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## *Reclaiming Agency: Indigenous Energy Sovereignty and the Limits of International Law in Latin America and Africa*

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# RECLAIMING AGENCY: PRESENTATION STRUCTURE



- 1) Framing the Problem: VUCA Lens on Energy Transitions
- 2) The Architecture Of Energy Law: Fragmentation & Legal Invisibility
- 3) Regaining Agency: The Central Research Questions
- 4) Analytical Frameworks
- 5) Methodological Approach
- 6) Case Study 1: Ecuador (Kichwa & Sápara)
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- 8) Comparative Insights from the Case Studies
- 9) Indigenous Energy Sovereignty
- 10) Towards a Plural, Just, Decolonial Energy Law
- 11) Institutional Pathways: Reform → Regional Courts → Community Protocols.
- 12) Conclusion: Reclaiming Agency



# FRAMING THE PROBLEM: VUCA LENS ON ENERGY TRANSITIONS

## The Just Transition Paradox- The Key Issues:

- Energy transition rhetoric vs. extractive reality
- New waves of dispossession: oil, lithium, renewables
- Tension: Sustainability vs. Sovereignty
- Aim: Rethinking international energy law from Indigenous perspectives
- Regions of focus: Latin America and Africa
- VUCA: Volatility of price shocks and geopolitics; Uncertainty- energy as relation vs. resource; Complexity- overlapping treaties and legal regimes; Ambiguity- contested terms – sustainability, net-zero, prosperity



# THE ARCHITECTURE OF ENERGY LAW: FRAGMENTATION & LEGAL INVISIBILITY

## A] Colonial Legacies

- Evolution of international energy law from 19th-century concession regimes
- Its legal architecture embeds extraction within international law, erasing Indigenous territorial situatedness

## B] Modern Manifestations

- Contemporary international energy law, through investment treaties and arbitration forums, continues to prioritise investor rights over Indigenous claims.

## A] Legal Fragmentation

- The fragmentation of international legal regimes governing energy, investment, and human rights creates normative uncertainty, leading to inconsistent application and legal invisibility of Indigenous communities.

## B] Impact on Indigenous Peoples

- This legal fragmentation and invisibility exacerbate the marginalisation of Indigenous communities, with significant challenges in asserting their rights and resisting extractive projects that encroach upon their territories.

# REGAINING AGENCY: THE CENTRAL RESEARCH QUESTIONS

Indigenous conceptions: Energy as relational and reciprocal, with sovereignty as autonomy over energy resources and governance.

Thus, in the current governance structure:

- 1) Does international energy law facilitate or hinder Indigenous energy sovereignty?
- 2) How can its normative architecture be reframed for plural, just, and legitimate transitions?

# ANALYTICAL FRAMEWORKS

- Doctrinal Legal Analysis: UNDRIP, ILO 169, BITs
- Critical Indigenous Studies: Energy as relation, not commodity
- TWAIL: Law's colonial legacy in energy governance
- Gaps: Legal fragmentation, weak enforcement, policy conflicts
- Overlap with investment treaties and state energy laws



# METHODOLOGY AND CASE SELECTION

The study adopts an interdisciplinary methodology:

- 1) Doctrinal legal analysis
- 2) Comparative case studies from the Ecuadorian Amazon (Kichwa, Sápara) and Nigeria's Niger Delta (Ogoni, Ijaw).

These cases were selected for their deep histories of extractivism, resistance, and Indigenous-led energy alternatives.



## CASE STUDY 1: ECUADOR (KICHWA & SÁPARA COMMUNITIES)

- Sápara and Kichwa cosmology: Oil extraction = ontological violence
- Living Forest proposal: conservation without commodification
- Constitutional contradictions: rights of nature vs. state control
- FPIC often reduced to proceduralised consultation workshops





## CASE STUDY 2: NIGERIA'S NIGER DELTA REGION (OGONI, IJAW, ILAJE)

- History of oil imperialism, spills, repression
- Land Use Act 1978 → dispossession
- Domestic courts fail; communities resort to transnational litigation (*Okpabi v. Shell*)
- Community-led solar/mangrove projects ignored



# COMPARATIVE INSIGHTS FROM THE CASE STUDIES

Two variables arise from the comparative insights from the case studies

**A] Commonalities:** marginalisation; FPIC proceduralised; alternatives ignored

- **In Ecuador:** Plurinational recognition but undermined
- **In Nigeria:** No Indigenous rights recognition; Petro-state dominance

**B] Divergence:**

- **In Ecuador,** plurinational structure of governance recognised
- **In Nigeria,** Petro-state denial of Indigenous agency persists

# INDIGENOUS ENERGY SOVEREIGNTY

Indigenous energy sovereignty is not merely about control over resources but about maintaining the spiritual, ecological, and social integrity of land-based life systems.

## A] Cultural Foundations

- For Indigenous communities like the Kichwa and Ogoni, energy is deeply intertwined with their cultural and spiritual practices.
- The Kichwa concept of Sumak Kawsay (Buen Vivir) situates energy within a relational matrix where rivers, forests, and spirits are kin, emphasizing the importance of reciprocity and intergenerational responsibility.

## B] Contrast with Current Dominant Models

- This relational ontology starkly contrasts with the dominant model of hierarchical, technocratic, and extractive energy governance,



# TOWARDS A PLURAL, JUST, DECOLONIAL ENERGY LAW

There is a necessity for the following:

- Shift from resource governance → relational governance
- Plural sovereignties: Indigenous legal orders co-equal
- Making FPIC its transformative through genuine consent, that is ongoing, revocable, and rooted in Indigenous epistemologies that prioritise harmony with nature over market efficiency.
- Epistemic justice: Indigenous knowledge as co-equal
- Relational impact assessments: cultural & ecological continuity



# INSTITUTIONAL PATHWAYS TOWARD REFORM

Reform → Regional Courts →  
Community Protocols.

- A binding complaints mechanism under UNDRIP
- Treaty reform for enforceable Indigenous energy rights
- The creation of Regional Energy Courts with Indigenous judges, and
- The elevation of community protocols to binding annexes in energy contracts.
- Inclusion of Indigenous communities in climate and energy transition financing



# CONCLUSION: RECLAIMING AGENCY

A green transition without justice is just another colonialism.

- Transition risks reproducing extractivism in green clothing
- Indigenous sovereignty = litmus test of law's legitimacy
- In VUCA world: Indigenous cosmologies offer continuity, not profit margins
- Reclaiming agency = condition for justice



THANK YOU!  
WE WELCOME QUESTIONS, VIEWS,  
AND COMMENTS

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