AID WATCH

OHCHR Working Group on Business and Human Rights

# Extractive sector, just transition and human rights

# SUBMISSION

AID/WATCH

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## EXECUTIVE SUMMARY

AID/WATCH Australia welcomes the opportunity to respond to the call for submissions to the Working Group on Business and Human Rights call for inputs on the Extractive sector, just transition and human rights.

For three decades, AID/WATCH has been the only independent monitor of Australia's international aid and development. Through research, campaigns and advocacy centered in justice and solidarity, AID/WATCH collaborates with frontline communities and networks to expose Australian foreign policy mechanisms and development aggressions that undermine their lives, lands, and waters.

Since 2020, AID/WATCH has expanded our mandate beyond the 'aid lens' in response to the converging and intersecting eco-social issues including the COVID-19 pandemic, enduring crises of climate change, human and collective rights, biodiversity loss, and pollution and waste. This has included research and advocacy on the greenwashing tactics of the mining and extractive sector in the expansion mining of transition minerals[i] for the energy and material transition and the culminating human rights and justice issues.

In this submission AID/WATCH recommends caution with the narrative set in the Australian Governments *Australia's Critical Minerals Strategy* paper (December 2022) that "decarbonisation goals are of such magnitude that to reach net zero, we will need more mining, not less," and urges the Australian government and States globally to make decisions that also include an abrupt turn away from material and mineral overconsumption in the foreseen solutions. Policies should avoid causing new harm to the environment, expansion of current mines and opening new areas to mining, and the human, collective and cultural rights of Indigenous peoples and local communities.

Intensive resource exploitation and extraction is being framed "not only as compatible with climate change, but indeed as necessary to its mitigation"[ii] and is justified by the assumption that economic growth and climate mitigation can occur together. The concept of 'green growth'[iii] currently sits at the heart of the EU's climate transition plans with Australia trailing behind, in part with the assumption that there will be a constant supply of raw materials for the green energy transition[i]. Mining has become associated with positive images of high-tech industries, 'green jobs' and 'climate-friendly' extraction however the word 'green' should be regarded as nothing less than deception, by definition, these kinds of extractivism are anything but green.[iv]

Expansion of global extractive developments are creating sacrifice zones described as 'geographical areas which are knowingly destroyed in the name of power and profit'.[v] In the

[i] We use the term 'Transition Minerals' in this submission to mean those minerals and metals needed for the transition away from fossil fuels.
[ii] Daniel Voskoboynik, Diego Andreucci, *Greening extractivism: Environmental discourses and resource governance in the 'Lithium Triangle,* Environment and Planning E: Nature and Space. 2022;5(2):787-809, https://doi.org/10.1177/25148486211006345
[iii] Jason Hickel (2020), *Less is More: How degrowth will save the world*, 1st edition (Cornerstone Digital, 13 August 2020)
[iv] Bárbara Jerez, Ingrid Garcés, Robinson Torres, *Lithium extractivism and water injustices in the Salar de Atacama, Chile: The colonial shadow of green electromobility*, Political Geography, Volume 87, 2021, https://doi.org/10.1016/j.polgeo.2021.102382
[v] Maja Darlington, "Sacrifice zones: the places being destroyed by our toxic system – and the dangerous 'climate solutions' that could make them worse," Greenpeace website, accessed 10 August 2022, https://www.greenpeace.org.uk/news/sacrifice-zones-geoengineering/

climate change context, the term has been applied to Global South communities who have contributed little to global warming but are suffering the brunt of the climate change impacts caused by industrialised nations. By extension, the term "green sacrifice zone"[vi] refers to the offloading of impacts of the green energy transition - the efforts to 'solve' the climate crisis - onto those same marginalised communities not only in the Global South but the Global North with the increase move to onshoring.

A plethora of such green sacrifice zones are emerging including our oceans deep seabeds with the push for deep sea mining. These sacrifice zones are mainly in the Global South; but increasingly frontlines are appearing within the Global North including here in Australia, where marginalised groups including First Nations peoples face the impacts of mining expansions on their lives and livelihoods. Impacts include water pollution and depletion, air and water contamination, degradation of agricultural lands, forced displacement of communities, disrespect of Indigenous cultural heritage and land rights, disregard free, prior and informed consent, human rights abuses and labour rights violations.

We must urgently slash carbon emissions and wean off fossil fuels – but do so without generating new injustices and environmental harm through mining, which is adversely impacts communities and pollutes ecosystems and waterways across the world. The energy transition is a critical juncture: we call on the Australian Government and all States to not just electrify the status quo, but to take the opportunity for ambitious policies that simultaneously slash emissions, reduce pressure on ecosystems, and improve community wellbeing.

Our submission provides a summary of six key issues as well as a set of recommendations to take into consideration.

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[vi] Christos Zografos, Paul Robbins, *Green Sacrifice Zones, or Why a Green New Deal Cannot Ignore the Cost Shifts of Just Transitions*, One Earth, Volume 3, Issue 5, 2020, Pages 543-546, https://doi.org/10.1016/j.oneear.2020.10.012

## 1. Defining priorities and Objectives

In terms of which strategic raw materials States should focus on, this should be based on looking at overall demand in sectors and identifying sectors where this demand could be reduced, due to:

- Ability to reduce overall demand by implementing sufficiency policies. For example, plans to reduce the overall number of cars in Australia and limit demand in sectors such as space exploration, digital technologies and electronics, or the military, whilst prioritising renewable energy technologies and infrastructure.
- Ability to move towards much greater circularity.
- Ability to substitute - this is currently underexploited in states like Australia, for example substituting lithium with sodium, zinc or fluoride for storage and mobility, and with sand batteries for storage and heating.

In terms of setting objectives for increasing capacity at different value chain stages to guide national efforts in mining, refining and recycling:

- Any objectives must be underpinned by a commitment to, and enforcement of, high environmental and social legislation and standards. A lack of technical standards is not the challenge, but rather the quality of the standards and their transparency and enforcement. At the same time, standards should not replace legal requirements or replace ensuring public and private accountability (for example industry standards schemes should not be responsible for verifying companies' and their suppliers' and should respect requirements like the EU Corporate Sustainability Due Diligence Directive's).
- States and corporations should embrace new legislation and update and enforce existing legislation to ensure high social and environmental standards, including water, waste and EIA legislations as well as look more closely into the role of Social Impact Assessments (SIA) in mining.
- Any objectives must be underpinned by a commitment to, and enforcement of, mandatory human rights and environmental due diligence.
- Any objectives must favour the use of secondary over primary raw materials and ensure that at least 30% of all investments are on secondary sourcing and projects (urban, landfill or waste re-mining, recycling plants).
- Technologies and workforce capacity for secondary raw materials projects must be greatly increased. This includes investment in technologies for recycling transition minerals, ecodesign, reuse and substitution. For this, we must also focus on training workforce and increasing skills in these areas.
- That any "streamlined and quicker permitting procedures" are focused on strengthening and improving administrative capacity, for example through the digitalisation of permitting, increased workforce or one-stop shop, and not on by-passing environmental standards or safeguards.

## 2. Improving monitoring, risk management and governance of the extractive sector and transition minerals

Large-scale mining entails social and environmental harm, in many cases irreversibly damaging landscapes, this is regardless of states like Australia who are seen as having a record of world's best practice. As societies undertake the urgent and transformative task of building new, zero-emissions energy systems, some level of mining is necessary. But the volume of extraction is not a given. Neither is where mining takes place, who bears the social and environmental burdens, or how mining is governed.

To ensure a secure and sustainable supply of transition minerals and to strengthen the resilience of their supply chains, States needs to not only look at managing the value and supply side but also actively play a role in influencing the demand side i.e., in implementing policies that centre around demand reduction and sufficiency. This should be done in collaboration with civil society in related discussions and expert groups. Mapping and monitoring of strategic mineral resources should include:

- Demand developments at national, regional, and global levels
- Supply developments (including forecasting)
- Trade flows
- Robust data analysis of broader national material flows broken down for regional and local levels (including urban areas).
- The flow and stocks of secondary transition minerals

## 3. Strengthening the transition materials value chain (mining, refining, processing, recycling) in a global context

If a list of strategic projects is developed, it is vital that:

- The process and selections are done in a transparent and democratic manner involving relevant institutions and stakeholders. The process of developing the criteria for which to choose projects must be transparent and involve stakeholders all along the way.
- The criteria for how projects are chosen should be based on a robust assessment of environmental and social risks, particularly for waste, water and pollution control, and that extractives and exploration projects have full community consent.
- There is an assessment of any company involved and its past performance.
- Exploration and extractive projects do not take place in specified "no-go" zones e.g., protected areas, cultural heritage sites, sites with endangered species, wetlands, sea beds.
- That a certain percentage, at least 30%, of the strategic projects are secondary raw materials projects, for example, urban, landfill or waste re-mining, and recycling plants.

- That any "streamlined and quicker permitting procedures" are focused on strengthening and improving administrative capacity, for example through the digitalisation of permitting, increased workforce, or one-stop shop, and not on by-passing environmental standards or safeguards.
- Projects should use renewables to power activities.

The strengthening of transition mineral value chains should rely on ambitious policies, creating clear market drivers and certainty for the reusability and recycling of transition minerals, notably in the automotive, electronics, buildings, and renewable energy sectors.

## 4. To ensure high environmental, social and governance standards and to lower the environmental impact of extraction.

Expansion of global extractive developments are creating sacrifice zones described as 'geographical areas which are knowingly destroyed in the name of power and profit'[i]. In the climate change context, the term has been applied to Global South communities who have contributed little to global warming but are suffering the brunt of the climate change impacts caused by industrialised nations. By extension, the term "green sacrifice zone"[i] refers to the offloading of impacts of the green energy transition - the efforts to 'solve' the climate crisis - onto those same marginalised communities not only in the Global South but the Global North with the increase move to onshoring.

A plethora of such green sacrifice zones are emerging. These are mainly in the Global South; but increasingly frontlines are appearing within the Global North including here in Australia, where marginalised groups including First Nations peoples face the impacts of mining expansions on their lives and livelihoods. Impacts include water pollution and depletion, air and water contamination, degradation of agricultural lands, forced displacement of communities, disrespect of Indigenous cultural heritage and land rights, disregard free, prior and informed consent, human rights abuses and labour rights violations.

- "No-go" zones should be established for exploration and extractive activities e.g. protected areas, cultural heritage sites, sea beds.
- There should be ambitious and enforced environmental and social legislation and standards. The Australian Government, States globally and companies should embrace new legislation and update and enforce existing legislation to ensure high social and environmental standards.
- There should be a commitment to, and enforcement of, mandatory human rights and environmental due diligence.
- Scaled up investment and action on low-impact mining, underground mining, bio-mining, geothermal and other less impactful mining techniques (what works where depends on various factors, importantly geological and social conditions).

- Extractive, processing, refining etc. activities should use renewables to power activities, including moving towards electric vehicles and substituting fossil fuel-derived explosives.
- A requirement that suppliers report on carbon emissions, water and material footprint and land use per tonne of commercially usable material.
- The creation of storage capacities must favour secondary over primary raw materials if this is not done to disadvantage the use and market prices of secondary raw materials.
- Both the secondary and primary raw materials that are stockpiled must comply with the highest possible ecological, human rights and labour standards. Companies in the upstream and downstream supply chains must be required to comply with their human rights, environmental and climate due diligence obligations. In the event of human rights violations or environmental degradation linked to stockpiling, it is necessary to create both compensation opportunities for those affected and access to justice.
- Raw materials from stockpiling must be used exclusively for sustainable products and infrastructure, this includes renewable energies, sustainable forms of mobility (bicycles, buses, trains) and technologies that help achieve climate goals, environmental protection, and respect for human rights.
- The mining of transition minerals is too important as a political issue to be left to industry and authorities behind closed doors. Democratic decision-making involving trade unions, human rights and environmental organisations, academia, civil society, and elected representatives is needed.

## 5. Respecting Local Communities and Indigenous/Traditional Peoples

Mining concerns across the world include failures to respect Indigenous rights and community rights with the extractive sector responsible for polluted waterways, land clearing and the legacy issues of abandoned mining site.

In Australia, Aboriginal also known as First Nations groups have a history of resisting mining, leading to a number of native title disputes with mining companies. First Nations groups' access to, and control over, areas of cultural significance is often negotiated through land use agreements. Furthermore, Australian Native Title law does not allow First Nations people to say no to mining or exploration.

Impacts of mining in remote communities have been devastating to cultural continuity and spiritual practices due to the landscape disruptions of sacred sites and the socio-cultural impacts of mining activities near remote communities. Events such as Rio Tinto's destruction of a 46,000 year old sacred site at Juukan Gorge continue to occur.

As the *Way Forward* report outlines, Aboriginal Cultural Heritage legislation across Australia is not fit for purpose and allows minister discretion for industry to obtain approval for destroying sacred sites. Government regulations currently fail to protect the 'right to say no' which is implied in Free

Prior Informed Consent (FPIC) described in the United Nations Declaration on the Rights of Indigenous Peoples. Therefore, any Australian transition minerals strategy, must include:

- An overhaul of Australia's cultural heritage protection regulations and a review of the *Native Title Act 1993* to address power imbalances in negotiations based on free, prior and informed consent as per the *Way Forward* report.
- Recognise that communities have the Right to Say No. Frontline communities bear the effects of a mine into the future for the sake of the global community. After a fully informed independent assessment, they should still be afforded a legal right to refuse hosting a proposed mining operation.
- Lines of Extractivism need to be drawn up and adhered to:
    - No mining nor purchasing metals and other minerals from sites whose communities and or First Nations have not freely given their consent, and only after being previously and thoroughly informed of the possible impacts of the proposed extractive activity, to be verified by an independent community-appointed entity.
    - No mining nor purchasing metals and other minerals from projects or operations that could diminish a country's archaeological or cultural heritage.
    - No mining nor purchasing metals and other minerals from any protected area, including those declared by subnational governments.
    - No mining nor purchasing metals and other minerals from sites whose communities face forced relocation.
    - No mining nor purchasing metals and other minerals from areas harbouring species in danger of extinction or critically endangered.
    - No mining nor purchasing metals and other minerals from sites where Acid Mine Drainage poses a significant threat to water sources.
    - No mining nor purchasing metals and other minerals from sites whose extraction of water will diminish sources of water.
    - No mining nor purchasing metals and other minerals from sites harbouring primary, old-growth and native forests.
    - No mining nor purchasing metals and other minerals from river and ocean beds.

## 6. Strengthening resource use, waste, and circularity frameworks.

It is necessary to reduce the pressure on primary raw material consumption. There needs to be stricter legislation regarding what is allowed to be placed on the market in the first place and the quantity consumed (an overall reduction target). Strengthening resource use, waste, and circularity frameworks by:

- In the context of Australia, the Australian Government must act in its next mandate to develop an Australian-wide material footprint reduction target. This is vital to reduce overall demand across the economy, including for transition minerals.

- Circularity measures should apply to all products using transition minerals. including wind, solar, heat pumps, data transmission networks, buildings, electronics, and appliances etc. There is a lack of existing frameworks to address circularity in these products, yet it is greatly needed.
- Strengthen exploration and documentation of transition minerals. in secondary deposits and waste streams (including old landfills).
- Creation of an open database to report exhaustive, up-to-date, and reliable data on extractive waste facilities hosted on states and territories as well as obliging companies to report on their mining waste volume and content:
    - Setting clear binding targets for waste operators handling transition minerals from different waste streams for material recovery and final recycling levels
    - Design requirements for products containing transition minerals that ensure product longevity, ability to disassemble, and repair and replaceability information and requirements are to the fore.
    - Minimum content of recycled transition minerals in relevant products. For example, through the development of minimum targets for recycled content of raw materials, these measures should also expand into the larger users of transition minerals like the military sector.
    - Product passport for vehicles, batteries (both electric vehicles and industrial energy storage batteries), electronics, appliances and new or refurbished buildings, disclosing transition minerals contents information for actors along the reverse value chain and recyclers.
    - Increased support for research and innovation funding on recycling, substitution and material recovery technologies for transition minerals.
    - Any higher level targets on self-sufficiency in raw materials must include: by how much a State will source domestically and what this means in detail (e.g. not counting that States companies operating abroad as domestic sourcing), indicating how much of this will come from secondary sources, by how much total raw and processed imports will thus reduce, and by how much a States raw materials demand will reduce overall to ensure self-sufficiency does not lead to shifting harmful impacts from outside to inside the State.

## COMMENTS & RECOMMENDATIONS

AID/WATCH is aware of various case studies that indicate some problematic trends especially in the context of Australia, including:

- A silence from government or industry about the current and potential impacts of extractive sacrifice zones across Australia.
- The side-lining of voices of critique and dissent against the industrial roll-out of ‘green’ extractivism. Australia’s pro-industry policy and media stance presents a difficulty in finding public information about the impacts of existing exploitation domestically.

- Alternative voices from people and environments directly affected by mining expansions are sparse in the literature.
- Consultation processes being designed to assist the streamlining and fast-tracking of projects, via the ticking of social licence boxes.
- The state-corporate branding of projects as "zero carbon" or "100% clean energy," often with a marketed goal to 'clean up' emissions in Australia, with risk of greenwashing any negative immediate impacts on communities and the environment, as well as scope 3 emissions and upstream or downstream supply chain impacts.
- A push for industry-led and technology driven 'solutions', invested in by companies keen to establish 'green' supply chain credentials.
- The framing of Environmental, Social & Governance (ESG) as a risk/opportunity analysis for industry and investors.

AID/WATCH set of Recommendations:

- Establishment of a Mining Ombudsman and independent corporate watchdog regarding the mining, processing and supply chains of transition minerals.

- Reduce demands for materials and energy. We must pursue policies and practices that aggressively reduce consumption, and unfettered economic growth, and instead promote and support public transportation, develop and provide other alternatives to individual vehicle travel, and design-level attention to repair, reuse and recycling of battery and other products.

- Promote unbiased assessment of mining proposals for frontline communities. Communities must be able to fully understand the consequences of a proposed mining project: to be able to evaluate what changes to the mine may be required to meet the needs/interests of the community, if they are to agree to its implementation, or determine if there is no acceptable mining plan.

- Recognise that communities have the Right to Say No. Frontline communities bear the effects of a mine into the future for the sake of the global community. After a fully informed independent assessment, they should still be afforded a legal right to refuse hosting a proposed mining operation.

- Address climate change from a holistic and environmental justice perspective towards a just transformation. Mining is inherently destructive including hampering the ability of nature to moderate climate, loss of valuable biodiversity, and disproportionately affecting certain communities. All of these must be acknowledged and meaningfully addressed in climate action policy and practice.

- **Ending corporate impunity.** Promote legally binding treaties on business and human rights, ensure robust consultation obligations and compliance mechanisms that carry legal sanction and fiscal penalties if not met in full, and enforce meaningful regulatory limits for environmental and social protection to the highest standards.

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