

Protector not prisoner:

Indigenous peoples face rights violations & criminalization in climate actions

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Indigenous Peoples
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“Indigenous peoples are vital actors in climate solutions. Responses to the climate crisis should be based on partnership with Indigenous peoples as stewards of nature and protectors of our biodiversity. We must stop the criminalization of Indigenous peoples and respect their collective and individual rights.”

Joan Carling, Global Director,
Indigenous Peoples Rights International

The climate crisis is one of the most critical and complex issues our planet and its people face. Indigenous peoples are at the forefront of environmental protection and addressing this crisis, [managing over 20% of the Earth’s land surface and 80% of its biodiversity](#). Drawing upon thousands of years of expertise in environmental stewardship, Indigenous peoples are vital leaders in the fight to protect our planet. They are also among the first groups to experience the direct consequences of climate change, despite having contributed very little to its causes. [Climate change exacerbates the challenges already faced by Indigenous communities](#), including political and economic marginalization, loss of livelihoods, food insecurity, displacement, discrimination, unemployment, and threats to cultural practices and social cohesion. Recognition of the importance of effective participation of Indigenous peoples in climate actions has been detailed in numerous international agreements, including [the Paris Agreement](#).

Unfortunately, some projects enacted with the aim of mitigating climate change and achieving the [Sustainable Development Goals \(SDGs\)](#) are threatening the rights of Indigenous peoples, including their collective rights to land, territories, and resources; food; water; free, prior, and informed consent (FPIC); and cultural traditions and customs, among others. This includes wind, hydropower, biofuel, geothermal, forest and biodiversity conservation projects, as well as mining of [transition minerals](#), such as cobalt, lithium, copper, manganese, nickel and zinc, needed to produce renewable energy technologies – from wind turbines to solar panels to electric vehicles.

In addition, as they take legitimate action to defend their lands, territories and resources and protect their fundamental rights from harms associated with business and state projects, including those with intended benefits for the climate, Indigenous peoples face retaliation from state and non-state actors. This criminalization of Indigenous peoples is rooted in the same generalized failures to legally recognize and respect Indigenous rights. Between January 2015 and August 2022, there were at least 883 attacks on Indigenous defenders raising concerns about harmful business practice, including killings, threats, arbitrary detention, and strategic lawsuits against public participation (SLAPPs). As this data is based on publicly available information and many attacks go unreported, and official government data on attacks remains [extremely limited](#), the problem is even more severe than these figures indicate. Indigenous defenders are among the first to raise the alarm about human rights risks related to renewable energy and other business projects - crucial information for company human rights due diligence and for policymakers responsible for achieving the goals of the Paris Agreement.

Disregarding the rights of Indigenous peoples in the race to a decarbonized economy by 2050 will result in numerous human rights violations and will continue to fuel opposition, conflict, and result in delays to projects and achieving our global climate and SDG targets. This paper explores how climate actions which do not center human rights have been harmful to Indigenous peoples, as well as the scale of attacks Indigenous defenders face when protecting their lands, territories, natural resources, and communities from such projects. It also provides examples of Indigenous resistance to harmful climate actions and related legal decisions upholding the rights of Indigenous communities.

Solutions to the global climate crisis need to be consistent with the respect and protection of human rights to be sustainable. Governments must position human rights and social equity at the core of their climate plans to realize the goals of the Paris Agreement and be successful long term. This includes legally recognizing and upholding Indigenous peoples' collective and individual rights, rooted in respect for their right to self-determination and their right to lands, territories and resources, and ensuring that project benefits are equitably shared with marginalized and directly affected communities. It is also critical for Indigenous peoples to engage in decision-making about climate mitigation and adaptation approaches and for Indigenous-led solutions to be supported and [adequately resourced](#).¹ While the recognition of Indigenous peoples' contributions to addressing climate change in the Paris Agreement and by the Intergovernmental Panel on Climate Change (IPCC) is a big step, more action is needed at the local, national and global levels to ensure the meaningful, effective and safe participation of Indigenous peoples and respect for their collective and individual rights.

¹ In 2021 [Rainforest Foundation Norway](#) released a report which showed that international aid to support Indigenous peoples and local communities tenure and forest management was \$270 million annually on average, between 2011 and 2020. This equals less than 1% of international climate aid.



Criminalization and human rights violations of Indigenous peoples in climate actions

Context

Indigenous peoples across the globe are victims of colonization and forced assimilation in the process of state-building. Centuries of systemic discrimination and marginalization of Indigenous peoples have led them to seek legal recognition as distinct peoples with their own customary institutions and ways of life. Both the [ILO Convention 169 on Indigenous and Tribal Peoples](#), adopted in 1989, and the [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#)², adopted by the UN General Assembly in 2007, affirm the collective rights of Indigenous peoples to their land, territories, and resources, self-determination, free, prior, and informed consent, and cultural integrity, among others. Despite this recognition, Indigenous peoples' rights are routinely violated by state and non-state actors and they continue to be left out of decision-making and access to benefits when it comes to climate mitigation and adaptation initiatives.

A growing trend is the use of laws and judicial systems to penalize and criminalize social protest activities and legitimate demands made by Indigenous organizations and movements in defense of their rights. This includes both the application of emergency legislation, such as anti-terrorist laws to restrict human rights work, and the use of a range of legal tactics in an attempt to silence defenders, such as criminal and civil lawsuits, arbitrary detention, abusive subpoenas, and fabricated charges by governments and business actors.

Criminalization is this unjustified application or use of criminal laws and processes by state and/or non-state actors in relation to the exercise of rights and/or to hinder, suppress, or punish legitimate organizing, complaints, protests, and other actions that are intended to assert, protect and defend those rights, including the collective rights of Indigenous peoples which are often not recognized in national legal systems and policies.

In a [2018 report to the Human Rights Council](#), former UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, highlighted a root cause of this trend by saying, “a crucial underlying cause of the current intensified attacks is the lack of respect for Indigenous peoples’ collective land rights and the failure to provide Indigenous communities with secure land tenure.” Her report noted that the criminalization of Indigenous people has widespread impacts on both their families and broader communities and that “acts of criminalization that disrupt the participation of Indigenous peoples in defining priorities and strategies for the development and use of their lands or territories and other resources will result in increased marginalization and social inequalities.” She also expressed that “the important contribution Indigenous peoples can make in terms of ensuring better conservation and climate change adaptation and mitigation strategies... cannot reach full potential if Indigenous peoples’ land rights are still being contested.” The [Inter-American Commission on Human Rights](#), [European Parliament](#), [UN experts](#), and other actors have also raised serious concerns about the criminalization of Indigenous defenders.

² The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) says that “states shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent (FPIC) to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

State of attacks against Indigenous defenders protecting their rights and the environment

Since 2015, the Business & Human Rights Resource Centre (the Resource Centre) has [tracked the scale and nature of attacks against human rights defenders](#)³ raising concerns about harmful business practice, including the criminalization of Indigenous defenders. Between January 2015 and August 2022, the Resource Centre tracked 883 attacks on Indigenous human rights defenders (IHRDs), including killings, threats, arbitrary detention, and strategic lawsuits against public participation (SLAPPs). Indigenous defenders experience a disproportionately high level of attacks. Although Indigenous peoples comprise approximately one in 17 (6%) of the world's population, nearly one in five (20%) attacks globally since 2015 have been against Indigenous defenders. As this data is based on publicly available information and many attacks go unreported, and official government data on attacks remains [extremely limited](#), the problem is even more severe than these figures indicate.

Attacks against Indigenous peoples include threats, criminalization, and even murder. On average, half of attacks recorded by the Resource Centre between 2015-2022 against defenders focused on business constituted judicial harassment, with the rate increasing in recent years. While judicial harassment against Indigenous defenders comprised 30% of attacks against them (lower than the overall average), that is because Indigenous defenders are much more likely to experience violent physical attacks than non-Indigenous defenders.

Latin America and Asia and the Pacific are consistently the most dangerous regions for human rights defenders defending their rights from harmful business actions. Between January 2015 - August 2022, 75% of attacks against Indigenous human rights defenders (IHRDs) occurred in Latin America, followed by Asia-Pacific with 18% of attacks. The highest numbers of attacks against IHRDs occurred in Honduras, Peru, Mexico, Guatemala, Brazil, the Philippines, and Colombia.

Mining and agribusiness are the two sectors most frequently linked with attacks. It can be challenging to identify perpetrators of attacks and there is often collusion among a range of powerful actors including state authorities, police and military forces, companies, and in some cases, organized criminal groups. In cases where companies were publicly linked with attacks against IHRDs, the majority were headquartered in Honduras (72), Guatemala (54), Canada (39), USA (37), Mexico (32), and China (28).

³ The Business & Human Rights Resource Centre's research on attacks against human rights defenders focused on business includes people protecting land, environmental, labour, and other rights and those working on anti-corruption.

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It also reveals the significant shortcomings in the renewable energy industry's adoption of human rights standards, with many companies failing to take adequate steps towards enacting human rights policies and due diligence practices. At least 134 attacks out of the 883 attacks we recorded against IHRDs related to renewable energy projects, including hydropower, wind, and solar. As with all companies and investors, renewable energy companies and companies in their supply chains have a responsibility under the UN Guiding Principles on Business and Human Rights to respect human rights, including the rights of defenders. This includes respecting Indigenous peoples' rights to free, prior, and informed consent and their rights to land, territories, and resources. Effective human rights due diligence relies on Indigenous communities, defenders, and organizations being able to safely voice their concerns and opposition.

Harms to Indigenous peoples related to renewable energy projects

As the effects of the climate crisis worsen, the global transition to decarbonized forms of energy is accelerating. Researchers estimate [climate finance needs to reach \\$5tn per year](#) by 2030 if the world is to scale up renewable energy to the level needed to avert catastrophe. While the growth of wind, solar and other forms of renewable energy global capacity is vital, this sector is not immune from the human rights risks which have historically plagued the fossil fuel and traditional extractive industries. The [renewable energy sector](#) has a fleeting opportunity to transform its industry business model and ensure shared prosperity for communities and workers, so that it can deliver its essential contribution to a fast and fair transition. Investors, on the other hand, have a [critical chance to influence the development of a renewable energy industry](#) that respects human rights – while simultaneously securing sustainable and secure investments, in addition to benefits for communities and a just transition to clean energy.



Kenya: Olkaria geothermal project disregards Indigenous rights

The Olkaria geothermal project in Nakuru Country, west of Nairobi, Kenya is the world's single largest geothermal power plant, covering approx. 20,000 acres and consisting of five power plants and their extensions. It is being developed by state-owned Kenya Electricity Generation Company (KenGen).

The Olkaria geothermal field is located on Maasai ancestral land in Kenya. Since the 1970s, Kedong Ranch

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HRDs.**

**This data
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peoples play an
outsized role in
the protection
of land, water,
and forests and are
on the frontlines
of climate, land,
and environmental
protection -
and the
disproportionate
risks they face.**



Ltd. has leased around 75,000 acres of this land and Olkaria is one of several development projects taking place there.

After the Olkaria project was established, [concerns were raised that the land was acquired irregularly](#), affecting 150 households. In addition, some HRDs advocating for the rights of the community affected by the project have been arrested for their advocacy work and some have allegedly been subjected to police brutality. A [complaint was filed to the financiers](#) (World Bank and European Investment Bank) stating that 14 households had been left out of the resettlement process (which occurred in 2014), as Project Affected Persons (PAPs) were asked to relocate before receiving title and before the project infrastructure was complete. It was further alleged that the grievance mechanism in place was ineffective. The EIB Complaints Mechanism and World Bank Inspection Panel jointly conducted an investigation which found a lack of compliance with World Bank policies, that PAPs were adversely affected by the resettlement, and that the specific rights of Maasai people had not been respected.

In December 2019, four individuals who claimed to represent the community, [entered into an agreement with Kedong Ranch Ltd.](#), where the corporate granted them 4,000 acres and 10 million Ksh (approx. 82,450 USD). Two of the four individuals are from the Kitet Sossion Community; the other two were not. The agreement was allegedly reached without the knowledge of other Maasai peoples living in Kedong Ranch, resulting in division within the community. On 30 October 2019, a case was filed at the Court of Appeal to question the legality of the agreement between the four individuals and Kedong Ranch Ltd.

Biofuels: A Closer Look

The [IPCC has acknowledged](#) that sustainable biofuels can offer mitigation benefits for the transportation sector in the short and medium term. However, as biofuels are often produced alongside or as a by-product of agriculture and forestry, risks commonly associated with these industries such as deforestation and access to water carry over to biofuels as well. The production of biofuels has had negative consequences for Indigenous peoples due to expropriation of huge areas of customary lands for biofuel plantations and Indigenous peoples defending their lands and resources have faced [trumped up charges, illegal arrests, and other forms of criminalization](#). In January 2019, 236 Indonesian NGOs and civil society leaders signed [an open letter to the European Commission](#), warning that European demand for biofuels was driving “deforestation, land grabs, human rights violations, labor exploitation, corruption, socio-economic and political problems and ecological problems.” The letter raises concerns that the biofuel industry’s high land usage marginalizes small-scale farmers and contributes to ecological damage, highlighting how the industry infringes on both human rights and biodiversity.



■ *The Philippines: Indigenous leaders killed opposing Jalaur River Multi-Purpose Project Phase II Dam*

The [Jalaur River Multi-Purpose Project](#) - Stage II in Iloilo, Philippines, implemented by the national government, includes the construction of three dams intended to generate 6.6-megawatts of hydroelectric power. The Jalaur River project is expected to [displace 17,000 Tumandok Indigenous people from their ancestral lands](#), as well as at least 1.2m people living near the river basin due to flooding. Tribal leaders have expressed concern the dam would submerge Tumandok people's farms and other sources of sustenance and negatively affect their spiritual and cultural practices by destroying the biodiversity upon which these practices are based.

An [international mission in 2016](#) found that FPIC was not obtained from the Tumandok by the government of the Philippines. As the Tumandok protested the dam construction, the government intensified militarization and surveillance. In December 2020, [nine Indigenous leaders were killed and 17 were arrested](#) during a coordinated police and military operation. Six of the 17 people arrested and detained were Indigenous women who are active members of Anggoy (an Indigenous women's organization in Panay island). [In a response to the Resource Centre in February 2021](#), the Export-Import Bank of Korea, which funded the project with a loan, said "linking JRMP-II to the reported incidents is misleading" and "the majority of the IP community members affected by the project are supportive of the project." Human rights organizations across the globe [condemned these gross violations of human rights](#) and called for impartial and credible investigations. There has not yet been any accountability for these murders.



Tumandok demonstration, Philippines. Panaghiusa PH Network

Harms to Indigenous peoples related to transition minerals mining

Another area of concern is the mining of six key commodities vital to the clean energy transition: cobalt, copper, lithium, manganese, nickel and zinc. Extraction of these six minerals – core components for renewable energy technology – is expected to rise dramatically. According to the [International Energy Agency](#), need for critical minerals could increase by as much as six times by 2040.

The Resource Centre tracked [495 allegations of human rights abuses related to transition minerals between 2010-2021](#). In addition, between 2010-2021, [148 attacks against defenders](#) related to the mining of transition minerals; one-third of these attacks were against IHRDs. Of these 148 attacks, 107 allegations referred to indirect attacks, where a company did not directly take part in the attack. In these cases, other actors, such as the police or private security companies, allegedly acted to protect the interests of the company. The remaining 41 allegations referred to direct attacks where a company was involved.

Russia: Indigenous peoples call on Tesla not to source from Nornickel due to harm to their territories and livelihoods

Representatives of Indigenous peoples, environmental and human rights organizations have been raising serious concerns about Russian mining company Nornickel's damage to the territories and livelihoods of Indigenous peoples in the Arctic for many years. This includes the [rupture of a diesel storage tank at one of the company's natural gas power plants in May 2020](#), which flooded local waterways with an estimated 23,000 tons of diesel oil.

Nickel is a key ingredient of electric car batteries, allowing them to store energy more cheaply. In August 2020, the Aborigen Forum, a coalition of organizations, activists, and community leaders that represent and protect the rights of Indigenous Peoples in the North, Siberia, and the Far East of the Russian Federation [released a letter](#) calling on Tesla to not buy nickel, copper, and other products from Nornickel until the company complies with its human rights responsibilities - including compensating Indigenous communities for the damages done to their traditional way of life and revising its policies for engaging with Indigenous peoples. The Resource Centre [contacted Nornickel and Tesla to respond](#) to this call to respect Indigenous peoples rights; neither company responded. Nornickel previously responded to requests from the Resource Centre regarding allegations of Indigenous rights violations and environmental harm; responses are available [here](#) and [here](#).

In August 2021, a prominent Sámi leader who was one of the organizers of the campaign calling for Tesla not to purchase products from Nornickel, [Andrey Danilov - was detained for hours by the police](#). He said his detention was part of ongoing official pressure on him as payback for his campaigning against mining on Sámi lands; "Their main goal is to either push me to flee abroad or to force me to shut up," [Danilov shared with journalists](#) in January 2022. The arrest occurred after a previous victory won by Danilov in the Constitutional Court which ruled that unlicensed hunting is the birthright of any Indigenous person as part of their traditional way of life.

Peru: Community leaders protecting their land and rights from transition mineral mining faced criminal charges

The highest number of attacks on HRDs related to transition mineral mining have taken place in Peru, which is also the number one country for HRD attacks in the mining sector, according to the [Resource Centre's tracking](#).

One example is Las Bambas, the world's ninth-largest copper mine. When operating, it produces [2% of the global copper supply](#). However, operations are frequently shut down due to worker strikes, and [blockades](#) and protests by [Indigenous peoples](#).

There are 55 separate allegations of human rights abuse against Las Bambas recorded in the Resource Centre's [Transition Minerals Tracker](#) – the highest of any single operation. These range from an absent or insufficient environmental impact assessment, harms to water access, insufficient/inadequate consultation, and attacks on HRDs, including SLAPPs. In 2015 the company [accused 19 social leaders in Apurímac](#) of illicit association to commit a crime, aggravated damages, disturbances, and illegal possession of weapons and explosives. According to the Peruvian Criminal Code, the penalties for those crimes are between 11 and 17 years of imprisonment. The criminal case was initiated following demonstrations in September 2015 by local community members in opposition to the company's mining project. In March 2020, the Unipersonal Court of Cotabambas acquitted all 19 leaders due to a lack of sufficient evidence. The Business & Human Rights Resource Centre [invited MMG Limited Las Bambas to respond](#); it did not. Despite these allegations of abuse, in 2022 the Peruvian Government [approved](#) an expansion of the mine.

Harms to Indigenous peoples related to conservation projects

In October 2022, the current Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay, [highlighted the correlation between secure Indigenous land tenure and effective conservation](#), as well as their integral role in sustainability. He also expressed concern about proceeding with “[fortress conservation](#)”, initiatives that treat humans as separate from nature and can result in violating the individual and collective rights of Indigenous peoples, such as by forcibly evicting Indigenous peoples from their lands and territories and restricting their access to natural resources.

While action to protect biodiversity is urgently needed, it is critical to ensure that Indigenous peoples' rights are fully protected in national laws and practices, otherwise land-grabbing and evictions in the name of national parks and conservation areas will occur and reaching biodiversity protection targets will surely fail.

Nepal: Indigenous peoples evicted to create national parks and other “protected areas”

In Nepal, many Indigenous peoples were evicted during the creation of national parks and remain landless, without having been provided alternative livelihoods or compensation. According to the 1973 National Park and Wildlife Conservation Act, [the government can declare an area a national park](#) “by publishing a notice in the Nepal Gazette and indicating the boundary thereof”. The Act does not include a provision for FPIC of Indigenous communities, nor does it include a provision for compensation of people displaced by a new national park.

National parks and other “protected areas” cover almost a quarter of Nepal. This includes 12 national parks, one wildlife reserve, one hunting reserve, six conservation areas and 13 buffer zones. [Almost all of these are on Indigenous peoples’ ancestral land](#), including the Tharu in the mid-western part of Nepal and Chepang, Bote, Darai Banariya, Danuwar, and Majhi peoples in the Terai lowland region.

In addition to forced evictions and denial of rights to their ancestral lands, [Amnesty International and the Community Self-Reliance Centre \(CSRC\) have documented other violations of Indigenous people’s rights](#), including arbitrary arrests, unlawful killings, detention and torture or other ill-treatment by the Nepal Army and National Park personnel protecting conservation areas.

As one example, on 10 May 2017, army personnel stationed in the Bardiya national park arrested seven Tharu women and 13 men from the Jharniya and Sitronela settlement in the buffer zone. They were detained for 25 days and threatened until they agreed to ensure the whole community of 105 Tharu households left the area. They were released on bail, after needing to take loans to pay the fees, and had to report to the national park office every two months for two years. On July 16, 2020, 26-year-old Raj Kumar Chepang and six others (three Chepang men, two Chepang women and one person from the Indigenous Rai community) entered the Chitwan National Park to collect a species of snail for food. An army soldier detained and severely beat the men and verbally abused the women. Raj Kumar Chepang died a few days later.

Restrictions on fishing, gathering food, medicinal herbs and firewood in place have also severely impacted access to food and the right to health. There have been reports of mistreatment, sexual abuse, and arbitrary detention of Indigenous women who have tried to collect wood and fodder.

The Green Climate Fund and Indigenous peoples’ human rights

The [Green Climate Fund \(GCF\)](#), established in 2020, is a financial mechanism to support climate mitigation and adaptation actions of developing countries. It has a critical role in achieving a just transition by providing innovative and scaled finance in four areas: built environment, energy and industry, human security, livelihoods and wellbeing, and land use and forests and ecosystems. GCF has already approved a total of 209 projects (as of October 2022), with US\$11.3bn committed. [These projects](#) are supposed to mitigate 2.4bn tonnes of CO2 equivalent and increase resilience of 676 million people from developing countries.

GCF has an [Indigenous Peoples \(IP\) policy](#) which seeks to avoid any adverse impacts its activities may have on Indigenous peoples’ rights, interests and well-being and ensure they benefit from GCF activities and projects in a culturally appropriate manner. However, GCF does not have any public disaggregated data on how many of the projects already approved are going to be implemented in Indigenous territories and potential social impacts.

The [Indigenous Peoples Tracker](#) is an initiative by [Tebtebba](#) (Indigenous Peoples’ International Centre for Policy Research and Education) to better understand how GCF-approved projects may impact Indigenous peoples. The Tracker reports that at least 70 (or more than a third) of the 190 approved

projects (as of December 2021) could impact Indigenous peoples. These projects will take place in 55 countries with US\$2.8m in financing.

As one example, the [GCF observer network of Civil Society, local communities and Indigenous peoples](#) has raised concerns about the following project and its potential harms to Indigenous peoples' lands and livelihoods and rights.

Indonesia: Geothermal development project disregards potential impact on Indigenous Peoples (FP083)

Adopted by the CGF Board in 2021, this geothermal project is a [World Bank proposed 10-year project worth US\\$410m](#). It aims to mitigate a total of 112m tonnes of CO₂ and it is being implemented by PT Sarana Multi Infrastruktur (PT SMI). The project aims to scale up investment in geothermal energy development, support Indonesia in reducing GHG emissions and displace highly polluting power supply alternatives, and reduce reliance on fossil fuels, ultimately lowering emissions from the energy sector.

Indigenous peoples, local communities, and civil society organizations have raised serious concerns that the project disregards potential impacts on Indigenous peoples. They are also concerned about the company's technical ability to manage such a high risk, large-scale project. [Concerns about the World Bank's proposal include:](#)

1. It pays insufficient attention to Indonesia's location on the "ring of fire", the volcanic belt where about 90% of all earthquakes and many volcanic eruptions occur.
2. It suggests that 20 individual geothermal projects might be constructed, two-thirds of which will be operated by private sector entities which will be selected upon further exploration from a list of 45 potential sites, for many of which specific information is not available. It was not clear where the 20 individual projects will be located and who might be affected.
3. It does not have any reference to Indigenous peoples despite the government's recognition of 1,128 ethnic groups in the country with a population of between 50m and 70m people.
4. There is no public plan for how the project will undertake FPIC processes with Indigenous Peoples as stipulated in GCF IP Policy.

As a [condition to approving this project](#), GCF stated that the safeguards instruments for the project, including related to its Indigenous peoples policy, would be publicly disclosed. However, there are still no public reports about how this project will comply with the policy and PT SMI will soon start to receive proposals for potential subprojects.

Recent legal decisions upholding Indigenous peoples' rights in relation to climate actions

Indigenous peoples around the world continue to assert and defend their rights through a range of strategies, including policy advocacy, community mobilization, strategic litigation, culturally specific forms of resistance, and more. There have been several recent wins upholding Indigenous peoples' rights related to renewable energy projects and challenging government climate policies that have harmed Indigenous peoples.

This includes the UN Human Rights Committee finding in September 2022 that the Australian government violated the rights of Indigenous Torres Strait Islanders by [failing to adequately protect them against the adverse impacts of climate change](#). This was the first legal action brought by climate-vulnerable inhabitants of low-lying islands against a state.

Similarly, the success of legal proceedings – like the ones outlined below against wind turbines in Norway affecting the Sámi people and the Lake Turkana wind power project in Kenya – establish important precedents to help protect the lands, territories, resources, and rights of Indigenous peoples moving forward.

■ *Norway: Supreme Court of Norway rules that wind park construction threatens Sámi peoples' rights*

In October 2021, the [Supreme Court of Norway ruled that the construction of the Fosen wind park in Western Norway threatens Sámi reindeer herding culture](#), in violation of Article 27 of the International Convention on Civil and Political Rights (ICCPR).

Initially, a lower court found that the Sámi had lost their grazing land as a result of the two wind parks, and ordered Fosen Vind to pay the herders NOK90m (US\$10m) to buy fodder for the animals for the foreseeable future. [Sámi groups appealed this ruling](#) claiming the concession was illegal.

One year after the landmark Supreme Court verdict, Norway's Ministry of Petroleum and Energy has not complied with the reindeer herding community's demand to deconstruct and repatriate the wind farm and restore the appropriated winter pastures and instead believes it is possible find a lasting "solution" through dialogue and further investigations. Leif Arne Jåma, a reindeer herder in Fovsen Njaarke, [responded](#) to the Norwegian government's [assessment plan](#); "If the Government continues its attempts to wriggle around the verdict in order to protect capital interests, it will probably result in a serious weakening of international trust in Norway as a pioneering country in terms of Indigenous rights."

Following the Supreme Court decision about the Fosen Vind project, Norway's largest asset manager Storebrand shared in its periodic report that it placed a different wind energy developer, Eolus Vind, under observation for human rights risks on Southern Sámi reindeer herding lands related to the Øyfjellet Wind Park. In the report, [CEO of Storebrand, Jan Erik Saugestad stated](#), "Enabling a just transition to a carbon neutral

economy will require investments in renewable energy, but such investments must also respect the rights of indigenous peoples and other vulnerable groups.”

The [Sámi Council is urging other investors to withdraw from the Øyfjellet wind power project](#), which would similarly threaten ancestral reindeer herding and Southern Sámi culture, and the Government of Norway to comply with their human rights obligations.

Kenya: Kenyan Environment and Land Court rules that land deeds upon which Lake Turkana Wind Power Project sits were unlawful

The Lake Turkana Wind Farm Project is the largest wind power project in sub-Saharan Africa. It is land-intensive, with [365 wind turbines that supply the national grid](#). The wind farm is also [registered as a ‘clean development mechanism’ project](#), expecting to remove almost 750,000 metric tonnes CO2 equivalent per annum.

The project impacts the ancestral lands of the Turkana, Rendile and Borana Indigenous communities whose livelihoods depend on livestock herding or fishing. Affected Indigenous communities and civil society groups have raised concerns that free, prior, and informed consent protocols were not followed, proper compensation was not provided when the land leases were acquired, and the leases violated current and former land acts.

In October 2014, [local residents filed a lawsuit](#) against the Lake Turkana Wind Power project, county government, National Government and the National Land Commission for illegal land acquisition. In October 2021, the Kenyan Environment and Land Court in Meru ruled that the title deeds of the land on which the project sits are “irregular and unlawful”. The county government was given 12 months to correct the process or else the deeds will automatically be cancelled and the land will go back to the community.



Photo by Aquilas Ngomo Koko, ANAPAC - DRC



Disregarding the rights of local communities and Indigenous peoples in the race to a decarbonized economy by 2050 is short-sighted. It is resulting in human rights violations and is a failure by governments in their duty to protect human rights and by companies in their responsibility to respect human rights. As over 200 organizations [said in an open letter](#) to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) and State parties in September 2022, human rights need to be put at the centre of the energy transition. The profit-driven extractive model has entrenched and exacerbated inequality, and contributed to driving conflict, environmental damage, attacks on communities and defenders, while simultaneously playing a significant role in emissions. It also creates legal, financial, and reputational risks for companies and investors. An energy transition based on this model will fail.

Likewise, the target to scale up biodiversity conservation by 30% by 2030 by increasing the number of national parks and protected/conserved areas will be a major threat to Indigenous peoples if the fortress conservation approach remains imbedded in national laws and policies. This approach disregards the rights of Indigenous peoples to their lands, territories, and resources and their sustainable resource management and conservation systems.

For real progress to be made toward meeting the goals of the Paris Agreement in a way that respects Indigenous peoples' rights and realizes a just and sustainable future for all we recommend:

States

1. Ensure that all climate plans and actions, including on biodiversity conservation, are in full alignment with human rights obligations and commitments, including the [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#). This includes adding specific provisions in Nationally Determined Contributions (NDCs) and biodiversity conservation targets to protect land rights (especially women's land rights), and Indigenous peoples' rights, rooted in respect for their right to self-determination. It also includes ensuring coherence across local and national level policies, such as environmental regulations and trade and investment policies.
2. Adopt and implement legislation recognizing the vital role and risks human rights defenders (including Indigenous peoples' communities) face in promoting human rights, sustainable development and a healthy environment, with a commitment to zero tolerance for attacks. This must include legal recognition of the individual and collective rights of Indigenous peoples and a recognition of the disproportionate risks and violence they face when they protect or exercise their rights to their lands, territories, and resources, practice of traditional livelihoods, and others.
3. Establish effective mechanisms and processes for the meaningful, effective and safe participation of Indigenous peoples at the local and national levels in climate policies and actions, including full respect for their right to free, prior, and informed consent (FPIC).
4. Enact gender responsive, mandatory human rights and environmental due diligence legislation that includes a duty for companies to engage safely and meaningfully with rightsholders and HRDs to inform all stages of due diligence and remediation and places a positive obligation on companies to prevent retaliation against HRDs across their operations and value chains.



5. Support Indigenous-led climate mitigation and adaptation initiatives. Support an equitable energy transition by ensuring that renewable energy development results in equal access to clean, reliable, and affordable energy, including for Indigenous peoples and female-headed households.
6. Develop and sustain mechanisms that collect and report disaggregated data on attacks against HRDs, using this information to inform more effective policies and protection mechanisms to reduce attacks. Deepen the investigation of attacks on HRDs beyond the identification of the material actors to examine any involvement by companies and ensure accountability for harm caused.
7. Provide access to justice to victims of human rights violations in climate actions, including on biodiversity conservation, and establish effective grievance and accountability mechanisms accessible to Indigenous peoples. In addition, create a comprehensive system focused on the prevention of attacks in coordination with judicial authorities to investigate and enforce the law against those who threaten the life, integrity and personal security of HRDs.

Board of the Green Climate Fund

1. Ensure effective implementation of the [GCF Indigenous peoples' policy](#) by exercising due diligence in the review, monitoring, and evaluation of project support proposals, including by collecting disaggregated data by ethnicity on target beneficiaries or potentially adversely affected peoples.
2. Establish a program and allocate resources within the GCF to facilitate and support direct access of Indigenous peoples to climate finance.

Companies

3. Adopt and implement policy commitments which recognise the valuable role of HRDs, reference specific risks they face, ensure effective engagement and consultation with HRDs at all stages of the due diligence process and commit to zero-tolerance for reprisals throughout the company's operations, supply chains and business relationships.
4. Engage in robust human rights and environmental due diligence, in accordance with the [UNGPs](#) and the [UN Working Group on Business and Human Rights' guidance on ensuring respect for HRDs](#). This must include ongoing consultation with potentially affected and affected people related to the company's operations, supply chain, and business relationships.
5. Respect Indigenous peoples' land and forest rights and right to FPIC, including their right to define the process by which FPIC is achieved and to withhold consent, regardless of an opposing claim by the government. Develop and publish detailed [Standard Operating Procedures \(SOPs\) on FPIC](#) and respect FPIC Protocols developed by communities (example [here](#)).
6. Provide accessible, effective and culturally appropriate grievance mechanisms for Indigenous peoples affected by business activities.



7. Establish mutual agreements between company and community representatives outlining benefit-sharing, co-ownership, and monitoring of respect for communities' rights, and integrate traditional decision-making processes into company operations, when appropriate.

Investors

1. Publish a public human rights policy which recognises the valuable role of HRDs in identifying risks associated with business activities and commits to a zero-tolerance approach to attacks against HRDs. Clearly communicate the [human rights expectations included in this policy to portfolio companies](#), and develop an engagement plan for if companies fall short, including that companies:
 - a) disclose human rights and environment-related risks
 - b) engage in ongoing consultation with communities, workers and HRDs
 - c) have policies and processes to respect Indigenous peoples' rights
 - d) respect the rights of HRDs
 - e) ensure effective access to remedy when harm occurs
2. Undertake human rights and environmental due diligence and review potential investees for any past involvement with retaliation, including within their supply chains or business relationships. Avoid investing in companies with this track record.
3. Use leverage with investee companies which cause, contribute to, or are directly linked to human rights and environmental harms to ensure the company mitigates negative impacts and provides access to remedy to those affected.
4. Invest in Indigenous-led initiatives in support of biodiversity, conservation, and environmental protection and support strengthening their resilience to the adverse of impacts of climate change.



Photo by Aquilas Ngomo Koko, ANAPAC - DRC



Indigenous Peoples Rights International

Championing Indigenous Peoples Rights

The [Indigenous Peoples Rights International \(IPRI\)](#) is a legally registered, non-profit global Indigenous Peoples organization that works to protect Indigenous Peoples' Rights, and unite and amplify the call for justice to victims of criminalization and impunity. In 2019, IPRI was established to lead and coordinate the [Global Initiative to Address and Prevent Criminalization, Violence, and Impunity against Indigenous Peoples](#).

Download [IPRI Brochure](#) and [Annual Reports](#) for more information.



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Business & Human Rights Resource Centre

[Business & Human Rights Resource Centre](#) is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website. The Resource Centre's Civic Freedoms and Human Rights Defenders programme collaborates with partners across the globe to ensure that civic freedoms are protected and that human rights defenders and organisations focused on business-related issues are able to work in a safe and enabling environment free from attack or restriction.

COVER PHOTO: TUMANDUK demonstration, Philippines.
Panaghiusa PH Network