

Submission in response to the call for inputs to the report of the Working Group on: Extractive Sector, Just Transition and Human Rights

JOINT DECLARATION OF NHRIs

15 MAY 2023

The National Human Rights Institutions that are part of the GANHRI Working Group on Business and Human Rights (GANHRI WG) congratulate the Working Group on the issue of Human Rights and Transnational Corporations and Other Business Enterprises (UNWG) for undertaking this public consultation on Extractive Sector, Just Transition and Human Rights in line with the respect of the UN Guiding Principles on Business and Human Rights (UNGPs).

Eleven years after the adoption of the UNGPs, we consider this new report to be of utmost importance. This is due to the growing trend in the productive sector (PS) to implement energy transition and zero emissions actions, which are essential to achieve the Sustainable Development Goals (SDGs) on clean energy (SDG 7) and climate change action (SDG 13). However, we believe that in order to fully meet the 2030 Agenda, it is imperative that actions for the SDGs, guarantee human rights. Currently, PS actions for the energy transition raise concerns about potential human rights violations; therefore, they must incorporate human rights standards and principles, particularly for the SDG, and be socially, economically and environmentally sustainable.^{1 1}

As state-mandated, independent, effective, and pluralist bodies with a broad human rights mandate, National Human Rights Institutions (NHRIs) are among the pillars of protection and respect for human rights. NHRIs play vital roles in complementing, supporting, or drawing attention to States' actions or policies affecting human rights, as well as monitoring the activities and operations of businesses.

NHRI actions (Q 19)

NHRIs express the importance of respecting human rights under the UNGP framework, in all contexts. The energy transition pertains to actions of a PS that favours the realisation of the SDGs. However, the human rights transgressions it can produce are worrying. Consequently, NHRIs are constantly working to address the issue and strengthen the UNGPs.

In this sense, in September 2022, the **Danish Institute of Human Rights (DIHR)**, in collaboration with **Tanzania Women in Energy Development (TAWoED)**, organised a

¹ Bansal, Tulika; Winarsky Green, Kayla, *Outcome Report: Expert meeting on the human rights impacts of nordic investments in renewable energy developments in the global south*, The Danish Institute for Human Rights, 2021, p.5. Doi: https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Nordic%20Investments%20in%20renewable%20energy_expert%20meeting%20outcome%20report_2021_0.pdf

roundtable, with representatives from the state, the PS and civil society.² As a result of the event, 10 gender-sensitive initiatives for human rights in the energy transition were brought forward. The methodology of the roundtable and its resulting proposals are useful for NHRIs to address the issue.

In addition, the international conference held by the Qatar NHRI in February this year, entitled "*Climate Change and Human Rights*", is also noteworthy. Held in cooperation with the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme, the League of Arab States and GANHRI, the conference aimed to emphasize the importance of rights-based climate action such as: the right to participation, access to information, access to justice, the role of human rights and environmental defenders and to present experiences of NHRIs.³

Another important action carried out by NHRIs is the collection of information on energy transition and human rights cases. This information is used to take action in their jurisdiction on the basis of the UNGPs, or to highlight situations through public documents. For example, the DIHR has produced multiple reports such as: "*Human rights impacts of nordic Investments in renewable energy developments in the Global South*", "*Women's human rights in the energy transition in Sub-Saharan Africa...*", "*Scoping papers: Human rights and energy transition*", "*Case study: Equitable access to energy and indigenous participation in Chile's energy policy*", etc.⁴

To optimise their work, NHRIs have used digital tools for the creation of information databases on human rights conflicts related to the energy transition, in order to develop improved action strategies for compliance with the UNGPs. For example, the **Chilean** NHRI has created a map of socio-environmental conflicts in Chile.⁵ It reflects 131 socio-environmental conflicts, of which 23 involve the renewable energy sector. This digital tool helps the Chilean NHRI Chile to strategise on human rights abuses in energy transition projects.

Along with this, NHRIs exercise their mandate to act in contexts of energy transition and human rights. **Argentina's** NHRI has developed projects to regulate the mining industry and implement due diligence for the respect for the UNGPs in the sector.⁶ For several years, **the Kenyan** NHRI has been documenting the patterns of human rights violations caused by deforestation by various PS, including energy.⁷ This is in addition to actions such as:

² Dicalou, Mathilde; Winarsky Green, Kayla; Gözmann, Nora (eds.), *Summary report-roundtable on the rights of women and girls in the energy transition in Sub-Saharan Africa*, The Danish Institute for Human Rights, 6 October 2021. Doi: https://www.humanrights.dk/files/media/document/EnergyGenderRoundtableOutcomeReport_EN_accessible.pdf

³ See: <https://www.qna.org.qa/en/News-Area/News/2023-02/23/0090-climate-change,-human-rights-conference-concludes,-issues-recommendations>

⁴ See <https://www.humanrights.dk/projects/energy-transition-human-rights>

⁵ See <https://mapaconflictos.indh.cl/#/>

⁶ Global Alliance of National Human Rights Institutions (GANHRI), *Argentina: Using the SGDs to monitor human rights and climate change*: <https://ganhri.org/argentina-climate-change/>

⁷ Global Alliance of National Human Rights Institutions (GANHRI), *Kenya: how partnering with the government helped conserve forests and protect the rights of indigenous people*: <https://ganhri.org/kenya-climate-change/>

advocacy in court cases, filing of *amicus curiae* briefs, legal assistance, among others.⁸

These are some actions and examples of NHRIs' work on human rights in energy transition projects. Through articulated actions, NHRIs continue to work for these causes under the framework of the UNGPs.

Human rights and energy transition (Q 17)

The UNWG raised concerns about the implementation of energy transition policies and projects, especially the sourcing of critical transition minerals, which may exacerbate situations including child labour, modern slavery, poverty and social exclusion of vulnerable and historically excluded groups. The GANHRI WG shares these concerns.

The **Business and Human Rights Resource Centre (BHRRC)** is an organization dedicated to the assessment of the policies and practices of renewable energy companies. None of the companies assessed in its 2021 report fully meet their responsibility to respect human rights. In fact, since 2010 the BHRCC has received 197 reports of human rights abuses in renewable energy projects, 121 of them from Latin America. According to the BHRRC, countries in the global south are the most affected.⁹ In this regard, it has pointed out that the most common categories of human rights abuses are those perpetrated against: the right to land and territory; indigenous rights; the right to a healthy environment; free, prior and informed consent; and attacks against human rights defenders.¹⁰ Regarding the latter, the 2015 attack in Honduras stands out, where human rights defenders were victims of legal harassment designed to silence them by entangling them in lengthy and costly litigation processes.¹¹

As such, the observance of human rights must be present throughout the entire energy transition supply and operations chain, from resource extraction to project implementation.

Transitional public policies (Q 20)

Willingness on behalf of states to implement energy transition programmes is growing rapidly. This is due to the international commitments that have been made with an ecological focus. The "Paris Agreement", for example, involves the acquisition of commitments such as: substantially reducing greenhouse gas emissions, offering financing to developing countries to mitigate climate change, reviewing the fulfilment of countries' commitments every five years, etc.¹² Another example is the "European Green Pact"¹³ in which the

⁸ For example, the *amicus curiae* submitted by the Norwegian NHRI in Case No. 20-051052SIV-HRET, which is the first climate change litigation under the environmental provisions of the Norwegian Constitution. See https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/Norwegian_climate_change_case.pdf

⁹ Business and Human Rights Resource Centre, *Renewable Energy and Human Rights Benchmark*, June 2020: <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>

¹⁰ Business and Human Rights Resource Centre, *Energy (In)justice in Latin America*, August 2021, p.12: chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://media.business-humanrights.org/media/documents/reportespanol04.08_BgB3kz3.pdf

¹¹ Op.cit. 8, p.14.

¹² United Nations, *Paris Agreement of Climate Change*, 12 December 2015: <https://www.un.org/es/climatechange/paris-agreement>

¹³ European Commission, *2050 long-term strategy*: https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2050-long-term-strategy_en

European Union committed to achieving climate neutrality by 2050.

Renewable energy PS is booming. Environmental or green tax incentives for actions such as reducing carbon emissions, increasing energy efficiency or using renewable energy sources are examples of state policies that enhance PS and further their international environmental commitments. However, these policies do not always take the potential human rights abuses that may occur in their implementation into account. Therefore, it is crucial that public transition policies are guided by the UNGPs' guidelines.

Human rights conflicts and energy transition in practice

Human rights impacts in the energy transition can occur at different stages of the production chain. In resource extraction, the excessive demand for raw materials such as cobalt, copper, nickel and lithium, which are key components for the creation of green technologies such as electric vehicles, is a major cause of such impacts. According to Amnesty International, by 2030 nickel production will double, magnesium production will grow eight-fold; while cobalt and lithium production will grow ten-fold.¹⁴ Unsustainable extractive growth is a worrying human rights issue in the energy transition.

In the Democratic Republic of Congo, this problem has forced communities to leave their homes and farms to make room for the industrial expansion of copper and cobalt mines.¹⁵ In Chile, Bolivia and Argentina, the extraction of lithium and copper has affected water sources and the overall environment, endangering the indigenous peoples of the areas where these activities are carried out. The impacts produced by the aforementioned dynamics lead to conflicts between communities and companies over land issues, environmental impacts, lack of free, prior and informed consultation and human rights. This has been replicated in countries such as Colombia, Mexico and Peru.¹⁶

The same applies to critical natural resources such as balsa wood, used for making wind turbine propellers. Ecuador is the world's leading exporter, doubling its international sales in 2019 and doubling them again in 2020 due to the energy transition boom. The excessive demand for balsa has led to the creation of an illegal market, associated with the deforestation of the Amazon rainforest, which in turn has affected the communities that inhabit the area, many of them indigenous. This market has created conflicts between Amazonian communities over several issues; ranging from the rainforest clearing for balsa plantation to the introduction of drugs.¹⁷

While green energy generation is positive for reducing the collective carbon footprint, unsustainable demand for critical resources affects the human rights of historically excluded groups such as indigenous communities. The lack of effective business and

¹⁴ Amnesty International, *Energy Transition*: <https://www.amnesty.org/en/what-we-do/climate-change/energy-transition/#whatistheenergytransition>

¹⁵ Saade Hazin, Miryam, *Macroeconomía del desarrollo: Desarrollo minero y conflictos socioambientales*, ECLAC, United Nations, Santiago de Chile, 2013, p.53. doi: Chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://repositorio.cepal.org/bitstream/handle/11362/5369/LC/L3706_es.pdf?sequence=1&isAllowed=y

¹⁶ *Idem*.

¹⁷ Ferro, Carolina, *Las hélices de los aerogeneradores disparan las ventas de madera de balsa*, University of Navarra, 27 December 2021. Doi: <https://www.unav.edu/web/global-affairs/las-helices-de-los-aerogeneradores-disparan-las-ventas-de-madera-de-balsa>

environmental regulatory mechanisms in conflict zones means that **UNGP 3 and 13** need to be strengthened, the former to ensure that state laws and regulations governing business are conducive to respect for human rights in their interventions, and the latter to ensure that companies prevent their activities from generating negative impacts, as well as addressing their consequences.

On the other hand, the implementation of energy transition projects can also violate human rights if not carried out properly. The following are some examples: **(Question 17)**

- **Los Prados Solar Project** by the Scatec Solar company, which is building a solar power plant in Honduras. The project has affected the food and water supply of the Choluteca community, who were never properly consulted about the project, and who have been criminalised for opposing its construction.¹⁸
- **Lake Turkana Wind Power Project** in Kenya, which is a public-private project to build 365 wind turbines in the Loiyangalani District. The project has been accused of negatively impacting human rights through inadequate consultation with indigenous communities; and the area registers increased alcoholism, sex work and violence rates.¹⁹
- **Khimti-Dhalkebar Transmission line** in Nepal, which is a project by the government, the World Bank and the Nepal Electricity Authority to build a 100-kilometre power transmission line to improve the country's electricity connectivity. The local and indigenous communities through which the line crosses were never consulted and have suffered from impacts such as: devaluation of their properties, land grabbing, agricultural restrictions, destruction of sacred sites and other environmental impacts.²⁰

Energy transition projects are 2030 Agenda initiatives that should be guided by the UNGPs. In the examples above, the groups affected by the projects were not adequately consulted and, as a result, human rights violations were exacerbated.²¹ For this reason, **UNGP 18 and 3 need** to be strengthened in these projects, in order for companies to include substantive consultation with potentially affected groups, and for states to develop norms that make consultation effective. Only in this way will these projects be implemented to produce the least possible impact on these groups and, in the case of indigenous communities, make the rights of **ILO Convention 169** more effective.

Human rights and energy transition projects in practice (Questions 5, 10, 13, 19, 20)

Despite the above, there are also positive examples of respect for human rights in energy transition projects such as the "Huapi Island Electrification Project" in Chile developed between 2017 and 2018. The public-private project sought to provide access to electricity

¹⁸ Winarsky Green, Kayla; Khardine, Florence; Bansal, Tulika, *Background paper for a virtual expert meeting on the human rights impact of nordic investments in renewable energy developments in the global south*, The Danish Institute of Human Rights, July 2021, pp.17-18. Doi: <chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://respect.international/wp-content/uploads/2021/08/Human-rights-impacts-of-Nordic-investments-in-renewable-energy-developments-in-the-Global-South-background-paper-1.pdf>

¹⁹ *Idem*, pp.16-17.

²⁰ *Idem*, pp.18-20.

²¹ *Idem*, pp.16-20.

to the island's inhabitants through solar panels distributed to each household. Throughout its implementation, central elements of a human rights approach to the development and implementation of renewable energies were taken into account. Prior and informed consultation was held with the entire community, including the indigenous Mapuche Huilliche people who live on the island. The interactive participation of the State, the PS and the island community was ongoing during the planning, execution and review of the project. Currently, the inhabitants of Huapi Island, the State and the company are satisfied.²²

From this example, it is possible for the energy transition to be fair to human rights. It is possible to create inclusive programmes that maximise social and economic opportunities for climate action, where challenges are managed through dialogue and interaction. The replication of projects such as Huapi Island is important for states, in cooperation with private companies, to meet their environmental and human rights commitments.

In the same vein, Qatar Energy has currently launched an updated sustainability strategy outlining multiple pioneering initiatives to reduce greenhouse gas emissions, such as carbon capture and storage technology to capture more than 11 million TPA of CO₂ by 2035. This company has demonstrated a commitment to respecting human rights through its "*Human Rights, Health and Safety at Work*" policy where they recognise that their respect for human rights is inspired by the Universal Declaration of Human Rights in relation to the Qatari Constitution.²³

Access to redress (Question 18)

The UNGPs highlight the importance of access to effective judicial mechanisms for redress in cases of human rights violations by companies (UNGP 25, 26). In the energy transition SP, UNGPs 25 and 26 have largely not been implemented. For example, in 2014, affected communities in Kenya filed a lawsuit against the "Lake Turkana Wind Power Project" for illegal land acquisition, which was heard in 2020 with delays in the process.²⁴ Another example is the action filed against the World Bank and the Nepal Electricity Authority for "Khimti-Dhalkebar Transmission line" project, resolved with a dialogue following which not all those affected have been compensated.²⁵ Therefore, UNGPs 25 and 26 need to be strengthened in the energy transition.

Conclusions and recommendations

The role of NHRIs in just transition

NHRIs are important bodies for the protection and promotion of human rights in each state. In the face of the possibilities of human rights violations in extractivism and just transition

²² Orama, Krista; BAnsal, Tulika, *Case Study: Equitable access to energy and indigenous participation in Chile's energy policy*, The Danish Institute for Human Rights, October 2021. Doi:

https://www.humanrights.dk/files/media/document/Equitable_access_energy_indigenous_participation_Chile_s_energy_policy_accessible.pdf

²³ See: chrome-

extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.qatarenergy.qa/en/whoweare/governance/Documnts/Our%20Foundational%20Policies.pdf

²⁴ Op. cit. 1, p.17.

²⁵ *Idem*, p. 20.

PS, the NHRIs must take action within the framework of their competence. As a result, it is recommended that they continue to work in favour of human rights with an emphasis on extractivism and just transition.

The State's Duty to Protect Human Rights (Questions 1 - 8; 20 and 21)

State actions in relation to just transition and extractivism require the observance of human rights, which implies implementation of measures that adhere to UNGPs and international human rights standards. To this end, it is recommended that financial, administrative, contractual and media incentives for energy transition programmes governed by human rights and the green economy be incorporated into their regulatory framework. Another recommendation is the creation and strengthening of institutions that ensure workers' rights, occupational health, safe access to justice and compensation in the context of extractivism. Likewise, improved mechanisms for remedy, access to justice and reparation in cases of human or environmental rights violations should be implemented. Finally, public policies that are formulated should incorporate an approach on gender equity, attention to vulnerable or historically excluded groups, and risk prevention in just transition projects.

Corporate responsibility for human rights (Questions 9,14, 15)

Business commitment to a just transition, including in extractivism, implies attention to human rights. Companies should therefore follow up on the UNGPs, the green economy and just transition and human rights models such as the "Huapi Island Electrification Project" and "Qatar Energy". It is also recommended to look at relevant inputs such as human rights and energy transition reports, UNGPs and international human rights instruments. In this regard, the formation of partnerships with the state, civil society and other institutions is essential to integrate and strengthen human rights accountability. Finally, binding commitments to prevent harmful situations and remedy them should they occur, are vital.