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**Promotion and protection of all human rights, civil,
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including the right to development**

Green financing – a just transition to protect the rights of Indigenous Peoples

Report of the Special Rapporteur on the human rights of Indigenous Peoples, José Francisco Calí Tzay

Summary

In the present report, prepared pursuant to Human Rights Council resolution 51/16, the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, focuses on the impact of green finance on Indigenous Peoples and addresses the social and environmental safeguards needed to protect their rights.



I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, pursuant to Human Rights Council resolution 51/16. The Special Rapporteur provides a brief summary of his activities since his previous report to the Council and a thematic study on green finance and its role in guaranteeing a just transition for Indigenous Peoples.

II. Activities of the Special Rapporteur

2. In the past year, the Special Rapporteur has continued to carry out work within the scope of his mandate to examine ways and means of overcoming existing obstacles to the full and effective realization of the rights of Indigenous Peoples and to identify, exchange and promote best practices. He conducted academic visits to Argentina, Bolivia (Plurinational State of), Chile, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Peru and Sweden, during which he met with a number of Indigenous Peoples and authorities, as well as representatives of government and the international community. In 2023, the Special Rapporteur conducted two official country visits: to Denmark and Greenland from 1 to 10 February and to Canada from 1 to 10 March.

3. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates relating to the rights of Indigenous Peoples, during the past year the Special Rapporteur participated in the annual meetings of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. He was a keynote speaker at a number of meetings and events organized by Member States, civil society and Indigenous Peoples, presenting his expertise and views on the protection of the rights of Indigenous Peoples in different parts of the world. He has continued to send communications jointly with other special procedure mandate holders to States and other relevant stakeholders, raising awareness of human rights issues and challenges affecting Indigenous Peoples.

III. Green financing and the rights of Indigenous Peoples

A. Background

4. The Special Rapporteur presents his report on green financing to update and build on the findings of previous work conducted by the mandate on the topic of climate finance,¹ international investment agreements² and protected areas,³ with a focus on the accountability of financial actors. The Special Rapporteur compiled the report with information collected during his academic and official visits, as well as the submissions provided in response to a questionnaire addressed to States, international finance institutions, Indigenous Peoples' organizations and non-governmental organizations (NGOs), meetings with individual experts and a consultation held with Indigenous Peoples' representatives on 26 May 2023.⁴

5. Green financing involves loans and investments for projects, programmes and initiatives that promote environmental sustainability and climate action. Green financing, as defined by the United Nations Environment Programme (UNEP), "is to increase the level of financial flows (from banking, micro-credit, insurance and investment) from the public, private and not-for-profit sectors to sustainable development priorities".⁵ Green financing is critical to achieving the Sustainable Development Goals and the targets set by agreements

¹ [A/HRC/36/46](#).

² [A/HRC/33/42](#).

³ [A/77/238](#).

⁴ The submissions are available from <https://www.ohchr.org/en/calls-for-input/2023/green-finance-just-transition-protect-indigenous-peoples-rights>.

⁵ <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-finance>.

under the United Nations Framework Convention on Climate Change and the Kunming-Montreal Global Biodiversity Framework adopted at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity.

6. The Special Rapporteur emphasizes that green financing has an important human rights dimension.⁶ The processes and associated finance to achieve the climate and biodiversity targets could have significant negative impacts on Indigenous Peoples unless the protection of their internationally recognized human rights is defined as central to successfully achieving those goals. In addition, as economic transition requires large amounts of financial flows, nature credit markets have been considered important tools to mobilize the financial resources needed to meet international environmental targets, such as the reduction in greenhouse gases and other conservation and green economy initiatives. Securing a “just transition” inclusive of respect for human rights should address the social and environmental interventions and safeguards needed to protect the rights and livelihoods of Indigenous Peoples when economies shift to sustainable development practices to combat climate change and biodiversity loss. This will ensure that those who are most affected by environmental harm do not bear the costs of the transition and that they participate in the formation of policy solutions.

7. The purpose of the present report is not to condemn or deter the financing of green projects and green market strategies but to ensure that Governments and other financial actors take all precautions to ensure their support for the much-needed transition to a green economy and that climate change action does not perpetuate the violations and abuses currently plaguing extractive and other fossil fuel-related projects. The Special Rapporteur aims to remind Governments and other financial actors enabling the transition that many green projects and nature-based solutions are likely to occur on Indigenous lands,⁷ whether or not the land rights of Indigenous Peoples are recognized by the State, and human rights due diligence should therefore be undertaken from the outset, using a human rights-based approach that acknowledges their collective rights to land and right to self-determination.

8. The present report is not an exhaustive study of the implications of green finance for Indigenous Peoples. It reflects on the international obligations of States and the duty of their public and private financial partners to respect the right of Indigenous Peoples to self-determination in any green project occurring on or near their lands and territories, and seeks to shift mindsets to consider Indigenous Peoples as a gauge for project sustainability rather than a risk to financial investment. In the report, the Special Rapporteur looks specifically at addressing Indigenous issues from the outset of any project, prior to the decision to fund, and provides recommendations for financing mechanisms to strengthen governance and accountability structures in order to reduce negative impacts on the rights of Indigenous Peoples and facilitate their access to economic opportunities and global markets. The report also presents good practices, particularly in terms of providing direct financing to Indigenous-led conservation initiatives and renewable energy projects.

B. Indigenous Peoples and green finance

9. The Paris Agreement adopted at the twenty-first Conference of the Parties to the United Nations Framework Convention on Climate Change in 2015 represented a landmark moment for climate financing, as it clearly established the need for financial flows to align with climate goals and called for developed countries to mobilize \$100 billion per year to address the needs of developing countries for climate-induced loss and damage. Since then, climate action has been considered a strategic priority for most financial institutions.

⁶ See recent communications related to fossil fuels and other extractive energy projects:

AUS 3/2022, CAN 2/2022, BRA 4/2022, SWE 2/2022, BWA 3/2021 and NAM 2/2021, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁷ According to a recent study, 54 per cent of energy transition mineral and metals projects are located on or nearby the lands of Indigenous Peoples. See John R. Owen and others, “Energy transition minerals and their intersection with land-connected peoples”, *Nature Sustainability*, vol. 6, No. 2 (February 2023).

10. At the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change in 2021, parties acknowledged the important role of Indigenous Peoples and their scientific knowledge for mitigating the crises of global climate change and biodiversity loss. Indigenous Peoples contribute little to greenhouse gas emissions and maintain some of the largest carbon stores within their lands. Their role in protecting biodiverse environments, maintaining healthy forests and mitigating climate change through their scientific knowledge has been widely documented by the mandate and many other sources.⁸ Scientific evidence supports the need to engage Indigenous Peoples in the planning and implementation of green development projects that affect their territories. The scientists on the Intergovernmental Panel on Climate Change have also acknowledged that “supporting Indigenous self-determination, recognizing Indigenous Peoples’ rights and supporting Indigenous knowledge-based adaptation are critical to reducing climate change risks and effective adaptation”.⁹

11. Climate finance and official development aid for climate-related issues have so far failed to direct sufficient funding to support initiatives led by Indigenous Peoples, advance recognition of their collective land rights, preserve their lifestyle that allows nature to thrive and balance out the carbon-emitting activities of the rest of the world, and protect them from encroachment, attacks and other violence by third parties. Similarly, international financial institutions are struggling to consider Indigenous Peoples as rights holders, rather than vulnerable affected peoples, and fail to consistently apply safeguarding policies, leading to violations of Indigenous Peoples’ rights. Typical human rights risks in the context of green financing include forced evictions and resettlement, lack of consultation regarding land use and decision-making, environmental degradation, limited information provided on the governance of natural resources and inadequate environmental and social impact assessments.

12. The twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change saw Governments and philanthropic organizations pledge \$1.7 billion to advance the tenure rights and tropical forest guardianship of Indigenous Peoples. Similarly, in December 2022 the Kunming-Montreal Global Biodiversity Framework was adopted, explicitly recognizing the rights of Indigenous Peoples, including the distinct nature of their lands, territories and resources and the need to include their full and equitable decision-making for implementation of the Convention on Biological Diversity. However, a lack of transparency, reporting and monitoring mechanisms will make it challenging to assess whether these commitments to support Indigenous Peoples under the two conventions will be met. Investors’ current funding practices must change to adopt a human rights-based approach and redress the current gap in funding for Indigenous Peoples and their own renewable energy, climate action and conservation projects.¹⁰

C. Financial actors

13. Green finance consists of two interplaying driving forces: global efforts to comply with international commitments for climate change mitigation and biodiversity loss, and financial imperatives to rapidly place and deliver funding or investment. Green funds and financing are controlled and administered by international development finance institutions,¹¹ development banks,¹² United Nations specialized agencies,¹³ international climate and

⁸ See, for example, A/HRC/36/46 and A/HRC/33/42.

⁹ https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_TechnicalSummary.pdf.

¹⁰ Rainforest Foundation Norway, “Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)” (2021), p. 4; and Charapa Consult, *Directing Funds to Rights. Principles, Standards and Modalities for Supporting Indigenous Peoples’ Tenure Rights and Forest Guardianship* (November 2022).

¹¹ The World Bank and the International Finance Corporation.

¹² The Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank, Inter-American Development Bank and African Development Bank.

¹³ The International Fund for Agricultural Development (IFAD), United Nations Development Programme and UNEP.

biodiversity finance mechanisms¹⁴ and increasingly the private sector (including large conservation organizations)¹⁵ and public-private partnerships. International development finance institutions occupy an intermediary space between public aid and private investment. They are distinct from aid agencies through their focus on profitable investment and operations according to market rules but share a common focus on fostering economic growth and sustainable development.¹⁶ In Africa, development finance plays a critical role in financing private enterprises and acts as a complement to overseas aid.

14. The complexity of green finance, as it relates to potential human rights violations, lies in the fact that it encompasses a variety of financial acts and objectives, including grants, loans, lucrative investments and speculation. It is often the product of interaction between multiple actors (States, international organizations, international development finance institutions and public and private banks), intermediaries (national development agencies or other national ministries, non-profit organizations and private entities) and the final recipients of the funding, as well as the interface of the project proponents with local populations. In addition, green finance can be official and public when loans are issued by States or international development finance institutions, or fully private (private banking investments, investments or purchases of carbon credits by private companies, conservation organizations) and is increasingly the product of public-private partnerships. In the midst of complex and sometimes undisclosed lines of funding, rights holders, such as Indigenous Peoples, have found it extremely difficult to challenge projects and hold actors accountable for the human rights violations they have experienced.

15. Host States, whether as borrower, co-financer or recipient of development aid, bear the primary responsibility for establishing appropriate institutional mechanisms and legal frameworks for protecting the rights of Indigenous Peoples in the development of green projects, even when international development finance institutions have safeguarding policies. Where host States do not recognize the status of Indigenous Peoples, or where national protection mechanisms or legal frameworks are not operational, other funders and donors will need to take additional precautionary measures to ensure that Indigenous Peoples are not negatively impacted by projects and ensure robust enforcement of their own safeguarding policies. In such cases, Indigenous Peoples may have to rely exclusively on the safeguarding policies of international finance institutions to seek redress.

16. States regulate the activities of private conservation organizations by requiring registration, regular reporting and monitoring, and compliance with relevant laws and regulations. In addition to regulatory oversight, States may also provide funding or other support to private conservation organizations in the form of grants, tax incentives or other financial incentives to support conservation efforts. Some countries have adopted national action plans on business and human rights to assist in the implementation of the Guiding Principles on Business and Human Rights and ensure that businesses, whether private or State-owned, respect human rights.¹⁷

17. States are also likely to become buyers of carbon credits in the voluntary market; for example, Norway, the United Kingdom of Great Britain and Northern Ireland and the United States of America are part of the Lowering Emissions by Accelerating Forest finance coalition, a public-private partnership. States are responsible for establishing the rules defining who the carbon rights holders will be, whether such rights will acknowledge the forest and land ownership of Indigenous Peoples and how benefit-sharing will be arranged.

18. International development finance institutions are the financial actors that have received the most scrutiny for the impact of their projects on human rights, and on those of Indigenous Peoples in particular. As a result, they developed, early on, internal frameworks and policies for socially and environmentally responsible investment. However, efforts are still needed to secure greater participation of Indigenous Peoples in the design of policies and

¹⁴ The Global Environment Facility.

¹⁵ The World Wildlife Fund, Wildlife Conservation Society, Conservation International Foundation and Nature Conservancy.

¹⁶ Thomas Dickinson, "Development finance institutions: profitability promoting development", Organisation for Economic Co-operation and Development (2019).

¹⁷ Submission by the Indigenous Peoples of Africa Co-ordinating Committee.

projects so as to ensure that the frameworks are well understood and effectively implemented by staff, with institutional support at the highest levels. Those frameworks must include safeguards for Indigenous Peoples that provide concrete and human rights-based guidance to financial institutions and their partners on how to perform independent human rights and environmental impact assessments, implement ongoing free, prior and informed consent throughout the project cycle, foster the participation of Indigenous Peoples and their ownership of a project, and ensure benefit-sharing that is agreed by the rights holders affected. The establishment of independent grievance mechanisms is also critical to ensuring the accountability of those principles and should be made available to rights holders even after a project has been completed. However, even where grievance mechanisms are in place, the negative impacts of large infrastructure projects on Indigenous Peoples are often not remedied. International development finance institutions need to address the fact that government non-compliance with international and domestic law increases the risk of Indigenous rights violations.

19. The World Bank began implementing its environmental and social framework in 2018, replacing its operational policy/Bank procedures on Indigenous Peoples (OP/BP 4.10). The new framework emphasizes principles such as borrower capacity-building and transparent stakeholder engagement through meaningful and ongoing consultations throughout the life cycle of a project. It also seeks to enhance the responsiveness of grievance mechanisms to facilitate the resolution of concerns of parties affected by projects. The framework advances the existing policy of the Bank on Indigenous Peoples by including the requirement of free, prior and informed consent in projects affecting their territories, natural resources or cultural heritage, or requiring involuntary resettlement and ensuring that grievance mechanisms take into account the availability of judicial recourse and customary dispute settlement mechanisms among Indigenous Peoples.¹⁸

20. However, stakeholders are of the opinion that there are several limitations to the new World Bank framework and the frameworks of other international development finance institutions that are based upon it, including a reference to human rights as aspirational and not binding; delegation of World Bank due diligence duties to borrowers, giving them the responsibility for carrying out environmental and social impact assessments for projects; and flexibility for borrowers and financial intermediaries to apply local laws and regulations as benchmarks for projects instead of higher and more protective international standards.¹⁹ Regarding the rights of Indigenous Peoples, critiques include a lack of compliance with international human rights standards on consultation and free, prior and informed consent; failure to consider impacts outside the immediate project area; limiting remedies to monetary compensation; and the absence of engagement, dialogue and consultation with Indigenous Peoples regarding the establishment of grievance mechanisms, as required by principle 31 of the Guiding Principles on Business and Human Rights.²⁰

21. As the Asian Development Bank is currently in the process of updating its 2009 safeguarding policy statement, Indigenous Peoples are asking it to uphold international standards on free prior and informed consent and to expand the triggering of free, prior and informed consent processes to include all projects funded by the Bank, not only the ones that could have severe impacts on the rights of Indigenous Peoples.²¹ The 2023 update to the integrated safeguarding system of the African Development Bank requires borrowing States to obtain free, prior and informed consent from affected “highly vulnerable rural minorities”, a term it defines as potentially including Indigenous Peoples, but only as recognized by

¹⁸ World Bank, Environmental and social standard No. 7, paras 24 and 34.

¹⁹ See <https://earthrights.org/blog/world-banks-new-environmental-and-social-framework-is-a-huge-step-backward-for-human-rights/> and <https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2020/08/GT-GELR200022.pdf>.

²⁰ See <https://minorityrights.org/2016/09/16/comments-regarding-world-banks-environmental-social-framework-8953/>.

²¹ See joint submission by Asia Indigenous Peoples Network on Extractive Industries and Energy and Community Empowerment and Social Justice Network to the Working Group on the issue of human rights and transnational corporations and other business enterprises. March 2023, available from <https://cemsoj.wordpress.com/2023/03/06/aipnee-and-cemsojs-joint-submission-on-development-finance-institutions-and-human-rights-to-the-un/>.

national laws and not in accordance with international standards on the identification and rights of Indigenous Peoples.²² That is despite the Bank having previously acknowledged the need to do more in this area.²³

22. In 2022, the European Investment Bank updated its environmental and social standards framework, including standard 7, which addresses vulnerable groups including Indigenous Peoples and women.²⁴ The Inter-American Development Bank adopted an Indigenous Peoples safeguarding policy in 2006 (updated in 2020),²⁵ established a social investment funds policy and put in place programmes to increase access to financial resources for Indigenous Peoples and other vulnerable communities.²⁶ However, the grievance mechanisms currently in place have been criticized for delays in the claims process and a lack of mitigation and reparation measures for the damages suffered by the people and communities affected.

23. The International Fund for Agricultural Development (IFAD) has formalized the participation of Indigenous Peoples in the work of the agency, including by convening since 2013 an annual Indigenous Peoples forum during meetings of the IFAD Governing Council. The forum enables a more systematic dialogue between Indigenous Peoples and IFAD at the headquarter and regional levels, receiving Indigenous Peoples' concerns and recommendations to inform IFAD-funded projects. Other good practices to enhance Indigenous Peoples' participation in decision-making include the Facilitative Working Group of the Indigenous Peoples and Local Communities Platform of the United Nations Framework Convention on Climate Change, which reviews and provides feedback to Green Climate Fund projects, and the International Indigenous Forum on Biodiversity

24. The Global Environment Facility (GEF), an intergovernmental fund permanently established in 1992, is the main financial mechanism for the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. GEF funds are available to countries in economic transition to meet the objectives of international environmental conventions and agreements to address the global climate and biodiversity loss crises.²⁷ Financial support is provided to government agencies, civil society, the private sector, research institutions and other partners. In 2017, the mandate noted good practices undertaken by GEF, including its rights-based policy, "Principles and guidelines for engagement with Indigenous Peoples", adopted in 2012.²⁸ In 2019, GEF updated its policy on environmental and social safeguards, including provisions on Indigenous Peoples' free, prior and informed consent, and designated a focal point for Indigenous Peoples within its secretariat. More than 15 per cent of the GEF small grants projects are accessed and managed by Indigenous Peoples' organizations.²⁹ GEF has implemented initiatives to provide resources and funding to Indigenous-led conservation initiatives, including through securing land rights.³⁰ Although GEF continues to fund projects that do or could negatively impact the rights of Indigenous Peoples, it has undertaken investigations on safeguarding compliance and suspended projects in cases where human rights violations have been documented.³¹ A GEF trust fund was recently established to support the implementation of the Global

²² African Development Bank, Updated Integrated Safeguards System (April 2023), pp. 11, 21, 104, 138 and 142.

²³ "African Development Bank Group's development and Indigenous Peoples in Africa", Safeguards and Sustainability Series, vol. 2, No. 2 (2016).

²⁴ See https://www.eib.org/attachments/publications/eib_environmental_and_social_standards_en.pdf.

²⁵ See <https://www.iadb.org/document.cfm?id=2032081>.

²⁶ See <https://www.iadb.org/es/gender-and-diversity/el-bid-y-los-pueblos-indigenas> (in Spanish).

²⁷ See <https://www.thegef.org/who-we-are/funding>.

²⁸ See https://www.thegef.org/sites/default/files/publications/Indigenous_Peoples_Principle_EN.pdf.

²⁹ See https://www.thegef.org/sites/default/files/publications/GEF_IndigenousPeople2016_CRA.pdf (2016), p. 12.

³⁰ GEF Inclusive Conservation Initiative, available from <https://www.inclusiveconservationinitiative.org>.

³¹ See GEF Conflict Resolution Commissioner, safeguards-related cases, available from <https://www.thegef.org/projects-operations/conflict-resolution-commissioner>.

Biodiversity Framework³² and could provide an important opportunity to ensure direct access to financing for Indigenous Peoples.

25. Considering the scale of the financial need for green transition, the World Bank is in the process of expanding the engagement of private sector finance,³³ which will present some challenges as corporations are under less scrutiny and, in most cases, either do not have or do not follow internal policies for Indigenous Peoples. On the contrary, they may actively seek to avoid triggering the application of safeguarding policies. As such, there is even less clarity as to responsibilities, monitoring and grievance mechanisms in private sector financing.

26. Private sector financial actors include not only corporations and investment banks involved in the extraction of energy transition minerals and other renewable energy projects, but also private conservation organizations, acting as intermediaries to allocate large funds for the creation of conservation areas that may lead to violations of the rights of Indigenous Peoples, as detailed in the Special Rapporteur's 2022 report on protected areas.³⁴ The boards of directors of large conservation organizations are usually comprised of representatives of high-profile academic, political and corporate entities and capital management firms, and there is minimal Indigenous representation. In recent years, large conservation organizations have started to develop policies on stakeholder engagement that are more respectful of the rights of Indigenous Peoples, following reports of violations by entities funded by them.³⁵

27. Other private actors, such as certifying companies in the context of the carbon market and projects for reducing emissions from deforestation and forest degradation in developing countries and additional forest-related activities that protect the climate (REDD-plus), may not be considered as financial actors, but bear a significant role in enabling financial flows to projects with potentially negative impacts on Indigenous Peoples. It is important to have oversight on such actors, considering their influence on green finance. Retail traders are businesses that purchase carbon credits directly from the supplier, bundle those credits into portfolios and sell them to the end buyers, typically with some commission. End buyers are companies committed to offsetting part or all of their greenhouse gas emissions. Private sector standards, guidelines and grievance mechanisms often do not meet international human rights standards with respect to Indigenous Peoples.

28. Philanthropic funders are another model for development financing. The Bezos Earth Fund was created in 2020 by Amazon founder and Chief Executive, Jeff Bezos, with a commitment of \$10 billion in disbursed grants over the next decade to focus on conserving and restoring nature, the future of food, environmental justice, decarbonizing energy and industry, economics, next technologies and data monitoring and accountability. Private funders have more flexibility in their operational requirements and can channel direct support to Indigenous Peoples, especially in countries with weak recognition of and weak institutional capacity to deal with the rights of Indigenous Peoples.³⁶

29. Perhaps more important than the question of who is involved in the allocation and administration of climate finance is the question of who is excluded: those who are experiencing the greatest impacts of climate change, namely Indigenous Peoples, particularly those in the Global South. At best, climate-related funds have included Indigenous Peoples as stakeholders to be consulted, but they are not given decision-making power or meaningful opportunities for participation.³⁷

³² See CBD/COP/DEC/15/7, paras. 29–30.

³³ See https://www.nrdc.org/sites/default/files/media-uploads/wbg_evolution_roadmap_paper_december_18_2022.pdf.

³⁴ A/77/238.

³⁵ See, for example, World Wildlife Fund, “Statements of principles and environmental and social safeguards” (2023), pp. 34–36, available from https://wwfint.awsassets.panda.org/downloads/essf_sops__download_all_documents_english_1.pdf.

³⁶ See Charapa Consult, Directing Funds to Rights. Principles, Standards and Modalities for Supporting Indigenous Peoples’ Tenure Rights and Forest Guardianship.

³⁷ See submission by Indigenous Environmental Network.

D. International legal framework and standards

30. The United Nations Declaration on the Rights of Indigenous Peoples contains the minimum human rights standards with regard to the protection of the rights of Indigenous Peoples against any negative impact or potential impact they may experience as a consequence of a project funded by national and foreign multilateral investors, including international development finance institutions.³⁸ The right to free, prior and informed consent is emphasized throughout the Declaration, including in relation to the use of Indigenous lands (art. 32). States must provide redress where free, prior and informed consent is not implemented (art. 28). Article 29 provides for assistance programmes for Indigenous Peoples to conserve and protect the environment and productive capacity of their lands, territories and resources. Article 39 sets out the right of Indigenous Peoples to access financial and technical assistance from States and through international cooperation.

31. The Committee on Economic, Social and Cultural Rights declared in its general comment No. 26 (2022): “States shall avoid those policies for mitigating climate change, such as efforts for carbon sequestration through massive reforestation or protection of existing forests, which lead to different forms of land grabbing, affecting especially land and territories of populations in vulnerable situations such as peasants or indigenous peoples.” Other treaty bodies have also developed relevant jurisprudence in relation to climate change and Indigenous Peoples.³⁹

32. The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides further guidance for a just transition for Indigenous Peoples. The right to participation (art. 7.1) clearly applies to the development and implementation of projects related to conservation, clean energy, transition and carbon markets. The convention also affirms the right to ownership and control over lands, territories and resources (art. 17).

33. States are the primary bearers of responsibility to Indigenous Peoples for the realization of their rights. However, private actors, including conservation organizations and international development finance institutions, also have duties and responsibilities to respect the rights of Indigenous Peoples. The Guiding Principles on Business and Human Rights provide a framework of concrete measures for such actors, articulated around three pillars: protect, respect and remedy. The Working Group on the issue of human rights and transnational corporations and other business enterprises has clarified that all private and institutional investors should respect these principles through meaningful and ongoing human rights due diligence, including by identifying and addressing the risks to people and to the environment associated with their products, services, clients and investment activities, and should provide or contribute to remedies for adverse impacts.⁴⁰ The Working Group has emphasized the responsibility of institutional investors and banks to avoid negative human rights impacts.⁴¹ It has also emphasized that international development finance institutions need robust policies and practices on human rights due diligence and remedy, which should be elaborated in consultation with Indigenous Peoples.⁴²

³⁸ For further guidance on human rights remedy in development finance, see <https://www.ohchr.org/sites/default/files/2022-02/Remedy-in-Development.pdf>; and [A/HRC/53/24/Add.4](https://www.ohchr.org/sites/default/files/2022-02/Add.4.pdf).

³⁹ [E/C.12/AUS/CO/4](https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters); [E/C.12/KHM/CO/1](https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters); Committee on the Elimination of Racial Discrimination, letters sent under the early warning and urgent action procedure to Peru (dated 28 April 2023, in Spanish) and Indonesia (dated 28 September 2009), available from <https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters>.

⁴⁰ See <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>.

⁴¹ See https://www.ohchr.org/sites/default/files/Documents/Issues/TransCorporations/WG_BHR_letter_Thun_Group.pdf.

⁴² See, for example, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/20200911_UNWG_submission_IFC.pdf; <https://www.ohchr.org/en/special-procedures/wg-business/financial-sector-and-human-rights> and <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>.

34. Safeguarding policies for the private sector were developed by the International Finance Corporation in its performance standard 7 on Indigenous Peoples (2012)⁴³ and the guidelines for multinational enterprises on responsible business conduct of the Organisation for Economic Co-operation and Development (OECD).⁴⁴ They both recall the right to free, prior and informed consent and/or human rights impact assessments, but still fall short of interpreting international human rights law.

35. The OECD guidelines include a national contact point for responsible business conduct grievance mechanism, which handles complaints against companies alleged to have failed to meet the guideline standards. To date, 51 countries, concentrated in Europe and the Americas, have established national contact points and grievance mechanisms. In 2022, facing a growing number of grievance cases involving Indigenous Peoples, OECD published a guide for national contact points on the rights of Indigenous Peoples when handling specific instances.⁴⁵ OECD parties can also find useful guidance on Indigenous Peoples in the decision of the Norwegian national contact point in 2011 related to the Intex nickel mine in the Philippines, as it considered free, prior and informed consent requirements in some detail as part of community and stakeholder engagement, as well as impact assessments, disclosure and transparency.

36. The Equator Principles are voluntary guidelines adopted by 97 financial institutions in 37 countries to ensure that the projects they finance and advise on are developed in a socially responsible manner that reflects sound environmental management practices.⁴⁶ They follow the International Finance Corporation performance standards, but only apply them to projects with a volume of over \$100 million and only refer to free, prior and informed consent being applied in “non-designated” countries, namely non-OECD countries. There is no grievance mechanism or other independent compliance monitoring mechanism.⁴⁷

37. The so-called Cancun safeguards address all levels of financial actors, in calling for “The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities”.⁴⁸ The Convention on Biological Diversity also provides guidance through its Akwé: Kon Voluntary Guidelines (2004) and section C of the Global Biodiversity Framework recalls the human rights of Indigenous Peoples.

38. Seeking the free, prior and informed consent of Indigenous Peoples is recognized as an essential element of human rights due diligence, risk mitigation and human rights responsibilities.⁴⁹ Safeguarding policies and guidelines have not elaborated on the scope and meaning of “consent”, which is sometimes wrongly understood as requiring only consultation, rather than as a substantive prerequisite to proceeding with a project. A study by the Expert Mechanism on the rights of Indigenous Peoples that points to the important role of the autonomous free, prior and informed consent protocols of Indigenous People as authoritative guidance should also act as a reference for the scope and meaning of “consent”.⁵⁰

⁴³ See <https://documents1.worldbank.org/curated/es/729401491377002155/pdf/113847-WP-ENGLISH-PS7-Indigenous-peoples-2012-PUBLIC.pdf>.

⁴⁴ See https://www.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.

⁴⁵ See <http://mneguidelines.oecd.org/guide-for-national-contact-points-on-the-rights-of-indigenous-peoples-when-handling-specific-instances.pdf>.

⁴⁶ See <https://equator-principles.com/>.

⁴⁷ See Jose Aylwin and Johannes Rohr, *The UN Guiding Principles on Business & Human Rights and Indigenous Peoples: Progress Achieved, the Implementation Gap and Challenges for the Next Decade* (International Work Group on Indigenous Affairs and Indigenous Peoples Rights International, 2021), pp. 35 and 36.

⁴⁸ FCCC/CP/2010/7/Add.1, appendix 1, para. 2 (d).

⁴⁹ [A/71/291](#).

⁵⁰ [A/HRC/39/62](#).

IV. Growing recognition of the role of Indigenous Peoples in the transition to a green economy

A. Renewable energy

39. The finance sector is expected to increasingly fund projects related to the transition to renewable energy, such as hydropower, wind farms and the mining of lithium for batteries. The transition is both urgently necessary to respond to climate change and is expected to support economic growth. Regulation of such projects at the national level must ensure respect for and protection of Indigenous Peoples, including in terms of access to energy and inclusiveness.⁵¹ Financial actors should recognize that renewable energy projects are often located on or near Indigenous territories⁵² and should undertake human rights due diligence to address all actual and potential negative impacts of their projects on Indigenous Peoples and identify, assess and address all the risks to rights holders.

40. Financial actors should be especially cautious when investing in projects such as lithium mining, a sector frequently fast-tracked to accelerate the transition to electric vehicles, too often without due regard for the rights of Indigenous Peoples. Inadequate and non-participatory environmental and social impact assessments, lack of free, prior and informed consent, insufficient or non-existent remuneration of Indigenous Peoples on whose lands the mining sites are located, as well as negative health and environmental impacts from extraction through to battery disposal, have been reported as important issues for some Indigenous Peoples.⁵³

41. Nomadic and semi-nomadic Indigenous Peoples are particularly at risk from energy transition and other green projects. In Africa and Europe, wind farms and geothermal projects have been undertaken without their free, prior and informed consent.⁵⁴ Too often, Governments and foreign investors assume that land used by nomadic herders and pastoralists is simply “empty”. Investors too often rely on formal registration of State or private ownership, or government assurances that land is available to use, when a diligent independent analysis prior to investment would have indicated that the land may be subject to the customary rights of Indigenous Peoples.

42. Indigenous Peoples have typically been excluded or marginalized in national energy distribution grids. Benefit-sharing should therefore be an important consideration in the funding of renewable energy projects. The Special Rapporteur has observed instances where electricity-generating projects failed to include a plan for distributing electricity to the Indigenous Peoples on whose land and resources the electricity was produced. Indigenous Peoples have sometimes even been required to buy the electricity produced on their lands at market prices.⁵⁵ At the same time, funders should be aware that the promise of employment and other benefits offered to Indigenous Peoples to acquire their lands does not, in itself, constitute proper consultation for obtaining free, prior and informed consent.

43. The mandate has received numerous complaints concerning dams and associated infrastructures that were planned or implemented without the consent of Indigenous Peoples, causing their forced displacement or the degradation of their environment and means of sustenance.⁵⁶ Recent complaints involved a hydropower project in Nepal funded by the

⁵¹ See Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022); and <https://www.humanrights.dk/publications/womens-human-rights-energy-transition-sub-saharan-africa-roundtable-event-outcome>.

⁵² See, for example, John R. Owen, Eleonore Lebre and Deanna Kemp, “Energy transition minerals (ETMs): a global dataset of projects”, University of Queensland data collection (2022), available from <https://doi.org/10.48610/12b9a6e>.

⁵³ See submission by the Shoshone Paiute Tribes of the Duck Valley.

⁵⁴ See, for example, https://media.business-humanrights.org/media/documents/Lake_Turkana_Wind_Power_Judgment_October_2021.pdf and <https://www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2021-1975-s.pdf>.

⁵⁵ See Dan Chu, “Investing with tribal partners to create a climate safe world”, GreenMoney, (March 2020).

⁵⁶ See Submission by the Shoshone Paiute Tribes of the Duck Valley.

European Investment Bank and wind power projects in Norway and Mexico funded by a German-based investment and asset company and Electricité de France, respectively.⁵⁷ There are growing concerns that hydropower projects are funded under the “clean energy” umbrella, despite their negative impacts on people and the deterioration of surrounding ecosystems that they cause.

44. Participation or co-ownership of projects with Indigenous Peoples reduces risks for investors. For example, Hydro-Québec, a bond-funded Canadian public corporation, adopted a policy in 2019 formalizing its commitment to involve Indigenous Peoples in its decisions and initiatives. The policy was built on long-standing partnerships with Indigenous Peoples, including a 1992 agreement to implement remedial works jointly and a 2002 agreement on joint planning, studying, implementation and operation of hydropower projects.⁵⁸

45. Governments need to incorporate a human rights-based approach in their energy transition plans.⁵⁹ For example, in 2022 the Government of Chile launched its national energy transition strategy, with specific reference to clean energy projects designed and co-led by Indigenous Peoples, and a mechanism to facilitate access to funding for Indigenous projects through partnerships. The strategy provides for transparent mechanisms to foster the leadership of Indigenous Peoples in the design and management of such projects and prioritize investment and financing initiatives aimed at improving Indigenous Peoples’ access to energy services and their development.⁶⁰

46. Canada has many examples of Indigenous-led green energy projects that receive federal funding or are a result of joint ventures between Indigenous Peoples and private companies. Indigenous Peoples in Canada currently own, co-own or derive financial benefit from almost 20 per cent of the country’s electricity-generating infrastructure as owners of land and treaty rights, including the right to economic self-determination.

B. Carbon emission-reducing initiatives and programmes

47. In recent years, private investors, Governments, NGOs and businesses have increasingly purchased carbon credits from the mechanism for reducing emissions from deforestation and forest degradation in developing countries and additional forest-related activities that protect the climate (REDD-plus) and other offset projects to negate their own emissions – either in the context of the compliance market or the voluntary market. This increased interest from international carbon markets poses a threat to the land security of Indigenous Peoples. The booming voluntary carbon market is not yet fully regulated and where regulations exist, there are no mechanisms to ensure enforcement. The rising economic value of carbon sequestered on Indigenous lands promotes land-grabbing by both the public and private sectors.⁶¹ Failure to regulate carbon market prices also means that Indigenous Peoples living in developing countries receive remuneration at a highly underestimated value. Indigenous representatives at the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change declared that carbon markets and offsets, geo-engineering, net zero frameworks, nature-based solutions and ecosystem services did not cut emissions and were new forms of green colonialism.⁶²

48. In the Amazon Basin, Indigenous Peoples are increasingly being taken advantage of by so-called carbon pirates operating in this underregulated sector. The Special Rapporteur was informed of opaque deals for carbon rights that can last up to a century, involving lengthy

⁵⁷ See communications NPL 2/2022, NOR 2/2021 and MEX 13/2021.

⁵⁸ See https://www.un.org/esa/sustdev/sdissues/energy/op/hydro_seelos_paper.pdf.

⁵⁹ E/2022/43-E/C.19/2022/11, para. 10.

⁶⁰ See https://energia.gob.cl/sites/default/files/documentos/pen_2050_-_actualizado_marzo_2022_0.pdf (in Spanish).

⁶¹ See Committee on the Elimination of Racial Discrimination, letters to Peru (dated 28 April 2023, in Spanish) and Indonesia (dated 28 September 2009). See also A/77/238, para. 33, and A/HRC/36/46, para. 97.

⁶² See <http://www.iipfcc.org/blog/2022/11/7/statement-of-the-iipfcc-at-the-joint-opening-plenary-at-cop27>.

contracts written in English, with communities being pushed out of their lands for projects.⁶³ Indigenous Peoples are seeking to train themselves in carbon market regulation, to better understand the mechanics and avoid falling victim to carbon pirates. Forest-offsetting schemes are often found on land belonging to Indigenous Peoples whose rights have not been secured. The main protection against this trend is to recognize their right to land as part of any carbon-offsetting agreements. Considering that Indigenous Peoples are the best stewards for protecting forests, this fundamental safeguard can only serve the wider goal of greenhouse gas emissions reduction.

49. A 2021 study revealed that of the 31 countries that contain almost 70 per cent of the world's tropical forests, only around one quarter of them explicitly recognized the rights of communities to govern and benefit from carbon rights. Just five countries have defined how carbon and non-carbon benefits will be shared, with only Viet Nam having an operational benefit-sharing scheme.⁶⁴

50. At the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change, countries agreed on regulations to enhance the environmental integrity and transparency of market-based activities under article 6 of the Paris Agreement. Article 6 (2) of the Paris Agreement allows countries to trade emissions reductions and removals with one another through bilateral or multilateral agreements and article 6 (4) creates a global carbon market to be overseen by a [supervisory body](#) designated by the Conference of the Parties. At the twenty-seventh Conference of the Parties, Indigenous Peoples discussed with States parties how to ensure that they did not bear the brunt of carbon-offsetting projects and instead benefited from increased direct financial flows for forest protection, conservation and improved livelihood opportunities.

51. Carbon finance stakeholders should adopt high-integrity, rights-based approaches to secure the collective rights of Indigenous Peoples to their lands and resources, adopt human rights safeguards, including free, prior and informed consent, and secure their participation in projects from initial design to implementation, monitoring and reporting. Integrity should include transparent information about the final buyer of credits, as in many cases credits are used as offsets by companies whose activities are damaging the territories of Indigenous Peoples. Additionally, they should provide accessible grievance redress mechanisms and increase direct financing support for community-led initiatives.⁶⁵

52. Financial actors will rely heavily on the assessment of certifying entities before directing funds towards a REDD-plus or other carbon-sinking project. Indigenous Peoples and NGOs have expressed concerns over the lack of transparency and independence of the entities in charge of certifying the carbon emission reduction units of carbon projects and the lack of adequate, independent and accessible grievance mechanisms.⁶⁶ Additionally, processes may not always include respect for the rights of Indigenous Peoples among the criteria for certification, or as a framework to decide cases brought before their complaint mechanisms. For instance, even where the REDD-plus environmental excellence standard used by the certifier, Architecture for REDD+ Transition, recalls the Cancun safeguards, the certifier's complaint mechanism failed to apply an Indigenous Peoples human rights framework to decide a recent case concerning Indigenous Peoples.⁶⁷

53. Some States have strengthened the participation of Indigenous Peoples in the regulation of carbon and biodiversity offset markets. In Canada, Indigenous Peoples have participated in the development of federal offset protocols under the country's greenhouse gas offset credit system and the Government is working on free, prior and informed consent mechanisms to develop federal offset protocols for land-based projects that will be applicable

⁶³ See <https://www.theguardian.com/environment/2023/jan/21/amazon-indigenous-communities-carbon-offsetting-pirates-aoe>.

⁶⁴ Rights and Resources Initiative and McGill University, "Status of legal recognition of Indigenous Peoples', local communities' and Afro-descendant Peoples' rights to carbon stored in tropical lands and forests" (2021).

⁶⁵ See <https://www.energymonitor.ai/policy/carbon-markets/the-interwoven-fortunes-of-carbon-markets-and-indigenous-communities/>.

⁶⁶ See <https://www.elclip.org/resguardo-indigena-cumbal-bonos-de-carbono> (in Spanish).

⁶⁷ See <https://www.artredd.org/complaints/>.

on Indigenous territories.⁶⁸ In Malaysia, the national guidance on voluntary carbon market mechanisms requires carbon projects to be conducted in conformity with national regulations on the participation of Indigenous Peoples.⁶⁹ In Argentina, REDD-plus initiatives are implemented with the participation and respect for the knowledge and rights of Indigenous Peoples.⁷⁰

54. In some cases, Indigenous Peoples participate in the voluntary carbon market to strengthen their autonomy and collective rights. The Yurok Tribe in the United States has used the profits from forest offset projects to pay back a loan taken to buy a part of their ancestral territory, support youth programming, housing and road improvement, and help develop off-reservation businesses.⁷¹ In Mexico, the Indigenous municipality of Capulálpam de Méndez joined the carbon offset market in 2008, using the profits for forestry work, education and athletic programmes.⁷² In the United Republic of Tanzania, the Yaeda-Eyasi Landscape REDD project strengthened land tenure, management capacity and local natural resource management in Hadza hunter-gatherer and Tatoga pastoralist communities.⁷³

C. Biodiversity protection and conservation

55. Funding for the creation of protected areas for biodiversity protection is set to increase significantly with the implementation of global biodiversity target 3 of the Convention on Biological Diversity, according to which at least 30 per cent of terrestrial and inland water areas and marine and coastal areas are to be effectively conserved before 2030. Given that 80 per cent of the world's remaining biodiversity lies within Indigenous lands, this target will have a significant impact on Indigenous Peoples. With the creation of a new global biodiversity framework fund,⁷⁴ large conservation organizations will have even greater influence and financial power, as they receive investment and tax breaks from Governments, corporations and other transnational organizations. Conservation organizations have long been heralded as champions of biodiversity protection and climate change efforts, but in recent years have come under scrutiny for increasing reports of human rights violations, including the violent evictions of Indigenous Peoples from their lands. A more detailed explanation is provided in the Special Rapporteur's report to the General Assembly in 2022.⁷⁵

56. The Global Biodiversity Framework also includes a commitment by States to encourage and enable businesses, transnational corporations and financial institutions to "monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity", along with their operations, supply and value chains and portfolios, to provide information to consumers to promote sustainable consumption and to report on compliance with access and benefit-sharing regulations and measures (target 15). While target 15 identifies the important need for disclosure, risk assessment and benefit-sharing, it is only a voluntary measure and does not mandate the regulation of private sector investors.

57. Target 18 of the Framework establishes an expedited time frame to phase out subsidies harmful for biodiversity by 2025, reducing them by at least \$500 billion per annum by 2030, while scaling up positive incentives for conservation and sustainable use. Target 19 calls for an increase in funding in an "effective, timely and easily accessible manner, including domestic, international public and private resources" of at least \$200 billion per annum and for enhancing the role of Indigenous Peoples in natural resource management aimed at the conservation of biodiversity.

⁶⁸ See submission by Canada.

⁶⁹ See submission by Malaysia.

⁷⁰ See submission by Argentina.

⁷¹ See <https://www.yesmagazine.org/environment/2021/04/19/california-carbon-offset-program-yurok-tribe-land-back>.

⁷² See <https://www.context.news/nature/custodians-of-mexicos-indigenous-forests-confront-climate-change>.

⁷³ See submission by Amazon Watch.

⁷⁴ See <https://www.thegef.org/newsroom/news/statement-gef-ceo-and-chairperson-creation-global-biodiversity-framework-fund>.

⁷⁵ A/77/238.

58. Those targets present an opportunity for increased funding of Indigenous-led conservation projects and direct financing to Indigenous Peoples. However, that requires a complex understanding of how biodiversity offsets and credits work in practice and how to access and leverage the market. There is concern that Governments will be overly dependent on private financing and may fall short of meeting their biodiversity targets. Financial resources must target the right beneficiaries to empower Indigenous Peoples and effect transformative change.⁷⁶

59. For example, Canada is using the project finance for permanence funding model to support Indigenous-led conservation projects, bringing together Indigenous organizations, Governments and the philanthropic community to identify shared goals for protecting nature and realizing long-term community benefits. Impact and benefit agreements, formal contracts between Indigenous Peoples and private industry outlining the obligations of each party throughout the business relationship are a further vehicle for delivering funding to Indigenous Peoples for conservation governance and stewardship, provided they are based on a framework of free, prior and informed consent.⁷⁷ Mexico has created an Advisory Council to promote the participation of Indigenous Peoples in the conservation of protected areas.⁷⁸

D. Emerging digital and technology issues

60. The Special Rapporteur was made aware of private projects involving emerging technologies for conservation activities and sustainable investments. These projects collect, digitalize and archive information concerning Indigenous Peoples and their territories (satellite images, audio and video documentaries) without any protection for the rights of Indigenous Peoples over their intellectual property or data sovereignty. The information is converted into digital tokens (digital security assets), and traded as a financial product on blockchain or other ledger technology.

61. New technology companies conclude contracts with Indigenous Peoples without any good faith consultation or proper explanation of the implications of such contracts. Based on such contracts, companies may acquire full ownership of information from Indigenous territories, allowing them to sell geological data to mining or oil companies, or to those who buy and sell environmental services for the carbon market. The Indigenous territory may be subject to monitoring and surveillance so that buyers of digital assets can “observe” the territory via satellite. Under the guise of addressing climate change and biodiversity loss, companies involved in the collection and monetization of environmental data and the creation of digital assets may be violating the rights of Indigenous Peoples. Financial stakeholders seeking to buy environmental services (such as forests, biodiversity and soil) to offset carbon on the digital market are likely to contribute to a transfer of ownership of Indigenous land value without the consent or maybe even the knowledge of the Indigenous Peoples concerned.

V. Direct access to funding for Indigenous Peoples

62. Following the \$1.7 billion pledge made by bilateral donors and philanthropic funders at the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change and the finding that international funding does not effectively reach Indigenous Peoples and their own projects,⁷⁹ studies emerged to provide donors and investors

⁷⁶ Helen Tugendhat and Maurizio Farhan Ferrari, “Unpacking the Kunming-Montreal Biodiversity Agreement: identifying key advances and making them work”, Forest Peoples Programme, 20 March 2023.

⁷⁷ See submission by Canada; and <https://news.mongabay.com/2023/03/indigenous-funding-model-is-a-win-win-for-ecosystems-and-local-economies-in-canada/>.

⁷⁸ See submission by Mexico.

⁷⁹ Rainforest Foundation Norway, “Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)”, p. 4; and Charapa Consult, Directing Funds to Rights. Principles, Standards and Modalities for Supporting Indigenous Peoples’ Tenure Rights and Forest Guardianship.

with principles, standards and mechanisms to make their green investments sustainable by providing financial support to Indigenous Peoples to secure their tenure rights and forest guardianship.⁸⁰

63. At the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change, Indigenous Peoples themselves came forward with principles and guidelines for direct access funding for climate action, biodiversity conservation and fighting desertification for a sustainable planet.⁸¹ This initiative calls for an independent Indigenous-led global green funding mechanism to support global coordination, solidarity, experience- and knowledge-sharing, and lobbying and advocacy work for Indigenous Peoples from the seven sociocultural regions. The Special Rapporteur believes that direct funding to Indigenous Peoples is critical to ensuring a just transition to a green economy that supports Indigenous Peoples' self-determined climate and biodiversity actions.

A. Obstacles to direct financing

64. Several factors have prevented the direct financing of Indigenous Peoples' projects. Obstacles to financing must be understood in the context of the underlying structural racism and colonialism that continue to affect Indigenous Peoples but also, in some situations, in the context of the political and economic interests of States in maintaining Indigenous Peoples in the margins of power. Additionally, financial actors may consider that investing in projects led by Indigenous Peoples are high risk because they may perceive participatory and consent processes as onerous delays in the implementation of their projects, or because Indigenous Peoples may lack or be perceived to lack sufficient collateral or other revenue streams and the necessary capacity and experience with fund management and accounting.⁸² Another important obstacle is the rigidity of funding practices (short-term projects, tight deadlines) and the fact that Indigenous world views and realities are rarely accommodated.⁸³ In remote communities, the lack of a State presence and infrastructure barriers also hamper access to international funding mechanisms.⁸⁴

65. The mandate has previously observed how national Governments may impose onerous reporting requirements on Indigenous Peoples who are seeking funding for management of their resources and sometimes involve non-Indigenous third parties in the management of the funding. Indigenous governance institutions applying for funds are expected to respond within relatively short time frames to government-issued notices; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns.⁸⁵

B. Inclusive grant-making

66. Funding practices and grant design need to be modified to enable Indigenous Peoples to access, manage and benefit from funds more easily and quickly.⁸⁶ Funding must be channelled in ways that are relevant and appropriate for Indigenous Peoples, funding engagements should as far as possible be led by Indigenous Peoples, be flexible, long-term, gender-inclusive, timely and accessible, and ensure accountability. Transformative changes need to occur in the practices and infrastructure of climate and conservation funders,

⁸⁰ Amazon Watch, *Respecting Indigenous Rights: an Actionable Due Diligence Toolkit for Institutional Investors* (2023); Charapa Consult, *Directing Funds to Rights; and Rights for Resources Initiative and Rainforest Foundation Norway*, "Funding with purpose: a study to inform donor support for Indigenous and local community rights, climate, and conservation" (2022).

⁸¹ See <https://www.oneearth.org/indigenous-leaders-call-for-independent-funding-mechanism-to-support-climate-and-biodiversity-action/>.

⁸² See submission by Canada.

⁸³ See submission by the Indigenous Peoples of Africa Co-ordinating Committee and Maliasili and Synchronicity Earth, "Greening the grassroots: rethinking African conservation funding" (July 2022).

⁸⁴ See submission by Canada.

⁸⁵ A/HRC/27/52/Add.2, para. 72.

⁸⁶ Fred Nelson and others, "Better climate funding means centering local and indigenous communities", *Stanford Social Innovation Review*, 11 May 2023.

including international NGOs, private foundations and philanthropic bodies, and government funding agencies, to accommodate the world view and realities of Indigenous Peoples and support Indigenous self-determination.

67. Access to capital alone may be insufficient; capacity support to help Indigenous Peoples hire external legal, financial and technical experts and gain experience through deal-making is likewise important. As part of the transition to direct financing, Indigenous Peoples should be supported to build their own technical units within their organizations so that they can meet the minimal requirements of donors and other funders.

68. In many cases, Indigenous organizations will need intermediaries, such as NGOs, multilateral agencies or funding mechanisms to access funds from donors. Such intermediaries also play a critical role in providing fund management expertise to Indigenous organizations and the necessary tools to apply for funds and manage and prepare financial reports themselves. Intermediaries have a role to play in training donors, funders and investors on how existing standards may need to be adapted to suit the needs of Indigenous organizations, including by adapting priorities within projects to address diverse community needs and imminent threats or seize opportunities.⁸⁷ Indigenous Peoples should be given, wherever possible, a choice as to the intermediaries with whom they will work.

69. The Special Rapporteur received additional practical suggestions for ensuring Indigenous Peoples' access to funding, including (a) meaningful participation of Indigenous Peoples in the design and implementation of funding opportunities from the outset to ensure that funding is responsive to their needs, priorities and aspirations, and that it aligns with their vision of sustainable development; (b) terms of funding that recognize self-determination over lands, territories and resources; (c) simplification of grant application procedures and reporting requirements; (d) flexible financing mechanisms that take into account the diverse needs and circumstances of Indigenous Peoples; and (e) a reduction in intermediaries.⁸⁸

C. Funding land tenure security

70. A necessary component of the green finance objective is the urgent need to support Indigenous Peoples in securing their collective land rights and self-determination over their territories, which are instrumental for the conservation of biodiversity and climate change adaptation.⁸⁹

71. The land rights standard is a process instigated by the Indigenous Peoples Major Group for Sustainable Development and the Rights and Resources Initiative aimed at developing a comprehensive set of principles, in consultation with Indigenous Peoples to, inter alia, establish a framework for guiding rights-based climate, biodiversity and sustainable development actions and investments in the world's lands, forests and other natural ecosystems that is driven and determined by rights holders.⁹⁰

72. Intermediary organizations, such as the International Land and Forest Tenure Facility, offer grants and technical assistance directly to Indigenous Peoples with a view to securing their tenure, as part of their work to mitigate climate change, reduce conflict and promote gender equality. It is important that all finance actors, in particular international development finance institutions or States, allocate funding for activities to support Indigenous Peoples seeking recognition of their collective land rights, including legal documentation, mapping, monitoring, conflict resolution and other activities that strengthen their capacity to protect, plan, manage and sustainably use their forests and lands.

73. Relatively few donors prioritize land tenure and forest management as part of their development aid. According to the Rainforest Foundation Norway: "The United States and Norway have been the largest contributors in absolute terms, followed by other major donors

⁸⁷ Rainforest Foundation Norway, "Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)".

⁸⁸ See submission by the Indigenous Peoples of Africa Co-ordinating Committee.

⁸⁹ Paul De Wit, "Securing land tenure for prosperity of the planet and its peoples" (Rights and Resources Initiative, 2023).

⁹⁰ See <https://rightsandresources.org/wp-content/uploads/LandRightsStd-1.pdf>.

including Germany, the United Kingdom and Sweden. Considering their share of total ODA, Norway supports IPLC tenure and forest management at a far greater rate relative to its peers in Germany and the United Kingdom.”⁹¹

VI. Conclusions

74. The shift to green finance is necessary and urgent, and if done using a human rights-based approach it can be a source of opportunity for Indigenous Peoples to obtain funding to preserve their lands, knowledge and distinct ways of life, and to create economic opportunities that may help them to maintain and strengthen their indigenous identity.⁹² An indigenous rights-compliant form of green financing can infuse renewed hope for Indigenous Peoples’ physical and cultural survival, as well as the protection of their life-sustaining resources and the natural environment upon which they depend spiritually.

75. A just green transition will require that States and other financial actors break down the power asymmetries that continue to characterize aid and development financing and involve Indigenous Peoples, Indigenous women in particular, as equal stakeholders in the finance process and foster true cooperation and solidarity. As already observed by the previous Special Rapporteur in her report on international investment agreements, in spite of increasing human rights safeguards in host countries donors and investors continue to wield the most power and exclude from decision-making those most affected by their financial decisions.⁹³

76. States, international financial institutions and the private sector play a critical role in shaping policy beyond their financial investments and must take steps to ensure that Indigenous Peoples are consulted on, consent to and meaningfully participate in the development and implementation of projects and programmes that may affect their rights and interests. By doing so, they will contribute to the promotion of a sustainable and inclusive economy that benefits all stakeholders and rights holders, including Indigenous Peoples. When investing in green projects, some funding should be targeted directly to Indigenous Peoples. This may require allocating resources to secure their land tenure and/or empowering them to directly access funding through training and other empowerment measures. At the same time, investors should make every effort, through continuing consultations, to adapt their financing approach to be culturally appropriate for Indigenous Peoples. A successful transition to direct funding is not guaranteed through training alone but instead needs meaningful intercultural engagement with Indigenous organizations to help them build technical capacity. As many organizations are more political than technical in nature, that implies long-term funding to support technical bodies to enable the continuation of political activities.

VII. Recommendations

77. The Special Rapporteur recommends that States:

- (a) **Protect Indigenous Peoples from human rights abuses by business enterprises and financial actors within their territory or jurisdiction;**
- (b) **Acknowledge and respect the rights of Indigenous Peoples, as enshrined in international human rights instruments, including the United Nations Declaration on the Rights of Indigenous Peoples. That includes the right to self-determination, lands, territories and resources, as well as the right to free, prior and informed consent in green finance decision-making processes that affect their lands and communities;**

⁹¹ Rainforest Foundation Norway, “Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)”, p. 4.

⁹² ILO, “La creación de empleos verdes para los jóvenes indígenas en Colombia” (2023) (in Spanish).

⁹³ See [A/HRC/33/42](#).

(c) Guarantee the right of Indigenous Peoples to provide or withhold their free, prior and informed consent regarding green finance initiatives affecting their lands, territories and resources after a meaningful and gender-inclusive consultation process. States should ensure that Indigenous Peoples have access to relevant information, can freely express their views and make decisions without coercion or manipulation. States should recognize that free, prior and informed consent is an ongoing process, requiring ongoing consultation throughout the life cycle of a project;

(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;

(e) Secure the land rights of Indigenous Peoples and demarcate their ancestral lands and territories to protect them from encroachment, land-grabbing and other forms of unauthorized exploitation;

(f) Establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and remedy in cases of human rights violations or environmental harm resulting from green financing projects;

(g) Establish monitoring and reporting mechanisms to track the impacts of green financing projects on the rights of Indigenous Peoples, including regular consultations with the Indigenous communities affected. States should also hold project proponents accountable, in compliance with human rights standards, and require them to report periodically on the human rights and environmental impacts of green initiatives;

(h) Adopt, in consultation with Indigenous Peoples, domestic frameworks regulating the green economy including requirements for REDD-plus initiatives, carbon markets and nature-based markets to clearly recognize and protect the rights to land, territories and resources of Indigenous Peoples and their right to free, prior and informed consent;

(i) Allocate resources aimed at enhancing Indigenous Peoples' knowledge and understanding of green financing mechanisms, so that they can effectively participate in decision-making processes, including by giving or withholding their free, prior and informed consent in relation to green finance projects;

(j) Provide funding for Indigenous Peoples to hire external legal, financial and technical advisers. Provide financial and human resources to overcome infrastructure barriers that hinder access to financial mechanisms and processes for Indigenous Peoples living in remote areas;

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

78. The Special Rapporteur recommends that donors, investors and funders (including international development finance institutions and intergovernmental organizations):

(a) Adopt explicit policies and guidelines for the rights of Indigenous Peoples that are aligned with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Guiding Principles on Business and Human Rights. Such policies should recognize the contribution of Indigenous Peoples to protecting the planet and provide for the protection of their rights, particularly in green operations;

(b) Adopt a regulatory framework on human rights due diligence, requiring recipient Governments and/or implementing partners to identify, prevent, mitigate and account for any human rights risks. That includes assessing the potential social, environmental and cultural impacts of projects, as well as the human rights track record of project proponents and partners;

(c) Condition funding on the adoption and application of a solid Indigenous human rights-based approach by recipient Governments and/or implementing partners on the ground;

(d) Ensure that Indigenous Peoples that are or could be affected by a project they are funding are correctly identified and recognized, based on the principle of self-identification, and assess their security of tenure over their collective lands, which may be affected by the project. If land rights are not properly secured and Indigenous Peoples have provided their informed consent to the project, then donors should reserve a part of their budget to support the efforts of Indigenous Peoples to secure their land rights;

(e) Secure Indigenous Peoples' free, prior and informed consent before funding any projects that may affect their lands, territories, resources and livelihoods. Ensure free, prior and informed consent processes are ongoing and led by experts on the rights of Indigenous Peoples and on such processes;

(f) Require comprehensive and independent human rights and environmental impact assessments for projects involving Indigenous lands and resources. Such assessments should be conducted in consultation with Indigenous Peoples and take their knowledge, cultural heritage and ecosystem services into account. They should include expertise on Indigenous governance structures and decision-making, as well as an analysis of potential impacts on collective land rights, irrespective of the position of host States on the issue;

(g) Ensure the establishment of robust mechanisms to monitor and report on the rights of Indigenous Peoples throughout the chain of intermediaries and implementing partners. When abuses occur, ensure Indigenous Peoples can access independent grievance mechanisms that are in line with principle 31 of the Guiding Principles on Business and Human Rights;

(h) Ensure a direct financial flow to Indigenous Peoples by creating or redesigning flexible financing mechanisms that simplify application procedures and reporting requirements for Indigenous-led green finance initiatives and projects. Such financing mechanisms should:

(i) Respond to the needs and priorities for funding of Indigenous Peoples, including with regard to their self-determination, land tenure and their sense of responsibility for future generations;

(ii) Respect Indigenous Peoples' own decision-making processes and cooperate with their governance institutions;

(iii) Avoid unnecessary intermediaries, other than those requested by Indigenous Peoples themselves;

(i) Track all funds allocated directly to and for Indigenous Peoples in order to generate data on how much they benefit from green finance;

(j) Involve Indigenous Peoples in the design and implementation of funding opportunities from the outset to ensure that funding processes are responsive to their needs, priorities and aspirations, and align with their vision of sustainable development;

(k) Improve gender-inclusiveness by scaling up funding for Indigenous women leaders and their organizations. Foster the participation of Indigenous women and their organizations before funding decisions are made, continue their engagement throughout the project life cycle and ensure that it is led by experts on free, prior and informed consent processes;

(l) Increase the institutional, technical and financial capacity of Indigenous Peoples and their organizations to access and influence the financial market as it relates to conservation, clean energy transition and nature markets. Support the organizational development and project management of Indigenous Peoples and the promotion of sustainable livelihoods;

(m) Increase the representation of Indigenous Peoples within financial institutions, for example by adopting staff diversity and inclusion policies, establishing focal points for them, maintaining rosters of Indigenous experts, creating Indigenous advisory bodies and/or appointing social safeguard specialists. Include representatives of Indigenous Peoples in the governance of GEF and the Global Biodiversity Framework Fund to better design and administer grants;

(n) Provide targeted training to organizational staff and incentives for organizational learning to better integrate the rights of Indigenous Peoples;

(o) Improve the transparency of private foundations by publicly sharing their funding data to better align with the practice of bilateral and multilateral institutions;

(p) Adapt existing and future carbon crediting and certification schemes to explicitly require compliance with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples. Guarantee the full participation of Indigenous Peoples in multi-stakeholder governance organizations, including in the voluntary carbon market;

(q) Ensure there is Indigenous rights expertise in the validation and verification bodies and properly assess national laws, policies and practices in relation to the rights of Indigenous Peoples to be in line with international human rights law standards. Ensure that projects proceed in a manner that respects the rights of Indigenous Peoples and are agreed to by them;

(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.
