

# Open Letter to the European Union

## **To be globally just and sustainable, the Critical Raw Materials Act must ensure effective social, environmental and governance safeguards and provide meaningful participation to local communities, Indigenous Peoples, and civil society in resource-rich countries**

17 July 2023

Dear Commissioners,

Dear Honourable Members of the European Parliament,

Dear Ministers,

We, movements, Indigenous Peoples, and Civil Society Organizations, particularly but not exclusively from resource-rich countries in the Global South, are very concerned due to the lack of strong due diligence terminology and safeguards for the sourcing of raw materials in the Critical Raw Materials Act and other related legislation.

We, in resource-rich countries, are already experiencing the double impacts of the climate crisis, on one hand via the effects of climate change itself and on the other hand from the increase in mining and renewable technologies infrastructure resulting from decarbonisation plans of rich countries.

The EU's decarbonisation ambition is laudable, but to be just and fair, it has to follow the rule of law and its associated legislations have to adhere to the highest standards, including the respect of human rights, Indigenous Peoples' rights and environmental protection, not only within the European Union, but in other resource-rich countries – including our lands and communities.

The Critical Raw Materials Act and other related legislation, such as the Corporate Sustainability Due Diligence Directive, among others, will have a direct impact on our health and well-being, cultural practices, traditions and values, livelihoods, and environment. People are regularly killed attempting to safeguard the environment we rely on.

For this reason, we ask you to take a human-rights based approach to decarbonisation and ensure that all rights holders and stakeholders in resource-rich countries, not only governments and the private sector, are involved in the process in a full and meaningful way.

More specifically, we ask you to set the following minimum conditions for strategic projects and the sourcing of raw materials from resource-rich countries:

**1) Respect human rights, Indigenous rights and adhere to international human and environmental rights legislation, agreements, and standards**, including the UN Guiding Principles on Business and Human Rights, United Nations Declaration on the Rights of Indigenous Peoples, ILO Conventions as well as the full Aarhus convention, the Escazú agreement as well as the EU Corporate Sustainability Reporting Directive. The CRMA should ensure that companies adhere to strict mandatory Human Rights and Environmental Due Diligence.

**2) Ensure that strategic partnerships are formed and run in a democratic manner**

Negotiations for strategic partnerships should be announced in a timely fashion and agreements with resource-rich countries should be disclosed prior to approval. The CRMA should address the high corruption risk in the mining sector.

**3) Meaningful participation and accountability**

Rights holders, especially Indigenous Peoples, civil society organisations and local communities, must have a stake in the governance of the CRMA and should be able to participate in the definition and monitoring of strategic projects and partnerships.

**4) Minimum requirements for strategic projects**

The environmental and social impacts of mining and other projects related to the energy transition should be assessed during the permitting process and projects cannot go ahead without concerned Indigenous Peoples' Free Prior Informed Consent.

Companies participating in strategic projects should have in place a clear, easily accessible, and safe grievance mechanism and a history of human rights abuses or environmental destruction should lead to the exclusion of companies.

There should be a mechanism to facilitate access to justice for victims of corporate abuse and strict sanctions for companies that fail their due diligence obligations.

Instead of using self-regulation through certification schemes, companies must be monitored by governments and a neutral third party.

**5) Respect our cultural practices, traditions and values, our lifestyles, and our environment**

Strategic projects should respect no-go zones, including protected areas, the deep-sea, and sacred sites. Regulations on conflict minerals and minerals extracted through forced or child labour must be enforced and adopted respectively.

#### **6) We should not just be treated as raw material suppliers**

Set clear goals and clarify what it means to add value through strategic partnerships. Furthermore, support the development of our countries through climate finance, knowledge and technology transfer, the provision for local procurement and ensuring that companies pay taxes in host countries and create decent jobs.

#### **7) Take responsibility for reducing the EU's own consumption**

In turn, this will reduce the demand for raw materials from our countries.

Taking these concerns into account will be crucial to ensure climate and resource justice on a global scale. The CRMA could be an opportunity for the European Union to promote a just energy transition that pays off the historical ecological debt owed to the countries of the Global South and respects their development models.

We urge you to take these recommendations into consideration, as the policy decisions regarding the Critical Raw Materials Act will have a large impact on our lives.

Sincerely,

#### ***Signatories:***

- *AbibiNsroma Foundation*
- *Action Mines Guinée*
- *African Resources Watch (AFREWATCH)*
- *Aksi Ekologi & Emansipasi Rakyat (AEER), Indonesia*
- *Alliance Voahary Gasy (AVG)*
- *alterNativa Intercanvi amb Pobles Indígenes*
- *Alyansa Tigil Mina (ATM)*
- *Asia Dalit Rights Forum (ADRF)*
- *Bench Marks Foundation*
- *Cadre de Concertation de la société civile de l'Ituri sur les Ressources Naturelles*
- *CartoCrítica (México)*
- *Centre congolais pour le droit du développement durable (CODED)*
- *Centro de Análisis Socioambiental (CASA), Chile*

- *Christi - Perú*
- *Coalition des Organisations de la Société Civile pour le Suivi des Réformes et de l'Action Publique (CORAP)*
- *Coalition Nationale de Plaidoyer Environnemental (CNPE)*
- *Coalition Publiez Ce Que Vous Payez-Mali (PCQVP-MALI)*
- *Comité Nacional pro Defensa de la Fauna y Flora*
- *CooperAcción*
- *Cordillera Women's Education Action Research Center (CWEARC)*
- *Corporate Europe Observatory*
- *Crudo Transparente*
- *Cultural Survival*
- *Debt Observatory in Globalisation (ODG)*
- *Derecho Ambiente y Recursos Naturales*
- *Ecosistemas*
- *Engenera, A.C.*
- *Enginyeria sense Fronteres*
- *Focus Association for Sustainable Development*
- *Forest Peoples Programme*
- *Forests of the World*
- *Fundación Ciudadanía y Desarrollo - TI Ecuador*
- *Fundación Foro Nacional por Colombia - Capítulo Suroccidente*
- *Fundación Terram*
- *Funprosperiti Guatecivica*
- *Future-Prenuers Zambia (FPSZ)*
- *Global Witness*
- *Grupo Propuesta Ciudadana*
- *Indonesia for Global Justice (IGJ)*
- *Interamerican Association for Environmental Defense -AIDA*
- *Lafede.cat - Organitzacions per a la Justícia Global*
- *Legisladores x el Ambiente ALC*
- *Natural Resource Governance Institute (NRGI)*
- *Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE)*
- *Observatorio Petrolero Sur*
- *Pakistan Development Alliance*
- *Perkumpulan HuMa Indonesia*
- *Philippine Rural Reconstruction Movement*
- *Pole Institute (DR Congo)*
- *Policy Forum Guyana*
- *Publiez Ce Que Vous Payez Madagascar*
- *Publish What You Pay Zambia*
- *Red de Información y Acción Ambiental de Veracruz, México*
- *Réseau panafricain de lutte contre la corruption "UNIS"*

- *Resource Matters*
- *Satya Bumi*
- *Securing Indigenous Rights in the Green Economy (SIRGE) Coalition*
- *SETEM Catalunya*
- *Solidaritat Castelldefels Kasando*
- *Southern Africa Human Rights Defenders Network*
- *Spaces for Change*
- *TAFOMIHAAVO*
- *Transparency International Initiative Madagascar*
- *Transparency International Zambia*
- *Trend Asia*
- *Universidad nacional de Colombia, Facultad de minas Medellín, Centro de pensamiento responsabilidad y sostenibilidad minera*

## **Annex: Our requests in detail**

### **1) Respect human rights, Indigenous rights, and adherence to international human and environmental rights legislation, agreements, and standards**

- The CRMA should ensure strict mandatory Human Rights and Environmental Due Diligence (mHREDD).
- Respect the Human Rights Framework of the United Nations.
- Respect the rights of Indigenous Peoples, including the right of Free Prior and Informed Consent (FPIC), as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Indigenous and Tribal Peoples Convention and International Labour Organization (ILO) Convention 169.
- Respect the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.
- Respect ILO Conventions 29, 138, and 182 regarding forced labour, minimum age, and the worst forms of child labour.
- Observe and respect the full Aarhus convention and the Escazú agreement.
- Ensure EU companies conduct environmental, human rights, Indigenous rights, and corruption due diligence, in line with international business and human rights standards including the UN Guiding Principles on Business and Human Rights, the OECD Due Diligence Guidance for Responsible Business Conduct, and the EU Corporate Sustainability Reporting Directive.
- Make sure that EU companies that extract or source critical resources in other territories respect local, national, and regional ESG standards, along with the EU's and global standards.

### **2) Ensure that strategic partnerships are formed and followed up in a democratic manner**

- The EU should recognize and address the high corruption-risk in the mining sector and ensure that the CRMA is well-equipped to handle these issues.
- The development of strategic projects and partnerships should take place in full transparency. Timely disclosure of memorandums of understanding and agreements signed with resource-rich countries in the Global South is essential.
- There should be a public announcement of strategic partnerships and public disclosure of agreements prior to approval.
- There should be a review of the strategic partnerships that were agreed prior to the issuance of the CRMA in order to bring them into compliance with these standards.

### **3) Meaningful participation and accountability**

- From the start, rights holders and other stakeholders, especially Civil Society Organizations, Indigenous Peoples, and local communities, must be considered and their participation must be assured.

- People on the ground who will be impacted should have a stake in the governance of the CRMA and should be able to take part in the definition and monitoring of strategic alliances between the EU and third countries, as well as at the project level.

#### 4) **Minimum requirements for strategic projects**

- The environmental and social impacts of mining and other projects related to the energy transition should be assessed during the permitting process.
- A strong due diligence definition is needed, and companies should not be allowed to self-regulate. Voluntary schemes have proven to be insufficient to guarantee the respect of human rights or the protection of the environment. To monitor companies, both the State and a neutral third party should be involved.
- There should be clear procedural standards on how consent is guaranteed and projects without consent must be rejected. As per ILO Convention 169 and UNDRIP, Indigenous peoples have a specific collective right to self-determination. This right must be respected, upheld, and protected, and operations cannot be conducted without the consent of affected Indigenous Peoples. The Regulation should explicitly refer to the FPIC principle.
- The mechanisms for monitoring the Supplier Code of Conduct should be respected in a comprehensive manner, including UNDRIP, ILO 169, and human rights.
- The conditions under which mining companies can participate in strategic projects should be clearly defined. Companies that have a history of human rights abuses or environmental destruction should not be permitted to participate in strategic projects.
- It is important that companies and governments have clear, easily accessible, and safe grievance mechanisms to provide feedback and complaints when their due diligence commitments are not met.
- There should be a mechanism to facilitate access to justice for victims of corporate abuse.
- There should be strict sanctions for companies that fail their due diligence obligations.
- There should be strict regulation on the responsible exit from strategic projects by companies and financiers, such as the International Financial Institutions.

#### 5) **Be respectful of our cultural practices, traditions and values, our lifestyles, and our environment**

- Ensure respect for the cultural and traditional values of affected communities to avoid social conflict and the breakdown of our social fabric.
- The EU Conflict Minerals Regulation should be properly enforced.
- Ensure an ambitious conclusion of negotiations on a ban on goods made using forced labour, with swift ratification to prevent the entry of minerals made with forced or child labour.
- When located near Indigenous lands, Human Rights Impact Assessments must be mandatory, and companies must be required to ensure that they have received Free, Prior, and Informed Consent from impacted Indigenous Peoples.
- When located near local communities, ensure these are meaningfully involved from the beginning and their Right To Say No is ensured.

- Strategic projects should respect no-go zones, including Ramsar Sites, biosphere reserves, the deep-sea, the Arctic and Antarctic regions, protected areas and sacred sites listed as tangible or intangible cultural heritage at the domestic or international level. Our planet's health and climate goals are directly linked to them.

**6) We should not just be taken as raw material suppliers. Set clear goals and clarify what it means to add value through strategic partnerships. Furthermore, support the development of our countries through climate finance, knowledge and technology transfer**

- Establish equitable benefit-sharing schemes that ensure that both Indigenous and non-Indigenous local communities benefit from strategic projects and have access to mitigations and emergency plans.
- Promote the creation of decent jobs in affected communities prioritising local, regional and national employment.
- Ensure companies pay mining royalties and taxes in the countries hosting their operations.
- Legislation should include provisions for local procurement that will encourage mining companies to buy local products.
- Contribute to the development of mineral-producing countries, including through knowledge and technology transfer and climate financing.
- It is important for the EU to set targets for value addition in countries with strategic partnerships.
- It is imperative that multilateral institutions like the World Bank or the International Monetary Fund are guided towards increasing the creation of value in resource-rich countries.
- A true win-win partnership requires that trade and other multilateral instruments be used to support value creation in our resource-rich countries.

**7) Taking responsibility for reducing the EU's own consumption will reduce the demand for raw materials from our countries. In light of the ecological debt, we expect you to take the lead on reducing consumption and keeping within the planetary boundaries by setting an ambitious, clear and binding material reduction target.**