

## **INPUT PAPER**

### **BY PANEL MEMBERS DARÍO MEJIA MONTALVO AND SARA OLSVIG, APPOINTED BY THE UN PERMANENT FORUM ON INDIGENOUS ISSUES TO THE WORK OF THE UN SECRETARY-GENERAL'S PANEL IN CRITICAL ENERGY TRANSITION MINERALS**

## **INSTITUTIONAL FRAMEWORK IN THE UNITED NATIONS ON THE RIGHTS OF INDIGENOUS PEOPLES.**

### **CONTEXT**

The rights of Indigenous Peoples originate from their own cosmovision and value systems with which they have resisted different types of State policies.

One of the common characteristics of Indigenous Peoples in different regions of the world is their capacity to survive the imposition of borders and legal systems derived from the formation of modern States.

Because international law is largely the result of agreements between States, Indigenous Peoples have been absent from the decision-making processes of major international norms and institutions.

However, even before the creation of the United Nations, in 1923, a delegation of Indigenous Peoples made unsuccessful efforts to be heard within the League of Nations.<sup>1</sup> Subsequently, there has been constant advocacy to be incorporated into the institutions and norms of international law.

Indigenous Peoples have achieved the adoption of the United Nations Declaration on the Rights of Indigenous Peoples<sup>2</sup>, which does not create new rights, but rather systematizes existing rights, especially in treaties on human rights. This implies that they are, in reality, pre-existing obligations, which States have committed themselves to respect regardless of their political regimes.

The presence of Indigenous Peoples in the public arena has strengthened democracy, to the point that we currently have at least three categories of rights, i) individual rights, related to human beings, ii) collective rights related to present and future members of societies, and, iii) the rights of collective subjects of rights, which corresponds to Indigenous Peoples, which is not the sum of individuals, but includes

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<sup>1</sup> In 1923, the Deskaheh (chief) of the Haudenosaunee traveled to Geneva to speak before the League of Nations and defend the right of his people to live according to their own laws, in their own lands and under their own faith. He was not allowed to speak.

A similar trip was made by the Maori religious leader, T. W. Ratana, to protest the breaking of the Treaty of Waitangi, concluded with the Maori in New Zealand in 1840, which gave the Maori ownership of their lands. Ratana first traveled to London with a large delegation to petition King George, but was denied access. He then sent part of his delegation to Geneva to the League of Nations which he later joined in 1925, but was also denied access.

<sup>2</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/UNDRIP_E_web.pdf)

elements associated with memory, identity, territory, norms and institutions, as well as their unique relationship with the livelihoods of their lands.

## **INSTITUTIONAL FRAMEWORK IN THE UNITED NATIONS ON THE RIGHTS OF INDIGENOUS PEOPLES**

In exercising their right to self-determination, Indigenous Peoples have agreed to the denomination of Indigenous Peoples and, for their part, States have recognized them as such in international law. The United Nations Declaration on the Rights of Indigenous Peoples is the fundamental international instrument that consolidates the rights of Indigenous Peoples as collective subjects.

Respect and recognition of the inherent rights, status and role of Indigenous Peoples are directly related to the language and working methods of UN entities. Some institutional practices resulting from the presence of Indigenous Peoples at the United Nations are described below.

### **AT THE GENERAL ASSEMBLY**

Since the 1980s, the General Assembly of the United Nations began to address Indigenous Peoples' issues in a general scope of Human Rights, including social, humanitarian and cultural issues, in the resolutions prepared by the third committee on Indigenous Peoples' issues of the United Nations, adopting important decisions in the gradual evolution of the recognition of the Rights of Indigenous Peoples. Highlights include the establishment of the first (1995 - 2004) and second (2005 - 2014) International Decade of the World's Indigenous Peoples. Also the adoption of the program of action on Indigenous issues in 2005.

These resolutions promoted the Rights of Indigenous Peoples as a pathway to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

Since then, the UN General Assembly has continued to issue annual resolutions to address and advance issues related to the Rights of Indigenous Peoples.

The General Assembly adopted the **United Nations Declaration on the Rights of Indigenous Peoples** on September 13, 2007. The Declaration is the most comprehensive document on the rights of Indigenous Peoples, giving prominence to their rights as collective subjects at a level unprecedented in international human rights law. The adoption of this instrument is the clearest indication that the international community is committed to the protection of the individual and collective rights of Indigenous Peoples.

In 2014, the first high-level meeting known as the **World Conference on Indigenous Peoples** was held, at which Member States made important commitments in relation to the Rights of Indigenous Peoples, contained in the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

The General Assembly adopted resolution A/RES/71/321 - of September 8, 2017, entitled "**Enhancing the participation of Indigenous peoples' representatives**

**and institutions in meetings of relevant United Nations bodies on issues affecting them”,** following up on commitments made at the 2014 World Conference on Indigenous Peoples. This process continues today on the basis of the decisions taken by the General Assembly in its resolution A/RES/71/321.

In the United Nations system, there are three bodies that are mandated to deal specifically with Indigenous Peoples’ issues. These bodies are the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples.

## **DEVELOPMENT OF WORK ON INDIGENOUS PEOPLES IN THE ECONOMIC AND SOCIAL COUNCIL**

### **The United Nations Permanent Forum on Indigenous Issues**

The United Nations Permanent Forum on Indigenous Issues was established in July 2000 and is an advisory body to the Economic and Social Council, with a mandate to examine Indigenous issues (in the context of ECOSOC's mandate) relating to economic and social development, culture, environment, education, health and human rights.

The Forum is composed of 16 members serving in their individual capacity as independent experts on Indigenous Peoples’ issues. Eight members are nominated by Governments and elected by the Council, and eight members to be appointed by the President of the Council, following formal consultation with the Bureau and Indigenous Peoples from the seven socio-cultural regions.

The Permanent Forum is mandated to:

- Provide expert advice and make recommendations on Indigenous issues to the Council, as well as to United Nations programs, funds and agencies, through the Council
- Raise awareness and promote the integration and coordination of activities relating to Indigenous issues within the United Nations system
- Prepare and disseminate information on Indigenous issues.
- Promote respect for and full application of the provisions of the UN Declaration on the Rights of Indigenous Peoples and follow up the effectiveness of this Declaration (Art. 42 UNDRIP).

The Permanent Forum meets once a year for 10 days, usually in May, at which Indigenous Peoples’ Organizations, States, UN agencies and bodies, intergovernmental organizations and NGOs - which have consultative status with ECOSOC - participate as observers. The first meeting of the Permanent Forum was held in New York in May 2002.<sup>3</sup>

## **AT THE HUMAN RIGHTS COUNCIL**

### **The Special Rapporteur on the Rights of Indigenous Peoples.**

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<sup>3</sup> See <https://social.desa.un.org/issues/Indigenous-peoples/unpfi>

The Commission on Human Rights decided in 2001 to appoint the Special Rapporteur on the rights of Indigenous Peoples as part of the special system of Thematic Procedures. The mandate of the Special Rapporteur was renewed by the Commission on Human Rights in 2004 and by the Human Rights Council in 2007.

In fulfilling their mandate, the Special Rapporteur, *among other things*:

- Examines ways and means of overcoming existing obstacles to the full and effective protection of the rights of Indigenous Peoples, and to identify, exchange and promote best practices;
- Promotes good practices, including new laws, government programs and constructive agreements between Indigenous Peoples and States, to implement international standards relating to the rights of Indigenous Peoples;
- Reports on the range of human rights situations of Indigenous Peoples in selected countries;
- Addresses specific cases of alleged violations of Indigenous Peoples' rights through communications with governments;
- Conducts or contributes to thematic studies on issues of particular relevance to the promotion and protection of the rights of Indigenous Peoples.

The Office of the Special Rapporteur on the Rights of Indigenous Peoples also submits annual reports to the United Nations General Assembly.<sup>4</sup>

### **Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)**

The Expert Mechanism on the Rights of Indigenous Peoples was established by the UN Human Rights Council in 2007 under Resolution 6/36 as a subsidiary body of the Council.

The Expert Mechanism provides the Human Rights Council with thematic advice, in the form of studies and research, on the rights of Indigenous peoples as directed by the Council. The Expert Mechanism may also suggest proposals to the Council for its consideration and approval.

The Expert Mechanism is composed of five independent experts on the rights of Indigenous peoples who are appointed by the Human Rights Council. The Mechanism holds an annual session, usually in July, in which representatives of States, Indigenous Peoples, Indigenous Peoples' Organizations, civil society, intergovernmental organizations and academia participate. The Special Rapporteur on the rights of Indigenous Peoples and a member of the Permanent Forum on Indigenous Issues are invited to participate in the annual session of the Expert Mechanism to enhance coordination and cooperation.<sup>5</sup>

## **GENERAL FACTS ABOUT INDIGENOUS PEOPLES**

Indigenous Peoples live in at least 90 countries around the world. There are about 5,000 distinct Indigenous Peoples with at least 5,000 distinct languages. Their

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<sup>4</sup> See <https://www.ohchr.org/en/special-procedures/sr-Indigenous-peoples>

<sup>5</sup> See <https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-on-Indigenous-peoples>

estimated population is about 476 million people, representing about 6.2 percent of the world's population.<sup>6</sup>

However, they represent 15 percent of the world's most disadvantaged and in situation of vulnerability.

Indigenous Peoples have special and distinctive relationships with their lands, territories and livelihoods, based on their worldviews and their own value and knowledge systems.

Indigenous Peoples contribute the least to environmental pollution and to the causes of global warming and the increasing instability of climate cycles. Their lands and territories have been managed to maintain balance with other beings in nature including biodiversity and minerals.

## CONCLUSIONS AND RECOMMENDATIONS

Agreed upon language on the Rights of Indigenous Peoples exists within the United Nations, particularly under the UN Human Rights Council and ECOSOC, adopted and recognized by the General Assembly, and this agreed upon language must form the basis for language in the UN Secretary-General's Panel on Critical Energy Transition Minerals voluntary guidelines.

Indigenous Peoples have achieved recognition of their distinct and different status from other groups, categories or subjects in such a way that it is necessary to maintain the language already established in order to avoid regressive practices to their Rights, to fully implement and adhere to the international law instruments developed and agreed upon by the UN.

We note the included references to the rights of Indigenous Peoples in the background paper of the UN Secretary-General's Panel on Critical Energy Transition Minerals. We are concerned, that the references and recognition of the rights of Indigenous Peoples are not consistently included in the issues papers of the four workstreams. We propose concerted efforts and implementation of minimum standards based on the agreed upon UN language in each issues paper as well as in the drafting of voluntary principles. Although specific provisions of the UN Declaration on the Rights of Indigenous Peoples are particularly relevant to the UN SG's Panel on CETM, we recommend recognition of the Declaration in its entirety, as the rights enshrined in the Declaration are *interdependent, interrelated, interconnected and indivisible*.

We recommend that the panel takes a clear stance on any processes in relation to CETM does not result in value deduction for Indigenous Peoples, be it in relation to the lands and territories traditionally occupied and owned by Indigenous Peoples, or in relation to the wellbeing of Indigenous Peoples, and their right to freely determine their economic, social and cultural development (UNDRIP article 3).

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<sup>6</sup> International Labour Organization (ILO). 2019. Implementing the ILO Indigenous and tribal peoples convention No. 169: towards an inclusive, sustainable and just future. Geneva, Switzerland. (also available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_735607.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735607.pdf)).

We draw attention to the Joint Statement by the UN Mechanisms on Indigenous Peoples, urging all UN entities to urge all UN entities, “in their methods of work to refrain from conflating, associating, combining, or equating Indigenous Peoples with non-Indigenous entities, such as minorities, vulnerable groups, or “local communities.”<sup>7</sup>

We propose to include clear language recognizing the United Nations Declaration on the Rights of Indigenous Peoples and in particular the rights of Indigenous Peoples to participation in relation to the principles of transparency and fairness. Adhering to principles of transparency and fairness must be aligned with fundamental human rights principles, including the rights of Indigenous Peoples. We recommend distinct recognition of Indigenous Peoples as rights holders, decision-makers, developers of own initiatives and negotiators on their own behalf, as equal partners with other actors of the CETM sector.

We recommend distinct recognition of Indigenous Peoples as rights holders in relation to revenue sharing, and recommend the panel to draw on experiences in negotiating Indigenous Impact Benefit Agreements, as implemented in, among other places, Canada.

The document includes a reference to the right of Free, Prior and Informed Consent. However, we consider it pertinent to add the contents of articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples:

"Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". (Article 3).

"Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions". (Article 4)

We consider it vital for stability and accessibility of mineral supplies that the rights of Indigenous Peoples are respected in all aspects of value chains, including recognizing Indigenous Peoples as beneficiaries of these value chains.

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<sup>7</sup> See <https://social.desa.un.org/issues/Indigenous-peoples/news/joint-statement-by-the-un-mechanisms-of-Indigenous-peoples> & <https://social.desa.un.org/sites/default/files/Outcome%20document%20Rome%20Meeting%20UN%20Mechanisms%20Indigenous%20Peoples'%20rights.pdf>