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TO

**THE REPORT OF THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE
RIGHTS OF INDIGENOUS PEOPLES**

TO THE 80TH SESSION OF THE UN GENERAL ASSEMBLY

Background

The Ismail Mahomed Centre for Human and Peoples' Rights (IMCHPR) is a university-based research and advocacy Centre that was established in the School of Law, University of Venda (UNIVEN) in 2001, now under the Faculty of Management, Commerce and Law. It aims to promote social justice and foster a human rights culture. As an independent institution, the IMCHPR aims to address poverty, discrimination, and environmental injustice. The research thrusts/niche areas of the IMCHPR in the context of social justice and human rights are people living in vulnerable conditions, climate change, biodiversity loss, extractives, and sustainability. The IMCHPR achieves its goal through collaborative research, advocacy, training, and lobbying in response to global, regional, and national issues affecting Africa in general and South Africa in particular. (check <https://imchpr.univen.ac.za/> for more information)

The IMCHPR welcomes the opportunity to provide input into the Special Rapporteur's report on Indigenous Peoples' rights to lands, territories, and resources. The IMCHPR hereby submits on the questionnaire concerning Africa as follows:

- 1. What are the legal criteria for recognising Indigenous Peoples' rights to lands, territories and resources? Do these criteria reflect Indigenous Peoples' customary tenure systems? Do they address potential historical injustices?**

In South Africa, Indigenous Peoples such as the Khoi and San have unique historical ties to their ancestral lands. Still, they are primarily excluded from land restitution frameworks due to the 1913 cut-off date established by the Restitution of Land Rights

Act.¹ While the Traditional and Khoi-San Leadership Act (TKSL) recognises their governance structures, it does not grant automatic land rights, leaving them reliant on state-led processes that often fail to reflect their customary tenure systems.² Under the TKSL, the Commission on Khoi-San matters was established to receive all applications for the recognition of Khoi-San communities, branches and leaders, investigate the applications received and make recommendations to the Minister on the possible recognition of Khoi-San communities and leaders.³ The TKLS, however, was declared unconstitutional due to a deficit of public participation in the process leading to its passage.⁴ In Kenya, the Community Land Act explicitly recognises customary land tenure and provides a framework for collective ownership.⁵ Nevertheless, implementation has been slow, and communities like the Ogiek and Sengwer continue to experience forced evictions despite a 2017 African Court ruling affirming the Ogiek's land rights.⁶ In the Democratic Republic of Congo (DRC), the Promotion and Protection of Indigenous Pygmy Peoples' Rights marks a significant step forward by recognising indigenous land tenure.⁷ However, broader land laws in the DRC, such as the 1973 law, prioritise state ownership, where all land is declared owned by the state, and concessions are granted under state control. This framework leaves Indigenous communities vulnerable to displacement by state-backed projects, as their customary rights are not fully integrated into formal law.⁸

2. What are the legal and policy frameworks governing the identification, documentation, demarcation, registration, or titling of Indigenous Peoples' lands, territories and resources?

In South Africa, the legal and policy frameworks governing Indigenous Peoples' land rights are deeply influenced by the nation's historical context of colonialism and apartheid. Key legislation includes the Constitution,⁹ the Restitution of Land Rights Act,¹⁰ and the Communal Property Associations Act,¹¹ collectively providing mechanisms for communities to claim and manage land. The landmark case of

Alexkor Ltd v Richtersveld Community exemplifies challenges and opportunities in the existing framework.¹² This case highlights the importance of acknowledging Indigenous customary law as part of South African law, securing the community's entitlement to exclusive beneficial occupation and compensation for past

¹ Restitution of Land Rights Act 22 of 1994.

² Traditional and Khoi-San Leadership Act 3 of 2019.

³ The Commission was established in accordance with section 56 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019)

⁴ *Mogale and Others v the Speaker of the National Assembly and Others* (CCT 73/22) [2023] ZACC 14.

⁵ The Community Land Act 27 of 2016.

⁶ *African Commission on Human and Peoples' Rights v Kenya* (Application No. 006/2012) [2017] AFCHPR 2 (26 May 2017).

⁷ The Protection and Promotion of the Rights of Indigenous Pygmy Peoples Law no.22/030.

⁸ Democratic Republic of Congo Land Law 1973, article 53.

⁹ The Constitution of the Republic of South Africa, 1996.

¹⁰ Restitution of Land Rights Act 22 of 1994.

¹¹ Communal Property Associations Act 28 of 1996.

¹² *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC).

exploitation.¹³ However, the historical context of apartheid and the mass displacement/dislocation of populations during that era remains a significant challenge to the current identification, documentation, demarcation, registration, or titling of Indigenous Peoples' lands, territories and resources in South Africa.

Countries like Tanzania and Namibia have made significant progress in recognising Indigenous land rights through their legal frameworks, though challenges remain. In Tanzania, the Village Land Act represents a pivotal effort to secure customary tenure by legally empowering village governments to manage and administer village lands.¹⁴ The implementation has been uneven, though, with many communities lacking the resources or awareness to formalise their land rights.¹⁵ Investment drives of the states have aided land grabbing of settlements traditionally belonging to Indigenous Peoples and, therefore, constitute a significant threat. In Namibia, the Communal Land Reform Act provides a framework for recognising and registering customary land rights through communal land boards.¹⁶ Communal Lands Boards (CLBs) manage communal lands and issue certificates of customary land rights, which offer legal recognition to Indigenous communities.¹⁷

3. What are the institutional arrangements and the Government agencies responsible for or involved in the processes for identification, documentation, demarcation, registration, and titling of Indigenous Peoples' lands, territories and resources?

In South Africa, the legal framework concerning land rights is primarily governed by the Constitution, which enshrines the right to restitution for those dispossessed of land after 1913 due to discriminatory laws.¹⁸ Several government departments and institutions play a role in identifying, documenting, demarcating, registering, and titling Indigenous Peoples' land. The Department of Agriculture, Land Reform and Rural Development (DALRRD) is responsible for land reform programs, including restitution and redistribution.¹⁹ The Commission on Restitution of Land Rights is specifically mandated to investigate and resolve land claims lodged by communities, including

¹³ *Richtersveld Case* para 47.

¹⁴ The Village Land Act 5 of 1999.

¹⁵ LA Wily 'Customary Land Tenure in the Modern World Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa - Brief #1 of 5' January 2012
https://www.lifemosaic.net/images/uploads/Territories_of_Life/TOL_Resources/Land_Rights/Customary_land_tenure_in_the_modern_world_-_Africa.pdf (accessed 30 March 2025).

¹⁶ The Communal Land Reform Act 5 of 2002.

¹⁷ Report of the African Commission's Working Group on Indigenous Populations/Communities Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights 2017 East, Central and Southern Africa, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa" Adopted by the African Commission on Human and Peoples's Rights at its 58th Ordinary Session.

¹⁸ The Constitution of the Republic of South Africa, 1996.

¹⁹ Department of Agriculture, Land Reform and Rural Development (DALRRD) 'About Us' <https://www.dalrrd.gov.za/About-Us> (accessed 30 March 2025).

Indigenous groups, who lost their land due to past discriminatory practices.²⁰ Additionally, the Deeds Registries Offices are responsible for registering and titling land once claims have been settled.²¹

Botswana has faced challenges in recognising Indigenous Peoples' land rights, particularly with the San people. The Ministry of Environment, Natural Resources Conservation and Tourism, and the Ministry of Lands and Housing are key agencies involved in land management.²² Still, there is a need for more specific mechanisms to address Indigenous Peoples' land rights. Kenya has seen at the receiving end of significant legal developments, such as the African Court on Human and Peoples' Rights ruling in favour of the Ogiek people, recognising their Indigenous status and right to reparations for being forcibly evicted from their ancestral lands in the Mau Forest.²³

4. What are the primary legal or procedural barriers in implementing the procedures of recognition, identification, documentation, demarcation, registration, and titling of Indigenous Peoples' Lands, territories and resources? How are these barriers being addressed?

In South Africa, a significant challenge stems from the historical dispossession of Indigenous communities, particularly the Khoi and San peoples, whose land rights were stripped during colonialism and apartheid. While the Restitution of Land Rights Act aimed to address these injustices, its 1913 cut-off date excluded many Indigenous claims.²⁴ Efforts to address these barriers include legislative reforms and innovative partnerships. South Africa has a Land Claims Court and has implemented mediation processes to resolve disputes, as seen in the Makuleke community's successful land restitution case.²⁵ In Burundi, The Batwa people face marginalisation due to the lack of a comprehensive national land policy recognising Indigenous rights. This leads to landlessness and exclusion from decision-making processes. Advocacy groups *like Unissons-nous pour la Promotion des Batwa* UNIPROBA are working on participatory mapping and legal assistance to document Batwa land claims.²⁶ The Baka, Bakola/Bagyeli, and Mbororo communities face legal barriers in Cameroon as the

²⁰ Commission on Restitution of Land Rights 'Mandate and functions under the Restitution of Land Rights Act 22 of 1994' <https://www.sahistory.org.za/article/land-restitution-south-africa-1994> (accessed 30 March 2025).

²¹ CD Hofmeyr 'The critical role of the South African Deeds Offices in property transactions and common issues that can arise during registration' <https://www.cliffedekkerhofmeyr.com/news/publications/2024/Practice/Real/real-estate-law-alert-10september-the-critical-role-of-the-south-african-deeds-offices-in-property-transactions-and-commonissues-that-can-arise-during-registration> (accessed 30 March 2025).

²² AF Flaherty 'Indigenous land rights and self-determination in Botswana' (2016) 27 (1) *Indigenous Policy Journal* 1-13.

²³ African Commission on Human and Peoples' Rights v Kenya (Application No. 006/2012) [2017] AFCHPR 2 (26 May 2017).

²⁴ Restitution of Land Rights Act 22 of 1994.

²⁵ C Steenkamp & J Uhr 'The Makuleke Land Claim Power Relations and Community Based Natural Resource Management' June 2020 <https://www.iied.org/sites/default/files/pdfs/migrate/7816IIED.pdf> (accessed 30 March 2025),

²⁶ Minority Rights Group International 'Burundi: Protecting Batwa land rights' 18 November 2016 <https://minorityrights.org/burundi-protecting-batwa-land-rights/> (accessed 30 March 2025).

current land laws do not recognise customary tenure systems. This exposes their territories to commercial projects' expropriation.²⁷ Organisations like the Centre for

Environment and Development (CED) promote participatory mapping and advocate for legal reforms to recognise Indigenous land rights. Initiatives like LandCam support documenting Indigenous territories and proposing reforms to recognise customary systems better.²⁸ In Burkina Faso, Indigenous groups such as the Fulani pastoralists face challenges in securing land and resource rights due to competing agricultural expansion. Some community-led resource management projects have helped, but state policies favour commercial farming, limiting Indigenous influence.²⁹ In Ethiopia, Indigenous groups like the Afar and Oromo often see their land used for state-led development projects without meaningful consultation. While some community-based natural resource management programs exist, government control over land limits Indigenous participation.³⁰

5. Are there mechanisms or measures taken to secure Indigenous Peoples' titled lands against encroachments or dispossessions?

In South Africa, the Communal Land Rights Act 11 of 2004 (CLARA) is most clearly applicable to the recognition of communal land tenure. However, this legislation was declared unconstitutional in the case of *Tongoane v Minister of Agriculture and Land Affairs 2010 (6) SA 214 (CC)*. Therefore, communal rights to land are protected by customary law and the Interim Protection of Informal Land Rights Act 31 of 120996 (IPILRA0). These measures are, however, inadequate considering the legal limits of the instruments and challenges, such as mining encroachments and infrastructure projects continuing to threaten Indigenous lands due to weak enforcement and limited consultation with affected communities.³¹

In Botswana, the San people of Botswana have faced significant encroachments on their ancestral lands due to conservation policies under the 'fortress conservation model.' Although they won the right to return to their homeland in 2006, government tactics such as blocking access to water sources have hindered their ability to fully reclaim and utilise their lands.³² In Kenya, the Ogiek people, an Indigenous community

²⁷ A Seigneret & S Nguiffo 'Land reform in Cameroon: a coherent vision from civil society' May 2021 https://www.iied.org/sites/default/files/pdfs/2021-05/20126IIED_1.pdf (accessed 31 March 2025).

²⁸ R Ngono & A Olinga 'Strengthening Indigenous land rights in Cameroon' (2003) <https://www.iied.org/21296iied> (accessed 31 March 2025).

²⁹ K Greenough 'Pastoralists and Change in Burkina Faso: Report on Preliminary Research carried out with the West African Science Service Centre on Climate Change and Adapted Land Use. Ouagadougou, West African Science Service Centre on Climate Change and Adapted Land Use (WASCAL, 2016) 120.

³⁰ D Mekonnen 'Major features of indigenous conflict resolution mechanisms in Ethiopia' (2016) 1(1) *International Journal of Arts Humanities and Social Sciences* 1-6.

³¹ Supusupu Khoikhoi First Language Project, Cultural Survival, and Natural Justice 'Cultural Survival advocates for Indigenous rights in South Africa at the UN's Universal Periodic Review' 27 June 2022 <https://www.culturalsurvival.org/news/cultural-survival-advocates-indigenous-rights-south-africa-unsuniversal-periodic-review> (accessed 31 March 2025).

³² S Moeti & G Gakelekgoalele 'San Settlement in the Central Kalahari Game Reserve, Botswana' https://www.conservation.org/docs/default-source/publication-pdfs/indigenous-negotiations-casestudy-san-settlement-in-the-central-kalahari-game-reserve.pdf?Status=Master&sfvrsn=e0713f63_3 (accessed 31 March 2025).

living in the Mau Forest, have faced historical land dispossession. The African Court of Human and Peoples' Rights (the African Court) in the Ogiek case recognised their right to live on and manage their forested lands.³³ However, implementing this ruling has been problematic, as the government failed to consult the Ogiek community and excluded them from decision-making processes regarding land management. This

case highlights the need for more vigorous enforcement of legal protections and meaningful participation of Indigenous Peoples in land governance decisions.³⁴

6. Are there mechanisms for meaningful consultation and effective participation of Indigenous Peoples in these identification and recognition processes?

In South Africa, mechanisms for the meaningful consultation and effective participation of Indigenous Peoples in identification and recognition processes are developing but remain inconsistent. The National House of Traditional and Khoisan leaders aim to increase the voice of Indigenous Peoples in national governance. At the same time, the Commission on Khoi-San-San matters was established to receive all applications for the recognition of Khoi-San communities, branches and leaders, investigate the applications received and make recommendations to the Minister on the possible recognition of Khoi-San communities and leaders. However, the legal basis for the operation of these structures remains in limbo as their enabling Act has been declared unconstitutional. The National n Namibia Communal Land Reform Act mandates the establishment of Communal Land Boards, which include representatives from traditional authorities, to ensure community participation in land administration.³⁵ Similarly, Botswana's Tribal Land Act collaborates with tribal communities in land allocation and development decisions. However, these mechanisms face challenges related to power imbalances and ensuring genuine representation.³⁶

7. How is gender considered in the identification, documentation, demarcation, registration and titling of Indigenous Peoples' lands, territories and resources?

In South Africa, gender plays a significant role in the identification, documentation, demarcation, registration, and titling of Indigenous Peoples' lands, territories, and resources. Despite constitutional guarantees of gender equality, customary law and patriarchal practices often limit women's access to land.³⁷ Land reform initiatives have largely failed to address these disparities, as land titles are typically passed down through male lineage, excluding women from ownership rights. Efforts like the Land Reform Gender Policy Framework aim to address these inequalities by advocating for

³³ *African Commission on Human and Peoples' Rights v Kenya* (Application No. 006/2012) [2017] AFCHPR 2 (26 May 2017).

³⁴ A Langat 'Violent evictions are latest ordeal for Kenya's Ogiek seeking land rights 20 December 2023 <https://news.mongabay.com/2023/12/violent-evictions-are-latest-ordeal-for-kenyas-ogiek-seekingland-rights/> (accessed 31 March 2025).

³⁵ The Communal Land Reform Act 5 of 2002.

³⁶ Tribal Land Act, 2018.

³⁷ Commission for Gender Equality 'Exploring barriers to women's access to communal land in selected provinces' 2024 <https://cge.org.za/wp-content/uploads/2024/08/157533-CGE-Communal-Land-Report-Webupdate.pdf> (accessed 31 March 2025).

women's land rights registration.³⁸ In Kenya, despite progressive laws like the Constitution and the Land Act, which promote gender equality in land ownership, customary practices still dominate in rural areas. Women are often excluded from decision-making processes regarding land allocation and inheritance due to patriarchal traditions.³⁹ Meanwhile, in Uganda, the Land Act includes provisions to

protect women's land rights by requiring spousal consent for family land transactions. However, enforcement is weak, and cultural norms undermine these legal frameworks.³⁹

8. Are there cases where Indigenous Peoples' lands overlap with other claims or uses of lands, territories and resources (e.g., individual titles, conservation areas, businesses and extractive industries, and other Indigenous Peoples' claims)? How are such conflicts addressed in identifying, documenting, demarcating, registering and titling Indigenous Peoples' lands?

In South Africa, the Restitution of Land Rights Act allows Indigenous communities, like the San and Khoi, a limited window to claim ancestral land.⁴⁰ Also, conflicts often arise when these lands are privately owned or used for conservation. Based on the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), all mineral resources are subsumed under the custodianship of the Minister of Mineral Resources. The Minister is responsible for developing the nation's mineral resources and, to this end, allocates prospecting and mining rights to suitable applicants. Generally, therefore, communal ownership of land or use rights to such land does not extend to minerals on or beneath such land. This law lacks express provision for Indigenous Peoples' ownership of resources within their territories. Sometimes, Solutions include negotiated settlements, co-management agreements, or financial compensation. Also, while the Act requires consultation of communities for exploration, consent is not mandatory in terms of its provisions.⁴¹

In Namibia, the Communal Land Reform Act provides land tenure security for Indigenous groups, particularly the San, but mining and tourism interests often overlap. The government resolves disputes through land boards, public consultations, and alternative land allocation.⁴² In Kenya, the Community Land Act enables Indigenous groups like the Ogiek and Maasai to claim communal lands.⁴³ However, conflicts emerge with conservation areas (e.g., Mau Forest) and private development. Courts

³⁸ MM Masako, Z Mthembu *et al* 'Gendered effects of land access and ownership on food security in rural settings in South Africa' 2023 (7) *Frontiers in Sustainable Food Systems* 1-8. ³⁹K Sheria 'Women's Land Rights' 2023. <https://kituochasheria.or.ke/wp-content/uploads/2023/11/Women-Land-Rights-Booklet-FINAL3-1.pdf> (accessed 31 March 2025).

³⁹ The Land Act, 1998.

⁴⁰ The Restitution of Land Rights Act, 1994.

⁴¹ Section 10, Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

⁴² The Communal Land Reform Act, 2002.

⁴³ The Community Land Act, 2016.

play a key role in resolving disputes, as seen in the African Court's ruling favouring the Ogiek of Kenya.⁴⁴

9. How has the right to lands, territories and resources of mobile Indigenous Peoples, such as pastoralists and hunter-gatherers and those living in voluntary isolation or initial contact, been addressed?

In South Africa, mobile Indigenous groups like the Khoi and San struggle for land rights due to historical displacement.⁴⁵ The government has offered land restitution and comanagement deals, but many still lack secure access to traditional territories.⁴⁶ In

Kenya, pastoralist communities like the Maasai and Samburu face land grabbing, conservation restrictions, and development projects. The Community Land Act recognises communal ownership, but enforcement is slow, and conflicts with private interests persist.⁴⁷ In Burundi, the Batwa, a traditional hunter-gatherer community, have lost most of their forests to agriculture and conservation.⁴⁸ They remain primarily landless, with little government support for securing traditional territories.

10. Do the processes of identification, documentation, demarcation, registration and titling of Indigenous Peoples' lands, territories and resources in your country consider coastal areas and marine territories and resources?

Indigenous coastal communities like the small-scale fishers have struggled for recognition in South Africa. While land restitution laws exist, marine territories were long excluded.⁴⁹ The Marine Living Resources Amendment Act, 2014 (Act 5 of 2014) grants small-scale fishing communities access to fishing rights, but commercial fishing and conservation projects still limit access.⁵⁰ The National Water Act 36 of 1998 (NWA) is problematic because it excludes natural and juristic persons, including customary communities, from enjoying any title or tenure over freshwater resources other than for drinking and small subsistence gardening or grazing purposes. In Cameroon, coastal Indigenous groups like the Bagyeli (Pygmies) rely on fishing, but their rights to marine resources are poorly recognised.⁵¹ Industrial fishing and conservation areas

⁴⁴ *African Commission on Human and Peoples' Rights v. Republic of Kenya*, ACtHPR, Application No. 006/2012 (2017).

⁴⁵ Indigenous Peoples of Africa Co-ordinating Committee 'Who are the Indigenous Peoples of Southern Africa?' <https://www.ipacc.org.za/southern-africa/> (accessed 30 March 2025).

⁴⁶ South African Government, Khoi and San people to work with government in restoring their land rights <https://www.gov.za/ts/blog/khoi-and-san-people-work-government-restoring-their-land-rights> (accessed 30 March 2025).

⁴⁷ CE Bedelian 'Conservation, tourism and pastoral livelihoods: wildlife conservancies in the Maasai Mara, Kenya (Doctoral dissertation, UCL'2014).

⁴⁸ ReliefWeb 'Forgotten people: the Batwa 'Pygmy' of the Great Lakes region of Africa' <https://reliefweb.int/report/burundi/forgotten-people-batwa-pygmy-great-lakes-region-africa> (accessed 31 March 2025).

⁴⁹ M Isaacs, M Hara, M Dennis and others 'A situational analysis of small-scale fisheries in South Africa: From vulnerability to viability' (2022, October).

⁵⁰ Department of Agriculture, Forestry and Fisheries (DAFF). (2012). Policy for the small-scale fisheries sector in South Africa. Government Gazette, No. 35455.

⁵¹ V Luling 'From Principles to Practice: Indigenous Peoples and Protected Areas in Africa' (2004).⁵³ Tenure Facility and Mi Morzaria 'Battle for the Forests: DRCs Indigenous communities seek to take

often restrict their traditional access, with little government intervention to protect their livelihoods. In DRC, Indigenous communities along the Congo River and Atlantic coast depend on fishing and mangrove ecosystems. However, land laws focus on forests, ignoring marine areas. Conservation projects, like those in Mangroves National Park, often exclude Indigenous participation.⁵³

11. How have you prevented and addressed the cases of intimidation and reprisals against Indigenous lands rights defenders?

In South Africa, Indigenous land rights defenders, especially those opposing mining and land grabs, face threats and violence. The government has laws protecting activists, but enforcement is weak. NGOs such as the Ismail Mahomed Centre for Human and Peoples' Rights, the University of Venda, and other groups and legal aid organisations, such as the Legal Resources Centre, provide support and advocacy. In the Central African Republic (CAR), Indigenous activists, particularly those defending forest lands, face attacks from armed groups and illegal loggers.⁵² The state offers little protection, leaving defenders reliant on international organisations and human rights groups for safety. In Sudan, Indigenous land defenders, especially from

marginalised communities like the Nuba, risk arrests and violence from security forces and militias. Some seek protection through advocacy networks, but government repression makes activism dangerous.⁵³

12. Are there any good practices or lessons learned from your process of identification, documentation, demarcation, registration and titling of Indigenous Peoples' lands, territories and resources?

In South Africa, land restitution programs, like those under the Restitution of Land Rights Act, have helped some Indigenous groups reclaim land.⁵⁴ However, slow processes and conflicts with private interests highlight the need for faster, community-led mapping and legal support. In Botswana, recognising San land rights in the Central Kalahari Game Reserve case is a step in the right direction.⁵⁵ Even so, there are decisions against Kenya in the *Endorois and Ogiek* cases by the African Commission and African Court, respectively. These developments affirm their right to land and resources, showing that legal action and participation of NGOs can help secure Indigenous territories. In Mali, customary land tenure systems have been integrated into national laws, allowing Indigenous groups to register communal lands. This approach helps protect traditional territories but requires more vigorous enforcement and protection from land grabs.⁵⁶

back ancestral land' <https://thetenurefacility.org/article/battle-for-the-forests-drcs-indigenouscommunities-seek-to-take-back-ancestral-land/> (accessed 31 March 2025).

⁵² OR Lieberman 'Conflict resolution: The case of Central African Republic (2020).

⁵³ GK Komey 'The denied land rights of the indigenous peoples and their endangered livelihood and survival: the case of the Nuba of the Sudan' (2008) 31(5) *Ethnic and Racial Studies* 991-1008.

⁵⁴ Restitution of Land Rights Act, 1994.

⁵⁵ AF Flaherty 'Indigenous land rights and self-determination in Botswana' (2016) 27(1) *Indigenous Policy Journal* 1-13.

⁵⁶ TA Benjaminsen and others 'Formalisation of land rights: Some empirical evidence from Mali, Niger and South Africa' (2009) 26(1) *Land use policy* 28-35.

13. Are there any good examples of partnerships between the Government, Indigenous Peoples' organisations, civil society, or international institutions to advance identification, documentation, demarcation, registration and titling of Indigenous Peoples' lands, territories and resources?

In South Africa, Indigenous communities, particularly the Khoi and San, have struggled to influence resource management decisions. However, partnerships with organisations like the Ismail Mahomed Centre for Human and Peoples Rights and Indigenous Peoples-focused organisations help ventilate Indigenous Peoples issues. The institutions such as the National House of Traditional and Khoi-San Leaders and the Commission on Khoi-San Matters are good examples of platforms to elevate Indigenous Peoples' voices in national governance. The government promotes consultation in mining and conservation projects. However, Indigenous Peoples often lack real decision-making power.⁵⁷ Successful cases, like co-management agreements in national parks, show that legal recognition and active participation can improve outcomes.

14. Do you have any additional comments, recommendations, or insights valuable for the Special Rapporteur's thematic report?

It is recommended that the Special Rapporteur's report emphasise more substantial legal recognition of Indigenous land rights, especially for mobile communities and

those reliant on marine territories. Many legal frameworks fail to protect customary land tenure, leaving Indigenous groups vulnerable. Expanding legal protection to include marine and coastal rights is essential while meaningful Indigenous participation in resource management is also crucial. Governments often conduct consultations as the tick of the boxes, which rarely engage or translate into real influence. Indigenous communities should have veto power over projects affecting their lands to ensure their rights are upheld. Protecting land rights defenders is another priority. Many activists face threats and violence; governments must enforce protective laws, hold perpetrators accountable, and establish community-led safety mechanisms.

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⁵⁷ F Osman 'An examination of the recognition of communities and partnership agreements under South Africa's Traditional and Khoi-San Leadership Act'(2024) 24(2) *African Human Rights Law Journal* 609-631.

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