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Indigenous Peoples and the Just Transition: Navigating Impacts, Promoting Equitable and Sustainable Renewable Energy, and Safeguarding Rights

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^{*} The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

Executive Summary

The global shift towards renewable energy sources is a crucial component of the just transition to a sustainable future. This is both to combat climate change and advance sustainable development for all. However, this energy transition has significant implications for Indigenous Peoples, necessitating a comprehensive understanding of the impacts on their rights, as well as the development of good practices to ensure equitable and respectful integration. This paper explores the intersections of Indigenous rights, renewable energy development, and the challenges to Indigenous Peoples, offering key recommendations for a just and inclusive transition.

Introduction

The just transition to renewable energy seeks to address climate change while promoting social and economic justice in advancing sustainable development for all. This major shift to low carbon is part of the Paris Agreement to combat climate change, and also integral component of the Sustainable Development Goals under Goal Seven (7) as "ensure affordable, clean reliable, sustainable modern energy for all".¹ The Intergovernmental Panel on Climate Change (IPCC) defines the just transition as "a set of principles, processes, and practices aimed at ensuring that no people, workers, places, sectors, countries or regions are left behind in the move from a high-carbon to a low-carbon economy."² It includes respect and dignity for vulnerable groups; creation of decent jobs; social protection; employment rights; fairness in energy access and use, and social dialogue and democratic consultation with relevant stakeholders.

Indigenous Peoples, with their deep connections to their lands, territories and resources, are uniquely impacted by this energy transition although they have the least carbon footprint.³ While Indigenous Peoples' territories host many renewable energy projects such as large hydro-dams, geothermal plants, solar and windmill farms, majority of the affected and nearby Indigenous communities do not even have access to energy. Likewise, these projects were implemented

https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_Chapter17.pdf

¹ Energy - United Nations Sustainable Development. United Nations.

https://www.un.org/sustainabledevelopment/energy/#:~:text=Goal%207%20is%20about%20ensuring,%2C%20educ ation%2C%20healthcare%20and%20transportation.

² Denton, F., K. Halsnæs, K. Akimoto, S. Burch, C. Diaz Morejon, F. Farias, J. Jupesta, A. Shareef, P. Schweizer-Ries, F. Teng, E. Zusman, 2022: Accelerating the transition in the context of sustainable development. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.019.

³ Pimentel, G.B. Dhir, R.K. Oelz, M. Villamil, R. Olsen, Lene. Ferreira, C. Coronado, H. (2022, November). Just Transition Policy Brief: Indigenous Peoples and a Just Transition for All. International Labour Organization. https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_860607.pdf.

without regard to the individual and collective rights of Indigenous Peoples resulting to long standing conflicts, massive loss of livelihoods, destruction of cultural heritage, increased abuse and violence of Indigenous women and girls, food insecurity and further marginalization and discrimination among others. Therefore, the recognition of Indigenous Peoples rights, their aspirations, and concerns is paramount for an energy transition that is genuinely just and inclusive.

Impacts on Indigenous Peoples Rights and Key Challenges

Land and Resource Rights

The development of renewable energy projects often encroaches on Indigenous territories, threatening their land and resource rights. States, along with the private sector, develop renewable energy plans and targets without ensuring the respect, recognition and protection of the rights of Indigenous Peoples to their lands, territories and resources. In spite of the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) by 193 member-states of the United Nations, only 10% of the customary lands claimed by Indigenous Peoples around the world (at least in 93 countries) have legal recognition. This lack of legal recognition and protection has directly resulted to Indigenous Peoples' territories becoming highly vulnerable to expropriation, destruction and land grabbing for renewable energy development and for the mining of transition minerals by states and the private sector. This situation is leading to long standing conflicts.⁴

More than 50% of transition minerals (lithium, cobalt, nickel, etc.) are found in or nearby Indigenous territories.⁵ With this, Indigenous territories are expected to be the new frontier of green colonization as the demand for transition minerals will skyrocket. Yet, governments are still not putting in place laws and policies recognizing the rights of Indigenous Peoples over their lands, territories, and resources. Furthermore, renewable energy and mining companies do not have strong safeguards for human rights, including obtaining properly the free, prior and informed consent (FPIC) of Indigenous Peoples; and also for environment protection and the establishment of effective redress mechanisms.

Likewise, numerous large solar farms, windmill parks are planned in Indigenous territories without their meaningful participation in decision-making and under business-as-usual approach in the name of green transition. In fact, two supreme court decisions upheld the rights of Indigenous Peoples which were violated in the establishment of windmill farms. These are the Fosen Wind Farm in Norway affecting the Saami Indigenous Peoples, and the Lake Turkana

⁴ Robinson, S. (2023, August 9). Scale of conflict between mineral mines and Indigenous peoples revealed. Institute of development studies. https://www.ids.ac.uk/news/scale-of-conflict-between-mineral-mines-and-indigenous-peoples-revealed/.

⁵ Taft, M. (2023, September 18). Article explores how Indigenous People's lands are impacted by mining of transition minerals. Business & Human Rights Resource Centre. <u>https://www.business-humanrights.org/en/latest-news/article-explores-how-indigenous-people-s-lands-are-impacted-by-mining-of-transition-minerals/</u>.

wind farm in Kenya affecting the Maasai Indigenous Peoples.⁶ The building of large dams has also gained renewed justification in the name of green economy. This runs counter to the findings and recommendations of the World Commission on Dams on the serious financial, social, and environmental impacts resulting to the forced displacements of more than 100 million and the destruction of livelihoods of additional more than 80 million, of which Indigenous Peoples are disproportionately impacted. Thus, the key challenge of the lack of legal and regulatory framework and policy coherence for the full recognition and protection of Indigenous Peoples rights need to be addressed immediately to prevent further violation of Indigenous Peoples rights and to advance the just transition in the right way.

Meaningful consultation and consent processes are vital to respecting these rights

Integral to the rights of Indigenous Peoples to their lands, territories, as well as to selfdetermination is the need to secure their free, prior and informed consent. As Indigenous lands and resources are being used and impacted by renewable energy development and the mining for transition minerals, it is pertinent to ensure FPIC through meaningful consultations in good faith, and an independent consent process which needs to be respected and the result to be upheld.⁷ The conduct of FPIC is the obligation of both the state and the private sector, which should ensure the substantive recognition and protection of the collective rights of Indigenous Peoples, including their right to self-determination; and not as a mere procedural matter. However, proper policies and guidelines are not developed and implemented by many states and energy and mining companies.⁸

Cultural and Spiritual Impacts

Renewable energy projects and mining of transition minerals have been adversely impacting sacred sites, disrupting the spiritual and cultural practices of Indigenous communities. Often, sites for geothermal plants, and also transitional minerals overlap with sacred sites of Indigenous Peoples, resulting to conflicts when companies and states ignore this reality for Indigenous Peoples. In the U.S., many of the transition mineral deposits are located near or within culturally or environmentally important areas to Indigenous Peoples, according to the MSCI study.⁹ The

⁶ Rasmussen, E. (2023, July 25). Norway's largest wind farm violates Indigenous rights. ICT news. <u>https://ictnews.org/news/norways-largest-wind-farm-violates-indigenous-</u>

rights#:~:text=In%20October%202021%2C%20Norway%27s%20Supreme,on%20their%20reindeer%20grazing%2 Olands; (2023, May 26). Kenya rules that a 310 MW wind project was built on land acquired irregularly. Enerdata. https://www.enerdata.net/publications/daily-energy-news/kenya-rules-310-mw-wind-project-was-built-land-acquired-irregularly.html.

⁷ Owen, J.R. Kemp, D. Harris, J. Lechner, A.M. Lèbre, É. (2022, May 31). "Fast track to failure? Energy transition minerals and the future of consultation and consent". Energy Research & Social Science. ScienceDirect. https://www.sciencedirect.com/science/article/pii/S2214629622001694.

⁸ Radwin, M. (2023, September). Rechargeable battery industry needs better mining regulations, report says. Mongabay. https://news.mongabay.com/2023/09/rechargeable-battery-industry-needs-better-mining-regulations-report-says/amp/.

⁹ Block, S. (2021, June 3). Mining Energy-Transition Metals: National Aims, Local Conflicts. MSCI. https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947.

disruption of cultural practices and desecration of sacred sites have serious implications to the distinct and collective identities, spirituality and wellbeing of Indigenous Peoples.

It is therefore imperative for states and companies to engage in good faith with affected Indigenous communities in the conduct of social, cultural, and environmental impact studies in areas with and nearby transitional mineral deposits. It also requires the meaningful participation and consent of Indigenous Peoples in designing mitigation measures to prevent the violations of their cultural. The Supreme Court decision of Norway in relation to the Fosen Windmill farm affirms that the state company violated the cultural rights of the Saami people in relation to reindeer herding as integral to their cultural life and wellbeing.¹⁰ Collaborative efforts are needed to ensure the preservation of these essential cultural and sacred elements of Indigenous identity.

Environmental consequences of mining of transition minerals

According to the report of the UN Environment Programme, mining for transitional minerals have serious environmental consequences, in addition to cultural and social impacts.¹¹ These impacts include significant carbon emissions, severe water pollution, destruction of habitats and landscapes, deforestation and soil erosion and land degradation. These have serious consequences in the health of biodiversity and exacerbates disasters. These environmental impacts have dire consequences in the sustainable management of resources of Indigenous Peoples, their use of traditional knowledge, their food security and their overall wellbeing in oneness with their lands, territories and resources. The case of the lithium mining in South America is poisoning ecosystems and endangering various species leading to ecological devastation.¹² Likewise, mining of nickel in the Indonesia is causing massive deforestation and water pollution.¹³ In the Philippines, it is leading to soil erosion and threatens the biodiversity is Sibuyan island, known for unique mammals and other species of flora and fauna.¹⁴

Economic and Social Disparities:

Despite the potential for renewable energy projects to create jobs and economic opportunities, Indigenous communities may face disparities in benefit-sharing, sustainable livelihoods and food security and will lead to unsustainable management of resources. Past experiences have shown that the massive extraction and use of lands and resources of Indigenous Peoples by states and

¹³ Mining Technology. The cost of green energy: lithium mining's impact on nature and people.

¹⁰ Elin, H. (2021, October 25). Norway: Supreme Court Rules Windmill Park in Sami Area Violates Indigenous Rights. Library of Congress. https://www.loc.gov/item/global-legal-monitor/2021-10-25/norway-supreme-court-rules-windmill-park-in-sami-area-violates-indigenous-rights/.

¹¹ Taft. Article explores how Indigenous People's lands are impacted by mining of transition minerals.

¹² (2023, October 30). The cost of green energy: lithium mining's impact on nature and people. Mining Technology. https://www.mining-technology.com/analyst-comment/lithium-mining-negative-environmental-impact/?cf-view&cf-view.

¹⁴ Willis, J. (2023, December 6). Nickel mine threatens Philippines biodiversity hotspot on Sibuyan Island (analysis). Mongabay. https://news.mongabay.com/2023/12/nickel-mine-threatens-philippines-biodiversity-hotspot-on-sibuyan-island-analysis/.

corporations have destroyed the base of their traditional occupations and sustainable livelihoods, as well as food security. Indigenous Peoples are asserting that they cannot be further left behind and bear the brunt of the energy transition; otherwise, this shift shall be nothing but mere greenwashing.

Likewise, mechanisms for equitable benefit sharing is few and far between particularly in countries where the collective rights of Indigenous Peoples to their lands, territories and resources are not legal recognized.¹⁵ Indigenous Peoples are not treated as equal partners with clear entitlements and compensation in the use of their lands and resources in the energy transition.

In spite of this challenge, an increasing number of Indigenous institutions and organizations are now developing their own equitable models for renewable energy development in Indigenous territories. These are being undertaken as fully owned by Indigenous nations or in partnership with state agencies or the private sector. Many Indigenous-led renewable energy development projects are focused on respecting Indigenous cultures, ensure the meaningful participation of all sectors—Indigenous women, youth and elders, and on sustainability including intergenerational continuity. These models of Indigenous led- renewable energy development ensuring access to clean energy by Indigenous communities are in New Zealand with geothermal plants, U.S. and Canada on solar and windmill among others.¹⁶ Further, community-based renewable energy owned and managed by Indigenous Peoples are also increasing in Indigenous territories in Asia, Africa, Latin America and the Caribbean and the Pacific.¹⁷ These initiatives are supported by a growing number of non-Government organizations, philanthropists and donor community, and also the private sector including some mining companies.

The recognition, and support to Indigenous-led solutions for the just transition will ensure equitable, inclusive and sustainable development of renewable energy. Further, it will contribute

¹⁶ Blair, A. Siratovich, P.A. Campbell, A. Geothermal Fuels Prosperity: How geothermal projects in New Zealand are catalyzing significant socio-economic benefits for Māori. Upflow NZ Limited. <u>https://assets.website-files.com/63db257f39a0ee46cb665e15/646c09f92d0f176aa3a27e08_Blair%20-</u> %20Geothermal%20Fuels%20Prosperity%20-%20Mexican%20Geothermal%20Assocn%20AGM%20-%202018.pdf; Sherriff, L. (2023, December 4). Native Americans are building their own solar farms. Future Planet. <u>https://www.bbc.com/future/article/20231204-native-americans-are-building-their-own-solar-farms;</u> Indigenous-led Clean Energy Project Map. Indigenous Clean Energy. https://indigenouscleanenergy.com/connect-learn/indigenous-led-clean-energy-project-map/.

¹⁵ Salamanca, A. Farnan, B. Strambo, C. Araújo, J.A.V. Forni, L. Canales, N. Del Duca, L. <u>Marcinkevičiūtė</u>, S. (2022, November 14). Five considerations for a just transition for Indigenous communities and ethnic minorities. SEI. https://www.sei.org/perspectives/just-transition-indigenous-communities/.

¹⁷ Ngo Pouhe, M.S. (2023, December 2). Deploying Energy Justice for a Meaningful Inclusion of Indigenous Peoples in Energy Decision-Making. The Power of Energy Justice & the Social Contract. Pp 121.128. <u>https://link.springer.com/chapter/10.1007/978-3-031-46282-5_17</u>; Peart, N. (2021, September 6). How Indigenous communities build energy sovereignty. GreenBiz. https://www.greenbiz.com/article/how-indigenous-communitiesbuild-energy-sovereignty.

to sustainable economic development based on respect for human rights, social justice and democratic governance is crucial to avoid exacerbating existing inequalities.

Indigenous Peoples' Environment and Human Rights Defenders (HRDs) under attack

As Indigenous Peoples defend their lands, territories and resources to imposed energy projects and mining for transition minerals, many are subjected to violence and attacks from state and company forces. In 2022, there were 49 allegations of human rights violations against Indigenous Peoples linked to mining of transition minerals.¹⁸ These cases include land grabbing, killings of Indigenous leaders, and violations of FPIC and cultural rights of Indigenous Peoples. Furthermore, according to the documentation and research of the Business and Human Rights Resource Center (BHRRC) "from 2010-2021, Indigenous Peoples and communities [are] at the forefront of both resistance and harm (in relation to mining transitional minerals).¹⁹ Of 148 attacks on HRDs, 32% of the attacks (47) were against Indigenous HRDs who were mostly protecting their land rights, water rights, and livelihoods. Forty-two percent of the attacks on Indigenous Peoples involved the denial of freedom of expression, judicial harassment and SLAPPs; 23% involve violations of the right to protest; 23% involved intimidation and threats, and—most disturbingly—14% were killings of Indigenous People[s] defending their rights". Indigenous Peoples in Peru were recorded with the highest number of attacks related to transition minerals.

Key Recommendations

For States:

• Strengthen Legal Protections

Governments should enhance legal frameworks to explicitly recognize and protect the rights of Indigenous Peoples in the context of the energy transition and sustainable development. This shall include review of policies and guidelines towards ensuring policy coherence for the recognition and protection of Indigenous Peoples rights based on the UNDIRP, the protection of the environment, and for social equity.

• Land Tenure Security and FPIC

Strengthen efforts to secure land tenure for Indigenous Peoples, providing legal recognition and protection for their territories, and mandatory conduct of FPIC process to prevent the criminalization of Indigenous Peoples in defending the lands and the expropriation and land grabbing for renewable energy development. This requires specific policies and guidelines, sufficient budget and effective accountability and redress mechanisms.

• Inclusive Policy Development and Planning

 $human rights.org/media/documents/Transition_Minerals_Tracker_Global_analysis.pdf.$

¹⁸ Chacko, S. (2023, June 8). Companies mining under energy transition minerals committed hundreds of human rights abuse cases: Report. DownToEarth. https://www.downtoearth.org.in/news/mining/companies-mining-energy-transition-minerals-committed-hundreds-of-human-rights-abuse-cases-report-89915.

¹⁹ Cato, J. Tochukwu Christopher, M. Zbona, A. (2022 May). Transition Minerals Tracker: 2021 Analysis. Business & Human Rights Resource Centre. https://media.business-

Mechanisms for the meaningful participation of Indigenous Peoples shall be established in developing policies, plans and targets on climate actions and Sustainable Development Goals ensuring Indigenous Peoples voices are heard and respected.

• Partnerships with Indigenous Peoples

States shall collaborate with Indigenous Peoples in developing appropriate renewable energy projects with equitable benefit-sharing arrangements subject to FPIC of affected communities.

• Environment Protection

Ensure the development and enforcement of laws, policies and guidelines for the protection of the environment, while recognizing the rights of Indigenous Peoples and enhancing their roles and contributions in the protection of the environment and biodiversity.

• Protection of Indigenous rights defenders

States shall adopt specific measures against reprisals, attacks and violations of the rights of Indigenous rights and environment defenders and provide effective access to justice to victims of attacks and human rights violations.

• Strong regulatory framework for business

States shall regulate activities of energy and mining companies to respect Indigenous Peoples rights and be held to account for violations and abuses including on adverse environmental impacts in line with the UN Guiding Principles on Business and Human Rights.

For Energy and Mining Companies and Investors:

• Mandatory human rights due diligence

Conduct human rights due diligence in respecting the rights of Indigenous Peoples as affirmed by the UNDRIP regardless of state's legal.

• Social and Environmental Impact Assessments

Conduct comprehensive social impact assessments before initiating renewable energy projects, taking into account the cultural, social, and environmental implications on Indigenous communities by ensuring their meaningful participation.

• Proper conduct of the FPIC

Companies and investors shall ensure the proper conduct of FPIC for affected communities and respect their collective decision.

• Effective redress mechanisms

Companies shall be held to account for any adverse impacts of their project to Indigenous Peoples by establishing redress mechanisms accessible to Indigenous Peoples.

• Community Benefit Agreements

Establish transparent and fair community benefit agreements that ensure Indigenous Peoples receive equitable compensation, share in the economic benefits, and have a say in the decision-making process.

• Responsible and accountable investment

Investors shall adopt a policy for zero tolerance on human rights violations: conduct monitoring and independent verification process on the conduct of human rights due diligence,

implementation of FPIC and environmental impact assessments; establish independent grievance mechanisms; partner directly with Indigenous Peoples and their communities to support Indigenous-led renewable energy development.

• Investment in sustainable technologies

Prioritize investments in research, technologies and practices that minimize environmental impact, more sustainable and respecting the delicate ecosystems within and around Indigenous territories.

For UN Agencies, Funds, and Programmes:

• Capacity Building and Technical Assistance

Provide ongoing capacity-building programs and technical assistance to Indigenous Peoples, supporting their participation in national, regional and international dialogues and negotiations related to renewable energy, climate change and sustainable development.

• Support effective engagement

Facilitate engagements of Indigenous Peoples with governments at the national, regional and global levels in raising their concerns and aspirations in relation to the energy transition in particular, and on climate change and sustainable development in general.

• Advocacy and Awareness

Advocate for the inclusion of Indigenous Peoples' perspectives in climate discussions and awareness campaigns, emphasizing the importance of respecting their rights to enhance their role in biodiversity observation and sustainable development.

• Monitoring and Reporting:

Establish mechanisms for monitoring and reporting on the adherence to Indigenous Peoples' rights in the context of renewable energy projects, ensuring accountability at the international level.

• Direct Funding Mechanisms

Establish direct funding mechanisms that enable Indigenous Peoples to access financial resources for renewable energy projects, environmental protection, and self-determined sustainable development without undue bureaucratic hurdles and focusing on supporting Indigenous communities in all regions.

Policy Advocacy

Advocate for the integration of Indigenous Peoples' perspectives, rights, and concerns in global policies related to renewable energy, climate change, and sustainable development.

• Research and Data Collection

Support research initiatives and data collection efforts of Indigenous Peoples focused on understanding the specific impacts, challenges, and opportunities faced by Indigenous Peoples in the context of renewable energy projects, contributing to evidence-based decision-making.

• Collaborative Partnerships

Directly support the initiatives of Indigenous Peoples to meet their energy and sustainable development needs while enhancing their contributions in the protection of the environment and biodiversity.

• Human Rights Defenders Protection

Raise awareness, attention and actions to protect Indigenous Peoples' human rights defenders and leaders, who often face threats and attacks while advocating for their communities in the context of renewable energy projects.

• Technical assistance

Support Cultural Mapping and Impact Assessments by Indigenous Peoples of culturally significant areas and sacred sites towards minimizing the adverse effects of renewable energy projects on Indigenous cultural heritage.

• Promotion of Indigenous-led Solutions

Actively promote, showcase and support Indigenous-led solutions and innovations in the renewable energy sector, emphasizing sustainable practices that respect cultural values and environmental stewardship.

For Indigenous Peoples:

Strengthen Community Empowerment

• Enhance community awareness and education on renewable energy projects, their potential impacts, and the rights of Indigenous Peoples including in decision-making processes.

Build Alliances and Networks:

• Facilitate the formation of alliances and networks among Indigenous communities, organizations and institutions for coordinated actions for equitable and sustainable just transition; and to share experiences, strategies, and best practices in dealing with renewable energy projects including in promoting Indigenous-led renewable energy solutions.

Capacity Building:

• Develop training programs and capacity-building initiatives for Indigenous Peoples to actively engage in negotiations, consultations, and decision-making processes related to renewable energy projects (including mining for transition minerals)

Conduct research and documentation.

• Undertake systematic research and documentation in partnership with relevant institutions for evidence-based advocacy relating to the energy transition and related issues.

Policy advocacy and engagements

- Undertake coordinated advocacy and engagements with states, corporations and investors for the legal recognition, respect and protection of Indigenous Peoples rights; prevent the criminalization of Indigenous Peoples, and facilitate access to justice for victims of human rights violations and abuses.
- Collaboration and Partnership

Build and strengthen collaboration and partnerships with relevant actors to facilitate access to renewable energy by Indigenous Peoples communities and support for Indigenous-led solutions for climate change and for advancing sustainable development for all.

• Protection of Indigenous Human Rights Defenders

Undertake measures to minimize potential attacks and reprisal for Indigenous rights defenders and leaders, and engage with redress and accountability mechanisms to seek justice for victims of human rights violations and abuses.

These recommendations aim to reinforce the obligations of states, responsible and accountable business conduct and the role of United Nations agencies, funds, and programmes in fostering inclusive, equitable, and culturally sensitive and rights-based approaches to renewable energy and sustainable development, with a specific focus on Indigenous Peoples.