Call for inputs: Extractive sector, just transition and human rights

United Nations – Working Group on Business and Human Rights

Image source: Property of Laurel Chor[1]. http://www.laurelchor.com/

[1] Time's top 100 photos of 2022. Workers dig out copper and cobalt ore from an open-pit mine operated by artisanal mining cooperative COMAKAT in Shabaka in southern Democratic Republic of Congo, on May 6.

Overview

The interface between climate change, energy transition and human rights, in the context of energy transition plans, programs and activities, remains a complex area for policymakers and extractive industries to tackle. Mineral raw materials while facilitators of sustainable development can also be the contributing cause for adverse social and human rights impacts when considered as part of the whole cycle of extraction, production, and commercialisation processes. With that in mind, IOSH is urging that proactive steps are taken to ensure occupational safety and health (now as a fundamental principle and right at work) (FPRW) is considered as critical to a just transition, as risks for workers from vulnerable populations may arise not only due to environmental changes, but also due to new work processes or hazardous materials used in the transition[2]. As part of good occupational health and safety management, assessments of risk must be undertaken at times of change to ensure new hazards or risks are prevented and mitigated as part of that process, which is the case when looking at new processes for energy transition.

As the world progressively transitions towards sustainable energy and net zero targets and commitments, the demand for many minerals, including lithium, nickel, cobalt, graphite, copper, aluminium, and rare earth elements, is expected to scale up. In practice, this will mean that the expectation for mineral-rich countries, and those in the mining value chain, will be to hinge upon the established mode of production-consumption. This is concerning, as in order to meet the 'green economy', UN Sustainable Development Goals (SDGs), and the market needs for transition, minerals such as cobalt, graphite, lithium, copper, and vanadium, can realise the uncomfortable truth is that human rights [and fundamental principles and rights at work] including child labour, labour and occupational safety and health risks can be overlooked[3]. On a similar basis, this cycle of neglect can also have a lifechanging impact for the livelihood of the communities located next to mineral sourcing operations, in the form of deforestation, water shortages, toxic chemical release or increased risk of exposure zoonotic and vector-borne infections and diseases.

IOSH's Response to the consultation

How human rights (including OSH provisions) can be better embedded in states, corporations, investors, and other stakeholders plans to implement net-zero emission and energy transition programs.

It is fair to say that for many states the energy transition in the extraction of oil, gas, solid minerals, and rare metals continues to be an imbalanced activity, with this industry widely considered a key driver for economic growth but at the cost of poor levels of human and labour rights accountability, traceability, and transparency. This situation, and the complex competition for these scarce minerals is somehow supported by foreign investments into mining energy transition minerals in

[2] International Labour Organization. Achieving a just transition towards environmentally sustainable economies and societies for all. Geneva: International Labour Office, 2023

[3] World Bank. 2020. 2020 State of the Artisanal and Small-Scale Mining Sector. Washington, D.C.: World Bank.

regions with demonstrated lax enforcement and human rights protection, which ultimately leads to worker exploitation as latest evidence[4] suggests.

As government policy and overall macroeconomic needs have the potential to guide the investment appetite behind the design, approval, financing and implementation of an extractive project, the inclusion of key climate change and human rights due diligence at these stages is crucial. A good example of responsible practices can be seen in the integration of different elements of social regulatory frameworks as part of the negotiation of licensing standards (e.g., labour and OSH impact assessment). To this extent more regions should incorporate legislation requiring raw material extraction companies to produce specific occupational safety and health impact assessments as part of mining project approval processes.

Another avenue is for human rights clauses to be firmly embedded into implementation plans for net-zero emission and energy transition programs and that those plans consist of international trade negotiations and trade agreements, by including human rights-based principles primarily targeted towards a more sustainable and human-centred trade[5] [6] in the context of the extractive sector. The Critical Raw Materials Act[7] that looks at improving the EU capacity to monitor and mitigate risks associated to circularity and sustainability. Under this Act, certain large companies will be required to carry out a thorough audit of their strategic raw materials supply chains, including labour rights, human rights and environmental protection provisions within the EU and in third countries.

Another initiative that has the potential to improve sustainable development of critical raw materials value chains through enhanced sustainability governance and human rights due diligence is the Sustainable Critical Minerals Alliance[8]. The stakeholder alliance prioritises a human rights–based approach, a commitment to sustainability and the highest environmental, social and governance (ESG) standards as a means to meet our climate goals and transition to a prosperous net-zero economy. It also incentivises extractive industries to embed more responsible and ethical practices through sustainability reporting to investors and to the public, and by implementing stronger due diligence systems in mineral supply chains.

Policymakers also need to explore more specific interventions that can have a positive impact for workers and communities associated to the extractive industries. To that effect, human rights-based principles need to be incorporated into climate regulations, from mitigation policies, adaptation policies and compensation policies[9] that target the groups most affected by the transition to a carbon-neutral economy. This needs to include the appetite for policymakers to facilitate litigation and other forms of judicial proceedings. While there is a growing international

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[4] Vice News. How Clean Energy Is Increasing Worker Exploitation in DRC. Documentary, August 2022.

[5] Jones, R, Williams, I. and Zivkovic, M. Revitalising 2.0: building back better and healthier – Institution of Occupational Safety and Health Policy Brief. UN-WTO
Policy Hackathon, Institution of Occupational Safety and Health (IOSH), https://www.unescap.org/sites/default/files/135%20Final-Team%20Richard%20Jones-UK.pdf

[6] Williams, I. Recognizing the Imperative Need to Step up Integration Efforts of Occupational Health and Safety Provisions in Trade and Investment Agreements. September, 2021 Geneva. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_818105.pdf

[7] European Commission. Critical Raw Materials: ensuring secure and sustainable supply chains for EU's green and digital future. Brussels, March 2023. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1661

[8] Government of Canada. Countries Commit to the Sustainable Development and Sourcing of Critical Minerals. December, 2022. https://www.canada.ca/en/natural-resources-canada/news/2022/12/countries-commit-to-the-sustainable-development-and-sourcing-of-critical-minerals.html

[9] Eurofound (2023), Impact of climate change and climate policies on living conditions, working conditions, employment and social dialogue: A conceptual framework, Eurofound research paper, Publications Office of the European Union, Luxembourg.

consensus that human rights obligations may apply in the context of both climate change mitigation and adaptation, in practice, arguments about adaptation have a rather poor presence[10] in the legal arena.

More specifically, governments, together with employer and worker organisations (where they exist) need to ensure that OSH risk assessments consider new hazards and risks arising from greening processes associated to the extractive industry, and that prevention and mitigation measures are taken.

Renewed ownership from government-to-government coordination through institutions like the United Nations Environment Agencies, the World Bank and other international development finance institutions, the World Trade Organization and the Organization for Economic Co-operation and Development (OECD) should proactively demonstrate more willingness to engage in safer, healthier, and more sustainable trade strategies by elevating occupational safety and health standards as part of worker-centred trade policy and agreements linked to sustainable mining and supply chain practices. Integrating human rights principles when International Financial Institutions (IFIs) are in the process of financing transition mineral mining becomes a critical area to improve governance and practice so that past errors from the fossil fuel industry aren't repeated.
Additionally, this coordination should include the provision of technical assistance and capacity building for government agencies and administrations responsible for the oversight of mineral production, environmental protection and trade through financial means. By creating a consensus at this level there should also be a greater commitment for action aimed at all parts of the value chain – from mining to end-use products associated with the extraction, transport, or trade of minerals to ensure that policies on critical raw materials and clean energy transitions better address human rights risks, not just the same from large scale mining but for artisanal and small-scale mining (ASM).

This collaborative approach was supported by research that IOSH commissioned on worker representation on OSH in coal mining in five countries with different economic profiles: Australia, Canada, India, Indonesia and South Africa. The study[11] suggested that global regulatory bodies, such as the International Labour Organization and global workers' organisations, also have an essential role to play to ensure miners' representation and consultation.

What roles should business enterprises in the extractive sector play to integrate human rights (including OSH provisions) into ongoing energy transition plans?

While we are conscious that many industries in the extractive sector are in the process of renewing their strategies and targets to reduce their carbon emissions and achieve net zero, these strategic goals must be supported by human rights-based principles that sets the standard in relation to energy transition programs. IOSH recommend stronger efforts from the extractive sector through initiatives that enhance transparency obligations to those operating in the mining and extractives industry, from exploration ventures to mining and extractives operators, such as the Extractives Industries Transparency Initiative[12], a multi-stakeholder network.

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[10] Setzer J and Higham C (2021) Global trends in climate change litigation: 2021 snapshot. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

[11] Walters D, Wadsworth E, Johnstone R, Lippel K, Quinlan M, Bhattacharya B, and James P. The role and effects of representing miners in arrangements for safety and health in coal mining: a global study. Wigston: IOSH, 2018

[12] See the Extractives Industries Transparency Initiative https://eiti.org/our-mission

Accelerating the 'S' in ESG through better social standards and more socially responsible and sustainable investments still represents an unresolved matter for enterprises in the extractive sector and financial markets. As competition for international resources becomes intense, the more concerning sustainability risk for transition mineral-rich countries is human rights abuses, which is the reason why robust corporate social due diligence systems and practices are vital for creating responsible and resilient critical minerals supply chains and respecting human rights.
Business enterprises in the extractive sector need to play a more active role when integrating human rights into ongoing energy transition plans and programs to address adverse human rights impacts, while minimising potential modern slavery and occupational safety and health impacts. Failure to engage in more comprehensive due diligence with a greater focus on risk mitigation strategies might impact the effectiveness of clean transitions programs. Despite this companies mining minerals used for the energy transition, or whose value chains use these minerals are known for having low levels of public disclosure and corporate reporting on how extractive industries manage human rights risks[13], or struggle to inform accurately about the risks associated with their activity[14]. For that reason, extractive industries should be encouraged to list and report a comprehensive account of risks and violations associated with the use of minerals used for the energy transition. For large-scale mining industry, disclosing data at source seems to be the way forward if companies want to excel on their social license to operate.

Boards and leadership/top management need to assume ownership by leading on the integration of human rights issues in the extractive sector in the context of the energy transition and climate change given its multi-faceted impacts. One area that continues to be overlooked are climate-related hazards affecting the health of certain groups of workers. These health impacts have the potential to extend beyond the heavy industries and their supply chains. For example, metal manufacturing can destabilise the human nervous system and possibly increase the risk of neurodegenerative diseases[15]; long-term exposure to mine dust has been found to have harmful health effects for artisanal and small-scale mining workers[16]; issues relating to gender in occupational health linked to washing and handpicking functions that tend be mostly performed by women.

What role can the informal economy (e.g., artisanal and small-scale mineral exploitation, including supply chains) play in advancing a just and human rights-based energy transition?

With the current usage trend and the expectation of energy transition mineral consumption, it is reasonable to think that this industry will continue becoming a critical means for subsistence for an estimated 40 million informal miners working in artisanal mining worldwide[17]. However, this mechanism to assure the livelihood of many communities comes at a cost of environmental, health, and social risks that are often overlooked. The ASM sector is characterised by extreme

[13] The Organisation for Economic Co-operation and Development. Interconnected supply chains: a comprehensive look at due diligence challenges and opportunities sourcing cobalt and copper from the Democratic Republic of the Congo. Paris, 2019.
[14] Sherpa. Mining with meaning. Protecting human rights and the environment in the shift to clean energy. October, 2020.
[15] R. Chen et al., "Exposure, assessment and health hazards of particulate matter in metal additive manufacturing: A review," Chemosphere, vol. 259, p. 127452, Nov 2020, doi: 10.1016/j.chemosphere.2020.127452.
[16] Ngombe, L.K.,Ngatu, N.R., Christophe, N.M., Ilunga, B.K., Okitotsho, S.W., Sakatolo, J.-B.K., Danuser, B. and Numbi, O.L. (2016) "Respiratory Health of Artisanal Miner of Lwisha in Katanga/DR Congo"., Open Access Library Journal, 3: e3233. http://dx.doi.org/10.4236/oalib.1103233
[17] World Bank, 2019 State of the Artisanal and Small-Scale Mining Sector (Washington, D.C.: World Bank, 2019), vii, www.pactworld.org/state%20of%20asm.

work conditions with lack of occupational health and safety. The impact of occupational hazards[18] in these sectors is severe including substantial risk of accidents, infectious disease, and chronic exposure to toxic metals. Women and children experience higher risks of socio-economic disparities including hazardous exposures during child-bearing age and pregnancies and child labour. The lack of decent work that ASM miners experience have significantly created a conducive environment[19] that violate human rights including chronic exposure to cobalt dust, child labour, work in extreme climate conditions, violence, long hours of working, and lack of protective equipment.

To improve this situation a more robust commitment from national governments, local communities, and the extractive industry is needed to ensure that people performing different activities next to energy transition minerals environments are offered formalisation conduits to enjoy basic protections and coverage. The informal economy within the extractive sector should take on a participative role with a focus on community engagement, capacity building, transparency, and accountability through global supply chains[20].

For governments, this could entail adapting regulatory frameworks to this critical mass, or incentivising artisanal and small-scale mineral workers to form cooperatives and other more formalised community-based solutions. Other more straightforward intervention could be developed, by making the creation of Artisanal Mining Zones (ZEAs) and regularisation of unauthorized mining areas into energy transition programs a binding commitment.

Stronger ties must also be bonded by strengthening collaboration amongst the extractive sector producers and consumers beyond the supply chain, by conducting extensive assessments of weaknesses across supply chains. The effect of inaction can already be seen in extractive sectors, as the tragedy in a landslide at Glencore Plc's mine in the Democratic Republic of Congo in 2019 showed us, and in non-extractive settings that transform the minerals Indonesia Morowali Industrial Park, better known as IMIP, the world's epicentre for nickel production a critical link in the supply chains of EV manufacturers[21], in which there are concerning reports of work-related accidents, injuries and deaths and occupational diseases due to the polluted air and water that are known to be causing respiratory problems, sickness, and eye injuries.

We hope this response provides better evidence on how climate and environmental change can constitute an emerging threat to occupational safety and health through the increased risk of occupational injury, disease and death. Regrettably there is still a general assumption that work involved in greening the economy is safe, this is clearly not the case. Some green jobs aren't necessarily safe, in fact they can be *dirty, dangerous and in need of reform*[22].
IOSH sees the transition to greener economies and industries such as the extractive sector - with the consequent renewed focus on the entire mineral supply chain - as a once-in-a-lifetime

[18] Landrigan P, Bose-O'Reilly S, Elbel J, Nordberg G, Lucchini R, Bartrem C, et al. Reducing disease and death from Artisanal and Small-Scale Mining (ASM) - the urgent need for responsible mining in the context of growing global demand for minerals and metals for climate change mitigation. Environmental Health. 2022;21(1):78.

[19] Amnesty International. "This is what we die for": Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt. United Kingdom2016.

[20] Otoijamun I, Kigozi M, Abdulraman SO, Adetunji AR, Onwualu AP. Fostering the Sustainability of Artisanal and Small-Scale Mining (ASM) of Barite in Nasarawa State, Nigeria. Sustainability. 2021;13(11).

[21] Wired. Workers Are Dying in the EV Industry's 'Tainted' City. https://www.wired.com/story/workers-are-dying-in-the-ev-industrys-tainted-city/

[22] O'Connor, Sarah. Not all green jobs are safe and clean. October, 2021. https://www.ft.com/content/111f9600-f440-47fb-882f-4a5e3c96fae2

opportunity to improve the working conditions, working environment and working practices of low-skilled and migrant workers, as well as workers in the so-called informal economy, who continue to have poor access to human rights provisions, including labour protection and health and safety protections and worker rights. It is undeniable that extractive industries are critical to a human rights-based and just transition, but IOSH believes that awareness and action of occupational safety and health impacts remains poor among stakeholders, and this is an agenda that needs to be prioritised as part of a strengthened human rights-based approach.

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