

# POLICY BRIEF

## Towards effective Indigenous Environmental Justice in Africa: Challenges and Pathways for Reform





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| Abimbola Olowa, Llewellyn Leonard, Robert Kibugi, Sokhna Dié Ka Dia, Mphathleleni Makaulule and Ndumiso Nzaca

### 1. INTRODUCTION

Over 35 countries in Africa recognise the right to a healthy environment in their national constitutions, and almost all have incorporated elements of the environmental right in their laws and policies. Yet Indigenous communities across Africa continue to face profound environmental injustices. These injustices arise from extractive industries, climate change, and government systems that exclude Indigenous voices. They manifest in displacement from ancestral lands, pollution of water sources, destruction of sacred sites, and marginalisation in environmental decision-making processes.



These realities highlight the persistent gap between legal recognition of environmental rights and their practical realisation for Indigenous communities. This paper draws on key insights from a webinar hosted by the Centre for Environmental Justice in Africa in collaboration with Natural Justice.

It offers recommendations for government, the judiciary, civil society and the African Union to strengthen Indigenous Environmental Justice in Africa.



## 2. INDIGENOUS ENVIRONMENTAL JUSTICE: POLICY AND NORMATIVE FRAMEWORKS

Environmental justice is commonly understood as the fair treatment and meaningful involvement of all people—regardless of race, colour, national origin, or income—in the development, implementation, and enforcement of environmental laws, regulations, and policies.

Indigenous peoples are communities whose cultures and ways of life differ considerably from the dominant society and who maintain a special relationship with their traditional lands and natural resources.

Applied through this lens, Indigenous Environmental Justice (IEJ) entails the fair treatment and meaningful involvement of Indigenous peoples in environmental decision-making in ways that recognise and respect their indigenous knowledge systems, cultural practices and customary laws.

IEJ therefore goes beyond access and participation—it requires recognition of Indigenous knowledge systems, cultural practices, and customary laws as well as respect for self-determination. A central component of IEJ is Free, Prior and Informed Consent (FPIC). FPIC ensures that Indigenous communities have the right to determine whether and how a project affecting their lands or natural resources proceeds. It entails that consent to undertake a development or extractive project is obtained freely, before the development or extractive project is commenced with and the Indigenous community is properly informed of the impacts of the development or extractive project.

Several international and regional legal instruments form the normative foundation for protecting Indigenous peoples' rights—particularly in relation to land, culture, and participation in decision-making—and they establish Free, Prior, and Informed Consent (FPIC) as a cornerstone of IEJ.

The following section will consider these applicable international and regional instruments and assesses the extent of their domestic alignment and enforcement.

## 2.1. Applicable International and Regional Instruments

### 2.1.1. International Instruments

#### Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169)

The ILO Convention (ILO 169) provides a comprehensive framework for ensuring Indigenous peoples' rights to self-determination, culture, and natural resources. It obligates governments to consult Indigenous peoples, through their representative institutions, before adopting laws or administrative measures that may directly affect them (article 6); affirms Indigenous peoples' right to determine their own development priorities and to fully participate in the planning, implementation, and evaluation of projects affecting their lives, lands, and cultures (article 7); requires governments to respect the cultural and spiritual significance of Indigenous peoples' relationships with their lands and territories, including their collective dimension (article 13); affirms Indigenous peoples' rights to natural resources on their lands, requiring state consultation, participation in management and benefits, and fair compensation where state-controlled resources are explored or exploited (article 15); and provides that Indigenous peoples may not be removed from their lands except in exceptional circumstances, and any relocation must be based on free and informed consent or, failing that, fair legal procedures ensuring their representation (article 16).

Only one African country has ratified ILO 169, reflecting political reluctance to recognise Indigenous peoples and Indigenous territorial rights explicitly.

#### United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP)

The UNDRIP prohibits forced displacement and requires free, prior, and informed consent (FPIC) before any relocation, ensuring just and fair compensation and, where possible, the option of return (article 10); requires States to consult and cooperate in good faith with Indigenous peoples through their representative institutions to obtain FPIC before adopting or implementing legislative or administrative measures that may affect them (article 19) and obligates States to obtain FPIC before approving any project affecting Indigenous lands, territories, or resources, including mineral and water resources (article 32).

Most African states supported the UNDRIP, giving it strong persuasive authority, even though it is classified as soft law.

### 2.1.2. Regional Instruments

#### African Charter on Human and Peoples' Rights (1981) (African Charter)

Although the African Charter does not explicitly refer to "Indigenous peoples," it provides a strong foundation for Indigenous environmental justice. The African Charter recognises the right of all peoples to freely dispose of their natural wealth and resources, providing for redress in cases of dispossession (article 21); affirms the right to economic, social, and cultural development, aligning with Indigenous values and sustainable practices (article 22); and guarantees the right to a satisfactory environment favourable to development (article 24).

The African Charter has been ratified by 54 out of 55 African States,<sup>1</sup> making it a regional binding framework that States are obligated to respect, protect and fulfil.

The provisions of the African Charter have been invoked by parties seeking to enforce their rights, including before the African Court of Peoples and Human Rights.<sup>2</sup> Yet, despite these international and regional commitments, meaningful alignment with domestic legislation and practice remains limited, and implementation gaps persist.

## 2.2. Domestic Alignment and Enforcement

A number of African States have incorporated FPIC in their public participatory processes within environmental decision-making. Most countries require Environmental Impact Assessment (EIAs) for major projects, particularly in sectors such as mining, infrastructure, land acquisition, forestry and energy. However, the realisation of genuine and meaningful FPIC remains limited, especially in matters that directly affect the livelihoods and cultural survival of Indigenous communities. States frequently authorise development, resource extraction, and conservation projects without meaningful consultation or FPIC, leading to litigation and social conflict.

Landmark cases such as *African Commission on Human and Peoples' Rights v the Republic of Kenya*,<sup>3</sup> *Trustees for the Time Being of Groundwork Trust v Minister of Environmental Affairs*,<sup>4</sup> *Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy (the Wild Coast Shell)*<sup>5</sup>, *Osman & Ors vs Northern Rangeland Trust & Ors*<sup>6</sup>, *National Environmental Management Authority and Amu Power Co., Ltd vs Save Lamu et al*<sup>7</sup> highlight the persistent disconnect between legal obligations and state conduct with the underlying failure of participatory environmental governance of Indigenous communities.

These cases demonstrate that, while legal frameworks exist, achieving effective IEJ requires certain key measures: treating FPIC as a living, community driven process, adopting a rights-based and culturally-sensitive framework, and integrating Indigenous Knowledge into environmental and marine governance.

<sup>1</sup> State Parties to the African Charter <https://achpr.au.int/en/states> accessed 29 October 2025.

<sup>2</sup> For instance, *African Commission on Human and Peoples' Rights v the Republic of Kenya*, Application No 006/2012.

<sup>3</sup> Application No 006/2012.

<sup>4</sup> (39724/2019) [2022] ZAGPPHC 208.

<sup>5</sup> 2024 [ZASCA] 84.

<sup>6</sup> *Osman and others vs Northern Rangeland Trust* Petition E006 of 2021.

<sup>7</sup> Judgment in the Land and Environment Court (LEC) 16 October 2025.

### 3. KEY MEASURES FOR REALISING EFFECTIVE IEJ

FPIC must be seen as a living, community driven process. FPIC entails acknowledging Indigenous Peoples as Rights-Holders who must be engaged through their own representative institutions and decision-making systems—not imposed structures or hand-picked intermediaries. Indigenous communities have long-established rules and procedures to guide how outsiders may interact with their lands and cultural spaces, often transmitted through oral tradition and embedded in customary values and laws.

However, current consent-seeking processes developed by multilateral conventions and private actors often fail to accommodate the diverse decision-making systems within Indigenous communities. Second, it entails ensuring the process is truly ‘free’ without coercion or manipulation. The Indigenous community must be able to decide and give their consent without intimidation, inducement, or undue pressure. Third, engagement should be genuinely optional — not framed as inevitable or a mere formality. Thus, consultation must occur before any decisions are made or activities approved (e.g. licensing, exploration, development). Fourth, it must be ‘informed’ by the availability of full and accessible information which provides clear, accurate and complete information about the project, its potential environmental, social, and cultural impacts, and possible alternatives. Fifth, there must be culturally appropriate communication by using local languages, oral formats, or visual materials that align with the community’s communication traditions.

Central to genuine and meaningful FPIC is the recognition and protection of sacred sites. These sites hold profound cultural and spiritual significance and are essential for sustaining traditional knowledge systems and cultural practices. Sacred sites are not merely physical locations, but are living, interconnected elements of the landscape embodying ancestral presence and spiritual continuity. Their destruction can lead to ecological and cultural collapse, making their protection a core component of effective IEJ. The sacred significance of Indigenous sites —as sources of biodiversity, spiritual balance, and water systems —must therefore be fully considered in FPIC processes. Thus, for FPIC to be genuinely meaningful, participation processes should be linguistically, culturally and socially grounded in community realities taking into account the ecological and spiritual significance of sacred sites.

The second key measure requires a rights-based and culturally sensitive approach that safeguards communities, ecosystems, and heritage. This entails recognising and enforcing Indigenous land and water rights as a legal foundation for their environmental governance. Environmental assessments must move beyond technical evaluations to meaningfully integrate Indigenous knowledge systems and consider the impacts of development on water sources, food security, and sacred sites. Participatory monitoring processes, led primarily by Indigenous communities and supported by independent experts, can enhance transparency, and enable early detection of environmental harm. Furthermore, decisions on development projects should rest with the affected communities themselves, rather than external actors who may use traditional leadership structures as proxies for consent. FPIC protocols therefore need to be context-specific and clearly articulate community rights in relation to their customary laws as well as relevant national and international laws. To ensure meaningful protection, accountability mechanisms must be strengthened to hold extractive industries responsible for environmental degradation and associated health impacts, including obligations for restitution, rehabilitation, and equitable community compensation.

The third key measure requires integrating Indigenous Knowledge into environmental and marine governance. Indigenous knowledge refers to the accumulated observations, beliefs, innovations, and practices developed by Indigenous peoples over many generations through close interaction with their environment. It encompasses skills, traditions, and knowledge about agriculture, health, culture spirituality, and social structures passed down through generations —often orally through stories, songs, rituals, and other cultural expressions. A decolonised approach to environmental and marine governance that recognises indigenous wisdom, cultural continuity and the vital role of Indigenous communities in protecting their ecosystems is paramount to promoting equitable and sustainable forms of governance which will lend itself to ensuring environmental justice. By formally recognising Indigenous Knowledge within statutory frameworks, governments can strengthen environmental governance, ensure robust public participation and advance decolonial legal reforms grounded in political ecology and Indigenous worldviews.

**These key measures, together with active civil society engagement and robust oversight will significantly enhance the realisation of effective IEJ in Africa.**



## 4. PATHWAYS FOR REFORM: RECOMMENDATIONS FOR ADVANCING INDIGENOUS ENVIRONMENTAL JUSTICE



### **Treating FPIC as a living and community-driven process means:**

- Treating FPIC as a substantive and ongoing process, rather than a once-off procedural requirement.
- Grounding FPIC in ongoing dialogue, trust, and community-defined consent mechanisms.
- Recognising consent as a dynamic process that continues throughout the life of a project —not merely at its onset.
- Reflecting Indigenous governance systems, where consent may be expressed through collective discussion, consensus practices, spiritual consultation or clan-based negotiation rather than solely through formal signatures or approval or select individuals.



### **Integrating Indigenous Knowledge into environmental and marine governance involves:**

- Recognising Indigenous Knowledge Systems as central to effective environmental and marine governance.
- Protecting Indigenous wisdom, cultural continuity, and the critical role of coastal and traditional communities in sustaining ecosystems and biodiversity.
- Embedding Indigenous knowledge into environmental and marine governance frameworks —not as supplementary input, but as a core knowledge base equal to scientific approaches.



### **Adopting a Rights-based and culturally-sensitive framework involves:**

- Ensuring that private actors, state actors and development partners collaborate with Indigenous communities to develop context-specific FPIC protocols and standards that are aligned with customary law as well as relevant national, regional and international norms.
- Shifting the focus from mere technical or procedural compliance to the meaningful protection of Indigenous lands, natural resources, cultural heritage and sacred landscapes.
- Establishing effective accountability and enforcement measures must be in place to ensure that reparations and restitutions when FPIC agreements are violated or when harm is caused to Indigenous lands, natural resources, cultural heritage or sacred sites.



### **Recognising the critical role of Civil Society and Oversight Bodies means:**

- Strengthening civil society organisations, community networks and independent monitoring bodies to ensure transparency, protect community rights, and hold state and private actors accountable.

Role-player	Action	Expected Impact
<b>Government</b>	<ul style="list-style-type: none"> <li>Establish legally binding FPIC protocols and verification mechanisms in conjunction with Indigenous communities.</li> <li>Ratification of the ILO Convention 169.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthened legal protection of Indigenous land, cultural and environmental rights.</li> <li>Greater transparency and accountability in development and extractive projects</li> <li>Reduced conflict and improved trust between Government and Indigenous communities.</li> </ul>
<b>Judiciary</b>	<ul style="list-style-type: none"> <li>Continue enforcing accountability against State and non-State actors who disregard FPIC or violate Indigenous rights inclusive of reparation for violations.</li> </ul>	<ul style="list-style-type: none"> <li>Consistent jurisprudence affirming FPIC as a legal and enforceable right.</li> <li>Increased deterrence against rights violations.</li> <li>Restoration of dignity, justice, and reparations for affected communities.</li> </ul>
<b>African Union</b>	<ul style="list-style-type: none"> <li>The African Union should actively encourage and support all Member States that have not yet ratified the ILO Convention No 169 to do so without delay.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthened continental legal coherence on Indigenous rights.</li> <li>Enhanced regional cooperations and standard-setting on FPIC.</li> </ul>
<b>Civil Society</b>	<ul style="list-style-type: none"> <li>Strengthen advocacy, monitoring, and litigation to ensure FPIC compliance, protect Indigenous communities, and promote participatory environmental governance.</li> <li>Lobby African States to ratify the ILO Convention 169</li> </ul>	<ul style="list-style-type: none"> <li>Increased public awareness and pressure for reform.</li> <li>Stronger accountability mechanisms and improved policy implementation.</li> </ul>

Note: Source Authors



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