**Swedwatch submission to the UN Working Group on Business and Human Rights in response to the call for input on ‘Extractive sector, just transition and human rights’**

**Introduction**

To counter the impacts of climate change, a rapid and unprecedented green transition must take place in the upcoming years, prompting a steep demand for transition minerals and an increase in extractive activities. The extractive sector is often associated with a series of human rights and environmental risks, including loss of land and livelihoods for communities, violation of indigenous rights and their land rights, health and hazardous risks, environmental degradation and conflict risks. In order for the green transition to also be a just transition, human rights need to be at the centre of state and company policies and green transition programs. This includes, but is not limited to, conducting ongoing human rights and environmental due diligence (HREDD) throughout the value chain, and in the designing of energy transition programs, in alignment with internationally recognised standards on BHR like UNGPs and the OECD Guidelines on Multinational Enterprises.

Much of the sourcing for transition minerals will take place in some of the world’s most fragile and conflict-affected areas. In such contexts, it is paramount that business and states conduct [heightened human rights due diligence](https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide), including a mapping of conflict risks rooted in an ongoing and locally rooted context analysis. This includes identifying potential and actual impacts on people (human rights) as well as on the context (conflict). The UNWG has previously noted that “businesses are not neutral actors; their presence is not without impact. Even if business does not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics” [[1]](#footnote-2). This does not only apply to companies. State actors, investors, and development finance institutions (DFIs) should also take the conflict dimension into account when developing energy transition plans and programs, when granting public procurement contracts, or signing concession agreements for extractives. It is important that urgency and rapidity of the transition does not come at the expense of human rights and environmental concerns, potentially creating a host of new adverse side effects, including corruption and conflict risks.

**Question 7**

**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?**

Energy transition policies, programs, plans and activities in one State can have adverse human rights impacts outside of their territory or jurisdiction, including value chain issues and sourcing. This is mainly due to the need to mine raw materials and minerals needed for the energy transition. It has been documented by countless reports and investigations that mining can have severe adverse impact on human rights, including the right to enjoy a healthy environment.

While States have a duty to protect human rights, poor governance and a perceived conflict between economic development and human rights have often led to countries where mining occurs to forgo this duty. In many countries, rights holders are not able to defend their rights, and opposition to projects is often labelled as being anti-development.

*Export credit agencies*

The energy transition, especially when efforts to achieve it are underpinned by a sense of urgency to achieve climate goals, can exacerbate these patterns, as many countries rush to ensure a steady supply of minerals to implement energy transition technologies.

This can be seen e.g. in the EU’s Global Gateway, which presents a strategy to, amongst others, “work with partner countries to invest in infrastructure for developing sustainable and resilient raw materials value chains”[[2]](#footnote-3). In Sweden, the country’s export credits agency (ECA) was given a [mandate to offer a credit guarantee](https://www.ekn.se/en/about-ekn/newsroom/archive/2022/press-releases/new-credit-guarantee-to-secure-swedens-access-to-raw-materials/) for imports to “secure access to raw materials for Swedish companies”. The involvement of state actors, like ECAs and development financial institutions (DFIs), can increase investments in mining. While some ECAs and DFIs adopt safeguards to ensure the respect of human rights and avoid negative social and environmental impacts, this is far from common practice for all ECAs. It is also not uncommon that development projects assume a political meaning for the countries involved, and are hence approved without much regard for human rights.

Public ownership of projects, where stakeholders have a say regarding investments and projects, and where benefits are shared with communities affected, can mitigate some of these impacts.

[Possible measures](https://swedwatch.org/wp-content/uploads/2023/04/sustainable-european-export-finance230419.pdf) to avoid and mitigate these impacts include due diligence provisions for export credits at EU and OECD level, and the introduction of strong environmental, social and human rights safeguards in trade treaties and in the WTO framework. In addition, states should adopt strong and specific rules to ensure ECAs and DFIs do not infringe on human rights, and to ensure public participation in projects, including access to information rights.

*Public procurement*

At the core of many human rights and environmental issues connected to the green transition is the asymmetry in the economic model where unsustainable consumption in high-income countries pushes resource-rich countries in the global south to act as mere suppliers of raw materials. This system has severe implications in those parts of the world where resource extraction takes place – as it often leads to severe impacts on the environment and human rights.

Swedwatch welcomes initiatives at European level to regulate corporate due diligence practices, however regrets that public procurement has so far not been sufficiently explored as a strategic tool to improve working conditions and facilitate decarbonization in global value chains.

Public procurement has been recognised as a lever to meet the Sustainable Development Goals and should, according to the UN Guiding Principles on Business and Human Rights (UNGPs), be used to promote respect for human rights. To this end, it is important that states tap into the substantial purchasing power of public procurement, which in the EU alone amounts to 2 trillion EUR.

[Swedwatch research](https://swedwatch.org/wp-content/uploads/2016/11/82_Agents-for-Change-enkelsidor.pdf) has shown that social criteria in public procurement are powerful tools to ensure compliance with international standards on responsible business conduct and improve conditions in global value chains. However, at the moment sustainable procurement is very much voluntary. In practice, this means that most procurement procedures still use lowest price as the only award criterion for public contracts, and contracting authorities often overlook fundamental human rights even when goods and services are sourced from areas with a high risk of impacts on human rights and the environment.

Swedwatch considers it pivotal that binding rules are introduced at the national, regional and global level which make it mandatory for public purchasers to consider social and environmental criteria in contracting procedures. Such rules should further ensure that the procurement of goods and services does not facilitate the energy transition in one part of the world at the expense of human rights and the environment in resource-rich low- and middle-income countries. Furthermore, this has the potential to significantly improve access to decent work and social protection for groups in vulnerable positions, such as human rights defenders, migrant workers and women – as such facilitating not just the green but also the just transition.

Crucially, such mandatory criteria must be aligned with the UNGPs, recognizing the full concept of human rights and environmental due diligence (HREDD) and including all internationally recognized human rights. Purchasing authorities should be required to ensure that the suppliers comply with their obligations and allow for the exclusion of suppliers that are neglecting their HREDD obligations.

**Question 9**

**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.**

The extraction of the minerals and materials needed for the energy transition would not be possible without mining machinery. Businesses that provide mining equipment, such as drills, excavators, trucks, and backhoes, have a responsibility to seek to prevent or mitigate the adverse human rights and environmental impacts that are directly linked to their products or services, even if such impacts are caused by a third party (i.e. mine operators/mining companies). Companies selling or renting out mining equipment therefore have a responsibility to conduct due diligence across their entire value chains, which includes both the upstream and downstream parts of their value chain.

Research by Swedwatch on [Myanmar’s jade mines](https://swedwatch.org/publication/machinery-providers-fail-to-recognize-human-rights-risks-in-myanmars-jade-mines/%3B%20https%3A/swedwatch.org/publication/mining-machinery-sales-in-myanmar-may-be-aggravating-human-rights-abuses/) and [South Africa’s platinum mines](https://swedwatch.org/publication/atlas-copco-sandvik-should-do-more-to-address-risks-in-south-africas-platinum-mines/) has shown that companies providing mining equipment fail to conduct adequate human rights and environmental due diligence for their downstream value chains. The importance of downstream due diligence has also been highlighted in two recent policy papers Swedwatch has published in [2022](https://swedwatch.org/wp-content/uploads/2022/12/downstream-due-diligence.pdf) and [2023](https://swedwatch.org/wp-content/uploads/2023/04/policy-paperdownstream-due-diligence-in-practice230404.pdf) together with a group of non-governmental organizations, where the extractives sector is highlighted as one of many sectors where risk-based downstream value chain due diligence is essential to prevent adverse impacts.

As the extractives sector is associated “with risks related to large environmental footprint and impacts on local communities”[[3]](#footnote-4), companies selling to mining machinery should identify and assess the risks that their products could have in a volatile downstream context, such as Myanmar’s or South Africa’s mining sectors. Rightsholders’ engagement should be part of the risk identification process.

Measures to mitigate and prevent adverse impacts could include conducting ‘know your customer’ risk analyses to ensure that the prospective customers have not previously caused or contributed to adverse impacts or resold the machinery to companies causing harm. Introducing contractual clauses limiting the buyer from using products in a way that causes or contributes to adverse impacts or from selling the machinery to actors that may cause harm. Moreover, as due diligence is an iterative process, companies selling mining machinery should regularly review distributors and resellers’ human rights performance.

**Question 11**

**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?**

Many of the human rights impacts and conflicts related to the extractive sector are related to the lack of free, prior and informed consent (FPIC) for indigenous and other affected communities and the lack of meaningful consultation. Human rights and environmental defenders protecting the rights of such communities are increasingly exposed to attacks through violence, threats, SLAPPs and smear campaigns. Lack of transparency and information on the investors behind extractive projects makes it difficult for affected communities and workers to hold investors to account. Changes in ownership and lack of responsible exit strategies further diminish communities’ chances to proper remediation.

In any [large-scale land-related project](https://swedwatch.org/publication/companies-impact-womens-rights-and-social-conflict-in-liberia-and-sierra-leone/), including extractive projects, impacts caused by lack of access to land and natural resources are common. Women, especially those belonging to particularly vulnerable groups within the community such as landless, older women, young girls, indigenous groups and women lacking formal education are particularly at risk. They are less likely to benefit from formal employment opportunities and are often neglected in compensation schemes due to lack of formal land titles. They are severely impacted by loss of natural resources such as land, water, firewood, medicinal herbs on which their livelihood depend. When livelihoods are lost, women may be forced into prostitution or have to leave the area, ending up in the slum areas of bigger cities. Migrant workers moving into the area in search of employment tend to exacerbate intra-community conflicts and increase competition over remaining natural resources. Prostitution and sexually transmitted diseases around project sites often increase as well as teenage pregnancies and school drop-outs when young girls from vulnerable households are drawn into temporary relationships with male workers who tend to leave the area and new families after the construction phase when employments are lost.

Investors, particularly state-owned or controlled investors such as development finance institutions, development banks and pension funds, need to step up their efforts to prevent impacts on human rights. Clear and binding requirements on conducting human rights due diligence should be put on investors, including assessing financed companies/projects’ ability to properly conduct gender responsive HRDD, meaningful stakeholder consultation and to ensure FPIC is applied. Investors should ensure transparency in relation to business partners, particularly when operating in high-risk contexts, to allow at-risk defenders to reach out for support. They should also use leverage over business partners to support defenders and the right to freedom of expression, assembly and association whenever there is an opportunity to do so. Furthermore, they should encourage third parties such as governments, state authorities and other business actors to comply with their duties and responsibilities to respect the rights of human rights defenders, protect them from attacks and threats, and to create and maintain an enabling environment in which human rights defenders can operate freely. Investors should also require that companies they invest in adopt a policy commitment to respect human rights defenders and to not obstruct their work in the course of company operations and investments, including by pledging not to use criminal proceedings against human rights defenders even where they may oppose a project or operation.

Securing the right to information, participation in the decision-making process and access to remedy and justice is key in the just transition. Access to remedy should be timely, accessible, and inclusive for women and other marginalized groups. States should take the appropriate steps to prevent, investigate, punish and redress violations, also in relation to green transitions and green investment projects.

Remediation efforts should include mechanisms to provide remedy and money to account for impacts should be set aside from the start and not depend on the economic viability of the project. Particular emphasis must be put on developing [responsible exit strategies](https://swedwatch.org/wp-content/uploads/2017/11/No-Business-No-Rights-final.pdf) in consultation with all relevant stakeholders at the initial phase of the project, paying particular attention to clearly defining and communicating responsibilities in case of an exit/divestment or change in ownership of a project. There should be a guarantee that communities have access to remedy regardless of changes in project ownership.

To prevent impacts related to irresponsible exits there is a need for investors’ complaint mechanisms to accept grievances related to irresponsible exits and recognition of the additional harm it may cause to communities when exits are made without a responsible exit plan. Grievance mechanisms must be known, credible, and accessible by potentially affected rightsholders and should be open to receive and handle complaints also after an exit/divestment. This is particularly important when the omission, or failure to mitigate identified risks, by the investor, have exacerbated the impacts.

1. UNWG on Business and Human Rights (2020) Business, human rights and conflict-affected regions: towards heightened action, p. 10. <https://www.ohchr.org/en/business-and-human-rights/business-human-rights-and-conflict-affected-regions-project> [↑](#footnote-ref-2)
2. European Commission (2021) Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank. The Global Gateway, p. 6 [↑](#footnote-ref-3)
3. OECD (2018) ‘OECD Due Diligence Guidance for Responsible Business Conduct’, p. 62. [↑](#footnote-ref-4)