

# Human Rights Advocacy in Energy Projects: An Approach from the Case of the U'wa Indigenous People and Their Members v. Colombia

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## Abstract

The decision of the Inter-American Human Rights Court in *U'wa Indigenous People and their Members v. Colombia* (2024) is relevant to exploring the path of protecting human rights in the development of energy infrastructure projects. The analytical and historical method allows us to explore the background of the case, as well as the reasoning that determined the violations of the human rights of the indigenous people. The research aims to identify specific strategies for advocating for human rights in energy projects. This includes promoting policies and legal instruments designed to protect human rights, reasonable dialogue and communication, as well as assessing the due diligence processes implemented to safeguard vulnerable populations, such as members of indigenous groups.

## Keywords

Advocacy, Energy Justice, Energy Infrastructure, Vulnerability, Indigenous Peoples

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## 1. Introduction

The development of energy infrastructure is relevant to satisfying the needs of people and the private sector. However, the aforementioned infrastructure often raises environmental or social concerns. One of the problems that has been more visible in Latin America in the past decades relates to the confrontation between the public and private sectors and indigenous people, as the latter consider that their property, consent, life, health, and well-being are at stake. At the Inter-

American Human Rights System, cases such as *Comunidad Indígena Yakye Axa vs. Paraguay* (2005), *Comunidad Garífuna Punta Piedra vs. Honduras* (2015), *Comunidad Garífuna Triunfo de la Cruz vs. Honduras* (2015), *Pueblos Kaliña y Lokoño vs. Surinam* (2015), *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) vs. Argentina* (2020), and *Comunidad Indígena Maya Q'Eqchi' Agua Caliente vs. Guatemala* (2023) illustrate how states have affected the rights to free, prior, and informed consent, health, life, and property of indigenous people. Recently, the case of the *U'wa Indigenous People and their Members vs. Colombia*, decided in July 2024, has exposed the actions and omissions that have endangered the human rights of indigenous groups.

Despite the fact that there are international instruments and national laws that protect human rights, further actions ought to be taken to prevent the violation of human rights and foster economic development. Cases such as *U'wa Indigenous People and their Members v. Colombia* may offer additional insights to consider in human rights advocacy in the energy sector. The nature of energy projects reinforces the need to consider that actions should be taken in the public sector, with a critical analysis of the content of the law and the scope of the State's actions, as well as in the private sector, where an assessment is needed in areas such as corporate social responsibility strategies and inclusive dialogue, as well as in due diligence processes.

In this regard, the aim of this paper is to explore the contributions of the case *U'wa Indigenous People and their Members v. Colombia* to human rights advocacy in the public and private sectors for preventing and protecting human rights in energy projects.

The research question is: What is the trajectory of human rights advocacy in energy projects resulting from the decision of the Inter-American Court of Human Rights in the case of the *U'wa Indigenous People and Their Members v. Colombia*?

The working hypothesis posits that the decision in *U'wa Indigenous People and their Members v. Colombia* is significant for exploring additional strategies aimed at preventing the violation of the human rights of indigenous peoples and safeguarding their rights. A close collaboration among human rights advocates and the public and private sectors is needed to develop a strong legal framework to protect human rights, as well as to implement corporate strategies, such as due diligence and corporate social responsibility, to prevent the violation of human rights and to foster an inclusive and reasonable dialogue with indigenous peoples.

The historical and analytical methods are useful for exploring the doctrine, international instruments, and legal frameworks to identify the relevance of the human rights paradigm and the scope of the facts and reasoning of the Inter-American Court of Human Rights in *U'wa Indigenous People and Their Members v. Colombia*.

The approach to the aforementioned case is useful for identifying the challenges of protecting human rights within the energy sector, the main problems in the

development of energy projects, and the need to seek an equilibrium between social and economic goals.

This manuscript is divided into three sections. The first section provides a brief overview of the confrontation between the need to develop energy infrastructure projects and the protection of human rights in Latin America. The second section explores the case of U'wa Indigenous People and their Members v. Colombia to identify the main facts and human rights violations that the Inter-American Court of Human Rights identified in 2024. Finally, the third section explores the need to foster strategies for human rights advocacy in energy projects to prevent human rights violations, as well as to achieve goals such as energy justice and economic development.

## **2. The Confrontation between the Private and Social Sectors in the Development of Energy Projects in Latin America**

The development of energy projects to provide fuels and electricity is required to ensure better living conditions, perform industrial activities, boost science and technology, and achieve energy justice, which is one of the core principles of energy law, linked to the principle of natural resources sovereignty, access to modern energy services, the prudent, rational, and sustainable use of natural resources, the protection of the environment and human health, combating climate change, and energy security, reliability, and resilience (Heffron, 2021).

According to Sovacool and Dworkin (2015), energy justice is defined as “a global energy system that fairly disseminates both the benefits and costs of energy services, and one that has representative and impartial energy decision-making.”

Energy justice emphasizes the social aspect as it considers the application of human rights across the energy life cycle, which deals with the just distribution of benefits and duties, the respect for legal process, the recognition of the rights of different groups, the consideration that energy activities and global business supply chains affect the whole world, the rectification of any injustice caused by the energy sector, and the enforcement of particular laws (Heffron, 2021).

Therefore, the focus on energy justice requires considering the situation of people in the decision-making process in order to provide access to reliable, secure, and affordable energy, as well as to consider the concerns of people regarding the possible damages that could be involved in the development of a project. The consideration of human beings must be broad enough to include consumers, enterprises, academics, and vulnerable populations, such as indigenous people.

Certainly, as part of the dimension of recognition justice (encompassed within energy justice), it is required to respect the fact that people have different social, cultural, and economic positions and identities, which is related to the procedural justice dimension that safeguards testimonial justice to give voice to actors (Valkenburg, 2025). As a result, the energy decision-making processes require the development of strategies to duly consider the needs and concerns of the social sector to foster the growth of the energy industry. Therefore, energy should not

only be seen from an economic or technological perspective, as it requires considering the perspective of the people who could be benefited or even affected by energy projects.

The need to consider the social aspect in the decision-making process in energy requires that the public, private, and social sectors take into account topics such as energy efficiency, energy externalities, human rights and conflicts, energy and due process, energy poverty, energy subsidies, energy resources, and climate change (Sovacool & Dworkin, 2015). Once again, it can be seen that energy should not only be centered on economic gains and losses, but also on the impact on the lives of people and their rights.

The aforementioned topic should be considered in the following years, as further growth of energy projects will be required, particularly in emerging economies (ExxonMobil, 2025), to meet the needs of the growing population and industry.

However, the Latin America Region deals with challenges in energy projects, due to the negative reputation that some people have toward enterprises (Furtado & Soldati, 2021), and the association of enterprises with the violation of human rights, such as the free, prior and informed consent. This problem is not exclusive to the traditional fuel sector, but also applies to renewable energy projects (Business & Human Rights Resource Centre, 2021).

The confrontation between the public, private, and social sectors in the development of energy projects is not limited to the discursive or theoretical arena but also has legal implications that have resulted in conflicts in local and regional jurisdictions, which offers interesting lessons on the path that human rights advocacy should explore to avoid further violations of human rights.

### **3. A Brief Analysis of the Decision of the Inter-American Court of Human Rights on the Case of the U'wa Indigenous People and Their Members v. Colombia**

#### **3.1. General Overview of the Protection of Human Rights in the Inter-American System of Human Rights**

The international and regional systems of human rights, as well as local laws in Latin America, provide a wide scope to protect the political, economic, social, and cultural rights of the people, with the corresponding mechanisms to enforce those rights. The protection of rights is also extended to vulnerable groups, such as indigenous peoples.

Indeed, the protection of human rights is addressed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the United Nations Declaration on the Rights of Indigenous Peoples, as well as the Indigenous and Tribal Peoples Convention No. 169 of the International Labour Organisation, among other international instruments and resolutions of International Organizations.

At the Inter-American System of Human Rights, the protection of human rights

is based on the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; the Inter-American Convention on Forced Disappearance of Persons; the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; and the American Declaration on the Rights of Indigenous People and the Declaration of Principles on Freedom of Expression.

In addition, the protection of human rights is recognized in the constitutions and laws of the 35 states that are members of the Organization of American States and the countries that are part of the Inter-American System of Human Rights, of which only 20 states have accepted the contentious jurisdiction of the Inter-American Court.

As can be seen, in the normative sphere, human rights are duly recognized at the international and national levels. Moreover, there is a wide legal doctrine that fosters the protection of human rights, which tends to improve the standards and protection of human rights with the collaboration of the public, private, and social sectors.

Despite the protection in law and international agreements, there have been several violations of the rights of people, as seen in the more than 557 cases that have been decided by the [Inter-American Court of Human Rights \(2024\)](#). The cases indicate that vulnerable groups, such as women, children, and indigenous people, require special protection of their political, economic, social, and cultural rights.

As for the indigenous groups' concerns, there have been examples that involve the private sector contributing directly or indirectly to the violation of human rights in situations involving the extractive industry, such as mining, electricity, and oil. Cases such as *Comunidad Indígena Yakye Axa vs. Paraguay (2005)*, *Comunidad Garífuna Punta Piedra vs. Honduras (2015)*, *Comunidad Garífuna Triunfo de la Cruz vs. Honduras (2015)*, *Pueblos Kaliña y Lokoño vs. Surinam (2015)*, *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) vs. Argentina (2020)*, and *Comunidad Indígena Maya Q'Eqchi' Agua Caliente vs. Guatemala (2023)* illustrate how the State has committed certain actions or omissions regarding the human rights of indigenous people, particularly concerning the right to free, prior, and informed consent, collective property, cultural identity, life, health, or the environment.

The oil industry has also been related to conflicts with indigenous people and the State, as seen in *Kichwa Indigenous People vs. Ecuador (2012)*, and *Pueblo Indígena U'wa and Members vs. Colombia (2024)*. In order for more people and industries to get the needed quality and continuity of energy, the aforementioned cases could be of special relevance for identifying measures that could develop the

projects without affecting human rights. The experience and reasoning from those cases may be of special relevance for the industry, authorities, and human rights advocates to identify the main problems regarding the State, the energy sector, and indigenous groups and how to prevent conflicts. Due to the recent resolution given in *Pueblo Indígena U'wa and Members vs. Colombia*, special emphasis will be given to that case in the following section.

### **3.2. Facts of the Case: U'wa Indigenous People and Their Members v. Colombia and the Decision of the Inter-American Court of Human Rights**

In general terms, the U'wa Indigenous People settled around the Sierra Nevada del Cocuy in Colombia. This region is rich in natural resources, including oil. The cosmogony of this indigenous group is based on the permanent balance among humankind, the environment, and their cosmic universe, making the defense of their territory a central part of their identity and way of life.

In 1999, the State created the Unified U'wa Indigenous Reserve with an approximate area of 220,275 hectares. Since then, various actions have been taken to achieve territorial clearing through the acquisition and titling of lands and improvements. This reserve, however, overlaps with a part of the Cocuy National Natural Park, which is managed by the State of Colombia, preventing the indigenous people from exercising their autonomy and governance over a certain portion of the territory.

The State of Colombia granted different authorizations to some projects within the U'wa Reserve involving oil, gas, and minerals, which allegedly affected the rights of the U'wa people. Enterprises such as Ecopetrol, which has public-sector participation, and Oxycol, which is privately owned, participated in the projects. Flaws in the consultation processes were alleged for the Samoré Block, Catleya Block, and Sirirí Block projects, which were within the area of U'wa territory. Other projects such as Gibraltar 1, Gibraltar 3 (Gibraltar Gas Field), and the Magallanes Exploratory Drilling Area (APE Magallanes), despite not being located in the indigenous territory, could have directly impacted the U'wa People's rights, and therefore a due consultation process was required despite their location outside the territory.

Since the 2000s, the U'wa people have alleged the presence of third parties, members of the military, and other armed actors in their territory, which has resulted in acts of intimidation, violence, and cultural and environmental impacts that have affected their community members, including children. As a result, the indigenous group has claimed violations of their rights to free, prior, and informed consent; collective property; participation; access to information; life; health; environment; and participation in the cultural life of the U'wa people.

On April 28, 1998, the Association of Major Councils of the U'wa People, the National Indigenous Organization of Colombia, and the Coalition for Amazonian People and the Environment filed the initial petition before the Inter-American

Commission on Human Rights (Commission).

On October 21, 2020, the Commission submitted the case to the jurisdiction of the Inter-American Court of Human Rights, as the State of Colombia could be responsible for the violation of the rights to collective property, access to information, political rights, judicial guarantees, judicial protection, and other cultural rights, enshrined in Articles 21, 13, 23, 8, 25, and 26 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of the U'wa People. The Commission stated that the lack of complete titling of the ancestral property of the U'wa people and the undertaking of various oil, mining, tourism, and infrastructure projects carried out in their ancestral territory without prior consultation constituted violations. Additionally, the Commission noted that the violations of the right to property affected their cultural and spiritual practices. Despite complaints and appeals against the licenses and projects carried out in the U'wa territory, the members of the U'wa People did not have a recourse that would have effectively protected their property rights or allowed for the land titling promised to the alleged victims since 1999.

### **3.3. The Responsibility of the State of Colombia for the Violation of Human Rights**

On July 4, 2024, the Inter-American Court of Human Rights (IACHR) reached a decision concerning the case *U'wa Indigenous People and Members v. Colombia*.

The analysis of the facts concerned the situation of indigenous groups in Colombia, with special emphasis on the U'wa people. Additionally, the Court analyzed the processes of expansion, sanitation, and titling of the U'wa territory; the extractive projects in U'wa territory; the overlap between the U'wa territory and the Parque Nacional Natural del Cocuy (PNNC); and the militarization and use of force in the U'wa territory (IACHR, 2024). The evidence consisted of documentary, testimonial, and expert information that, in relation to the legal framework of Colombia and the Inter-American System of Human Rights, resulted in the determination of the responsibility of the State of Colombia for the violation of human rights against the U'wa indigenous people.

The violation of rights and the reasoning were presented in the following order:

- Collective property and political participation rights (VI.1). The Court stated that Article 21 of the American Convention protects the close connection that indigenous and tribal peoples have with their lands, as well as with natural resources and the intangible elements derived from them. Among indigenous and tribal peoples, there exists a communal tradition of collective land ownership, which understands that ownership is centered on the group and its community.

The Court recognized that the State of Colombia made progress in fulfilling its obligation to demarcate, title, and sanitize the territories contained in the U'wa Reserve since 1999. However, the Court noted that the U'wa People's participation in the administration of the PNNC has not been constant and permanent but ra-

ther the result of specific agreements and accords. Furthermore, the State has adopted decisions that affect how conservation actions are carried out in the overlapping area between the PNNC and the U'wa Indigenous Reserve, where there is no evidence of any participation by the U'wa people and no elements of conviction regarding the consideration of the cosmovision of indigenous people or the benefits of the administration and conservation of the PNNC. Therefore, the State violated the right to collective property.

- Free, prior, and informed consent (VI.2): The Court found that the consultation process was carried out without consideration of the customs, traditions, and representation of the U'wa people, which are safeguarded by Articles 1.1, 21, 13, 23, and 26 of the American Convention on Human Rights. In particular, the adequate process of prior consent was not observed in the extractive projects Gibraltar 1, Gibraltar 3, el Gaseoducto Gibraltar-Bucaramanga, and APE Magallanes.

The ruling of the Court allows us to identify the following aspects that should be taken into account regarding free, prior, and informed consent: 1) The State should adopt a methodology to grant the right of prior, informed, and free consent, transparency, and legitimacy to conduct the consultations; 2) Consultation must be perceived as an essential tool for promoting meaningful and effective social dialogue, mutual understanding, and legal certainty; 3) The transparency principle refers to the fact that the public must be provided with the maximum amount of information, which must be complete, understandable, provided in accessible language, up-to-date, and delivered in a manner that is effective for the different sectors of the population in order to understand the large-scale projects that affect their territories or natural resources.

- Liberty of expression, reunion, childhood, and free determination of indigenous and tribal people (VI.3): The Court considered that the State must permit and facilitate peaceful protest demonstrations, and where restrictions are justified, they must be provided for by law, pursue a legitimate aim, and comply with the requirements of necessity and proportionality. In the present case, the Court notes that the facts related to possible violations of the right to freedom of expression and protest are related to the public complaints of the U'wa people regarding events where the State allegedly used force to evict and disperse peaceful demonstrations. The Court considers that when dispersing the protest on February 11, 2000, the State should have taken into account its duty to protect children, in accordance with Article 19 of the Convention. Thus, the use of tear gas to disperse the protest by members of the U'wa People constituted a violation of the rights of children present when the army carried out actions to disperse the U'wa People's protest.
- Participation in cultural life and healthy environmental rights (VI.4): The Court determined that the right of indigenous peoples to participate in the cultural life of their lands and territory includes, among other manifestations, the right to maintain and strengthen their cultural relationship with their lands

and territory when this has spiritual or religious significance that is an integral part of their cultural identity. States should not interfere with an indigenous people's enjoyment of its cultural heritage and should take measures to prevent third parties from hindering or nullifying such enjoyment.

As for the environmental concerns, the Court determined deficiencies in the environmental impact assessment approvals of the extractive projects and insufficient mitigation measures regarding the explosion of the Caño Limón-Coveñas pipeline. This led to an affectation of the environment of the U'wa people, which had a negative impact on the life and culture of the indigenous people as well.

The Court considered the duty of prevention, which requires a robust regulatory framework and a coherent system of preventive measures, investigation, supervision, remediation, and enforcement to ensure their effective application in the private sector. Those activities that may pose a danger should be regulated according to the risk level and should protect natural reserve areas and traditional territories in order to prevent environmental damage, including that caused by individuals and companies, through adequate monitoring and enforcement mechanisms.

The obligation to conduct environmental impact studies constitutes a safeguard against potential socio-environmental impacts linked to a project or activity that is potentially hazardous to the environment. In this way, states must ensure that risk assessments are carried out to determine the scope and nature of the potential environmental impacts that an activity could entail before granting any type of authorization for its implementation.

The Court recalled the Advisory Opinion OC23/17, which expresses that environmental impact studies must comply with the following requirements: a) be carried out before the activity takes place, b) be carried out by independent entities under the supervision of the State, c) cover the cumulative impact, d) involve the participation of interested parties, e) respect the traditions and culture of indigenous peoples, and f) ensure that the content of the environmental impact studies is appropriate to the specific circumstances of each case and the level of risk involved in the proposed activity.

The participation of interested parties in the approval of an environmental impact assessment allows for a more comprehensive examination of the potential impact of the project or activity, as well as whether it will affect human rights. Therefore, it is advisable that states allow those who may be affected, or, in general, any interested party, the opportunity to present their opinions or comments on the project or activity before, during, and after the environmental impact assessment.

In addition, the Court considered it pertinent to point out that states must take into account the “triple planetary crisis” in fulfilling their obligations to respect and guarantee the right to a healthy environment. The triple planetary crisis describes the interconnectedness and combined effects of three global threats: environmental pollution, biodiversity loss, and the climate crisis resulting from the

exploitation and use of fossil fuels and methane emissions. This crisis requires integrated and urgent measures to guarantee the sustainability of the planet and the welfare of its inhabitants.

According to those considerations, the Court determined that the State failed to demonstrate whether the measures adopted to mitigate environmental damage caused by the bombing of the Cañas-Limón pipeline were sufficient to effectively mitigate the harm inflicted on the environment. Even though Ecopetrol certified that it had buried the pipeline following the State's request, this does not constitute proof that the State has fulfilled its obligations to mitigate environmental impacts in the area and repair the environmental damage caused by the bombing of the Cañas-Limón pipeline.

In addition, the Court determined that the State failed to protect the U'wa culture from extractive projects in its territory and adjacent areas and allowed third parties to encroach upon areas of high cultural and spiritual value to the U'wa people. Furthermore, the State violated the right to a healthy environment by failing to fulfill its due diligence obligations in approving environmental impact studies for extractive projects and by failing to demonstrate the adoption of adequate measures to mitigate the damage caused by the explosion of the Caño Limón-Coveñas oil pipeline. Consequently, the State is responsible for violating Articles 1.1 and 26 of the American Convention on Human Rights.

- Life, personal integrity, and equality rights (VI.5). The Court determined the responsibility of Colombia due to the violent dispersal of a protest by the U'wa people against exploration in the Samoré Block. In addition, the presence of armed actors in the territory constituted a factor of threats and acts of violence against the U'wa people, as well as intrusions into their territory that have affected their sites of high cultural value.

The Court reiterated that the violation of the right to physical and mental integrity of persons has various connotations of degree and that it ranges from torture to other types of abuse or cruel, inhuman, or degrading treatment, whose physical and mental consequences vary in intensity according to endogenous and exogenous factors that must be analyzed in each specific situation.

Even though the State of Colombia adopted a series of positive measures to protect the rights of the U'wa People, such as: a) the recognition of the need for reinforced protection for ethnic minorities, through rulings of the Constitutional Court; b) the adoption of legislative measures and public policy in the areas of education, recognition of indigenous languages, autonomy, protection of reserves, and administration of natural parks; c) agreements to achieve the titling and regularization of the territory; and d) the recognition of the risk situation of the U'wa People in the face of the armed conflict, the Court determined that the dispersal of the protest and the presence of third parties impacted the quality of life of the U'wa people and caused suffering to some of its members. This situation resulted in a violation of the right to a dignified life and to personal integrity, which constituted a violation of the rights contained in Articles 1.1, 4.1, and 5 of the Amer-

ican Convention on Human Rights.

- Judicial warranty and judicial protection rights in relation to equality rights (VI.6). The jurisprudence of this Court has indicated in other cases that indigenous and tribal peoples have the right to effective and expeditious administrative mechanisms to protect, guarantee, and promote their rights over indigenous territories, through which the processes of recognition, titling, demarcation, and delimitation of their territorial property can be carried out. Furthermore, it concludes that the State is responsible for the violation of the guarantee of a reasonable time frame with respect to the action for annulment against the environmental license granted in relation to the Magallanes APE and for the lack of effectiveness of the judgment of the Administrative Court of Cundinamarca in the action for annulment and restoration of rights against the mining concession. Consequently, the State is responsible for the violation of Articles 8, 25.1, and 25.2.c of the American Convention, in relation to Article 1.1 of the same instrument.

Among the reparation measures, the Court ordered the redress of the human rights violations suffered by the U'wa People and their members, as well as the prevention of the recurrence of events similar to those analyzed in the case. In addition, the Court determined restitutory and satisfactory measures, which involved the adoption and completion of the necessary actions to carry out the comprehensive clearing of the Unified U'wa Reserve and the Kuita Reserve, the clarification of the colonial titles of the U'wa People, a roundtable with representatives of the U'wa People to agree on their participation in the administration and conservation of the overlapping area with the Cocuy National Natural Park, a participatory process regarding the ongoing extractive projects, ensuring that these projects do not impact the exercise of the U'wa People's right to participate in cultural life, the adoption of measures to mitigate environmental damage caused by the explosion of the Caño Limón-Coveñas pipeline, and the creation of a community development fund to redress harm to cultural life participation and as compensation for material and immaterial damages suffered. In addition, the Court ordered the resolution of pending administrative and judicial processes.

This resolution offers interesting axes to analyze the impact of the extractive and energy industry on indigenous peoples. Even though the Court should have presented the analysis of the rights in a more organized and related form, it still poses some points that ought to be taken into account to prevent the violation of human rights and continue with the projects.

## **4. Engagement of Human Rights Advocacy with the Public and Private Sectors in Energy Issues**

### **4.1. Scope of Human Rights Advocacy with Indigenous Peoples**

The Resolution of the Inter-American Court of Human Rights in the case of the U'wa Indigenous People and their Members vs. Colombia may offer some considerations that human rights advocates should take into account to protect the rights

of indigenous people in cases related to energy infrastructure.

As [Metcalf-Hough \(2021\)](#) notes, advocacy—whether private diplomacy, public denunciation, or direct or indirect communication—is a key tool utilized by a range of international and national/local actors to try to influence the behavior of conflict actors in regard to their treatment of the civilian population.

Additionally, energy justice should be considered as part of the required actions to avoid the development of energy projects harming third parties, such as indigenous people. This objective could be achieved through a deep anthropological approach to indigenous people, as well as the adoption of procedures to hear the voices of all people to reach a fair decision.

In relation to indigenous people, it is necessary to take into account the vulnerability to which they are exposed. The approach to vulnerability entails considering the possibility of a human being being harmed, the possibility of injury, and the need to associate this term with the individual's circumstances, as well as with the environment (environmental, social, or otherwise) in which their life unfolds ([Feito, 2007](#)).

Applied to indigenous people, the vulnerability may focus on recognizing the historical disadvantages that this group has had in relation to processes such as colonization, which generated unequal treatment and does not fully recognize the differences in topics that [Axelsson and Sköld \(2006\)](#) recall regarding religion, language, ethnicity, and cultural expressions.

In the Latin American region, the presence of indigenous groups is vast, accounting for more than 54 million indigenous people ([FAO, 2025](#)). These groups have their own religions, languages, ethnicities, and cultural expressions and may also have faced marginalization and difficulties in accessing public services, education, or health.

The recognition of the situation of indigenous people is a starting point that human rights defenders should take into account. This means that a historical and anthropological approach ought to be considered in the defense of their human rights in order to understand the needs and deficiencies that these groups have faced and continue to face in areas such as health ([Cerón et al., 2016](#)). Throughout history, it is possible to observe the oppression, marginalization, and mistreatment that have been documented against indigenous people, prevent future violations of human rights, and implement reparative measures.

The cases brought before the Inter-American Court of Human Rights have shown that sometimes there was no serious intention to understand the perspective of indigenous peoples. Regarding energy conflicts, the lack of understanding of the anthropological and historical perspective of those groups has resulted in the violation of rights such as free, prior, and informed consent; environment; life; liberty; equality; and health. Therefore, a deeper understanding of indigenous groups is required for the protection of their rights. This understanding will require an interdisciplinary approach so that lawyers, historians, sociologists, and anthropologists participate in protecting the rights of indigenous peoples.

Another important aspect that should be taken into account is the need to be duly represented before national and international authorities, whether for purposes of titling their property, demanding public services, or presenting claims before national or international courts. This representation requires due dialogue between indigenous people, defenders, and public servants to fully explain the scope of the procedures and to have the opportunity to explain facts or considerations that could be relevant to the cases. In addition, knowledge of the rules and principles that protect indigenous human rights is fundamental to advancing the protection of indigenous people.

In addition, human rights advocacy should consider a gender approach to protect indigenous women from the harms that the energy sector may pose to them and to promote the effective participation of indigenous groups in decision-making processes, not only within their communities but also before authorities and the private sector when dealing with energy infrastructure.

The professionalism and ethics of human rights defenders are also relevant points to consider to duly represent the interests of indigenous people and avoid discrimination.

Additionally, collaboration with the public and private sectors is required to duly protect the rights of indigenous people in energy projects, as will be discussed in the next section.

#### **4.2. Collaboration with the Public Sector**

The human rights advocacy for indigenous people in energy projects requires collaboration with the public sector to guarantee the protection of their human rights. First, it should be analyzed whether the national legal framework, in coordination with international instruments, has the necessary provisions to protect indigenous people in general and specifically in the energy sector.

It can be found that there are some areas for further legal development to add those standards that international organizations or the Inter-American Human Rights Court have identified as necessary to protect human rights. Some provisions may still need to be considered in the energy legislation in order to reinforce the protection of the human rights of indigenous people.

For instance, in Mexico, the Hydrocarbons Sector Law and the Electrical Sector Law require a social impact study to develop energy infrastructure. However, based on the analysis of human rights advocacy, the provisions could be improved to include topics such as the methodology for granting the right to prior, informed, and free consent; transparency and legitimacy in conducting consultations; and formal considerations of the conditions under which the dialogue between the public, private, and social sectors will take place.

In addition, human rights advocacy could provide some diagnosis of the administrative and legislative measures to protect the rights of indigenous people and give follow-up on the implementation of the measures.

Furthermore, as [Sovacool and Dworkin \(2015\)](#) mentioned, energy justice is a

decision-making tool to promote availability, affordability, due process, good governance, sustainability, inter- and intragenerational equity, and responsibility. This requires considering that people deserve sufficient high-quality energy resources, the need to respect due process and rights in the production and use of energy, as well as access to high-quality information about energy and the environment.

The referred case *U'wa People v. Colombia* showed that due process and good governance need to be strengthened, as sometimes people are not given the right information about the project, nor are they heard by the public and private sectors. As a means to strengthen these topics, it is highly advisable to take into account energy justice in the design of public policies, the drafting of laws, the decisions of the courts, and administrative actions.

The design of public policies should also be done with the collaboration of the public, private, and social sectors. This topic is of special relevance in normativity, as the Planning and Transition Energy Law in Mexico contains provisions that only allow the public sector to design public policies for energy transition strategies. This may be problematic due to the fact that the private sector could offer interesting approaches to the energy transition according to its experience and resources in science and technology. Furthermore, the social sector, such as indigenous groups, could offer interesting insights into how they have been affected by previous projects and even express how their relationship with nature could be useful to achieve sustainability.

Moreover, the collaboration between the public sector and human rights advocacy groups could be useful to offer proposals at an international level to keep protecting the rights of indigenous people and even search for measures to achieve goals, such as energy justice.

### **4.3. Collaboration with the Private Sector**

It is fundamentally a collaboration between human rights advocacy in indigenous groups and the private sector in energy projects. Despite the fact that these sectors may have different interpretations of values and goals, their collaboration is important to avoid violations of human rights, set the basis to achieve energy justice, and help indigenous people satisfy their basic needs.

The preventive strategies are of core importance to achieve the aforementioned objectives, in which human rights advocates may assess companies through Corporate Social Responsibility and Due Diligence Processes.

Corporate Social Responsibility can be understood as a way of organizing the structure and operation of companies in relation to the individuals who are directly or indirectly related to them by being affected by the activities they carry out, so that, based on ethical principles, the organization of the company and the development of its activity are carried out taking into consideration the responsibility for the effects and consequences thereof. The socially responsible company bases its policies and actions on principles and values that benefit its environment

and the people connected to it. This requires action in areas such as business ethics, community engagement and impact, quality of life within the company, and environmental stewardship (Dacasa López, 2020).

One of the aspects that should be considered among enterprises is the code of conduct, which is the first step to fulfilling the moral obligations of the enterprise. This code should consider the mission, the principles of the enterprise (e.g., moral responsibility of individuals, respect, and avoidance of undue behavior such as fraud or unjust exploitation), the duty of professionalism, the role that the enterprise performs or should perform in society, and the statement of purposes of the enterprise (Otteson, 2022).

Some of the aspects that have been accepted as proof of corporate social responsibility are politics, codes, handbooks, certified actions, public reports, and recognition by third parties. In addition, ISO certifications, such as 9000, 14000, and 26000, are of special relevance for implementing quality management and developing an environmental management system and an international standard on social responsibility (Dacasa López, 2020).

In this regard, the approach with human rights advocacy may offer some strategies and concerns that have affected indigenous people so that enterprises could be aware of real risks based upon the experience and fears of indigenous people and not only from an executive perspective.

In addition, human rights advocates could offer some insights on the design of due diligence processes to reinforce the social dimension of the activities of enterprises, which could be useful not only for ethical legitimacy but also as a means to ensure the successful development of the infrastructure energy project.

Important to recall is that due diligence has gained significance in the Inter-American Human Rights System to ensure that States meet their conventional obligations on human rights, which requires the identification of individuals who could be affected, and the evaluation standards, such as good faith, the reasonability principle, and the consideration of the rights and interests involved, the level of control, and the provision of adequate adoption of measures to avoid damage (Sánchez Cárdenas et al., 2025).

The due diligence should also consider the dimensions of energy justice mentioned at the beginning of this manuscript, as it is required to consider the need of people to access affordable and secure energy, explore strategies to provide clear and complete information about the project to the social sector, and to give voice to those who will be directly or indirectly benefited or affected by the project. Despite the fact that some laws have mandates regarding the social impacts of energy projects, it is required that enterprises go beyond those provisions in order to incorporate higher standards for the protection of human rights, as well as for energy justice.

Instruments such as the Due Diligence Guidance for Responsible Business Conduct (OECD, 2018) or the Guidelines of the International Petroleum Industry Environmental Conservation Association (IPIECA) could also be relevant for enter-

prises to explore the need to protect human rights. These instruments promote consistent approaches to identify and address potential human rights impacts in the oil and gas industry, with a special focus on human rights and the energy transition, as well as on developing and implementing human rights due diligence processes, with the corresponding reference to indicators and the situation of indigenous people (IPIECA, 2021).

As a result, companies should consider not only a business-centered vision in the energy sector but also a cultural vision from the direct perspective of indigenous people and their defenders. This approach may require a respectful and open dialogue with the mentioned vulnerable group to reinforce the social engagement of enterprises.

This approach may lead to achieving what Otteson (2022) has defined as honorable enterprises, which not only yield economic benefits for the enterprises but also benefit other human beings, considered as complete moral agents.

As moral agents, it is expected that enterprises consider the protection of indigenous people and collaboration with human rights defenders in order to prevent any violation of human rights and promote respect for all humans, with the corresponding means to achieve dignity, well-being, and the full development of people.

Considering that energy is precisely one of the means that human beings require to fulfill a life with dignity, health, education, work, food, and a healthy environment, enterprises should also take into account the energy justice principle to identify their contributions to distributive energy, so that people can enjoy accessible and secure energy services, provide adequate information for people in all the projects in which the enterprises endeavor, and incorporate all the voices of the people involved in the project, not only within the company, but also with third parties, such as universities, consumers, human rights defenders, non-governmental organizations, and indigenous peoples. Therefore, an adequate design of the due diligence process in energy projects, as well as dialogue channels, are important tools for companies to achieve energy justice.

From what was previously referred to, it can be observed that the collaboration between the private sector and indigenous groups may broaden the view of the enterprise to incorporate a social perspective in the decision-making processes when dealing with energy projects. Furthermore, it may lead to preventing the violation of human rights and even to incorporating the view of indigenous people to consider the dangers of the activity and the reparation requirements.

## 5. Conclusion

The experience in the oil industry is crucial to ensure that the development of energy transition projects adequately considers the protection of human rights, particularly those of vulnerable groups such as indigenous peoples. In this context, energy justice is important for implementing actions to ensure accessible and secure energy. It involves considering the perspectives of individuals directly or in-

directly affected by the project, safeguarding human rights, and actively participating in the protection of these rights.

The case of the U'wa Indigenous People and their Members v. Colombia provides interesting lessons for human rights advocacy in energy issues. The actions require a compromise with the protection of vulnerable people, such as indigenous people. The advocacy needs to understand the anthropological dimension of the indigenous people; determine if the national laws and regional and international instruments effectively protect their rights and provide mechanisms of protection; provide a critical analysis of the conditions for the enjoyment of human rights; give the due assessment in their own language and in an accessible way of the information of the project to fulfill the right of free, prior, and informed consent; provide accompaniment in the negotiation and judicial processes; and give a due follow-up of the industrial activity that will take place in the territory of indigenous people.

In addition, it is desirable to have a collaboration with the public and private sectors to protect the rights of indigenous people in energy projects. The approach to the public sector could be aimed at suggesting reasonable measures to protect human rights, with the corresponding preventive and supervisory actions to enforce the law and foster a robust legal framework to protect human rights. Collaboration with the private sector requires an assessment of due diligence, the implementation of guidelines from international organizations and business codes of conduct, and an adequate dialogue in the negotiation processes.

The human rights advocacy on energy projects requires a deep insight into the human rights paradigm so that the public, private, and social sectors may identify adequate strategies to adopt present and future actions to protect the life, health, integrity, freedom, and environmental rights of vulnerable people.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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