

May 26, 2023

Working Group on Business and Human Rights
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH 1211 Geneva 10, Switzerland

Re: Submission to UNGA thematic report on extractives, just transition and human rights

Dear Members of the Working Group,

Thank you for the opportunity to provide a submission to your forthcoming report on the extractive sector, the just transition and human rights to the UN General Assembly's 78th Session. Christian Aid has long been a firm supporter of the work of the Working Group and we welcome its focus on the extractive sector and the just transition – an area of utmost importance in relation to the Guiding Principles on Business and Human Rights and for a just energy transition which is vital given the context of climate change. **For that reason, we are currently in the process of undertaking new research focused on Business and Human Rights in the green energy transition, which we look forward to sharing with you by the 54th Human Rights Council session and the Business and Human Rights Forum in autumn.**

For now, we trust that the findings of some of our recent research relating to Business and Human Rights in the extractive sector will be of interest to the Members for its forthcoming report. We set out our key findings and reflections on some of the questions you have posed in the pages below. If you have any questions about this work, please do not hesitate to reach out, otherwise we look forward to hopefully connecting with you on these topics soon in Geneva.

Kind regards,

A handwritten signature in black ink, appearing to read "Emma Bürgisser".

Emma Bürgisser
Economic Justice Lead
Christian Aid

eburgisser@christian-aid.org

A handwritten signature in black ink, appearing to read "Juan Carlos Ochoa-Sánchez".

Juan Carlos Ochoa-Sánchez
Economic Justice Advisor
Christian Aid

jochoa-sanchez@christian-aid.org

I. Research overview

Several recent reports by Christian Aid and its partners have contributed to the documentation on the adverse human rights and environmental impacts of the industrial mining sector. This includes research into the value chain of aluminium, a so-called ‘critical transition mineral’, as well as into iron and coal mining activities, which offer important lessons for avoiding replicating the deeply harmful, asymmetric, and extractive power dynamics of these industries in the green transition to sustainable and just renewable energy.

- **Undermining Resilience: Climate change, rights and mining**
 - *Published January 2023*
 - This report highlights concerns of Quilombola and riverine communities about the detrimental impacts of the mining industry in the Brazilian Amazon on their rights and resilience and the role of this sector in contributing to climate change and the degradation of critical ecosystems. The report documents the human rights and climate impacts of the mining industry in the Brazilian Amazon, records testimonies of Quilombola and riverine communities, and offers policy analysis and recommendations particularly in relation to alignment with the Paris Climate Agreement and strengthening regulatory frameworks.

- **Profit before People and Planet: How economic policies and corporate profit maximisation perpetuate the unsustainable exploitation of the Brazilian Amazon and its people**
 - *Published December 2022 in partnership with the Financial Transparency Coalition and Red Latinoamericana por Justicia Económica y Social (LATINDADD)*
 - This report aims to uncover some of the structural drivers behind the industrial bauxite mining industry in the Brazilian Amazon. Its research focuses on the operations of the Brazilian bauxite mining company, Mineração Rio do Norte S.A. (MRN) and documents its extensive human rights impacts on Quilombola and riverine communities, including on their rights to food, water, health and livelihoods. The report establishes that Brazil’s tax policies grant large tax exemptions to companies operating throughout the aluminium value chain, helping to maintain an unsustainable and extractive economic model. The report also identifies that a few major international companies control most of the sector and largely fail to meet their responsibilities under international law to prevent and mitigate adverse social and environmental impacts of these operations.

- **The Mud Went Through my Soul: Voices of women affected by the Brumadinho dam rupture**
 - *Published January 2022 in partnership with Movimento dos Atingidos por Barragens (MAB)*
 - This report documents how, three years on, the rupture of the Brumadinho tailings dam at the Córrego do Feijão iron ore mine in Brazil, owned by Vale, continues to undermine women’s rights, specifically, in relation to access to water and to a healthy environment, gender equality and freedom from violence, decent work and income, and mental health. Through testimonies of affected communities, the report demonstrates how these impacts have exacerbated gender inequalities by disproportionately affecting women in poor and marginalised communities who already faced multiple and intersecting barriers to achieving their rights and how company-led reparation efforts have been insufficient. This report builds on Christian Aid’s earlier work, [*Engendering Business and Human Rights*](#) published in 2019.

- **Undermining Human Rights: Ireland, the ESB and Cerrejón Coal**
 - *Published February 2020*
 - In this report, Christian Aid Ireland have documented the serious human rights and environmental impacts associated with the Cerrejón coal mine in Colombia. This has included forced displacement of indigenous communities, pollution of air, soil and water, and intimidation of activists and human rights defenders. The report also sets out the close involvement of a number of high-profile European companies. Impacted communities have struggled to engage meaningfully with Glencore, the mine’s owner, and to seek justice.

II. Key reflections:

The research outlined above endorses many of the previous positions of the Working Group and include recommendations on the corporate responsibility to protect human rights, access to remedy, and good practices, as outlined in the [questions](#) you raise. For the purposes of this submission, following the wordcount limit, the below reflections focus on our findings and recommendations towards state obligations that you may be somewhat less familiar with and are most relevant to the extractive sector in the green transition.

1. **Mandatory regulations are required for a just green transition**

Overall, our collective research demonstrates that the largely voluntary approach adopted in national and international frameworks aimed at ensuring human rights protection in the context of business operations, including the mining sector, is **wholly inadequate** to prevent and mitigate adverse impacts on human rights and the environment. Our work with communities in Colombia and Brazil over several years has documented the consistent degradation of human rights and the environment by the mining sector and continued lacking access to remedy, while net profit margins of this global industry have continued to climb. Where legislation and regulations are in place, these are often inadequately enforced.

Therefore, we firstly recommend that states:

- **Adopt mandatory regulations** imposing clear duties to prevent and mitigate adverse impacts on human rights and the environment contributed by mining companies. These duties should include:
 - A corporate duty to conduct **human rights and environmental due diligence** in relation to their own operations and their business relations, including the duty “to take appropriate action” to prevent and mitigate adverse human rights impacts directly linked to their operations, products or services through their business relationships. This should include providing effective remedy for historic impacts and explicit requirements of reporting on the implementation of ‘free, prior and informed consent’, including documentation on environmental, social, gender and human rights impact studies and the specific rights of indigenous peoples as recognised under ILO Convention 169.
 - A corporate duty to report sufficient information on their **supply chains**. The deliberate lack of transparency in this area prevents civil society organisations and citizens from having access to information about whether the goods they consume are made from inputs produced respecting human rights and protecting the environment.
- **Put in place strong governance structures** to design and implement policies to regulate, supervise and sanction mining. This should cover key areas such as granting of permits, land rights and use, including extraction and use of surface and subsurface water sources, taxes and waste management, including tailings. This should also include setting and effectively implementing robust standards on ex-ante environmental and human rights impact assessments, including gender impact assessments. States should also ensure sufficient regulatory capacity at the national and subnational level to ensure that rules are complied with. Finally, regulatory criteria regarding government procurement should be updated to include both incentives and exclusion clauses linked to businesses’ human rights records overseas, including through their supply chains.
- **Support a Binding Treaty on Business and Human Rights.** We call on governments to constructively engage with the Binding Treaty negotiation process and to prioritise coverage of all business enterprises regardless of size, sector, operational context, ownership and structure, parent company-based extraterritorial regulation and mandatory gender impact assessments of business activities, gender-sensitive justice and remedy mechanisms, and ensuring respect, protection and an enabling environment for women human rights defenders and local communities.

2. Transparency and tax policies remain too often overlooked

Our research has contributed evidence to establishing that a widespread lack of transparency in the mining industry and certain tax policies relating to the sector can be **critical hidden drivers** in creating an enabling environment for extractive practices that structurally undermine the fulfilment of human rights and the protection of the environment. Opacity of the true ownership of mining companies makes it harder for communities to seek justice with the right powerholders for instance, while tax policies that allow international corporations to hide their profits and dodge taxes ultimately undermine the capacity of states to fulfil their human rights obligations. More broadly, tax policies can be **powerful tools to incentivise, as well as discourage**, behaviours of businesses. In the context of the green transition, our experiences tell us that temptations for states to provide significant tax incentives to mining companies as ‘carrots’ to support the green transition must be tempered and carefully weighed, and go hand-in-hand with ‘stick’ approaches. The governance structures described above are pre-requisites to implementing and maintaining this approach.

We therefore recommend that states:

- **Improve access to information** on multinational enterprises' operations, including on revenues, profits before tax, taxes paid and accrued, number of employees, stated capital, retained earnings, and tangible assets, on the basis of public country-by-country reporting, starting with a mandate to publish these for all companies in the extractive industries, including project-by-project reporting. States should ensure greater transparency along value chains, in price setting, GHG emissions, and implement public beneficial ownership registries to allow public scrutiny of real owners of companies, trusts and other legal vehicles.
- **Ensure that mining and related sectors are adequately taxed.** In order to finance the green transition and fulfil their human rights obligations, states require fiscal space, which includes the progressive mobilization of domestic resources. This requires ending the race-to-the-bottom on corporate taxation and tackling corporate tax evasion and avoidance, from which the mining industry cannot be exempt writ large for extracting ‘transition minerals’ that are critical to the green transition. When considering tax reforms in the context of the green transition, states firstly should apply the UN Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies and put in place clear, transparent and credible political, legal and technical processes for publicly discussing tax exemptions in the context of the green transition. This includes ensuring informed and effective participation of local communities in the design, decision-making and supervision of these tax policies. Tax exemptions and subsidies to fossil fuel sectors must ultimately be removed, but with careful consideration of sequencing, to target upstream policy interventions, to assess, mitigate and redress adverse human rights impacts, especially on the poorest and most vulnerable, and to front-load investments in sustainable alternative energy sources. Doing so with disregard can increase inequality, fuel unrest and conflict, and undermine popular support for climate action, slowing the transition. Regarding any tax exemption to be maintained or introduced, states should disclose sufficient information on key elements to allow stakeholders to make a full evaluation, including of its human rights impacts and socioeconomic costs and whether it contributes to achieving its stated objectives.
- **Review current fiscal policies** as they relate to the extractive sector to ensure the right to benefit sharing among local communities is respected, with the meaningful participation of indigenous communities impacted by extractive activities.
- **Instruct tax administrations** to examine information on mineral extraction and sales, verify compliance with tax obligations by mining companies and buyers, and address the implications of relationships between companies in highly integrated value chains, including for the risk of tax abuse.
- **Join international initiatives** that aim to increase transparency on taxes paid by mining companies, including the Extractives Industries Transparency Initiative (EITI).

3. Women's rights require specific attention

Our research helps establish that the human rights and environmental impacts of mining activities carry specific and differential burdens on women, requiring redress measures that address intersecting inequalities. These should not only address the differential impacts of mining on women and men, but also support women's leadership and agency, increase their access to resources, and guarantee their freedom from discrimination and violence. Yet, our research speaks to the continued **invisibilisation of women's experiences** in relation to the extractive sector, with our findings clearly pointing to a systematic absence of gender differentiated responses and attention to harms caused to women by states and corporations.

We therefore recommend that states:

- Ensure meaningful participation of women and marginalised groups, with a specific focus on indigenous communities, in the design and implementation of policies and actions relating to extractive industries. This includes ensuring free, prior and informed consent for any mining operations through meaningful consultations with potentially affected communities, as determined by ILO Convention No. 169, and ensuring that channels are created for dialogue and negotiation between local communities, including women leaders, throughout the life cycle of mining projects.
- Take steps, including the provision of additional resources, expertise and oversight, to enforce legal protections for local communities impacted by extractive industries, with a focus on gendered impacts, such as impacts on gender-based violence.
- Dedicate resources to ensure protection for women human rights defenders, union representatives, social leaders and environmental activists working to protect rights in the context of mining and other extractive industries.
- Ensure the right to effective, accessible remedy is protected and fulfilled, with a particular focus on addressing the experiences of women impacted by extractive industries.

4. The fulfilment of human rights must enjoy policy primacy

Finally, as an organisation that actively advocates towards governments in our economic and climate justice work, our experiences tell us that a major obstacle to the realisation of human rights is policy incoherence, whereby different parts of one state, particularly those in the global North, or different intergovernmental institutions, are **working at odds with one another**. In these contexts, the political, policy and fiscal space of those working in the interests of realising human rights and within national and international human rights frameworks has been structurally undermined and lose out against those working in the interests of economic growth and major corporations. While the green transition has the potential to bring about stronger alignment between human rights, economic policies and climate action, many governments, especially those with the power and resources to do better, are already embracing approaches that widen these gaps instead.

We therefore recommend that states:

- Establish and fully resource a **transparent national mechanism** with a mandate that includes implementation of the UNGPs and explicit recognition of extra-territorial human rights obligations in the context of private sector activities. This mechanism should be mandated to regularly conduct thorough human rights and environmental spill-over analyses of all international trade, debt and taxation agreements, to which the state is a party and rectify inconsistencies between state obligations under international human rights law and the Paris Climate Agreement on the one hand, and economic policies on the other. This should include positions governments take up in the decision-making bodies of intergovernmental organisations and international finance institutions, which require strengthened human rights accountability mechanisms.
- Comprehensively and transparently evaluate and compare the **costs and benefits** of mining activities to human rights, environmental integrity and ecosystems. Assess risks in the light of climate data and predicted trends. Commission and ensure access to comprehensive and independent information regarding the impacts of mining operations from their commencement, including comprehensive environmental, human rights and gender impact assessments, as well as assessment of impacts on inclusive economic development in their location of operations. This also requires monitoring information about air, soil and water contamination and the risks and impacts of extractive operations, including tailings dams, should continue to be provided where needed after operations have closed.
- Ensure the development of a **fast and fair exit plan for fossil fuel extraction**, including provisions for both employees and local communities to engage, and measures such as social protection and reskilling of employees, and the creation of new employment opportunities in the wider community, to ensure they benefit from more sustainable economic activities. This should also be part of a transformative economic and social plan and a wider commitment to stop extracting fossil fuels.

Christian Aid exists to create a world where everyone can live a full life, free from poverty. We are a global movement of people, churches and local organisations who passionately champion dignity, equality and justice worldwide. Since 1945, we have provided long-term development support and humanitarian relief for affected communities worldwide, while highlighting suffering, tackling injustice and championing people's rights.