

31 Human rights and Indigenous peoples in just energy transitions

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A human rights-based approach that acknowledges past injustices and deliberately engages Indigenous communities in deciding, designing and collaborating in renewable energy projects is key to ensuring that transitions are just. This chapter highlights examples from Australia, Canada, Guatemala and New Zealand of benefit-sharing models; community-owned initiatives; and partnerships between indigenous peoples, governments and the private sector that balance the needs of different stakeholders. It focuses on how development co-operation policy frameworks should integrate a human rights-based approach as an integral component of responsible business conduct, support inclusive mechanisms for financial and technical support to indigenous peoples, and facilitate equitable arrangements to address the climate crisis and contribute to reducing poverty and inequalities.

Key messages

- Upholding indigenous rights benefits both the indigenous communities and the green transition process by avoiding lengthy legal battles and conflicts while directly addressing poverty and inequalities.
- The principles of free, prior and informed consent alongside meaningful engagement and impact mitigation can shape green transitions in ways that are respectful of indigenous rights and ensure appropriate benefit sharing.
- Indigenous peoples are demonstrating their active support for just transitions by designing new equitable benefit-sharing partnership models for renewable energy projects that respect human rights.

A human rights-based approach to energy transitions acknowledges past injustices to indigenous peoples and their present development challenges

Energy transition processes can seriously threaten the rights of indigenous peoples. The foundation of a human rights-based approach to energy transitions is acknowledgement of the historical injustices perpetrated against indigenous peoples. Indigenous communities have endured colonisation, land dispossession and cultural marginalisation, often at the hands of states and development actors such as corporations and investors. While indigenous peoples represent only 6.2% of the global population, they comprise 18.7% of the world's extreme poor, according to a study for the International Labour Office (Oelz, Kumar Dhir and Harsdorff, 2017^[1]), a situation likely to have deteriorated further due to impacts of the COVID-19 crisis. Indigenous peoples also tend to lack access to energy, education, health and basic infrastructures (ILO, 2016^[2]). As a result of this legacy of exclusion and discrimination, they suffer from relatively poorer health and illiteracy and are more likely to experience disability and reduced quality of life: their life expectancy is estimated to be 20 years less than non-indigenous counterparts in some countries (UN DESA, 2015^[3]). Further, indigenous peoples have difficulty participating fully in the formal economy, enjoying access to justice, and participating in political processes and decision making (ILO, 2016^[2]).

The legacy of these injustices continues to reverberate, shaping contemporary power dynamics and fuelling distrust between indigenous peoples, states and development actors, including in relation to development co-operation. It is estimated that 36% of the world's remaining intact forests (Fa et al., 2020^[4]), at least 24% of the above-ground carbon in tropical forests (Veit and Reyta, 2017^[5]), and up to 80% of the world's remaining biodiversity (World Bank, 2023^[6]) are found on land and territories traditionally inhabited by indigenous peoples. Yet, their lands and resources are forcibly and systematically undermined by the pursuit of economic development targets such as energy development, large-scale mining, agribusiness and commercial tourism, among others. A recent study suggested that more than half of the energy transition minerals and metals are located on or near the lands of indigenous and peasant populations (Owen et al., 2023^[7]). If the process to extract these minerals follows historical precedent of dispossession and exclusion of the participation of indigenous peoples in development projects, this could be detrimental to their well-being now and in the future. Conversely, adopting a human rights-based approach to energy transitions would avoid perpetuating existing inequalities and uphold indigenous peoples' rights.

Energy transitions must uphold indigenous peoples' rights and require their free, prior and informed consent

Extractive industries and large-scale energy projects have historically caused significant harm to ecosystems, water sources and traditional livelihoods, disproportionately affecting indigenous communities. Mitigating these environmental and social impacts is a critical duty for both states and companies. Amid the green transition, adhering to effective environmental and social safeguards, including human rights due diligence, is more essential now than ever as the emergence of new initiatives and instruments such as bio-credits and efforts to mobilise funds for so-called nature-based solutions also will seriously impact on indigenous peoples.

Embracing a human rights-based approach to energy transitions is essential to guarantee just transition processes that do not result in human rights violations. A human rights-based approach to the energy transition requires respect for indigenous knowledge and cultural heritage and recognition that both are vital to fostering resilience across generations. By integrating indigenous perspectives into energy planning and decision making, societies can also draw on this rich knowledge to develop energy solutions that are culturally sensitive and thereby sustainable.

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Upholding free, prior and informed consent (FPIC) is central to ensuring a human rights-based approach for indigenous peoples. Requiring FPIC in energy transitions affirms that indigenous peoples have collective rights – to self-determination and to participate in decisions affecting their lands, territories and resources – and that these distinctive rights are a means for them to achieve social equity and justice due to their historical marginalisation and systemic discrimination.

Furthermore, a human rights-based approach demands economic empowerment and social equity for indigenous peoples as core elements of development co-operation. Ensuring access to justice and remedies is central, as indigenous communities frequently encounter barriers in seeking legal recourse and redress for human rights violations. Transparent and accessible grievance mechanisms are essential for holding perpetrators accountable and providing meaningful remedies, thus fostering a culture of accountability within energy companies and government institutions.

The failure to obtain genuine consent from indigenous communities for renewable energy projects has led to protracted conflicts, legal battles and reputational damage for energy companies and governments. For example, the wind farms licensed to operate on indigenous peoples' territories in Kenya and Norway prompted legal action against both governments. Norway's supreme court ultimately ruled that the cultural rights of Saami to practice reindeer herding had been violated and the African Court on Human and Peoples' Rights affirmed that approval of the wind farms in Kenya violated the community land rights of the Ogiek (Business and Human Rights Resource Centre, 2023^[8]; Amnesty International, 2023^[9]). These cases demonstrate that not respecting FPIC in practice can result in energy transition processes that pose serious threats to indigenous peoples.

Though not always respected in practice, the rights of indigenous peoples are enshrined in a range of global declarations

Numerous decisions and recommendations of United Nations (UN) human rights bodies and procedures, for instance the 2008 UN Declaration on the Rights of Indigenous Peoples, underscore the need to uphold the rights of indigenous peoples, including the proper conduct of FPIC in energy transition efforts. The

principles of FPIC are also affirmed in the UN Guiding Principles on Business and Human Rights (OHCHR, 2011^[10]) as well as the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, which state that enterprises should particularly respect the human rights of individuals belonging to specific groups or populations and pay special attention to any adverse impacts on individuals at heightened risk of marginalisation and vulnerability, including indigenous peoples (OECD, 2023^[11]). Other OECD guidance, including the *Due Diligence Guidance on Responsible Business Conduct*, provides practical guidance on FPIC and indigenous peoples (OECD, 2018^[12]). Indigenous peoples expect that the implementation of this OECD guideline, particularly in relation to the conduct of FPIC, will be consistent in respecting their rights to their lands, territories and resources, and to their cultural heritage and the right to self-determination, as affirmed by the UN Declaration on the Rights of Indigenous Peoples (UN DESA, 2015^[3]). The Committee on the Elimination of Racial Discrimination also emphasises the need for states to fully implement FPIC in all decision-making processes that affect indigenous peoples, especially regarding development projects involving their lands and resources (OHCHR, 2013^[13]).

Equitable benefit-sharing arrangements and partnerships with indigenous communities are advancing climate action

Meaningful engagement with indigenous peoples through open and constructive dialogue is crucial for building trust, respect and co-operation in energy transition initiatives. Historically, energy projects have often employed top-down approaches that marginalise indigenous voices and prioritise profit. Successful initiatives, however, highlight the value of co-creating solutions with indigenous communities and utilising their traditional knowledge and expertise in sustainable resource management. Meaningful partnerships enable states, companies and investors to navigate complexities, mitigate risks and achieve shared prosperity.

The just transition from fossil fuels to renewable energy can catalyse transformational changes, and when anchored in respect for and protection of indigenous peoples' rights and well-being, transitions also contribute to reducing poverty and inequalities. Models of collaboration already exist whereby states and the private sector support indigenous-owned and -led renewable energy development projects. Some of these good practices of ownership, co-ownership partnerships, and community-owned and managed renewable energy partnerships were presented during the Conference on Indigenous Peoples and the Just Transition held in April 2024, which brought together 87 indigenous peoples' representatives from 35 different countries (Indigenous Peoples Rights Tribunal, 2024^[14]). There are also numerous examples of community-led and -owned energy projects that can be replicated in indigenous communities without access to energy that nonetheless need financial and technical support and assistance.

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The success of these initiatives is due to positive policy frameworks for renewable energy development as well as partnerships that include benefit-sharing arrangements, respect of indigenous peoples' rights in relation to their lands and resources, and their participation in decision making. These elements allow for their knowledge and cultural heritage to be respected, thereby establishing a collective sense of ownership and responsibility.

The following examples demonstrate how development co-operation for energy transitions can be deployed to support ownership and co-ownership by indigenous peoples.

Indigenous Clean Energy (Canada): Co-ownership and full ownership of renewable energy projects

The Indigenous Clean Energy platform promotes indigenous-led capacity building and collective action in Canada's clean energy transition. It offers various programmes such as capacity development, information sharing, energy efficiency initiatives, training for indigenous youth and mentorship. Indigenous peoples in Canada own 20% of the country's renewable energy portfolio, with a mix of fully owned and co-owned projects. The Canadian government and indigenous peoples have started a journey towards shared prosperity in the energy transition that offers broader lessons about the value of establishing good relations and collaboration while respecting the rights, needs and aspirations of indigenous peoples.

Rotokawa II Nga Awa Purua Geothermal Plant of Tauhara North No. 2. Trust (New Zealand): Co-ownership of a renewable geothermal plant

A joint venture between the Tauhara North No. 2 Trust, owned by Māori indigenous people in New Zealand, and Mighty River Power led to the development of a major geothermal power station on Trust-controlled land. The project, including the Nga Awa Purua Power Station, benefits the community economically and socially. The Trust owns 25% of the Nga Awa Purua Joint Venture, with agreements including equity ownership, a ground lease and royalty payments. The power generated can electrify 140 000 homes and generate 3% of New Zealand's energy needs.

Tribal Clean Energy Network (Australia): Network supporting community-owned renewable energy projects

The Tribal Clean Energy Network collaborates with various stakeholders to support indigenous peoples in Australia in transitioning to clean energy. Its work includes supporting communities in clean energy projects, promoting industry partnerships, and advocating for policy reform to remove regulatory barriers and promote government investment. The government of Australia has also created and filled the post of Ambassador for First Nations People, whose key priorities include advancing the rights and interests of First Nations globally; sharing experiences and knowledge of reconciliation processes and other related issues; embedding First Nations perspectives into Australia's foreign policy; supporting First Nations trade and investment, for instance by advising the Department of Foreign Affairs and Trade; and bolstering Australia's First Nations diplomatic capability and advocacy.

Community-owned microgrids (Guatemala)

The collective Madreselva supports indigenous peoples in Guatemala to develop and manage their own electricity generators and grids at affordable prices, emphasising community ownership and environmental stewardship. It provides technical support and funding for renewable energy projects with active participation from women and men of the community, which sets electricity rates to cover maintenance and administration costs.

Partnership between the Right Energy Partnership and the United Nations for access to renewable energy by indigenous communities

The collaboration between the Right Energy Partnership and the United Nations Development Programme (UNDP) involves the allocation of at least USD 1 million every year from the UNDP Small Grant Programme to support indigenous-led and -owned renewable energy projects in indigenous communities in developing countries. It has supported solar, micro-hydro and biogas projects in six countries: Cambodia, Cameroon, Democratic Republic of the Congo, El Salvador, Honduras and Nepal. These community initiatives have significantly improved access to clean water, electricity, lighting and other essential services in indigenous

communities, thereby enhancing the overall quality of life and promoting better health outcomes. Empowerment of marginalised groups, especially indigenous women and youth, has been a key benefit, leading to greater economic opportunities and social participation. The community-based energy projects have benefited indigenous communities by contributing to environmental conservation, emissions reduction and climate change mitigation; promoting economic diversification through sustainable energy use, eco-tourism and other activities; enhancing educational opportunities; improving community cohesion and co-operation; advancing gender equality through initiatives such as the training of women in solar technology; heightening disaster readiness; and generating cost savings by increasing community ownership of local resources.

Conclusion

Any meaningful transition towards just and fair energy transitions must begin with a recognition of past wrongs done to indigenous peoples and a commitment to redress historical injustices and marginalisation, including by increasing international development co-operation. OECD research shows that indigenous peoples still receive only a limited share of bilateral biodiversity-related official development finance (OECD, 2023^[15]). Likewise, a study by the Rainforest Foundation Norway estimates that between 2011 and 2020, projects supporting tenure and forest management for indigenous peoples accounted for less than 1% of official development assistance for all climate change mitigation and adaptation activities (Rainforest Foundation Norway, 2021^[16]). Furthermore, most of the disbursements occurred through large intermediaries, with indigenous peoples' organisations receiving only a small fraction and small sub-grants (Rainforest Foundation Norway, 2021^[16]).

In moving forward with the green transition, development co-operation actors can increase support for indigenous peoples by embracing human rights-based approaches and energy partnership models. This will not only contribute to reducing poverty and lessening the economic disparity between indigenous peoples and other groups, it will also foster much-needed co-operation, collaboration and partnerships to collectively address the global climate crisis and advance sustainable development for present and future generations. The lessons learnt from past experiences of indigenous peoples underscore the imperative of embracing a human rights-based approach to energy transitions, supporting indigenous-led and -owned renewable energy projects, and facilitating equitable benefit-sharing models. Development co-operation providers should also ensure policy coherence in upholding human rights, social equity and meaningful participation by indigenous communities in decision-making processes around development planning and implementation at all levels.

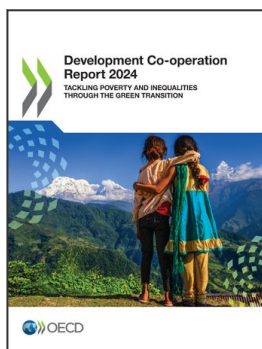
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From:

Development Co-operation Report 2024

Tackling Poverty and Inequalities through the Green Transition

Access the complete publication at:

<https://doi.org/10.1787/357b63f7-en>

Please cite this chapter as:

Carling, Joan (2024), "Human rights and Indigenous peoples in just energy transitions", in OECD, *Development Co-operation Report 2024: Tackling Poverty and Inequalities through the Green Transition*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/226fddd0-en>

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