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Rights of Indigenous Peoples

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Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the rights of Indigenous Peoples, Albert K. Barume, in accordance with Human Rights Council resolution [60/4](#).

* [A/81/150](#).



Report of the Special Rapporteur on the rights of Indigenous Peoples, Albert K. Barume

Demarcation, registration and titling of Indigenous Peoples' lands, territories and resources

Summary

Nearly 20 years after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the present report examines the legal recognition, demarcation and titling of Indigenous Peoples' lands, territories and resources, and how their rights are protected when they conflict with competing interests. While important progress has been made in some regions, implementation remains uneven. The Special Rapporteur calls for urgent action to recognize, demarcate, title and effectively protect Indigenous Peoples' lands, territories and resources, in accordance with international human rights law.

I. Introduction

1. The present report reviews States' implementation of Indigenous Peoples' land rights nearly 20 years after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. It reviews trends in the seven sociocultural regions defined by Indigenous Peoples, focusing on legal recognition, land demarcation and titling of lands,¹ and how Indigenous Peoples' rights are weighed against competing interests, such as resource extraction, infrastructure, conservation, climate policies and security.²

2. Despite progress in some regions, the report reveals a global gap in implementation. It identifies enduring patterns of dispossession, exclusion and inadequate protection, while also highlighting positive practices and pathways for strengthening the effective enjoyment of Indigenous Peoples' rights in accordance with international human rights law.

II. Africa

A. Legal recognition

3. Fewer than five African countries have legally recognized the collective rights of Indigenous Peoples to their lands, in accordance with international standards. The Constitution of the Congo guarantees "rights of Indigenous Peoples" (art. 16) but no African constitution explicitly mentions their land rights.

4. Across Africa, three broad approaches to the legal recognition of Indigenous Peoples' land rights can be identified.

5. The first and largest number of States legally recognize weak or limited rights over either lands or resources. These are essentially user, occupation or access rights, which are often granted by sectoral laws on forests, wildlife, conservation, climate change, land, agriculture, mining or related areas. Indigenous Peoples' rights are considered subordinate to primary objectives established by the Governments.

6. All six Congo Basin countries allow Indigenous Peoples limited use of State-owned forests through "community forest" schemes, which offer some land rights but no ownership of their ancestral lands. In Cameroon, for example, the law restricts community forest concessions to just 5,000 hectares, which is significantly less than the entirety of the country's ancestral lands.³

7. A similar pattern is found in West and North Africa and in the Sahel region. Legal frameworks in Mali, Chad and the Niger⁴ recognize transhumance and pastoral use but only grant Indigenous pastoralists user rights over lands and corridors, which remain classified as public lands.

8. In numerous East and Southern African countries, Indigenous Peoples are given user rights to resources, such as wildlife, through community-based natural resource

¹ In the present report, the term "lands" encompasses lands, territories and resources.

² In future reports, the Special Rapporteur will pay particular attention to mobile Indigenous Peoples, Indigenous Peoples in voluntary isolation or initial contact, and Indigenous Peoples with marine and coastal territories, as they face particular challenges and threats.

³ Tchoumba, B., "Indigenous Peoples and Protected Areas in Central Africa" (World Wide Fund for Nature, 2005). See also [CERD/C/CMR/CO/22-23](#) and [A/71/229](#).

⁴ Mali, Law No. 06-045 of 2006 on agriculture; Chadian Pastoral Code; Niger, Ordinance No. 93-015 of 1993 establishing the guiding principles of the Rural Code. See also [E/C.12/GC/26](#) and [HRI/GEN/1/Rev.6](#), p. 212.

management programmes; however, these rights do not include land ownership. In Namibia, for instance, communal conservancies grant communities conditional rights to manage wildlife and tourism within designated areas, while all communal land remains State-owned.

9. A second category of African States legally recognize customary or communal land rights, but these laws often favour dominant traditional communities that visibly use the land, excluding Indigenous Peoples whose livelihoods depend on mobility. In Botswana, for example, tribal lands are governed by land boards, composed of members from dominant tribes. This leaves many Indigenous Peoples without legal protection.⁵ Similarly, Morocco's collective tribal land ownership does not refer to Indigenous Peoples.⁶

10. In many Central, North and West African countries with civil law systems, customary uses and occupations of lands must be both visible and permanent to be recognized and protected. Rural lands are inspected for visible occupation; if found to be vacant, they become State property for reassignment. This legal doctrine, originating from colonial *terra nullius* theories, has led to systemic discrimination against hunter-gatherers and nomadic Indigenous pastoralists, resulting in most major national parks and protected areas being established on their ancestral lands.⁷

11. A third category of African States are moving towards full recognition of Indigenous Peoples' land rights. The law on Indigenous Peoples adopted by the Congo is the strongest example, granting collective and individual rights to own, access and use traditional lands and resources.⁸ However, this law remains unimplemented.⁹ Similarly, the Central African Republic ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) in 2010, but it remains unimplemented.

B. Demarcation and titling

12. In most African countries, Indigenous Peoples' lands are not demarcated and titled, and no African State has a land registry system specifically devised for Indigenous Peoples. Only few Indigenous Peoples have obtained titles to their lands, relying on imperfect demarcation or titling processes that were not originally designed for their needs. In South Africa, for instance, the Communal Property Associations Act has enabled the Richtersveld Nama community to obtain legal titles to some of their lands.¹⁰ In 2011, the Hadzabe Indigenous hunter-gatherers in the United Republic of Tanzania were granted a certificate of village land for a portion of their territory. The Maasai Indigenous Peoples in Ngorongoro and Loliondo have not received even the limited land demarcation and titling afforded to the Hadzabe.¹¹

13. There is no demarcation or titling of land ownership rights for Indigenous Peoples in any of the Congo Basin countries. Instead, Indigenous Peoples have seen limited user rights through "community forests", which are being demarcated, registered and inaccurately branded as land rights.

⁵ See [A/HRC/15/37/Add.2](#).

⁶ See <https://arablandinitiative.gltm.net/countries/morocco>.

⁷ See [A/71/229](#).

⁸ Act No. 5-2011.

⁹ See [A/HRC/45/34/Add.1](#).

¹⁰ Constitutional Court of South Africa, *Alexkor Ltd v. Richtersveld Community*, 2004. See also [E/CN.4/2006/78/Add.2](#).

¹¹ Letter from the Chair of the Committee on the Elimination of Racial Discrimination addressed to the Permanent Representative of the United Republic of Tanzania (reference No. CERD/EWUAP/115thsession/2025/CS/BJ/ks).

14. Similarly, in West Africa, the Sahel and North Africa, many countries register user rights for land and resources rather than granting full land ownership. Chad's Pastoral Code and the Niger's Rural Code outline how to demarcate transhumance corridors and pasture areas for Indigenous Peoples, but these remain classified as public lands.

15. In most countries of Southern Africa, through community-based natural resource management schemes, user rights of resources can be registered but land ownership remains vested with the State.¹²

16. Emerging positive practices include the Kenyan Community Land Act, which introduces a six-step process to register community land, but complex procedures and delays have left most Indigenous Peoples' land unregistered and under government trusteeship.¹³ In Angola, in 2007, 1,389 hectares of lands were collectively titled for the Mupembati San community in Huila Province.

17. Indigenous Peoples' own mapping of their lands and territories across Africa constitutes a significant emerging practice, in the absence of formal demarcation by States.

C. Balancing Indigenous Peoples' land rights with competing interests

18. Legal frameworks in African systematically privilege State, business and conservation interests, while treating Indigenous Peoples' land rights as residual, conditional and expendable.

19. The growth of extractive industries, coupled with the global demand for transition minerals, is significantly affecting Indigenous Peoples' land rights. The target contained in the Kunming-Montreal Global Biodiversity Framework to conserve at least 30% of the Earth's terrestrial, inland water, coastal and marine areas by 2030 has the potential to benefit Indigenous Peoples, but also carries a significant risk of accelerating conservation-based dispossession if implemented without respecting international standards on Indigenous Peoples' rights.

20. The requirement for free, prior and informed consent is often violated in African land processes. No African country has a standalone law or policy on the matter, and only two – the Congo and the Democratic Republic of the Congo – have Indigenous Peoples-specific laws that explicitly include provisions for free, prior and informed consent. Other countries, including Kenya and South Africa, address the issue partially through sectoral frameworks, usually without focusing on Indigenous Peoples.

21. Criminalization of and violence against Indigenous land defenders is on the rise across Africa, which recorded the second-highest number of killings of land and environmental defenders globally in 2020, with Indigenous Peoples disproportionately represented among the victims.¹⁴

¹² See [A/71/229](#) and [A/77/238](#).

¹³ See [A/HRC/4/32/Add.3](#).

¹⁴ Global Witness, "Defending tomorrow: The climate crisis and threats against land and environmental defenders" (2020), p. 14; [A/HRC/39/17](#).

III. The Arctic

A. Legal recognition

22. The Arctic¹⁵ presents diverse models for the recognition of Indigenous Peoples' land rights. Greenland (Kalaallit Nunaat) and Arctic Canada provide for extensive Inuit self-government and territorial governance, while across Sápmi, Indigenous Peoples' land rights are grounded in their traditional use and occupation of lands.

23. In Norway, Sweden and Finland, Sámi rights to reindeer husbandry,¹⁶ hunting and fishing are generally based on immemorial use and recognized primarily as rights of use. In Norway, the Finnmark Act can be seen as offering the highest level of protection for the Sámi, acknowledging both their individual and collective rights to land and natural resources.¹⁷ However, to assert ownership based on immemorial use, Sámi communities must provide evidence of historical control over the land; otherwise, they may be classified as authorized users rather than owners.¹⁸

24. In Sweden, the Reindeer Husbandry Act recognizes Sámi usufruct rights to land and water they have traditionally used. Only Sámi individuals belonging to specific communities (*samebyar*) and who rely primarily on reindeer herding for their livelihood are allowed to exercise these exclusive rights. The Swedish Supreme Court has clarified, however, that the burden of proof lies with the State to show that rights based on time immemorial use have been legally terminated.¹⁹

25. In Finland, the legal status of the Sámi lands remains unresolved.²⁰ In 2022, the Committee on Economic, Social and Cultural Rights concluded that the State had not legally recognized Indigenous Peoples' rights to their traditional lands and called for legal recognition, including collective ownership.²¹

26. In the Russian Federation, federal legislation adopted between 1999 and 2001 recognized Indigenous Peoples' rights to use and own lands and renewable natural resources within their traditional territories and provided for the establishment of "territories of traditional nature use".²² However, subsequent legislative amendments have weakened these protections. Indigenous Peoples' ownership is no longer recognized, environmental safeguards have been reduced, access to traditional lands has increasingly become subject to general land legislation²³ and Indigenous

¹⁵ This section is based on an understanding of the sociocultural Arctic region determined by Indigenous Peoples, as they relate to the United Nations.

¹⁶ Norway, Reindeer Husbandry Act of 2007; Sweden, Reindeer Husbandry Act of 1971 (Rennäringslagen); Finland, Reindeer Husbandry Act (848/1990).

¹⁷ Norway, Act relating to legal relations and management of land and natural resources in Finnmark (2005).

¹⁸ Norwegian Supreme Court, *Finnmark Estate v. Karasjok Sámi Association et al*, case No. HR-2024-982-S.

¹⁹ Swedish Supreme Court, case No. T 853-18, 23 January 2020.

²⁰ See [CCPR/C/FIN/CO/7](#) and [E/C.12/FIN/CO/7](#).

²¹ See [E/C.12/76/D/251/2022](#).

²² Russian Federation, Law No. 82-FZ of 1999, Law No.104-FZ of 2000 and Law No. 49-FZ of 2001.

²³ Russian Federation, Law No. 136-FZ of 2001 and Law No. 200-FZ of 2006.

communities may be required to compete with commercial interests for lands and natural resources.²⁴ Recent amendments have also reduced previous tax exemptions.²⁵

27. Greenland, a self-governing part of Denmark, combines collective and public ownership of land with extensive self-government under the 2009 Self-Government Act. The authorities of Greenland (the Parliament and the Government) effectively hold legislative and executive powers over management of land, waters and resources.²⁶ In Canada, modern treaties throughout Inuit Nunangat recognize Inuit ownership of land, co-management of natural resources and extensive self-government arrangements²⁷ within the overall recognition of the right to self-determination of the Inuit.²⁸

B. Demarcation and titling

28. Sámi lands have only been partly demarcated and titled. Sweden has historically demarcated only certain grazing areas,²⁹ while many customary rights continue to depend upon litigation before domestic courts.³⁰ In Finland, 90% of the land within the area that is designated as Sámi homeland is legally State land and is administered by the Finnish Forest and Park Enterprise.³¹ In 2025, the Sámi Truth and Reconciliation Commission concluded that Sámi land rights remain inadequately protected and recommended renewed efforts to recognize traditional land use rights.³² In Norway, the Finnmark Commission continues to investigate claims under sections 29 and 36 of the Finnmark Act but progress has been slow and relatively few claims of collective ownership have been recognized.³³ Concerns have been raised that the legal tests applied are costly and tend to favour conventional concepts of ownership rather than Indigenous patterns of seasonal and shared land use.

29. In the Russian Federation, although federal legislation provides for “territories of traditional nature use”, no such territories have been established at the federal level more than two decades on from the adoption of that legislation,³⁴ and most relevant lands remain under federal ownership. As a result, Indigenous communities continue to lack secure territorial recognition.³⁵

²⁴ Prina, F. and Tomaselli, A., “Land and fishing rights of indigenous peoples in Russia”, Committee on the Implementation of the Rights of Indigenous Peoples of the International Law Association (2016). See also Russian Federation, Federal Law No. 209-FZ of 2009 and Federal Law No.166-FZ of 2004.

²⁵ Russian Federation, Law No. 176-FZ. See also International Work Group for Indigenous Affairs, *The Indigenous World 2026*.

²⁶ See [A/HRC/54/31/Add.1](#).

²⁷ Inuvialuit Final Agreement, the Nunavut Agreement, the James Bay and Northern Quebec Agreement, the Nunavik Inuit Land Claims Agreement and the Labrador Inuit Land Claims Agreement.

²⁸ Inuit Nunangat Policy.

²⁹ Submission by Sámi Parliament of Sweden.

³⁰ Swedish Supreme Court, Nordmaling case, *Nytt Juridiskt Arkiv*, 2011, p. 109; submission by Sámi Parliament of Sweden.

³¹ See [A/HRC/33/42/Add.3](#), [CCPR/C/124/D/2668/2015](#) and [CCPR/C/124/D/2950/2017](#).

³² See <https://sdtsk.fi/en/2025/12/05/the-sami-truth-and-reconciliation-commission-in-finland-submitted-its-final-report/>.

³³ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 113th session (2025), p. 1,033.

³⁴ See [CERD/C/RUS/CO/25-26](#).

³⁵ Suliandziga, L. and Sulyandziga, R. and Cadena, A. “Russian Federation: Indigenous Peoples and land rights”, *Fourth World Journal*, vol. 20, No. 1, 2020.

C. Balancing Indigenous Peoples' land rights with competing interests

30. Throughout the Arctic, Indigenous Peoples' lands are affected by mining, energy projects, forestry, tourism, infrastructure, military expansion and geopolitical interests.

31. Sámi grazing areas and seasonal pastures have been significantly reduced.³⁶ In Norway, 89% of the Sámi reindeer husbandry grazing area has been affected. United Nations mechanisms have repeatedly expressed concern that cumulative impacts are insufficiently considered and that decisions continue to prioritize economic development over Indigenous Peoples' rights.³⁷

32. In parts of the Arctic, the adoption of the European Union's Critical Raw Materials Act has raised concerns about an increasing subordination of Indigenous Peoples' land rights to broader economic and security objectives.³⁸

33. Norway, Sweden and Finland have introduced legislation on consultation, rather than on free, prior and informed consent. Additionally, Indigenous Peoples have underlined that these consultations often take place after key policy decisions have been made.³⁹

34. The Government and Parliament of Greenland are responsible for managing land and natural resources and consulting local communities, according to the 2009 Self-Government Act. Consequently, disputes concerning mining projects, protected areas and other land uses are primarily matters between the authorities of Greenland and the communities directly affected. Concerns nevertheless remain regarding effective consultation, particularly in remote settlements.⁴⁰ Recently, Greenland's geostrategic location and natural resources have underscored the importance of respecting the Greenlandic people's right to self-determination.⁴¹

35. In the Russian Federation, concerns continue to be raised about inadequate consultation regarding extractive projects, increasing pressure on reindeer grazing lands, growing restrictions on Indigenous organizations and criminalization of Indigenous human rights defenders.⁴²

IV. Asia

A. Legal recognition

36. No Asian State has enacted specific legislation to recognize Indigenous Peoples' land rights over the nearly 20 years since the United Nations Declaration on the Rights

³⁶ Larsen, E., *The State of Sápmi*, vol. 1, International Work Group for Indigenous Affairs, 2015.

³⁷ A/HRC/33/42/Add.3, paras. 45 and 46, and E/C.12/SWE/CO/6, paras. 13 and 14 (d).

³⁸ International Work Group for Indigenous Affairs, *The Indigenous World 2026*.

³⁹ See A/HRC/33/42/Add.3, E/C.12/SWE/CO/6 and CCPR/C/SWE/CO/7, paras. 38 and 39. See also Larsen, E., *The State of Sápmi*, vol. 1, International Work Group for Indigenous Affairs, 2015.

⁴⁰ Ibid.

⁴¹ See www.ohchr.org/en/press-releases/2026/01/greenland-un-experts-urge-united-states-respect-international-law-and-right.

⁴² See E/C.12/RUS/CO/7, CERD/C/RUS/CO/25-26, A/HRC/60/59, A/80/382, communication RUS 3/2026, CERD/C/RUS/CO/25-26, E/C.12/RUS/CO/7 and CCPR/C/RUS/CO/8; and International Work Group for Indigenous Affairs, *The Indigenous World 2026*. See also www.ohchr.org/en/press-releases/2026/04/strategy-blattant-abuse-counter-terrorism-and-extremism-laws-destroy-russian.

of Indigenous Peoples was adopted. Yet, Asia is home to two thirds of the world's Indigenous Peoples, and over 30 Asian States voted in favour of the Declaration.

37. The legal frameworks governing Indigenous Peoples' land rights in Asia reveal three broad patterns.

38. First, few Asian States have enacted legislation recognizing Indigenous Peoples as collective owners of their ancestral lands and territories. The most comprehensive framework is the Indigenous Peoples' Rights Act of the Philippines, which recognizes collective ownership and possession of ancestral domains, including associated natural resources, sacred sites and hunting and fishing grounds.⁴³ In Cambodia, the Land Law recognizes Indigenous Peoples' right to collectively own traditional lands, and the Forestry Law protects customary use⁴⁴ and provides for the creation of community forests.⁴⁵ India's Forest Rights Act recognizes individual and collective rights of scheduled tribes and other traditional forest dwellers over forest lands and resources. In Indonesia, although legislation does not recognize Indigenous Peoples' ownership as such, the Constitutional Court's 2013 decision confirmed that customary forests are not State forests and reaffirmed Indigenous Peoples' territorial rights under the Constitution.⁴⁶

39. A second group of Asian States recognize limited rights for Indigenous Peoples to use or occupy their ancestral lands or give them restricted authority over traditional territories without recognizing collective ownership. These limited land rights are usually granted through sectoral laws, concerning forests and protected areas, among others. In Bangladesh, customary tenure continues to exist within the Chittagong Hill Tracts under special administrative arrangements.⁴⁷ In Malaysia, Indigenous Peoples exercise customary rights over parts of their traditional territories, while community use zones and traditional fishing zones have been established in some protected areas.⁴⁸ More recently, in 2025, Thailand adopted the Ethnic Way of Life Protection and Promotion Act, which provides some recognition of Indigenous Peoples' rights to land and natural resources within designated areas.⁴⁹

40. Third, many other Asian States, including Viet Nam and the Lao People's Democratic Republic, categorize Indigenous Peoples' lands as unowned, encroached or illegally reclaimed lands⁵⁰ and therefore regard such lands as State or public land, with no specific legal framework recognizing Indigenous Peoples' rights.

B. Demarcation and titling

41. In Asia, much of Indigenous Peoples' land is not registered or titled,⁵¹ including in countries where specific procedures for demarcation or titling have been established. Procedures are often lengthy, costly and administratively burdensome.

⁴³ Philippines, Republic Act No. 8371, chap. III, sect. 7.

⁴⁴ Arts. 25 and 26.

⁴⁵ Errico, S., "The Rights of Indigenous Peoples in Asia" (International Labour Organization, Geneva, 2017).

⁴⁶ See https://en.mkri.id/download/decision/pdf_Decision_35PUU-X2012.pdf.

⁴⁷ Roy, D., "The ILO Convention on Indigenous and Tribal Populations, 1957" (No. 107) and the laws of Bangladesh: A comparative review" (International Labour Organization, Dhaka, 2009).

⁴⁸ Submissions by the Asia Indigenous Peoples Pact and Jaringan Orang Asal Semalaysia. See also Jaringan Orang Asal Semalaysia, *Red & Raw: Indigenous Rights in Malaysia and the Law*, 2015.

⁴⁹ See <https://bangkok.ohchr.org/thailand-new-law-ethnic-groups>.

⁵⁰ Submission by Luong Huu Phu.

⁵¹ International Work Group for Indigenous Affairs, "Situation on Lands, Territories and Resources of Indigenous Peoples in Asia", 2019.

42. In Cambodia, few Indigenous communities have obtained communal land titles, despite the legal framework for collective ownership.⁵² In the Philippines, prolonged delays in issuing certificates of ancestral domain title have enabled the conversion of ancestral lands into plantations and other commercial developments.⁵³ In India, although millions of claims have been submitted under the Forest Rights Act, a substantial number remain unresolved, particularly community claims.⁵⁴

43. In Indonesia, following the 2013 Constitutional Court ruling, the Ministry of Agrarian and Spatial Planning introduced communal rights titles, which can be registered with the National Land Agency.⁵⁵ Indigenous Peoples founded the Ancestral Domain Registration Agency, which has reportedly facilitated the registration of millions of hectares, encompassing forests, rivers and seas. However, recognition of customary forests remains dependent upon prior State recognition of Indigenous communities, leaving many customary territories legally classified as State forests.⁵⁶ In Malaysia, large areas of customary lands are not demarcated and continue to be treated as State land, particularly where they overlap with forest reserves or protected areas.⁵⁷ In the Chittagong Hill Tracts of Bangladesh, much customary communal land has never been formally recorded. The Chittagong Hill Tracts Land Dispute Resolution Commission, established under the 1997 Peace Accord, has received more than 22,000 applications since its establishment, but no land dispute has been resolved to date.⁵⁸

C. Balancing Indigenous Peoples' rights with competing interests

44. Throughout Asia, Indigenous Peoples' land rights are systematically subordinated to mining, hydropower, agribusiness, infrastructure development, climate and conservation initiatives.⁵⁹

45. Few countries in Asia have adopted dedicated legal frameworks for consultation or free, prior and informed consent. The 1997 Indigenous Peoples' Rights Act of the Philippines remains the most comprehensive statutory regime.⁶⁰ In Nepal, consultation requirements are reflected in the Constitution, the implementation of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and sectoral legislation governing local government, environmental assessment, forests and protected areas. However, these elements do not establish a comprehensive statutory procedure for free, prior and informed consent.⁶¹ India and Indonesia provide for consultation or consent through sector-specific legislation, particularly in relation to forests, land and natural resources. However, across much of the region, consultations are rarely held before decisions are made.⁶² There are reported cases of Indigenous Peoples' consent

⁵² International Work Group for Indigenous Affairs, *The Indigenous World* 2026.

⁵³ See E/C.12/PHL/CO/7.

⁵⁴ Submission by Shanmitha M.

⁵⁵ Indonesia, Regulation 9/2015, revised by Regulation 10/2016. See also www.ijssh.org/vol7/876-SH0011.pdf.

⁵⁶ Indonesian National Human Rights Commission, National inquiry on the right of Indigenous Peoples on their territories in the forest zones, 2015.

⁵⁷ Submission by the Asia Indigenous Peoples Pact.

⁵⁸ See https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:4464553.

⁵⁹ Submissions by the Asia Centre, the Justice in Mining network, the Adivasi Women's Network and the Asia Indigenous Peoples Pact.

⁶⁰ See the Indigenous Peoples Basic Law (2005) and the Regulations for Consulting Indigenous Peoples or Tribes to Obtain Their Consent and Participation (2017).

⁶¹ See the Local Government Operation Act (2017), the Environment Protection Act (2019), Environment Protection Rules (2020) and the Forest Act (2019).

⁶² Submission by the Tebtebba Foundation.

being obtained through bribes, strategies to divide communities or “manufacture” consent,⁶³ deception, threats, systematic harassment, force and fatal violence.⁶⁴

46. Throughout Asia, the failure to protect Indigenous Peoples’ land rights has resulted in conflict and violence. In some cases, the military has been deployed to protect economic interests on Indigenous Peoples’ lands and has resorted to intimidation and violence, including bombing and killings.⁶⁵ In Indonesia, the Ministry of Defence backs “food estates”, strategic projects and other extractive initiatives in West Papua, deploying combat troops into Indigenous Peoples’ lands. This has resulted in multiple instances of human rights violations.⁶⁶ In the Philippines, Indigenous Peoples’ opposition to mining has been framed as “terrorism”, thus justifying the militarization of Indigenous territories under the Anti-Terrorism Act of 2020 and the Mining Act of 1995. In Malaysia, the rights of Indigenous Peoples in Sabah are enshrined in the Sabah Land Ordinance of 1930 (revised in 1996), which forms the legal basis for native customary rights to land and forest resources. Nevertheless, a nature conservation agreement granting a private company exclusive rights over 2 million hectares of forest located within the Indigenous Peoples’ ancestral territories was allegedly signed without respecting their rights to consultation and free, prior and informed consent.⁶⁷

47. In Bangladesh, the Chittagong Hill Tracts have been heavily militarized, with security forces establishing camps and training centres on Indigenous Peoples’ lands, while supporting land-grabbing by settlers.⁶⁸ In some cases, violence against Indigenous women is used as a tool to evict Indigenous people from their land, and impunity prevails.⁶⁹

48. Across the region, Indigenous land defenders are increasingly subjected to arbitrary arrest and detention, intimidation, threats, enforced disappearance, extrajudicial killing and legal harassment, including through unfounded lawsuits.⁷⁰ In many countries, Indigenous land defenders have been labelled “terrorists”, “insurgents”, “foreign agents” or “anti-development actors”, subjected to criminalization through fabricated charges and, in some cases, extrajudicially killed.⁷¹ In Bangladesh, a pattern of criminalization and judicialization of Indigenous community leaders has been documented.⁷² Moreover, Indigenous women, who are frequently at the forefront of the defence of Indigenous territories, face targeted violence, while remaining in many cases excluded from consultations and decision-making within their communities.⁷³

V. Latin America

49. Latin America has some of the most advanced legal frameworks for Indigenous Peoples’ land rights. However, nearly two decades after the adoption of the United

⁶³ Submissions by the Justice in Mining network, the Adivasi Women’s Network and Tebtebba.

⁶⁴ See [CCPR/C/PHL/CO/5](#) and [A/HRC/56/46/Add.2](#).

⁶⁵ See [A/HRC/56/46/Add.2](#) and [E/C.12/IDN/CO/2](#).

⁶⁶ See communication IDN 8/2025.

⁶⁷ See communication MYS 3/2023.

⁶⁸ See communications BGD 5/2025, BGD 4/2025, BGD 3/2022, BGD 8/2020 and BGD 2/2018.

⁶⁹ www.ohchr.org/en/press-releases/2022/12/bangladesh-un-expert-concerned-about-non-implementation-chittagong-hill.

⁷⁰ See [E/C.12/LAO/CO/1](#), [E/C.12/IDN/CO/2](#), [A/HRC/59/45/Add.2](#), [CCPR/C/IDN/CO/2](#), [A/HRC/56/46/Add.2](#) and [CERD/C/THA/CO/4-8](#). See also International Work Group for Indigenous Affairs, *The Indigenous World 2026*.

⁷¹ Submissions by the Asia Indigenous Peoples Pact, Tebtebba and the Asia Centre.

⁷² See communications OTH 56/2025 and BGD 3/2025.

⁷³ See [A/HRC/59/45/Add.2](#).

Nations Declaration on the Rights of Indigenous Peoples, effective protection of these rights remains limited due to slow demarcation, competing interests, insecurity, violence and setbacks.

A. Legal recognition

50. In recent decades, most Latin American countries have recognized Indigenous Peoples' land rights, prompted by the mobilization of Indigenous Peoples, constitutional and legal reforms, the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and evolving jurisprudence.⁷⁴ The Declaration on the Rights of Indigenous Peoples was expected to build on those achievements and further strengthen the legal basis of those rights in Indigenous Peoples' self-determination.

51. The recognition of Indigenous Peoples' land rights in the region can be classified into four broad approaches.

52. The first group of States regard Indigenous Peoples' land rights as inherent, deriving not from State authority or recognition, but from their status as equal nations possessing the right to self-determination.⁷⁵ The Constitutions of Ecuador and the Plurinational State of Bolivia recognize that they are plurinational States. Ecuador's Constitution guarantees Indigenous Peoples' collective ownership of communal lands with no time limits, protecting them from alienation, division, seizure and taxation.⁷⁶ The Bolivian Constitution affirms Indigenous Peoples' rights to self-determination and collective ownership as central to their territorial rights.

53. A second group of countries recognize Indigenous Peoples' inherent land rights based on ancestral ownership and use.⁷⁷ The Constitution of Argentina recognizes the cultural pre-existence of Indigenous Peoples and guarantees community possession and ownership of their traditional lands.⁷⁸ Article 231 of the Constitution of Brazil recognizes Indigenous Peoples' "original rights" over the lands they traditionally occupy. The Constitution of Nicaragua acknowledges the distinct identity of Indigenous Peoples as the constitutional basis for recognition of their collective rights.⁷⁹ The Constitution of the Bolivarian Republic of Venezuela grounds Indigenous Peoples' land rights in the recognition of their existence and their original relationship with their ancestral lands and habitats.⁸⁰

54. A third group of States, including Colombia,⁸¹ Mexico⁸² and Panama,⁸³ legally recognize Indigenous Peoples' territories as an integral part of the State administrative architecture. These arrangements enable Indigenous Peoples to exercise authority over some aspects of territorial governance, including customary institutions, local decision-making and land management. The establishment of the *comarcas* (Indigenous territories) in Panama between 1938 and 2000 is a strong

⁷⁴ Economic Commission for Latin America and the Caribbean (ECLAC), "Guaranteeing indigenous people's rights in Latin America", 2014; ECLAC, "Los pueblos indígenas de América Latina – Abya Yala y la Agenda 2030 para el Desarrollo Sostenible", 2020.

⁷⁵ A/80/181, para. 30.

⁷⁶ Arts. 57 and 60.

⁷⁷ A/80/181, para. 30.

⁷⁸ Art. 75.17.

⁷⁹ Art. 5.

⁸⁰ Art. 119.

⁸¹ Constitution, arts. 287 and 330.

⁸² Constitution, art. 2.

⁸³ Law No. 2 of 1938, Law No. 16 of 1953, Law No. 22 of 1983, Law No. 24 of 1996 and Law No. 34 of 2000.

example of such protection.⁸⁴ In Colombia, Indigenous authorities are recognized as State agents with some level of official jurisdiction over their territories.

55. Several countries within the first three categories provide additional legal safeguards for Indigenous Peoples' recognized land rights. The normative frameworks of Argentina,⁸⁵ Bolivia (Plurinational State of),⁸⁶ Brazil,⁸⁷ Costa Rica,⁸⁸ Ecuador,⁸⁹ Paraguay,⁹⁰ Peru⁹¹ and Venezuela (Bolivarian Republic of)⁹² expressly provide that Indigenous Peoples' lands are inalienable and may not be sold, transferred or seized.

56. A fourth group of States provides only limited use rights. In Suriname, Indigenous Peoples' lands are considered State property, with access mainly based on actual occupation, administrative tolerance or temporary policy arrangements.⁹³ In Jamaica, a State-sanctioned narrative of "Indigenous extinction" continues to impede the recognition of Indigenous Peoples' rights, particularly in relation to the Yamaye and Maroon communities.⁹⁴

57. Even where Indigenous Peoples' land rights are legally recognized, significant limitations remain. Some countries have introduced "cut-off" dates for land rights. In Nicaragua, Indigenous Peoples' historical occupation prevails only over titles granted after the adoption of the Constitution.⁹⁵ In Brazil, the *marco temporal*, which has been declared unconstitutional by the Supreme Federal Court, restricts Indigenous Peoples' land rights to territories physically occupied as of the date of the adoption of the Constitution.⁹⁶

58. In many countries, recognized land rights do not encompass waters, coastal seas and the renewable resources pertaining to lands.⁹⁷ In Peru, land suitable for forestry is excluded from collective titling and subject only to concessions of use granted by the State, which remain revocable.⁹⁸

59. Other countries grant Indigenous Peoples user rights over, but not full ownership of, coastal and marine resources. In Nicaragua, Indigenous communities on the Caribbean coast have exclusive rights to artisanal and community fishing within certain maritime zones.⁹⁹ Chile has established marine coastal areas of Indigenous Peoples to protect customary uses.¹⁰⁰ Many States retain ownership over subsoil resources and recognize, at best, Indigenous Peoples' right to consultation.

⁸⁴ A/HRC/27/52/Add.1, para. 13.

⁸⁵ Constitution, art. 75.17.

⁸⁶ Constitution, art. 395.III.

⁸⁷ Constitution, art. 231.4.

⁸⁸ Law No. 6172 of 29 November 1977.

⁸⁹ Constitution, art. 57.4.

⁹⁰ Constitution, art. 64.

⁹¹ Law Decree No. 22175, art. 13.

⁹² Constitution, art. 119.

⁹³ Submission by Platform Oorspronkelijke Rechten Inheemsen.

⁹⁴ Submission by Yamaye Guani Council.

⁹⁵ Law No. 445 of 2003, art. 35.

⁹⁶ See www.ohchr.org/en/statements-and-speeches/2023/06/brazil-un-expert-concerned-about-legal-doctrine-threatening.

⁹⁷ See, for example, the Constitution of Argentina, art. 75.

⁹⁸ Law Decree No. 22175, art. 11. See also www.ohchr.org/en/press-releases/2024/02/peru-changes-forestry-law-will-threaten-survival-indigenous-peoples-un.

⁹⁹ Law No. 445 of 2003, art. 33.

¹⁰⁰ Law No. 20249 of 2008.

B. Demarcation and titling

60. The absence of land demarcation and titling is a major obstacle to Indigenous Peoples enjoying their land rights in the region. This is recognized by domestic courts and the Inter-American human rights system.¹⁰¹

61. Administrative barriers such as complex procedures, excessive bureaucracy, inadequate resources and fragmented land systems hinder recognition of Indigenous territories. Political and economic interests, including interference, competing claims, extractive concessions and recognition of third-party rights, constitute additional barriers. Overlapping conservation areas often restrict Indigenous land use, while insecurity from armed groups, conflicts, remoteness and third-party objections delay progress.¹⁰² Some Indigenous Peoples face arbitrary or illegal allocation of their traditional lands to third parties.¹⁰³

62. There are, however, emerging positive practices in the region, including where Indigenous Peoples actively participate in all stages of demarcation and titling.¹⁰⁴ In Colombia and Brazil, partnerships between Indigenous organizations, civil society and public institutions have strengthened technical and legal support for territorial recognition and enhanced Indigenous Peoples' capacity to defend territorial rights.¹⁰⁵ In the Peruvian Amazon, an Indigenous organization has signed inter-institutional agreements with the State to support land titling procedures and promote participatory methodologies. Moreover, various Indigenous Peoples have carried out processes of "self-demarcation" of their territories as a complementary strategy to protect them.¹⁰⁶

C. Balancing Indigenous Peoples' land rights with competing interests

63. Across the region, there is a deeply concerning trend of stagnation or even regression in the protection of Indigenous Peoples' lands.

64. Legislative regression is evident in numerous countries that have amended or are attempting to amend existing legal or policy frameworks in ways that weaken protections for Indigenous Peoples' land rights in order to advance extractive industries, renewable energy projects, agrobusiness and large-scale infrastructure projects. Notable cases include the *marco temporal* in Brazil and initiatives in Argentina, Nicaragua and Guatemala.¹⁰⁷

65. Many Latin American countries have consultation laws for Indigenous Peoples, but these often do not meet the standards for free, prior and informed consent.¹⁰⁸

¹⁰¹ Inter-American Court of Human Rights, *Indigenous Communities members of the Lhaka Honhat (Our Land) Association v. Argentina* (2020); Inter-American Court of Human Rights, *Indigenous Maya Q'eqchi' Agua Caliente Community v. Guatemala* (2023).

¹⁰² Submission by the Indian Law Resource Center.

¹⁰³ Submissions by Nacionalidad Siekopai del Ecuador, Centro de Derechos Humanos de la Montaña Tlachinollan, Centro de Asistencia Legal a Pueblos Indígenas, Cultural Survival, Amazon Conservation Team, Indian Law Resource Center and Asociación Intercultural Bari Wesna.

¹⁰⁴ See submission by the Centro de Asistencia Legal a Pueblos Indígenas.

¹⁰⁵ Submission by the Amazon Conservation Team.

¹⁰⁶ Submission by the Indian Law Resource Center.

¹⁰⁷ See, for example, Argentina, Law No. 27.742 of 2024 creating the Incentive Regime for Major Investments; Nicaragua, Law No. 1258 (Ley de Territorio Fronterizo); or Guatemala, Law No. 6663 (Ley Especial de Regularización de Tierras otorgadas por Jefes de Estado). See also Tatiana Alfonso Sierra, Ana Braconnier De León and Rachel Sieder, "Indigenous Peoples and Land Claiming in Latin America", *Annual Review of Law and Social Science*, 2025, vol. 21: 249–267.

¹⁰⁸ See Constitutional Court of Ecuador, Decision No. 273-19-JP.

Consultations are frequently held after decisions are made, focus on procedural formalities, or lack meaningful participation of Indigenous Peoples.¹⁰⁹ Sometimes, agreements are made with selected individuals who do not represent the affected communities.¹¹⁰

66. Throughout the region, Indigenous Peoples' land rights are threatened by rising insecurity caused by organized crime and criminal groups occupying and controlling their territories, especially in border, forest and remote areas. Many countries have increased their military presence in Indigenous territories, often under states of emergency and by portraying Indigenous Peoples as security threats or criminal accomplices, as has been the case in Ecuador.¹¹¹ Since 2022, Chile has enforced a constitutional state of emergency in its southern regions due to violence linked to historical land disputes, with anti-terrorism laws applied against the Mapuche.¹¹² In Mexico, the State has intervened in Indigenous territories, often invoking violence or the presence of organized crime.

67. Latin America remains one of the most dangerous regions for Indigenous land and environmental defenders, as criminal and economic actors exploit weak governance and delayed recognition of Indigenous territories. Indigenous land defenders face intimidation, criminalization, arbitrary arrest, detention, forced disappearance, torture and even death. In 2024, about two thirds of human rights defenders who were killed or disappeared were Indigenous persons.¹¹³

68. Impunity for attacks against Indigenous leaders remains widespread, while protection mechanisms only exist in few States.¹¹⁴ In response, some Indigenous Peoples have established their own community security groups and territorial monitoring mechanisms to protect their territories, such as the *guardia indígena*.¹¹⁵

69. The Special Rapporteur on the rights of Indigenous Peoples has documented a pattern of attacks against Indigenous leaders, especially women leaders, to undermine the spirit and resilience of Indigenous communities.¹¹⁶ Likewise, he has observed attacks against Indigenous community security groups, which are sometimes perceived by States, criminal networks and land grabbers as threats to their interests. United Nations human rights mechanisms have consistently urged States not to criminalize Indigenous Peoples and to guarantee their protection from non-State criminal actors.¹¹⁷

70. The non-implementation of rulings by domestic courts and the Inter-American Court of Human Rights is another illustration of the trend of regression and stagnation

¹⁰⁹ Submission by the Centro de Derechos Humanos de la Montaña Tlachinollan.

¹¹⁰ Submission by Right Livelihood.

¹¹¹ Submission by Nacionalidad Siekopai del Ecuador.

¹¹² Submission by the Centro de Estudios e Investigaciones Comunidad de Historia Mapuche. See also www.gob.cl/en/news/president-boric-participates-in-launch-of-presidential-commission-for-peace-and-understanding-and-announces-its-members/?__cf_chl_f_tk=slQ4.EnFp9TA63O16l.tkq_Pfe6aCpKH2xHS58YcG.8-1783263370-1.0.1.1-q7V0nMtJZoSg8AIXZuMilaCgN8mlz9XbC8c3QHsD3bs.

¹¹³ Global Witness, *Roots of Resistance*, 2025, and www.ohchr.org/en/press-releases/2025/11/un-experts-condemn-deadly-attack-guarani-and-kaiowa-indigenous-peoples. See also communications COL 3/2026, MEX 2/2026, MEX 1/2026, MEX 14/2025, BRA 6/2025, BOL 2/2025, NIC 2/2025 and GTM 5/2025.

¹¹⁴ Submissions by the Government of Costa Rica, Amazon Conservation Team and Centro de Derechos Humanos de la Montaña Tlachinollan.

¹¹⁵ See submission by Centro de Derechos Humanos de la Montaña Tlachinollan and www.alianzaceibo.org/guardia-indigena-ejerciendo-derechos-defendiendo-vida-y-territorio/.

¹¹⁶ See A/HRC/39/17.

¹¹⁷ See, for example, A/HRC/46/35.

on Indigenous Peoples' land rights in the region.¹¹⁸ There have also been challenges to the inter-American system, which has become a last resort for many Indigenous Peoples in the region, including setbacks and discussions on precautionary measures.

VI. North America

71. Although Indigenous Peoples are recognized, to varying degrees, as sovereign nations in both Canada and the United States of America, they do not exert full control over their lands, territories, resources and lives.

72. In 2021, Canada's Federal Government passed the United Nations Declaration on the Rights of Indigenous Peoples Act and adopted an action plan in 2023, although its impact remains to be seen.

A. Legal recognition

73. Indigenous Peoples' land rights in Canada and the United States are recognized in a variety of historical and modern treaties and other agreements, court cases, constitutional provisions and laws. In both countries, these legally recognized rights include harvesting and other use rights, rights to live on land held in trust by the State and, in rare instances, recognized titles to own, control and benefit from their traditional lands, territories and resources.

74. Indigenous Peoples and States frequently dispute treaty interpretations. Canada and the United States assert that Indigenous Peoples relinquished land rights, while Indigenous Peoples see treaties as agreements to share lands without surrendering rights.¹¹⁹ In addition, not all Indigenous Peoples of the region are recognized by the State.¹²⁰ In the United States, while over 500 tribes have been federally recognized, hundreds more are seeking recognition.¹²¹

75. In both countries, there are "reservations" or "reserves", where the State or the Crown holds land in trust for Native Americans and First Nations. Recognition of reserve lands has not prevented the theft and expropriation of these lands, however. In Canada, the 1996 Royal Commission on Aboriginal Peoples found that since Canada's formation in 1867, Indigenous Peoples had lost about two thirds of supposedly protected lands. In the United States, on many reservations, Indigenous and non-Indigenous individuals reside, work and own property,¹²² leading to complicated land use and jurisdictional arrangements, amid shared values regarding sustainability and self-determination.¹²³

76. However, there is no such reserve or reservation system for Inuit or Métis lands in Canada or in the State of Hawaii. In Alaska, the reserve system was abolished by the 1971 Alaska Native Claims Settlement Act, with lands now held primarily through a system of native-run corporations.¹²⁴ In Hawaii, Indigenous Peoples maintain rights to use lands and water consistent with their customs and traditions.¹²⁵

¹¹⁸ See, for example, *Saramaka People v. Suriname* and *Garífuna Afro-Indigenous Communities v. Honduras*.

¹¹⁹ Fumoleau, R., *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11* (Calgary: University of Calgary Press, 2004).

¹²⁰ Submissions by 7 Directions of Service and Winnemem Wintu Tribe.

¹²¹ Submission by Winnemem Wintu Tribe.

¹²² Royster, J., "The Legacy of Allotment", *Arizona State Law Journal* (1995).

¹²³ Carpenter, K., and Riley, A., "Privatizing the Reservation?", *Stanford Law Review*, vol. 71 (2019).

¹²⁴ See [A/HRC/21/47/Add.1](#).

¹²⁵ Hawaii Constitution, art. XII, sect. 7 (1978).

77. In the United States, many lands within Indigenous Peoples' traditional territories remain under "public" ownership and management by the federal or state government, or under private ownership by individuals and entities. On these lands, non-Indigenous entities generally possess authority to determine land use and development, subject to federal requirements for consultation with tribal governments.

78. In addition, "aboriginal title" is excluded from legal recognition, protection or compensation under the Constitution of the United States.¹²⁶ However, a federal court recently cited the United Nations Declaration on the Rights of Indigenous Peoples, laying the groundwork for a settlement recognizing the rights of Jemez Pueblo to ongoing uses of aboriginal title lands.¹²⁷

B. Demarcation and titling

79. In Canada, existing reserves are listed as Crown-held parcels in land registries. The specific claims process addresses the return of Indigenous lands wrongfully taken by the Crown. Processes such as "treaty land entitlement claims" and "additions to reserve" are key steps in formal demarcation and titling processes.¹²⁸

80. Indigenous Peoples participate by supplying evidence, negotiating and litigating.¹²⁹ However, these processes are expensive, legally challenging and time-consuming, sometimes lasting decades.¹³⁰ Some Indigenous groups have left claim proceedings because of high costs and long delays.¹³¹

81. In 2024, Canada and the Manitoba Métis Federation (the government of the Red River Métis) signed the Red River Métis Self-Government Recognition and Implementation Treaty.¹³² In 1993, Canada and the Tunngavik Federation of Nunavut signed the Nunavut Land Claims Agreement, granting Inuit ownership of over 350,000 km² in Nunavut, the largest Indigenous land claim settlement in Canadian history.¹³³

82. The United States established the Indian Claims Commission in 1946 to address historical dispossession, but the Commission only offered monetary compensation, which many Indigenous Peoples rejected, leaving land claims unresolved.¹³⁴

C. Balancing competing interests

83. Often, Indigenous Peoples' rights are not safeguarded when they compete with economic interests. Approving resource development projects without Indigenous

¹²⁶ United States Supreme Court, *Tee-Hit-Ton Indians v. United States* (1955).

¹²⁷ United States Court of Appeals for the Tenth Circuit, *Pueblo of Jemez v. United States* (16 October 2024). See also www.doi.gov/pressreleases/interior-department-signs-settlement-agreement-recognizing-jemez-pueblos-rights.

¹²⁸ Submissions by Shirina Evans and Saba Ahmad.

¹²⁹ Ibid.

¹³⁰ Submission by Shirina Evans.

¹³¹ See [A/HRC/54/31/Add.2](#).

¹³² The second reading by the House of Commons is currently under way; once that process has been completed, the Treaty will become part of Canadian law. See www.mmf.mb.ca/news/red-river-metis-self-government-recognition-and-implementation-treaty-goes-to-second-reading-in-the-house-of-commons.

¹³³ See <https://nlca.tunngavik.com>.

¹³⁴ Submission by the Association on American Indian Affairs and the Trust for Public Land.

Peoples' consent or allowing unrestricted mineral staking has caused conflicts in Canada and the United States.¹³⁵

84. Indigenous Peoples defending their lands are subjected to police surveillance, harassment and excess use of force; injunctions and other costly court proceedings; criminal charges and incarceration; and economic pressures.¹³⁶ A link has also been noted between the presence of extractive industries in Indigenous territories and increased rates of gender-based violence, including trafficking.¹³⁷

85. In addition, legislative reforms are being promoted to make it easier to approve projects deemed to be of "national interest", often at the expense of Indigenous Peoples' land rights and self-determination. Examples include the One Canadian Economy Act, the Protect Ontario by Unleashing our Economy Act, and British Columbia's Renewable Energy Projects (Streamlined Permitting) Act and Infrastructure Projects Act.

86. Regarding consultation and free, prior and informed consent, consultation with Indigenous Peoples is frequently treated as a mere procedural requirement, lacking substantive effect.¹³⁸ The State, at federal or other levels, holds broad authority over Indigenous Peoples' lands and can make decisions affecting their territories without obtaining their consent.

87. The creation or expansion of natural parks and conservation areas often leads to Indigenous Peoples being excluded and criminalized for harvesting, cultural practices, and movement on their own territories. In addition, Indigenous Peoples' lands and territories are accessed and used for military and national security reasons, often without Indigenous Peoples' free, prior and informed consent.¹³⁹ The Department of Agriculture was recently ordered to transfer a sacred site to a major mining company, over the objections of the Apache people, who practice their religion at the site.¹⁴⁰

88. In the United States, a positive example is the agreement for joint or cooperative management of national parks and monuments between Indigenous Peoples and federal land agencies. For instance, Bears Ears National Monument is co-managed by an inter-tribal commission.¹⁴¹ In addition, the Department of the Interior and related agencies have recently referenced the United Nations Declaration on the Rights of Indigenous Peoples, especially its provisions on free, prior and informed consent, as best practices for safeguarding Indigenous rights regarding sacred sites on federal lands.¹⁴²

¹³⁵ Submission by Saba Ahmad. See also [E/2024/43](#), para. 30.

¹³⁶ Submission by Shirina Evans.

¹³⁷ See [CEDAW/C/CAN/CO/10](#).

¹³⁸ Submissions by the Association on American Indian Affairs and the Trust for Public Land, Charles Hookimaw, and Mikisew Cree First Nation. See also [CCPR/C/CAN/CO/7](#) and [CERD/C/USA/CO/10-12](#).

¹³⁹ Submission by the Indian Law Resource Center.

¹⁴⁰ See www.ohchr.org/sites/default/files/documents/hrbodies/cerd/earlywarning/letters/cerd-ewuap-letter-115-usa2.pdf.

¹⁴¹ See <https://nps.history.com/publications/blm/bears-ears/psf-v41n3-2025.pdf>.

¹⁴² United States Department of the Interior, "Advancing the United Nations Declaration on the Rights of Indigenous Peoples" (2025).

VII. The Pacific

A. Legal recognition

89. Like other regions, the Pacific is seeing a trend towards the erosion of Indigenous Peoples' land rights through regressive laws and policies in certain countries.¹⁴³

90. Since the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, Australia has not enacted any major law recognizing Indigenous Peoples' land rights. The 1993 Native Title Act, enacted after the Mabo decision that rejected the *terra nullius* doctrine, recognized that Indigenous Peoples hold native title to their traditional lands and waters, in accordance with their laws and customs. In 1998, amendments introduced to the Native Title Act diminished the level of protection granted to Indigenous Peoples' land rights, as highlighted by the Committee on the Elimination of Racial Discrimination.¹⁴⁴

91. The minimal progress on Indigenous Peoples' land rights in Australia has mainly come through court cases, such as *Commonwealth of Australia v. Yunupingu* in 2025, where compensation was awarded for native title violations. In another recent case, Fortescue mining was ordered by the Federal Court of Australia to pay the Yindjibarndi Indigenous People over 100 million United States dollars in compensation for the impairment and extinguishment of native title rights arising from the development of Fortescue's Solomon Hub iron ore project.¹⁴⁵

92. The former mandate holder, James Anaya, noted positive developments during his 2011 country visit to New Zealand. He said that New Zealand had made significant strides to advance the rights of Māori People, including by expressing support for the United Nations Declaration on the Rights of Indigenous Peoples and by taking steps to repeal and reform the 2004 Foreshore and Seabed Act.¹⁴⁶ However, recently, progress on the land rights provisions contained in the Treaty of Waitangi has slowed, encountering obstacles and setbacks, characterized as a "trend of a persistent erosion of the rights of Māori Indigenous Peoples through regressive legislations and policies that would breach [the country]'s international obligations".¹⁴⁷

93. Māori land rights still lack constitutional recognition. While court decisions have acknowledged Māori customary ownership as part of common law, various laws over time have reduced these protections by converting group ownership into individual titles that can be sold, through the Māori Land Court.¹⁴⁸

94. In the absence of a comprehensive constitutional guarantee, the recognition and protection of Māori land rights are scattered through general legislation, Treaty settlement statutes, and judicial interpretations of the Treaty of Waitangi. These rights therefore remain vulnerable to political override, resulting in their insecurity and instability. For example, the Marine and Coastal Area (Takutai Moana) Act 2011 grants Māori Indigenous Peoples certain rights over marine and coastal areas through "customary marine title", although these rights remain subject to State-defined titles and conditions. An amendment to this Act was introduced in 2024, imposing stricter

¹⁴³ See communication NZL 2/2025.

¹⁴⁴ See [CERD/C/54/Misc.40/Rev.2](#).

¹⁴⁵ Federal Court of Australia, *Yindjibarndi Ngurra Aboriginal Corporation RNTBC v. State of Western Australia* (2026).

¹⁴⁶ [A/HRC/18/35/Add.4](#), para 66.

¹⁴⁷ See communication NZL 2/2025.

¹⁴⁸ Submission by New Zealand Human Rights Commission; Waitangi Tribunal, Rangahaua Whānui series; Boast, R., "Foreshore and Seabed, Again", *New Zealand Journal of Public and International Law* (2011).

requirements on Māori, including a requirement to demonstrate “exclusive use and occupation” of a defined area from 1840 to present without “substantial interruption”.¹⁴⁹ In addition, recent debates over “Treaty principles” legislation underscore the ongoing weakening of legal protection of Māori land rights and reveals their fragility and exposure to unilateral legislative extinguishment.¹⁵⁰

95. Other countries in the region recognize Indigenous Peoples’ land rights based on customary law. In Papua New Guinea, for example, where Indigenous Peoples own approximately 90% of the land under customary tenure,¹⁵¹ a Customary Land Tenure Bill is currently under consideration by the Parliament, with a view to enhancing tenurial protections for customary landowners, including by establishing a clan registry and a customary lands registry.¹⁵² In New Caledonia, the Nouméa Agreement provides the overall framework for the recognition of Indigenous Peoples’ customary rights.¹⁵³

B. Demarcation and titling

96. In Australia, the Native Title Act regulates the processes for determining native title rights, requiring proof of uninterrupted connection to the area claimed according to traditional laws and customs. This is an extraordinary challenge and burden of proof in the context of the historical forced removal and dispossession of Indigenous Peoples in Australia. In most cases, Indigenous Peoples require legal assistance given the complexities of the process and the various issues that may need addressing, including competing overlapping claims.¹⁵⁴ On average, procedures last 5–15 years and fees may be prohibitive.

97. Surveying remote areas is difficult, bureaucracy slows progress, and overlapping land claims cause disputes and sometimes result in criminal charges against land defenders.¹⁵⁵ Although Indigenous Peoples should play a key role in demarcation, courts ultimately decide boundaries, especially when communities’ accounts differ.

98. In New Zealand, for land that is legally designated as Māori land, the processes of demarcation and titling require a survey, an application to the Māori Land Court or relevant authorities, and subsequent registration. The legally recognized holders are generally trusts or incorporations established pursuant to State legislation.¹⁵⁶ These processes are often expensive, technically complex and lengthy, particularly when boundaries are disputed; final authority on boundaries lies with the relevant authorities of the State. As of 2025, the Government has reportedly signed a total of 100 deeds of settlement.¹⁵⁷ However, these demarcation and titling arrangements have also transformed overlapping, seasonal and spiritual connections to land and waters

¹⁴⁹ Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2025.

¹⁵⁰ Submission by the New Zealand Human Rights Commission. See also communication NZL 2/2025.

¹⁵¹ Submission by Humanity and Nature Indigenous Women’s Association.

¹⁵² See <https://papuanewguinea.un.org/en/311690-historic-step-forward-customary-land-reform-papua-new-guinea>.<https://papuanewguinea.un.org/en/311690-historic-step-forward-customary-land-reform-papua-new-guinea>

¹⁵³ Art. 14.

¹⁵⁴ Submission by Gwynette Govardhan.

¹⁵⁵ Submission by Mijica Rose Lus.

¹⁵⁶ Submission by the New Zealand Human Rights Commission.

¹⁵⁷ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=39168>.

into defined parcels assigned to individual owners, resulting in alienation and undermining collective governance structures.¹⁵⁸

99. In New Caledonia, the Rural Development and Land Planning Agency, which is tasked, under the Nouméa Accord, with managing land reform and surveying and registering customary lands, has achieved the restitution of more than 115,000 hectares of land to the Indigenous Kanak People. However, demarcating the land according to traditional Indigenous boundaries (such as vegetation and sacred ridges) poses a challenge to static Western geographic information systems, requiring hybrid, participatory approaches.¹⁵⁹

C. Balancing competing interests

100. In both Australia and New Zealand, Indigenous Peoples have been resorting to courts, advocacy campaigns and United Nations mechanisms for the protection of their land rights.

101. In Australia, the future acts regime under the Native Title Act gives native title holders and claimants procedural rights, including the right to be consulted and negotiate, when their lands or waters are used for activities such as mining or infrastructure projects by the Government or the private sector. However, Indigenous Peoples often have less bargaining power in negotiations due to factors such as limited resources, information gaps, tight timelines and the statutory requirements of the National Native Title Tribunal.¹⁶⁰

102. In New Zealand, in practice, Indigenous Peoples' land rights are frequently subordinated to State and commercial interests.¹⁶¹ Often sectoral laws governing conservation, mining, energy, infrastructure and climate or biodiversity initiatives can authorize activities on or affecting Indigenous Peoples' lands and waters without their free, prior and informed consent. Under environmental and conservation legislation, sometimes protected status is superimposed on Indigenous ancestral territories while limiting customary use and decision-making.¹⁶² Whereas consultation with Indigenous Peoples is required by some laws and policies in relation to decision-making about lands, resources, fisheries and conservation, among other matters, consultation procedures are reportedly applied inconsistently, and are not always in accordance with Indigenous Peoples' decision-making procedures.¹⁶³ There are also cases of Indigenous land defenders being pressured or attacked in public media.

103. In Papua New Guinea, Indigenous Peoples' lands have commonly been affected by special agricultural business leases, alienating customary land through compulsory acquisitions, and by urban expansion, with the Government allegedly facilitating land grabbing by corporations and elites and failing to enforce environmental legislation to prevent and counteract industrial dumping on or affecting Indigenous territories.¹⁶⁴ In some cases, Indigenous communities were coerced or misled into signing agreements they did not understand. Compensation paid is reportedly inadequate and irregular, and few benefits flow from the projects into the communities as they are

¹⁵⁸ Boast, R., "Foreshore and Seabed, Again", *New Zealand Journal of Public and International Law* (2011).

¹⁵⁹ Submission by Jannai Tokotoko and Alosio Ghislain.

¹⁶⁰ A future act determination is a decision made by the Tribunal about whether a future act that has gone through the right to negotiate process may be done, may be done subject to conditions, or must not be done.

¹⁶¹ Submission by the New Zealand Human Rights Commission.

¹⁶² Ibid.

¹⁶³ See [A/HRC/18/35/Add.4](#).

¹⁶⁴ Submission by Humanity and Nature Indigenous Women's Association.

captured by elites or mismanaged by the State. In particular, Indigenous women are excluded from decision-making and benefit-sharing.¹⁶⁵ Moreover, those living in villages near mining sites and along mining corridors are victims of violence and harassment.¹⁶⁶ Criminalization of Indigenous Peoples defending their rights is common.¹⁶⁷

104. Across the region, Indigenous land and environmental defenders who oppose projects or assert rights to rivers, forests and coastal areas may encounter significant pressure, including public vilification, legal proceedings and police harassment.¹⁶⁸

VIII. Conclusions and recommendations

105. **The adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007 has enhanced the recognition and protection of Indigenous Peoples' land rights in few regions only. Too many States still fall short of the standards, and a wide implementation gap persists worldwide. The Special Rapporteur is deeply concerned about the trend of stagnation or even regression in the protection of Indigenous Peoples' land rights in many States.**

106. **Across the world, Indigenous Peoples continue to face major obstacles in securing legal recognition, demarcation, titling and effective protection of their lands, territories and resources. Delayed implementation often amounts to a denial of rights. Only few States have fully implemented the broader conception of ownership, control and self-determination reflected in the United Nations Declaration on the Rights of Indigenous Peoples and take into account and respect the special significance and integrity of Indigenous Peoples' territories.**

107. **A structural bias against Indigenous Peoples, their land uses and their ways of life, deeply rooted in historical and ongoing patterns of discrimination, still permeates legislative frameworks, particularly affecting mobile Indigenous Peoples, Indigenous Peoples in voluntary isolation or initial contact, and Indigenous Peoples with marine or coastal territories. The result is that economic and other interests systematically prevail over the protection of Indigenous Peoples' land rights.**

108. **At the global scale, Indigenous Peoples' land rights are under threat from extractive industries, renewable energy and critical minerals, infrastructure development, conservation initiatives, climate-related measures and security policies.**

109. **Free, prior and informed consent remains inadequately implemented. In many countries, consultation has become a procedural formality or is manipulated to legitimize infringements of Indigenous Peoples' rights, rather than serving as a genuine process through which they can freely determine developments affecting their lands, territories and resources. These global trends also lead to an alarming increase in the criminalization, militarization and violence affecting Indigenous Peoples defending their lands and territories, particularly women leaders. Impunity for these violations remains widespread.**

110. **Effective protection of Indigenous Peoples' lands, territories and resources remains indispensable for the realization of their rights to self-determination, culture, food, health, livelihoods and sustainable development, and thus requires**

¹⁶⁵ Ibid.

¹⁶⁶ International Work Group for Indigenous Affairs, *The Indigenous World 2026*.

¹⁶⁷ Ibid.

¹⁶⁸ Submission by the New Zealand Human Rights Commission.

urgent attention to ensure their effective enjoyment of the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.

111. The Special Rapporteur recommends that States:

(a) Recognize Indigenous Peoples and their rights to own, use, develop and control their lands, territories and resources in accordance with the United Nations Declaration on the Rights of Indigenous Peoples;

(b) Halt immediately the regression on the recognition of Indigenous Peoples' land rights and accelerate the identification, demarcation and titling of Indigenous Peoples' lands, with their participation, through simplified procedures and adequate financial and technical support, with special attention to mobile Indigenous Peoples, Indigenous Peoples in voluntary isolation or initial contact, and Indigenous Peoples with marine and coastal territories;

(c) Protect Indigenous Peoples' land rights pending demarcation and titling;

(d) Adopt legislation to ensure free, prior and informed consent before making decisions on any legislative or administrative measure or projects affecting Indigenous Peoples' lands, territories or resources, including extractive, conservation, climate and infrastructure initiatives, and ensure that all decisions on land appropriation comply with international human rights obligations;

(e) Ensure that Indigenous Peoples can freely decide and pursue their priorities for the development of their territories;

(f) Adopt legislation requiring social, spiritual, cultural and environmental impact assessments, with the participation of Indigenous Peoples, before authorizing initiatives affecting their lands, including consideration of cumulative impacts with existing projects;

(g) Review and amend legislation and policies, including sectoral legislation, to ensure that they are consistent with the United Nations Declaration on the Rights of Indigenous Peoples;

(h) Prevent and investigate attacks, intimidation, criminalization and violence against Indigenous Peoples and their leaders, provide effective protection for Indigenous human rights defenders, including special measures for Indigenous women, and ensure accountability for perpetrators;

(i) Implement judgments and decisions of domestic, regional and international courts and human rights mechanisms concerning Indigenous Peoples' land rights;

(j) Strengthen support for Indigenous Peoples' own institutions, territorial governance systems, mapping initiatives and community-based monitoring and protection mechanisms;

(k) Ratify and implement the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and fully implement the United Nations Declaration on the Rights of Indigenous Peoples.