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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and transnational corporations and other business enterprises

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, in accordance with Human Rights Council resolutions [17/4](#) and [44/15](#).

* [A/78/150](#).



Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Extractive sector, just transition and human rights

Summary

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises considers how States, businesses, investors and other stakeholders in the extractive sector can best design and implement just, inclusive and human rights-based energy transition programmes, in line with the Guiding Principles on Business and Human Rights. Since the adoption of the Paris Agreement in 2015, a growing number of stakeholders in the extractive sector worldwide have announced, or are currently developing, commitments and plans to implement energy transition programmes. However, concerns have emerged over how the design and implementation of these programmes, and in particular the sourcing of critical transition minerals, may further exacerbate human rights abuses related to the extractive sector. The report is aimed at providing insights on current challenges, as well as emerging positive practices in this context, and at proposing a course of action to ensure that all existing and future energy transition programmes are compatible with international human rights norms and standards, including the Guiding Principles. To that end, the report offers action-oriented recommendations to States, businesses and other stakeholders.

I. Introduction

A. Context

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises explores the implications of ongoing energy transition programmes in extractive sectors across the world for human rights. The Working Group considers how States, businesses and other stakeholders in the extractive sector can best design and implement just, inclusive and human rights-based energy transition programmes in line with the Guiding Principles on Business and Human Rights.

2. For several centuries, the extraction, development and use of natural resources have remained at the heart of the global economy.¹ For many years, the economies of several States have been critically dependent on the development and use of extractive resources. These resources have acted as a catalyst in providing access to energy needed to sustain socioeconomic growth. However, over the past decades, scientific studies, including reports of the Intergovernmental Panel on Climate Change, have emphasized the urgent need to transition away from carbon-intensive energy sources.

3. In response to the climate emergency, a growing number of stakeholders in the extractive sector have announced, or are currently developing, plans to reach net-zero carbon emissions by 2050 or earlier.² The ensuing energy transition has already resulted in a degree of divestment from fossil fuels, which is known as “transition out”, and investment in decarbonization projects, in particular those relating to solar and wind energy, hydropower, battery storage systems, low-carbon hydrogen and power infrastructure, which is known as “transition in”. The global energy system is therefore in the middle of a major and rapidly evolving transition to low-carbon energy sources. The energy transition is urgently needed to avert and minimize catastrophic human rights harms related to climate change. The global climate emergency poses a profound threat to human rights, affecting every aspect of peoples’ lives.

4. Despite the need for these efforts, energy transition programmes have been linked or have contributed to serious human rights abuses, such as land-grabbing, forced displacement, modern slavery, discrimination and environmental pollution, among others. For example, recent reports show that more than 1 million children worldwide are being forced to work in dangerous cobalt and coltan mines, which are essential minerals needed to manufacture batteries for electric vehicles and solar, wind and other renewable energy infrastructure.³

5. As the scale and ambition of clean energy policies and projects are ramped up, the global demand for transition minerals, in particular copper, lithium, nickel, manganese, cobalt, graphite, phosphate rock, zinc, rare earth metals and other

¹ The Working Group understands the extractive sector to consist of people, businesses, financial institutions, trade organizations and State-owned enterprises that are involved in the production, processing, distribution and sale of oil, gas, solid minerals and rare earth metals, with a value chain that encompasses production (upstream), networks (midstream) and retail (downstream).

² The Working Group acknowledges that net-zero programmes, which aim to remove greenhouse gases that cause climate change or reduce them to as close to zero as possible, may alone not be sufficient to halt the climate emergency and could seriously undermine the right to a healthy environment, especially when carbon offsets are abused or misused. The Working Group underscores that, in line with human rights responsibilities and duties, greenhouse gas emissions should not be released into the atmosphere in the first place (this is also referred to as zero carbon), in particular in developed States.

³ See www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_720743.pdf.

materials such as balsa, sand and aggregate, is projected to increase fivefold.⁴ Such a significant rise in demand may further exacerbate human rights abuses across the world, in particular in global South countries, which are home to large supplies of these materials.

6. Similarly, studies show that the energy transition could result in job loss and reduced economic opportunities for workers in emission-intensive sectors, while creating more jobs in the clean energy sector.⁵ At the same time, the financial challenges resulting from divestment from fossil fuels as a result of energy transition programmes are already being linked to an escalation in energy poverty in many parts of Africa, Asia and Latin America.⁶

7. The social, economic and environmental aspects of the transition and their implications for a wide range of human rights raise fundamental questions relating to law, policy and practice. For several decades, international human rights law and standards, including the Universal Declaration of Human Rights, the Paris Agreement, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), General Assembly resolution 76/300 on the human right to a clean, healthy and sustainable environment and the Guiding Principles on Business and Human Rights, have all emphasized the need to promote, protect, respect and fulfil human rights. For example, in the preamble to the Paris Agreement, it is stipulated that all parties and stakeholders should, in all climate change-related actions, “respect, promote and consider their respective obligations on human rights”. However, human rights protection gaps remain in the design, financing and implementation of energy transition policies and programmes in the extractive sector worldwide.

8. The energy transition cannot replicate or create new forms of human rights and environmental abuses, including corruption and conflict risks. The energy transition approach must be consistent with States’ human rights obligations and commitments, including the realization of the right to a clean, healthy and sustainable environment, as well as with Sustainable Development Goal 13 on climate change mitigation and adaptation and the Paris Agreement, under which States are committed to limiting the rise in the global average temperature to well below 2°C above pre-industrial levels, while striving for 1.5°C.⁷

9. The question of how to achieve a just transition in the extractive sector therefore arises. In the present report, the term “just transition” refers to the transition to a green and zero-carbon economy that is fair and inclusive, creates decent work opportunities and upholds the human rights of affected communities, in particular Indigenous Peoples and populations affected by energy poverty, through social dialogue and meaningful participation, particularly in decision-making on the use of land and natural resources.⁸ Critical to achieving this goal is the recognition of the differentiated human rights impacts experienced by communities and individuals in

⁴ See <https://pubdocs.worldbank.org/en/961711588875536384/pdf/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>.

⁵ See www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_752069.pdf.

⁶ See www.thenational.scot/news/23124775.report-political-instability-biggest-threat-net-zero-transition/, <https://african.business/2021/10/energy-resources/africa-must-not-be-the-west-s-sacrificial-lamb-for-net-zero-at-cop26/> and <https://african.business/2021/10/energy-resources/africas-complex-road-to-net-zero/>.

⁷ The Paris Agreement is a legally binding international treaty on climate change. Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁸ See www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf and www.ilo.org/global/topics/green-jobs/WCMS_824102/lang--en/index.htm.

vulnerable situations, to prevent and address those adverse human rights impacts and leave no one behind. A just transition will also have to acknowledge and address the fact that the people potentially adversely affected by the transition out may not be the same as those who benefit from the transition in.

B. Objectives

10. In the present report, the Working Group examines how stakeholders in the extractive sector can develop and implement human rights-compatible energy transition programmes against this backdrop. As part of the State duty to protect individuals and communities from business-related human rights abuses, as laid down in the first pillar of the Guiding Principles, the Working Group examines the regulatory and policy requirements necessary to ensure coherence in promoting business respect for human rights and corporate accountability in the extractive sector. Within the framework of the second pillar of the Guiding Principles, which applies to the activities and operations of business enterprises in the extractive sector, the report contains analysis of how businesses, in particular those in the extractive sector, can better integrate human rights considerations, including human rights and environmental due diligence, into ongoing energy transition programmes. The Working Group evaluates the potential of ongoing legislative, regulatory and institutional reforms on the energy transition to integrate and accentuate access to remedy for individuals and communities affected by energy transition projects. The Working Group also considers how extant dispute resolution provisions and frameworks in the extractive sector may be improved to address human rights abuse complaints linked to extractive activities and energy transition projects, in order to prevent, at a minimum, constraining access to remedy for the affected rights holders.

C. Methodology

11. The present report builds on the work previously undertaken by the Working Group, the special procedures of the Human Rights Council and other organizations and mechanisms, such as the Office of the United Nations High Commissioner for Human Rights, the United Nations Environment Programme, the International Labour Organization, the United Nations Conference on Trade and Development, the Organisation for Economic Co-operation and Development (OECD) and the Security Council, by addressing the various dimensions of the interface between climate change, the energy transition and human rights.⁹ In addition to desk research, the report draws on input received from stakeholders in response to a call for submissions and consultations organized on the topic with partner institutions.¹⁰ The highlighted practices in section III are largely based on information received from consultations and submissions.

D. Scope and limitations

12. The report is focused on the human rights implications of the extractive sector in the context of energy transition programmes. The general human rights impacts of extractive activities are outside the purview of the present report. However, States may still draw inspiration from the report for integrating and promoting human rights-

⁹ See Security Council resolution 1952 (2010), A/77/226, A/HRC/31/52, A/HRC/24/41 and A/HRC/21/4; and www.unpri.org/download?ac=1655.

¹⁰ See www.ohchr.org/en/calls-for-input/2023/call-inputs-extractive-sector-just-transition-and-human-rights.

based and responsible business conduct across the entire extractive sector value chain. In the report, the term “energy transition programmes” refers to activities, initiatives, policies, projects and investments in the extractive sector that are aimed at advancing a zero-carbon economy. This may include investments in emission reduction and decarbonization projects, the sourcing and procurement of transition minerals and the reporting of climate-related sustainability actions. In the report, the implications of energy transition programmes for the promotion and protection of human rights across the world are examined.

II. Concerns related to energy transition programmes in the extractive sector

13. Advancing a just transition in the extractive sector requires the fair and equitable distribution of the benefits and burdens of energy transition programmes and the integration of human rights standards, in particular on meaningful and equal participation and access to remedy for victims of human rights abuses, across the entire extractive sector value chain. The call for a just transition is increasingly being recognized by States. Many businesses and business associations also recognize that the private sector benefits from policy and regulatory clarity, consistency and predictability with respect to how energy transition programmes are designed, implemented and communicated. Furthermore, international organizations are increasingly highlighting the private sector’s role in the just transition. For example, one of the key updates to the revised *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* is that enterprises should align with internationally agreed goals on climate change and biodiversity, and the International Labour Conference has adopted a resolution concerning a just transition.¹¹

14. However, the design and implementation of energy transition programmes remain characterized largely by imbalance, fragmentation and inconsistency, which leads to irresponsible business conduct. Two illustrative examples show the imbalance inherent in current energy transition programmes. The first example is the impact of energy transition programmes on a State’s revenue in the light of the increased global defunding of non-renewable extractive projects.¹² Although international human rights law recognizes that every State has the authority to make decisions with respect to the use, control and disposal of natural resources within its territory,¹³ energy transition programmes may affect the ability of States, especially resource-rich but energy-poor States, to use and dispose freely of their natural resources to advance the provision of water, energy and food infrastructure. The second example is that most long-term extractive agreements confer imbalanced but legally enforceable contractual rights upon investors, which may constrain the ability of States to advance the energy transition or respond to its human rights impacts.¹⁴ For example, stabilization clauses in extractive contracts could restrict the ability of States to update existing laws or contracts. Such contractual risks in long-term

¹¹ See www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_885375.pdf.

¹² See www.euronews.com/green/2021/08/12/the-end-of-fossil-fuels-which-countries-have-banned-exploration-and-extraction and www.reuters.com/business/sustainable-business/bnp-paribas-will-no-longer-provide-financing-development-new-oil-gas-fields-2023-05-11/.

¹³ This is the idea of permanent sovereignty of natural resources, which has for several decades remained the bedrock of international human rights law. See General Assembly resolutions 523 (VI), 626 (VII), 37/135, 36/173, 35/110, 34/136 and 32/161 and resolutions 31/186, 3336 (XXIX), 3175 (XXVIII) and 3005 (XXVII).

¹⁴ See <https://resourcegovernance.org/analysis-tools/publications/tying-their-hands-how-petroleum-contract-terms-may-limit-gov-climate-policy-flexibility>.

extractive agreements related to the energy transition are already triggering new waves of disputes.¹⁵ Furthermore, investor-State dispute settlement mechanisms in investment agreements have led to increased claims against some States as a result of their just transition efforts.¹⁶ As the number of energy transition policies and legislation that limit investment in non-renewable resource projects increases, investors may rely on stabilization and dispute resolution clauses to initiate arbitration proceedings against States for an alleged breach of the terms of long-term extractive contracts and investment agreements.

15. Flowing from this imbalance is the growing level of fragmentation in the design and implementation of energy transition programmes. While several stakeholders are announcing energy transition programmes, the specific recognition or mention of human rights dimensions remains significantly lacking. Human rights and climate change are each governed in many States by separate sets of laws, rules and institutions. Similarly, at the international level, the lack of coordination, cooperation and systemic integration by different stakeholders in the design and implementation of energy transition programmes produces adverse human rights impacts in the extractive sector, especially for vulnerable groups, such as women and Indigenous Peoples. For example, while energy transition programmes may aim to provide new economic opportunities in renewable energy sectors, they may not necessarily consider pre-existing patterns of social and economic exclusion that are often linked to human rights abuses in the extractive sector. These factors could make it very difficult for marginalized individuals and groups to gain access to such economic opportunities, secure renewable energy technologies or obtain financing to establish renewable energy ventures.¹⁷

16. Regulatory and institutional fragmentation is resulting in inconsistency in the implementation of energy transition programmes. As a result of the lack of clear and explicit regulations on the human rights responsibilities of businesses and investors in the extractive sector in the context of energy transition programmes, the proliferation of incoherent energy transition standards, guidelines and frameworks continues.¹⁸ The lack of consistent standards on net-zero reporting is a case in point, as it has led to the widespread proliferation of deceptive, unclear or poorly substantiated reporting on the scale and scope of implementation of net-zero programmes, which is also known as greenwashing. For example, in March 2023, an Internet sweep conducted by the Australian Competition and Consumer Commission and covering all sectors raised concern that about 57 per cent of environmental and net-zero claims made by businesses may represent greenwashing.¹⁹ Similarly, a European Commission study, also covering all sectors, found that 53.3 per cent of environmental claims made by businesses in the European Union “provide vague, misleading or unfounded information”.²⁰ The use of misleading environmental or

¹⁵ International Centre for Settlement of Investment Disputes, *Westmoreland Mining Holdings v. Canada*, Case No. UNCT/20/3; International Centre for Settlement of Investment Disputes, *RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands*, Case No. ARB/21/4; see also www.iisd.org/articles/insight/how-energy-charter-treaty-could-have-costly-consequences-governments-and-climate.

¹⁶ See www.iisd.org/itn/en/2019/06/27/spains-renewable-energy-saga-lessons-for-international-investment-law-and-sustainable-development-isabella-reynoso/.

¹⁷ Elisabeta Smaranda Olarinde and Hilary Okoeguale, “Energy transition and the role of women: advancing gender-aware transition in the natural gas industry”, in *The Palgrave Handbook of Natural Gas and Global Energy Transitions*, Damilola S. Olawuyi and Eduardo G. Pereira, eds. (Cham, Switzerland, Palgrave Macmillan, 2022).

¹⁸ See www.sei.org/perspectives/regulating-net-zero-pledges/.

¹⁹ See www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims.

²⁰ See https://environment.ec.europa.eu/topics/circular-economy/green-claims_en.

sustainability labels or logos on products also remains pervasive in the extractive sector and has been the subject of recent anti-greenwashing litigation.

17. Recognizing this lack of clear, transparent and comprehensive regulatory standards on the energy transition, the Secretary-General established the High-level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities to “develop stronger and clearer standards for net-zero emissions pledges” and to “speed up their implementation”.²¹ Similarly, a number of States have introduced legislation that imposes sanctions and fines on businesses that provide misleading environmental claims.²²

18. Furthermore, the asymmetrical protection offered by extractive agreements and the lack of a clear, comprehensive and human rights-based regulatory framework on the energy transition provide an incentive for extractive sector operators and investors to focus on protecting their investment and overlook their human rights responsibilities. The lack of an explicit reference, in some cases, to investors’ obligation to consider and remediate any adverse environmental, social and economic impacts of energy transition programmes leads to many of these programmes being approved and implemented irrespective of their human rights impacts on people and the environment. In many cases, the barriers that prevent affected communities from seeking remedy against extractive operators and business partners for human rights abuses relating to the energy transition exacerbate irresponsible business conduct in the context of the energy transition.

19. Despite the increased commitment by stakeholders to finance energy transition programmes in the extractive sector, little progress has been made in providing the corresponding regulatory and governance frameworks needed to advance a just transition process. Among the main barriers that must be urgently addressed, the Working Group identified the following: regulatory gaps; lack of meaningful participation of affected communities; lack of access to information, including data transparency; and lack of access to effective remedies for victims.

A. Regulatory gaps

20. As States continue to elaborate the international legal framework on climate change, there is an urgent need for a clear road map for a just transition, which takes into account the capabilities, circumstances and needs of States, in order to advance the energy transition and use it to produce an economic and human rights boon. A mix of financial, regulatory and clean technology tools are urgently required to assist resource-dependent States in their energy transition.

21. Despite the rising number of international arbitration claims brought against States by extractive sector businesses to challenge measures that are aimed at mitigating climate change or addressing the human rights impacts of the energy transition, recent extractive contracts, legislation and national action plans on business and human rights show that States have not yet shifted their policies to address clauses in extractive contracts that may hinder a just transition.²³ Recent studies indicate that several of the constraining stabilization clauses remain in place,

²¹ See www.un.org/en/climatechange/high-level-expert-group.

²² See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166>, www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf and www.ftc.gov/system/files/ftc_gov/pdf/GreenGuides-FRN-11-5-22.pdf. See also www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services, the purpose of which is to “help businesses understand and comply with their existing obligations under consumer protection law when making environmental claims”.

²³ See <https://resourcegovernance.org/analysis-tools/publications/tying-their-hands-how-petroleum-contract-terms-may-limit-gov-climate-policy-flexibility>.

even in contracts negotiated after the adoption of the Paris Agreement in 2015. Furthermore, many extractive agreements do not contain provisions imposing human rights responsibilities on investors, including agreements since 2015.

22. Similarly, while more and more energy transition pledges and commitments are being made worldwide, several States have yet to enact specific laws to achieve those targets in a just and human rights-based manner. This regulatory gap contributes to the continued neglect of human rights considerations in the exploitation, production and distribution of transition minerals, as well as in the implementation of energy transition programmes in the extractive sector. Businesses have a responsibility to respect human rights regardless of the regulatory systems in place and the will or capacity of States to fulfil their human rights duties. However, the absence of clear and comprehensive laws that address human rights harms related to climate change can limit the coherent elaboration of actions that businesses and other stakeholders in the extractive sector should take to respect human rights in the context of the energy transition.

23. The importance of domestic legislation and regulations, in line with international human rights law, in advancing a just transition cannot be overemphasized. A clear legal framework on climate change can provide a legal basis for integrating human rights considerations into the licensing and approval of extractive activities, including net-zero and energy transition programmes, and place the obligation on States to do so. Climate legislation can also provide clarity on the key energy transition and human rights due diligence standards and measures with which extractive sector licensees must comply at the project design and approval stage. These are questions that must be carefully laid out in national legal frameworks on the energy transition.

B. Access to information

24. Even when human rights and public participation standards are set out in energy transition policies and programmes, the lack of credible, transparent and accessible statistical data and information on the level of compliance remains a critical barrier to a just transition. In many instances, communities simply do not have access to this information.

25. Obstacles to access to information are often coupled with the lack of clear legal requirements on the transparent reporting and verification of energy transition programmes. This lack of clarity leaves space for deliberate disinformation and greenwashing, while the lack of accuracy and consistency in reporting standards continues to limit the reliability of energy transition reports prepared by businesses. This gap is often related to the lack of a specific reference to human rights measurement or reporting in extractive legislation in many States, despite the evidence of the human rights risks of implementing energy transition programmes.²⁴

26. In many cases, failure to report energy transition performance in accessible formats and languages limits the reports' widespread utility, especially for communities.²⁵ There is also a need to disaggregate data on energy transition programmes on the basis of human rights and intersectional indicators, such as gender and the socioeconomic impacts of the energy transition on Indigenous Peoples, people

²⁴ See <https://news.bloomberglaw.com/esg/lack-of-uniformity-in-esg-ratings-system-poses-risks-opportunities> and www.globalreporting.org/standards/reporting-frameworkoverview/Pages/default.aspx.

²⁵ See https://impact.economist.com/sustainability/get-to-net-zero/pdfs/10-Inconsistent-measurement-and-reporting_EL.pdf.

of African descent and other groups in at-risk situations, in order to understand and address the human rights impacts of such programmes.

C. Insufficient access to effective remedy

27. In many cases, current legal and policy frameworks that apply to both the extractive sector and the energy transition do not provide effective access to justice and remedy and do not adequately address the situation of marginalized groups, for example by failing to apply a gender lens to remedy frameworks.

28. Procedural barriers in judicial systems make it difficult for victims of human rights abuse to seek and obtain justice. For example, locus standi requirements can make it very difficult for civil society organizations to bring a legal claim on behalf of project-affected communities and to establish companies' liability, including for parent companies. Furthermore, legal systems may place a disproportionate burden of proof on the claimants, making it more difficult to seek and obtain remedy in courts. The high cost of litigation and of obtaining legal representation, inadequate legal aid programmes, and general delays in the dispensation of justice all make it difficult for communities to obtain remedy for human rights abuses in a fair and timely manner.

29. Similarly, despite increased awareness of the potential of alternative dispute resolution mechanisms, such as investment arbitration and mediation, in facilitating access to remedy, a wide range of legal and institutional barriers still limit their widespread application in extractive sectors, especially by affected communities. For example, where domestic legislation limits the scope of arbitrable matters to commercial disputes, it may not be possible to submit non-commercial disputes, such as those relating to access to land or the resettlement of communities, in particular Indigenous Peoples, to arbitration. Such a model is plainly unjust and indefensible. The use of alternative dispute resolution to settle extractive disputes should not be restrictive. On the contrary, it should allow States and affected communities to resolve their grievances, including those relating to the design and implementation of energy transition programmes, in a transparent, fair, timely and accessible manner. Integrating clear and specific rules to guide the arbitration of disputes related to the human rights impacts of business activities can help in this regard.²⁶

D. Lack of participation of affected stakeholders

30. Inadequate stakeholder participation in the design, development and implementation of transition programmes that affect them raises significant human rights concerns and has already led to many instances of social conflicts.²⁷ Energy transition programmes often have far-reaching social, economic and environmental implications, particularly for communities that reside in proximity to extraction sites or whose livelihoods depend on the extractive sector. Across all regions, the Working Group has received information showing increased evidence of people being forced to leave their homes and livelihoods to make room for the expansion of climate and energy transition programmes that affect their water sources, land livelihoods and the environment.

²⁶ Andi Baaij, "The potential of arbitration as effective remedy in business and human rights: will the Hague rules be enough?", *Business and Human Rights Journal*, vol. 7, No. 2 (May 2022).

²⁷ See e.g. communications SWE 2/2022, GUY 1/2022, OTH 26/2022, CAN 1/2022, DNK 2/2021, OTH 189/2021, AUS 2/2021, CHN 17/2018, AUS 6/2019, CHN 8/2019, PER 2/2019, OTH 25/2019, OTH 26/2019 and OTH 27/2019. Communications are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

31. When affected stakeholders, including local communities, Indigenous Peoples and workers, are excluded from decision-making processes and their voices are disregarded, their human rights are undermined. Upholding public participation standards and free, prior and informed consent requirements ensures that the voices of those who are most directly affected can be heard and taken into account when shaping policies and actions that affect their lives. Failing to involve affected stakeholders not only perpetuates power imbalances, inequalities and marginalization but also hampers the achievement of fair and just outcomes to the detriment of human rights.

III. Reform trajectory and implications of the Guiding Principles on Business and Human Rights for a just transition

32. The following section outlines key trends and highlighted practices that are aimed at addressing human rights concerns in energy transition programmes. By aligning with the Guiding Principles, the extractive sector can navigate the complexities of transitioning to a sustainable energy future while safeguarding human rights.

A. Regulatory space

33. All over the world, human rights abuses related to the design and implementation of energy transition programmes in the extractive sector show that voluntary measures alone are not enough.²⁸ There is a need for a comprehensive “smart mix” of laws and policies that are in keeping with the Guiding Principles and clarify what all stakeholders should do to advance a just transition in the extractive sector.

34. The second pillar of the Guiding Principles clarifies that businesses have a responsibility to respect human rights and, accordingly, are required to exercise human rights due diligence to identify, prevent and address human rights impacts. The Working Group reiterates its guidance on human rights due diligence²⁹ and welcomes emerging initiatives related to mandatory human rights due diligence that could apply to the extractive sector and energy transition programmes.

Box 1

Highlighted practices: human rights due diligence

Mandatory human rights due diligence legislation has been enacted by some States, including France, Germany and Norway, and is being considered by other regions and States. For example, in Brazil, a bill on business and human rights, with provisions on human rights due diligence, is under discussion in the National Congress. The European Union has also developed legislation for mandatory due diligence in specific sectors, such as the Conflict Minerals Regulation.

²⁸ See www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/.

²⁹ See A/73/163.

The Government of the United Kingdom of Great Britain and Northern Ireland requires businesses to commit to net-zero emissions by 2050 and publish a carbon reduction plan for public procurement bids.^a

The Customary Land Rights Act, 2022, adopted by Sierra Leone guarantees women's equal rights and access to land and prohibits industrial development, such as mining, plantation activities, farming and the development of housing, in protected, conserved or ecologically sensitive areas.

As part of its commitment to the Children's Rights and Business Principles agenda, the United Nations Children's Fund in Chile signed a collaboration agreement with the Ministry of Energy, which has as one of its main objectives to promote the implementation of international human rights due diligence standards, with a focus on the rights of children and adolescents, within the framework of the development of its energy projects.

^a See www.gov.uk/government/news/firms-must-commit-to-net-zero-to-win-major-government-contracts.

35. Despite these initiatives that are being developed, there are businesses, in particular in the energy and extractive sectors, whose greenhouse gas emissions have remained the same or even increased, which is not in keeping with the targets and ambitions set out in the Paris Agreement.³⁰ Using the Guiding Principles to facilitate a human rights-based approach to addressing the issue of corporate responsibility for climate change, including through the effective application of human rights and environmental due diligence, will provide a much-needed framework for responsible business practice in the extractive sector. Going forward, a thorough definition of adverse environmental impacts will also be crucial to the effectiveness of human rights and environmental due diligence obligations and their application to the extractive sector.

36. In order to finance the energy transition and fulfil their human rights obligations, States will need to mobilize their domestic resources progressively, which requires economic diversification and sound fiscal policies. The extractive sector therefore cannot be exempt from taxation for extracting minerals or materials that are critical to the energy transition, and fossil fuel subsidies must be removed to promote sustainable consumption, eco-entrepreneurship and investment in cleaner technologies.

Box 2

Highlighted practices: climate action tax credit

In 2008, the Province of British Columbia in Canada implemented a carbon tax, called the climate action tax credit. This tax generates revenue that is returned to citizens as a dividend, which helps to offset increased costs from higher fossil fuel prices.

37. It is imperative that States seeking to mainstream human rights standards in energy transition programmes adopt measures that preserve regulatory space for them to do so at the national, regional and international levels. At the national level, this would be done by addressing gaps and ensuring coherence in the regulatory

³⁰ See e.g. communications SAU 3/2023, OTH 53/2023 and associated communications.

framework applicable to energy transition-related laws. At the regional and international levels, when States negotiate investment agreements, concessions and contracts, it is imperative that they attract rights-respecting investments and businesses.

Box 3

Highlighted practices: minerals, metals and the environment

During the fifth United Nations Environment Assembly of the United Nations Environment Programme, in 2022, the Assembly adopted resolution 5/12 on environmental aspects of minerals and metals management, in which it encouraged Member States and invited stakeholders to align their mining practices and investments in the mining sector with the objectives of the 2030 Agenda for Sustainable Development and relevant multilateral environmental agreements.

B. Capacity-building

38. The risks of delaying the energy transition are much higher for the livelihoods of people around the world. Workforce training will therefore have to become a priority for States and businesses during the energy transition, in particular in developing States where there are higher rates of low-skilled workers in the energy sector. It is essential to equip stakeholders, in particular workers that may be exiting employment in the extractive sector, with the knowledge, skills, financial resources and tools necessary to transition into other economic sectors or to establish their own sustainable small and medium-sized enterprises, while upholding international human rights standards. When performing workforce training, it will be necessary to employ gender-responsive approaches and address other human rights issues, such as child labour in the informal economy. Professional associations and higher education institutions also have key roles to play in providing technical assistance and designing tailored capacity-development programmes on the just transition. The report of the Working Group on building capacity for the implementation of the Guiding Principles is relevant in this respect.³¹

Box 4

Highlighted practices: working in the renewable energy sector

In the United States of America, the Employment and Training Administration, which is an agency within the Department of Labour, awarded more than \$90 million in grants to young people between 16 and 24 years of age in education and training to expand the clean energy workforce base.

The German Coal Commission oversees the transition away from coal-fired power plants in the country. One of its key recommendations was to provide job training and support for workers in the coal industry. The Government of Germany has allocated billions of euros to support the transition of coal workers to new jobs in the renewable energy sector.

In Thailand, in an area originally targeted for coal-fired power plants, Green World Network has recently opened the Green World Renewable Energy Learning Centre, a community-driven solar cell project that is aimed at providing clean energy to dozens of families and has an

³¹ A/HRC/53/24.

educative function that will help to replicate the project in neighbouring communities.

Oman has released its national strategy for an orderly transition to net zero, 2022, which aims to achieve an orderly transition that minimizes the social impact of the net-zero transition, by providing new green business opportunities for workers and upskilling and reskilling citizens to fill new jobs in the clean technologies sector, such as hydrogen energy production, electric vehicles manufacturing and carbon capture and storage.

C. Stakeholder engagement

39. Effective rights-based climate action requires participatory and transparent processes.³² In order to amplify the voices and priorities of rights holders and ensure a just transition, meaningful consultation is indispensable. This includes, but is not limited to, engagement with women; Indigenous Peoples, with their free, prior and informed consent; human rights defenders; trade unions; young people, as the segment of the population that will bear the brunt of climate change; and at-risk groups, including minorities, LGBTIQ+, persons with disabilities and people of African descent.

40. Communities should participate in, and not just be consulted about, the development and implementation of policies and activities related to energy transition programmes. Community-based or participatory human rights, social and environmental impact assessments, for example, can provide an alternative to applicant-driven impact assessments and may guarantee better outcomes for rights holders. Community or impact benefit agreements, which are contracts between businesses and communities that outline the benefits and responsibilities associated with energy transition programmes and projects, may also be useful tools. These agreements can include provisions for revenue-sharing, employment opportunities and community development projects, among others.

41. Indigenous Peoples are one of the most affected groups in the energy transition, as studies indicate that more than half of the world's resources that are key to the energy transition are located on or near the lands of Indigenous Peoples.³³ In this context, States must ensure that the rights of Indigenous Peoples are protected in legislation to guarantee a just transition, including through the codification of free, prior and informed consent and the United Nations Declaration on the Rights of Indigenous Peoples in legislation.

Box 5

Highlighted practices: responsible mining

AXIS Capital Holdings Limited is the first insurance company in North America to announce that it will not underwrite new projects that fail to obtain free, prior and informed consent, as outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

The Initiative for Responsible Mining Assurance offers independent, third-party assessments of mining sites and is governed by the private sector, communities, workers and civil society.

³² See www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf.

³³ John R. Owen and others, "Energy transition minerals and their intersection with land-connected peoples", *Nature Sustainability*, vol. 6 (February 2023).

The Isla Huapi electrification project in Chile, developed between 2017 and 2018, was a public-private project that aimed to provide inhabitants of the island with access to electricity using solar panels. The project was co-designed with the Indigenous Mapuche Huilliche People who live on the island and with a particular emphasis on a human rights-based approach. The State, business and island community engaged actively with each other during the planning, execution and review of the project.

42. Women's rights and gender equality also require specific attention to ensure a just transition. The human rights and environmental impacts of mining activities often result in greater and differential burdens on women, which in turn require redress measures that address intersecting inequalities. For example, studies show that women, in particular Indigenous women, are more susceptible to a wide range of human rights abuses across the mining sector value chain and are less likely to obtain the benefits of the energy transition.³⁴ Women and girls are often not considered in compensation and relocation schemes derived from mining activities that have an impact on their rights, including their rights to housing, food, work and an adequate standard of living. Women's experiences in the extractive sector must therefore be made visible, so that policies and programmes can effectively address gaps through a gender-responsive approach.

43. Businesses and States will also benefit from engaging with trade unions to ensure the advancement of policies and practices that respect workers' rights. Workers can help to facilitate access to remedy by evaluating progress towards any remediation action and assessing the sustainability of the changes in business operations to avoid future human rights abuses. This is particularly relevant in contexts where workers live in the communities that are adversely affected by businesses. Respectful engagement and consultation by business with human rights defenders is also essential, and States should ensure that the legitimate activities of human rights defenders are not obstructed.

44. Furthermore, intergovernmental organizations and industry associations have key roles to play in placing stakeholders at the heart of energy transition programmes across the entire extractive sector value chain. For example, it is important to consider the human rights and environmental impacts of the blue economy, including offshore energy and seabed mining projects, and the global shipping industry, which is responsible for transporting 90 per cent of globally traded goods, including fuels, and accounts for 3 per cent of global greenhouse gas emissions.³⁵

Box 6

Highlighted practices: the Maritime Just Transition Task Force

The Maritime Just Transition Task Force is an initiative set up by the International Chamber of Shipping, the International Transport Workers' Federation, the United Nations Global Compact, the International Labour Organization and the International Maritime Organization to ensure that the shipping industry's response to the climate emergency puts seafarers at the heart of the solution.

³⁴ See https://resourcegovernance.org/sites/default/files/documents/primer_gender_and_extractives.pdf.

³⁵ See www.ics-shipping.org/representing-shipping/maritime-just-transition-task-force/.

D. Access to information, transparency and reporting

45. There is an urgent need for States and businesses to ensure that data and reports on energy transition programmes, including disaggregated data, are accessible and accurate. Credible, timely, transparent and accessible information allows stakeholders to monitor and evaluate the effects of energy transition programmes and is critical to enabling access to remedy and combating corruption. Statistical data and information on compliance levels are especially useful for affected communities and other stakeholders to hold States and businesses accountable. To this end, international and domestic frameworks should be leveraged to secure and promote access to information and transparent reporting.

Box 7

Highlighted practices: access to information and transparency

The Extractive Industries Transparency Initiative and the Extractive Workforce Disclosure Initiative are voluntary approaches that promote access to information and transparency.

Adopted in 2018, the Escazú Agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean is an important legally binding regional instrument that promotes transparency, environmental justice and protection of environmental defenders.

The European Commission adopted a proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims, known as the Green Claims Directive, in March 2023. This Directive establishes clear criteria for businesses to substantiate their environmental claims and labels. The proposal also stipulates that these claims must be independently verified and introduces new rules for the governance of environmental labelling schemes to ensure that they are credible.

46. National human rights institutions also play an important role in the energy transition by facilitating access to information, as well as stakeholder engagement and access to remedy. They can collect information on energy transition and human rights cases, provide legal assistance to affected communities, file amicus curiae briefs and assist in other ways.

Box 8

Highlighted practices: national human rights institutions

In Chile, the national human rights institution has created a map of socioenvironmental conflicts in the country, which is used for strategizing solutions to human rights abuses in energy transition projects. In Argentina, the national human rights institution is also working on guidelines for the mining industry, including the protection of human rights. Lastly, in Kenya, the national human rights institution has been documenting patterns of human rights violation as a result of deforestation in various productive sectors, including the energy sector.

E. Investors

47. The Working Group has repeatedly highlighted the applicability of the Guiding Principles to financial actors.³⁶ It has reaffirmed the responsibility of institutional investors and banks to prevent and address the adverse human rights impacts associated with their activities, value chains and business relationships, in line with principles 13 and 17 of the Guiding Principles.³⁷ To ensure a just transition, investors must be held accountable under legislation, policies and industry guidelines. To this end, investors must be required to, for instance, conduct gender-responsive human rights due diligence, in meaningful consultation with affected communities, civil society organizations, Indigenous Peoples and human rights defenders, and their remediation responsibility must be established.

Box 9

Highlighted practices: responsible investment

Climate Action 100+ is an association made up of over 700 investors that are responsible for managing \$68 trillion in assets. One of its three key goals is for businesses to take action to reduce greenhouse gas emissions across the value chain, in line with the goals of the Paris Agreement.

Mexico has developed a new sustainability taxonomy for investments that identifies and labels economic and financial activities that contribute to sustainable development and the achievement of environmental and climate objectives.

As part of the Investing in a Just Transition Initiative, the Principles for Responsible Investment published a guide for investor action on the just transition.^a

The Global Investor Commission on Mining 2030 aims to address key systemic risks that challenge the sector's ability to meet the increasing demand for the energy transition.

^a See www.unpri.org/download?ac=9452&adredir=1.

F. Small and medium-sized enterprises

48. The growing focus on energy citizenship, along with the important role of small and medium-sized enterprises in developing low-carbon energy ventures, provides an opportunity to decentralize and accelerate energy transition programmes. Sustainability-focused small and medium-sized enterprises can offer innovative solutions, increase local knowledge and foster community engagement.

49. States, businesses and other stakeholders should provide regulatory, financial and capacity-building support and tools to assist small and medium-sized enterprises in managing their human rights impacts, especially in the context of the energy transition. Providing enabling environments for responsible and sustainable business conduct can, in turn, help to create new opportunities, including employment, for small and medium-sized enterprises in the energy transition. By prioritizing human

³⁶ See A/HRC/53/24/Add.4.

³⁷ See www.ohchr.org/sites/default/files/Documents/Issues/TransCorporations/WG_BHR_letter_Thun_Group.pdf and www.unepfi.org/industries/banking/banks-and-human-rights-a-legal-analysis-2/.

rights in line with the Guiding Principles, small and medium-sized enterprises can serve as catalysts for positive change by promoting inclusive and equitable employment opportunities, while ensuring fair wages, safe working conditions and respect for labour rights.

G. State-owned enterprises

50. State-owned enterprises are major extractive players, including in sectors such as oil, mining, transport, logistics and storage. As State-owned economic actors, such enterprises have both a duty to protect and a corporate responsibility to respect human rights. In that regard, they should take a leading role in establishing positive practices that are in line with the Guiding Principles, including through the transparency and disclosure of information on energy transition programmes. For guidance on State-owned enterprises, please refer to the report of the Working Group on the matter.³⁸

Box 10

Highlighted practices: State-owned enterprises in Spain

In Spain, Law No. 7/2021 on climate change and energy transition includes a requirement for large businesses owned by the State or in which the State has a shareholding to have and publish climate action plans.

H. Informal economy

51. Artisanal and small-scale mining specifically, and the informal economy more generally, play an important role in the mining of critical transition minerals. However, artisanal and small-scale mining in several States remains associated with significant human rights risks, in particular with respect to child labour and workplace accidents. While the need to formalize artisanal and small-scale mining activities, in order to improve the regulation thereof, has been identified and discussed in studies, in many economies, taxes and other levies are so high that the formalization process is too complex for marginalized communities.³⁹ It is therefore important to understand the complexities and support communities that depend on these informal activities, including by providing alternative opportunities in the formal economy. Ongoing initiatives, such as the European Union Directive on corporate sustainability due diligence, may provide a direct incentive for businesses using minerals to support training, capacity development and other efforts to address the adverse human rights impacts of artisanal and small-scale mining.

52. As minerals from the formal and informal economies are routinely combined during processing, it is not credible for businesses to assert that their value chains are free from child labour or other human rights risks. Providing technical assistance and support in the formalization process, as well as other initiatives to address the human rights impacts in artisanal and small-scale mining, can contribute to a just transition by enhancing local economic development, promoting sustainable mining practices, enabling capacity development on human rights and improving social inclusion by, for example, empowering women and stopping child labour.⁴⁰

³⁸ See [A/HRC/32/45](#).

³⁹ Gavin Hilson, “‘Formalization bubbles’: a blueprint for sustainable artisanal and small-scale mining in sub-Saharan Africa”, *The Extractive Industries and Society*, vol. 7, No. 4 (November 2020).

⁴⁰ See www.iisd.org/system/files/publications/igf-asm-global-trends.pdf.

Box 11

Highlighted practices: artisanal and small-scale mining

The Alliance for Responsible Mining works with artisanal and small-scale miners to help them to improve their environmental and social performance, including the protection of human rights. Through its human rights tools and knowledge resources, the organization works closely with communities to ensure that their rights are respected.

In the Democratic Republic of the Congo, the Mutoshi project has demonstrated the successful integration of human rights standards in artisanal cobalt mining. Until its conclusion in 2020, the Mutoshi pilot project formalized small-scale mining, providing miners with mechanized mine sites and improved safety measures. The use of modern machinery increased productivity and decreased the risk of accidents. Women's inclusion in mining activities not only ended their marginalization but also helped to mitigate child labour. By doubling household incomes, families were able to send their children to school instead of mines. The formalization pilot project ended in March 2020 owing to the coronavirus disease (COVID-19) pandemic, and subsequently there were several work-related deaths.

The World Bank-assisted Mineral Sector Support for Economic Diversification Project has provided knowledge resources and capacity development to almost 20,000 artisanal and small-scale miners in Nigeria to help them to improve their environmental, social and human rights performance.

In the Department of Caldas in Colombia, the regional government established legal mining areas to address the problems associated with the informal economy. Miners in these areas committed themselves to using low-impact mining methods and were given training. In the case of La Cascada mining company, formalization led to significant improvements in employment, health, safety, environmental protection and training for miners. La Cascada was recognized for these practices and was awarded the Fairmined certification in 2017 and is now able to commercialize its minerals internationally.

I. Reducing consumption in high-consuming States

53. Reducing consumption and implementing “de-growth” strategies will also be crucial elements in achieving a just transition towards a sustainable future. In addition to transitioning to clear or green energy sources, it is equally important to address the consumption patterns that drive excessive energy demands, especially the practice of subsidizing the use of hydrocarbons. State subsidies for fossil fuels encourage the consumption of greenhouse gas-intensive fuels and have been described in several studies as a significant contributor to climate change and a roadblock to the energy transition.⁴¹ In that respect, extractive companies should support and not stand in the way of subsidy removals.

54. There have been recent examples of States announcing the end or gradual phasing out of fossil fuel subsidies. While commendable, such plans must be

⁴¹ See www.iea.org/reports/fossil-fuel-subsidies-in-clean-energy-transitions-time-for-a-new-approach and www.unep.org/news-and-stories/story/calling-time-fossil-fuel-subsidies.

accompanied by human rights and social safeguards to ensure that they do not result in or exacerbate energy poverty, social exclusion, job loss, poverty or a return to biomass for heating and cooking, especially for people at risk. As an essential component in advancing the energy transition, the removal of fuel subsidies should proceed in a rights-compatible and responsible manner that leaves no one behind.

55. Shifting away from the prevalent culture of single-use goods and promoting more sustainable alternatives are also essential for reducing the energy consumption of high-consuming nations. This shift requires a focus on sustainable production practices, circular economy models and conscious consumption. Moreover, energy assistance and distribution must be prioritized to ensure equitable access for all. States and businesses should leverage extractive-related infrastructure to provide clean energy access to underserved communities. For example, an independent power project installed to power a mine could provide electricity to community members and small and medium-sized enterprises located in the vicinity.

56. By prioritizing energy access and distribution, States and extractive sector businesses can begin to engage in responsible business conduct by addressing energy waste and redirecting resources to meet the energy needs of underserved communities.

J. High-risk regions

57. A high percentage of mineral reserves critical to the scaling up of current renewable energy technologies are located in conflict-affected and high-risk regions with significant governance challenges.⁴² The illegal exploitation of transition minerals, theft and illicit trade in such resources, and the trafficking of natural resources to fund violence and extremism also remain key challenges in high-risk regions.⁴³ In this regard, the Working Group highlights its work relating to conflict-affected regions.⁴⁴

58. In order to address the human rights risks that arise from the extractive sector in conflict-affected contexts, it is critical for businesses to include responsible security management in their heightened human rights due diligence processes.⁴⁵ Anyone purchasing, processing and using transition minerals should at all times implement responsible and rights-based due diligence standards.

Box 12

Highlighted practices: Security Council resolution 1952 (2010)

The Democratic Republic of the Congo produces more than half of the world's cobalt, which is a transition mineral needed to manufacture batteries for electric vehicles and other renewable energy infrastructure. In the light of this, the Security Council, in its resolution 1952 (2010), called upon all States to “urge importers, processing industries and consumers of Congolese mineral products to exercise due diligence” and to address violations of international human rights and humanitarian law.

⁴² According to the OECD definition, high-risk areas are countries characterized by “the presence of armed conflict, widespread violence or other risks of harm to people”.

⁴³ In Security Council resolution 2482 (2019), the rise in illicit trade in natural resources was noted.

⁴⁴ See www.ohchr.org/en/business-and-human-rights/business-human-rights-and-conflict-affected-regions-project.

⁴⁵ See principles 10, 11 and 16 of the principles on the protection of the environment in relation to armed conflicts, adopted by the International Law Commission. Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf.

K. Access to remedy

59. To ensure a just transition, States and businesses must facilitate access to remedy for those affected by energy transition programmes. Effective means of resolving disputes need to be established through extractive sector laws, bilateral investment treaties, concessions and contracts. Important reforms in this area may include: expanding dispute resolution provisions in extractive contracts to promote access to remedy, not just in the case of contractual disputes but also with regard to human rights concerns as a result of such contracts; expanding the application of alternative dispute resolution to non-commercial disputes, including human rights disputes; requiring licensees to establish or participate in operational-level grievance mechanisms; requiring extractive sector operators to contribute to climate compensation and reparation funds; and enabling communities to obtain such funds and seek other remedies against extractive sector investors. These mechanisms should specifically tackle the existing difficulties faced by those affected by energy transition programmes.

Box 13

Highlighted practices: grievance mechanisms

The African Development Bank (AfDB) has established an independent recourse mechanism that provides a channel for communities to voice grievances related to projects financed by the Bank.

Accountability Counsel maintains the Accountability Console, which is a database of cases filed with AfDB and other similar independent accountability mechanisms for projects, including energy transition programmes, financed by them.

Ghana has established a community mining scheme that provides a platform for communities affected by mining to voice their concerns and receive compensation for any harm caused.

In Brazil, “dialogue tables” have been used as a mechanism to enable effective community participation in decision-making and access to remedy related to extractive projects. For example, in the municipality of Barcarena, a dialogue table was created for the community and a mining company after environmental and health impacts were reported.

The Business and Human Rights Resource Centre maintains the Transition Minerals Tracker, which highlights cases of alleged human rights abuses related to transition minerals.

60. Operational-level grievance mechanisms, which can be extended to the value chain, are also crucial in facilitating access to remedy. Such mechanisms can also inform businesses, so that they can change their policies as a result of lessons learned, avoid recurrences and prevent future human rights abuses (see principles 29 and 31 of the Guiding Principles).

61. With upcoming legislation in some States on mandatory human rights due diligence, States have an opportunity to take meaningful steps to improve access to remedy, including through provisions for the reversal of the burden of proof, as limited access to evidence, such as internal business documents, often makes it hard for claimants to substantiate their claims. States can also advance measures and mechanisms that promote access to justice, compensation, restitution and rehabilitation measures. These measures could include protection and support

measures for claimants and requirements to train the judiciary, so that lawyers, bar associations and judges understand the specific challenges of the energy transition and are able to deal with cases involving human rights abuses effectively.

IV. Conclusions and recommendations

A. Conclusions

62. States must seize the ongoing energy transition as an opportunity to promote just transition laws and policies and hold businesses, including investors, accountable for human rights abuses across the entire value chain. By taking action based on the recommendations provided below, States and businesses can ensure that the pursuit of the Sustainable Development Goals and the implementation of the Paris Agreement include guarantees of human rights protection.

63. In order to advance a just transition, States should ensure policy coherence in the extractive sector, including the implementation of legislation on the right to a clean, healthy and sustainable environment. In order to advance policy coherence, energy, environmental and investment policies must be developed collaboratively, while ensuring that human rights are always protected. The process of ensuring a just transition will also require strong coordination between international and regional institutions and organizations, national Governments, as well as with subnational governments. States must respect their extraterritorial obligations, as efforts to meet international climate commitments domestically cannot justify overlooking human rights abuses in the States where the extractive activities are taking place. The terms of extractive sector agreements affect the ability of States to regulate business conduct in the context of a human rights-based and just transition. States should therefore maintain their domestic policy space when negotiating new extractive contracts, concessions or bilateral agreements or reforming existing agreements, in order to meet their human rights obligations under international law and in conformity with principle 9 of the Guiding Principles.

64. Businesses, especially those in the extractive sector, must play an indispensable role in promoting a human rights culture in the design and implementation of energy transition programmes. Businesses should work to integrate human rights into ongoing energy transition plans and programmes to address adverse human rights impacts, including through social dialogue. Better information disclosure and transparency will lead to more informed decision-making and can also facilitate access to remedy. Furthermore, the growing number of regulatory developments unfolding at the national, regional and international levels is further increasing expectations of extractive sector businesses, including investors, to prevent, mitigate and address the adverse impacts of their energy transition efforts on human rights. In order to advance a just transition, energy transition programmes should be designed with international human rights standards and the Guiding Principles in mind, including standards on decent work, capacity-building, social inclusion, public participation and environmental protection.

65. As energy transition programmes in the extractive sector unfold, the availability of effective remedies will be crucial for individuals and communities that may experience human rights abuses during the transition. Any legislative, institutional and procedural barriers that limit or delay the abilities of individuals and communities adversely affected by energy transition programmes should be fully dismantled.

66. Ultimately, a just transition should not only focus on achieving environmental sustainability as quickly as possible but also prioritize human rights, ensuring that no one is left behind. A just transition requires systemic changes that promote sustainable

consumption patterns, foster equitable access to clean energy and prioritize the well-being of both people and the planet, with full regard to international human rights law.

B. Recommendations

67. The Working Group would like to reiterate the recommendations made in its previous reports,⁴⁶ as well as in the reports of the Special Rapporteur on the promotion and protection of human rights in the context of climate change,⁴⁷ the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,⁴⁸ the Special Rapporteur on the rights of Indigenous Peoples,⁴⁹ the Special Rapporteur on the rights to freedom of peaceful assembly and of association,⁵⁰ the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes,⁵¹ the High-level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities and the Office of the United Nations High Commissioner for Human Rights.⁵² In addition, the Working Group provides the recommendations below.

68. The Working Group makes the following recommendations to States:

(a) Adopt a clear and comprehensive regulatory framework to achieve energy transition targets in a just and human rights-based manner. Contracts, nationally determined contributions and procurement and other extractive sector-related legal frameworks should:

(i) Require business enterprises to respect and fulfil international human rights obligations when designing or implementing energy transition programmes, including by assessing intersecting forms of discrimination and social exclusion, to develop inclusive, coherent and gender-responsive programmes;

(ii) Include mandatory human rights, environmental and climate change due diligence provisions with a gender-responsive approach, which apply to State and State-owned enterprise activities;

(iii) Require businesses to identify and manage risks that Indigenous Peoples and other vulnerable groups face, including by obtaining mandatory free, prior and informed consent prior to any decision-making that may affect Indigenous Peoples' rights;

(iv) Recognize and protect the work of environmental and human rights defenders, including by adopting anti-strategic lawsuits against public participation legislation and implementing properly funded protection mechanisms that guarantee the rights of defenders;

(v) Require extractive sector businesses to prove that they are taking effective action to address the impacts of energy transition programmes on

⁴⁶ See A/77/201, A/76/238, A/75/212, A/74/198, A/73/163, A/72/162, A/68/279, A/HRC/53/24, A/HRC/53/24/Add.4, A/HRC/47/39/Add.1, A/HRC/47/39/Add.2, A/HRC/47/39/Add.3, A/HRC/44/43, A/HRC/41/43 and A/HRC/35/32; and www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf.

⁴⁷ See A/77/226.

⁴⁸ See A/77/284, A/74/161 and A/HRC/31/52.

⁴⁹ See A/HRC/54/31, A/HRC/36/46, A/HRC/33/42 and A/HRC/24/41.

⁵⁰ See A/76/222.

⁵¹ See A/77/183, A/HRC/54/25, A/HRC/54/25/Add.2, A/HRC/51/35 and A/HRC/21/48.

⁵² See www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf.

human rights and the environment, by reporting on their board composition, appointments, procurement practices and operations;

(vi) Penalize and discourage greenwashing and misleading claims or labels related to the energy transition by requiring businesses to disclose, in a transparent manner, their just transition programmes and measures taken and verifiable progress made in implementing such programmes;

(vii) Set out comprehensive and standardized approaches for data collection by extractive sector entities, ensuring that energy transition reports are released by investors in a publicly accessible and transparent way and in appropriate languages understood by affected communities, civil society and other industry stakeholders and end users;

(viii) Set out clear expectations for all business enterprises in order to implement energy transition programmes that advance public participation in decision-making in a way that ensures equality and non-discrimination;

(ix) Set out more ambitious, long-term zero-carbon plans in order to end the climate emergency and to actualize the right to a healthy environment, especially in the extractive sector;

(b) Actively engage at the international level to support legally binding instruments under negotiation, such as those on plastics and on business and human rights;

(c) Mobilize financial and technical resources to assist resource-dependent States as part of a common global effort and international solidarity to keep the energy transition ambition on track;

(d) Develop national strategies and legislation and support regional green mineral strategies, in order to strengthen reliable, responsible and Guiding Principle-compatible production and supply of critical transition minerals that are essential to the energy transition;

(e) Review current fiscal policies related to the extractive sector and energy transition to ensure that affected communities' right to benefit-sharing is respected;

(f) Review and renegotiate, as a matter of urgency, existing extractive contracts, concessions, procurement practices and bilateral and multilateral investment agreements to remove any regulatory constraints to a just transition, and ensure that new agreements preserve the ability to effectively regulate energy transition programmes in the extractive sector;

(g) Eliminate fossil fuel subsidies and tax exemptions that encourage overconsumption and unsustainability, by removing them in a just, orderly and responsible manner that leaves no one behind;

(h) Establish social, financial, capacity-development and empowerment programmes that provide stakeholders, especially workers and small and medium-sized enterprises exiting the extractive sector, with the knowledge, skills and tools necessary to transition into other economic sectors or establish their own sustainable small and medium-sized enterprises, while upholding human rights standards;

(i) Protect and support environmental human rights defenders so that they can continue their important work, such as promoting corporate respect for human rights and the right to a clean, healthy and sustainable environment;

- (j) Ensure that any fast-tracking of impact assessments for critical minerals and materials adequately deals with all human rights concerns;
- (k) Consider ratifying the Escazú Agreement, for States in Latin America and the Caribbean, and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), for other States;
- (l) Strengthen policy and regulatory coordination to eliminate the illegal exploitation, trafficking, theft and illicit trade of natural resources, especially transition minerals;
- (m) Facilitate the formalization of artisanal and small-scale mining, including by:
- (i) Providing technical and financial support for artisanal and small-scale mining operators;
 - (ii) Ensuring compliance with health, safety, environment and human rights standards in all mining sites;
 - (iii) Encouraging and supporting strong leadership within affected communities to further the empowerment of women and protect children;
 - (iv) Ensuring that mining policies and the implementation thereof cover the specificities of the artisanal and small-scale mining sector;
 - (v) Effectively engage miners in the artisanal and small-scale mining sector to find rights-based solutions to the informal economy;
- (n) Facilitate access to remedy, including by:
- (i) Establishing guidelines for grievance, dispute and conflict resolution, including the establishment of an Office of the Ombudsperson and independent corporate watchdog that can effectively manage disputes relating to energy transition programmes;
 - (ii) Elaborating clear and comprehensive regulations and policies on the use of alternative dispute resolution to ensure that energy transition disputes are resolved in a timely, speedy and effective manner that de-escalates tensions and advances timely access to remedy;
 - (iii) Holding businesses liable under civil and criminal law for any adverse human rights and environmental impacts of their global value chains, operations and business relationships;
 - (iv) Revising extractive sector legislation, bilateral investment treaties, concessions and contracts to provide measures and mechanisms for access to justice, compensation, restitution and rehabilitation;
- (o) Create and strengthen national human rights institutions and provide them with financial resources to, inter alia, help them to coordinate relevant participation procedures and grievance mechanisms and oversee remediation actions as a result of the impacts of energy transition programmes;
- (p) Ensure that government officials and judges have the requisite training and capacity to monitor the human rights impacts of energy transition programmes;
- (q) Establish public awareness and capacity-development programmes on sustainable consumption and the just transition to enable all members of the public to better understand their rights and responsibilities in the context of the energy transition;

(r) Ensure that State-owned enterprises and other State agencies in or dealing with the extractive sector act fully in line with the Guiding Principles to prevent and mitigate the human rights impacts;

(s) When developing energy transition strategies, undertake meaningful consultation with all stakeholders and ensure that the free, prior and informed consent of Indigenous Peoples has been obtained.

69. The Working Group makes the following recommendations to businesses, including investors:

(a) Ensure that all their existing and future energy transition programmes are compatible with international human rights obligations, as well as the Guiding Principles, including by assessing intersecting forms of discrimination and exclusion to develop inclusive, coherent and gender-responsive programmes;

(b) Align their business practices, policies, processes, governance structures and decisions with the goals of the Paris Agreement, including the requirement that parties (in particular State-owned enterprises) should respect, promote and consider human rights when taking action to address climate change;

(c) Conduct human rights and environmental due diligence in the design, financing and implementation of energy transition programmes throughout their operations, including with a gender-responsive approach;

(d) Ensure effective and meaningful consultation with all relevant rights holders on the actual and potential impacts of energy transition programmes on human rights and the right to a clean, healthy and sustainable environment and ensure the free, prior and informed consent of Indigenous Peoples;

(e) Avoid greenwashing and misleading claims on energy transition programmes through clear, credible, transparent and accessible reporting;

(f) Stop carbon emissions offsetting and develop more ambitious zero-carbon plans as a long-term basis for halting the climate emergency and to actualize the right to a healthy environment;

(g) Take urgent remedial action, which includes ceasing any energy transition-related programmes with adverse human rights impacts that they cause, finance or contribute to, with special attention to the impacts on vulnerable groups;

(h) Use their leverage over their business relationships to prevent, reduce or mitigate any energy transition-related human rights impacts to which they contributed or are directly linked through procurements, operations, products or services;

(i) Invest in capacity-building to:

(i) Ensure that their workers have training in human rights and the capacity to monitor the human rights impacts of energy transition projects;

(ii) Train members of affected communities so that they can participate in and benefit from the construction and operation of energy transition projects;

(iii) Retrain workers for new jobs in the energy transition, in collaboration with higher education institutions, unions and workers bodies;

(j) **Commit to transparency, in line with global standards such as the Extractive Industries Transparency Initiative;**

(k) **Support the work of environmental human rights defenders and demonstrate zero tolerance towards attacks and reprisals against these actors;**

(l) **Eliminate barriers to the exercise of the freedom of association, throughout the value chain, extending this right well beyond those who are within traditional employer-employee relationships to anyone providing labour.**

70. The Working Group makes the following recommendations to the United Nations:

(a) **Strengthen and support multi-stakeholder collaboration and cooperation to disseminate and implement the Guiding Principles in the context of the just transition;**

(b) **Facilitate the meaningful, effective and informed participation of all stakeholders in the formulation and implementation of its programmes and projects;**

(c) **Identify, reduce and address the risk of retaliation against environmental human rights defenders through its programmes;**

(d) **Promote international cooperation, policies and guidelines that encourage a just transition;**

(e) **Support capacity-building efforts for a just transition.**