



Climate Action and Indigenous Rights under the ECHR

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Abstract

This blog examines how state-driven climate action can disproportionately affect Indigenous communities, and how this is addressed under the ECHR. This issue will be examined through a comparative case study of the lawfulness of applications for lithium extraction on Indigenous land in the US. With a basis in the right to private and family life under Article 8 of the ECHR, this assessment considers proportionality, necessity, and distributive justice. Ultimately, this blog argues that the perceived conflict between climate protection and Indigenous rights is not inevitable. Rather, it reflects shortcomings in implementation and a lack of meaningful participation by affected communities.

Keywords: Climate action, climate change, resource extraction, Indigenous rights, European Convention on Human Rights (ECHR), Article 8 ECHR, proportionality, distributive Justice.

Introduction

How far are states willing to go to protect the climate, and what rights are we prepared to compromise in the process? These questions are not merely theoretical, with climate measures producing a disproportionate impact on Indigenous peoples worldwide.¹ Living closely connected to, and with a dependence on ecosystems, these communities often suffer the worst impacts of climate change.² Despite their marginal contribution to the crisis, the green transition is now imposing an additional burden.³ Meanwhile, climate change is increasingly recognised by international courts and UN bodies as a human rights issue, particularly in relation to the right to

¹ Jenni Monet. “‘Green Colonialism’: Indigenous World Leaders Warn over West’s Climate Strategy.” *The Guardian*, April 23, 2023. <https://www.theguardian.com/world/2023/apr/23/un-indigenous-peoples-forum-climate-strategy-warning>.

² Ngozi Finette Stewart. *Indigenous Climate Justice in the Lake Chad Basin*. (Cham: Springer, 2025.), 2.

³ *Ibid*, 2.



private and family life protected under [Article 8](#) of the ECHR.⁴ Under the same provision, aspects of Indigenous peoples' traditional way of life may also receive protection. This tension is illustrated through the case of the Shoshone-Paiute Tribes in the United States, whose land was taken for a green energy project without consultation. The paper therefore asks: can climate action be pursued without compromising Indigenous rights under the ECHR, illustrated through a comparative US case study?

Climate obligations and indigenous rights under the ECHR

In the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the ECtHR established that climate change poses a serious risk for human "lives, health, well-being and quality of life." With this backdrop, the court recognized that inadequate climate action may interfere with Article 8 rights and confirmed that the State has a positive obligation to protect its citizens from consequential harm.⁵ The same provision may encompass aspects of Indigenous life relating to their traditional livelihoods.⁶ Though there is a lack of jurisprudence on this connection, cases such as [Johti Sappmelacat RY and Others V. Finland](#) suggests that it may exist, particularly when read together with the prohibition on discrimination in Article 14. Such a protection reflects the historical burden Indigenous communities have faced in the light of marginalisation and loss of land and resources.⁷ These patterns continue in the context of climate action, as renewable energy initiatives have disrupted cultural heritage through the [appropriation of land and forced displacement](#) across the world.⁸ Such tensions include conservation-related displacement in Tanzania, windfarm construction on Sámi reindeer herding land in Norway, and lithium extraction projects affecting Indigenous tribes in the United States.⁹

Case study: Lithium extraction and the Duck Valley tribes

⁴ Milieudefensie et al. v Shell plc (Court of Appeal of The Hague, 12 November 2024)

ECLI:NL:GHDHA:2024:2099, paras. 7.1–7.27.

⁵ Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. Application no. 53600/20. European Court of Human Rights. Judgment of April 9, 2024, paras 349–350, 413, 435, 544–545, 657.

⁶ NIM. *Obligations to Protect Indigenous Peoples from the Effects of Climate Change*. (Canary in the Coal Mine.)

⁷ UNDP. *Climate Change*. (Indigenous Peoples.)

⁸ Monet. “‘Green Colonialism’: Indigenous World Leaders”

⁹ Ibid.



It was in 2023 that the US processed 70 applications to extract lithium on the Duck Valley Reservation, where the Shoshone Paiute-Tribes have been living since a forced relocation.¹⁰ The submissions were made without free, prior and informed consent (FPIC) or consultation with the affected tribe,¹¹ forming protected human rights standards.¹² While the extraction project arguably represents a further example of pressure on Indigenous rights, lithium is considered necessary for the production of green technologies.¹³ This development is vital in limiting global warming, as warmer temperatures may lead to “abrupt, irreversible and dangerous” conditions for humans, described in an UN report, and may specifically affect Indigenous communities whose lifestyles depend closely on environmental stability. Although bypassing Indigenous consent for climate measures may seem beneficial for environmental protection, the Convention resolves competing rights claims through a proportionality analysis rather than hierarchies.¹⁴ If both climate protection and Indigenous rights fall under Article 8, one cannot simply override the other. This concern is not limited to the Shoshone tribes, as a 2022 report found that 54% of mineral extraction projects linked to the green transition are located on Indigenous lands.¹⁵

Balancing rights: proportionality and the risk of hierarchisation of rights

Although the ECHR does not bind the United States or other non-European states, this instance illustrates a broader pattern of how climate action can impact Indigenous communities, relevant to the interpretation and application of Article 8 ECHR. Similar protections are also recognised internationally under Article 17 of the ICCPR, covering interference with private life, family, and home, suggesting that such considerations may also hold relevance beyond the ECHR framework. When considering Article 8 (2) ECHR, note that Article 8 is a qualified rather than an absolute right. This could allow Indigenous rights to be restricted where justified through a strict

¹⁰ Isabella Breda, “Tribes Seek Mining Reforms amid ‘Green’ Energy Rush.” *The Seattle Times*, March 28, 2025. <https://www.seattletimes.com/seattle-news/climate-lab/tribes-seek-mining-reforms-amid-green-energy-rush/>.

¹¹ Monet. “‘Green Colonialism’: Indigenous World Leaders”

¹² Human Rights Watch. “US: Lithium Mine Permit Violates Indigenous Peoples’ Rights.” February 6, 2025. <https://www.hrw.org/news/2025/02/06/us-lithium-mine-permit-violates-indigenous-peoples-rights>.

¹³ Carmel Dowling, Gerardo Otero “Mirages or miracles? Lithium extraction and the just energy transition.” *Energy Research & Social Science*, Volume 119 (2025) 3.

¹⁴ L.R. Kiestra. *The Impact of the ECHR on Private International Law: An Analysis of Strasbourg and Selected National Case Law*. (Universiteit van Amsterdam, 2013.) 48.

¹⁵ Human Rights Watch, *The Land of Our People, Forever. United States Human Rights Violations against the Numu/Nuwu and Newe in the Rush for Lithium*. (2025).



proportionality and necessity assessment.¹⁶ For these tests to be satisfied, the limitation must make out a strictly necessary measure and prove to be the least burdensome alternative for those directly impacted.

When applying this to the Duck Valley extraction, one could argue that lithium extraction serves a legitimate and necessary aim in addressing the climate crisis, given its role in the production of green batteries. However, research shows a more nuanced image. While lithium is crucial for sustaining green energy plans and reducing emissions from transportation, the mining and production requires substantial amounts of water, releases toxic waste, and introduces greenhouse gases.¹⁷ In light of this, the interference with Indigenous land and traditional life may not automatically satisfy the necessity requirement under Article 8(2). When considering the question of proportionality, the burden should not fall disproportionately on communities who have contributed least to the crisis. The issue therefore extends beyond consultation alone. Even if consultation had occurred and consent was withheld, the broader legal question would remain of whether states may override Indigenous interests in pursuit of climate protection, and under what conditions such interference could genuinely be considered proportionate in a democratic society.

Rethinking the conflict: why Indigenous participation matters

Justifying intrusive green projects and a lack of cooperation based on climate urgency relies on a false assumption that one set of rights must come at the expense of another. The UNDP reports that 25% of land worldwide is operated by Indigenous people, who also take on the role of stewards of around 36% of all forests. In their management, these areas are protected through their knowledge and resources, focusing on the promotion of biodiversity and sustainability.¹⁸ Durable sustainability solutions developed by Indigenous communities include the creation of floating gardens in flood-prone areas in Bangladesh, as well as the search for opportunities to establish green energy sources in North America. Such possibilities arising from this involvement are not

¹⁶ Kiestra. *The Impact of the ECHR on Private International Law: An Analysis of Strasbourg and Selected National Case Law*. 51.

¹⁷ Carmel Dowling, Gerardo Otero "Mirages or miracles? Lithium extraction and the just energy transition." *Energy Research & Social Science*, Volume 119 (2025) 2.

¹⁸ UNDP. "Indigenous Knowledge Is Crucial in the Fight against Climate Change – Here's Why." *Climate Promise*, July 31, 2024. <https://climatepromise.undp.org/news-and-stories/indigenous-knowledge-crucial-fight-against-climate-change-heres-why>.



being sufficiently recognised or explored,¹⁹ which may hinder effective and inclusive climate action.

Conclusion

Forming two pressing issues, climate protection and Indigenous rights are increasingly linked to the right to private and family life under Article 8 of the ECHR. While indigenous communities are subject to existential threats following the climate crisis, they have faced an additional burden in the light of climate action. Simultaneously, action is needed to sustain a viable climate. So where can the line be drawn? Facing a double burden of the two intrinsically connected issues, Indigenous peoples both benefit and suffer from green projects. Considering the gravity and urgency of the climate crisis, states may be tempted to bypass procedural safeguards in pursuit of urgent climate objectives. However, such an approach risks undermining human rights protections and the legitimacy of . This is reflected in the non-hierarchical structure of rights, and adopting the opposite view would greatly undermine the potential of Indigenous knowledge and cooperation. Ultimately, as climate change is a collective action problem, it must be addressed as such.

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¹⁹ Ibid.



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