



Deploying Energy Justice for a Meaningful Inclusion of Indigenous Peoples in Energy Decision-Making

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Abstract The Permanent Forum on Indigenous Issues' assessment of the rights of indigenous peoples within the global energy mix found that First Nations peoples are negatively impacted by the energy transition value chain on a variety of levels, including their access to lands and resources, their right to participate in decision-making processes, and their ability to maintain cultural practices. According to experts, 69% of the lands used for energy transition mining projects are situated on or close to the territory of indigenous people. They live in rural and remote areas where 84% of people do not have access to electricity. Consequently, indigenous peoples are drastically subject to energy poverty, among the other injustices they face. The confluence of these facts prompts consideration of the function that the procedural justice and recognition justice framework

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can play in resolving, minimising, and addressing the grievances of indigenous people. From the analysis of Community-Based Renewable Energy Systems (CBRES) and co-equity mechanisms examples, the article argues the necessity to build stronger connection with minorities, especially First Nations to achieve a just and equitable transition.

Keywords Energy justice · Indigenous peoples · Procedural justice · Recognition justice

17.1 INTRODUCTION

The urgent need to respond to climate change and global temperature increase, coupled with the gradual depletion of fossil fuels, has left no other room for global political and industry leaders to plan for a transition to cleaner sources of energy to maintain life on the planet. As a result of the recovery from the Covid-19 pandemic and the response to the global energy crisis, investments in renewable energy have seen a significant increase since 2021, promising news towards the fulfilment of SDG7.¹

Paradoxically, the Permanent Forum on Indigenous Issues' assessment of the rights of indigenous peoples within the global energy mix found that First Nations peoples are negatively impacted by the energy transition value chain on a variety of levels, including their access to lands and resources, their right to participate in decision-making processes, and their ability to maintain cultural practices.² According to experts, 69% of the lands used for energy transition mining projects are situated on or close to the territory of indigenous people.³ The mining of six key energy transition minerals—cobalt, copper, lithium, manganese, nickel, and zinc—has been the subject of 495 human rights claims between 2010 and 2021,

¹ World Energy Investment. (2023). World Energy Investment 2023 (windows.net) (Accessed 28 May 2023).

² UN Permanent Forum on Indigenous Peoples. (2022). *The rights of indigenous peoples in relation to the global energy mix*. E/C.19/2022/9.

³ Owen, J. R., Kemp, D., Harris, J., Lechner, A. M., & Lèbre, É. (2022). Fast track to failure? Energy transition minerals and the future of consultation and consent. *Energy Research & Social Science*, 89, 102665.

according to the Business and Human Resources Centre.⁴ Most allegations involving indigenous communities were related to free prior and informed consent (FPIC), lack of consultation and access to information, land issues, and attacks on indigenous human rights defenders. In the same vein, the land intensiveness of large-scale renewable energy projects fuelled protests and frustration, sometimes leading to project nullification and suspension.

The rate of indigenous peoples' access to electricity is another critical aspect raised by researchers. They are located in rural and remote areas where 84% of people who do not have access to electricity live.⁵ In other terms, indigenous peoples, among other injustices, are drastically subject to energy poverty. The confluence of these facts prompts consideration of the function that the procedural justice and recognition justice framework can play in resolving, minimising, and addressing the grievances of indigenous people.

As a starter, we will briefly define the concept of indigeneity to unveil any ambiguity that could exist in determining the right people. The main discussion will demonstrate how procedural and recognition justice pillars can effectively enable indigenous peoples' empowerment in energy decision-making. The dessert will conclude the discussion by emphasising the need to go beyond a business-as-usual approach in energy transition planning and discussions to avoid the aggravation of historical injustices and the further marginalisation of indigenous peoples.

⁴ BHRRRC. (2023). *Transition_Minerals_Tracker_Global_analysis* (Accessed 27 May 2023).

⁵ Indigenous Peoples Major Group. (2018). *DOING IT RIGHT! Sustainable energy and indigenous peoples, 1.* (Accessed 27 May 2023).

17.2 INDIGENEITY AND INDIGENOUS PEOPLES

Communities are classified as indigenous considering their ancestral ties with the lands they have historically lived and relied on for subsistence.⁶ In simple terms, these people's existence depends on their lands and cultural systems.⁷ The fight to recognise their exclusive rights has not always been well received within the national and international jurisdictions.⁸ Indeed, in many nations, the problem of recognising indigenous peoples' status and rights is still blatant.⁹ They are found in the Arctic, Australia, New Zealand, Hawaii and Pacific Islands, the European Far North, Asia, and Africa.¹⁰

17.3 PROCEDURAL AND RECOGNITION JUSTICE: THE WEAPONS FOR INDIGENOUS ENERGY JUSTICE

Indigenous energy justice has been covered in case studies across different regions and countries.¹¹ From a procedural justice perspective, the most recurring grievances in renewable energy projects are related to ineffective implementation of FPIC, lack of information, and insufficient consultation for projects on or near indigenous communities' cultural lands.¹² In line with the UN Declaration on the Rights of Indigenous Peoples

⁶ The Torres Strait Islander peoples in Australia for example have been dispossessed from lands they had lived for more than 60,000 years during the British Crown colonisation in the late 1780s. Crawford, J. (Ed.). (1988). *The rights of peoples* (Vol. 59). Oxford: Clarendon Press, 31.

⁷ Hannum, H., Anaya, S. J., Shelton, D. L., & Celorio, R. (2023). *International human rights: problems of law, policy, and practice*. Aspen Publishing, 149.

⁸ Crawford, J. (Ed.). (1988). *Supra* 6, 31–38.

⁹ The Expert Mechanism on the Rights of Indigenous Peoples (2019) talks about the absolute denial of the existence of these groups in most African countries. UN Human Rights Council. (2019). *Report of the expert mechanism on the rights of indigenous peoples*. A/HRC/EMRIP/2019/3/Rev.1.

¹⁰ Hannum, H., Anaya, S. J., Shelton, D. L., & Celorio, R. (2023). *Supra* 7.

¹¹ Sovacool, B. K., Bell, S. E., Daggett, C., Labuski, C., Lennon, M., Naylor, L., ... & Firestone, J. (2023). Pluralizing energy justice: incorporating feminist, anti-racist, Indigenous, and postcolonial perspectives. *Energy Research & Social Science*, 97, 102996, 3.

¹² Cases have been documented in Brazil, Canada, and Kenya. Jaichand, V., & Sampaio, A. A. (2013). Dam and be damned: the adverse impacts of Belo Monte on indigenous peoples in Brazil. *Human Rights Quarterly*, 35, 408. Hoicka, C. E., Savic, K., & Campney,

(UNDRIPS), these complaints can lead to the nullification, stoppage, or suspension of energy projects.¹³ The Bolo Monte Dam and Kinangop Wind Park projects are two lived experiences.¹⁴ Resolving community engagement concerns, therefore, requires government and industry initiatives for equitable participation with consideration of indigenous people's perceptions. We argue these initiatives would be better fitted if aligned with energy justice.

Energy justice goes beyond the simple involvement in any energy projects and advocates for the development of inclusive and decentralised environmentally friendly energy systems.¹⁵ In that sense, indigenous communities-led renewable energy projects and consideration of indigenous knowledge gleaned through oral narratives and lived experiences are crucial for a just energy transition.¹⁶ Good practices of indigenous Community-Based Renewable Energy Systems (CBRES) in the Cordillera region in the Philippines, the community-based solar project initiated by the Manungurra Aboriginal Corporation in Australia, and the micro-hydro systems designed by Communities in Sabah and Sarawak in Malaysia achieved integrative management of micro-energy projects through indigenous communities' empowerment.¹⁷

A. (2021). Reconciliation through renewable energy? A survey of Indigenous communities, involvement, and peoples in Canada. *Energy Research & Social Science*, 74, 101897.
Renkens, I. (2019). The impact of renewable energy projects on indigenous communities in Kenya. *The cases of the Lake Turkana Wind Power project and the Olkaria Geothermal Power plants* (28).

¹³ Eichler, J. (2019). *Reconciling indigenous peoples' individual and collective rights: participation, prior consultation and self-determination in Latin America*. Routledge.

¹⁴ Jaichand, V., & Sampaio, A. A. (2013) and Renkens, I. (2019). *Supra* 11.

¹⁵ Tornel, C. (2023). Decolonizing energy justice from the ground up: political ecology, ontology, and energy landscapes. *Progress in Human Geography*, 47(1), 43–65.

¹⁶ Jara, E. C., & Bruns, A. (2022). Contested notions of energy justice and energy futures in struggles over tar sands development in British Columbia, Canada. *Futures*, 138, 102921.
Mazzone, A., Fulkaxò Cruz, D. K., Tumwebaze, S., Ushigua, M., Trotter, P. A., Carvajal, A. E., ... & Khosla, R. (2023). Indigenous cosmologies of energy for a sustainable energy future. *Nature Energy*, 8(1), 19–29.
O'Neill, L., Thorburn, K., Riley, B., Maynard, G., Shirlow, E., & Hunt, J. (2021). Renewable energy development on the Indigenous Estate: free, prior and informed consent and best practice in agreement-making in Australia. *Energy Research & Social Science*, 81, 102252.

¹⁷ Indigenous Peoples Major Group. (2018). *Supra* 5. 10. Jerez, M. M. (2021). Challenges and opportunities for Indigenous Peoples' sustainability. Serafica, E. C. Community-based Renewable Energy Systems. *Tech Monitor*, 30.

Procedural justice and recognition justice in this specific area are intertwined. In effect, the energy justice debate goes further in conceptualising recognition justice. Whereby usual claims for indigenous people's recognition solely refer to political and statutory concerns, energy justice appeals for their respect and their consideration as victims of energy systems.¹⁸ States are not only invited to plan and implement a set of values and norms to constitute a regulatory basis for the recognition of indigenous peoples' status and rights, but they are also advised to provide for specific energy-related policies addressing their special needs.¹⁹ This dual role of recognition justice has achieved interesting results, especially in fulfilling procedural rights. For example, the Indian Tribal Energy Development and Self-Determination Act (ITEDSA) passed in 2005 allows Indian tribes to enter into "tribal energy resource agreements (TERAs) with the Department of the Interior", decentralising energy management and promoting greater self-determination.²⁰ A further example of a co-equity mechanism, this time emerging from corporate sustainability management, has been observed in Kenya with the Kipeto Wind Power project. In fact, project operators agreed to grant five per cent equity shares to communities, integrating them into the company consortium as shareholders of the Kipeto Energy Wind Park alongside the African Infrastructure Energy Investment Fund, Craftskills Wind Energy International Ltd and the International Finance Corporation.²¹

¹⁸ Jenkins, K., McCauley, D., Heffron, R., Stephan, H., & Rehner, R. (2016). Energy justice: a conceptual review. *Energy Research & Social Science*, 11, 174–175.

¹⁹ Hurlbert, M., & Rayner, J. (2018). Reconciling power, relations, and processes: the role of recognition in the achievement of energy justice for Aboriginal people. *Applied Energy*, 228, 1320–1327.

²⁰ Royster, J. V. (2008). Practical sovereignty, political sovereignty, and the Indian tribal energy development and self-determination act. *Lewis & Clark Law Review*, 12, 1080. Bronin, S. C. (2013). The promise and perils of renewable energy on tribal lands. *Tulane Environmental Law Journal*, 222.

²¹ Gregersen, C. T. T. (2022). Building innovation capabilities through renewable electrification: a study of learning and capability building in wind power megaprojects in Kenya and Ethiopia, 70. Heinrich Boll Stiftung. (2022). Pastoralism and large scale renewable energy and green hydrogen projects, 21. <https://www.boell.de/sites/default/files/2022-05/Pastoralism-and-large-scale-REnewable-energy-and-green-hydrogen-projects.pdf> (Accessed 26 May 2023).

17.4 CONCLUSION AND FUTURE ISSUES

The energy justice framework offers pathways for deviating from the hegemonic business-centred energy systems to human and community-centred models. However, key challenges must be overcome to allow a cosmopolitan and systemic instrumentalisation of procedural justice to avoid the repetition of past injustices. These challenges entail indigenous peoples' access to financial and technical support for community-led energy projects, robust legal frameworks for participation procedures, political, legal and infrastructural recognition, the extraterritorial ruling of business impacts on indigenous peoples, a strong and consistent governance and businesses' recognition of their diversity.

Historically marginalised indigenous peoples are now recalling for more consideration in the energy systems.²² In a new “World order”, energy dominant actors need to connect with minorities to achieve a fair and just transition. As presented by Heffron and De Fontenelle, addressing this concern requires the establishment of a “new social contract”²³—a contract that emphasises on communities' perception, values, needs and well-being.

²² Mazzone, A., Fulkaxò Cruz, D. K., Tumwebaze, S., Ushigua, M., Trotter, P. A., Carvajal, A. E., ... & Khosla, R. (2023). *Supra* 16.

²³ Heffron, R. J., & De Fontenelle, L. (2023). Implementing energy justice through a new social contract. *Journal of Energy & Natural Resources Law*, 41(2), 141–155.

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