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INDIGENOUS COMMUNITIES AND THE ENERGY TRANSITION:

Rethinking Consent and Governance in Critical Mineral Extraction

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EU Energy Law - 6232



INTRODUCTION

INDIGENOUS COMMUNITIES & THE ENERGY TRANSITION

KEY QUESTION

Can the energy transition be considered sustainable if it depends upon critical mineral extraction that undermines indigenous rights?

THESIS

- Critical minerals are essential for decarbonization.
- Many deposits are located on indigenous lands.
- Existing governance frameworks struggle to reconcile energy security and indigenous self-determination.
- Future energy governance requires stronger consent and participation mechanisms.



ENERGY TRANSITION

WHY CRITICAL MINERALS MATTER

ESSENTIAL INPUTS FOR CLEAN ENERGY TECHNOLOGY

EV BATTERIES



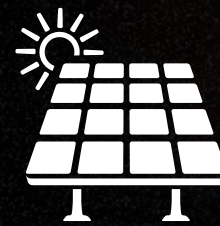
Lithium, Nickel,
Cobalt, Graphite

WIND TURBINES



Rare Earth
Elements

SOLAR PANELS



Copper, Silver,
Silicon

POWER GRID



Copper,
Aluminum

The Energy Transition Is Creating
Unprecedented Demand for Mineral Extraction

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).



HISTORICAL CONTEXT

INDIGENOUS COMMUNITIES AND EXTRACTION

Colonial Resource
Extraction



Fossil Fuel
Extraction



Critical Mineral
Extraction



Resource extraction on
indigenous lands

Environmental degradation

Limited participation in
decision-making

Unequal distribution of
benefits and burdens

Will the green transition
reproduce older extractive
relationships?

The background image shows a large-scale open-pit mining operation. In the foreground and middle ground, numerous workers are visible, some standing in muddy water, others near various pieces of mining equipment like pumps and sieves. Several large, simple tents or temporary shelters are set up on the left side of the site. The landscape is characterized by deep, terraced pits of reddish-brown earth, with many tree stumps remaining, indicating deforestation. The overall scene conveys a sense of industrial activity and its impact on the environment.

INDIGENOUS RIGHTS FREE, PRIOR, AND INFORMED CONSENT

- 1 FREE = without coercion, manipulation, or pressure
- 2 PRIOR = before any authorization or project approval
- 3 INFORMED = with full access to Information on risk, Impact, and alternatives
- 4 CONSENT = right to approve or withhold approval

KEY QUESTION

Is FPIC a right to consent or merely a right to be consulted?

GOVERNANCE ENERGY SECURITY VS. INDIGENOUS SELF-DETERMINATION



UNDRIP arts. 3, 18, 26.; European Commission, Critical Raw Materials Act, Regulation (EU) 2024/1252.



CASE STUDY

THE LITHIUM TRIANGLE



High water consumption In arid regions



States seeking economic development and foreign Investment



Indigenous communities raising concerns over land, water, and a lack of consultation



Global demand for batteries driving lithium expansion



United Nations Economic Commission for Latin America and the Caribbean reports on lithium governance.; International Energy Agency, Global Supply Chains of EV Batteries (2022).



A photograph of a mining site in a rural area. In the foreground, a person is seen from behind, sitting on a yellow bucket. To their left is a large brown sack. In the middle ground, a person is bent over, working in a muddy pool. To the left, another person stands in the mud. In the background, more people are visible, some on bicycles, near a line of trees under a cloudy sky. The ground is covered in brown mud and debris.

GOVERNANCE PROBLEM

WHY CURRENT GOVERNANCE FALLS SHORT

- ⊗ Consultation occurs too late or not at all
- ⊗ Communities lack equal bargaining power
- ⊗ Weak enforcement and limited accountability
- ⊗ Climate urgency used to justify rushed approvals
- ⊗ Environmental assessments overlook cultural and cumulative Impacts

The problem is not simply mining;
It is **who decides, who benefits,**
and **who bears the cost.** →

Cathal Doyle, Indigenous Peoples, Title to Territory, Rights and Resources (2015).;
UN Special Rapporteur reports on indigenous rights and extractive industries.

POLICY RECOMMENDATIONS

RETHINKING CONSENT & ENERGY GOVERNANCE

EARLY &
MEANINGFUL
PARTICIPATION



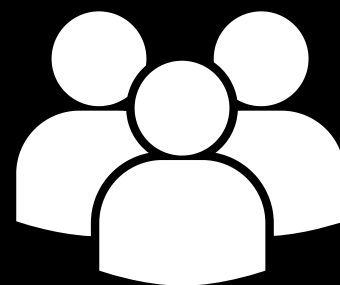
Engage indigenous communities before project design and approval

FPIC AS
SUBSTANTIVE
CONSENT



Treat FPIC as a right to approve or withhold consent, not just consult

CO-GOVERNANCE
MECHANISMS



Include indigenous representatives in monitoring, oversight, and enforcement

BENEFIT-SHARING
AGREEMENTS



Ensure long-term equitable benefits for communities and future generations

STRONGER IMPACT
ASSESMENTS



Integrate cultural, spiritual, and cumulative environmental impacts

SUPPLY CHAIN
DUE DILIGENCE



Require companies to respect Indigenous rights throughout the supply chain



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CONCLUSION

Critical minerals are essential
to the energy transition

Indigenous rights and F.P.I.C.
are central to legitimate

Existing governance frameworks
prioritize consultation over consent

A just transition requires
governance reform



The energy
transition will not
be just If It simply
replaces fossil fuel
extraction with
green extraction
on Indegenioug
lands.



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THANK
You

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