The Impact of Sourcing Critical Raw Materials on the Rights of Indigenous Peoples

Presentation to the European Parliament Subcommittee on Human Rights (EP DROI)

17 February 2025, Online

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First, let me take this opportunity to sincerely thank the European Parliament Subcommittee on Human Rights for inviting the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to speak on this critical and timely subject. A key part of EMRIP's mandate is to the assist Member States in achieving the goals of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As such, this exchange is imperative both in view of the promotion of UNDRIP and discharging broader mandate of the EMRIP. In this regard, I would like to speak to the topic based on the UNDRIP's provisions.

Before addressing the topic, I would like to underline the need to separate Indigenous Peoples, which is an internationally recognized terminology with defined rights under international law, from" local communities" or other similar terminologies that are ambiguous without defined rights under international law. The three United Nation entities mandated on the rights of Indigenous Peoples namely the EMRIP, the Special rapporteur on the Rights of Indigenous Peoples, and the Permanent Forum on Indigenous Issues have addressed this issue through joint statement stating that:

> "Despite the existing global consensus around the UN Declaration on the Rights of Indigenous Peoples, we have observed developments that have raised concerns about the integrity and backdrop of the rights of Indigenous Peoples. In particular, we have observed that in many conventions and processes, the term Indigenous Peoples has been used in conjunction with other ambiguous terms and groups such as "local communities." In fact, the characteristics, nature, and origins of the rights of Indigenous Peoples are very different from other groups. Therefore, Indigenous Peoples should not be grouped with an undefined set of communities that may have very different rights and interests."

Now coming back to the topic, there is no question that the sourcing of critical energy transitional materials has significant implications for the rights of Indigenous Peoples, particularly in the context of mining and other resource extraction activities. Historically, resource extraction has been linked with severe human rights abuses against Indigenous Peoples

globally, from forced evictions from their ancestral territories and lands, forced labor, pollution and destruction of their environments, and denial of their right to food security, clean water, health, adequate standards of living and others. These abuses often stem from lack of recognition of the rights of Indigenous Peoples as articulated in the UNDRIP, or when recognized its inadequate implementation, or simply lack of political will to protect Indigenous rights during extractive operations.

Studies show that critical energy transition materials that are desperately needed for transition to green economies are mostly found on Indigenous lands and territories. On the other hand, most Indigenous Peoples continue to be excluded from decision making processes including those related to so called "developments" on their traditional lands and ancestral territories. Hence, there has been an incongruity between where these critical energy transition materials are found and who decides and benefits from extraction of these resources. This has been one of the driving factors behind Indigenous human rights abuse in the context of extraction of critical raw materials, which leads me to discuss specific rights under UNDRIP that are mostly affected by extraction and sourcing of critical energy transition materials.

Indigenous Peoples have inherent rights to self-determination. According to UNDRIP article 3, "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." Currently, many projects are implemented on indigenous territories in the name of "development". The question for many Indigenous Peoples is 'development for who'? Development that is not defined by Indigenous Peoples through their own decision-making processes cannot be genuine development. Lack of recognition and respect for Indigenous Peoples' right to self-determination as defined above in the process of resources extraction can lead to expropriation of IPs territories, exploitation of their lands, and resulting in violations of Indigenous Peoples rights and further their political, economic, and social marginalization.

Indigenous peoples have the right to Free, Prior, and Informed Consent when it comes to any development projects that may affect their lands, resources, or communities. This means that they should be consulted and give their consent before any decisions are made that could impact them. UNDRIP article 19 states that, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Again, lack of free, prior, and informed consent can be a cause for violations of Indigenous Peoples rights in extraction and sourcing of critical raw materials.

Indigenous Peoples' right to land, territories, and resources is a well-established right under international law. UNDRIP article 26:1 state that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." Indigenous peoples often have deep connections to their lands and resources, which are essential for their cultural, spiritual, and physical well-being. Any extraction and sourcing activities must consider these connections and ensure that indigenous peoples' land rights are fully respected in conjunction with their right to self-determination and right to FPIC.

Extractive activities can have negative environmental and social impacts on Indigenous Peoples, including pollution, loss of biodiversity, displacement, and disruption of traditional ways of life. It is important to assess and mitigate these impacts to protect the rights of Indigenous Peoples in the process of extraction and sourcing of critical raw materials. This is true with regards to right to cultural heritage. Indigenous Peoples have unique cultural heritage that must be respected and protected. Extraction and sourcing activities of critical energy transitional materials should not harm or destroy cultural sites, practices, or artifacts that are important to IPs.

When projects are implemented in accordance with Indigenous Peoples' rights to self-determination and right to FPIC, Indigenous Peoples should benefit from the extraction of resources on their lands. Fair and equitable benefit-sharing agreements with Indigenous Peoples should be established to ensure that Indigenous Peoples receive a share of the profits and resources extracted from their territories. A monitoring mechanism with meaningful participation of IPs should be established to monitor compliance with such agreements.

To make sure that extractive activities and sourcing of critical raw minerals does infringe upon the rights of IP, I would like to invoke and recommend the following.

i. Recognize the UNDRIP in its entirety, as the rights enshrined in the Declaration are interdependent, interrelated, interconnected and indivisible and affirm this crucial dynamic of human rights. As the Expert Mechanism has underscored in its 2024 study, the Declaration has legal effect, as confirmed by the growing examples of its application. The Declaration is increasingly being interpreted in national, regional and international jurisprudence and judicial decisions on Indigenous Peoples' rights. It has contributed to the development of international law or customary international law and reflects the general principles thereof.
ii. Beyond recognition, it is important to comply with UNDRIP and other national laws and international standards that protect the rights of indigenous peoples, such as the ILO Convention 169.
iii. To avoid ambiguity, we should not conflate Indigenous Peoples with other terms such as local communities, minority, vulnerable groups or other stakeholders.
iv. Recognize 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), and for 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).
v. Strengthen Regulatory Oversight and promote sustainable practices, meaning to establish robust monitoring mechanisms that hold companies accountable for respecting human rights throughout their operations and to encourage partnerships

with companies committed to sustainable practices that prioritize environmental protection alongside economic development for Indigenous Peoples.

vi. Put in place 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.

In conclusion, while it is important for the world to access critical raw materials for achieving global green transition and sustainability, this must not come at the expense of abusing the rights of Indigenous Peoples. We need a fair, equitable, and just approach that respects Indigenous Peoples' right to self-determination and incorporates their right to FPIC into all stages of decision-making process.