



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)
- 7) Case Study 2: Nigeria's Niger Delta (Ogoni, Ijaw, Ilaje)
- 8) Comparative Insights from the Case Studies
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- 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 QUECTIONS

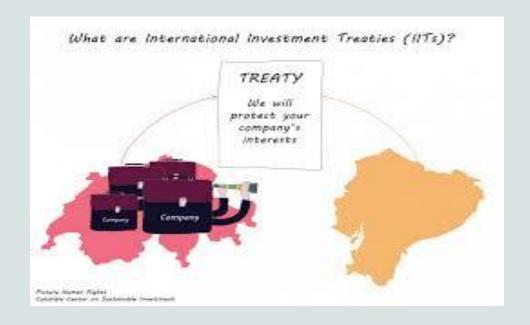
Indigenous conceptions: Energy as relational and reciprocal, with sovereignty as autonomy over energy resources and governance.

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 withoutcommodification
- 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 coequal
- 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 coequal
- Relational impact assessments: cultural & ecological continuity





INSTITUTIONAL PATHWAYS TOWARD REFORM

Reform \rightarrow **Regional** Courts \rightarrow **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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