

EXECUTIVE SUMMARY FOR UNFCCC COP31 ANTALYA, TÜRKIYE

Protection Before Extraction: Rights at the Transition Mineral Frontier

Territorial rights, investment protection, and the energy transition in Brazil, Bolivia, and Colombia



This document summarizes the key findings of a forthcoming report examining the tension between community territorial rights and investor protection in the energy transition, drawing on transition-mineral projects. It concludes with recommendations for Parties negotiating the mechanism at COP31, national governments, states and their treaty partners, and finance institutions and importing markets, and rightsholder organizations.

The minerals needed to move away from fossil fuels (lithium, copper, nickel, and rare earths) lie largely on or near the lands of Indigenous Peoples, local communities, and Afro-descendant Peoples. A 2023 global study of 5,097 transition-mineral projects found that 69 percent of these minerals are located on or near Indigenous and local communities' lands, rising to 85 percent for lithium.[1]

Yet, although the just transition negotiations under the United Nations Framework Convention on Climate Change (UNFCCC), have adopted the strongest rights-based language to date in the UN climate negotiations on just transition, the Just Transition Work Programme that is intended to support dedicated actions has yet to provide clear guidance on either minerals or land tenure rights.

The protection of community territories therefore falls to national law, and at this level, two inter-linked risks arise. The first concerns the risk of overlap between community territories and mining concessions, permitting or operations, and the second encompasses the regulatory risks associated with investment treaties, mining codes, licensing rules, and investor contracts that render territorial protection costly, slow, or uncertain. Together, these risks reveal a key imbalance: while community rights oblige state action, investor rights can oblige state compensation if efforts to protect the integrity of valued landscapes and territories results in actual or potential revenue losses.

The report concludes with recommendations for Parties negotiating the mechanism at COP31, national governments, states and their treaty partners, and finance institutions and importing markets, and rightsholder organizations.

Communities in the three case study countries were asked how they sustainably steward their landscapes in the midst of their own energy transition. Study results show that communities are actively investing in clean energy solutions that are commensurate with their needs and the ability of local landscapes to support such infrastructure. In effect, despite their limited size and output, community-led power generation initiatives are demonstrating the feasibility of locally adapted solutions that can be scaled with limited impacts on valued lands and territories. While communities are shaping and implementing solutions to deliver energy with far less risks of pollution and deforestation, their success depends on critical enabling conditions. Just transition for communities requires legal recognition of their lands and territories, functional and inclusive governance institutions and effective participation of community women in all decisions over priorities, finance, and assets before any renewable energy production system or initiative can be considered or initiated.

Key Messages

1. **Territories must be protected before mining titles are granted,** because laws, policies, and financing institutions tend to protect the interests of investors **over those** of affected communities, making it harder if not impossible for them to secure their rights once mining titles are awarded.

2. **The rules that will determine whether protection or extraction is prioritized are being written now** in national legislatures, courts, and in negotiation text over the just transition mechanism. Protections for communities' rights appear in all three, but as limits that can be bypassed or reversed, rather than requirements with commensurate obligations. Per precautionary principles, all ancestral lands and high biodiversity areas should be protected until national and international processes on the governance of the just transition are finalized.

3. **The just transition mechanism does not address transition minerals.** The Belém decision[2] contains the strongest rights language yet adopted on just transition, including Indigenous self-determination, the importance of free, prior, and informed consent, and references to peoples of African descent. But its language on rights remains largely declaratory: it says nothing about land or territorial rights and attaches no funding to the mechanism. References to minerals were removed before adoption, and the June 2026 session in Bonn did not produce the proposal Belém had asked for, leaving the decision on the mechanism to COP31.

4. **The pressure of the transition falls on community lands, and seldom are they informed, consulted or formally asked for their consent.** The research identified 16,584 interaction points where transition minerals coincide with, or lie within 10 km of, community territories: 14,893 in Brazil, 1,570 in Colombia, and 121 in Bolivia[3] About 3,200 of these involve Indigenous, Afro-descendant, and extractive-reserve territories; most of the remainder involve agrarian reform settlements in Brazil.[4] None of the 20 projects examined in the forthcoming report has a consultation process on record that the communities concerned accepted.

5. **Enforcement of community rights generates procedures; investor rights generate compensation.** When communities win, courts order consultation or suspend licenses, and those orders can fall. When investors win, the remedy is compensation owed by the state, and measures that communities secure from domestic authorities can become the subject of such claims.

6. **Community remedies are more limited and vulnerable than investor remedies.** Compensation awarded by regional human rights courts is typically a fraction of investor awards and depends on state compliance.

7. **Remedies fall unevenly across rightsholder groups.** Indigenous Peoples and Afro-descendant Peoples can invoke the right to consultation in court, while local communities often depend on environmental and licensing instruments that were not designed to secure tenure and consultation rights.

8. **Rules are not static, but change requires political leverage.** Who benefits from transition minerals largely depends on the treaties, laws and contracts that states undersign. Rules and agreements may be changed, but this takes time and political pressure, and because changes that impair current or future profits can be challenged (e.g., Investor-State Dispute Settlements, revised credit-ratings, retaliatory tariffs), most developing countries have limited fiscal and policy autonomy.

9. **The benefits of investment treaty protection cannot be assumed.** Usual justifications for treaty protection--that it attracts investment, creates jobs, and supports sustainable development—are not supported by evidence. States that accept the social and environmental costs of critical mining should weigh them against demonstrated benefits, not modeled projections.

10. **Most critical mining risks are pending, which is why timing matters.** Many mapped interaction points reference deposits that have yet to be explored or operationalized. Protections adopted before mining titles are granted are generally harder to challenge than those adopted afterwards. Per the intentions of the Just Transition Mechanism, the window in which these territories can be protected at the lowest cost to states and communities is therefore now.

Key Recommendations

The report makes **recommendations for different audiences**. They all share one core argument: the transition-mineral boom should not move faster than the recognition of territories and consent. The COP31 just transition mechanism is where international commitments can be tied to national reforms.

1. Parties negotiating the just transition mechanism at COP31

- **Minerals mandate**: Give the mechanism a mandate on transition minerals, building on the Belém draft's language and the UN Secretary-General's panel principles.[5]
- **Informed consent**: Make free, prior, and informed consent of Indigenous Peoples a necessary condition to all associated investments under the mechanism. And ensure Afro-descendant Peoples' and local communities' rights to free, prior, informed and substantive participation in consultative processes and decisions that may impact their lands, territories, and resources are fully respected and upheld.
- **Participation**: Guarantee the effective, meaningful and informed participation of rightsholders in all aspects of the mechanism, from associated guidance to actual implementation. That means dedicated seats in the governing body, and formal participation in the design and implementation of the workplan.
- **Tenure**: Explicit mention of the need to recognize, respect and protect collective tenure rights in all aspects of the mechanism.
- **Direct finance**: If the mechanism has funding, create a direct-access window with a numerical target, using the Tropical Forest Forever Facility's 20 percent minimum as the model. If funds are lacking, mandate it to channel finance from development banks and climate funds to territorial institutions.
- **Community-led transitions**: Recognize community-led energy initiatives and promote peer learning between territories in its knowledge and capacity functions.

2. National governments

- **Territories before titles:** Suspend new mining titles over territories whose recognition remain pending and prioritize the protection of community lands that overlap with mineral deposits.
- **Incentives tied to consent:** Governments should make free, prior and informed consultation and consent a condition for accessing the incentives they offer to the transition-minerals sector, including fast-track or special licensing, tax and investment benefits, and seats on sector governance bodies. Investment laws should also expressly recognize consultation and consent requirements as legitimate measures that do not breach investor-protection standards such as fair and equitable treatment.
- **Rights and stability clauses:** Exclude community, territorial, and environmental rights and protections from stability clauses.
- **Participation before territorial recognition:** Communities should take part in all licensing processes and agreements, regardless of whether their demarcation or titling is complete.
- **Equitable and inclusive energy transitions:** Adopt clear rules for transferring publicly financed assets to energy communities, those that produce renewable energy for local consumption, as Colombia's framework foresees, and simplify shared-generation procedures so that it is easy for community organizations to use them.[6]



3. Governments and treaty partners

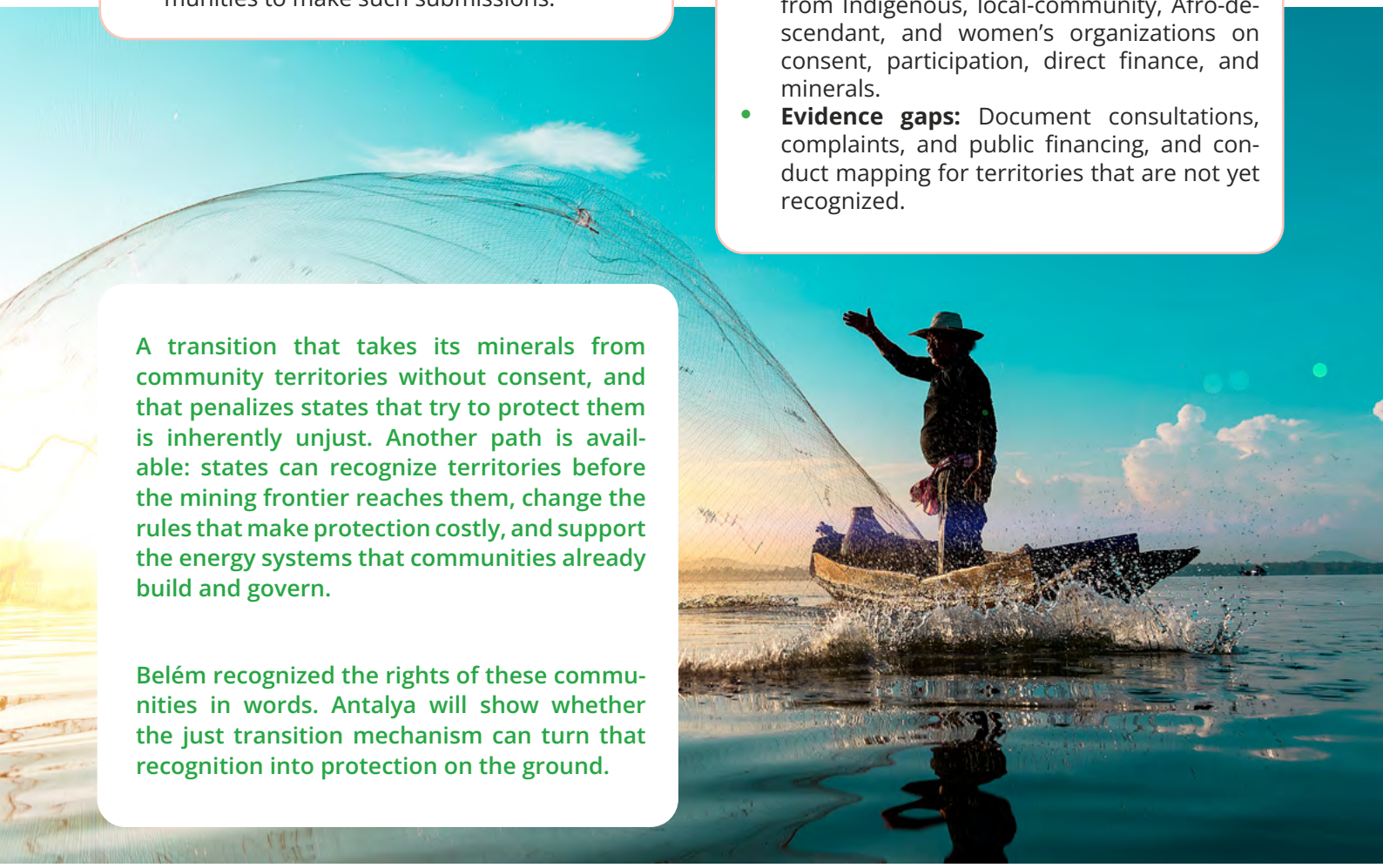
- **Termination:** Renounce investment-state dispute settlement clauses from investment treaties by mutual agreement, including their survival clauses, following the intra–European Union 2020 precedent.[7]
- **Safeguards:** States should incorporate human rights, Indigenous rights, and environmental safeguards, including requirements for consultation and free, prior, and informed consent, into new and renegotiated investment treaties.
- **Prevent Treaty shopping:** Prevent treaty shopping by including, in all new and renegotiated investment treaties, a requirement that investors hold the relevant nationality at the time the investment is made, together with denial-of-benefits provisions.
- **Use arbitration proceedings to advance community rights**. In ongoing proceedings, States should invoke applicable human rights and Indigenous rights obligations, assert counterclaims where investor conduct has affected community rights, and support the admission of submissions by affected communities. New and renegotiated treaties should establish the right of affected communities to make such submissions.

4. Finance institutions and importing markets

- **Public finance:** Make public financing conditional on communities' consent and territorial safeguards.
- **Supply chains:** Extend safeguards through mandatory due diligence.

5. Rightsholder organizations and the RRI coalition

- **Language for COP31: Propose concrete text that builds on the Belém language that ensures effective integration and adoption of UN guiding principles on critical energy transition minerals.**
- **Identify Party champions for each demand.** Rightsholder organizations should identify the Parties most likely to propose or support each of their demands (consent, participation, tenure recognition, direct finance and transition minerals) in the negotiating texts and should give those Parties proposed wording. Support is likely to vary from issue to issue.
- **Joint platform:** Present common demands from Indigenous, local-community, Afro-descendant, and women's organizations on consent, participation, direct finance, and minerals.
- **Evidence gaps:** Document consultations, complaints, and public financing, and conduct mapping for territories that are not yet recognized.



A transition that takes its minerals from community territories without consent, and that penalizes states that try to protect them is inherently unjust. Another path is available: states can recognize territories before the mining frontier reaches them, change the rules that make protection costly, and support the energy systems that communities already build and govern.

Belém recognized the rights of these communities in words. Antalya will show whether the just transition mechanism can turn that recognition into protection on the ground.

References

1 Owen, John R., et al. 2023. Energy Transition Minerals and Their Intersection with Land-Connected Peoples. Nature Sustainability 6(2): 203–211. doi:10.1038/s41893-022-00994-6.

2 The decision adopted at COP30 in Belém in November 2025 (decision 2/CMA.7, "the Belém decision") defined a mandate for parties to develop a just transition mechanism.

3 A "interaction point" is each interaction between a transition-mineral record (a mine, mining title, undertaking, deposit or occurrence) and a formally recognized or claimed IP, LC or AP territory, where the record lies inside the territory or within 10 km of it. The 10 km distance, taken from Brazil's Interministerial Ordinance No. 60/2015, is a comparative screening criterion, not a legal threshold. Interaction points signal risk, not confirmed conflict, and count interactions rather than affected territories; one territory may hold several.

4 Agrarian reform settlements are included as local-community territories in Brazil, although most are not collectively titled, the data do not allow for disaggregation between the two.

5 Resourcing the energy transition, Principles to Guide Critical Energy Transition Minerals Towards Equity and Justice. September 11, 2024. UN Secretary-General's Panel on Critical Energy Transition Minerals. Available at: https://www.un.org/sites/un2.un.org/files/report_sg_panel_on_critical_energy_transition_minerals_11_sept_2024.pdf

6 Government of Colombia. Decreto 2236 de 2023. December 22, 2023, art. 2.2.9.2.1. Available at: https://gestornormativo.creg.gov.co/gestor/entorno/docs/decreto_2236_2023.htm; MinEnergía. 2026. "Por medio de la cual se reglamenta la transferencia de activos destinados a beneficiar Comunidades Energéticas." Draft resolution, public consultation July 21–26, 2026. MinEnergía. Available at: https://www.minenergia.gov.co/es/servicio-al-ciudadano/foros/reglamentar-la-transferencia-de-activos-destinados-a-beneficiar-comunidades-energeticas/; Government of Brazil. Lei nº 14.300. January 6, 2022. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/l14300.htm.

7 Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union. May 5, 2020. Official Journal of the European Union L 169, May 29, 2020: 1. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22020A0529(01).

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