



# SDSG

**SUSTAINABLE DEVELOPMENT  
STRATEGIES GROUP**

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and Julie Donohue

March 2, 2023

## IMPACTS OF THE “GREEN MINERALS BOOM” AND INDIGENOUS RIGHTS

SDSG is an independent, nonprofit research institute advancing best practices for sustainable management of renewable energy and natural resources.





## OUR VISION

SDSG works for a future where resource development respects human rights, aligns with the economic and social objectives of local communities, and protects the natural environment.

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# The Transition to Renewables





Rapid transition of the global energy system from fossil fuels to renewables is necessary for addressing climate change.

The Department of Interior has published a list of **50** critical minerals, many of which are necessary for the energy transition.

The demand for these minerals is increasing dramatically as clean energy technologies replace traditional hydrocarbon resources.



## The Official List Includes the Following 50 Minerals:



Aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.

- The European Union has a similar list. So does Japan. So do others.
- Not all of these are important to the energy transition. But they are important to emerging technologies (e.g. no touch screens or colored displays without them)
- Many of these are not household names. Most of us do not know:
  - Where and in what form they occur in nature
  - What they are used for and why they are important
  - What kind of processing they need to be converted into useful material
  - What the environmental impact of all this may be
  - Who stands to get rich by producing them? Who stands to be harmed?

## Critical mineral needs for clean energy technologies

	Copper	Cobalt	Nickel	Lithium	REEs	Chromium	Zinc	PGMs	Aluminium
Solar PV	High	Low	Low	Low	Low	Low	Low	Low	High
Wind	High	Low	Moderate	Low	High	Moderate	High	Low	Moderate
Hydro	Moderate	Low	Low	Low	Low	Moderate	Moderate	Low	Moderate
CSP	Moderate	Low	Moderate	Low	Low	High	Moderate	Low	High
Bioenergy	High	Low	Low	Low	Low	Low	Moderate	Low	Moderate
Geothermal	Low	Low	High	Low	Low	High	Low	Low	Low
Nuclear	Moderate	Low	Moderate	Low	Low	Moderate	Low	Low	Low
Electricity networks	High	Low	Low	Low	Low	Low	Low	Low	High
EVs and battery storage	High	High	High	High	High	Low	Low	Low	High
Hydrogen	Low	Low	High	Low	Moderate	Low	Low	High	Moderate

Relative importance of minerals for a particular clean energy technology:

High: ●

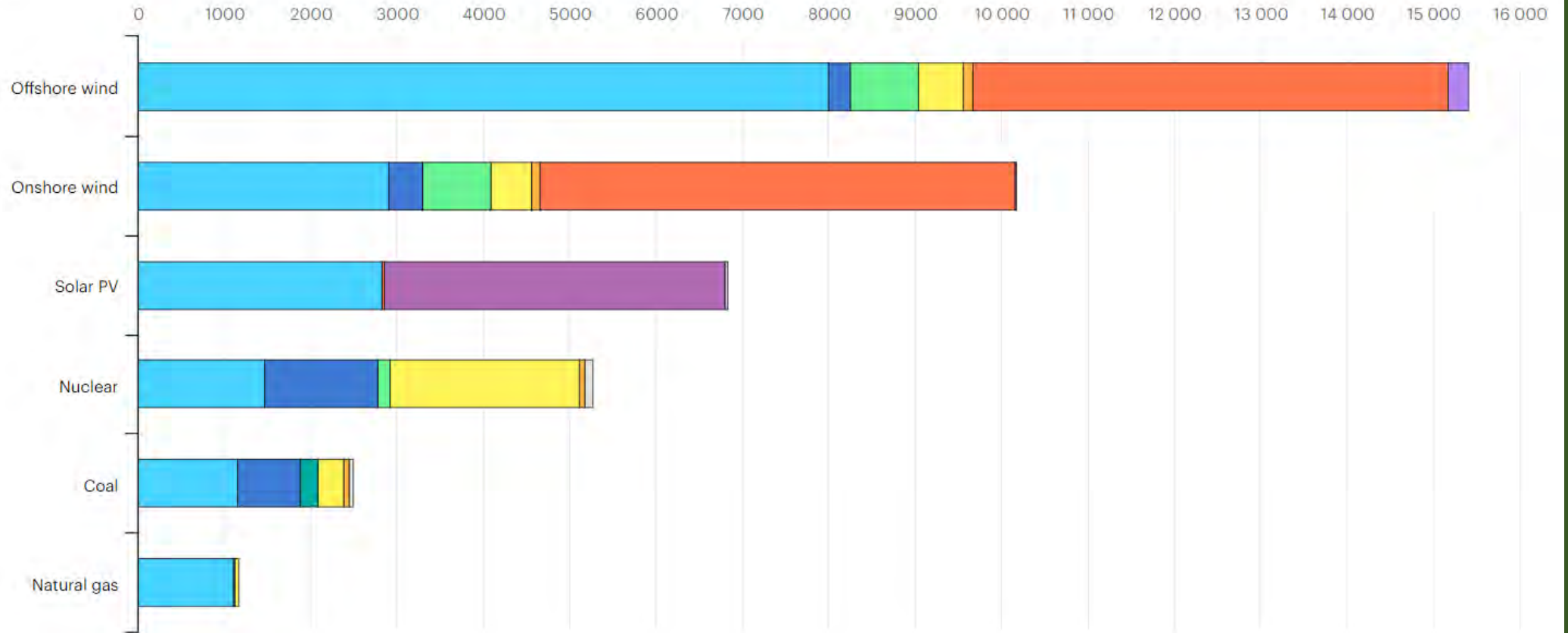
Moderate: ●

Low: ●

# Minerals used in clean energy technologies compared to other power generation

Source:

kg/MW

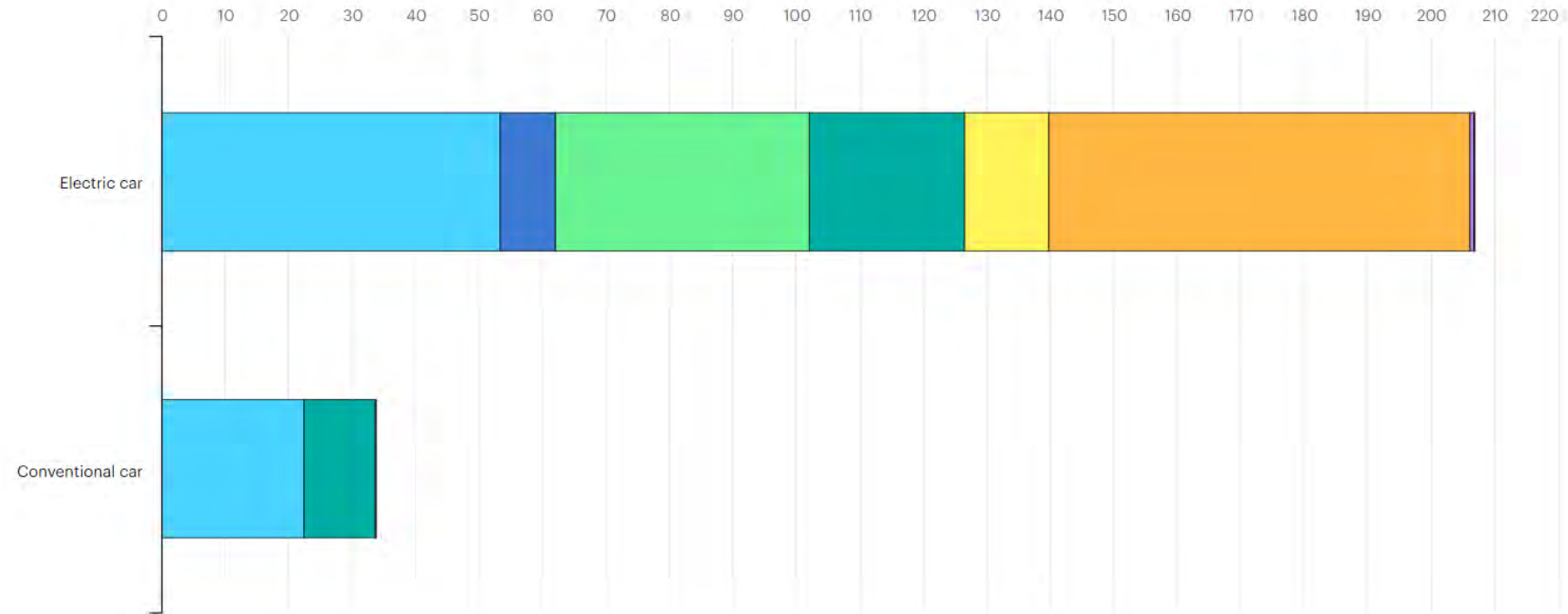


Copper Nickel Manganese Cobalt Chromium Molybdenum Zinc Rare earths Silicon Others



# Minerals used in electric cars compared to conventional cars

kg/vehicle



IEA, Licence: CC BY 4.0

■ Copper ■ Lithium ■ Nickel ■ Manganese ■ Cobalt ■ Graphite ■ Zinc ■ Rare earths ■ Others

EVs and battery storage account for about half of the mineral demand growth from clean energy technologies, spurred by surging demand for battery materials.

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# Examples of important critical minerals and their impacts



# Lithium Supply and Demand

According to the World Bank, lithium production **may need to increase by nearly 500% by 2050** to meet the growing demand for clean energy technologies. The EU projects that for electric vehicle batteries and energy storage, EU members may need up to 18 times more lithium by 2030 and almost 60 times more lithium by 2050, compared to the current supply to the whole EU economy.

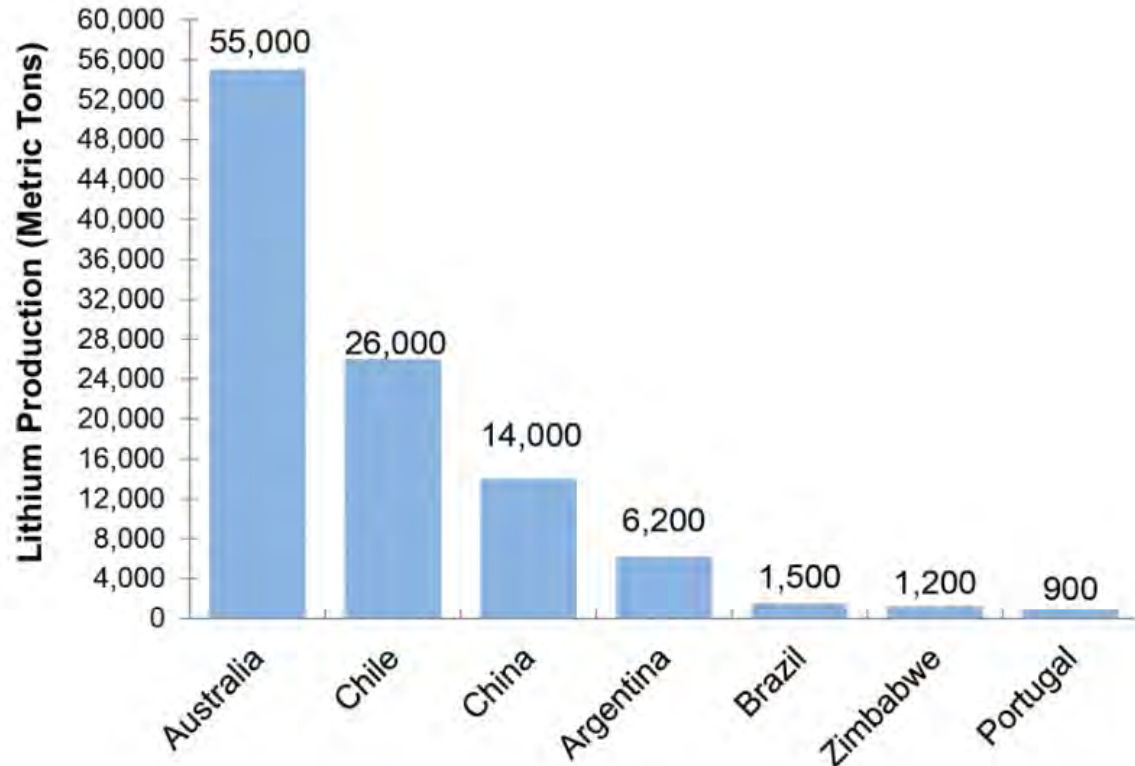
The main types of exploitable lithium deposits are (1) continental brines, (2) pegmatites, and (3) hydrothermally altered clays.

Brines, which are waters with high concentrations of inorganic salts (in this case chlorides), are the most substantial of the potential lithium resources, accounting for nearly 70% of global lithium reserves. Most of these reserves are in South America

The majority of the world's current lithium production is distributed in four mineral operations in Australia, two brine operations each in Argentina and Chile, and two brine and one mineral operation in China.

# Lithium

WORLD LITHIUM PRODUCTION, 2021<sup>7</sup>



Demand for lithium is expected to grow by over 40 times by 2040.

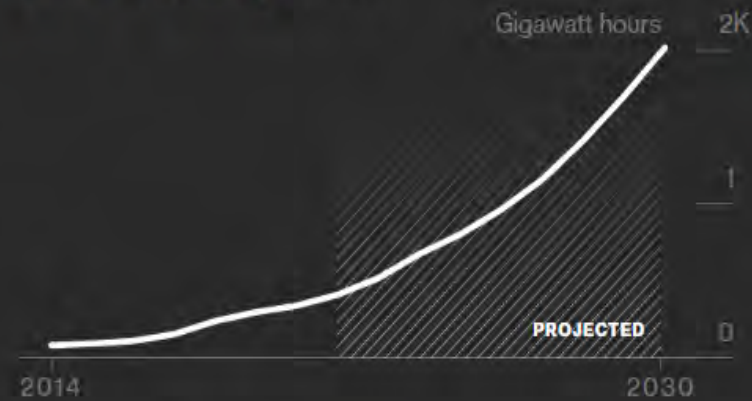
Lithium refining is dominated by China → more than 75% of global lithium processing, And in 2021, 79% of all lithium ion battery production

# Lithium-Ion Batteries

## KEY METALS AND MATERIALS:

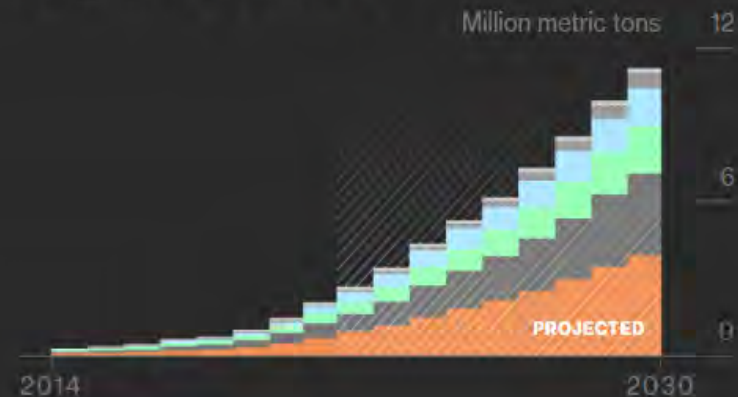
● Copper ● Aluminum ● Lithium (LCE) ● Nickel ● Cobalt ● Manganese

### Lithium-Ion battery demand



Lithium-ion batteries able to store 1 gigawatt hour of energy require about **729 tons of lithium**, **1,202 tons of aluminum** and **1,731 tons of copper**, according to BloombergNEF estimates.

### Total demand for materials

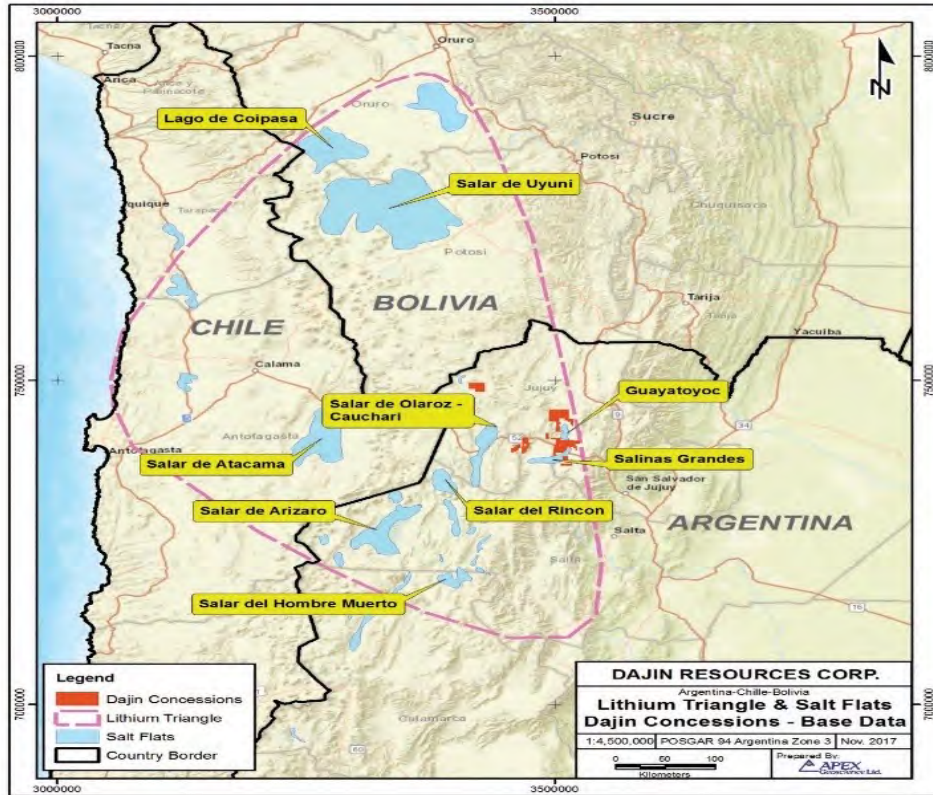


Supply of lithium raw materials will remain tight through 2022 as demand from the battery sector builds, BNEF said in a June report. Lithium hydroxide, the chemical favored for premium cells, could see shortages by 2027.

Limited availability of other materials is already threatening the battery sector's ability to keep pace with the EV boom, said Yang Hongxin, general manager of SVolt Energy Technology Co., which has an agreement to supply Jeep-maker Stellantis NV. Lithium chemicals and copper foil are a particular concern, while all key battery metals have seen prices advance since mid-2020.



# Brine Deposits



# Environmental concerns



<https://www.sciencenews.org/article/lithium-mining-flamingo-technology-climate-change>

## Example: Flamingos of Chile

There are three species of flamingo found in the Chilean Andes which form the foundation of the region's ecotourism industry.

Two of these species breed nowhere else in the world.

Scientists found that the numbers of flamingos in the Salar de Atacama, where mining is taking place, are in decline.

The culprit is likely declining water levels, which reduces the food resources available to flamingos.

# Social Impacts of the Lithium Boom

- Poor, thinly populated regions
- Government with limited capacity
- Limited legal requirements for transparency in government spending
- Projected massive flows of funds
- No housing for workers
- Shortage of education and health resources
- Increasing prices of basic commodities



# Aluminum

Aluminum is one of the most widely produced and used metals on earth.

It is the single most widely used material in solar photovoltaic (PV) applications. In fact, the metal accounts for more than 85% of most solar PV components – from frames to panels.

Annual global aluminum production averages roughly **65 million metric tons** of primary aluminum and **30** of recycled aluminum

The International Aluminum Institute expects annual global aluminum demand to nearly **double by 2050**, an increase of 35% and 170% in primary and recycled production respectively.



## ALUMINUM PRODUCTION

Annual global aluminum production averages roughly 65 million metric tons of primary aluminum and 30 of recycled aluminum. “Today more aluminum is produced than all other non-ferrous metals combined.”

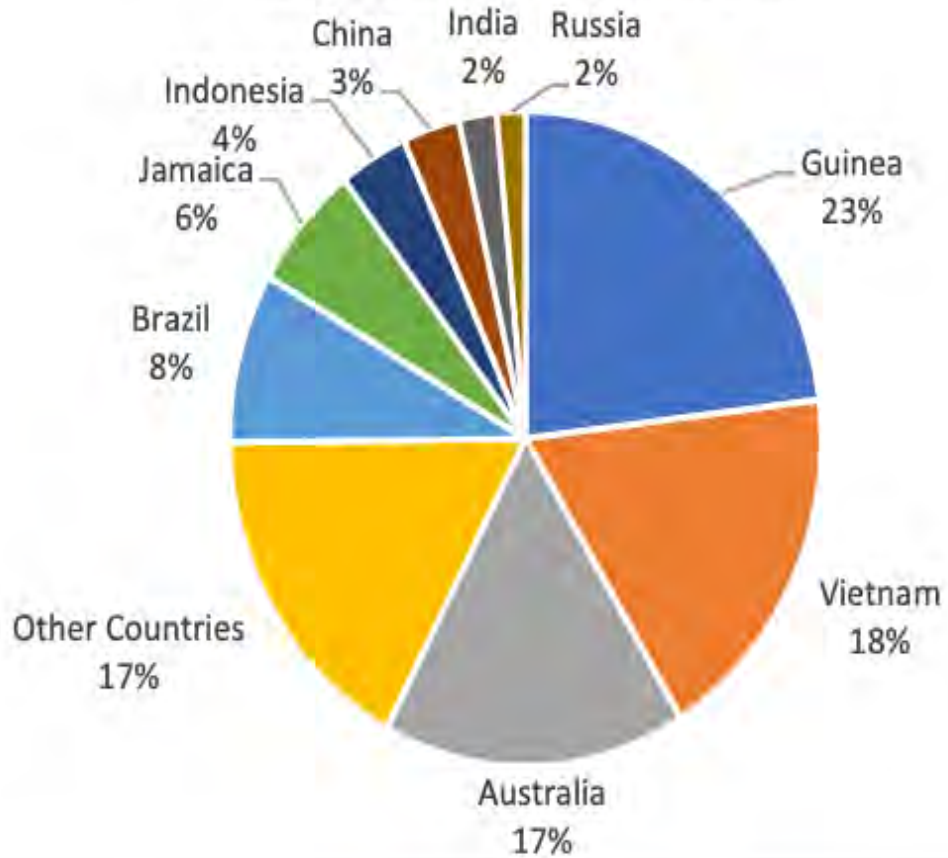
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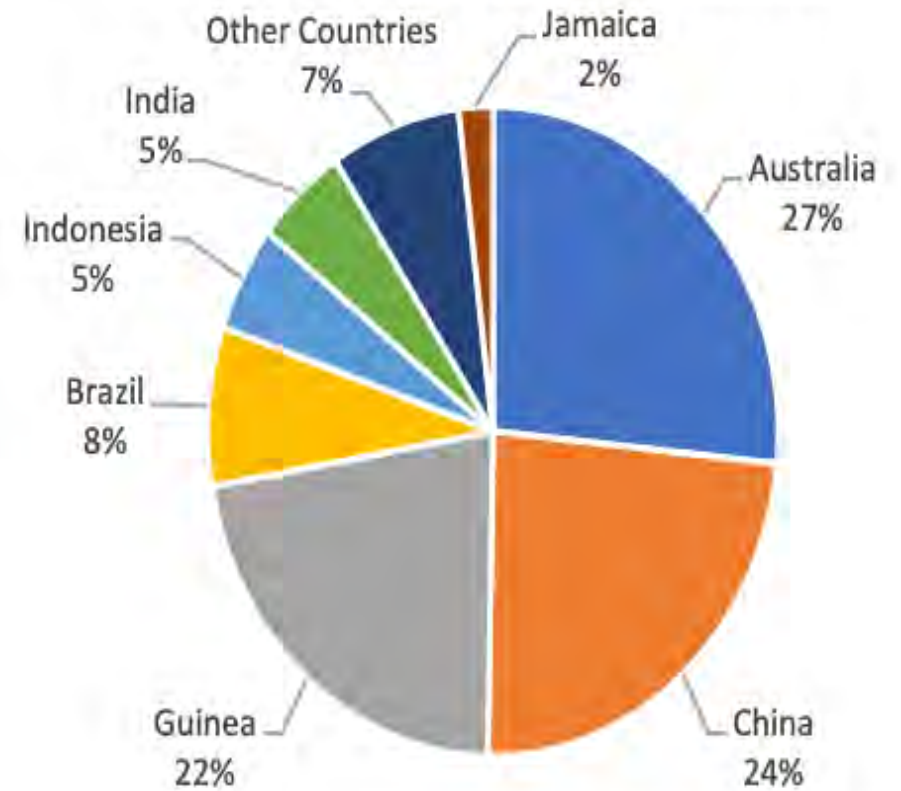
# Aluminum Ores Tend to be Located in Tropical and Subtropical Climates that are Forested

- “Bauxite deposits and mines are predominantly found in sedimentary rocks in lowlands and the majority of economic reserves (around 90%) are located in tropical and sub-tropical regions.” (Bardossy and Aleva, 1990 ).
- This is in part because climate conditions seem to play an important role in forming bauxite deposits. Uргуia et al., *Global direct pressures on biodiversity by large-scale metal mining: Spatial distribution and implications for conservation*, Journal of Environmental Management (2016).
- This means that aluminum production may have disproportionate impacts on forested landscapes.
- Bauxite mines tend to occupy large surface areas. Because bauxite occurs in relatively shallow deposits near the surface, extraction typically occurs through open cast mining. **Bauxite deposits cover many square kilometers and typically range from three to ten meters in depth.**

## Global Bauxite Reserves



## 2020 Global Bauxite Production



# RED MUD

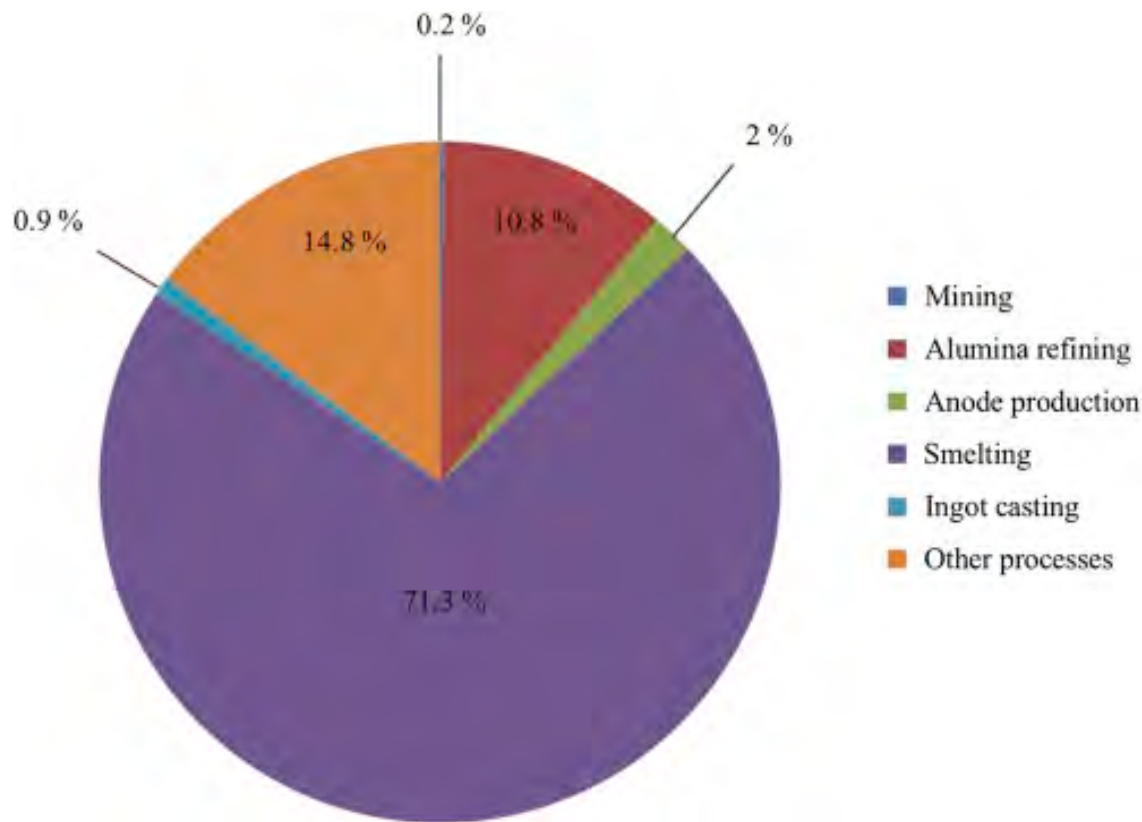
- So-called “Red Mud” is an industrial waste of the Bayer aluminum production process. The impacts are therefore felt where bauxite is converted to alumina.
- “The Bayer process produces not only the highly desired Al oxide from the bauxite ore, but it also produces an undesired by-product, called red mud. It contains toxic heavy metals and its high alkalinity makes it extremely corrosive and damaging to soil and life forms, creating a huge challenge for such disposals.
- There is considerably more Red Mud than aluminum produced.
- The typical “disposal” method for Red Mud used in industrial alumina operations involves discharging it as a slurry into holding ponds or dams. **But the Red Mud does not “go away,”** and the need to control it persists indefinitely. It is simply in a form of storage or confinement, which can ultimately fail. If red mud leaches from its storage area, whether by groundwater infiltration or large rain events, its high alkalinity and chemical components will result in impacts to water, soils, and air of the surrounding area.
- “More than 150 million tons of bauxite residue are produced every year ...., The majority of this highly toxic (and in part also valuable) waste is deposited as landfill. Worldwide more than 100 Bayer plants are operative. **The total stockpile of this bauxite residue exceeds 3500 million tons.”**

# NASA IMAGE OF RED MUD SPILL



# Carbon impacts of aluminum production

Percentage contribution in greenhouse gas emissions from major processes of aluminum production.



Aluminum deposits tend to be located in forested tropical and semi-tropical areas that currently sequester large amounts of carbon.

Producing aluminum is one of the most electrically intensive processes on earth

Most aluminum is smelted by electricity from coal fired power plants

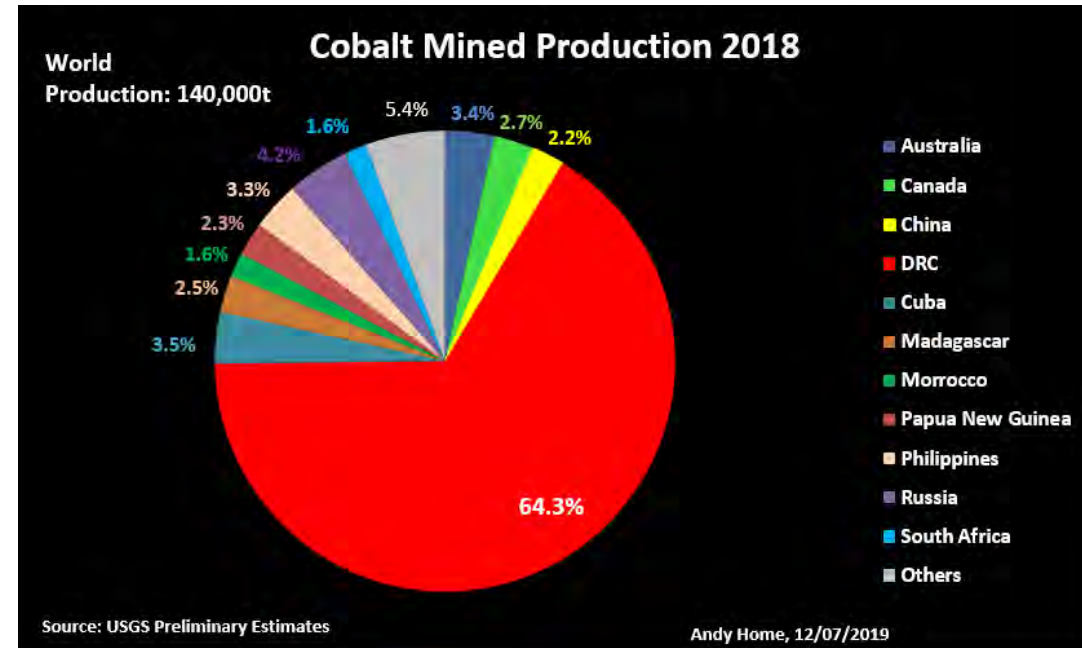


# Cobalt - an important battery material

By 2030 the global demand for cobalt will quadruple.

Rising sales of EVs = a scramble to secure cobalt supply chains

Much of the sourcing challenges for cobalt is about uncertainty regarding availability, security, and cost/price of cobalt extraction.



# Cobalt - Environmental, Social and Governance risk factors



The Democratic Republic of Congo produces about 70% of all cobalt on world markets, some 120,000 metric tons per year.

A significant portion of this is from artisanal mining

## Concerns:

- Weak governance
- Coercion
- Child labor
- Violence
- Forced labor
- Unacceptable environmental practices
- other human rights violations

# Copper Prices Could See "Astronomical Rise" as Supply Concerns Increase

- "If we are to meet energy transition targets, the amount of copper that's going to be used over the next 28 **years is going to exceed all of the cumulative copper consumption that the world has seen since 1900**," says John Mothersole of Market Intelligence.
- Electric vehicles (EVs) use about **four times more copper than internal combustion engine cars**, according to the International Copper Study Group. It can be found in batteries, windings, rotors, wiring, busbars and charging infrastructure.
- . Ivan Bebek, co-founder, president and CEO of Coppernico Metals, who was also featured in the copper forecast panel, said the world is not ready for the EV integration and modernization that's going on.
- "Finding mines that could make a difference, high-quality mines, is next to very, very, extremely difficult," he said. "Anything you find is going to take between 12 to 20 years to come online."

# Copper and Inequality

- While there has been considerable progress in electrification in recent years, the rate of progress has slowed. There are still 733 million people without access to electricity. Improving this situation requires putting much more copper in the hands of the world's poor, at a time when the rich countries are stressing copper supplies by their attempts to lead a transition to renewables.
- Per capita use of copper in the United States is about 12 kg. In China, even after years of economic growth, per capita copper usage was just 7.1 kg in 2013. India, with its 1.36 billion people, is at present using just 0.4 kg of copper per person

# RARE EARTH ELEMENTS

- Rare earths are a group of 17 elements, including the 15 lanthanides, together with scandium and yttrium. Rare earths are actually not rare, but relatively abundant in the Earth's crust. But the elements mostly occur in extremely low concentrations. Developed rare earth mines are limited in number.
- With the growing transition to renewable energy, the demand for rare earths, and specifically the rare earths used for permanent magnets (i.e., neodymium and dysprosium), is expected to increase considerably. The number of applications for rare earths and their importance to emerging technologies in renewable energy, defense applications, information technology and other fields is increasing rapidly.
- China leads the world in rare earth mining and processing. Chinese companies were responsible for about 60% of total world mine production in 2021. But the Chinese share of rare earth processing is even higher; perhaps 85% of all rare earth processing took place in China.
- The strength of Chinese companies in mineral processing is the basis for a similar position of strength in manufacturing of products that incorporate rare earths.
- In 2018 over 90% of the rare earth market value came from **permanent magnets**. Rare earth magnets are needed for many pieces of modern technology, such as smart phones and computer hard drives (Van Gosen et al., 2017). **Over 90% of magnet manufacturing takes place in China** (U.S. Department of Energy, 2022).



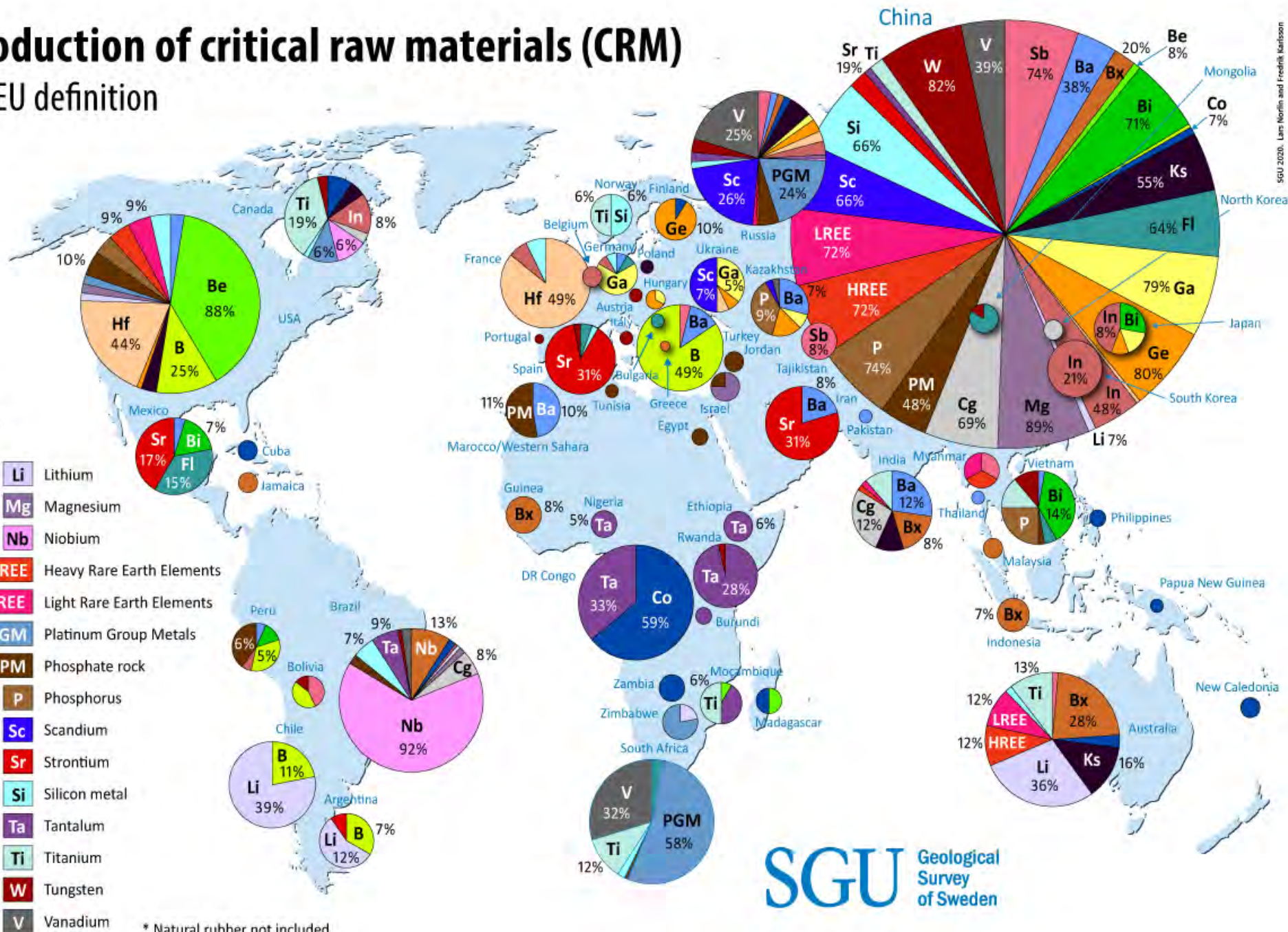
# Global production of critical raw materials (CRM) according to EU definition

according to EU definition

Critical raw materials included in the EU list \*

- |                            |                                       |
|----------------------------|---------------------------------------|
| <b>Sb</b> Antimony         | <b>Li</b> Lithium                     |
| <b>Bx</b> Bauxite          | <b>Mg</b> Magnesium                   |
| <b>Ba</b> Baryte           | <b>Nb</b> Niobium                     |
| <b>Be</b> Beryllium        | <b>HREE</b> Heavy Rare Earth Elements |
| <b>Bi</b> Bismuth          | <b>LREE</b> Light Rare Earth Elements |
| <b>B</b> Borate            | <b>PGM</b> Platinum Group Metals      |
| <b>Cg</b> Natural graphite | <b>PM</b> Phosphate rock              |
| <b>Co</b> Cobalt           | <b>P</b> Phosphorus                   |
| <b>Fl</b> Fluorspar        | <b>Sc</b> Scandium                    |
| <b>Ga</b> Gallium          | <b>Sr</b> Strontium                   |
| <b>Ge</b> Germanium        | <b>Si</b> Silicon metal               |
| <b>Hf</b> Hafnium          | <b>Ta</b> Tantalum                    |
| <b>In</b> Indium           | <b>Ti</b> Titanium                    |
| <b>Ks</b> Coking coal      | <b>W</b> Tungsten                     |
|                            | <b>V</b> Vanadium                     |

\* Natural rubber not included



SGU 2020, Lars Morlin and Fredrik Karlsson

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# Mineral exploration in our area





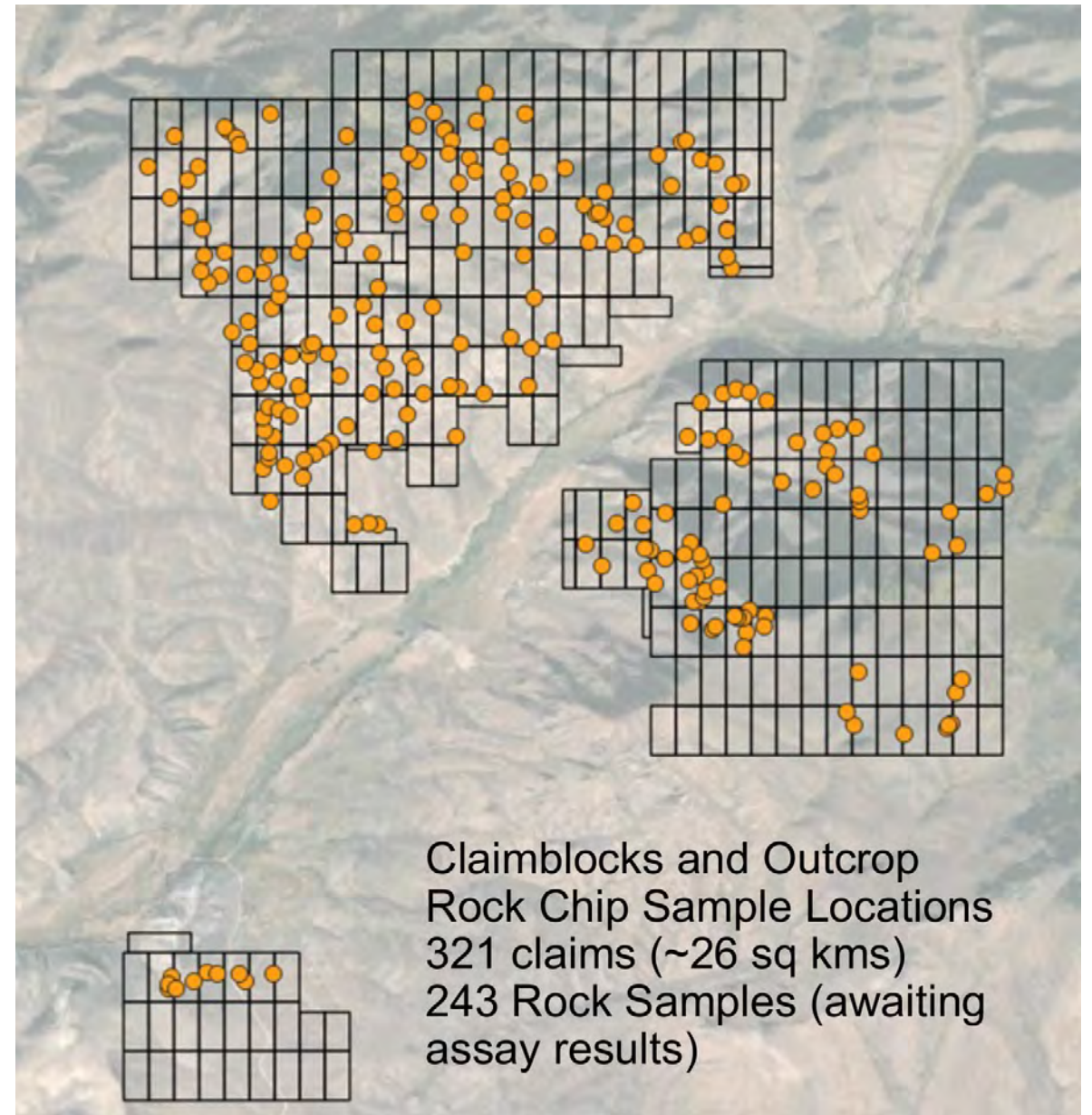
# The Patriot Lithium Project

In 2021 a geological crew from United Lithium Corp. worked in conjunction with a staking crew to collect 243 rock chip samples for analysis near **Ohio City** in the Quartz Creek Mining District

Lithium minerals were identified in a number of the samples

This area was mined in the 40s and 50s for lithium and beryllium to make armor and weapons during WWII.

The sites were reviewed due to their WWII-era significance.



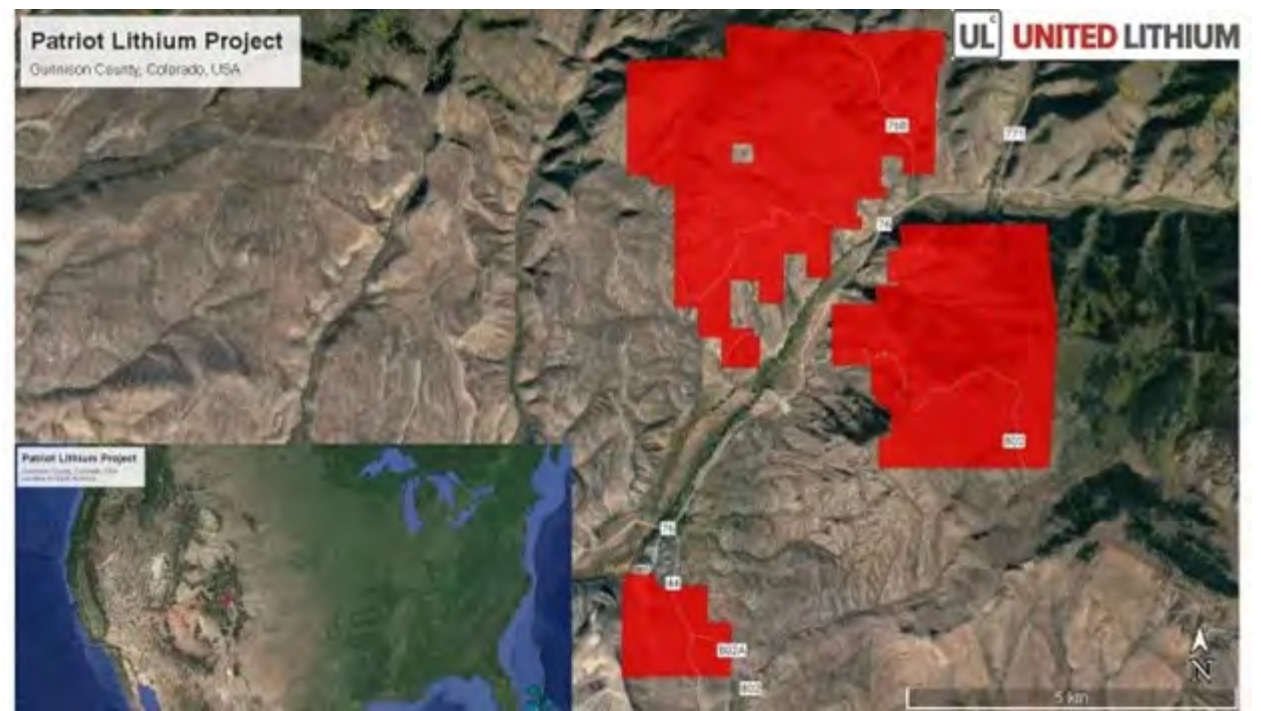
In 2022 United Lithium secured a 25-square-kilometer land position in the sampled area (~300 mining claims).

If United Lithium chooses to move forward following laboratory analysis of samples, they will use a core drilling method to obtain the lithium.

Holes will be 300-500 feet deep and 3 inches in diameter.

About a quarter to half an acre would be disturbed around any given hole

Water will be necessary for the mining process and to suppress dust.





# The Klondike Project



In 2022 First Tellurium Corp. completed collecting 343 soil samples on the Klondike property, 10 miles from **Saguache**

This site was previously explored by a raw materials exploration company, First Solar

First Solar reported:

“very high tellurium grades ...locally high gold grades....the highest [tellurium] encountered in the company’s nationwide exploration program.”



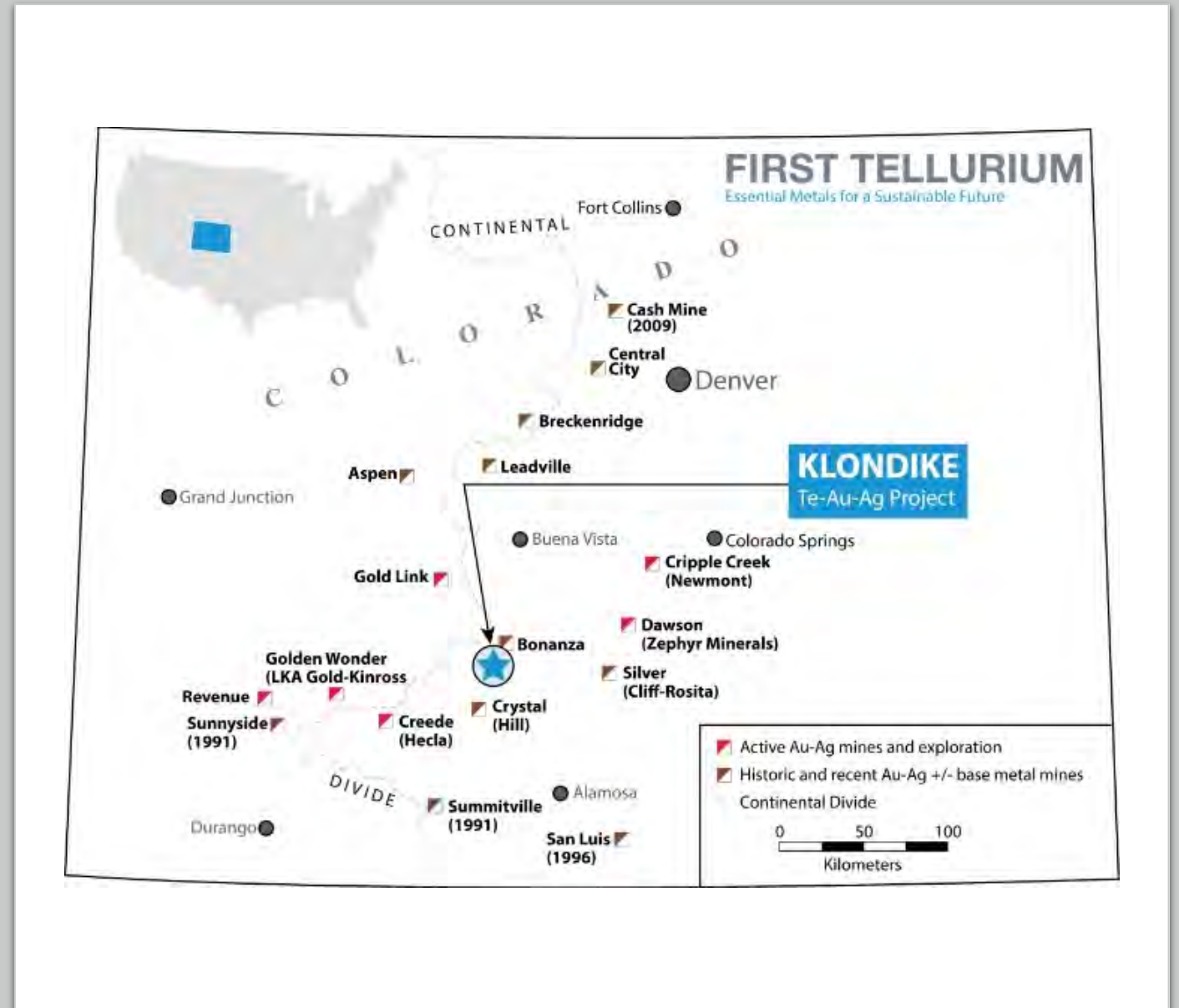
Tellurium is one of the least common elements on earth.

Amongst other uses, tellurium will be a critical component for safer, quicker-charging, high energy capacity Lithium-Ion batteries for EV's and smaller electronics.

It is important for manufacturing photovoltaic cells in solar panels.

Data and interpretations from soil samples will inform a Phase 1 drilling program at Klondike, helping to better formulate drillhole targeting and permitting drill sites.

Explorative drilling will begin in 2023.



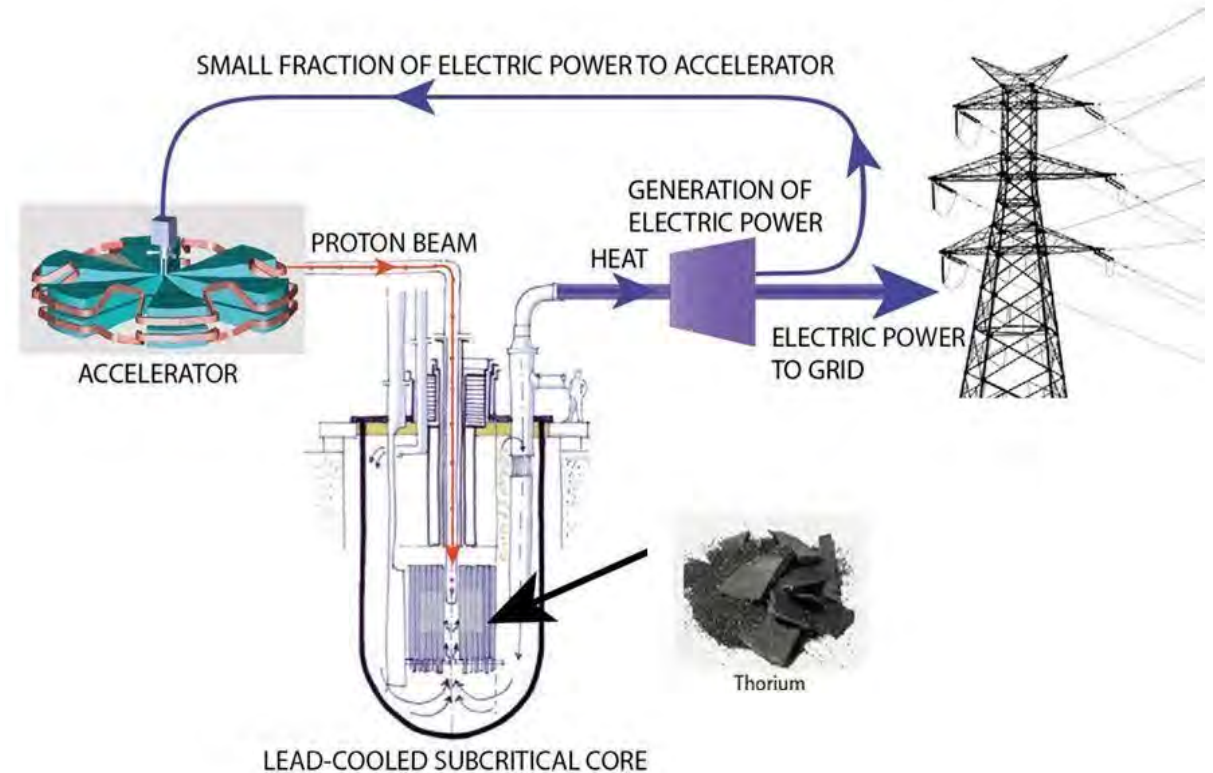
# Thorium and Rare Earth Elements

Thorium and other rare earth elements have been found since 1949 in at least 33 deposits in an area 6 miles wide and 20 miles long in the **Powderhorn** district.

The veins range from a few inches to 18 feet in thickness and from a few feet to 3,500 feet in length.

Rare earth elements are an important component of wind turbines, touch screens, cell phones and other technologies

The development of new technologies and overcoming the stigma of nuclear may result in thorium taking the spotlight as a source of green energy



An Accelerator Driven System (ADS) for clean electricity, based on 20 years of research at CERN.

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# Mineral extraction globally







Where is mineral extraction happening?

Who is it impacting?

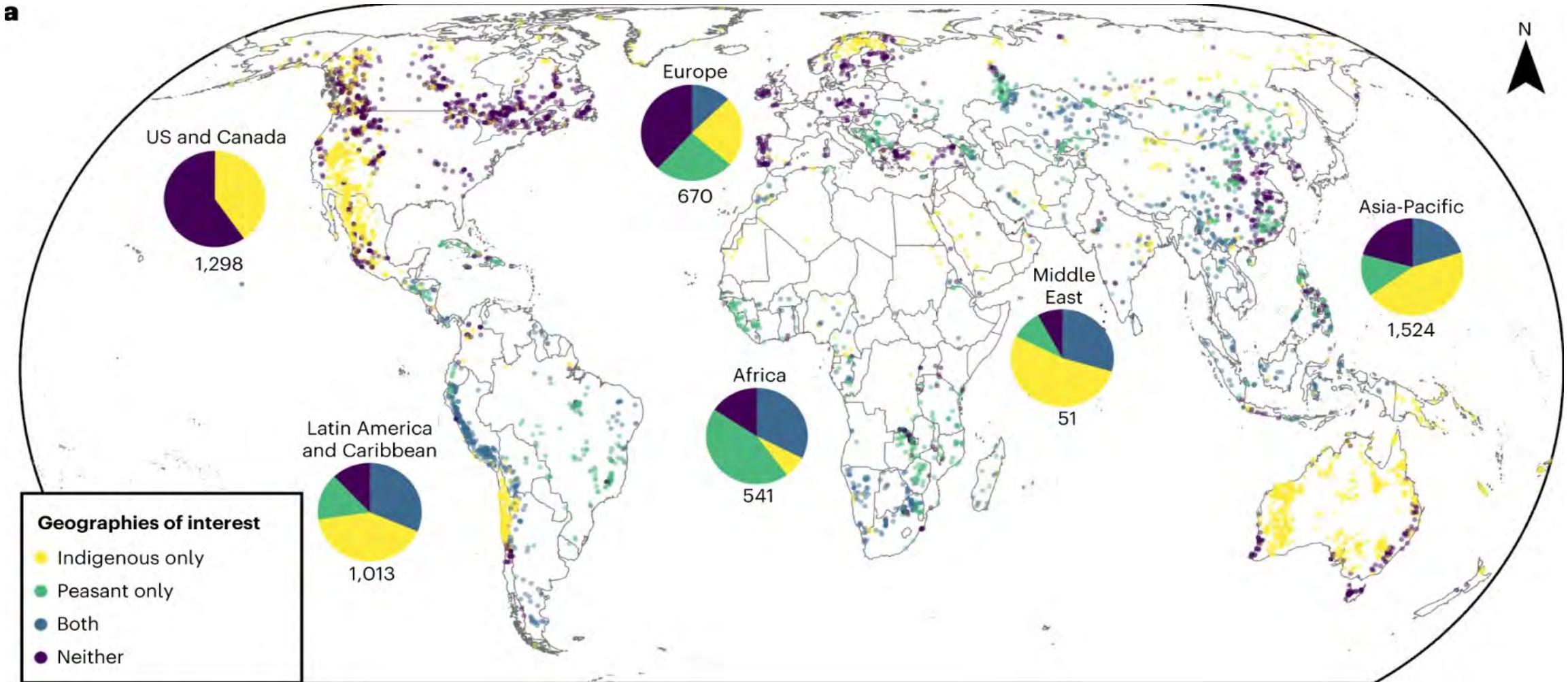
Who is making the decisions?

Who does it benefit?

**Minerals development in past eras has often been a source of great injustices, serious damage to the environment, and significant conflict.**

**Frequently there is a great disconnect between those who reap great benefits from mineral development and those who experience its negative impacts.**





Locations of 5,097 current and future mining activities for energy transition materials.



# Indigenous Peoples

“Indigenous Peoples are distinct social and cultural groups that **share collective ancestral ties to the lands and natural resources** where they live, occupy or from which they have been displaced. The land and natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being.”

- World Bank

# Indigenous Peoples

“There are an estimated 476 million Indigenous Peoples worldwide. Although they make up just 6 percent of the global population, they account for about 19 percent of the extreme poor. Indigenous Peoples’ life expectancy is up to 20 years lower than the life expectancy of non-indigenous people worldwide.

Indigenous Peoples often lack formal recognition over their lands, territories and natural resources, are often last to receive public investments in basic services and infrastructure and face multiple barriers to participate fully in the formal economy, enjoy access to justice, and participate in political processes and decision making.”

- World Bank

# Indigenous Peoples

“While Indigenous Peoples own, occupy, or use a quarter of the world’s surface area, they safeguard 80 percent of the world’s remaining biodiversity. They hold vital ancestral knowledge and expertise on how to adapt, mitigate, and reduce climate and disaster risks. ”

- World Bank

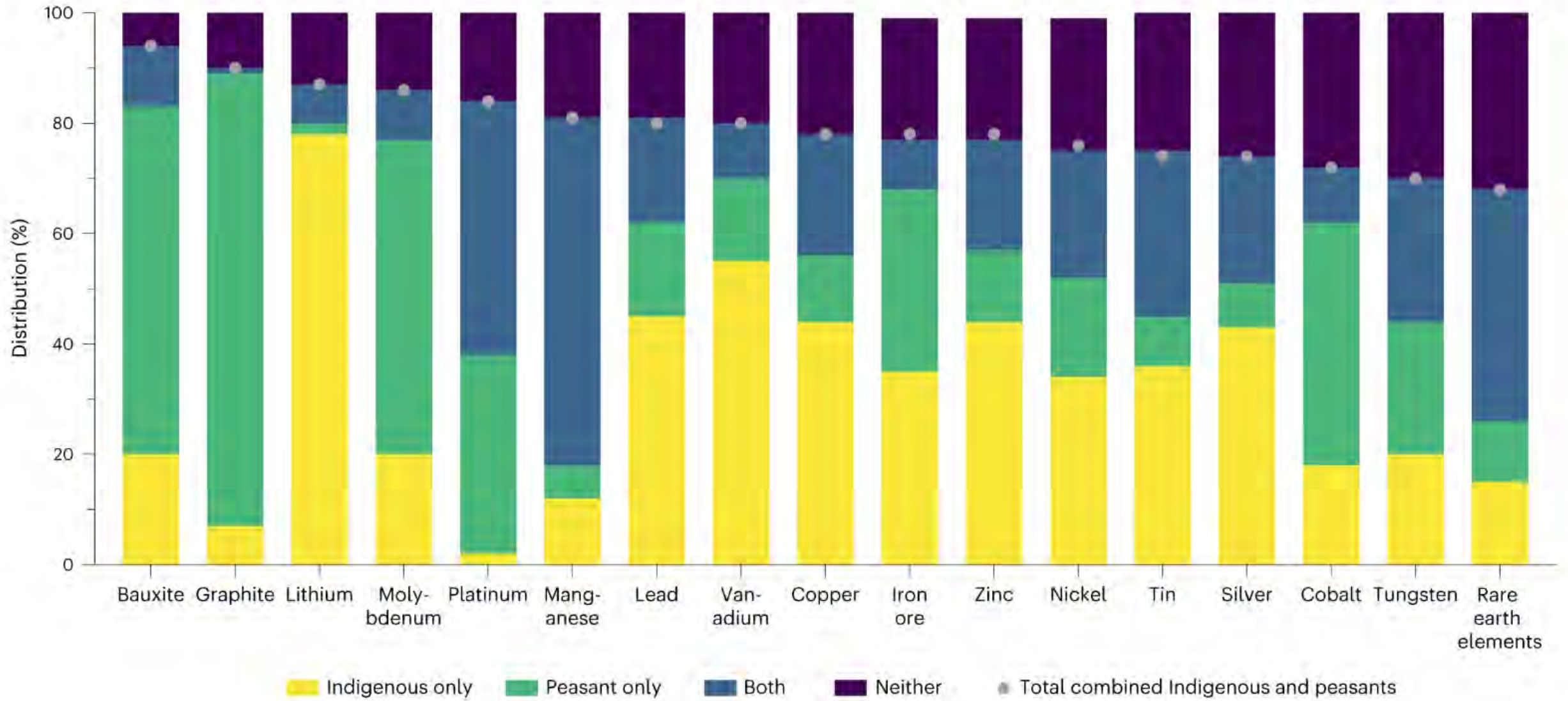
# Indigenous Peoples and Mining

- Most indigenous peoples have faced dispossession of their lands, or at least the threat of dispossession
- The desire to control their lands and exploit them for minerals is probably the single biggest driver of despoiling and dispossessing indigenous peoples over the last several centuries
- E.g. the place where we live
- Even if the rest of us have forgotten this history, indigenous peoples have not. Trying to sell them on opening their lands for mining is a hard sell.

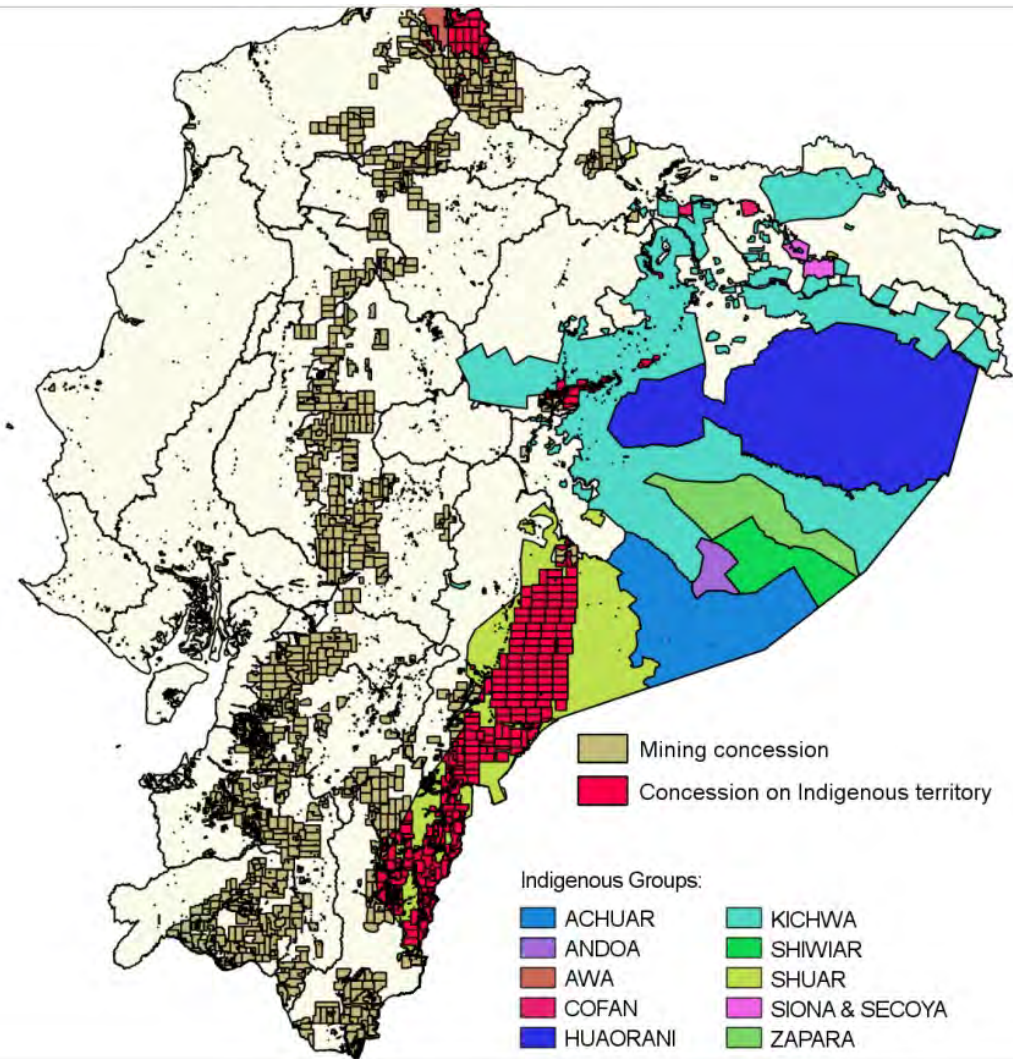
Indigenous Peoples and Mining Encounters: Strategies and Tactics  
Downing, et al. (2002)

**“Much of the remaining unexploited ores in sufficient concentration to be attractive for modern commercial exploitation lie under indigenous lands.** As pressure builds to gain access to their lands, a major sustainability and land access problem is unfolding. Mining can empower indigenous peoples, but previous encounters have stripped them of their sovereignty, their traditional wealth, and posed multiple impoverishment risks. The public has indicted the industry for tragic and unnecessary forced relocations, violations of human rights, under-compensation for damages, and lack of benefit sharing.”





# Ecuador



Roo Vandegrift, Daniel C. Thomas, Bitty A. Roy, and Mierya Levy; 2017.11.05 v1.0; The extent of recent mining concessions in Ecuador; Rainforest Information Center, Nimbin, New South Wales, Australia.



There is a long list of minerals associated with the green energy transition and each one has a story.

Many of these stories involve impacts on indigenous peoples, lands and territories.

Indigenous rights must be respected in this process. This is necessary to:

- Because it is the right thing to do
- To reduce conflict
- To build trust between indigenous communities, government, and the private sector
- To reduce environmental impacts
- To ensure indigenous communities benefit from the mining activities
- To give Indigenous voices decision making power





# Argentina

Argentina has among the world's largest lithium reserves, with two active production sites and over 60 projects under development.

Water-reliant industries' actions in the region, including lithium extraction, heavily impact the already limited water resource.

An Indigenous community of the Salinas Grandes salt flat relies on llamas as a source of meat, textiles and crafts made from wool. They have already seen lush regions become barren, and fear that soon there will not be enough water for their llamas.

Nearby communities live from artisanal salt harvesting, and from producing food such as peas and potatoes – all of which require water.





# Chile

Chile has the world's largest lithium reserves..

Mining is depleting indigenous communities' water supplies and affecting farming and pastoral practices.

Some communities rely on terraces to grow crops. Water flows down through vertical waterways between the terraces, from the highest point of the river, and is distributed in a controlled manner. This traditional practice is in danger of being lost.

As are the vineyards which some communities tend to produce wine.





# Nevada, USA

Thacker Pass Lithium mine project-  
the largest known lithium resource in the US.

The project is located on land in northern Nevada inhabited by the Northern Paiute for as long as 15,000 years.

Several Indigenous nations believe Thacker Pass is a sacred site, including the Fort McDermitt Paiute Shoshone Tribe, the Reno-Sparks Indian Colony (RSIC), the Shoshone-Paiute Tribes of the Duck Valley Reservation, Lovelock Paiute Tribe, Fallon Paiute Shoshone Tribe, and the Pyramid Lake Paiute Tribe



<https://unicornriot.ninja/2022/indigenous-fear-desecration-of-burial-sites-at-thacker-pass-lithium-mine/>

# Australia

80% of mining activities in Australia take place on Aboriginal lands.

More than 40% of Australia's landmass is under Native Title, a law recognizing Aboriginal people have varying rights to live or hunt on the land.

Native Title is not the same as ownership, and Aboriginal people typically can't veto proposed projects on native-titled land that they don't want. Developers are required only to negotiate "in good faith" for six months to try to reach an agreement with the community.



# Indigenous Rights

- Countries have obligations under international human rights law to respect the cultures, lands and resources of indigenous peoples
- Almost all countries voted for the 2007 United Nations Declaration on the Rights of Indigenous Peoples
- In many cases, national governments have fallen short of implementing necessary measures to protect indigenous rights
- We focus on one treaty, ILO Convention 169, because it is the subject of our recent work.



# Our current work includes:



## The Path to Peace and Development

- Analyzes over 25 rulings of the courts of numerous Latin American countries, almost all of which are ruling in favor of indigenous communities.
- We also look at subsequent efforts of governments to bring their processes in line with the requirements of the Convention.
- It will be published in Spanish in March 2023 by the Human Rights Institute of the University of Deusto in Spain
- It will be published in English in April by the Foundation for Natural Resources and Energy Law

We participated in the **national assessment of Ecuador's mining laws and policies**. This Assessment identified inadequate consultation with indigenous peoples as a priority problem. We led the Technical Assistance effort on these issues with the Government of Ecuador

We are currently leading a similar Technical Assistance program on indigenous consultation with the Government of Mexico.

In April, at FNREL's Latin American conference on **International Mining and Energy Law, Development and Investment** in Mexico City, I will chair a panel that will discuss national treaty obligations to consult Indigenous Peoples in making resource decisions





*ILO Convention No. 169 On Indigenous and Tribal Peoples  
in Independent Countries*



## Convention 169

Based on respect for the cultures and lifestyles of indigenous and tribal peoples and recognizes their right to define their own development priorities.

Its two basic postulates are:

1. their right to maintain and strengthen their cultures, lifestyles and institutions; and,
2. their right to participate effectively in decisions that affect them.

It contains 46 articles setting minimum standards of respect for the rights of indigenous peoples, including the ownership of their lands, the natural resources of their territories, preserving their traditional knowledge, self determination and prior consultation.

# 12 BASIC PRINCIPLES OF CONSULTATION WITH INDIGENOUS PEOPLES



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A document created as part of our review of international jurisprudence on Indigenous rights, which focused on ILO Convention No. 169

We aim to identify the basic principles of consultation to ensure that any legislation, regulation, or internal protocols of signatory countries of the Convention are consistent with the obligations they assumed upon ratification

# PRINCIPLE 1

## CONSULTATION APPLIES TO LEGISLATIVE OR ADMINISTRATIVE MEASURES

Article 6 No. 1 (a) of the Convention requires the Government to consult the peoples concerned (indigenous or tribal) **whenever consideration is being given to legislative or administrative measures that may affect them directly.**

Therefore, a government should not adopt legislation, regulations, or administrative measures that could directly affect indigenous or tribal peoples without prior consultation with the representative institutions of the affected peoples.





# PRINCIPLE 2

## SUSCEPTIBILITY TO DIRECT IMPACT

The duty to consult may be required with respect to:

- Administrative decisions on projects that can be developed on lands or territories recognized as belonging to indigenous or tribal peoples.
- Decisions concerning activities affecting lands or territories which, **although not officially recognized as belonging to indigenous or tribal communities, are disputed, claimed, or have important links to particular communities.**
- Decisions regarding projects that directly impact resources that are important to indigenous or tribal communities, such as water, wildlife, vegetation, or resources of historical or traditional use.
- Decisions regarding projects that impact sites of cultural or historical importance, sites of traditional use, ancestral tombs, etcetera.
- Decisions regarding activities that may directly impact indigenous peoples themselves, such as matters related to health, education, use of traditional languages, or maintenance of culture.

# PRINCIPLE 3

## IDENTIFICATION OF INDIGENOUS OR TRIBAL PEOPLES TO WHOM THE CONVENTION APPLIES

Tribal peoples are groups whose social, cultural, and economic conditions distinguish them from other sectors of the national community. Tribal peoples self-identify as members of their group and are governed wholly or partly by their customs, traditions, or special legislation.

If a particular group qualifies as indigenous or tribal under these criteria, **the State should not adopt definitions or other provisions that disregard their Indigenous or tribal identity and thus affect their right to consultation.**



# PRINCIPLE 4

## PURPOSE OF THE CONSULTATION

Consultations should be conducted in good faith and should aim at reaching an agreement or obtaining the consent of the people concerned.





# PRINCIPLE 5



<https://time.com/6109446/australia-aboriginals-green-energy/>

## INFORMED CONSULTATION

If the process aims to reach an agreement, people must be provided with the necessary information to ensure all aspects of the project are understood.

The definition of what constitutes necessary information should be determined by listening to the voices of the people concerned.





# PRINCIPLE 6

## **CULTURALLY APPROPRIATE PROCESS**

Consultations should be conducted under culturally appropriate procedures.

The community has the right to determine what information it needs and how it should be presented for cultural relevance.

Funds may be necessary to allow the affected peoples access to experts in relevant subjects.

# PRINCIPLE 7



## PRIOR CONSULTATION

Consultation with Indigenous communities must occur **prior to project development** or implementation of a plan.

Early notice provides adequate time for discussion within communities and allow communities to offer a thoughtful response to the State.



# PRINCIPLE 8

## GOVERNMENT IS RESPONSIBLE FOR THE CONSULTATION

The Government must conduct the consultation and cannot delegate this responsibility to third parties.



# PRINCIPLE 9

## THE ROLE OF THE PRIVATE SECTOR

Consultation must define a role for the company that intends to develop the project so that affected communities have an understanding of the possible benefits and risks of the project and can establish a genuine dialogue with the company.





# PRINCIPLE 10



## STATE SAFEGUARDS

The State must comply with the following safeguards:

Conduct an appropriate and participatory process that guarantees the right to consultation, especially in regard to development or large-scale investment plans

Conduct an environmental impact assessment

Reasonable share of the benefits produced by the exploitation of natural resources

# PRINCIPLE 11



## RESPECT THE AUTHORITIES OF EACH VILLAGE/COMMUNITY

It is the obligation of the State to carry out consultation processes that respect the decision-making system of each tribe or community so that an adequate and effective relationship is established with other state authorities, social or political actors, and interested third parties.



# PRINCIPLE 12



## PROTECTION OF THE COMMUNITY

The States must protect the community from third-party activities that aim to divide or interfere with their decision-making processes.

These activities may include offering money or economic benefits to obtain member consent, entering into secret agreements with members of the group or carrying out activities of exploration and exploitation of natural resources in a way that affects their right to consultation or to other rights.



# Chile

Case	Tribunal	Year
Comunidades Indígena Inalafquen e Inocente Panguilef y la Asociación Indígena Futa Koyagtun Coz Coz Mapu vs. Servicio de Evaluación Ambiental	Corte Suprema de Justicia, 3ª Sala	2014
Oficina de Asuntos Indígenas de la Conadi vs. S.Q.M. Salar S.A	Corte Suprema de Justicia	2014
Organización Comunitaria “Los Pueblos Indígenas Unidos de la Cuenca de Tarapacá, Quebrada de Aroma, Coscaya, Miñi Miñi” vs. Servicio de Evaluación Ambiental	2º Tribunal Ambiental	2015
<i>Comunidad Indígena Atacameña de Peine c. Dirección General de Aguas</i>	Corte de Apelaciones de Antofagasta	2020
<i>Comunidad Indígena Colla Río Jorquera y Sus Afluentes con Comisión de Evaluación Ambiental de la Región de Atacama</i>	Corte Suprema de Justicia	2021

# Ecuador

Case	Tribunal	Year
Confederación de Nacionalidades Indígenas del Ecuador y otros contra Ley de Minería	Corte Constitucional	2010
Consulta popular del Consejo Nacional Electoral	Corte Constitucional	2014
Consulta Popular Galo Patricio Mina Espinoza, Luis Amador Mina Espinoza y otros pobladores de la comunidades asentadas en las parroquias de Lita	Corte Constitucional	2019
Consulta Popular del Prefecto del Azuay	Corte Constitucional	2019
JOSE RIVADENEIRA SERRANO, COORDINADORA ECUATORIANA DE ORGANIZACIONES PARA LA DEFENSA DE LA NATURALEZA Y AMBIENTE, CEDENMA, PEDRO BERMEO GUARDERAS, ASOCIACION ANIMALISTA LIBETA ECUADOR, Y ALEXANDRA ALMEIDA ALBUJA, ACCION ECOLOGICA	CORTE PROVINCIAL DE JUSTICIA DE SUCUMBIOS	2021
All Metals Minería y otros v. Corte Provincial	Corte Constitucional	2019
GAD de Santa Ana de Cotacachi v. ENAMI y otros	Corte Constitucional	2021

# Colombia

Case	Tribunal	Year
Organización Indígena de Antioquia y Comunidad Indígena EMBERACATIO de Chajeradó vs. Corporación Nacional de Desarrollo del Chocó (CODECHOCO) y la Compañía de Maderas del Darién (MADARIEN)	Tercera Sala de Revisión de la Corte Constitucional	1993
Procuradora Delegada para Asuntos Etnicos vs. Gobernador del Departamento del Cesar, el Registrador Nacional del Estado Civil y el Registrador Departamental del Cesar	Septima Sala de Revisión de la Corte Constitucional	1999
Julio Alberto Torres Torres y otros vs. Ministerio del Interior y de Justicia y otros	Cuarta Sala de Revisión de la Corte Constitucional	2010
Oscar Carupia Domicó y otros, a nombre de los resguardos Chidimato y Pescadito pertenecientes a la etnia Embera-Katío vs. Ministerios de Transporte, Ambiente, Vivienda y Desarrollo Territorial, Interior y de Justicia, de Minas y Energía, de Agricultura, de Defensa, el Consejo Asesor de Regalías	Quinta Sala de Revisión de la Corte Constitucional	2011
Jovannys Pardo Castro vs. la Dirección General Marítima de la Capitanía de Puerto de Cartagena (Dimar)	Primera Sala de Revisión de la Corte Constitucional	2012



# Colombia

Case	Tribunal	Year
Junta Directiva del Consejo Comunitario de Mulaló vs. Ministerio del Medio Ambiente y Desarrollo Sostenible, Ministerio del Interior, Instituto Nacional de Vías (INVIAS), Consorcio D.I.S. S.A- EDL LTDA	Primera Sala de Revisión de la Corte Constitucional	2013
Zully Amparo Archibold vs. Ministerio de Comercio, Industria y Turismo, la Corporación Autónoma Regional Coralina y el Municipio de Providencia y Santa Catalina Islas	Cuarta Sala de Revisión de la Corte Constitucional	2014
Jacinto Epinayú, Luis Geronel Quintana y otros, identificados como indígenas del pueblo wayúu, vs. el Incoder, con vinculación de Agromar SAS	Primera Sala de Revisión de la Corte Constitucional	2015
Santacoloma Méndez y Negrete Montes	Corte Constitucional	2016
Comunidad Indígena Awá La Cabaña versus Consorcio Colombia Energy	Corte Constitucional	2018

# Peru

Case	Tribunal	Year
Bustamante con Occidental Petrolera del Peru	Tribunal Constitucional de la Republica del Peru	2009
ASOCIACION INTERETNICA DE DESARROLLO DE LA SELVA PERUANA con Ministerio de Energia y Minas	Tribunal Constitucional de la Republica del Peru	2010
Gonzalo Tuanama Tuanama y más de 5000 Ciudadanos vs. Presidencia del Consejo de Ministros	Tribunal Constitucional de la Republica del Peru	2010
Ministerio de Energía y Minas vs. Gobierno Regional de Junín	Tribunal Constitucional de la Republica del Peru	2012
Instituto de Defensa Legal vs. Ministerio de Energía y Minas	Sala de Derecho Constitucional y Social Permanente de la Corte Suprema de Justicia de la Republica del Peru	2013

# Peru

Case	Tribunal	Year
Instituto de Defensa Legal vs. Ministerio de Energía y Minas	Tribunal Constitucional de la Republica del Peru	2014
Instituto de Defensa Legal del Ambiente y el Desarrollo Sostenible Perú (IDLADS Perú) vs. Corte de Justicia de Lima	Tribunal Constitucional de la Republica del Peru	2021
ASOCIACION INTERETNICA DE DESARROLLO DE LA SELVA EPRUANA – AIDSESEP	Corte Suprema de Justicia de la Republica del Peru	2021
Comunidades campesinas Chila Chambilla y Chila Pucara vs. Instituto Minero Metalúrgico (Ingemmet) y Ministerio de Energía y Minas (MEM)	Tribunal Constitucional de la Republica del Peru	2019



# Mexico

Case	Tribunal	Year
Acueducto Independencia y la tribu Yaqui	Suprema Corte de Justicia Nacional	2013
Mayas con Monsanto. Voto Concurrente disponible en	Suprema Corte de Justicia Nacional	2015
NORMA ANGÉLICA GARZÓN MARTÍNEZY OTROS vs. CÁMARA DE DIPUTADOS Y CÁMARA DE SENADORES DEL CONGRESO DE LA UNION	Suprema Corte de Justicia Nacional	2020
Comisariado Ejidal de Tecoltemi y la Comunidad Indígena Nahua de Tecoltemi con Camara de Diputados y Senadores del Congreso de la Union, Director General de Minas de la secretaria de Economia y Minera Gorrion	Corte Suprema de Justicia Nacional	2022

# Guatemala

Case	Tribunal	Year
OXEC y Comunidad q'eqchi		2017
Centro de Acción Legal-Ambiental y Social de Guatemala (CALAS) contra Ministro de Energía y Minas	Corte de Constitucionalidad	2017

# Inter-American Court of Human Rights

Case	Year
Caso del Pueblo Saramaka vs. Surinam	2007
Pueblo Indígena Kichwa de Sarayaku vs. Ecuador	2012



Thank You!

Questions?



**SDSG**

**SUSTAINABLE DEVELOPMENT  
STRATEGIES GROUP**

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