon sequestration and storage value	3.8 billion per year
Option, bequest and existence value	30 Trillion
Relocation and rehabilitation value	114.4 Trillion
Watershed protection and catchment services	26.5 billion
Research and education	47 billion
Costs to the community	2.5 billion per year
Opportunity costs for MFCA (livestock & Husbandry).	4.8 billion per year
Opportunity costs for BCFR (sugarcane option)	20.4 billion per year

In 2019, Uganda's tourism industry reached \$1.6 billion USD, in which MFNP was one of the most visited parks in the country<sup>68</sup>. Investing in nature-based tourism represents one example of a more sustainable alternative for economic development. In contrast, the development of the oil sector will most likely come at the expense of MFNP's tourism potential, as well as threaten important ecosystem functions.

**If banks and financiers are to shift towards prioritizing sustainable development, then it is critical to consider how financing harmful activities may in effect preclude the development of more sustainable industries, due to the serious and at times irreversibility of environmental and social impacts. In other words, it demonstrates how prohibiting financing to harmful, extractive industries such as fossil fuels is critical for not only preventing negative impacts, but its prohibition is in fact a key condition for enabling the full development of more sustainable alternatives in biodiverse areas.**



# The Pitfalls of Creating Conservation Areas as a Financing Condition

**While national parks and conservations areas can be important mechanisms for biodiversity protection, there are pitfalls associated with creating conservation areas as a condition for financing.** In cases where financed activities impact high biodiversity areas, banks and financiers have worked with developers in promoting the creation of nationally protected areas as a condition for financing, which are essentially biodiversity offsets. However, several examples indicate the dangers of establishing protected areas as an offset-based mitigation measure.

In Guinea, the expansion of open pit bauxite mining is responsible for the destruction of the critically endangered western chimpanzee habitat; between 1990 and 2014, the western chimpanzee population fell by a staggering 80 percent to only 52,800 individuals<sup>70</sup>. In 2016, the Moyen Bafin National Park was designated as a wild chimpanzee sanctuary as a condition for IFC financial support of the mining operations of Compagnie des Bauxites de Guinée and Guinea Alumina Corporation<sup>71</sup>.

Just a few years after the reserve was created, the Guinean government proposed the Koukoutamba Dam, which would partially flood the national park. If built, the dam would destroy even more critical chimpanzee habitat, demonstrating the challenge that a biodiversity offset site, even if recognized as a nationally protected park, is not a guaranteed approach for protecting biodiversity.

This example shows how promises of protecting the area in perpetuity may instead only last a few years, as host country governments may renege on such commitments.



*The Koukoutamba Dam would partially flood the Moyen Bafing National Park and degrade or destroy the habitats of the hippopotamus, a Vulnerable Species, according to the IUCN's Red List.*

Another example of how the conceptual flaws of biodiversity offsets lead to practical problems is the Bujagali Dam in Uganda. In this case, IFC financing was approved based on offsetting the destruction of the iconic and ecologically significant Bujagali Falls<sup>72</sup>. In a misguided attempt to address the serious environmental, social, and cultural destruction caused by the dam, the World Bank and the Ugandan government signed the 2001 Kalagala Agreement, which established a biodiversity offset to compensate for ecological damage caused by the Bujagali hydropower project<sup>IV</sup>. Construction started later that year, and the project became operational in 2012. The reservoir created by the dam on the Nile River flooded the culturally and ecologically important Bujagali Falls and river banks which had great cultural and spiritual importance for the Basoga Indigenous Peoples residing in the project area<sup>73</sup>.

Eventually, the Kalagala Falls, located some 30 kilometres north of Bujagali Falls, were chosen as the offset location. Although the Kalagala offset area was not officially deemed a national park, it was essentially established as a conservation area which the Ugandan government was obligated to protect in perpetuity<sup>74</sup>. The 2001 Kalagala Agreement required that “as the implementation of the Bujagali Project will inundate Bujagali Falls, the World Bank Group concluded that Kalagala Falls must be conserved in perpetuity for its spiritual, natural habitat, environmental, tourism and cultural values”<sup>76</sup>. However, the legal agreement signed between the Government of Uganda and the World Bank contained only ambiguous requirements that the offset site be protected in perpetuity. According to International Rivers, World Bank staff “knew at the time that the Ugandan government never intended to honor its agreement, and that the agreement wasn’t worth the paper it was signed on”<sup>77</sup>.

As a result, “perpetuity” only lasted until another hydropower developer obtained permission to build another dam on the Nile River. Just a few years afterwards, the Isimba dam was proposed, in which its reservoir would submerge the Kalagala waterfalls and river banks set aside a few years earlier to compensate for the destruction of the Bujagali waterfalls and river banks destroyed by the Bujagali dam<sup>78</sup>. The Ugandan government provided the license for the Isimba in violation of the biodiversity offsetting provision in its 2001 Kalagala Agreement with the IFC on the financing of the Bujagali dam. The IFC, meanwhile, agreed to the destruction of the Kalagala offset site on condition that a new “offset” location be identified and protected; this in turn led to the Kalagala offset being flooded by the Isimba Hydropower Project only a few years later.

**What was announced as habitat protection in perpetuity ultimately lasted a few years before the biodiversity offset site, too, was flooded, and the originally proposed offset needed offsetting.**



IV After pulling its financing from the project in 2002 following allegations of corruption, the World Bank's IFC in 2007 eventually returned as funder of the Bujagali hydropower project.

# Acknowledging Historic Connections of Indigenous and Local Communities in Nationally Recognized Areas

In many countries, nationally recognized areas overlap with Indigenous and local community claims to land, resources, or monuments. This may be a source of historic or ongoing contention or trauma among Indigenous Peoples, local communities, and host country governments, particularly in light of the serious human rights consequences associated with managing protected areas based on “fortress conservation” models<sup>79</sup>.

In avoiding exposure to such conflicts, banks and financiers should develop and/or strengthen Indigenous Peoples policies so that historic or current concerns, and especially community opposition, are legible under bank policy frameworks. This should also include policies which account for Indigenous communities’ rights to sovereignty and self-determination, as well as the right to reject proposed activities at any stage<sup>V</sup>.

Such policies should in particular account for the historical context of controversial sectors in controversial areas, especially if Indigenous communities have repeatedly rejected harmful projects which negatively impact their territories and rights.

Understanding and acknowledging the historic and current connections of Indigenous and local communities’ ties to places is especially impor

tant when harmful bank financed activities overlap or impact nationally recognized areas. Doing so is critical for respecting impacted Indigenous communities and rightsholders. Failure to do so can lead to an array of negative outcomes, including legal action, costly project delays, and public outcry and controversy.

For instance, oil development in Yasuní National Park has led to recurring cases of legal conflicts with Indigenous Peoples and local communities. Yasuní National Park covers almost a million hectares of tropical rainforest in the western Amazon, in a region that forms part of the Amazon headwaters of Ecuador and Peru. It contains the greatest biodiversity per square meter on the planet, boasting 610 bird species, 62 snake species, and 204 mammal species<sup>80</sup>. According to the IUCN, 33 mammal species are in various stages of extinction, such as the jaguar and golden-mantled tamarin<sup>81</sup>. These areas are also ancestral territories of the Waorani Indigenous nation, as well as the Tagaeri-Taromenane, two Indigenous groups living in voluntary isolation<sup>82</sup>.

However, numerous oil concessions overlap Yasuní National Park, covering more than 45% of the park<sup>83</sup>. In 2013, the government opened the ITT fields (Ishpingo, Tambococha, Tiputini fields) in remote eastern part of the park in Block 43 to extraction. Ecuador had initially sought to keep the ITT fields – the country’s largest – permanently in the ground in exchange for international compensation for its forgone revenues, but now plans an estimated 651 wells. Block 43 represents the country’s largest oil exploration project, with an estimated reserve of more than 1,672 million barrels, and has already produced 67.7 million barrels of crude oil alone. Companies operating in Blocks 14, 15, 43, and 31 that overlap the park all receive financial support from the banks, as well as blocks adjacent to the park like blocks 79 and 83<sup>84</sup>.

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<sup>V</sup> More detail on the importance of protecting Indigenous and local communities rights will be published in Paper #7 of the Banks and Biodiversity Initiative Briefing Paper series.

Much of Yasuní National Park overlaps with Indigenous Peoples and Indigenous Peoples Living in Voluntary Isolation. In 1999, the Presidential Decree created an “Intangible”, or Untouchable Zone (ZITT), for over approximately 70,000 hectares of land within the Park, wherein all extractive operations, including oil drilling, were prohibited<sup>85</sup>. The park forms part of the ancestral lands of the Tagaeri and Taromenane Indigenous Peoples, although it has been noted that their actual territories far exceed the boundaries designated for the ZITT<sup>86</sup>. A 2018 referendum saw popular votes supporting the increase of the intangible zone and reduction in the oil production areas, but this has so far not resulted in any meaningful government action.

**In 2019, a provincial court found that the government had not consulted with the community on the auctions for oil block 22, which overlapped with ancestral lands of the Waorani indigenous peoples adjacent to the park. This decision effectively halted plans to develop new reserves in the block, and set a significant precedent for future legal action for communities in other oil concessions over the lack of Free, Prior and Informed Consent (FPIC).**

In 2020, the Waorani Indigenous Peoples also brought suit against the oil company PetroOriental, alleging that gas flaring from the oil wells had “contaminated” land and water resources and contributed to the adverse impacts of climate change in Ecuador<sup>87</sup>. Although the provincial court dismissed the case in April 2021, the community has expressed intentions to appeal this decision<sup>88</sup>.

The government’s unfettered pursuit and permitting of the extractive industry in and around Yasuni and inaction to protect the Tagaeri and Taromenane – who are subject to specific protections in the country’s constitution – is now

the focus to a case before the Inter-American Court on Human Rights that could redraw the boundaries of the current no-go zone. Depending on the verdict, it could effectively restrict drilling activity in the multiple oil concessions that overlap the park<sup>89</sup>. In the meantime, a proposal to permanently keep the ITT oil fields in block 43 in the ground will again be in front of Ecuadorean voters in an upcoming February 2023 referendum.

Several banks have been tied to oil development in the national park and Indigenous territories via sovereign bond financing and trade financing. Over \$750 million USD in bonds were issued to PetroAmazonas, China National Petroleum Company (CNPC), and its subsidiary, PetroChina, which are key oil developers in the area<sup>90</sup>. The banks which issued those bonds to these companies include BNP Paribas, Credit Suisse, Goldman Sachs, JPMorgan Chase, Deutsche Bank, UBS, and HSBC<sup>91</sup>. Banks which have supported trade financing<sup>VI</sup> of oil in the region include ING, Credit Suisse, UBS, Rabobank, Natixis, and BNP Paribas<sup>92</sup>.

The infringement of the historic and ongoing connections of Indigenous Peoples to an area at risk of harmful, extractive development is not unique to the Global South. Located in the United States, the Greater Chaco Canyon landscape in Northern New Mexico is rich in history. Chaco Canyon is sacred to multiple Indigenous tribes, including the Pueblo Indian peoples of New Mexico, the Hopi Indians of Arizona, the Navajo Indians of the Southwest, and others<sup>93</sup>.

Given the cultural values of Chaco Canyon, it was recognized as a UNESCO Heritage site in 1987<sup>94</sup>. The area is protected as seven different components by the federal government, including: “Chaco Canyon, formerly a National Monument (1907), and now Chaco Culture National Historical Park (1980); Aztec Ruins, a National Monument (1923, expanded in 1928, 1930, 1948, 1988); and five Chaco Culture Archaeological Protection Sites (1980). The inclusion of Chaco Canyon and Aztec Ruins in the National Park system gives them the highest possible level of protection, and assures them a high standard of interpretation and public access”<sup>95</sup>. According to UNESCO, “The legislation designating these components requires that the preservation of cultural resources be given high priority”<sup>96</sup>.

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VI Banks may finance the shipping of oil from the Amazon to international markets, which is known as trade financing. Trade financing in this case refers specifically to letters of credit, a financial tool where banks guarantee payment to the seller by covering the cost of the shipment upfront, and then recouping the costs from the buyer before the buyer can take receipt of the goods. This type of trade financing is traceable in the customs data because the bank acts as the consignee on the bill of lading. They only transfer ownership of the oil to the buyer once the buyer has met the terms of the loan.



*Over 90% of the Greater Chaco Canyon landscape has been leased for oil and gas activities. Although oil and gas wells are not located in the national park proper, their close proximity to the national park and cumulative impacts on local and Indigenous communities have been a source of contention.*

As one of New Mexico's largest oil producing regions, however, it is threatened by fossil fuel development in addition to grazing and mineral extraction<sup>97</sup>. Over 90% of the Greater Chaco Canyon landscape have been leased for oil and gas activities<sup>98</sup>. Although the oil and gas wells are not located in the national park itself, the close proximity to both the national park and cumulative impacts on local and Indigenous communities has been a source of contention. This issue is exacerbated by how **although the archaeological ruins are located in the national park, there are numerous other sacred sites to Indigenous Peoples spread throughout the surrounding landscape, prompting concerns about the cumulative impacts of oil and gas development on Indigenous culture, the environment, and public health**<sup>99</sup>. In 2014, the Bureau of Land Management, the agency responsible for the managing of protected areas, estimated that approximately 4,000 of the over 37,000 wells in the region are used for fracking, a method of oil drilling that is associated with a number of environmental harms and public health risks<sup>100</sup>.

In late 2021, the Biden Administration proposed to review a 20 year withdrawal of new oil and gas leasing within a 10-mile buffer of the Chaco Canyon Historic Park<sup>101</sup>. Although a significant first step towards protecting the landscape, the 10 mile buffer zone may not be adequate to protect the surrounding communities and Tribes against the long term public health effects of fossil fuel pollutants<sup>102</sup>. It also does not completely protect sites sacred to Indigenous communities if they fall outside buffer zone boundaries.

Notably, Indigenous and local groups have long argued that the oil and gas permits were illegally authorized due to its failure to consider the cumulative impacts of oil and gas activities, an opinion which was upheld by a court decision<sup>103</sup>. Despite the ruling, the Trump and Biden administration continued to allow drilling and fracking activities in the region<sup>104</sup>.

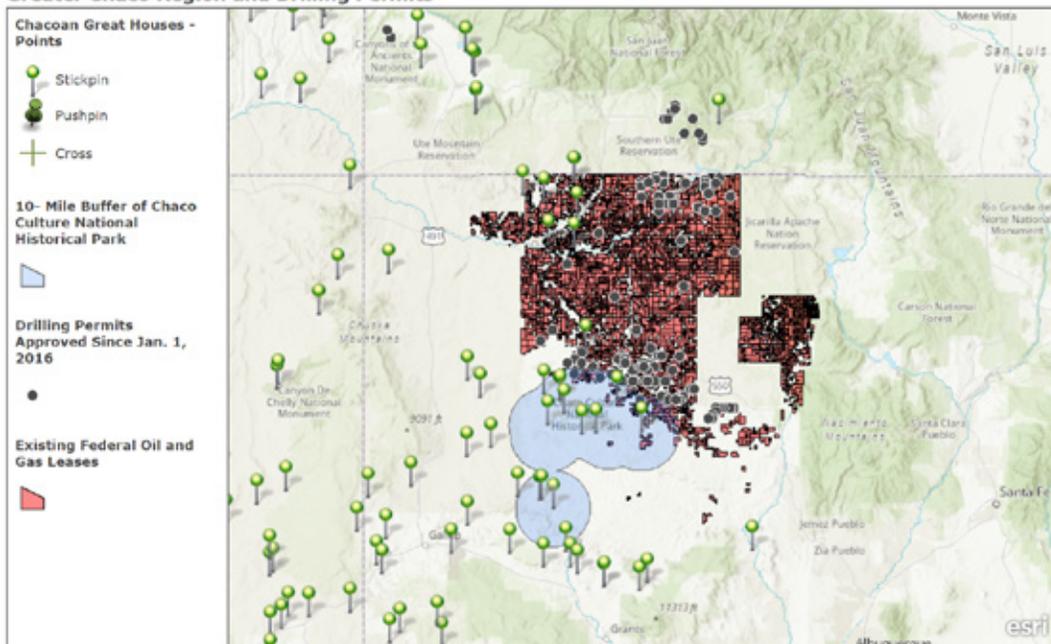
According to impacted Indigenous communities: “As a Tewa led organization that honors the relational wisdom of supporting and bringing forth life, it is very traumatic to see the blatant disregard of our traditional cultures and lifeways that the BLM is upholding for the state. Indigenous Peoples have endured this trauma for too long with no accountability. We call on those with legal authority (that is denied to us), to end the exploitation of our sacred, living ecologies and relatives”<sup>105</sup>.

In September 2022, a coalition of local and national groups called on the US government to halt new oil and gas leases on the grounds that “The 45,000 acres of oil and gas leasing approved under the Trump administration was not only illegal, it was the result of fast-tracking for the oil and gas industry at the expense of public notice, environmental justice, community outreach, the climate, and the region’s air and water”<sup>106</sup>.

The Chaco Canyon and Yasuní cases illustrate how nationally protected areas do not exist in a vacuum, but may and often do continue to serve as the home or as key, sacred sites to Indigenous Peoples. In many countries, this is particularly relevant given the historic trauma of dispossession and exclusion faced by Indigenous Peoples.

In some cases, such as the United States, nationally protected areas may in fact be the result of the fraught legacy of colonialism and violence towards Indigenous Peoples. Although no banks or financiers appear to be involved in supporting oil and gas activities in Chaco Canyon yet, this example shows how **there are compounding legal, operational, environmental, social, climate, and reputational risks for any financier who may consider or be approached for supporting activities which may impact areas associated with Indigenous claims, especially if such claims technically fall outside formal boundaries of protected areas.** It also demonstrates the need to ensure that the scope of buffer zones are proven to be adequate in advance, as the environmental health risks of oil and gas have been established to have potentially far-ranging impacts.

Greater Chaco Region and Drilling Permits



*This map indicates how existing oil and gas leases, as well as drilling permits, overlap with the National Park and Chacoan Great Houses, which are rare circular structures built by Indigenous Peoples around 1,000 years ago. The 10-mile buffer zone, which includes only some of the Great Houses, may not be adequate to protect these sacred sites as well as surrounding communities and Tribes from further oil and gas development.*

# Conclusion

An exploration of case studies from the Global North and South reveals the numerous environmental, social, biodiversity, operational, and compliance risks involved with promoting harmful, unsustainable activities which may negatively impact nationally recognized and protected areas. In the Ghanaian, Congolese, Ugandan (i.e. oil extraction in MFNP), Ecuadorean, and US examples, local governments illegally approved or fast tracked the approvals of permits for controversial projects in or near nationally recognized areas, which underscores the importance for banks and financiers to verify the validity of relevant permits and licenses. In many of these cases, the illegitimacy of approvals triggered public lawsuits in national and international courts, all of which are currently still pending even after several years. The Guinean and Ugandan (i.e the Bujagali and Isimba Dams) experiences further show how the creation of national conservation areas should not be used as a condition of financing, particu-

larly since there is no guarantee host country governments will respect such agreements. Last though perhaps most important, these examples collectively demonstrate the continued importance for banks and financiers to develop or strengthen their Indigenous Peoples policies in safeguarding their rights to sovereignty and self-determination, particularly since nationally recognized areas overlap with Indigenous Peoples territories or sacred sites.

Banks and financiers should prohibit harmful financing in nationally and sub-nationally recognized areas, including those areas which overlap with Indigenous lands and community conserved areas. By prohibiting harmful activities which negatively impact nationally recognized areas, banks and financiers not only avoid exposure to public controversy and increased risk, but help unlock investments for alternative, sustainable industries.

## KEY TAKEAWAYS

- ◆ Banks and financiers should prohibit financing to harmful, industrial, extractive activities which negatively impact nationally recognized areas
- ◆ The obtainment of permits and licenses should not be used as a proxy for legal compliance
- ◆ Banks and financiers banks should strengthen due diligence processes to validate the legitimacy of required permits or licenses
- ◆ Assessing a client's environmental and human rights record should be an important criteria in screening out low quality, high risk clients
- ◆ Banks and financiers should consider blacklisting companies with a recurring record of poor environmental and social performance
- ◆ Financing harmful, high risk sectors, such as fossil fuels, preempts alternatives for financing sustainable development
- ◆ The creation of conservation areas as a financing condition bears a poor record in delivering actual biodiversity conservation results, as host country governments may renege on such commitments
- ◆ Many nationally recognized areas overlap with Indigenous lands and community conserved areas, and so it is vital that banks understand the historic and current ties that Indigenous and local communities may have to an area.
- ◆ Banks and financiers would benefit from improving or establishing strong Indigenous Peoples policies which protect the right to self-determination, sovereignty, and free, prior, informed consent

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