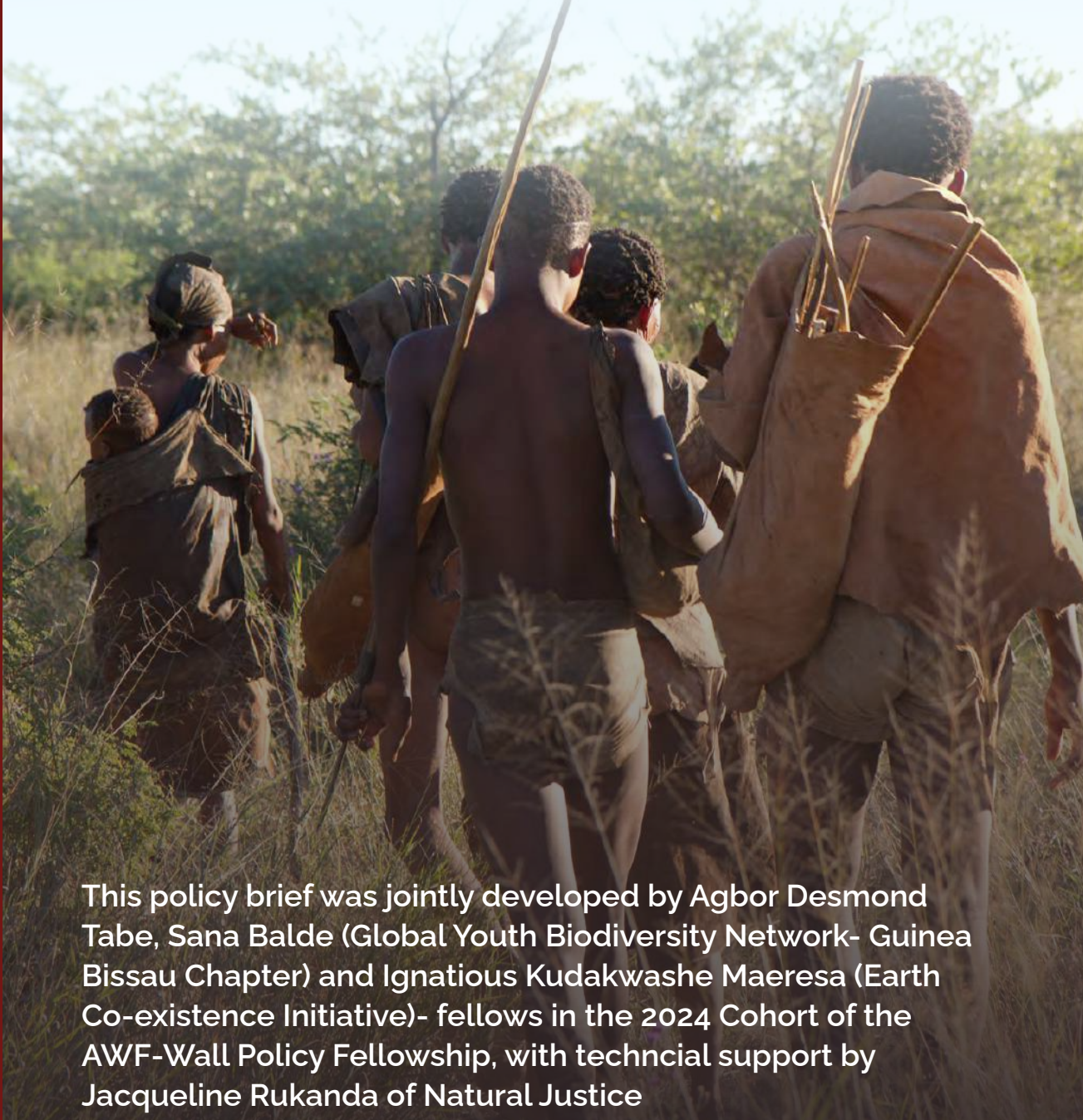


**POLICY BRIEF**

# Legal conceptualization of Indigenous and Local Communities in Southern African countries in the context of climate change. The case of South Africa.



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# Executive Summary

Although Indigenous peoples are amongst those most vulnerable to the impacts of climate change, their traditional knowledge is relevant in climate change mitigation and adaptation measures. The Indigenous San and Khoekhoe peoples of Southern Africa, known for their traditional practices that have contributed to environmental stewardship, are victims of persistent socio-economic marginalization. This repression undermines their contribution to climate change adaptation and mitigation. This policy brief argues that recognizing the rights of the Khoe-San through a well-established legal and policy framework, not only protects their human rights but preserves their traditional knowledge, existence and culture.

## Introduction

Indigenous people and local communities, particularly the San and Khoekhoe people who reside in various Southern African countries (South Africa, Namibia, Angola, Zimbabwe, and Botswana), play significant roles in Biodiversity Conservation and Climate adaptation. Despite the vital roles of their traditional knowledge in environmental stewardship, these communities are often marginalized and lack formal recognition in the National Policy of Southern African countries. This, in return, diminishes their rights and potential contribution to long-term biodiversity conservation. To mitigate climate change's impacts and comply with international

legal frameworks, governments of Southern African countries must integrate the protection of indigenous peoples into their national legislations and policies to ensure legal recognition, secure resource rights, and enhance Indigenous involvement in biodiversity efforts. This policy brief seeks to advocate for the legal recognition and inclusion of South Africa's Indigenous and Local Communities (ILCs) in national climate and biodiversity policies.

## Problem Statement

Despite the fundamental role played by indigenous peoples in climate change adaptation and mitigation through their traditional knowledge, they have been and are victims of economic, political, and social marginalization. The non-recognition of San and Khoe peoples as distinct communities undermines their contributions and diminishes their rights. For example, this marginalization predates the colonial era in South Africa. With the expansion of the agro-pastoral population, they were dispossessed of their lands, and the lands were handed over to white

farmers and, in the worst-case scenario, killed. According to Amnesty International, they have restricted access to education, health care, and housing. Without adequate recognition and inclusion in climate policy, there is a dual risk: ecological, as their potential contributions to biodiversity and sustainable land management are lost.



# Examination of Findings

## National Legal Framework

No comprehensive legal framework regulates the protection of indigenous communities in South Africa. While it is difficult to ignore the pieces of legislation that have been enacted by the government of South Africa, like the enactment of the Traditional Leadership and Governance Framework Act of 2003 and the Protection, Promotion, Development, and Management of Indigenous Knowledge Act, 2019 (No.6 of 2019), they fall short of meeting the threshold protection for these groups. Indigenous rights advocates have decried the legislation as it puts the land rights of communities and individuals at risk by granting traditional councils the power to sign mining or development deals without the express permission of land rights holders, thereby weakening customary consultation processes. Concerning the constitution, the only major progress is Article 6 (5) of the constitution, which indicates that it recognizes the Khoi, Nama, and San languages”. There is room for more progress to be made at the national level.

## International Legal Framework

South Africa is a party to the Convention on Biological Diversity and has signed right up to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. This protocol acknowledges the unique role of Indigenous communities in the conservation and sustainable use of biodiversity. It stresses the importance of their traditional knowledge, which should be accessed with prior informed consent and shared fairly. South Africa is equally a party to the United Nations Declaration on the Rights of Indigenous Peoples. Article 10 recognizes the land rights of Indigenous communities, and Article 11 recognizes their right to practice and revitalize their cultural traditions and customs. Article 21 of the African Charter on Human and Peoples Rights recognizes indigenous land rights. Building on these international regulations and their effective implementation, the government of South Africa can benefit from the role of indigenous knowledge in fighting climate change.



## Indigenous Knowledge Systems and Climate Resilience

Indigenous Peoples are custodians of unique knowledge systems, innovations, and practices that have been passed down through generations and have allowed different cultures and communities in many parts of the world to live sustainably, emphasizing the balance between humans and the natural world. These practices have minimal environmental impact and are highly adaptive to ecological changes, fostering healthy and resilient ecosystems. With the rise in the adverse effects of climate change across the globe, it is presumed that this knowledge will play a key role in climate change adaptation, resource governance, conservation, and sustainable use of biodiversity and ecosystems.

Research shows that despite increasing external pressure on their land, many forests and other ecosystems within areas managed by Indigenous Peoples are in better health than nature outside these areas, and they are important carbon sinks. Their knowledge of weather forecasting has played a remarkable role in tackling the adverse impacts of climate, and it's usually done through observations, experimentation, and validations. This knowledge varies from one group to another. To the Dejen community in Ethiopia, drought is indicated by dry fog, north-to-south dry wind, and wind after rainy days. The indigenous communities in the Sahel use water harvesting techniques known as zai pits or tassa to restore degraded drylands through climate-smart agriculture.

# Key Challenges

- The belief by African states that all Africans are indigenous or that there are no indigenous peoples to avoid allocating special treatment poses threats to these peoples and denies their unique situation.
- Sovereignty over natural resources by African countries has limited progress made in the recognition of the existence of indigenous peoples and the recognition of their land rights.

# Policy Actions

- Establish funding streams to support ILC-led climate adaptation projects, focusing on sustainable agriculture, water management, and reforestation.
- Train Indigenous leaders in project management, proposal writing, and climate resilience strategies.
- Institutionalizing Indigenous Knowledge Systems: Integrate Indigenous knowledge into national climate research programs and educational curricula and develop protocols to protect ILCs' intellectual property rights related to their knowledge systems.
- Strengthening legal recognition: Amend national laws to explicitly recognize Indigenous and Local Communities (ILCs) within climate policies, ensuring their rights and contributions are formally acknowledged.
- Create community-based revenue-sharing agreements for tourism and conservation projects in Indigenous territories.
- Develop a national ABS framework specific to ILCs incorporating TK and genetic resource use, ensuring that benefits flow back to Indigenous communities.
- Include provisions for Free, Prior, and Informed Consent (FPIC) from Indigenous communities before accessing their genetic resources or TK.
- Promoting inclusive policy development that incorporates Indigenous voices and knowledge systems

# Conclusion

Indigenous knowledge plays a critical role in tackling climate change and it's only by first recognizing the existence of indigenous peoples and their associated rights such as land rights, right to a healthy environment, self-determination and applying the recommendations above that we can effectively tackle climate change.

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