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Factors that enable or obstruct the participation of Indigenous Peoples in the green
economy.

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* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

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TRUTH, TRANSITIONAL JUSTICE, CONFLICT RESOLUTION AND RECONCILIATION: INTERNATIONAL LAW THE UNITED NATIONS SYSTEM

Abstract: As the world grapples with the climate crisis, a new green economy is rapidly emerging. However, in this transition, Indigenous Peoples are facing a new wave of transitional mining, mining, land development, etc. The lack of unified international and national regulations on the securing rights of Indigenous Peoples in the implementation principles of the "green" economy create problems and conflicts between people and the state. The article analyzes the key methodological problems associated with the formation and development of the "green" economy within the framework of conflicts for Indigenous Peoples. The article is aimed to identify the main conceptual approaches, the synthesis of which can create a basis for the formation of a unified methodological apparatus and implementation of practical actions for Indigenous Peoples in the field of the green economy.

Keywords: **green economy, Indigenous Peoples, UN Concept of Sustainable Development, economic and social development, human rights.**

The theoretical concept of the green economy is formulated in the late 1980s and early 1990s. It was time when the main principles were defined, signifying a new attitude to the environment and the need to ensure the future development that would not deprive future generations of resources, as well as growth that would not lead to unacceptable social and environmental costs - i.e. form the prerequisites for balanced, sustainable development.

Initially understood as a balance between economy, ecology, and social sphere, they formed the basis of the UN Concept of Sustainable Development. The latter now actually defines this vector of world development by specifying global sustainable development goals and states sustainable development programs adopted in accordance with them.

In the investment and corporate spheres, the balance between the environmental or natural, social and governance components of any economic activity subsequently became the core of the ESG concept. It now serves to guide business development, including Russia.

"Green economy" is a relatively new, but already quite clearly identified trend of socio-economic development at all levels of the hierarchy. The interest in the introduction of the ideas of "green" growth in the practice of economic management is a continuation of the well-known discourse of sustainable development as a stable socio-economic development that does not destroy its natural basis [2].

First, the concept of the green economy has gained huge popularity in relation to the several concurrent crises of the last decade: climate, biodiversity, fuel, food, water, and more

recently, the global financial system. In its simplest expression, a green economy is low-carbon, resource efficient, and socially inclusive. In a green economy, growth in income and employment are driven by public and private investments that reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services.¹

As per the United Nations Environment Programme, a green economy is defined as one whose growth in income and employment is driven by investments in systems to reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystems. This development path is supposed to “maintain, enhance, and, where necessary, rebuild natural capital...especially for poor people whose livelihoods and security depend strongly on nature.”

A significant number of authors note that the decisive role in the greening of the modern economy is played by the state actors as having the necessary resources for this purpose.

Agreeing, in general, with this opinion, it should be noted that the prospects for the implementation of the concept of "green" economy depend not only and not so much on the creation of infrastructural conditions and additional investments in "green" technologies, but also largely determined by the changes that occur in the political and socio-cultural sphere of public life, including at the local level.

The green economy appears to be an opportunity to enhance international efforts to achieve the Sustainable Development Goals and the UN Declaration on the Rights of Indigenous Peoples, strengthen economic and social systems, improve health, enrich educational, cultural and spiritual life, and protect knowledge systems and natural resources.

Indigenous Peoples and local communities, understood as social communities of people living in a certain territory and united by common knowledge, traditions, interests, values, ways of management of traditional economic territories, are currently involved as sometimes mute observers or participants in the implementation of "green growth" policy, which is confirmed by several empirical data [2].

Within the Inclusive Social Development Division (UNDD) of the United Nations Department of Economic and Social Affairs (UNDESA) the Indigenous Peoples and Development Branch was established as the secretariat of the United Nations Permanent Forum on Indigenous Issues to support the organization of international expert group meetings on the theme "Indigenous Peoples in greening".

Although Indigenous Peoples make up only about 5 per cent of the world's population, they effectively manage 20 to 25 per cent of the Earth's land surface. That land coincides with areas

¹ ₃(UNEP 2011: 16)

where 80 per cent of the planet's biodiversity and about 40 per cent of protected areas and ecologically intact landscapes are concentrated.

Already in 2010, the Permanent Forum noted that "climate change has reinforced the urgency of changing the dominant development model, not only for the benefit of Indigenous Peoples, but also for all of humanity and the planet". The climate change crisis is a direct result of the continued emission of greenhouse gases into the atmosphere caused by an economic model based on fossil fuels and the excessive depletion of natural resources such as forests, peatlands, grasslands, soils and the like.

Indigenous Peoples are disproportionately affected by the severe impacts of climate change, as their survival and impoverishment are largely dependent on the integrity of the ecosystems. Indigenous women are even more vulnerable to the adverse impacts of climate change and environmental degradation because of their traditional responsibilities for growing food, collecting water and firewood, for the family nursing and child-care, which link them even more closely to available natural resources and the environment [3].

In addition, Indigenous Peoples are affected by the actions of industrial companies. Mining using traditional mining technologies, such as surface mining or water-intensive mining, has not changed.

Similarly, the growing demand for transitional minerals is leading to an increase of human rights violations that exclusively and disproportionately affect Indigenous Peoples. There is no possibility of changing the location where such extractive activities take place. Minerals can only be extracted where they are located.

In 2021, the Business Resource Center for Human Rights reported that 495 human rights complaints had been filed over 10 years against 103 companies it tracks that are involved in transitional mining [4]. Exploitation takes place on inalienable lands and without the free, prior and informed consent of Indigenous Peoples, a situation that can lead to the desecration of sacred sites, the killing of human rights defenders protesting such exploitation and environmental threats to the lands, waters and livelihoods of people who are already experiencing first-hand the effects of climate change. These impacts are global and will continue unless there is a necessary change in the understanding of Indigenous Peoples' rights.

Indigenous Peoples' issues are coming to the fore with the growth and development of new mineral deposits, and the responsibility of companies to fulfill human rights obligations throughout the supply chain is increasing. Transition minerals require a wide range of minerals and metals, and as such, the demand for and value of these minerals is steadily increasing. A report by the

International Energy Agency predicts that mineral requirements for clean energy technologies will quadruple by 2040 [3].

With the rapid growth in demand for transitional minerals, the expansion of extractive activities also threatens the rights of Indigenous Peoples and territories where there is no comprehensive assessment of risks and harms to Indigenous Peoples or the participation of affected communities.

Thus, despite recognizing the key role of Indigenous Peoples in achieving sustainable development, they are often at the forefront of the negative impacts of climate change, which are destroying their communities, cultures and livelihoods.

Moreover, it has been noted that Indigenous Peoples are often negatively affected by the green economy decisions taken without their prior consent, resulting in violations of their rights, including through mining, hydroelectric dams and other large-scale infrastructure.

Indigenous Peoples' rights are recognized under the United Nations Declaration on the Rights of Indigenous Peoples and under the International Labour Convention United Nations (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). The rights are also elaborated in a separate body of international jurisprudence on the rights of Indigenous Peoples, including the UN human rights treaty bodies.

These are the main documents that serve as a basis for the consolidation of the rights of Indigenous Peoples and can serve as a basis in the realization of the "green economy" [6]. Indigenous Peoples' participatory rights as well as capacity building and mentoring initiatives should be ensured, following the main documents adopted by the UN. IPs' participation rights should be ensured, as well as capacity building and mentoring initiatives, following the main instruments adopted by the UN.

The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, recognizes Indigenous Peoples' right to self-determination (articles 3 and 4), the collective right to own and control their lands and resources (articles 25-27), their right to free, prior and informed consent to legislation, measures and projects that may affect their rights (articles 10, 11, 19, 28, 29 and 32) and their right to participate in decision-making processes (articles 5, 18 and 27).

Ensuring Indigenous Peoples' collective rights to lands, territories and resources is important not only for their well-being, but also for addressing some of the most pressing global challenges, including climate change and environmental degradation [5].

The "Green economy" is an economy aimed at reducing environmental risks and ecological deficits and ensuring sustainable development without environmental degradation. The transition

to a green economy is necessary to achieve the Sustainable Development Goals (SDGs), including those related to climate change, economic growth, equity and well-being [2]. Nevertheless, the transition to a green economy is now challenging Indigenous Peoples' rights due to conflicting interests and differences in opportunities and contexts.

In 2008, the United Nations Environment Programme (UNEP) launched the Green Economy Initiative (GEI), a country-level global research and assistance program designed to motivate policymakers to support investment in environmental protection. In 2015, the concept evolved into the Inclusive Green Economy (IGE) with the UNEP publication “Uncovering Pathways towards an Inclusive Green Economy: a Summary for Leaders”.²

The document defines an inclusive green economy as an economy that improves human well-being and ensures social justice while reducing environmental risks and scarcity. The concept provides an alternative to the dominant economic model today, which exacerbates inequality, encourages waste, provokes resource scarcity and harms both the environment and human health.

There is no doubt that recent global challenges, including the financial crisis, climate change and the energy, water, and food crises, are proof of the failure of the unsustainable economic system as a model of development. Moreover, the transition to a green economy without an appropriate framework or with disregard for the rights of Indigenous Peoples will continue to result in historical injustices, marginalization, discrimination and dispossession of their lands and resources.

The green economy has produced a broad debate and met a strong resistance among Indigenous People. While perhaps well-intentioned in scope, the concept of nature-as-market capital is in direct conflict with the worldviews of many Indigenous Peoples who understand themselves to be inseparable from nature, as stewards and caretakers with a responsibility to protect the environment.

The green economy proposed at Rio+20 also fails to address the inherent unsustainability of the practices that it outlines, ignoring the reality that natural resources are finite; if not properly cared for or respected, they will be depleted.³ As a result, Indigenous leaders whose ancestral homes were affected by green economy developments accused environmental groups of racism and colonialism. Such contestations have been framed as environmental protection taking

² <https://www.unep.org/resources/report/uncovering-pathways-towards-inclusive-green-economy-summary-leaders>

³ <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/future-we-dont-want-indigenous-peoples-rio20>

precedence over economic opportunities for Indigenous Peoples and raise concerns about the effectiveness and outcomes of environmentalism.⁴

For a long time, the Indigenous People who had long occupied state-sanctioned conservation zones weren't considered as part of the equation. Indigenous Peoples and conservationists have very different agendas. Indigenous agendas almost invariably begin with the need to protect and legalize their lands for their own use. They emphasize the importance of finding ways to make a living on the land without destroying those resources. And they give high priority to documenting their people's history, traditions, and cultural identity.

Conservationist agendas, by contrast, often begin with the need to establish protected areas that are off-limits to people, and to develop management plans. They tend to see traditional inhabitants as obstacles to be removed if they are considered at all. Advocates for expanding protected areas saw indigenous displacement, and the disruption of traditional practices, as the sad but necessary consequence of environmental protection. The model based on this trade-off has resulted in social conflict and brutal violations of human rights while degrading the very land it purported to protect.⁵

They are seldom willing to support legal battles over land tenure and the strengthening of indigenous organizations; they consider these actions "too political" and outside their conservationist mandate (2004:21)."⁶

The creation of sustainable and climate-resilient development pathways that incorporate Indigenous Peoples' visions, concepts and practices should be a requirement for the implementation of any green economy process. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) has already recognized that respect for Indigenous Peoples, their knowledge and diverse values can lead to more equitable and sustainable outcomes.

The transition to a green economy and related climate change mitigation measures requires States, Governments, the private sector, and donors to actively engage in the transition process with Indigenous Peoples as partners at all levels, not only as beneficiaries or stakeholders.

Moreover, Indigenous Peoples' organizations, including indigenous women, youth, Elders and persons with disabilities, should participate as rights-holders in decision-making and their free, prior and informed consent should be respected. Indigenous Peoples should receive direct funding

⁴<http://eprints.whiterose.ac.uk/124740/5/Black%20and%20green%20the%20future%20of%20Indigenous%20environmentalist%20relations%20in%20Australia.pdf>

⁵ <https://foreignpolicy.com/2018/07/16/how-conservation-became-colonialism-environment-indigenous-people-ecuador-mining/>

⁶ https://cmsdata.iucn.org/downloads/iucn_reconciling_ip_and_pa.pdf

to address their own priorities and needs in accordance with the principle of self-determination. Where facilitation is necessary, decision-making processes should remain with Indigenous Peoples.

However, it is worth being careful about financing, incentivizing processes related to the green economy or market mechanisms in general, they introduce a logic of individualism and competition into Indigenous Peoples communities, changing their way of life, their relationship to nature and to each other as collectives, leading to conflicts over land and resources. For example, the international climate change policy model REDD+ (Reducing Emissions from Deforestation and Forest Degradation) has been criticized for undermining the violation of Indigenous Peoples' basic rights and potentially leading to massive land grabbing.

In recent decades, there have been improvements in intergovernmental processes to recognize not only the individual rights of Indigenous Peoples, but also their collective rights as distinct groups. For example, in 2022, the Convention on Biological Diversity formulated new targets to protect 30 per cent of the world's lands, inland waters, coastal and marine areas by 2030, placing unprecedented emphasis on the importance of recognizing and respecting Indigenous Peoples and traditional territories. Recognizing and respecting the rights of Indigenous Peoples is evidence of their sustainable management of more than 38 million km² of lands in 87 countries or politically distinct areas on all inhabited continents [6].

REGIONAL CONTEXT – The Russian Federation

Under Article 42 of the Constitution of the Russian Federation, citizens are guaranteed the right to a favorable environment, including the right to compensation for damage caused by environmental offenses. Most of Russia's rich natural resources are in regions where Indigenous Peoples traditionally live. However, because of, among other things, industrial activities and the development of new lands, many Indigenous Peoples are on the verge of extinction.

According to the UN data, the world's population will double by 2050. Industrial market civilization cannot guarantee the renewable use of natural resources. For Indigenous Peoples, nature is a resource that supports their livelihoods and is their habitat. The main law regulating the environmental rights of small-numbered Indigenous Peoples in Russia is the Federal Law of April 30, 1999 N 82-FZ "On Guarantees of the Rights of Small-Numbered Indigenous Peoples of the Russian Federation"⁷. Article 8 guarantees that small-numbered Indigenous Peoples have the right to the free use of all types of land and minerals normally extracted in the places of their traditional residence to protect their ancestral settlements.

⁷ <https://base.garant.ru/180406/>

The development of legislation on the rights of Indigenous Small-Numbered Peoples in our country has been largely driven by environmental concerns. The traditional places of residence of Small-numbered Indigenous Peoples have become the object of industrial expansion over the past 50 years and the subject of conflicts of interest between representatives of different cultures, as well as different ways of using natural resources.

However, the main risk to Indigenous Peoples is not only the direct destruction caused by industrial expansion or the absorption of their traditional cultural and economic way of life. The danger is also that the struggle of Indigenous Peoples for special legal status to protect their ethno-cultural integrity is focused on the struggle for resources. As a result, this struggle is increasingly becoming a mechanism to involve Indigenous Peoples in a struggle over the use of resources according to the rules of industrial civilization (7).

Territories of traditional nature use acquire the status of specially protected natural areas after their legislative fixation by the Government of the Russian Federation, subjects of the Russian Federation [3]. The establishment of a special legal regime for territories of traditional nature use should be based on the inseparable connection between Indigenous Peoples, the environment, the quality, and quantity of renewable resources [3].

Despite the existence of numerous normative legal acts aimed at protecting the rights of Indigenous Peoples, the issue of compensation for losses incurred by Indigenous Peoples due to organized industrial and/or other economic activities remains poorly regulated. Federal legislation does not provide effective measures against legal entities that have an anthropogenic impact and cause damage to the traditional settlements of Indigenous Peoples. Legal norms prioritize public interests in the sphere of economic development, thereby violating the rights of Indigenous Peoples.

It should be noted that the relationship between economic entities exploiting natural resources and Indigenous Peoples is of a special nature. The self-determination of Indigenous Peoples is directly related to their traditional use of natural resources and traditional way of life, which changes significantly with the large-scale exploitation of natural resources in their territories.

For example, in Khanty-Mansiysk Autonomous Okrug, there is Lake Numto, which is sacred to Indigenous Peoples and where the oil production company "Surgutneftegaz" started working in 2011 [3].

The local population was dissatisfied with the authorities' decision to hand over the lake to the industrialists and began to advocate in its defense. It was stated that in case of withdrawal of lands belonging to Indigenous Peoples, compensation in the form of land, territory or resources of

comparable quality, size and status, or financial compensation or other appropriate compensation should be provided [3]. This is because Indigenous Peoples, as custodians of traditional ways of life, depend on biological resources and specific territories on a large scale and traditionally [3].

It is therefore essential that the law provide for procedures for obtaining Indigenous Peoples' consent to industrial activities in their places of residence. This practice is also found in international law. For example, Canada has procedures under the Mining and Extraction Agreement [3]. The State and the mining companies, represented by the representative authorities, traditionally negotiate, and coordinate their activities with the ethnic groups that inhabit the territories before embarking on such activities.

Thus, despite some positive trends in the protection of the environmental rights of Indigenous Peoples, several unresolved issues remain to be addressed urgently. Indigenous Peoples' ancestral territories are the basis of their livelihood. The preservation of Indigenous Peoples in Russia depends on the creation of appropriate conditions for protection of the Indigenous Peoples rights. The development of Indigenous Peoples' territories of traditional natural resource use should prioritize the preservation of an enabling environment to address economic challenges. A just transition should be human rights-oriented, including the United Nations Declaration on the Rights of Indigenous Peoples and the right to free, prior, and informed consent, and should respect Indigenous Peoples' self-determination and traditional knowledge.

CONCLUSION AND RECOMMENDATIONS

The constant endangerment of Indigenous Peoples communities' homes is a result of their lands and resources being taken away in the name of environmental objectives. As a result, the concept of eco-colonialism has emerged, emphasizing how the shift towards renewable energy and a green economy can sustain the same problems present in conventional resource extraction industries, but in a different form. To tackle this issue, it is essential to embrace a new perspective that recognizes the highly innovative and adaptable nature of Indigenous knowledge and economic systems, which prioritize the protection of nature and fairness in development. Incorporating Indigenous viewpoints on ecology is crucial in worldwide efforts to combat climate change and the depletion of biodiversity. By valuing Indigenous voices and incorporating their traditional knowledge, the green economy can achieve holistic environmental stewardship and cultural enrichment, benefiting both Indigenous communities and the global community. Governments, businesses, and policymakers must embrace these principles and work together with Indigenous leaders to establish a more sustainable and inclusive future for all. Indigenous communities should be fully included in the decision-making process when it comes to implementing any Green Economy initiatives on their ancestral lands, such as extracting transitional minerals, establishing

Solar or Wind Power stations, or developing other Green Economy projects and infrastructure. It is essential that all levels of government uphold their commitments under international Human Rights and Indigenous Peoples rights agreements and give priority to protecting the rights of Indigenous Peoples, especially their right to self-determination and Free Prior and Informed Consent (FPIC). Any future legislation or regulations regarding the Energy transition must include provisions for the right to FPIC.

It is important to thoroughly investigate all instances of violence against Indigenous Rights Defenders by States, regardless of the source or motivations of the perpetrators. This includes cases involving corporations or governments. States, businesses, and civil society must prioritize the creation of educational initiatives that empower Indigenous Peoples affected by the Extractive industry. These programs should teach them how to leverage international law to protect their rights to a safe and healthy environment.

The 2030 Agenda, based on its different views on poverty, well-being and sustainable development needs to review and revise the following:

1. Documentation of United Nations mechanisms/bodies or others that support the transition to a green economy, considering the rights of Indigenous Peoples.
2. Identification of the key considerations based on sustainability and a human rights-based approach in the transition to a green economy.
3. Assessment of structural/institutional barriers to Indigenous Peoples' participation in sustainable development processes.
4. Identification of Indigenous Peoples' initiatives for an equitable and sustainable transition, recognizing the importance of both technological and scientific tools and traditional and ancestral knowledge.
5. Preparation of policy recommendations for all relevant stakeholders.
6. Organization of discussions with Indigenous Peoples' organizations, UN agencies, foundations and programmes, Member States, non-governmental organizations, and academia on the green economy and just transition mechanisms.

Indigenous Peoples have repeatedly emphasized that states should take all possible measures to prevent environmental pollution.

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