



DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS

Division for Inclusive Social Development

Indigenous Peoples and Development Branch - Secretariat of the Permanent Forum on Indigenous Issues

International Expert Group Meeting on the theme

“The rights of Indigenous Peoples, including those in voluntary isolation and initial contact in the context of the extraction of critical minerals”

Virtual format, 2 - 4 December 2024

Indigenous Peoples of Southern Africa Land Dispossession in the Critical Minerals Complex - Particular focus on the Northern Cape Province in South Africa

Expert paper prepared by:

Anthony Phillip Williams*

1. Introduction

I would like to briefly mention that I (Anthony Phillip Williams) originate from Johannesburg, on the doorstep where Gold was discovered in 1886, with my family base in the Northern Cape province of South Africa, particularly from the Kimberly (Griqualand West) area where diamonds were first discovered in 1867. I come from a strongly committed activist family made up of strong human rights fighters. I am involved with the San and Khoe Indigenous Peoples emancipation for more than twenty-five years. I'm currently the leader of a sub-regional body called the Indigenous Peoples Network for Southern Africa (IPNeSA), which includes Namibia, Botswana and South Africa. My commitment to the Northern Cape, especially the Kathu area has to do with amazing Kalahari history of our San and Khoe People spanning into the 'Stone Age', and exceptional resources deposits.

2. Africa a Sizeable Resource Base

I have to painfully admit, that despite our tireless efforts and the healthy Critical Minerals deposit in Africa and particularly the sub-region where we operate as Indigenous Peoples, focusing on Resources Rights Protection, there is generally no accessible empirical evidence or independent reports regarding the position of IPs in the Critical Minerals space. As IPNeSA we will have to pay serious attention to the Transition Minerals Industry and the associated impact on the lives of the IPs.

In a 2023 report, the Payne Institute for Public Policy indicated that Africa is home to some 30% of the world's mineral reserves. The largest reserves of Cobalt, Diamonds, Platinum and Uranium in the world are in Africa. What must be added is that Africa, particularly South Africa holds the world's largest (80%) known Manganese Ore deposits. Africa's role cannot be overstated in the energy transition because we will continue to provide natural resources for clean energy technologies, electric vehicles (EVs), batteries and storage. Australia interestingly produces more than 40% of Lithium, Chile dominates Copper and ranks second in Lithium production. More than 50% of the world's Cobalt and Nickel production happens in the Democratic Republic of Congo (DRC) and Indonesia respectively.

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

The exploration decline in Africa remains a concern, notwithstanding, we as IPs continue to aim at contributing to the important discourse on Critical Minerals and how to harness them in a more sustainable manner as a catalyst for empowerment and towards the energy transition and by extension, climate action. If the Indigenous Peoples (IPs) are not located in the centre of this transformative environment, especially because much of mining activities happens on or close to our Lands/Territories, the colonial era of exploitation will quickly become a relived experience. As IPs we urgently need to develop universal protocols on Land/Territory Rights Protection, with a keen focus on Resources Rights and Ownership.

According to the International Energy Agency (IEA), there will be a fourfold increase in demand for minerals essential to green energy technologies by 2040. Additionally, the World Bank forecasts a potential 500% surge in the production of minerals such as graphite, lithium and cobalt by 2050. If the trajectory towards global climate neutrality by 2050 accelerates, demand could escalate further, possibly necessitating up to six times more minerals in 2040 than current levels. This shift towards renewable energy sources is expected to lead to a substantial increase in the demand for minerals and metals, highlighting the significance of the African continent due to our wealth of natural resources and its strategic importance in the decarbonised economy. Undoubtedly, lithium, cobalt, nickel, copper, rare earth and manganese are located on or near the Lands/Territory of our Indigenous Peoples in Botswana, South Africa and Namibia.

3. Case study: Manganese of the Northern Cape

Alongside Central Africa, the brutality of imperialism and colonization ‘arguably’ found its equally high expression amongst the San and Khoe People in the Southern Africa subregion. San People were hunted as in trophy hunting, while they ‘decapacitate’ until the late 1930’s. Our Ancestors were forced to abandon their languages and culture as one way of ensuring that they are alienated from their Land. The introduction of ‘Small-pox’ in the 1700’s was to ensure that they (colonizers) wipe-out the entire San and Khoe to lay claim to the Land and its Resources.

The San, Khoe collective of Southern Africa represent the most ancient cultural groups in human history. There are generous accounts recorded regarding the “Indigenous Peoples” dispossession of our Customary Legal Rights of our Ancestral Land in Southern Africa. Our Ancestors were nomads and pastoralist living across Southern Africa primarily. As descendants of the People

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

who still live in the north-western and western parts of what is now respectively the Western Cape and Northern Cape Provinces (our focus), and still occupy land in terms of customary law principles and land geography.

It's worth noting that our Ancestors traversed the length and breadth of the sub-region, and the Rock Art attest to what the western world call 'Title Deed', which is foreign in our custom. As the dispossession of the rights in land of our communities took place before 19 June 1913, the South African Constitution and the Restitution of Land Rights Act (Restitution Act) do not provide for the restitution of such rights. Our Land and Resources Rights has been 'legally usurped', with little legal recourse. Similarly in Botswana and Namibia.

Excavations at an archaeological site at Kathu in the Northern Cape province of South Africa have produced tens of thousands of Earlier Stone Age artifacts, including hand axes and other tools. These discoveries were made by archaeologists from the University of Cape Town (UCT), South Africa and the University of Toronto, in collaboration with the McGregor Museum in Kimberley, South Africa. Other sites in the complex include Kathu Pan 1 which has produced fossils of animals such as elephants and hippos, as well as the earliest known evidence of tools used as spears from a level dated to half a million years ago.

There are generous accounts recorded regarding the "Indigenous Peoples" dispossession of our Customary Legal Rights of our Ancestral Land in Southern Africa. Our Ancestors were nomads and pastoralist living cross Southern Africa primarily. As major dispossession of the rights in land of our communities took place before 19 June 1913, the South African Constitution and the Restitution of Land Rights Act (Restitution Act) do not provide for the restitution of such rights. Our Land and Resources Rights has been 'legally usurped', with little legal recourse.

Despite our historical and anthropological significance, we continue to experience centuries of marginalization, cultural erosion, and socio-political neglect in the democratic order. This has led to significant challenges in preserving our cultural heritage and sustaining a cohesive sense of existence. While some attention has been given to our past as "Indigenous Peoples," less emphasis has been placed on our Land dispossession, Identity, lived experience and how we circumnavigate our contradictory identities within a rapidly modernizing Southern African context.

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

In this submission, I (we) focus on the Northern Cape province of South Africa, where I spend most of my work amongst the Indigenous San and Khoe People on whose land companies like Anglo-American (Kumba-Kolomela mines) are currently mining with no regard for the Indigenous People of the Land. The Gamagara, Ga-Segonyana and Tsantsabane Municipal areas in the Northern Cape of South Africa is well-placed to capitalise on the growing international demand for manganese, as the province hold abundant manganese deposits with a long history of mining manganese.

Analysts estimate that the demand for manganese in lithium-ion batteries will increase by an average of 10% per year over the next decade, and South Africa's manganese ore (including Namibia) production is expected to concomitantly reach about 50% of the world's additional manganese ore output over this period.

Since 2020 (and even further back), we have intensified our engagements as Indigenous Peoples - in particular the communities of Khatu, Deben, Olifantshoek, Postmasburg and Pella, having spent laborious time trying to show Anglo-American mines such as Kumba and Kolomela as well as other local mines such as Khumani mines the value of including IPs in their socio-economic development as a distinct community. We have been ignored by these mines since 2020, including engagement with the Kumba CEO. We sent them letters evidencing what archaeologists have found regarding our IPs rock art and engravings in the mine and the land around the mine, instead of engaging honestly, Kumba management sent in researchers to establish whether we had valid claims, instead the research came to sow discord amongst the IPs. Remember, we do not have access to our Ancestral Lands. These are the lived realities of our Indigenous Peoples in the area where Anglo-American mines operate.

Artefacts from the area were sent to the McGregor Museum in Kimberly for safe keeping. However, the IPs have no access to mine benefit or from the museum who hold our history. In reality, Free Prior and Informed Consent (FPIC) does not even find practical expression in the development of mines in the area as whole. The online platforms of mines including Anglo-American Mines profess that they are "committed to FPIC", they purport to be in compliance with IPs empowerment, yet there is vigorous bias against the IPs and there is a designed regulatory exclusions agenda. Because the IPs are a minority, the voices of IPs are drowned out by government officials and the voices of local communities. Furthermore, the Land is not

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

considered to be Indigenous Land even though there is ample archaeological proof to this effect. The bulk of the Land belongs to the government under the custodianship of the municipality. The competency for mining rights sits with the federal government and the mining companies are granted rights to mine the land. Thus, subsequently, there is very little consultation. We are currently in a new battle with Anglo-Americans mine, Kumba. We will endure, we will overcome.

4. Indigenous San and Khoe Perspective

The perspective of the San and Khoe in the Southern Africa context, and specifically the context of the Northern Cape province in South Africa is important as far as ‘Critical Minerals’ are concerned. It must be borne in mind that we have lost big tracts of that land. In the Northern Cape, land occupied by the Bushmen and Khoe since time immemorial, is well vested with Critical Minerals (Transitional Minerals) (e.g. manganese, cobalt, copper, nickel, graphite, rare earth). Therefore, we have a vested interest in that land and the resources, unapologetically.

A recent analysis showed that a large majority of reserves for many transition metals are in close proximity to reservations, underscoring the continued salience of Indigenous interests and perspectives (MSCI Research, 2021). Already, tensions have emerged between Native/Indigenous groups and projects to mine critical minerals, raising the important question of whether the historical pattern of injustices and conflicts will recur or if new outcomes can be forged. From the colonial period well into the 20th century, many Indigenous groups in the U.S. were expelled from their historic homelands during gold rushes and mining expansions. Even where native people were not expelled, mining often burdened them with environmental injustices.

5. Transition Minerals in South Africa - Pivot for Industrial Diversification and Industrial Development

According to the United States Geological Survey (USGS) (2022), South Africa is one of the world’s leading mining and mineral processing countries, with a diversified portfolio of minerals and large shares of world production. Specifically, in 2017, South Africa’s estimated share of world mined rhodium production amounted to 80%; mined platinum, 72%; refined rhodium, 63%; refined platinum, 66%; chromium, 46%; vermiculite, 44%; mined palladium, 39%; manganese and refined palladium, 31% each; ferrochromium, 29%; zircon, 24%; industrial

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

garnet, 22%; vanadium, 11%; refined gold, 7%; diamond, 6%; fluorspar, 5%; coal, iron ore, and mined gold, 4% each; mined cobalt and nickel, 2% each; and aluminium, refined cobalt, mined lead, and stainless steel, 1% each.

The South African government and businesses over the last more than ten years have gradually seen the country's rich mineral deposits as well as the country's proximity to other equally resource rich economies in the region as a route for both upstream and downstream regional integration, as well as an opportunity for diversification and technological innovation.

As we observe the South African export basket of Transition (Critical) Minerals, seven minerals account for 80% of total value of the portfolio (figure 1). With the exception of the PGM which is exported completely outside the African continent, there is a significant export of Tin (16%), Tungsten (21%), Graphite (24%), and iron ore (13%) to other African countries. As the network analysis discussed above revealed, South Africa is not only an exporter in the continent but also a significant importer of critical minerals. This is due to the presence of large multinationals.

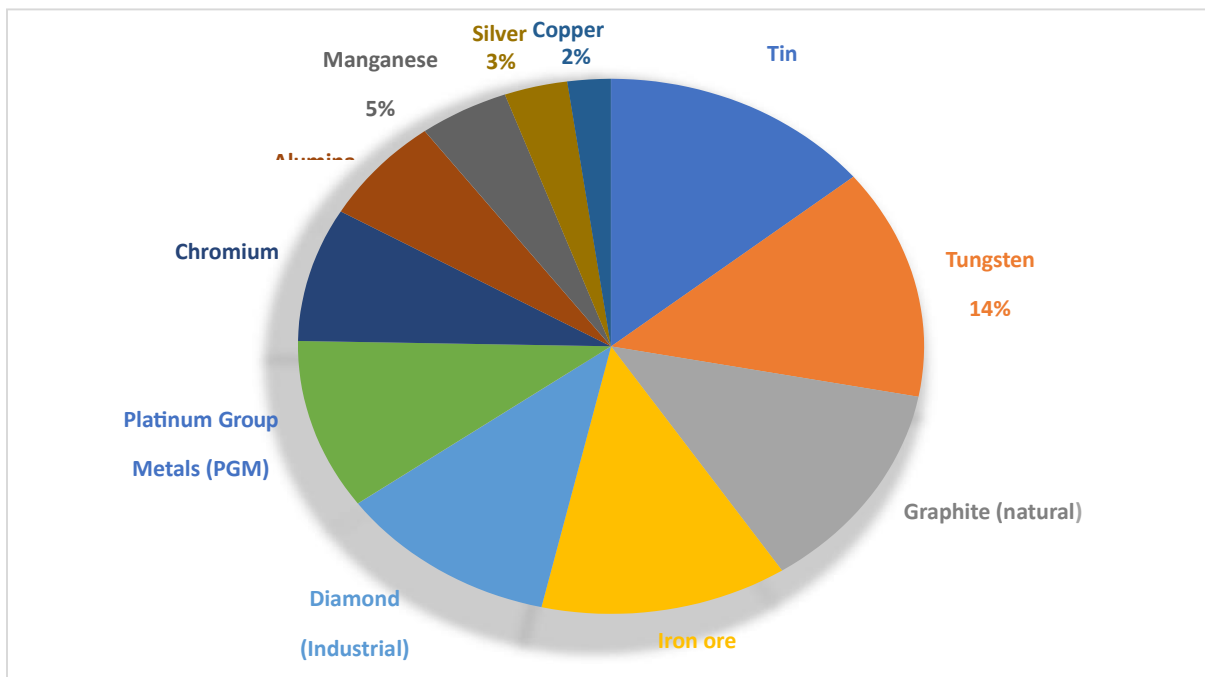


Figure 1: Critical minerals export basket of South Africa in 2021

6. Recommendations and Policy Directions

The industry downturns can be expected to be reversed as new and emerging opportunities in the green energy transition offers IPs of Southern Africa new prospects for sustained industrial development. This is because Southern Africa is endowed with critical minerals essential for the large-scale manufacturing of clean energy transition technologies. However, evidence suggests that the mining sector has so far played a limited structural transformation role in South Africa, despite the diversified ecosystem of technologically advanced mining equipment companies (Andreoni et al., 2021b). Taking advantage of the green windows of opportunity, while including the IPs, requires targeted law and policies that address the ‘resource curse’ and build a developmental agenda for structural transformation in Southern Africa. Since we observe limited available controls for action, we (IPs) have developed some key recommendations for policy makers to ensure that Critical Mineral value chains are responsive to the IPs needs to participate as equals, while sustainable development offer new:

- **Research and Development:** Establish and Cultivate a Universal R&D institution for IPs across the region of Africa and the Glode which must assist with providing empirical evidence & legal frameworks support.
- **Improve Regulatory Framework:** Ensure legal and regulatory protections and compliance to include Indigenous Peoples, backed by sufficient means of implementation and enforcement, ensuring FPIC and other International legal instruments are functional and implementable.
- **Develop Indigenous Peoples Protocols:** Develop guidelines and practices that aim to respect the rights and interests of Indigenous Peoples, and to minimize the negative impacts of mining on our lands/territories, resources, and livelihoods.
- **Improved Data:** Develop and Strengthen the collection and reporting of granular and standardised data to enable benchmarking and progress tracking throughout the value chain.

- **Increased Transparency:** Improve transparency throughout the value chain, including by enhancing traceability, evaluation, undertaking due diligence, reporting publicly on risks, mitigation actions and monitoring.
- **Provide Sustainable Standards:** Support the development of initiatives that help governments and companies demonstrate that their operations are IPs responsive, sustainable and accountable while ensuring cross-compatibility and interoperability.
