



Economic and Social Council

Distr.: General
2 February 2022
English
Original: Spanish

Permanent Forum on Indigenous Issues

Twenty-first session

New York, 25 April–6 May 2022

Discussion on the theme “Indigenous peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent”

The rights of indigenous peoples in relation to the global energy mix*

Note by the Secretariat

Summary

At its twentieth session, the Permanent Forum on Indigenous Issues appointed Darío José Mejía Montalvo, a member of the Forum, to conduct a study on the rights of indigenous peoples in relation to the global energy mix and to present that study to the Forum at its twenty-first session.

* The contributions of men and women leaders of indigenous peoples and organizations, academics and independent consultants have been crucial to the realization of this study. We would like to thank Carlos Mario González Charrasquiél and Carlos Vladimir Zambrano Rodríguez for their participation. We would also like to thank Bischöfliches Hilfswerk Misereor and the United Nations Development Programme in Colombia for their support.



Introduction

1. The global energy production, distribution and consumption model (energy mix) that has been in place to date has generated epistemic, economic and political injustice against indigenous peoples, as it has ignored the way in which they view energy, the ownership of their territories, their participation mechanisms and their right to equitable energy distribution and access.
2. The gradual depletion of fossil fuels, the main source of energy, and the increasing impact of climate variability require Governments, companies and society to bring about changes in energy production and consumption patterns to promote conditions that will sustain life on the planet. Transitioning the energy mix to sources other than coal, oil and gas is an urgent necessity. Although progress has been made in some countries, the transition process is still lagging considerably.
3. When conducting such activities, States and energy production and distribution companies should respect human rights and incorporate different views regarding the production and use of the Earth's energy. Standards for recognizing diversity and alternative development approaches that include parameters concerning the relationship with nature and seek to ensure balance in the present and for future generations are an integral part of this discussion.
4. Indigenous peoples have expressed their position on development in various global, regional and national contexts. Indigenous peoples are not an obstacle to development or to access to essential goods and services; they simply have their own vision of development and *buen vivir* (living well). According to this vision of self-development, the delivery of essential goods and services should be carried out in accordance with the community structures of each people and guided by the principles of harmony and balance with nature and with past and future generations.
5. When identifying and developing new sources of energy production, it is fundamental and important to include standards for recognizing and engaging in dialogue with indigenous peoples. Indigenous peoples possess a significant portion of the territories containing the world's nature reserves, although, paradoxically, indigenous peoples are among the most vulnerable and poor people in the world.
6. Indigenous peoples, like most vulnerable populations around the world, have pressing needs in terms of access to energy and energy-related services and goods but, fundamentally, they are committed to participating under equitable conditions in discussions on the best means of energy production, so as to ensure that harmony and balance with nature are taken into account in the development of new sources and means of energy production, distribution and access.
7. At the twenty-sixth Conference of the Parties of the United Nations Framework Convention on Climate Change, held in 2021, there were important discussions on the need to establish goals for changing the global energy mix, on the basis of the fact that the current state of pollution resulting from the production and consumption of fossil fuels is one of the main causes of the climate change that is threatening human life on Earth. Although several countries have committed to gradually reducing their use of coal-based energy sources and to ceasing to fund coal projects in developing countries, much remains to be done by the Governments of the countries that contribute most to global pollution to control the effects of climate variability and halt environmental degradation.
8. This study seeks to identify the central aspects of the relationship between indigenous peoples and the main actors (States and companies) involved in changing the current energy mix. The study will also take into account post-pandemic economic recovery measures. In that context, some Governments have announced relaxed

licensing requirements for the exploration and exploitation of natural resources, including sources of renewable energy, and attempted to increase the flexibility of consultation and free, prior and informed consent processes. The study concludes with recommendations on developing the sector in a way that respects and promotes the rights of indigenous peoples.

I. Indigenous peoples' view of energy

9. Energy, life and spirit are synonymous. For most indigenous peoples, asking “What is energy?” is the same as asking “What is life?” or “What is spirit?” There is no division between technical, economic, religious and scientific issues. Those concepts are viewed holistically in the cosmovisions of indigenous peoples, whereas in contemporary Western society they have different interpretations in the technical, economic, scientific and religious spheres.

10. For example, in the view of the Arhuaco people:¹

The light has a father a mother, which give it origin when they are unified. This is also interpreted as the masculine and feminine unifying to bring forth the light of the father (...), who is the one who gives light. When, from a cultural perspective, we ask ourselves how the Sun appeared, which gave light, which gave clarity, we answer that it gives light because birth filled it with gold, with light, and that is why it shone, and it was born because it has a father and a mother.

All beings, all objects, everything found in nature, which science divides into lifeless beings and living beings, have life in our tradition: stones, water, air, plants and animals all have life, and they have colours. All natural beings have fathers and mothers, which have the colour white, the colour yellow, the colour red and the colour black. These are the primary colours for us, and they are also full of life, and full of spirituality, and they each have their own characteristics. These characteristics complement each other, and other colours and the whole variety of shapes are born. Therefore, when we talk about spirituality, we are represented with physical characteristics, with memory, with a spirit that is not seen with the eye, with a power that gives us the energy to move. This representation reveals that we all come from the same nature and that the way of being of each being is dependent on these original characteristics and the multiple ways in which they combine.

11. For the Guna-Dule People:²

When you are in your mother's womb, the whole history of your ancestors comes together there; your grandmother's womb, your great-grandmother's womb, and the wombs of all the generations are there. In all these wombs of history, you appear as a human being. All the peoples of the world come from the same energy, and that same energy that is in the womb continues to be nourished by the cosmos, which is linked to the earth. That is where our energy is. So in the indigenous languages there is a being called “movement”. Why? Because we are moving through the cosmos, moving through the earth, and the earth is spinning.

So energy is possible because the cosmos exists, the Earth exists, and on the Earth – who is on the Earth? All that we are. The thing called “oil” is to us blood,

¹ Interview with Geremias Torres, indigenous authority of the Arhuaco People, Sierra Nevada de Santa Marta, Colombia.

² Interview with Abadio Green Stocel, of the Guna-Dule people.

placenta; coal, gold and silver are our spines; the air that we breathe is movement, it is the energy inside our bodies that enables us to walk, to move, to think, to feel. Without the strength of blood we cannot walk.

In the cosmovision of some indigenous peoples, the sea is the mother's amniotic fluid. So, when something affects the sea, it also affects the mother's womb. And despite all the damage that has been done to it, the sea still continues to produce food with much love. So we can say that energy is love, because the Earth is all love, the Sun is all love, plants, the stars, the Moon, everything out there in the universe is love, and everything that we have on Earth – placenta, oil, coal – is pure love, because they are bodies of Mother Earth. We indigenous peoples have taken advantage of this, but in a harmonious way. The knowledge of our peoples allows us to have a relationship of coexistence with energy.

What energy do we give so that we can access these energies of nature and the cosmos? It is chanting, it is the ceremonies that our grandparents teach us, for example using fire to connect with the cosmos, with the Earth. Fire is very important in many cultures, because it represents energy, and energy is love, energy is cleanness, energy is balance, energy is the connectedness of all of us beings.

12. Indigenous peoples' understanding of energy as synonymous with life and spirit gives it a different standing than that of a commodity, which has hitherto been dominant in Western society. The view of energy as a commodity that can be privatized and subjected to the dynamics of supply and demand and capital accumulation leaves little room for global energy policies and measures that promote justice, harmony and balance between the beings of nature and human beings.

II. The colonial matrix as a basis for the energy mix

13. The modern State emerged relatively recently, in comparison with the legal, institutional and cultural traditions stemming from the cosmovisions of indigenous peoples around the world. Most States have their origins in colonial processes, from which they inherited their legal, economic and governmental structures.

14. The relationship between indigenous peoples and States has been characterized by the imposition on native peoples of value systems of societies of European origin. This historical process has, at various times, resulted in indigenous peoples needing to fight, in different arenas, for diverse values to be recognized, as a strategy for preventing the extermination of the surviving peoples.

15. Understanding this historical process of relations from the perspective of pre-existence and diversity is important for addressing the current complex environmental, energy, ethical, economic, political and spiritual crises.

16. The pre-existence of indigenous peoples in their territories before colonization and the subsequent formation of nation States is understood as being continuous; therefore, the rights accorded in their original laws cannot be replaced by bringing in the external model of the Western concept of the law. For indigenous peoples, territorial rights are intrinsic to their respective cosmovisions and, consequently, are not created upon their inclusion in the constitutions or laws of States with Western origins. For indigenous peoples, constitutional recognition of their rights is not the granting of rights but rather the recognition of their pre-existence in the territory.

17. Pre-existence is at the root of the fights that indigenous peoples have engaged in to preserve their territories, not only as physical spaces but also as an essential element of their cosmovisions. This has led to disputes over the full recognition of

their rights to autonomy, self-government and self-determination, in order to guarantee the survival of their peoples, cosmovisions, cultures and the traditions linked to their identities.

18. Moreover, the diversity of value systems creates complexity in the relations between indigenous peoples and the State, since each indigenous people has its own distinct value system deriving from its particular cosmovision. The cosmovisions of indigenous peoples establish not only the conditions for the legitimacy of their own cultural, social and political norms, but also the horizons of collective life for the present and the future. In other words, their vision of development, based on relationship with the territory, nature and other societies, has its origins in the cosmovisions that they have held throughout history.

19. Taking into account the above-mentioned points, we can see that conflicts concerning the use of territory result from a lack of recognition of pre-existence as a source of rights of indigenous peoples and of diversity as a form of the exercise of the rights of those peoples.

20. The administrative boundaries found in modern States (departments, federated states, municipalities, provinces and other political and administrative divisions) have been established with no regard for the pre-existing territorial orders of indigenous peoples. Indigenous peoples have been trapped by legal artifices repeatedly imposed upon them by means of external political and administrative divisions, which have prevented them from participating in decision-making on matters concerning their territories and populations.

21. Indigenous peoples are fighting for essentially the minimum principles that any people in the world can expect their colonizer to follow: respect for their cultures, recognition of the territories that they still hold, freedom to maintain their own political, organizational and administrative structures and the right to remain united as peoples.

22. In many countries, indigenous peoples have been dispossessed of their lands; their cultures and languages have been denigrated; and their members have been marginalized in political and economic activities. The rules governing energy policies around the world were established without the participation of these peoples, being set instead by dominant corporate groups.

23. The current (conventional) energy mix was established on the basis of norms that reproduce and deepen profoundly colonial relations. States, making use of the legal fiction of absolute ownership of the territories within their national borders and the right to administer them, have granted permits allowing private entities to explore, exploit and trade the natural resources in these territories, paying no regard to the ancestral rights of the original inhabitants. This extractivist model has served as the basis for the development of the current energy mix, and indigenous peoples have been one of the main victims at the global level. The energy mix has entrenched justice gaps experienced by indigenous peoples at the epistemic, political and economic levels.

24. It is important to take a broad view of the extractivist economic model, since territory-related conflicts between the State and indigenous peoples do not concern only mining for fossil fuels and other energy sources. Mining for metals has had negative effects in territories. In particular, it has damaged the social fabric by causing internal divisions and other conflicts associated with militarization and the arrival of workers with outside customs and concerns. In the context of the energy transition, mining is still taking place and continues to cause damage to socio-environmental systems, as the demand for these minerals as input for the new energy mix will increase.

25. The global economy is based on the use of fossil fuels and minerals as the main sources of energy. As a result, in global discussions led by States and companies, economic stability concerns are given priority over the need to ensure the sustainability of life on the planet.

26. The global climate crisis has serious consequences for survival in territories, in particular in indigenous territories. To name just a few of the consequences of climate change and its effects in recent decades, more than 295 billion working hours have been lost, around 345,000 people over 60 years of age have died as a result of rising temperatures and 569.5 million people are living at risk from flooding.³

27. One of the consequences of territories becoming uninhabitable is the displacement of human populations. By 2050, 216 million people could have been displaced. Their abandonment of their territories would reduce production capacity and harm their cultures.⁴ It is predicted that around 17 million people could be displaced in Latin America alone.

28. At least 48 countries around the world have recently increased their hydroelectric capacity. Countries in East Asia and the Pacific added the most capacity, with 9.2 GW added in 2020. This was followed by countries in South America (4.9 GW), Central and South Asia (4.0 GW), Europe (2.2 GW), Africa (1.0 GW), North America (0.6 GW) and Central America (0.6 GW). Advances in the generation of energy from hydroelectric sources can be seen in various countries. China added the most capacity, with the installation of 8,540 MW, followed by Brazil (3,866 MW), Pakistan (2,487 MW), Turkey (1,085 MW), Angola (668 MW), Tajikistan (605 MW), Ecuador (556 MW), India (535 MW), Norway (419 MW) and Canada (401 MW). Brazil has become the second largest producer of hydroelectricity by installed capacity, producing 104.1 GW in 2018, surpassing the United States, which produced 102.7 GW.⁵

III. The energy transition and indigenous peoples

29. The need to move towards new energy sources such as solar, wind and hydroelectric energy, among others, which are referred to as clean energy, is not a new issue. These forms of energy have come to be known as clean energy because they make use of and are directly related to natural resources. However, their relationship to natural resources is not always beneficial, in particular for populations that depend on natural resources for their livelihoods.⁶

30. By 2010, at least 12,000 hydroelectric power plants located in or affecting indigenous territories had already been constructed. In most of these projects, there were problems related to a lack of consent and consultation prior to the development and design of the projects and to the reasonable and democratic distribution of the benefits they entailed. Moreover, the indigenous peoples that owned the affected

³ Sébastien Seibt, “COP26: el impacto del calentamiento global en 10 cifras”. See <https://www.france24.com/es/medio-ambiente/20211104-infografia-cifras-impacto-calentamiento-global>.

⁴ Julieth Riaño, “Cambio climático y desplazamiento, los efectos del clima en la movilidad humana”. See <https://www.france24.com/es/programas/migrantes/20211104-cambio-climatico-desplazamiento-migrantes-pobreza>.

⁵ José A. Roca, “La energía hidroeléctrica mundial aumentó su capacidad en 21,8 GW en 2018”. See <https://elperiodicodelaenergia.com/la-energia-hidroelectrica-mundial-aumento-su-capacidad-en-218-gw-en-2018/>.

⁶ Lee Roy Cano Torres and Luis Alejandro Rodríguez Cruz, “El impacto social de las energías limpias en comunidades vulnerables. La energía eólica en la comunidad zapoteca de Juchitán de Zaragoza, Oaxaca”, *Ambiente y Desarrollo*, vol. 24, No. 46 (Pontificia Universidad Javeriana, 2020).

territories were not involved in the projects. This was the case in countries such as Brazil, Ethiopia, Guyana, Malaysia and Peru.⁷

31. The energy transition has been seen as the replacement of sources of energy rather than as a change in the model for relations with communities. In other words, it is based on continuing mega capital investment projects on the premise that the territories concerned are the property of the State and that the national government authorities have absolute power to determine the future of the populations living there.

32. One of the alternative and renewable energy sources that has gained most ground in recent decades is hydroelectric power. While hydroelectricity generation does not emit greenhouse gases, it does have negative effects on the ecological dynamics of ecosystems, threaten biotic diversity and affect water quality, fishing sources, and the planting cycles and harvesting of food crops. The construction of hydroelectric dams in indigenous territories without the due participation of their peoples leads to environmental, social and political degradation and creates pressure with regard to legal certainty and territorial ownership, which in many cases results in the forced displacement of communities. It also creates and exacerbates internal conflicts, including territorial disputes. Against this backdrop, hundreds of indigenous and environmental leaders have been killed.

33. While they experience the negative effects of the construction of hydroelectric dams in their territories, the indigenous communities affected often do not receive access to any of the electricity generated, but rather continue to live in poverty, neglected by the State. In addition, hydroelectric dams often open the door to land-use pressures driven by economic motives that are not aligned with the interests of indigenous peoples, such as monoculture agriculture, tourism projects and the expansion of the agricultural frontier.

34. The type of relations developed by State authorities and companies in order to implement solar, wind and hydroelectric energy projects in various parts of the world has created and deepened internal divisions and conflicts among members of the indigenous communities themselves, generally when some are in favour of the energy projects and others are against them.

35. This model of relations carries risks for indigenous peoples, as the standards established by the public authorities may be based on practices that are reductionist or involve cultural assimilation, supported by the normalization of the procedures of monocultural law, which does not reflect the policy of recognition established in the international standards on the recognition of indigenous peoples.

36. There have been complaints from various parts of the world about pressure being put on indigenous peoples as a result of contractors (be they natural or legal persons) influencing the decisions of the public authorities responsible for recognizing the legal standing of the indigenous authorities, to ensure that preference is given to indigenous authorities that support energy projects. This determination (or imposition) by outsiders of indigenous peoples' authorities erodes the self-determination and the cultural integrity and identity of indigenous peoples and, as a result, undermines the modern democratic principle of pluralism. Furthermore, the external determination of the legal standing and legitimacy of indigenous authorities could have catastrophic consequences for the survival of the indigenous people in question, since those making the judgment do not have an in-depth understanding of the values at play in any given dispute.

⁷ Ibid.

37. The actions of the authorities in the face of internal and intercultural conflicts may undermine indigenous peoples' rights to survival and self-determination. This has been addressed in international law through the establishment of the right to prior consultation, which is a fundamental right, and the principle of free, prior and informed consent provided for in the United Nations Declaration on the Rights of Indigenous Peoples. The *raison d'être* of such instruments is to prevent cultural assimilation and the imposition of world views, including with regard to ways of organizing political authority, in relations among people, and the relationship between people and the environment.

38. The time in which life takes place for indigenous peoples cannot be regulated by contracts or measured in the terms used in the context of external administrative or judicial processes. Therefore, damage and impact can materialize in the form of the gradual erosion of culture and identity.

39. As an example of such a situation, research on wind energy projects in Mexico found that relations with communities were turbulent.⁸ There was evidence of human rights violations, intimidation, land dispossession, corruption and disruption to eating habits and productive activities, resulting in a loss of identity and the breakdown of the social fabric.⁹

40. No international organization has the capacity to monitor the effects of such breakdown, environmental impacts, the consequences of the lack of consultation and consent and other kinds of effects and determine the necessary corrective measures.

41. Part of the reason for these issues is that the burden of action to mitigate the environmental crisis has been shifted to communities, and society as a whole, which in some ways relieves Governments and corporations of responsibility. The risk with this model is that it could widen socioeconomic gaps, making certain groups of people more vulnerable to climate change.

42. The participation of indigenous peoples in energy mix transition plans is dependent on the willingness of national Governments to include them. Countries have been making energy transition plans covering 20 or more years without ensuring the representation and effective participation of indigenous peoples in accordance with international standards on the recognition of their right to autonomy, right to self-determination, territorial ownership and visions of self-development. Although some countries have made references to indigenous peoples, such mentions are declarative or merely formal.

IV. Heightened challenges as a result of the pandemic

43. The pandemic has demonstrated how the low rate of access to electricity affects other fundamental rights of indigenous people around the world. The pandemic has prevented indigenous children and teachers from meeting expectations with regard to schooling in virtual environments. In places where there is no electricity, basic medical equipment cannot be used to address critical health situations, cellular communication is more difficult, and it is harder to access information by radio or television. A lack of electricity also makes it more difficult to obtain water and affects production systems, food preservation and the generation of value added for products.

⁸ Ibid.

⁹ Oaxaca is home to the largest wind corridor in Mexico (responsible for 55.8 per cent of all wind generation in the country, according to data from the Asociación Mexicana de Energía Eólica (2018). The corridor is located along the Isthmus of Tehuantepec. This territory is shared primarily with the Zapotec community, which is the largest indigenous community in Oaxaca, accounting for approximately 36 per cent of the state's indigenous population.

The lack of information and communications technology infrastructure has also affected indigenous youth studying at university who have returned to their territories and had to suspend their studies because they did not have money or adequate Internet access. It prevents them from taking up new technologies and affects their competitiveness and job performance in the face of the demand for new skills and competencies in an interconnected world.

44. In emergency measures adopted to manage the pandemic, Governments have prioritized those areas of the economy that they considered necessary for economic recovery. Thus, States have promoted extractive, energy and agro-industrial projects that affect indigenous territories. Being considered an engine of economic recovery, the activities with the largest environmental footprint have not been subject to precautionary suspension during the pandemic, despite their significant impact on the right of indigenous communities and authorities to effective participation. This has led to consequences including environmental pollution and associated illnesses, changes in climate cycles and effects on subsistence crops. The restriction of the right to consultation on these projects goes against the processes of enforceability and defence of territorial rights, and is thus a retrogressive measure incompatible with human rights.

45. During the pandemic, some Governments have announced relaxed licensing requirements for the exploration and exploitation of natural resources, including sources of renewable energy, and attempted to increase the flexibility of consultation and free, prior and informed consent processes, ignoring the right of indigenous peoples to the integrity of their territories, among other rights. It is also unclear whether indigenous peoples are sharing in the benefits of economic recovery policies, despite the fact that their communities are among the groups most affected by the pandemic, the technology gap, hunger and inadequate access to public health infrastructure.

46. In Ecuador, for example, several indigenous organizations in the central Amazonia region have refused to countenance draft laws on prior consultation presented without their consent. Tupak Viteri, leader of the Kichwa People of Sarayaku, told the Inter-American Commission on Human Rights that extractive activities in Ecuador have not stopped during the pandemic. In some cases those activities even increased, following the Government's decision, through Executive Decree 1017 of 16 March 2020, to declare them essential and/or strategic. In addition, the Ministry of Energy and Non-Renewable Natural Resources announced the promulgation by executive decree of the regulations regarding free, prior and informed consultation for mining activities. The development of these regulations did not include participation of the indigenous and Afrodescendent peoples of the country (E/C.19/2021/9, pp. 12–13).

47. One of the main difficulties in determining the impact of the energy mix on indigenous peoples is the scarcity of information and data disaggregated according to the type of project undertaken at the national level. Governments grant licenses and offer up large regions for the implementation of energy projects, without taking into consideration the variable of the presence of indigenous communities or territories in those areas. By the time communities become aware of the projects, significant economic investment has already been made, and States therefore prefer to threaten to take administrative proceedings rather than act against their financial interests.

48. While the pandemic has increased inequities, had many economic and psychological impacts and affected communities, it also resulted in a 5.4 per cent decrease in greenhouse gas emissions, which mainly come from fossil fuels and coal, in 2020, while populations were in lockdown. That decrease is equivalent to 1.6 billion tons of carbon. In 2021, as a result of the implementation of progressive

economic recovery measures, emissions increased by 4.9 per cent, close to the levels seen in 2019.¹⁰

49. In official discussions on the effects of climate change, there has been a strong tendency to protect mining and energy companies – which cause most global pollution – accompanied by efforts to shift the burden of responsibility and sacrifice to the most vulnerable populations and sectors. In a kind of social blackmail, indigenous peoples are painted as opponents of solutions to climate change because they have defended their territorial rights and their own vision of development.

V. Need for a new global covenant with indigenous peoples

50. Transferring responsibility and sacrifice to groups of people who are the most vulnerable and are excluded from energy policies is not the right way to address the crisis caused by increased climate variability. It is necessary to establish a covenant that includes the implementation at the global level of the standards for recognizing diversity, particularly with regard to the territorial rights, systems of knowledge and systems of governance of indigenous peoples.

51. The more than 476 million indigenous people, who live in 90 countries and represent 6.2 per cent of the global population, possess a wide variety of unique knowledge systems, a special relationship with their territories and diverse development concepts based on their cosmovisions and priorities. Their holistic and comprehensive views on issues related to the energy mix – which affect not only the rights of indigenous peoples, but also the situation of humanity as a whole – can be shared in global decision-making contexts.

52. The progress that has been made on incorporating pluralism and respect for cultural diversity and the principles of international relations shows that it would be possible to establish a model of harmonious and balanced relations. This model and the human rights commitments undertaken by States mark a paradigm shift in relations between the State and indigenous peoples, from policies based on reductionism or assimilation to policies involving recognition, intercultural dialogue and horizontal coexistence.¹¹ This paradigm shift goes beyond mere tolerance of the presence of indigenous peoples within the jurisdictional boundaries of States; it also involves the possibility of establishing norms, institutions and policies to create more equitable and sustainable societies, in accordance with diverse visions of economic, social and political development.

53. Indigenous peoples' right to autonomy and self-determination, without regard to the organization of the States in which their territories are located, is recognized in international instruments such as the International Covenant on Civil and Political Rights; it is not based simply on the willingness of individual States. Enjoyment of this right allows indigenous peoples to determine their own economic, political, social and cultural development.

54. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization is key to this paradigm shift, as it requires States to take steps to guarantee the rights of indigenous peoples through transformation, adaptation, protection and respect.

¹⁰ Silvia Solano-Quesada and Edgar Ortiz-Malavassi, "Metodología de medición de la huella de carbono para edificaciones en Costa Rica y su aplicación en el módulo habitacional *Trópika*", *Tecnología en Marcha*, vol. 29, No. 3, pp. 73–84.

¹¹ International instruments such as International Labour Organization Convention No. 169 are aimed at safeguarding the rights of indigenous peoples and ensuring their physical and cultural survival.

55. One way that the Inter-American Court of Human Rights has recognized the autonomy of indigenous peoples was by recognizing their right to participate in public decision-making through their own institutions, without having to join a political party.¹² This right is closely linked to the recognition of the legal personality of indigenous peoples, by virtue of which they can elect their own representatives and take decisions that affect their communities independently.¹³ Indigenous peoples are also collective subjects of international law and are not limited by State boundaries.¹⁴

56. The call made by the Permanent Forum in 2021 concerning the need to move towards a new global covenant that includes indigenous peoples, taking into account their contributions and rights,¹⁵ is becoming increasingly relevant in matters such as the discussion on the energy mix. More than a decade after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and seven years after the United Nations adopted the Sustainable Development Goals in 2015, it is clear that there is a need for a greater level of effective participation by indigenous peoples in relation to matters such as the energy mix. The affairs, concerns and contributions of indigenous peoples are not related only to their internal challenges; indigenous peoples are political actors with the will, experience and capacity to contribute to structural solutions to the challenges faced by humanity. The change in the paradigm or model of relations must be realized in practice through the recognition of the valuable contributions of indigenous peoples to humanity, in particular with regard to the protection and sustaining of life in all its dimensions. This implies relations based on an intercultural, horizontal dialogue involving mutual recognition between peoples, States and the United Nations system.

57. Discussing and questioning whether or not the knowledge of indigenous peoples has a scientific basis is irrelevant at this point in history. It is clear that the specific effects of development that is based on the centrality of human beings, accumulation and the rules of trade have brought us to a crisis point where the boundaries of what makes human life viable on Earth are being crossed. It is also clear that in indigenous territories, biodiversity has been conserved and the natural reserves that support life on Earth have been maintained, and that there is no need for intrusive scientific investigation to prove that their cultures and way of living in harmony with nature are sustainable and worth being replicated on a global scale.

58. The vision of indigenous peoples, as collective rights-holders, is of value in the current discussions on possible solutions to the global environmental crisis, as it makes it possible to take into account elements associated with memory, identity, territory and systems of governance as conditions for survival with dignity. This cannot be interpreted as a privilege; rather, it is belated recognition, given that indigenous peoples have for centuries been subjected to colonial racist policies based on assimilation and exclusion.

59. In 1985, the planet was facing an environmental crisis caused by the depletion of the ozone layer as a result of the use of chlorofluorocarbons (CFCs). Progress was made in 1989, when the Montreal Protocol was adopted despite opposition from the

¹² *Case of YATAMA v. Nicaragua*. This right is closely related to the recognition of the legal personality of indigenous peoples.

¹³ Inter-American Court of Human Rights, *case of the Saramaka People v. Suriname*, *case of the Kaliña and Lokono peoples v. Suriname* and *case of the Kichwa Indigenous People of Sarayaku v. Ecuador*.

¹⁴ Inter-American Court of Human Rights, Advisory Opinion No. OC-22/16, *Entitlement of legal entities to hold rights under the Inter-American Human Rights system (interpretation and scope of article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46, and 62.3 of the American Convention on Human Rights and article 8.1 (a) and (b) of the Protocol of San Salvador*, 26 February 2016, Series A, No. 22, paras. 72–84.

¹⁵ Leaving no one behind: indigenous peoples and the call for a new social contract. <https://www.un.org/en/observances/indigenous-day>.

CFC industry. In 2018, the National Aeronautics and Space Administration (NASA) reported that there had been a significant decrease in ozone-destroying chemicals and that the ozone layer was on the road to recovery.¹⁶

60. Today, humanity faces the equally great, or even greater, challenge of changing the course of the global climate crisis, but there is hope in collective action as a strategy for addressing global crises. At the recent twenty-sixth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, 77 countries made a commitment to phase out their coal plants gradually, and 25 of those countries agreed to stop financing fossil-fuel projects in other countries by 2022. Despite these important announcements, much more action is still needed to limit global warming to less than 1.8 degrees Celsius and prevent an increase of 2.7 degrees Celsius, as stated by the United Nations Intergovernmental Panel on Climate Change.

61. Research centres around the world have highlighted the need to join forces in the face of the risks to humanity's survival on Earth. In 2009, the Stockholm Resilience Centre published a document setting out "planetary boundaries" in terms of climate change, land use change, biodiversity loss, shifts in certain nutrient cycles, freshwater use, ocean acidification, atmospheric pollution, the presence of waste and pollutants that disrupt the genetic and molecular basis of life, and ozone layer depletion, among others.¹⁷

62. It is clear that human activity, with its dynamic of energy and product consumption, has led to the transgression of several of these planetary boundaries, and the point of no return has been passed with regard to the disappearance of entire populations and an increase in disasters.

63. Putting into practice the commitment to leave no one behind in a just and inclusive energy transition means prioritizing efforts to improve human well-being, health and capacities; developing projects centred on resilience and the preservation of harmony and balance with nature; avoiding measures that would harm the cultures, systems of governance and unity of indigenous peoples; and democratizing investment. Although the pathways of transition will vary depending on the specific needs of different countries and regions, they must all be fair, participatory and based on legal pluralism. This will make it possible to accelerate collective action to achieve the Sustainable Development Goals and implement the Paris Agreement. The new social contract must be based on genuine participation and partnership that fosters equal opportunities and respects the rights, dignity and freedoms of all. Indigenous peoples' right to participate in decision-making is a key component in achieving reconciliation between indigenous peoples and States.¹⁸

64. Special attention must be paid to the rights of indigenous peoples in the context of the implementation of Sustainable Development Goal 7, concerning access to energy. As we have demonstrated here, the discussion of energy from the perspective of indigenous peoples is not limited to the question of access to electricity, as important as that is. Indigenous peoples have the right and the capacity to make contributions in relation to matters such as the focus of global energy policies, community relations policies, the sharing of the benefits of energy and access to energy-related services.

¹⁶ Daniel González Cappa, "Cambio climático: cómo la humanidad salvó la capa de ozono (y qué lecciones nos deja para la lucha contra el calentamiento global)". See <https://www.bbc.com/mundo/noticias-58982415>.

¹⁷ Rockström, J., W. Steffen, K. Noone, Å. Persson et al., "Planetary boundaries: exploring the safe operating space for humanity", *Ecology and Society*, vol. 14, No. 2, art. 32 (2009). <https://www.stockholmresilience.org/research/planetary-boundaries.html>.

¹⁸ Leaving no one behind: indigenous peoples and the call for a new social contract. <https://www.un.org/en/observances/indigenous-day>.

VI. Recommendations

65. In order to ensure that the injustices resulting from a fossil fuel-based energy mix are not further replicated and deepened in strategies and plans for changing the energy mix, it is crucial to ensure that the principles of autonomy and self-determination and indigenous peoples' right to participation are exercised in an effective and relevant manner. United Nations agencies should promote high-level discussions with indigenous peoples on this important issue, with the urgency warranted by the current circumstances resulting from the pace and impacts of climate variability and the effects of global pollution.

66. It is important to make progress with regard to the creation of regional spaces for inter-agency work on the applicable principles for the effective participation of indigenous peoples in national energy mix transformation plans.

67. Progress must be made on establishing an international arena for work between indigenous peoples and the United Nations system, to enable discussion of the contributions and challenges of indigenous peoples with regard to changes to the energy mix.

68. It is important to accelerate actions to regulate and implement the Local Communities and Indigenous Peoples Platform, approved by the Conference of the Parties, in such a way that different processes can be coordinated at the global level with the effective participation of indigenous peoples.

69. The United Nations agencies leading the implementation of the Decade on Ecosystem Restoration must redouble their efforts, in a coordinated manner, to ensure that discussions and actions under the strategy are conducted with a comprehensive approach and are focused on transforming the global energy mix without harming the territories or rights of indigenous peoples and, instead, ensuring the full and effective participation of indigenous peoples.

70. The United Nations should facilitate studies on the impacts of and opportunities for participation and the establishment of sustainable models based on the participation of indigenous peoples in energy transition initiatives.

71. States must take urgent measures to ensure adequate and effective participation in the design and implementation of national energy mix transformation plans. If they have already begun to develop national plans or programmes, they should take measures to remedy the possible lack of participation of indigenous peoples.