



ACT Alliance Submission - UN WG BHR May 2023 - Call for input - Extractive sector, just transition and human rights

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1. Introduction

[Action by Churches Together \(ACT\) Alliance](#) is a coalition of more than 147 faith-based working together in over 125 countries to create positive and sustainable change in the lives of poor and marginalized people regardless of their religion, politics, gender, race or nationality in keeping with the highest international codes and standards. ACT Alliance is faith-motivated, rights-based, impact focused, committed to working ecumenically and inter-religiously, with the communities we seek to serve and accompany at the center of our work.

ACT Alliance adopts a transformational development approach and affirms the vision and the mandate of ecumenical diakonia, as faith-based and right-based action, underscoring advocacy as an integral dimension. **Economic justice is about ensuring an Economy of Life that is founded on justice and dignity for all.** As set out in a recently published [briefing paper](#), ACT understands economic justice as a set of principles around which macro-economic policies wherein the ultimate goal is to enable the realization of human rights and to create an equitable environment that ensures people and planet thrive. **There is no economic justice without gender justice. Similarly, there is no transformative economic change if policies and actions are not human rights-based and/or connected and therefore mutually influencing macro (structural/global), meso (regional/national) and micro (local) levels/issues.**

2. Extractive Industries

Irresponsible corporate practices pose serious human rights risks. Often, they have impacts which affect people differently because of their gender, making the inequalities that they already experience even greater. As the call for inputs rightly highlights: 'extractive companies can also have considerable impacts on the environment and the economy of the societies in which they operate, with conflict-affected or post-conflict areas using revenue from extractive resources to fund unrest'.

There is increasing evidence that some private sector entities, particularly the extractive industries and multi-national corporations, have violated numerous human rights of people and communities in their business ventures. Therefore, it is critically important that the UN guiding principles on human rights are implemented at all levels to enable companies to be accountable. The UN guiding principles on business and human rights play an important role in contributing to an increased focus on human rights in relation to businesses.¹

¹ See [Private sector must adhere to human rights principles | ACT Alliance](#).



Similarly, ACT Alliance member, Christian Aid, produced a report entitled [Engendering Business and Human Rights Report](#) which focuses on human rights violations and other negative impacts of an 'extractive' model of development. The report argues that mega-projects – mining, gas pipelines, sugar processing, road building – have not benefited indigenous peoples. Instead, local communities have experienced increased pressure on their territories, damaging their livelihoods and increasing their vulnerability. For instance, a shadow report submitted by the Bolivian Indigenous Women's Alliance presented to the CEDAW Committee presents evidence of these abuses: eight case studies demonstrate serious human rights violations. A specific case relates to two proposed hydroelectric dams, Chepete and Bala, in the Madidi National Park.

3. Just Transition

Enabling just transition, (Questions 1, 3, 7):

The unsustainable use of natural resources puts future generations in an unequal position and jeopardizes the fulfillment of [human rights](#). Concurrently, we are aware that the action tackling climate and environmental issues is not necessarily compatible with social justice and respecting human rights. Subsequently, we maintain the position that advancing social justice can result in more lasting and legitimate solutions to the sustainability crisis in which extractive industries need to play a significant role. The following overarching principles that should guide the environmental and climate policy-development:

1. Human rights-based approach needs to be maintained at the core of all governance advancing sustainability transitions, including human rights principles of non-retrogression, maximum available resources and of progressive realisation.
 2. The established principles to global environmental/climate governance and inclusion – 'polluter pays', 'no one is left behind', 'nothing about us without us', and 'common but differentiated responsibilities' – should be abided and enforced.
 3. A just transition decreases poverty, and social and economic inequalities. Sharing the costs of the transition fairly requires funding based on fair, transparent and efficient taxation.
 4. Labour market organisations, civil society organisations, other stakeholder groups and individuals must have an opportunity to take part in the planning, implementation and decision-making, as well as the evaluation of the actions taken.
 5. A just transition to climate friendly society in EU must address both human rights and energy-poverty in global south. EU has classified 34 raw materials as CRM (Critical raw materials) considered crucial for EU's energy transition and a strategy aimed to secure the access to the CRM for EU
- 5a: EU's CRM strategy must also include a strategy to ensure respect for both human rights and a responsible sourcing in relation to local populations in the areas of origin for the EU CRM
- 5b EU's CRM strategy must ensure actions to target the injustice of energy poverty in relation to local populations in the areas of origin for the EU CRM. In mining raw material for energy transition

in EU it should also be connected to actions to develop access to electricity for local populations affected by the extractive activities.

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Just transition, corporate responsibilities in the extractive industries and the scope (Questions 6, 9, 13, 14, 15):

We maintain that ultimately states are responsible for guaranteeing the human rights of their citizens. However, due to the globalized character of extractive industries and the uneven field concerning the state capacities to guarantee human rights, governing sustainability in complex procurement chains is an issue of paramount importance.

At the core to governance development are legislations that necessitates the corporate sector to implement human rights based due diligence, as it is put forward in the UN Guiding Principles on Business and Human Rights framework, and more detailed practical description in OECD Due Diligence Guidance for Responsible Business Conduct, and [mining industry](#) in particular. All companies have a responsibility to respect human rights, and the extractive sector is not an exception. On the contrary, there are several governance instruments that should be considered to ensure accountability.

In terms of the human rights and extractive industries, the HRDD process is the most important approach as it offers the basic tools for engaging in the multi-stakeholder process of respecting human rights. For states, setting a law/policy that necessitates companies to implement human rights-based due diligence in the business operations puts an end to free riding companies that seek competitive advantage by disregarding human rights and sets a level playing field to advance and monitor the corporate respect to human rights. It is known that the diverse voluntary schemes and certifications to sustainability have a fragmented approach to sustainability and corporates have also different access to those initiatives.

There are a few caveats that need attention though. First is that human rights requirements should not leave corporations to opt for an alternative of risk aversion strategy in which responsible businesses leave from risky contexts, as took place in DRC after the enactment of [Dodd Frank](#) (conflict minerals) in the United States) but positive engagements would be supported.

Second, companies comply with legislation to avoid reputational and legal risks, and subsequently only superficial engagements are enacted. Thus, HRDD should be an ongoing process that seeks to identify the most salient human rights challenges and consider the (localized) avenues to averting, minimizing and addressing the risks instead of developing 'one-size fits all'. This tailoring is particularly important in risk-prone sectors such as extractive industries. Instead of relying on private compliance schemes and industry-driven initiatives that rely on top-down instruments to identify and reduce risks for companies, companies should have a duty to engage in diverse and local stakeholder led initiatives.

In particular, in cases where indigenous peoples are potentially affected, governments [must ensure](#) that the affected communities are consulted in order to obtain their free, prior, and informed consent. It should be recognised that consent may not be granted, and States must ensure that



businesses only source minerals from operations where the affected communities have given consent for mining operations. To demonstrate their respect for human rights and environmental standards, extractive companies must be transparent e.g. “know and show” where and under what conditions their minerals are being sourced.

Third, HRDD is not a ‘magic solution’ that solves all issues related to corporate abuse. A structural and human rights-based approach to economic policies, models and system is needed. For instance, it is important to promote a transformative lens to corporate justice such as those highlighted by the the UN Guidance on human rights impact assessments for economic reform policies, the UN Guiding Principles on foreign debt and human rights and the UN Guiding Principles on extreme poverty and human rights.

Good governance initiatives (Questions 2, 18):

There are several kinds of avenues what [kinds of mechanisms](#) are developed to enact HRDD governance. For the question two, we highlight: Belgian Due Diligence Law proposal, Australia’s Modern Slavery Act, The US Uyghur Forced Labor Prevention Act, Canada’s Forced Labor Bill (BILL S-211), UK Modern Slavery Act, Motion for an Austrian Supply Chain Act, Norway’s Transparency Act, Germany’s Supply Chain Due Diligence Act (LkSG), France’s Corporate Duty of Vigilance Law (Loi de Vigilance), The Netherland’s Due Diligence Legislation – the Responsible Business Conduct Act, European Commission’s proposal for a Directive on Corporate Sustainability Due Diligence.

Example beyond UNGPs (Question 2, 19, 20):

[EU biofuel development](#) offers a point of departure to showcase governance instruments that might serve the wider sector of extractive industries in the context of sustainability transitions. The sector was supported originally through making tax exemptions available for crop-based biofuels. Production and consumption, however, began to grow in the 2000s only after setting specific distribution mandates that created a secure investment environment.

Concurrently, the fast growth also raised serious questions about sustainability as new plantations of oil and sugar crops were dedicated to meet the growing consumption. Biofuels and their tropical feedstock became affiliated with rainforest loss, high emissions from land use changes and social conflicts especially in the Global South. As a response, EU has enacted [diverse governance](#) instruments to mitigate the negative outcomes that include

- a) steer biofuel feedstock towards waste flows and residues (e.g. through double counting sustainable materials to the set biofuel targets),
- b) tie favourable tax treatments to demonstrating the sustainability of the feedstock through the procurement chains. Sustainability can be demonstrated through EU approved certifiers that have specialized in certain regions or feedstock. Doing so offers greater convergence between different (and often competing) private standards, certification schemes, and reporting requirements should be created.

c) Furthermore, EU member states have systems of governance that can monitor the annual developments. Doing so increases the transparency of value chains, ensures better public accessibility to due diligence instruments, relevant information about risks and suppliers (eg. audit results), technological solutions among others.

4. Human Rights and Access to Remedy

Access to an effective remedy is an integral part of any human rights system. This entails protecting the rights of affected people, which imposes corresponding duties on governments, financiers and companies to provide an effective solution where there has been a violation. There are several measures and mechanisms that can be provided by extractive sector legislation, bilateral investment treaties, concessions, and contracts to allow individuals or communities affected by extractive activities to seek effective remedies for business-related human rights abuses. Some of these measures and mechanisms include:

- 1. Grievance and Complaints Mechanisms:** States should take initiatives to put in place judicial and non-judicial effective mechanisms in place for addressing grievances or complaints related to extractive sector operations. These mechanisms should be publicised, accessible, transparent, and impartial, and should provide for effective remedies for individuals and communities affected by human rights abuses. Again, they should consider the specific needs of communities. For example, the Ghanaian government has established the Minerals Commission, which receives and investigates complaints related to the extractive sector. The Australian government has established the Office of the Commonwealth Ombudsman, which receives and investigates complaints related to government agencies, including those responsible for regulating the extractive sector. Canada also has the Office of the Ombudsman specifically dedicated to dealing with human rights abuses and violations related to business.
- 2. Recognition and protection of human rights defenders:** Human rights defenders (HRDs), including journalists, lawyers, activists, members of indigenous communities and others, are crucial actors in the context of human rights and business activities as they work to promote corporate accountability and responsibility as well as assisting communities to access a remedy. The recognition and protection of HRDs, including rights accorded to them, such as access to information, is critical to ensure communities can safely seek remedy.
- 3. Independent legal and technical support:** Legal awareness and the provision of legal aid and technical assistance is an integral part of access to remedy. For instance, communities need dedicated support to be able to pursue a remedy either through judicial or non-judicial mechanisms. For example, communities need assistance to understand the grievance mechanisms that are available, to file complaints, and to assess proposed options for remedy. States and Businesses operating in human rights risk sectors like the extractives, must invest in setting aside a fund to support communities in pursuing a remedy.
- 4. Access to information:** Extractive sector legislation should require companies to provide communities with timely, accurate, and accessible information about their operations. This information should include the potential impacts of the extractive activities on human rights and extends to key documents like the Environmental Impact Assessment Reports and the Human Rights Impact Assessment Reports.

Commented [GU2]: Input from NCA/partners on access to remedy

Bilateral investment treaties:

Bilateral investment treaties (BITs) can have significant implications for human rights, particularly in the extractive sector. The following measures and mechanisms should be included in BITs to allow individuals or communities affected by extractive activities to seek effective remedies for business-related human rights abuses:

1. **Human rights clauses:** BITs should include human rights clauses that require investors to respect human rights and provide effective remedies for human rights violations.
2. **Dispute resolution mechanisms:** BITs should include transparent and impartial dispute resolution mechanisms that provide affected individuals and communities with access to justice.
3. **Business and Human Rights Treaty:** Outside the BITs and other international treaties applicable to business, States must support the process of developing a legally binding instrument on business and human rights currently ongoing at the United Nations level. This will ensure that there are direct human rights obligations placed upon corporations. The instrument presents an opportunity to develop an independent tribunal or international court to hold corporations, particularly those that operate transnationally, accountable for committing or contributing to human rights abuses and violations.

Concessions and contracts:

Concessions and contracts are legal agreements between companies and governments that grant the right to extract natural resources. The following measures and mechanisms should be included in concessions and contracts to allow individuals or communities affected by extractive activities to seek effective remedies for business-related human rights abuses:

1. **Community development agreements (CDAs):** Concessions and contracts should require companies to negotiate CDAs with affected communities. These agreements should include provisions for community engagement, revenue sharing, and environmental and social impacts.
2. **Performance requirements:** Concessions and contracts should include performance requirements that require companies to adhere to human rights and environmental standards.

Remedies:

The most appropriate remedies for business-related human rights abuses in the extractive sector will depend on the specific circumstances of each case. However, the following remedies are generally well-suited for this sector:

1. **Compensation:** Compensation can be an effective remedy for harm caused by extractive activities to individuals or communities. It should be adequate to cover the harm suffered and should be provided promptly and without discrimination. This compensation can be financial or in-kind, such as the provision of medical care or education.
2. **Reparations:** Individuals or communities affected by human rights abuses may be entitled to reparations. This can include measures such as providing them with financial compensation, restoring their property, or publicly acknowledging the harm that they have suffered.



3. **Restitution:** Restitution involves restoring the affected community to its pre-harm state as much as possible.
4. **Rehabilitation:** Rehabilitation involves providing medical and psychological care to affected individuals and communities.
5. **Social protection and new sources of livelihood:** This is an example of effective remedy that can be provided for people who lose jobs in fossil fuel industries. States in partnership with other stakeholders must implement remediation plans to adequately clean up the environment, compensate for damage and bring back livelihoods to such affected communities.
6. **Asset sharing models:** States can commit to exploring policy frameworks supporting shared asset models between corporations and communities impacted by transition mineral mining and renewable energy projects.
7. **Discussion Platforms:** States develop a platform where communities can discuss and air their concerns and collectively arrive at an appropriate remedy. Ghana has established the Community Mining Scheme, which provides a platform for communities affected by mining to voice their concerns and receive compensation for any harm caused by mining activities.

5. Conclusion and Recommendations

We believe that businesses, in particular extractives, must bring human rights to bear and must be held to account under international human rights law. We also believe that the UN Business and Human Rights Framework, its implementation mechanisms, and the states and business entities to which it applies, must respond better to the negative impacts of extractives on the rights of women and marginalised genders. The UNGPs and the UNGPs Gender Guidance are crucial but so are binding norms such as the draft UN Treaty on Business and Human Rights.

With this in mind, and also taking into account the detailed recommendations above, we recommend the following:

1. For the purposes of international human rights law, corporations must be treated as single entities. UNGP 23 provides for this, even where laws apply on a separate legal entity basis. This changes how we analyse questions of responsibility and effective decision-making levels. Unlike corporate rules, human rights principles do not treat corporations as separate entities. UNGP 23 states that 'all business enterprises have the same responsibility to respect human rights wherever they operate.' This responsibility extends to business relationships involving financing, supply chains and joint ventures, among others, while recognising that companies may have different degrees of leverage in such situations. The UNWG on BHR should recommend measures to guarantee the effective implementation of UNGP 23, reinforcing the position that corporations are single entities.
2. Tax dodging and related abuses must be regulated as direct infringements of women's human rights. We believe the activities of TNCs can have particularly negative impacts on women's human rights. When corporations rely on cheap labour, and pay less in tax or social security costs, they are abusing women's rights by reducing the available revenue and paying lower wages. According to the UNGPs, this includes the facilitation of human rights abuses – which is especially relevant for the TNC's financiers, bankers, lawyers, accountants and other service providers. For example: 'The



human rights impacts of those who advise and facilitate corporate tax abuse should equally be assessed and publicly reported' (UNGPs 19 and 23). States should identify and regulate other non-state mediated or direct impacts on women's rights, such as tax dodging and abuse.

3. We believe the UNGPs are not enough. We also need a binding UN Treaty on Business and Human Rights to create a stronger legal framework that can help to regulate issues such as land use/rights, environmental impacts, equitable access to remedial mechanisms and equal representation in the workforce. All state and non-state actors must support the development and guarantee the ratification and implementation of the Legally Binding Treaty on Business and Human Rights. We recommend that states support, adopt and provide for the proper implementation of a legally binding Treaty on Business and Human Rights that does not lock in standards lower than those embodied in the UNGPs, and has definitions consistent with the same terms used in the UNGPs. We also recommend that the treaty takes into account the gendered dimensions of corporate practices by incorporating into its provision the Gender Guidance to the UNGPs and/or recognising its legally binding character.