

United Nations Call for inputs: Extractive sector, just transition, and human rights.

This document is a joint submission from Mining Affected Communities United in Action - MACUA (South Africa); Women Affected by Mining United in Action - WAMUA (South Africa); and 8 ActionAid Offices, namely: Netherlands, Malawi, Senegal, Malawi, Zimbabwe, Ghana, Kenya, and Liberia.

Question 1¹:

States can better advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs in the following ways:

- 1.1. Develop a gendered human rights-based social justice approach** to ensure that the transition benefits all people, including marginalized and vulnerable communities, specifically women and youth.
- 1.2. Ensure Legal Liability:** States Parties should ensure that their domestic law provides for a comprehensive and adequate system of legal liability.
- 1.3. Ensure stakeholder participation:** States should engage and consult with a broad range of stakeholders, including communities directly impacted and civil society groups.
- 1.4. Ensure existing International Human Rights and Environmental standards, move from soft law voluntary application to hard legally binding obligations.**
- 1.5. Develop transparent, accessible, and systematic reporting mechanisms:** States should report to all relevant stakeholders, specifically communities directly impacted and civil society groups.
- 1.6. Build capacity:** Resources must be earmarked for the capacity building of key stakeholders.²
- 1.7. Measures to protect human rights defenders:** States must put in place effective measures for the safety and protection of (women) human rights defenders.
- 1.8. Social Justice and Human Rights Due Diligence:** States need to include Social Justice and Human Rights Due Diligence processes in relevant laws.
- 1.9. Free Prior Informed Consent:** to manage expectations, states should include free prior informed consent principles into new and existing laws.

¹How 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)?

² UN Guiding Principles on Business and Human Rights, Extractive Industries Transparency Initiative.



Question 2:³

There are several mechanisms and processes that could be put in place at the State level to assess and ensure that extractive sector operations, including the production and distribution of transition minerals, do not negatively impact human rights. These mechanisms and processes include:

- 2.1. **Multi-Stakeholder Working Groups:** Comprised of representatives from different government agencies, representatives of extractive companies, representatives of affected communities, and other regulatory bodies.
- 2.2. **Gendered Human Rights and Social Justice Impact Assessments:** These assessments should be conducted before, during, and after any extractive sector operations and across formal and informal value chains. The assessments should be transparent, and independent.
- 2.3. **Access to remedy:** States should take initiatives to put in place judicial and non-judicial mechanisms for addressing grievances or complaints related to extractive sector operations.⁴

Question 3:⁵

States can encourage and regulate the communication of energy transition efforts by business in the extractive sector by implementing the following:

- 3.1. **Mandatory Disclosure Requirements:** States can regulate the communication of energy transition efforts by businesses in the extractive sector, through mandatory disclosure requirements.⁶
- 3.2. **Impose penalties for non-compliance or false reporting:** to ensure the adequacy, accessibility, reliability, and accuracy of the information, States can impose penalties for non-compliance or false reporting.⁷

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?

⁴ For example, the Ghanaian government has established the Minerals Commission, which receives and investigates complaints related to the extractive sector. The Australian government has established the Office of the Commonwealth Ombudsman, which receives and investigates complaints related to government agencies, including those responsible for regulating the extractive sector. Canada also has the Office of the Ombudsman specifically dedicated to dealing with human rights abuses and violations related to business.

⁵ How do States encourage and regulate the communication of energy transition efforts by businesses in the extractive sector, including State-owned enterprises (SOEs), to avoid the publication of misleading or unsubstantiated claims or reporting of an entity's energy transition programs? Do these measures sufficiently ensure the adequacy, accessibility, reliability, and accuracy of information?

⁶ For example, the UK Companies Act 2006 requires companies to disclose their greenhouse gas emissions, energy use, and related information in their annual reports. The EU's Non-Financial Reporting Directive also requires companies to provide information on their environmental, social, and governance performance, including their energy use and emissions policies.

⁷ For instance, California's Greenhouse Gas Emissions Performance Standard Regulations require energy providers to accurately report their emissions, and failure to comply can result in penalties of up to \$5,000 per day. In the United States, a case brought against *ExxonMobil*⁸ alleged that the company had made misleading statements about its knowledge of climate change and the risks it posed to the company's business. The case was dismissed, but it demonstrates the potential legal liability that companies face for making inaccurate or misleading claims about their sustainability efforts.



QUESTION 4.⁸

Current concessions, contracts, and bilateral investment treaties in the extractive sector constrain States to meet their international human rights obligations in that **these agreements often prioritize the interests of companies rather than those of the affected communities, state, and its broader citizenship, leading to potential constraints on domestic regulatory space.**⁹

The following changes in key provisions and licensing/procurement processes are desirable:

- 4.1. **Licensing/procurement processes must change to ensure that human and women's rights are at the forefront of decision-making.**
- 4.2. **States must be able to set and enforce robust environmental and social regulations without fear of breaching contracts or investment treaties.** They must also be required to deny permits or licenses to extractive industries that do not meet human rights and environmental standards.¹⁰
- 4.3. **Contracts, concessions, and bilateral investment treaties in the extractive sector must prioritize human and women's rights.**

Question 5.¹¹

There are several gaps in the development and implementation of existing National Action Plans, legislation, and domestic, regional, or international frameworks on business and human rights, particularly in relation to the extractive sector. Some of the key gaps are:

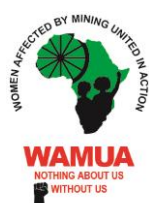
- 5.1 **Lack of enforceability:** States and businesses are not held accountable for their actions.
- 5.2 **Weak human rights standards:** Some frameworks, focus primarily on financial transparency and do not include strong human and women's rights standards.
- 5.3 **Inadequate consultation with affected communities:** Many frameworks do not provide for meaningful consultation with affected communities.

⁸ Do current concessions, contracts, and bilateral investment treaties in the extractive sector aid or constrain domestic regulatory space available to States to meet their international human rights obligations in the context of the energy transition? What further changes in key provisions and licensing/procurement processes are desirable to advance the energy transition in alignment with the UNGPs?

⁹ For example, a contract or concession may limit a state's ability to enforce its environmental and social laws or deny permits to extractive industries. Similarly, a bilateral investment treaty may grant foreign investors the right to sue states if the latter takes actions that negatively impact the investors' interests.

¹⁰ For example, the SADC Model bilateral investment treaty template has provisions that allow for enough regulatory space for States and sets clear obligations for investors to respect human rights. The Inter-American Court of Human Rights has held that states have an obligation to consult indigenous communities before making decisions that could impact their lands and resources, and the United Nations Guiding Principles on Business and Human Rights call for governments to protect against human rights abuses by businesses, including those in the extractive sector.

¹¹ 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?



5.4 Limited access to justice and remedy mechanisms: Many frameworks do not provide effective access to justice and remedy for communities.

5.5 Lack of specific focus on gender: Many frameworks do not adequately address the gender dimensions of the extractive industry.

5.6 Corruption and weak institutions: The implementations of mechanisms and domestic legislation has been adversely affected by grand corruption and weak oversight institutions.¹²

5.7 Absence of stakeholders and community dwellers in the development of these action plans that affect them.

Question 6. ¹³

Energy transition policies, programs, plans, and activities in one State can have adverse human and women's rights impacts outside of their territory or jurisdiction in several ways, including through supply chain issues and sourcing. ¹⁴ States need to:

6.1. Adopt Legally Binding Instruments: States parties should prevent the authorization of business activities of transnational character that would not meet the standards of human and women's rights protection provided in Legally Binding Instrument.

6.2. States must ensure human rights due diligence. The UNGPs state that businesses have a responsibility to identify, prevent, mitigate, and account for their human rights impacts throughout their operations and value chains.

Question 7. ¹⁵

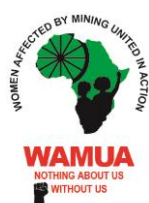
States can harness the potential of the energy transition to accomplish important policy objectives related to human and women's rights by adopting laws and policies that are designed to **promote social justice focused renewable energy and energy efficiency policies, that protect the rights of affected, vulnerable and marginalized communities and ensures that benefits are distributed equitably.** Some of the key steps that States can take include:

¹² Some Examples include: The UN Guiding Principles on Business and Human Rights, which call for states to provide effective remedies for human rights abuses committed by businesses. The Inter-American Court of Human Rights' ruling in the *Sarawak People v. Suriname*¹² case, which affirmed the rights of indigenous peoples to be consulted and to give their free, prior, and informed consent to extractive activities that affect them. The African Commission on Human and Peoples' Rights' Guidelines on Extractive Industries and Human Rights, which call for states and businesses to ensure that women's rights are protected in the extractive sector. The Canadian Supreme Court's ruling in the *Tsilhqot'in Nation v. British Columbia*¹² case, affirmed the rights of indigenous peoples to control their traditional lands and to be consulted and accommodated in decisions that affect those lands.

¹³ How can energy transition policies, programs, plans, and activities in one State have adverse human rights impacts outside of their territory or jurisdiction (including supply chain issues and sourcing)? What measures may reasonably correct this situation?

¹⁴ For example, the extraction of minerals used in renewable energy technologies such as solar panels and batteries can involve child labor, forced labor, and other human rights abuses. Similarly, the construction of renewable energy infrastructure such as wind turbines can lead to the displacement of indigenous peoples and local communities.

¹⁵ How can States harness the potential of the 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 realizing the Sustainable Development Goals?



7.1. Promoting local empowerment: States can promote local empowerment by insisting on the development of community-led renewable energy projects.¹⁶

7.2. Ensuring gender equality: States can ensure gender equality in the energy sector by promoting the participation of women in decision-making processes and ensuring that women have access to renewable energy technologies.¹⁷

7.3. Protecting the environment: States can protect the environment by promoting the use of renewable energy and setting targets for reducing greenhouse gas emissions.¹⁸

Corporate responsibility to respect human rights

Question 8¹⁹

Business enterprises in the extractive sector can integrate human rights into ongoing energy transition plans by doing the following:

8.1. Businesses should prioritize the protection of the human and women's rights of individuals and communities affected by their operations, as well as ensure that their activities do not cause adverse impacts on human and women's rights.

8.2. Businesses should identify and prevent human and women's rights abuses. They should identify and prevent rights violations throughout their operations, including through their business relationships.

8.3. Businesses must conduct Gendered Human Rights and Social Justice Impact Assessments (GHR SJIA) when developing and implementing projects. It is a critical tool that could help ensure that businesses respect social values and human and women's rights.

8.4. Businesses should respect the right of Communities to Free prior and Informed Consent. This should directly influence and inform a company's plan and activities.

8.5. Businesses should establish independent, transparent, responsive, and accessible grievance mechanisms that allow community members, the avenue to file complaints when rights have been violated due to company activities.

¹⁶ For example, in Germany, the Renewable Energy Sources Act provides financial support to individuals and communities for the construction of renewable energy projects. Through this, communities are empowered to take ownership of their energy needs and become active players in the energy transition.

¹⁷ For example, in India, the Ministry of New and Renewable Energy has launched a program called "Women in Solar Energy" to promote women's participation in the solar energy sector. Additionally, the state of Kerala in India has implemented a policy requiring that at least 50% of the beneficiaries of their rooftop solar program be women.

¹⁸ For example, in 2019, the UK became the world's first major economy to pass a law requiring net-zero emissions by 2050. Additionally, in Costa Rica, the government has set a goal to be carbon-neutral by 2021.

¹⁹ What roles should business enterprises in the extractive sector play to integrate human rights into ongoing energy transition plans and programs to address adverse human rights impacts? Please provide examples if possible.



Question 9²⁰

Human and Women’s rights provisions in existing concessions, contracts, and bilateral investment treaties have not been effective in encouraging businesses in the extractive sector to respect all recognized human and women’s rights. There are several reasons for this, including:

9.1 **Weak enforcement mechanisms,**

9.2 **lack of clarity and specificity in the provisions, and**

9.3 **limited participation and consultation with affected communities.**²¹

9.4 **A lack of a Legally Binding Instrument.**

9.5 There should also be **greater participation by affected communities**, particularly women and youth, in the negotiation and implementation of rights provisions.

Question 10.²²

Extractive sector investors have a crucial role in preventing and mitigating negative impacts on human and women’s rights from energy transition efforts. Investors can do the following:

10.1 Investors should insist that businesses conduct Gender-Responsive Social Justice Human Rights Due Diligence, which should be informed by meaningful consultation with women, local communities, and civil society organizations.

10.2 Investors must insist on socially just remediation responsibilities, which provide prompt and adequate remedies to affected individuals and communities in the case of harm.²³

Question 11.²⁴

The informal economy can play a significant role in advancing a just and human rights-based energy transition in several ways. For example:

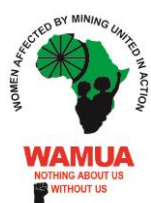
²⁰ Are human rights provisions, for example in existing concessions, contracts, and bilateral investment treaties, effective in encouraging businesses in the extractive sector, including investors, to respect all internationally recognised human rights? If not, what should be done to strengthen their efficacy?

²¹ According to a report by the International Council on Mining and Metals (ICMM),²¹ while most mining companies include human rights provisions in their policies and procedures, these are not always effectively integrated into their business practices. Furthermore, there is often a gap between the commitments made by companies and their implementation on the ground. A study by the Danish Institute for Human Rights found that while human rights provisions in investment treaties can be helpful in addressing human rights abuses by companies, they are often vague and lack clarity on specific obligations. The study recommends that investment treaties should be revised to include stronger human and women’s rights language and better mechanisms for enforcement.

²² 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?

²³ The landmark *Kiobel v. Shell*²³ case is an example of how investors can be held responsible for human rights abuses. Nigerian plaintiffs sued Royal Dutch Shell for its alleged involvement in human rights abuses, including torture, extrajudicial killings, and violations of their right to life, due process, and property. While the plaintiffs were ultimately unsuccessful in the US court, the case set an important precedent for holding investors accountable for human rights violations. Another example is the *Sreniawski et al. v. Vattenfall*²³ case, where Germany’s highest court ruled that Swedish energy company Vattenfall had breached fundamental rights by destroying a German forest for mining coal. The court ruled that Vattenfall had failed to consider the environmental and human rights impacts of its actions, and its proposed remediation of the harm caused was insufficient.

²⁴ What role can the informal economy (e.g., artisanal, and small-scale mineral exploitation, including supply chains) play in advancing a just and human rights-based energy transition?



11.1 Enhancing local economic development: Artisanal and small-scale mineral exploitation can provide local communities, with income-earning opportunities and contribute to the development of rural economies.

11.2 Promoting sustainable mining practices: Artisanal and small-scale mining can, with the right support and guidance, be conducted in a sustainable and responsible manner that minimizes environmental impact and promotes the long-term health of local ecosystems.

11.3 Improving social inclusion: Many people engaged in informal work, including artisanal and small-scale mining, are marginalized, and excluded from formal economic systems.

Question 12 ²⁵

Concessions, contracts, and legislation should require all business enterprises producing, purchasing, processing, and distributing transition minerals to apply and implement gendered social justice human rights-based impact and risk assessments and due diligence standards. Implementing these standards will help to ensure responsible sourcing of minerals, prevent harm to people and communities, and support the sustainable development of producing countries largely located in the global south.²⁶

All business enterprises in the value chain should:

12.1 Promote and resource, active and purposeful consultation, with interested and affected parties.

12.2 Community Equity in extractive ventures can also play a critical role in affected communities' meaningful participation. Communities that are affected should be allowed to negotiate a non-negotiable equity at a minimum of 10 percent value for community investment.

Question 13. ²⁷

13.1 Extractive sector associations must consult with human rights organizations to ensure that human and women's rights are adhered to, promoted, and fully integrated into the business model.

²⁵ 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?

²⁶ United Nations Guiding Principles on Business and Human Rights: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

²⁷ How could extractive sector associations, higher education institutions, and other stakeholders promote awareness and encourage human rights-compatible business practices (e.g., addressing green-washing and green scamming practices)?



13.2 Businesses must adopt human and women’s rights-compliant practices. This can be done through awareness-raising campaigns, training programs, and advocacy efforts.^{28 29}

13.3 Integration of social justice and human rights into higher education curricula: Higher education institutions can play a crucial role in promoting social justice and human and women’s rights-compatible business practices by integrating rights courses and modules into their curricula.^{30,31}

13.4 Certification programs: Certification programs can help promote awareness and encourage human rights-compatible business practices.³²

13.5 Transparency and accountability mechanisms: Extractive sector associations can establish transparency and accountability mechanisms through which stakeholders can scrutinize companies' actions.³³

Access to remedy

Question 14.³⁴

Some of the measures and mechanisms provided by extractive sector legislation, bilateral investment treaties, concessions, and contracts to allow individuals or communities affected by extractive activities to seek effective remedy for business-related human rights abuses are:

14.1 Access to Information - Legislations and contracts should require companies to disclose relevant information about their operations.

14.2 Impact assessments: Extractive sector legislation should require impact assessments to be conducted before any extractive activities are carried out.

14.3 Community participation: Bilateral investment treaties, concessions, and contracts should require companies to engage and consult with communities, in line with principles

²⁸ For example, the Extractive Industries Transparency Initiative (EITI) has a multi- stakeholder approach and encourages human rights-compatible business practices. This could involve joint training programs, conferences, or expert panels focused on discussing the importance of respecting human rights in the extractive industries. Such collaborations can help foster a greater understanding of the challenges faced by parties and promote more effective strategies for addressing human rights concerns in extractive industries. This however requires significant effort and moderation from states to ensure that such initiatives do not simply serve as a tick-boxing exercise by business, but it is monitored and exactly translates into outcomes and material changes in practices.

²⁹ Harvard University’s Human Rights Program: <https://hrp.law.harvard.edu/>

³⁰ Some examples of universities that have integrated human rights courses into their curriculum include Harvard University’s Human Rights Program and the University of Minnesota’s Center for Human Rights

³¹ University of Minnesota’s Center for Human Rights: <https://humanrights.umn.edu/>

³² One example of such a program is the Extractive Industries Transparency Initiative (EITI), which aims to enhance transparency in the extractive industries and promote respect for human rights and environmental sustainability.³² However, certification must never become a safe harbor from liability and accountability for companies .

³³ For instance, the International Council on Mining and Metals (ICMM) has established a set of sustainability principles that members must adhere to, including respect for human rights³³. ICMM members must also undergo regular independent third-party audits to ensure compliance with these principles.

³⁴ What measures and mechanisms should be provided by extractive sector legislation, bilateral investment treaties, concessions, and contracts to allow individuals or communities affected by extractive activities to seek effective remedy for business-related human rights abuses? What remedies are best suited for this sector?



of free, prior and informed consent and the laws should include a community equity stake of not less than 10 percent.

14.4 Grievance mechanisms: Extractive sector legislation should require companies to establish grievance mechanisms that are Independent, accessible, transparent, and responsive to the needs of affected communities.

14.5 Monitoring and oversight: Bilateral investment treaties, concessions, and contracts should require regular monitoring and oversight of extractive activities by an independent third party.

As for remedies, the most suitable ones for the extractive sector would depend on the nature of the rights abuse and the local context. However, some possible remedies include:

14.6 Restitution: Companies should provide compensation to affected individuals or communities for any harm caused by extractive activities.

14.7 Rehabilitation: Companies should also provide rehabilitation measures for the environment and to affected individuals or communities.

14.8 Preventive measures: Companies should take measures to prevent future rights abuses, including changes in their policies and operating procedures, and regular training for relevant staff.

14.9 Accountability: Companies should be held accountable for any rights abuses committed. This may include legal action, fines, or other penalties.

Question 15.³⁵

15.1 There have been several steps taken by States to investigate, punish and redress business-related human rights abuses related to the extractive sector in the context of energy transition projects which are cited in the footnotes.³⁶

15.2 There are some examples cited in the footnotes of legislation and applicable human rights laws that can be used to address business-related human rights abuses in the extractive sector.³⁷

³⁵ Please provide examples of steps taken by States to investigate, punish and redress business-related human rights abuses related to the extractive sector in the context of energy transition projects. Are the steps and redress mechanisms effective in terms of both process and remedial outcomes?

³⁶ Norway: The Norwegian Government Pension Fund Global (GPF) has made efforts to divest from companies involved in human rights abuses, including in the extractive sectors.

- Germany's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises investigated a complaint regarding the human rights impacts of RWE's lignite mining in the Rhineland region. The NCP facilitated a dialogue between the complainants and RWE and reached an agreement that RWE would provide additional support to affected communities and work towards the sustainable development of the region.
- In Canada, the British Columbia government established a "Mining Jobs Task Force" to review the province's approach to mining and ensure that the industry is operating in a socially, economically, and environmentally responsible manner. The Task Force made recommendations to improve transparency and accountability, strengthen environmental protections, and support community engagement and consultation.
- In the Philippines, the government has taken steps to investigate the human rights impacts of mining operations on indigenous peoples and their communities. In 2019, the Commission on Human Rights launched an inquiry into alleged violations of the rights of the Lumad people in Mindanao, including forced displacement, killings, and attacks on their schools and other community infrastructure.
- In Malawi erland coal mine left the country without following the decommissioning process, it left huge pits without any rehabilitation. The government failed to track the owners of the mine for over 12 years, until civil society joined the cause and currently the beneficial owners were found and the state with civil society intends to take the company to court.

³⁷ The UN Guiding Principles on Business and Human Rights provides a framework for States and companies to prevent and address human rights abuses linked to business activities.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights protect a range of human rights, including the right to life, the right to health, and the right to a healthy environment.



15.3 In terms of effectiveness, the steps and redress mechanisms taken by States have been an abject failure and has been criticized for impotency and failing to deliver concrete remedies for affected communities. **The influence and absolute power of business to act with impunity must be restrained by legally binding national and international mechanisms.**

Question 16.³⁸

16.1 There are cases that have been submitted to judicial and/or non-judicial reviews regarding business-related human rights abuses in the extractive sector which are cited in the footnotes.³⁹

16.2 It should be noted that there are multiple cases of business-related human rights abuses in the extractive sector, which are too numerous to mention in this submission. Some of the cases include the extraction of minerals required in the energy transition, for example gross child labor violations in cobalt mines in the DRC.

Question 17.⁴⁰

17.1 Current dispute resolution provisions and frameworks in the extractive sector have been criticized for being inadequate.

17.2 These criticisms arise from the lack of independence and transparency of some grievance mechanisms, and

17.3 the limited scope of some mechanisms that only address specific issues activities, and energy transition projects.

17.4 This is because many of these frameworks are voluntary and lack enforceability,

17.5 resulting in limited accountability and redress for affected communities.

National laws and regulations, such as state constitutions, mining laws, environmental impact assessment laws, labor laws, and laws protecting indigenous peoples' rights.

³⁸ 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?

³⁹ Omai Gold Mines in Guyana: In 1995, a tailings dam at the Omai Gold Mine collapsed, spilling mine tailings containing cyanide, heavy metals, and other pollutants into the Essequibo River.

The Marikana massacre occurred in 2012 at a platinum mine in South Africa owned by Lonmin. In this case, police opened fire on protesting workers, killing 34 and injuring many others.

In Malawi, issues of labor thus both child labor and abuse of power were reported to Malawi Human Rights Commission, which did its investigations and found there was noncompliance to labor laws by most coal mining companies even though there is a Ministry of Labor.

There are also ongoing cases involving mining company Rio Tinto's alleged human rights abuses in Papua New Guinea, including claims of environmental damage, and forced relocation of local communities to make way for mining operations.

⁴⁰ Are current dispute resolution provisions and frameworks in the extractive sector "fit for purpose" to address complaints related to human rights abuses linked to extractive activities and energy transition projects? If not, what are the alternatives for a legitimate, transparent, and effective dispute resolution system to address such complaints?



Alternatives:

Alternative for a legitimate, transparent, and effective dispute resolution system are to:

- 17.6 **establish a mandatory grievance mechanism.**
- 17.7 **implementation of a Legally Binding Instrument** to regulate, in international law, the activities of transnational corporations and other business enterprises is critical.
- 17.8 Attached to this instrument could be the **establishment of an international court or tribunal** to hold corporations accountable for violations of human rights and provide just and equitable remedies for affected communities.
- 17.9 Regardless of the approach chosen, it is crucial that **the dispute resolution system prioritizes the participation, consultation, and consent of affected communities.**
- 17.10 Additionally, **the system must have a strong enforcement mechanism.**

Good practices and other comments

Question 18.⁴¹

Here are some examples of good practices regarding the integration of human rights issues in the extractive sector in the context of the energy transition:

- 18.1 **Free, prior, and informed consent (FPIC)** of affected communities:
- 18.2 **Integrating human rights criteria in investment decisions:**
- 18.3 **Supporting human rights defenders and civil society:**

Question 19.⁴²

Some specific renewable energy policies, practices and safeguards that should be adopted by States and business include:

- 19.1 **Consultation and participation:** States and businesses should engage in transparent, consultation, and meaningful participation with affected communities.
- 19.2 **Social and environmental impact assessments:** States and businesses should conduct thorough and independent social and environmental impact assessments.
- 19.3 **Mitigation measures:** States and businesses should implement mitigation measures to address the adverse impacts of the energy transition on the rights of affected and marginalized communities.

⁴¹ Please provide examples of good practices regarding the integration of human rights issues in the extractive sector in the context of the energy transition.

⁴² 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?



- 19.4 Just Transition:** The energy transition should be guided by the principle of a just transition, which seeks to ensure that those affected by the transition are not deliberately overlooked.
- 19.5 Mandatory Gendered Social Justice Human Rights Due Diligence assessments:** States and businesses must conduct gendered due diligence assessments to identify and address any adverse impacts on human rights.
- 19.6 Monitoring and accountability:** States and businesses should establish monitoring mechanisms to assess the impact on women’s and human rights and ensure accountability for any violations.
- 19.7 Tax Justice:** States should ensure that taxes are paid in the jurisdictions that they are extracted from.

Question 20. ⁴³

There are several recommendations that could help further advance a just and human rights-based energy transition in the extractive sector. These include:

- 19.1 States should adopt a gendered human rights-based approach to energy policies and regulations.**
- 19.2 Businesses and investors should adhere to international human and women’s rights standards and guidelines** when investing in the extractive sector.
- 19.3 Civil society should be informed, resourced, and consulted** in the process of the energy transition.
- 19.4 UN bodies should play a key role in promoting and protecting human and women’s rights in the extractive sector.**

⁴³ Are there any specific recommendations to States, businesses (including investors), civil society, UN bodies and National Human Rights Institutions that would help further advance a just and human rights-based energy transition in the extractive sector? Any other comments or suggestions about the forthcoming report are also welcome.