

Open Letter by the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the International Seabed Authority

15 March 2024

To the Member States of the Council of the International Seabed Authority,

We are writing this open letter to you on behalf of the United Nations Working Group on Business and Human Rights (“the Working Group”),¹ the Special Rapporteur on Toxics and Human Rights,² and the Special Rapporteur on Human Rights and the Environment³. The Working Group is mandated by the United Nations Human Rights Council to promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights (UNGPs). Part of the Working Group’s mandate is to “identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon”. The Special Rapporteur on Toxics and Human Rights has a mandate to help States, businesses, and other stakeholders adopt solutions to the exposure of people to a myriad of harmful substances. The Special Rapporteur on Human Rights and the Environment examines the human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; promotes best practices of the use of human rights in environmental policymaking and identifies challenges and obstacles to the global recognition and implementation of the right to a safe, clean, healthy and sustainable environment.

We have been following the process at the International Seabed Authority (ISA) where States are negotiating the Draft Regulations on Exploitation of Mineral Resources in the Area (i.e., the commercial exploitation of minerals on the seabed).⁴ In the Working Group’s report on the Extractive Sector, Just Transition and Human Rights to the 78th Session of the United Nations General Assembly, the Working Group indicated the importance of considering the human rights and environmental impacts of deep seabed mining projects.⁵ In 2022, the UN Special Rapporteur on Climate Change and Human Rights reported that ‘serious concerns have been brought to [his] attention . . . about the potential environmental and human rights impacts from deep seabed exploration and mining for minerals that could be used in battery production for electric vehicles and other forms of electrical storage’.⁶ In 2023, the UN Special Rapporteur on Toxics and Human Rights reported that ‘the extraction of so-called transition minerals and metals can aggravate the toxic impacts of mining’ and called on States to ‘adopt mandatory standards on environmental and human rights due diligence and supply chain transparency to address the impacts of proposed climate action’.⁷ The Special Rapporteur on Human Rights and the

¹ Full title: Working Group on the issue of human rights and transnational corporations and other business enterprises. See <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

² <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights>

³ <https://www.ohchr.org/en/special-procedures/sr-environment>

⁴ <https://www.isa.org/jm/session-29-council-part-1-2-2/>

⁵ A/78/155

⁶ A/77/226

⁷ A/HRC/54/25

Environment reported in 2024 on business activity as a major contributor to the global environmental crisis.⁸

In this context, we note that there is an urgent need to include ocean-related economic development planning, such as deep seabed mining and exploration, into any consideration of the human rights impacts of energy transition policies and projects.

Generally, we would like to express our concern surrounding the mounting scientific evidence and stakeholder disquietude that, if deep seabed mining becomes an industry, there will be irreversible human rights impacts, particularly related to the rights to a clean, healthy and sustainable environment, food, cultural rights and Indigenous Peoples' rights, amongst others.⁹ The combined potential impacts from mining and other stressors on the marine environment (such as climate change, unsustainable fishing, biodiversity loss and pollution) are catastrophic. We wish to highlight that the Office of the High Commissioner for Human Rights has published a statement on deep seabed mining, which confirms the potential for negative impacts on human rights from this quickly developing industry.¹⁰ As the statement indicates, even where scientific evidence is not yet conclusive, the application of the precautionary principle requires States to act cautiously and diligently to avoid steps that may cause harm to human health or the environment.¹¹ The Working Group underscores that this principle also applies to business enterprises and their responsibility to respect human rights under the UNGPs.

More specifically, we note that the Draft regulations do not include any mention of human rights, the UNGPs, or applicable international human rights frameworks of ISA Member States (including their human rights obligation to effectively regulate and monitor business), and business responsibility to respect human rights. We wish to bring to the attention of the ISA Council that, as recognized under the UNGPs, States should set out clearly the expectation that business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, which include areas beyond the limits of national jurisdictions. Measures should be in place to ensure that any engagement by the private sector is consistent with their corporate responsibility to respect human rights. We further highlight that the UNGPs and relevant international human rights law already apply to the business enterprises that are currently engaged in or planning deep seabed mineral exploration.

As part of this responsibility, businesses are expected to undertake human rights due diligence, which involves identifying and assessing human rights risks with which they may be involved, taking effective measures to prevent and mitigate such risks, tracking whether those measures are effective in fact, and communicating information sufficient for external stakeholders to evaluate the adequacy of the businesses' response in respecting human rights.¹² Further, where harms occur, those affected must have access to effective remedy.¹³ The potential exploitation of deep seabed minerals must not proceed without a credible accountability framework for businesses engaged in these activities in accordance with international human rights law. This framework must account for the jurisdictional challenges posed by harms impacting multiple States when the damage is originally done in marine areas beyond national jurisdictions. It also must effectively integrate a precautionary approach informed by the best available science. The Working Group reminds the ISA that the UNGPs apply to State-owned entities, and that States should take additional steps to protect against human rights abuses by business

⁸ A/HRC/55/43

⁹ E.g., <https://www.iucn.org/resources/issues-brief/deep-sea-mining>, <https://deep-sea-conservation.org/key-threats/>, <https://www.greenpeace.org.uk/challenges/deep-sea-mining/>, <https://oneoceanhub.org/highlighting-critical-gaps-in-decision-making-on-deep-seabed-mining/>, <https://oneoceanhub.org/publications/policy-brief-the-need-for-strategic-environmental-assessments-and-regional-environmental-assessment-in-abnj-for-ecologically-meaningful-management/>, https://media.business-humanrights.org/media/documents/2021_TMT_deep_sea_mining.pdf

¹⁰ <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/ohchr-seabed-mining-10-july.pdf>

¹¹ Id.

¹² Guiding Principle 17

¹³ Guiding Principles 22 and 25-31

enterprises that are owned or controlled by the State.¹⁴ The Working Group also wishes to underscore the importance, as highlighted in Guiding Principle 18, of meaningful consultation with potentially affected groups and other relevant stakeholders.

We believe that, if these matters are left unaddressed, the Draft Regulations would not be in compliance with the UNGPs and international human rights frameworks, and have potentially far-reaching adverse human rights impacts. We ask that you draw our comments to the attention of all Member States of the Council as a matter of urgency. Please note that this letter may be posted on our website.

Yours sincerely,

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¹⁴ A/HRC/32/45