

Brief on a Rights based approach towards Net Zero in the context of Indigenous Peoples

Abstract

Achieving net-zero global emissions and sustainable energy supplies will require unprecedented quantities of rare earth minerals over the coming decades due to the growth in infrastructure, the built environment, and the transition to the green economy. Current estimates suggest that at least 30 energy transition minerals and metals (ETMs) form the material base for the energy transition. A new study published in *Nature Sustainability* highlights that over half of the world's resource base for crucial energy transition materials is located on or near land where Indigenous people live.¹ This is concerning as excess industrialization, such as mining, in regions where Indigenous people live has already led to large-scale deforestation, pollution of local water and food supplies, and increased conflict.

To address this problem, the rights of Indigenous peoples, including free, prior, and informed consent, must be central to any new ventures and current operations impacting Indigenous lands. It is crucial for the G20 to prioritize Indigenous rights and protect their lands while working towards a sustainable energy future.

Problem Statement

The inclusion of Indigenous peoples in energy transition plans is contingent on the willingness of national governments to involve them. However, many countries are making 20-year energy transition plans without ensuring proper representation and effective participation of Indigenous peoples. Although some countries mention Indigenous peoples in their plans, these mentions are often declarative or merely formal.

One of the main challenges in assessing the impact of the energy mix on Indigenous peoples is the lack of information and data disaggregated by project type at the national level. Governments often grant licenses and allocate large regions for energy projects

¹ Owen, J.R., Kemp, D., Lechner, A.M. et al. Energy transition minerals and their intersection with land-connected peoples. *Nat Sustain* 6, 203–211 (2023). <https://doi.org/10.1038/s41893-022-00994-6>

without considering the presence of Indigenous communities or territories. By the time communities become aware of the projects, significant economic investments have already been made, and states prefer to threaten administrative proceedings rather than act against their financial interests. For example: almost half of the top 300 undeveloped copper orebodies globally are located on or near Indigenous Peoples' lands, posing social and environmental risks throughout the value chain.

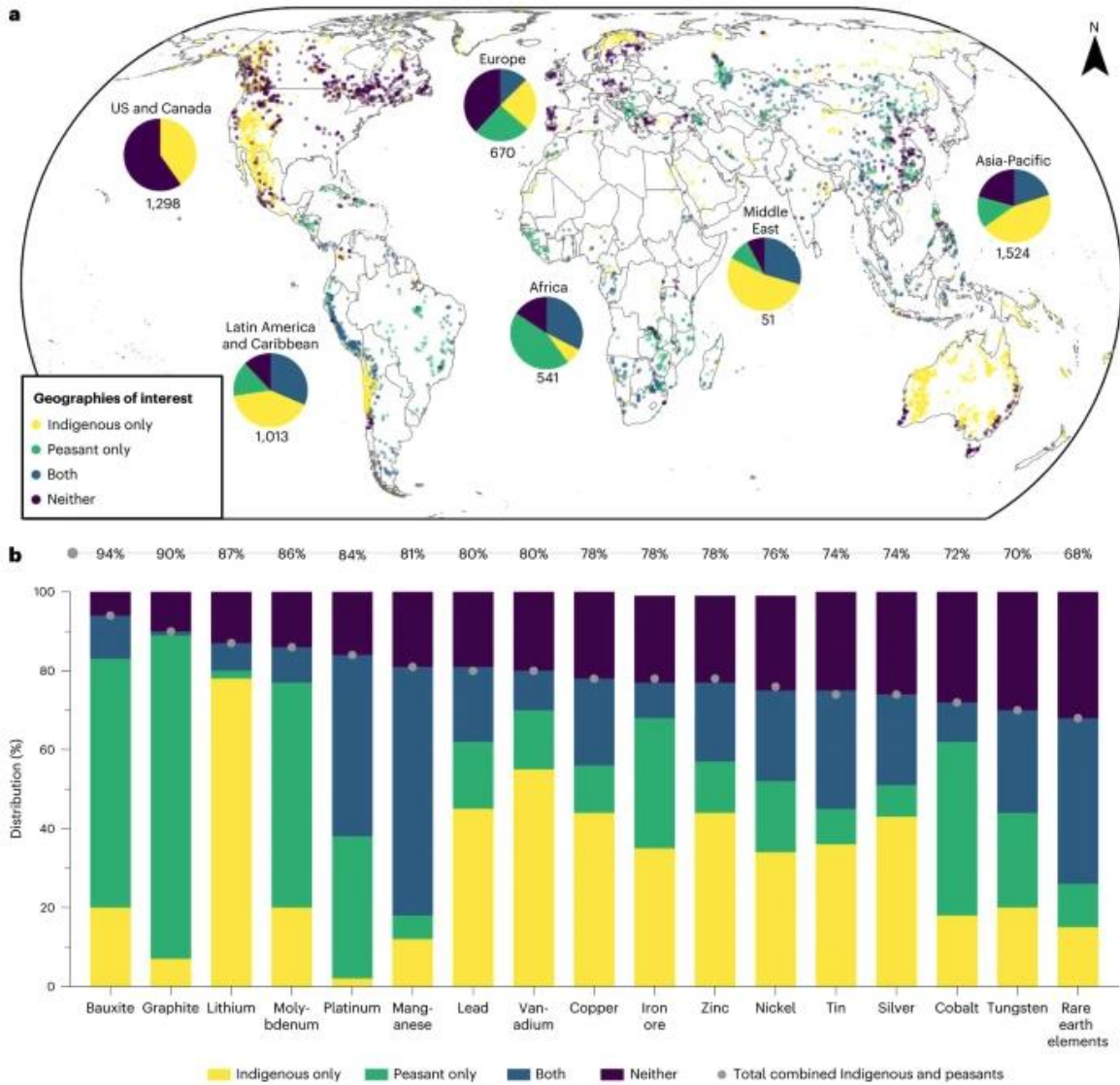
The overlapping issue of the overwhelming biodiversity contributions of indigenous peoples territories as a Net Zero target along with energy transition remains a major balancing act in this context.

Background information

Just transition to renewables often raises significant concerns about displacement, marginalization, and exploitation. It requires a delicate balance between the need for economic growth and the imperative to protect the rights, culture, and well-being of indigenous communities.

The Middle East has the highest proportion of energy transition projects located on or near Indigenous peoples' land (82%), although the region has a relatively small number of disclosed ETM projects. Latin America and the Caribbean follow closely, with 73% of projects situated on or near Indigenous lands. Africa, on the other hand, has the highest proportion of projects located on or near land that meets the criteria for peasant land (77%). This region also has the highest proportion of projects located on or near both Indigenous peoples' and peasant land (33%), reflecting its rich and complex history of settlement, conflict, and displacement.

Fig. 1: Distribution of ETMs by Indigenous peoples' and peasant land.



Land dispossession and displacement: A case study in the Indian context

- a. **Narmada Valley Project:** The Narmada Valley Project, comprising a series of dams and reservoirs across the Narmada River, has resulted in one of the most significant cases of indigenous displacement in India. The project, aimed at harnessing hydroelectric power and providing irrigation, led to the displacement of thousands of indigenous people, primarily belonging to the *Bhil* and *Bhilala* communities. The forced relocation disrupted their traditional way of life,

including fishing, farming, and forest-dependent livelihoods, while marginalizing their cultural heritage and community cohesion.²

- b. **Vedanta's Bauxite Mining in Odisha:** In Odisha, the Dongria Kondh and other indigenous communities have faced displacement due to bauxite mining projects initiated by Vedanta Resources, a multinational mining company. The proposed mining operations in the Niyamgiri Hills threatened the pristine environment and sacred sites of the indigenous peoples. Despite strong resistance and legal battles, the communities experienced significant pressure, including threats, intimidation, and loss of access to land and resources.³
- c. **Posco Steel Plant in Odisha:** The proposed Posco steel plant in Odisha posed a grave threat to the rights and lands of indigenous communities, particularly the Pauri Bhuiya, Juang, and Kondh tribes. The mega-project, aimed at establishing one of the largest steel plants in India, led to the forced eviction and dispossession of these communities from their ancestral lands. The loss of their agricultural, forest-based livelihoods, and cultural heritage raised concerns about their economic vulnerability and cultural disintegration.⁴
- d. **Tipaimukh Dam in Manipur:** The proposed Tipaimukh Dam in Manipur has sparked concerns about land dispossession and displacement of indigenous communities, including the Hmar, Zeliangrong, and Rongmei tribes. The dam, intended for hydropower generation, would submerge large tracts of land, displacing thousands of indigenous people and adversely affecting their agricultural and forest-based livelihoods. The project's potential impacts on the cultural heritage and ecological balance of the region have prompted widespread protests and calls for greater recognition of indigenous land rights.⁵

² Survival International. (2023, April 4). The Sardar Sarovar Dam. Retrieved from <https://www.survivalinternational.org/tribes/narmada-dam>

³ Amnesty International India. (2022, October). Don't Mine Us Out of Existence: Bauxite Mine and Refinery Threat to the Dongria Kondh in Odisha. Retrieved from <https://amnesty.org.in/wp-content/uploads/2022/10/Dont-Mine-Us-Out-of-Existence.pdf>

⁴ Human Rights Watch. (2013, November). Everybody's Business: Abuses by the Posco-India Project in Odisha. Retrieved from <https://www.hrw.org/report/2013/11/18/everybodys-business/abuses-posco-india-project-odisha>

⁵ CounterCurrents. (2022, February 6). Tipaimukh Dam: Indigenous People's Concern and Resistance in Manipur. Retrieved from <https://countercurrents.org/2022/02/tipaimukh-dam-indigenous-peoples-concern-and-resistance-in-manipur/>

Land dispossession and displacement in America

- a) The Trail of Tears:** One of the most well-known cases of Indigenous land dispossession and forced displacement in America is the Trail of Tears. In the 1830s, the United States government implemented policies, such as the Indian Removal Act, which resulted in the forced relocation of thousands of Cherokee, Muscogee (Creek), Seminole, Chickasaw, and Choctaw peoples from their ancestral lands in the southeastern United States to designated Indian Territory (present-day Oklahoma). The forced journey, marked by hardships and loss of life, led to the dispossession of lands and the disruption of Indigenous communities.⁶
- b) Reservation System:** The establishment of reservations in America was another significant aspect of Indigenous land dispossession and displacement. Through treaties, executive orders, and legislation, Indigenous peoples were confined to designated reservation lands, often far smaller and less fertile than their original territories. The Dawes Act of 1887 further eroded Indigenous land rights by allotting communal lands to individual tribal members, leading to the loss of millions of acres of Indigenous land.⁷
- c) Standing Rock Sioux Tribe and the Dakota Access Pipeline:** The protests led by the Standing Rock Sioux Tribe against the construction of the Dakota Access Pipeline (DAPL) brought international attention to indigenous land rights and environmental concerns. The pipeline's proposed route threatened sacred sites and water sources vital to the tribe's livelihood. The Standing Rock movement highlighted the ongoing struggle of indigenous communities to protect their lands and sovereignty.⁸

Land dispossession and displacement in European countries

⁶ United States National Park Service. (n.d.). The Trail of Tears. Retrieved from <https://www.nps.gov/trte/index.htm>

⁷ Native American Rights Fund. (n.d.). Indian Reservations and Indian Trust Areas. Retrieved from <https://www.narf.org/resources/indian-law-and-policy-reservation-resource-center/indian-reservations-and-indian-trust-areas/>

⁸ Standing Rock Sioux Tribe. (n.d.). Dakota Access Pipeline. Retrieved from <https://standwithstandingrock.net/dakota-access-pipeline/>

- a) **Sámi Land Rights in Scandinavia:** In Scandinavia, the Sámi people have experienced land dispossession and displacement as a result of industrial development and colonization. The encroachment of mining, logging, and hydropower projects on Sámi lands has threatened their traditional livelihoods and cultural heritage. The Sámi people have been actively advocating for recognition of their land rights and the preservation of their indigenous way of life.⁹
- b) **Land Dispossession in Canada:** In Canada, the colonization by European powers resulted in the dispossession of indigenous lands through policies such as the Indian Act and the establishment of reserves. Indigenous peoples were forcibly removed from their ancestral territories, leading to the loss of land and the disruption of traditional ways of life. The impact of residential schools, where indigenous children were separated from their families and cultures, further contributed to the dispossession and assimilation of indigenous communities.¹⁰
- c) **Indigenous Land Dispossession in Australia:** In Australia, the colonization by British settlers resulted in the dispossession of indigenous lands, leading to profound social and cultural impacts. The establishment of reserves, missions, and pastoral leases led to the loss of traditional lands and disrupted indigenous livelihoods. The forced removal of indigenous children from their families, known as the Stolen Generations, further exacerbated the disconnection from ancestral lands and cultural heritage.¹¹

The role of Indigenous Peoples' Free, Prior, and Informed Consent (FPIC) in decisions about infrastructure or extractive industries developed on their ancestral domain is an issue in international law. Projects lacking FPIC are called "development aggression" by Indigenous Peoples, who often lack access to accountability and grievance mechanisms to address human rights violations. These concerns have been formally raised with the United Nations Human Rights Council.

The United Nations Declaration on the Rights of Indigenous Peoples (U.N. Declaration) most clearly articulates FPIC in relation to self-determination rather than as a derivative

⁹ Arctic Council. (n.d.). Indigenous Peoples. Retrieved from <https://arctic-council.org/en/about/indigenous-peoples/>

¹⁰ Truth and Reconciliation Commission of Canada. (2015). Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada. Retrieved from http://www.trc.ca/assets/pdf/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf

¹¹ Australian Human Rights Commission. (n.d.). Stolen Generations. Retrieved from <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/stolen-generations>

right to culture or the right to non-discrimination. The Declaration requires the FPIC of Indigenous peoples in various situations, such as relocation, adoption of legislative or administrative measures, disposal of hazardous waste, and the approval of projects affecting their lands or territories and resources.¹²

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly called on States Parties to respect their obligations to consult with Indigenous peoples prior to exploration and exploitation of natural resources within their traditional territories. It has also insisted on the adoption and implementation of domestic legislation to facilitate these consultations.¹³

ILO Convention No. 169 and its subsequent interpretations by CEACR confirm the minimum standard of Indigenous peoples' rights to consultation regarding development projects, resource extraction, and investment projects within their traditional lands and territories. The convention also establishes that consultations must be undertaken in good faith with the goal of gaining consent. If a project involves the relocation of Indigenous peoples, consent is not just an aspiration but a requirement.

In a recent example, a government investigation in India found that the granting of licenses to a mining project violated the rights of affected Indigenous peoples' right to FPIC, as articulated in India's Forest Rights Act. ILO Convention No. 169 specifically requires that a State Party consult with Indigenous peoples prior to any exploration or exploitation of natural resources in their lands or territories. However, it is important to note that the only textual expression of full FPIC is found within the U.N. Declaration, a non-binding instrument. The other developments within international human rights law regarding FPIC have been the non-binding commentaries of U.N. Treaty bodies, such as the CESCR and the CERD. In its interpretation of ILO Convention No. 169, the CEACR has argued that consultation and participation are the cornerstones of the Convention. However, only 20 states have ratified this convention.

¹²<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/247/87/PDF/N2224787.pdf?OpenElement>

¹³<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=nji>
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Despite the growing recognition of the importance of FPIC in international law, the implementation of these principles remains inconsistent across countries. Governments must prioritize the inclusion of Indigenous peoples in energy transition plans and consult them in a meaningful and genuine manner to ensure their rights, autonomy, territorial ownership, and visions of self-development are respected.

In order to address the challenges faced by Indigenous peoples in the context of energy transition, several measures can be taken. These include increasing transparency in the allocation of licenses and project implementation, strengthening the legal frameworks that protect Indigenous peoples' rights, and implementing grievance mechanisms to address human rights violations.

Recommendations:

Governments, international organizations, and private sector actors should prioritize the following actions to ensure the protection of Indigenous peoples' rights in energy transition projects:

Develop comprehensive legal frameworks: National governments should create and enforce comprehensive legal frameworks that recognize and protect Indigenous peoples' rights to FPIC, land, and self-determination. This includes the ratification and implementation of relevant international conventions, such as ILO Convention No. 169.

Enhance transparency and access to information: Governments should ensure that all relevant information regarding energy transition projects, including potential impacts on Indigenous peoples and their lands, is readily available, accurate, and understandable to affected communities.

Capacity-building and technical assistance: International organizations and donors should provide capacity-building and technical assistance to Indigenous communities, enabling them to participate effectively in energy transition processes and decision-making.

Strengthen grievance mechanisms: Governments and international organizations should establish and enforce effective grievance mechanisms to address human rights violations related to energy transition projects. This includes holding accountable those

responsible for violations and ensuring access to appropriate remedies for affected communities.

Promote meaningful consultation and participation: Governments, private sector actors, and other stakeholders should actively engage Indigenous peoples in the planning, implementation, and monitoring of energy transition projects, in accordance with the principles of FPIC.

Foster collaboration and partnerships: Encourage cooperation between Indigenous peoples, governments, international organizations, and the private sector to develop and implement sustainable energy transition strategies that respect Indigenous rights and promote their socio-economic well-being.

Monitor and evaluate progress: Regular monitoring and evaluation of energy transition projects should be conducted to assess their impact on Indigenous peoples and their rights, and to ensure that necessary adjustments are made to mitigate negative consequences.