



Working Group on Business and Human Rights
“Extractive Sector, Just Transition and Human Rights”
Presentation of the Working Group’s report (A/78/155)
78th General Assembly
Damilola Olawuyi, Chair-Rapporteur
New York, 13 October 2023

Madam Chair, Excellencies, Distinguished delegates,

I am honoured to present the report of the Working Group on Business and Human Rights to the 78th session of the General Assembly on “Extractive sector, just transition and human rights”.

In the report, the Working Group explores factors leading to human rights abuses in the context of energy transition programs, including how the design and implementation of such programs remain largely characterized by power imbalances and fragmented and inconsistent regulatory frameworks. The report considers how to address persistent challenges by offering States, businesses, and other stakeholders in the extractive sector action-oriented recommendations on how to best design and implement just, inclusive, and human rights-based energy transition programs in line with the United Nations Guiding Principles on Business and Human Rights.

Since the adoption of the Paris Agreement in 2015, a growing number of stakeholders worldwide have announced, or are currently developing, commitments and plans to implement energy transition programs. Yet, concerns have emerged on how the design and implementation of these programs, especially the sourcing of critical transition minerals, may further exacerbate business related human rights abuses. For example, energy transition programs in some States have been linked or have contributed to serious human rights abuses, such as land grabs, forced displacements, child labour, modern slavery, discrimination, environmental pollution, and others.

The energy transition cannot replicate or create new forms of human rights and environmental abuses, including poverty, corruption and conflict risks. The energy transition drive must be consistent with States’ human rights obligations and commitments, including the realization of the right to a clean, healthy, and sustainable environment, SDG 13 on climate change mitigation and adaptation, and with the Paris Agreement.

Excellencies,

States must seize the ongoing energy transition as an opportunity to promote just transition laws and policies and hold business, including investors, accountable for human rights abuses

across the entire value chain. By taking action based on the recommendations in the report, States, businesses, and other relevant stakeholders can ensure that the pursuit of the Sustainable Development Goals and implementation of the Paris Agreement includes guarantees of human rights protection.

Policy coherence is key to advance a just transition, as decisive and coherent action by States across key government bodies is needed to include human rights and sustainable development considerations across energy transition initiatives. This includes the development and implementation of legislation protecting the right to a clean, healthy and sustainable environment. Further, many businesses recognize that the private sector benefits from policy and regulatory clarity, and in fact demand consistency and predictability on how to design, implement and communicate energy transition programs. To advance policy coherence, energy, environmental and investment policies must be collaboratively developed and ensure the protection of human rights. A just transition will also require strong coordination at the international, regional, national and local levels. Further, States will have to fulfil their extraterritorial obligations, as trying to meet international climate commitments domestically cannot justify overlooking human rights abuses in the States where extractive activities are taking place. The terms of extractive sector agreements have a bearing on the ability of States to regulate the conduct of businesses for just transition, so States should maintain sufficient domestic policy space while negotiating new extractive contracts, concessions or bilateral agreements, or reforming existing agreements in order to meet their human rights obligations under international law.

Businesses, especially those in the extractive sector, must play an indispensable role in promoting respect for human rights by integrating human rights in the design and implementation of energy transition plans and programs. Civil society and impacted communities, including Indigenous Peoples and human rights defenders, play a critical role in enabling businesses and investors to identify, prevent and address human rights risks. The growing number of regulatory developments unfolding at the national, regional and international levels reinforce the increasing expectation on businesses to prevent, mitigate and address adverse impacts on human rights of their energy transition efforts, which is a positive development. However, the Working Group stresses that current regulatory and policy frameworks do not sufficiently and coherently ensure human rights protection, including through meaningful participation of affected communities, access to information, including data transparency, and access to effective remedies when harm occurs.

To advance towards a just transition, energy transition programs should be designed with international human rights standards and the UNGPs in mind, including standards on decent work, capacity-building, social inclusion, public participation, and environmental protections.

Distinguished delegates,

After discussing in the report insights on current challenges, as well as emerging highlighted practices in this context, the Working Group aimed to provide a course of action to ensure that all existing and future energy transition programs are compatible with international human rights norms and standards, including the UNGPs. To do so, the report offers action-oriented recommendations to States, businesses and other stakeholders. For States (including as members of multilateral institutions), these recommendations include, but are not limited to:

1. Adopting a clear and comprehensive regulatory framework to achieve energy transition targets in a just and human rights-based manner;
2. Reviewing current fiscal policies related to the extractive sector and energy transition to ensure the right to benefit-sharing among affected communities is respected;
3. Recognizing and protecting the work of environmental and human rights defenders;
4. Reviewing and renegotiating, as a matter of urgency, existing extractive contracts, concessions, procurement practices and bilateral and multilateral investment agreements to remove any regulatory constraints to just transition; and,
5. Facilitating access to remedy through a number of measures indicated in the report.

For businesses (including as investors and members of industry associations), these recommendations include, but are not limited to:

1. Ensuring that all their existing and future energy transition programs are compatible with international human rights obligations, as well as the UNGPs;
2. Aligning their business practices, policies, processes, governance structures and decisions with the goals of the Paris Agreement;
3. Conducting human rights and environmental due diligence in the design, financing and implementation of energy transition programs throughout their operations, including with a gender-responsive approach;
4. Avoiding greenwashing and misleading claims on energy transition programs through clear, credible, transparent and accessible reporting;
5. Ensuring effective and meaningful consultation with all relevant rights-holders, including ensuring free prior and informed consent by Indigenous Peoples, on the actual and potential impacts of energy transition programs on human rights and the right to a clean, healthy and sustainable environment; and
6. Using their leverage over their business relationships to prevent, reduce or mitigate any energy transition-related human rights impacts that they contributed to or are directly linked to through procurements, operations, products or services.

The Working Group hopes that these recommendations will be widely read and implemented and stands ready to assist stakeholders.

Let me thank all stakeholders who contributed in various ways to the consultation process culminating in this report. Their written contributions posted on the Working Group's webpage provide an essential repository of information about this emerging field of work.

Excellencies,

I turn now to another matter. The Working Group has conducted visits to Japan and Argentina in 2023, and aims to conduct visits to Tunisia and Colombia in 2024. I would like to thank these States for inviting the Working Group and I encourage other States to similarly extend an invitation to the Working Group to conduct a country visit. The Working Group would also like to express its gratitude to civil society organisations, Indigenous Peoples, trade unions, affected community members, businesses, and other stakeholders who have shared or will share their experiences with us.

Secondly, the Working Group has co-organized with a wide range of entities regional forums on business and human rights in South Asia, Southeast Asia, Africa and LAC during 2023, and

will co-organize a dialogue for the Caribbean this December. These forums convened different stakeholders from the various regions, including States, civil society organizations, human rights defenders, Indigenous Peoples, trade unions, academia, international organizations, national human rights institutions, business enterprises, industry associations, journalists, lawyers, activists and campaigners for a constructive dialogue and peer-learning exchange on how to strengthen responsible business and corporate accountability in the respective regions. These forums are excellent opportunities for collective advancement on business and human rights across several regions. We are grateful to Thailand, Nepal, Ethiopia, Chile and Barbados for hosting the regional forums.

Finally, distinguished delegates, the Working Group is pleased to inform the General Assembly that the annual Forum on Business and Human Rights will take place in Geneva, Switzerland from 27 to 29 November under the title “Towards Effective Change in Implementing Obligations, Responsibilities and Remedies”. The Working Group encourages the participation of States in the Forum.

Thank you.