

**Written contribution to the Panel on Critical Energy Transition Minerals**  
*Prepared by panel members Dario Mejia Montalvo and Sara Olsvig, with input  
from members of UN Permanent Forum on Indigenous Issues and the UN Expert  
Mechanism on the Rights of Indigenous Peoples*

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The UN Permanent Forum on Indigenous Issues and the UN Expert Mechanism on the Rights of Indigenous Peoples, recognize the importance of the call by the UN Secretary General to form a Panel on Critical Energy Transition Minerals. We appreciate the meeting held in Geneva with the Co-Chairs of the Panel, in the margins of the 17th session of the Expert Mechanism, and that the Co-Chairs were able to exchange views with some leaders of Indigenous Peoples from the seven socio-cultural regions.

The establishment of the Panel on Critical Energy Transition Minerals responds to a need in the context of the climate and environmental crisis in which all humanity finds itself. Therefore, the work of the Panel must begin by recognizing that the current climate and environmental crisis has worsened due to the deepening and delay in replacing the economic and energy production model based on fossil fuels.

Indigenous Peoples have called for an end to the false dichotomy of dividing the world in so-called developed and developing. While the causes of the climate and environmental crisis must be addressed from the perspective of the differentiated responsibilities between diverse nations of the world, such differentiation should not be a reason for not seeking common solutions that involve replacing the fossil fuel energy production model in all regions and countries, since the climate crisis does not discriminate between borders or geographic location.

The Panel must also recognize that the planet's remaining biodiversity constitutes one of the elements that maintain global climate balance and therefore it must be identified and protected in all types of present and future decisions.

Biodiversity is essential to maintain not only climatic stability but also all the elements associated with human coexistence, including present and future global macroeconomic stability. Biodiversity is directly related to cultural diversity. At least 80 percent of the planet's remaining biodiversity lies within the territories of Indigenous Peoples.

The United Nations Declaration on the Rights of Indigenous Peoples affirms the diverse rights attached to lands, territories and resources in, inter alia, articles 25, 26, 27, 28, 29 and 30. There is an essential dynamic between the rights of Indigenous Peoples to land, territories and resources and the right to maintain biodiversity. The contributions of Indigenous Peoples are not a subsidiary matter or one that can be transferred to other actors, but rather a primary matter and must be recognized as their purview.

We ask the Panel to recognize, respect, and keep the value of biodiversity in mind in all discussions and in the final result, since it is essential that, in any case, the protection of biodiversity and cultural diversity be a priority and an unavoidable purpose for all actors involved and throughout the value chain.

The current reality requires us to move towards an economic perspective that places greater value on biodiversity and nature and not only on industrialization, capital and finance as is currently the case. This perspective also implies reviewing the basic aspects that are considered in risk assessments for investments.

As we are certain the delegation established by the Permanent Forum, Darío Mejía Montalvo and Sara Olsvig, have argued in the Panel's deliberations, the fundamental right of self-determination of Indigenous Peoples, as affirmed in the UN Declaration on the Rights of Indigenous Peoples, including the right to self-identification and the development of Indigenous Peoples' own economic prospects and priorities; the need to carry out culturally appropriate and good-faith consultations, and to obtain the free, prior and informed consent of Indigenous Peoples or respect their decision not to grant such consent prior to the initiation of any project on their lands, to ensure the protection and recognition of the ownership exercised by Indigenous Peoples over their territories and livelihoods; and the recognition of the value and contributions of Indigenous Peoples' own knowledge and other matters of vital importance, must all be part of the final outcome of the Panel's work.

We reiterate that the rights of Indigenous Peoples are contemplated in the international human rights instruments adopted by States and that consequently they have legal effect like the rest of the rights established in said instruments. The Declaration is a source of interpretation of States' obligations under the human rights treaties they have ratified. Established by widely ratified human rights treaties, the United Nations Treaty Bodies that monitor state party compliance with their substantive terms have frequently referred to the Declaration to interpret relevant provisions of these treaties in the context of Indigenous Peoples. Consequently, the Declaration assists Member States in the interpretation and understanding of their existing human rights obligations as a matter of international and domestic law in the Indigenous Peoples' context.” (A/HRC/EMRIP/2024, para 3).

The United Nations Declaration on the Rights of Indigenous Peoples does not create new rights, but rather contextualizes existing universal human rights in the context of Indigenous Peoples, specifies the way in which the rights contemplated in international treaties should be interpreted and implemented, in the case of Indigenous Peoples in their capacity as collective subjects of rights.

We would like to draw attention to the fact that the right to a name and identity is part of the fundamental rights that are obligatory for States and for all other actors.

The right of self-determination is a pre-requisite to the exercise and enjoyment of all other human rights, and includes the right of self-identification, which must be guaranteed to all Indigenous Peoples. This right is directly related to the possibilities of subsistence, maintenance of their value systems and knowledge, and their own models of economic, political, cultural and social development.

Some States deny the existence of Indigenous Peoples within their national borders. Instead, they have sought to establish new names for them, in most cases, for exclusion from decision-making, denial of their collective rights, assimilation as a population category or of another nature. Other States have sought to use the rights of Indigenous Peoples to establish procedures for relations with other groups that do not have the same nature and status as rights-holders or role as Indigenous Peoples. This has especially happened in the context of critical raw materials. In both cases, these are practices that negatively affect, discriminate and undermine the rights-holder status of Indigenous Peoples, whose rights, status and role have historically been recognized under international law as well as domestic law.

The Panel on Critical Energy Transition Minerals will provide an important document for the use of the UN Secretary-General and other entities of the international system. It is important that the guiding principles contained in the panel document accurately align with the norms of international law.

For this reason, the UN Permanent Forum on Indigenous Issues and the UN Expert Mechanism on the Rights of Indigenous Peoples reiterate the call that in no case should the legal term "Indigenous Peoples" be used in conjunction with or compared to any other category or name, especially if it does not exist in international law.

The panel must ensure that the recognition and protection of Indigenous Peoples is the responsibility of all the actors involved and throughout the chain of issues related to critical energy transition minerals, without discriminating against whether or not the States have taken the step to recognize Indigenous Peoples within their laws, policies, or territories.

Maintaining the independence of our mandates, we have developed actions to strengthen the articulation of our work around the contents of the United Nations Declaration on the Rights of Indigenous Peoples. In this regard, the United Nations Expert Mechanism on the Rights of Indigenous Peoples fully support the approaches and efforts made by the delegation appointed by the United Nations Permanent Forum on Indigenous Issues within the framework of the Panel on Critical Energy Transition Minerals.

***We invoke and recommend the following:***

1. That the guiding principles include the recognition of the United Nations Declaration on the Rights of Indigenous Peoples in its entirety, as the rights enshrined in the Declaration are *interdependent, interrelated, interconnected and indivisible* and affirm this crucial dynamic of human rights.
2. That the guiding principles consequently recognize Indigenous Peoples as rights holders and that the document does not conflate Indigenous Peoples with other terms such as local communities, minority, vulnerable or stakeholders.
3. That the guiding principles include specific recognition of the right of Indigenous Peoples to self-determination, and that by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development (UNDRIP Article 3).
4. That Indigenous Peoples, in exercising their right of 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 (UNDRIP Articles 4, 26)
5. That the guiding principles include, as a fundamental principle, the duty of states and the private sector to obtain the free, prior and informed consent of Indigenous Peoples or respect their decision not to grant such consent, prior to approval of any project and before adopting and implementing any legislative or administrative measures that may affect them (UNDRIP Articles 19, 32).
6. That the guiding principles include, as a fundamental principle, fair, independent, impartial, open and transparent processes giving due recognition to Indigenous Peoples' laws, traditions, customs, protocols and decision-making and land tenure systems to recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous Peoples shall have the right to participate in this process (UNDRIP Article 27).
7. That the guiding principles include, as a fundamental principle, that Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and

which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent, and that unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (UNDRIP Article 28).

8. That the guiding principles provide for good-faith negotiations, grievance redress mechanisms, just agreements and transparent impact assessments in relation to any industrial activity on the lands and territories of Indigenous Peoples, for the purpose of avoidance, minimization, mitigation and compensation of impacts.
9. That the guiding principles include, as a fundamental principle, that Indigenous Peoples have the right to conservation and protection of their environment and the productive capacity of their lands, territories and resources, and that effective measures to ensure no storage or disposal of hazardous materials shall take place in their lands or territories without their free, prior and informed consent (UNDRIP Article 29).
10. That the guiding principles stipulate zero tolerance to relocation of Indigenous Peoples from their lands of any kind and under any reason, without their free, prior and informed consent, according to Article 10 of UNDRIP.
11. That the guiding principles ensure where Indigenous Peoples agreed to fair access and benefit sharing from all revenue of the minerals, including for their own development.
12. That the guiding principles ensure the limit of the extraction that the world needs to transition, including a fair way of restoring the degraded land and resources of Indigenous Peoples for next generation, and that this limit will be defined with the community that is being displaced or depending on of the land and resources.

*Furthermore, we highlight following recommendations from prior reports by our mandates. The list is non-exhaustive, and we recommend the Panel to seek further information in additional reports by the three mandates:*

**Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya 2013- A/HRC/24/41 [United Nations](#)**

80. A preferred model for natural resource extraction within indigenous territories is one in which Indigenous Peoples themselves control the extractive operations, through their own initiatives and enterprises. Indigenous Peoples may benefit from partnerships with responsible, experienced and well-financed non-indigenous companies to develop and manage their own extractive enterprises.

92. Agreements with Indigenous Peoples allowing for extractive projects within their territories must be crafted on the basis of full respect for their rights in relation to the affected lands and resources and, in particular, should include provisions providing for impact mitigation, for equitable distribution of the benefits of the projects within a framework of genuine partnership, and grievance mechanisms.

**EMRIP Study and Advice on Indigenous Peoples and the right to participate in decision-making, Annex Expert Mechanism advice No. 2 (2011)- A/HRC/18/42**

<https://www.undocs.org/A/HRC/18/42>

19. As affirmed in articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples, and within the ambit of the right to self-determination, Indigenous Peoples have the right to make independent decisions in all matters relating to their internal and local affairs, and to effectively influence external decision-making affecting them if they choose to participate in such processes.

**EMRIP Follow-up report on Indigenous Peoples and the right to participate in decision-making, with a focus on extractive industries, Annex Advice No. 4 (2012): Indigenous Peoples and the right to participate in decision-making, with a focus on extractive industries 2012- A/HRC/EMRIP/2012/2**

[https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-2_en.pdf)

Advise 14:

Indigenous Peoples should be engaged at all stages in the design of appropriate consultation mechanisms. Consultation with Indigenous Peoples in relation to proposed extractive activities should begin at the earliest stages of the planning process, including its design.

**EMRIP Study and Advice on Free, prior and informed consent: a human rights-based Approach (2018)- A/HRC/39/62**

[g1824594.pdf \(un.org\)](https://www.un.org/g1824594.pdf)

44. Agreements on consent should include detailed statements of the project, its duration and the potential impacts on the Indigenous Peoples, including their lands, livelihoods, resources, cultures and environments (see A/HRC/24/41, para. 73); provisions for mitigation, assessment, and reimbursement for any damages to those resources; statements of indemnification of Indigenous Peoples for injuries caused to others on their lands; methods and venues for dispute resolution; detailed benefit-sharing arrangements (including investment, revenue sharing, employment and infrastructure); and a timetable of

deliverables, including opportunities to negotiate continuing terms and licenses. As a matter of best practice, any form of consent should include a detailed description of the process of notice, consultation and participation that preceded the consent.

Annex:

2. States should observe a human rights approach to free, prior and informed consent, among others by promoting capacity-building for State authorities and officials, including judges and lawmakers. Because local and subnational level authorities are in many cases closer and more sensitive to indigenous issues, local officials and company employees should receive better instructions on free, prior and informed consent.

22. States should ensure that any consent agreements are in writing and include, inter alia, provisions on impact mitigation, compensation and an equitable distribution of the benefits from the project; joint management arrangements; grievance procedures; and a dispute regulation mechanism with equal capacity of both sides. Access to justice for claims by Indigenous Peoples should be guaranteed.

**Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous Peoples on the impact of international investment and free trade on the human rights of Indigenous Peoples A/70/301:**

[Etpu \(un.org\)](https://www.un.org/equ/en/indigenous-peoples)

79, (d) The Special Rapporteur recommends that the United Nations and related organizations:

Take a leading role in coordinating Government efforts to increase transparency and oversight related to international investment agreements.

**Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, Protected areas and Indigenous Peoples' rights: the obligations of States and international organizations A/77/238:**

[n2243162.pdf \(un.org\)](https://www.un.org/equ/en/indigenous-peoples/n2243162.pdf)

71 (g). Member States, United Nations agencies, donors and all actors involved in conservation should: In consultation with Indigenous Peoples, ensure transparent and equitable benefit-sharing for their contributions to biodiversity protection on their lands and territories, and ensure that funding directed towards Indigenous Peoples is managed by them.

**Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, Green financing – a just transition to protect the rights of Indigenous Peoples A/HRC/54/31:**

[g2313903.pdf \(un.org\)](https://www.un.org/press/en/2024/g2313903.pdf)

77. The Special Rapporteur recommends that States:

(d) Ensure that Indigenous Peoples directly and equitably benefit from green financing projects. Indigenous Peoples should be provided with access to employment opportunities, training, capacity-building programmes and business development initiatives associated with green projects. States should ensure that funding proposals include provisions for benefit-sharing mutually agreed upon with Indigenous Peoples.

(k) Provide access to information to Indigenous Peoples and ensure transparency at all levels of green finance projects.

(r) Recognize and respect the value of Indigenous Peoples' scientific and technical knowledge, practices and innovations in green finance projects. That includes incorporating Indigenous knowledge of biodiversity, the environment and sustainable resource management practices into project design and implementation.

**UNPFII “Report of the international expert group meeting on the theme “Indigenous Peoples in a greening economy””, 2024:**

<https://social.desa.un.org/sites/default/files/EN%20n2405276.pdf>

We recommend the Panel on Critical Energy Transition Minerals to carefully consider the recommendations put forward in this recent report, including following recommendations to **UN Member states:**

37. States should strengthen and implement efforts to secure land rights for Indigenous Peoples, providing legal recognition and protection for their lands, waters, territories and resources, remedy past and ongoing injuries, including by removing existing underlying causes of those injuries, and extend measures related to remediation, reclamation and rehabilitation for the injuries related to conservation, energy economies and the green economy. Such measures require specific policies and guidelines, sufficient funding and effective accountability and redress mechanisms.

38. Indigenous Peoples must be part of all decision-making processes regarding the green economy in line with the United Nations Declaration on the Rights of Indigenous Peoples



(arts. 19 and 32) and ensure free, prior and informed consent for any activities, norms or policies that may affect Indigenous Peoples.

39. States should adopt legislation and effective mechanisms to make free, prior and informed consent mandatory for all green economy projects and initiatives, financing and corporate governance that may affect Indigenous Peoples, and ensure their right to full and effective participation in all aspects of impact assessments.

40. States should collaborate with Indigenous Peoples in developing appropriate renewable energy projects with equitable benefit-sharing arrangements subject to the free, prior and informed consent of affected communities.

43. States should develop and implement transparent and inclusive policies for the industrialization of lithium (and other minerals) and facilitate a platform for open dialogue and consultation between Indigenous Peoples, Member States and relevant stakeholders to address concerns related to lithium and rare earth minerals projects. This should be followed by monitoring and assessing Indigenous Peoples' lands and territories in achieving sustainable and responsible lithium production.

44. Lithium-producing countries and countries with sources of rare earth minerals should promote permanent dialogue with Indigenous Peoples, respecting their rights to land, territories and resources and free, prior and informed consent, including benefit-sharing.

### **Recommendations for the private sector and multinational corporations**

**We call the private sector and MNCs as the key actors in CETM development to affirm, respect, and recognize the rights of Indigenous Peoples. Each of the following paragraphs should be understood in the context of the interrelated rights affirmed in the UNDRIP**

70. When Indigenous Peoples have agreed to cooperate with companies, they should implement fair, adequate and prompt compensation practices, including non-monetary values and livelihood considerations as agreed, and in collaboration with project-affected Indigenous Peoples.

71. Corporations should train decision makers and their staff on the rights of Indigenous Peoples in order to avoid conflicts and violations of Indigenous Peoples' rights. Further, corporations should commit to complying with the Guiding Principles on Business and Human Rights while respecting the rights of Indigenous Peoples.

72. Corporations should apply due diligence in accordance with the Guiding Principles on Business and Human Rights and the articles of the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent. Comprehensive social-impact assessments with the full and effective participation of Indigenous Peoples should be conducted prior to initiating renewable energy projects, taking into consideration the cultural, social, spiritual and environmental implications on Indigenous Peoples.

73. Corporations should inform their shareholders of the risks associated when companies do not respect the rights of Indigenous Peoples.

74. Corporations must apply international standards regarding Indigenous Peoples' rights uniformly across jurisdictions and establish effective and accessible redress mechanisms for Indigenous Peoples.

75. Corporations should avoid supporting false solutions that promote the system of colonialism and neocolonialism that contributes to the climate crisis.

76. Companies should establish transparent, equitable, fair and just benefit-sharing agreements when Indigenous Peoples so choose.

77. Funding institutions must establish and adopt safeguards for the protection of the rights of Indigenous Peoples; if violations of their rights are documented, such companies should not be funded.

**From the report of the 23<sup>rd</sup> session of the UN Permanent Forum on Indigenous Issues, 2024, we wish to highlight following paragraphs:**

<https://documents.un.org/doc/undoc/gen/n24/121/40/pdf/n2412140.pdf>

13. The Permanent Forum is concerned by the adverse effects of climate change and irresponsible resource extraction on Indigenous Peoples' lands and territories. The Forum calls upon Member States, the United Nations and other international organizations to support Indigenous-led initiatives to mitigate these impacts and stresses the importance of self-governance of Indigenous Peoples in managing these natural resources.

59. The Permanent Forum urges the European Union to include the standards of the Declaration within its corporate sustainability due diligence regulations and rules, in particular in the context of implementing the Critical Raw Materials Act on the territories of Indigenous Peoples, both inside and outside the European Union.

118. The Permanent Forum appreciates the joint work of the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur in following up on the recommendations regarding the conflation of the terms “local communities” and Indigenous Peoples. In joint declarations issued in July 2023 and February 2024 Member States, United Nations entities, foundations, funders and non-governmental organizations were called upon to cease the conflation of the terms. The Forum thanks the United Nations entities that have responded to that call and encourages their continued efforts in that regard.

126. As rights holders to their own lands, territories and resources, Indigenous knowledge is essential for sustainable development, including pertinent international processes and Conferences of the Parties, inter alia, to the United Nations Framework Convention on Climate Change; to the Convention on Biological Diversity; and to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly, in Africa. The Forum welcomes the study transmitted in the note by the Secretariat entitled “Financing the future: the financial needs of Indigenous Peoples to support their actions for biodiversity, climate and the protection of Mother Earth” (E/C.19/2024/7).

127. Indigenous Peoples expressed their discontent with the many obstacles to being truly able to protect and manage projects and actions within these fields, including from the encroachment of extractive industries by private and public business enterprises that threaten the health of ecosystems and the health and livelihoods of Indigenous Peoples.

135. The Permanent Forum recommends that Member States strengthen and implement legal and institutional frameworks that recognize and protect the rights of Indigenous Peoples to their lands, territories and resources and ensure their participation in decision-making processes. Such frameworks should adhere to the UN Declaration, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, and the American Declaration on the Rights of Indigenous Peoples ensuring Indigenous Peoples’ free, prior and informed consent when development, environment, biodiversity and climate change programmes and projects are conducted on their lands and territories.

141. The Permanent Forum supports the initiatives that empower Indigenous women, recognizing their roles as custodians of biodiversity and Indigenous knowledge. Programmes should address the specific needs and leadership roles of women within Indigenous Peoples’ communities in order to ensure equitable participation in all funded projects.

In addition, we draw your attention to the American Declaration on the Rights of Indigenous Peoples, which invokes both the UNDRIP and ILO C169 and, with standards that are, in several cases, more rigorous than those of the ILO and UNDRIP. Noting that the nature of human rights are “interrelated, interdependent, interconnected, and indivisible” both the

preambular language and subject matter specific provisions of the OAS American Declaration affirm the rights of Indigenous Peoples relevant to CETM (Article XLI The rights recognized in this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity, and well-being of the Indigenous Peoples of the Americas; Article VI. Collective rights [including lands]; Article XIX. Right to protection of a healthy environment; Article XXV. Traditional forms of property and cultural survival. Right to land, territory, and resources; Article XXIX. Right to development).