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The description of this report states that *"In response to **the climate change emergency**, a growing number of States, business enterprises, investors, and other stakeholders in the extractive sector worldwide have announced, or are currently developing, **plans to implement net-zero emission and energy transition programs**. Yet, concerns have emerged on how the design and implementation of energy transition policies and projects, especially the sourcing of critical transition minerals, **may further exacerbate child labour, modern slavery, poverty, and social exclusion; impact the enjoyment of the right to a clean, healthy, and sustainable environment; worsen energy poverty levels; and constrain access to land and other resources** to vulnerable and historically excluded groups."*

This premise misses the undeniable fact that any production chain towards "net-zero" is not, and never will itself be a net zero process. It is entirely dependent on machines, vehicles and chemical processes that use gas, diesel, fuel and toxic materials. Even if machines or vehicles themselves were electric (which is impossible when it comes to large transport vehicles) the source of that electricity is dependent on the location of their use. In Serbia for example¹, all electricity is powered by coal or gas, thereby eliminating the possibility of net zero in the time that we need to get to it.

We believe that the only true way to address this problem is a complete shift of social and economic structures and a focus on reducing production (de-growth) starting with the one element of production that is never discussed in "green" transition landscape and that is the military industrial complex. While societies focus on single use cars, gadgets, household goods, we must also shift focus from the single-use-goods market and put a lot of pressure on war machines including aircraft, ships, tanks and weapons, whose production and emissions are incomparable to all other industries. It is in the interest of small to medium businesses that this focus shift as soon as possible so that we may see the changes we need in time.

¹ In their in-house resource report Rio Tinto themselves estimate 33% of their yearly budget going towards fuel and reagents, while in the instance of copper extraction in Bor, hundreds of trucks travel in and out of two mines which operate 24 hours a day, seven days a week. All this under the pretense that copper and lithium are crucial to the energy transition.

It is not in the interest of any corporation to reduce its carbon footprint, unless it means they will make money from it. This landscape has not incentivized an end to toxification, land destruction or extraction and a move towards human rights, but simply a rebranding for extraction of new minerals. (Note Rio Tinto's commercial in Serbia which says "together we can save the world²." The Serbian Science Academy has spoken fervently against Rio Tinto's proposed project, because it will do just the opposite.³)

The "need" to extract, and the corporate need to do it quickly has meant that corporations are pressuring governments to alter laws in order to fast track permitting processes, which is in direct contradiction to the necessity to protect land, water, soil, air and humans. **This can be seen perfectly in the EU's new Raw Minerals Act, an act which has done away with the necessity of Environmental Impact Assessments and other crucial legal regulations that protect nature, humans and non humans⁴.**

The only way to achieve a human rights based transition is to put human rights first and not equal to the rights of extractive industries. Humans, non humans and nature can not be seen as something "in the way" of extraction, with "national interests" availing expropriation. The rights of the living should not be something "put in place" and ought to be prioritized above and beyond rights of the extractive sector – **the rights of nature and human rights must be at the top of the hierarchy of legal regulation.**

In Serbia Rio Tinto threatened locals with expropriation⁵, and this without any recourse. Physical attacks on protesters in Bor and Majdanpek who fight the Zijin mining company are also of great concern⁶. The "interface between climate change, energy transition and human rights" can not be equal otherwise it opens companies up to corruption. **We need laws that delegitimize the rights of factories and corporations and legitimize the rights of local communities.**

It is not the role of frontline communities, like the ones we work with or come from, to be the arbiters of the solutions created by the companies who are responsible for the

² <https://www.dropbox.com/s/e1zykizv4wj0si5/rio-tinto-reklama-njihova.mp4?dl=0>

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- https://rtv.rs/sr_lat/ekonomija/aktuelno/akademici-sanu-kopanje-litijuma-bi-devastiralo-srbiju-raselilo-stanovnistvo%E2%80%A6_1318836.html
- <https://www.radioosvit.com/vijesti/srpska-akademija-nauka-dovodi-u-pitanje-opravanost-projekta-rudnika-rio-tinto>
- <https://novaekonomija.rs/vesti-iz-zemlje/akademija-inzenjerskih-nauka-ocekuje-trajne-negativne-posledice-rio-tinta>

⁴ <https://www.dropbox.com/s/2cx98bb9jq2naty/2023%2003%2016%20Critical-Raw-Materials-Regulation-FoEE-analysis-1.pdf?dl=0>

⁵ <https://www.dropbox.com/sh/pimt4jps7d78go/AABRS-vzKvsNwCqMtJio-s7Ia?dl=0>

⁶

<https://www.dropbox.com/s/do4nkzd1f0qgsff/For%20Chinese%20Embassy%20Serbia%20MG%207%20oct%202022%20%28versi%C3%B3n%20ingl%C3%A9s%29.docx.pdf?dl=0>

problem. The perpetrators of this disaster must be held to account, as has been requested of the World Criminal Court.

Energy distribution (to communities that have no basic electricity, water, heat) must be the priority over an energy transition in societies that extract from those communities.

State duty to protect human rights

- 1. 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)?**

The new European Raw Materials Act is a travesty for human rights and rights of nature (which we recommend that the scope of this report considers equally). Rather than going into the act, we stand with the Friends of the Earth Analysis (in the footnote above). We ask that the UN consider suggesting states repeal this Act, reinstate the EIA procedure and take out every element of fast tracking licenses for mining.

There are two important elements that we suggest be added to the scope of business conduct:

1. Mandating insurance of damages lasts for 50-100 years after the life of a mine.
2. Mandating that corporations can not enter into business practices other than the ones they are registered for. For example a mining company can not donate money to local arts and crafts initiatives, or to the local football field, or universities if it is registered in that jurisdiction as being a mining company. This is a complicated ask, but addressing it in some way would minimize the ability of corporations with more than a small country's GDP to buy out local communities⁷.

- 3. What mechanisms or processes should exist at the State level (e.g., inter-ministerial committee, ex ante human rights impact and risk assessment) to assess and ensure that extractive sector operations, including the production and distribution of transition minerals, do not impact negatively human rights? Are these measures effectively enforced and do they provide the necessary coverage in light of energy transition plans, programs and activities?**

⁷ <https://www.dropbox.com/s/3t0snj5gtod7i3y/Risk%20assessment%20final%202.pdf?dl=0>

EIA procedures must be put back on the agenda of legal regulation in the EU.

5. What are the gaps in the development and implementation of existing National Action Plans, legislation, and domestic, regional, or international frameworks (e.g., the Paris Agreement or climate change laws) on business and human rights, particularly in relation to the extractive sector, which if addressed will advance a just and human rights-based energy transition?

In Serbia we do not have an action plan and have written to the EU about this. Their responses were generic to say the least. Links to correspondence can be found here:

<https://www.dropbox.com/sh/pbmpnmwenp4m8qs/AACQP9sOH2IYnvhp6ORtBXuxa?dl=0>

8. How can States harness the potential of energy transition to accomplish important policy objectives related to human rights, such as achieving local empowerment, gender equality, protection of the environment, mitigation of climate change and realising the Sustainable Development Goals?

In a situation where the state is corrupt this is impossible, and the problem is that most of the states where resources are extracted from are the ones with weak rule of law. In most cases, if laws were applied, extraction could not happen at the pace that it does. So, just as we are trying to go off fossil fuels, we need to consider what it would mean to go off corporate structures, and how to disarm those corporate structures from legal protection. We need more protection for the living and less protection for business.

Again, in this transition, energy distribution (to communities that have no basic electricity, water, heat) must be the priority over an energy transition in societies that extract from those communities in order to power their already apparent wealth and privilege.