

Submission by the Business and Human Rights Resource Centre to the UN Working Group on Business and Human Rights

Extractive Sector, Just Transition and Human Rights

[Business and Human Rights Resource Centre](#) welcomes the opportunity to contribute to the open call for inputs on “**Extractive Sector, Just Transition and Human Rights**” launched by the **UN Working Group on Business and Human Rights**. In response to the guiding questions, we aim to provide a critical analysis, as well as recommendations on safeguarding human rights from corporate abuse, and improve corporate accountability in the context of rapid energy transition.

About us

Business & Human Rights Resource Centre is a non-profit organization that monitors human rights impacts of over 10,000 companies across the globe. We use our digital platform to report on companies and civil society concerns. Recently, we have focused our research on business and human rights in the context of just transitions, including extraction of transition minerals and renewable energies.

Summary of evidence and research on risks to human rights in mining for transition minerals

Transition minerals are not free from the human rights risks that have historically plagued the fossil fuel and traditional extractive industries.

Between 2010 and 2021, the Resource Centre, through its [Transition Minerals Tracker](#), has registered 495 allegations of direct and indirect human rights abuses from companies in the context of the extraction of minerals¹ that are key for the energy transition. The leading category of abuse is violations of rights of local communities, civil society organisations and their leaders which makes up nearly two-thirds (63%) of the allegations in the Tracker. Violations of land rights, and the rights of communities to give Free, Prior and Informed Consent (FPIC) to the use of their resources feature prominently.

Mining operations have multifaceted impacts on human rights, including the right to a clean, healthy, and sustainable environment. Environmental damage caused by transition mineral operations featured in 166 (33%) allegations in the Tracker. Three-quarters of these allegations are linked to water rights (access or pollution). Over half of water allegations (54%) highlight the struggle of communities around mining sites to access water due to high demand for limited water resources by companies and poor consideration of community needs.

A third of the allegations reported include attacks on human rights defenders (HRDs) among which 13 cases of killings. [According to our database of attacks against HRDs](#), mining is the most dangerous sector for defenders. Those are not standalone events: there is a continuum between affected rights and attacks on those defending them - particularly in relation with land rights and the rights of Indigenous peoples to give their FPIC to the exploitation of their resources and lands.

Human rights risks are present not only during the production phase but also during the licensing phase. According to our latest study on [renewable energy value chains in the Andes](#) – the region with the highest number of allegations in our Transition Minerals Tracker- lack of FPIC is a recurring concern from communities located in areas in which transition mineral mining licensing is taking place.

¹ Cobalt, copper, lithium, manganese, nickel and zinc.

These communities, especially indigenous communities also have raised their concern for potential environmental damages resulting from future extractive activities, as well as threats, and Strategic Lawsuits Against Public Participation (SLAPPs) against human rights defenders. The development of related extractive activities in areas where armed conflict is taking place is also an issue of distress for communities.

Finally, pressure to scale-up electric vehicles production, is also increasing risks of negative impacts on human rights and the environment. We have documented such cases in [Southeast Asia's nickel supply chains](#).

Should concessions, contracts, and legislation require all business enterprises producing, purchasing, processing, and distributing transition minerals to apply and implement human rights-based impact and risk assessments and due diligence standards, including gender-responsive HRDD and heightened HRDD for conflict-affected areas? If so, how could such processes ensure meaningful participation of impacted communities, particularly vulnerable and historically excluded groups.

Ensuring mandatory human rights and environmental due diligence (mHREDD) is in place throughout the entire transition mineral supply chain is crucial. mHREDD should be mandated through legislation, and carried out throughout the whole transition mineral lifecycle (from licensing to its disposal). The process should be voluntary, inclusive, transparent, informed, and effective community participation, and be continuous in nature, with ongoing review and reassessment of human rights risks and action, beyond one-time assessments or social audits. Ensuring policy coherence between energy transition objectives and mHREDD legislation is needed. Emerging mHREDD needs to fully embrace the wide-ranging nature of human rights risks associated with mining for transition minerals, and refrain from adopting a silo approach assuming that risks are confined to sourcing from Conflict-Affected and High-Risk Areas only. Heightened due diligence should be required in this instance but must be viewed as supplementary to mHREDD.

In the context of transition minerals mining licensing and extraction, mHREDD legislation should include steps to obtain FPIC through a process agreed upon by Indigenous communities, one which they are able to withhold. When available, [FPIC protocols](#) developed by Indigenous communities must be considered. This is of high relevance considering the significant overlap between [indigenous and peasant lands, and the locations in which the extraction is and will be carried out](#). Moreover, mitigating the risk of abuse towards HRDs should also be at the center of mHREDD in the context of transition mineral mining licensing and extraction. By obtaining FPIC, along with an effective grievance mechanism, access to remedy, as well as a zero-tolerance policy on attacks to HRD, this risk can be significantly reduced. mHREDD legislation should also incorporate Environmental Impact Assessments (EIAs), addressing risks related to water access, water pollution, and impacts on wildlife and species habitats, which are among the most frequently reported allegations reported in the extraction of transition minerals. Corruption is a long-standing issue in the extractive sector and undermines the capacity of states to ensure the effective realisation of all human rights: mHREDD must incorporate specific [safeguards](#) on governance, corruption, and bribery.

Finally, we highly recommend including the disposal of these minerals as part of the lifecycle subject to transition mineral HRDD, as it has been evidenced this stage also poses [risks to human rights](#).

What specific renewable energy policies, practices and safeguards should be adopted by States and business so that energy transition does not have adverse effects on human rights?

States must clarify their expectations regarding the role of companies/domestically headquartered or operating in country/ in a just and fair energy transition, including [a commitment to energy justice](#). This should include national policies to ensure business contributes to a just transition, by identifying, preventing, mitigating and remedying potential or actual adverse impacts on the rights of workers, communities, consumers or societies in relation to the energy transition. Business must consider changes in operations, value chains, as well as related use of natural resources, and promote models of shared benefits and co-equity for affected local communities. For instance, the case of renewable energy [co-equity models between energy companies and indigenous communities in Canada](#) provides a notable example of how this can be enacted, one that has the potential for increased participation of all communities in the energy transition. Indigenous communities in [Peru](#) and in [Australia](#) who have borne the cost of the extractive model have increasingly been calling for adoption of models based on the principles of co-ownership and sustainable shared benefit.

There are clear steps companies should adopt to safeguard and actively promote human rights in the renewable energy sector. First off, businesses should set a clear goal to implement mHREDD in operations and supply chains, paying special attention to risks related to indigenous rights, land rights, and workers' rights. This should be done alongside ensuring access to remedy, human rights impact assessment conducted at site level, as well as the adoption of zero-tolerance policies on attacks on HRDs, are in place. Moreover, businesses can cooperate jointly with investors and governments to promote the implementation of the UN Guiding Principles for Business and Human Rights (UNGPs) and mHREDD.

How can States better advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs (e.g., including, but not limited to, design, approval, financing, implementation, and reporting of energy transition programs)?

States play a key role in ensuring that business conduct is respectful of and actively promotes human rights in the context of energy transition. We consider this can be achieved through States implementing the following policies and laws:

1. Mandatory Human Rights and Environmental Due Diligence Laws: [Financial services](#) should also be in the scope of all mHREDD legislation. Such legislation should provide for effective enforcement through penalties and sanctions. Mining companies that have caused human rights abuses should be held civilly liable. Access to justice before national Courts should be guaranteed, including when harm has occurred abroad. This is crucial as many mining operations are transnational in nature.
2. Ratification of relevant human rights instruments: States must adopt the [International Labour Organization \(ILO\) 169 Convention](#), the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIPs\)](#), the [United Nations Declaration on the Rights of Peasants](#), and in the case of Latin America and the Caribbean, the [Escazu Agreement](#), as key human rights instruments in the context of the energy transition.
3. Granting full public participation: States should implement policies enabling meaningful community and civil society participation in energy transition projects. This includes timely access to relevant information, allowing communities to voice concerns and providing transparent and voluntary consultations, particularly for indigenous and peasant communities. Additionally, policies should ensure access to justice for communities affected by project implementation. States must actively support and protect individuals who raise human rights concerns in the context of the energy transition.

4. States considering the adoption of legislation aimed to secure their global transition mineral supply chains, such as the US and the EU, should introduce policies to reduce the demand for new minerals to release the pressure to extract large quantities of transition minerals at a highly accelerated pace. For instance, [the United States energy transition to electric vehicles could require three times as much lithium as is currently produced for the entire global market](#), which would put additional pressure on extractive activities, often carried out in countries of the Global South.

Have you seen extractive sector investors play a role in preventing and mitigating, or in exacerbating, negative impacts of energy transition efforts on human rights? Should investors be required to conduct gender-responsive HRDD in meaningful consultation with local communities, civil society organizations, Indigenous Peoples, and human rights defenders? What remediation responsibility should investors have?

Respect for human rights, including FPIC, must be front-of-mind for the investors and companies involved in related activities. Where they are not, companies and their investors face significant reputational, litigation, and financial risks.

The energy transition also provides an opportunity for investors to contribute to building a truly rights-respecting renewable energy industry (including the mining of transition minerals). According to our research, [essential steps investors should adopt include](#):

- (i) Adopting stewardship and responsible investment policies, including voting and proxy resolution guidelines;
- (ii) Establishing and publicly communicating on human rights standards for all transition minerals mining investments, consistent with the UNGPs as well as the OECD Due Diligence Guidance for Responsible Business Conduct;
- (iii) Developing an engagement plan with transition minerals mining investees to carry out gender-responsive human rights due diligence – which includes carrying out meaningful and effective consultation with impacted local communities, as well as insists on urgent and decisive action to remove human rights and environmental risks from operations. Requiring heightened due diligence for investments in conflict-drive zones in these plans is a must;
- (iv) Using leverage with investee companies which cause, contribute to, or are linked to human rights and environmental harms, especially attacks on HRDs, so that companies mitigate negative impacts and provide access to remedy to those affected;
- (v) Undertaking rigorous human rights and environmental due diligence and review existing and potential investees for any past involvement with retaliation, including avoiding investing in companies with this track record, and when directly investing, engage with communities and defenders affected by extractive projects on an ongoing basis and in a regular, secure and reciprocal manner;
- (vi) Using divestment as a last resort following repeated failed engagement with transition minerals mining companies to ensure respect for human rights. For example, in 2020, after multiple efforts to engage with Grupo Mexico, Mexico’s largest mining company was blacklisted by Denmark’s statutory pension fund ATP over dangers posed by a new tailings dam. The dam was located at the site of the Buenavista copper mine, where a massive dam failure in 2014 was the cause of an environmental disaster;

In addition, investors can also engage in politically responsible practices which aim to achieve a transition to a fossil fuel-free economy, while promoting a renewable energy sector that respects human rights. Finally, investor coalitions can play a key role in engaging extractive companies – as exemplified by the recently launched [PRI Advance initiative](#), as well as support the growing calls on mandatory human rights due diligence legislation.

Are you aware of any cases submitted to judicial and/or non-judicial instances (e.g., national human rights institutions, national contact points, mediation, etc.) regarding business-related human rights abuses in the extractive sector, particularly in the context of energy transition projects?

Strategic litigation in support of a just transition is also emerging. “Just Transition Litigation” cases are typically brought by Indigenous peoples and affected communities, relying on human rights arguments to question the distribution of the benefits and burdens of the transition away from fossil fuels and towards net-zero emissions. The objective is not to stop the transition, but to ensure that the transition to net-zero emissions is fair and that peoples’ human rights are not impeded during the process. We have identified the following cases:

About extractives:

- [USA: Lawsuit against Lithium Nevada lawsuit over approval of lithium mine](#)
- [Serbia: Green NGOs sue Rio Tinto and China Communications and Construction for allegedly violating environmental regulations \(Jadar mine project\)](#)
- [Chile: Indigenous from Atacama salt flat call for temporary suspension of lithium miner SQM's activities until it submits an environmental compliance plan](#)

About other renewable energy projects:

- [Norway: Court rules against two windfarms, finds harm to Sámi reindeer herders](#)
- [Mexico: EDF's Gunaa Sicarú wind energy project has contract cancelled following a court ruling](#)
- [Lake Turkana Wind Farm Project Lawsuit](#): Local communities challenged the 33-year lease of 150,000 acres of land in Marsabit County, Kenya which they claimed was issued without adequate consultation, remuneration or lease procedure. The court ruled in the communities’ favour.
- Gitson Energy Lawsuit re its wind power project in Bubisa, Kenya halted after the High Court ruled that the Commissioner of Lands had no powers to demarcate the contested land. This decision was upheld by the Court of Appeal.