

Ipieca response: Extractive sector, just transition and human rights

STATE DUTY TO PROTECT HUMAN RIGHTS

QUESTION 1 – How can states better advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs (e.g., including, but not limited to, design, approval, financing, implementation, and reporting of energy transition programs)?

- An internationally-discussed common definition of ‘Just Transition’ is important for clear discussions.
- ‘Energy transition’ and ‘just transition’ are often used interchangeably, but they are not identical. ‘Just transition’ is about the desired characteristics of the transition.
- Many organisations have developed their own definitions of just transition, and this has created many definitions. After reviewing existing definitions Ipieca and its members have therefore created a ‘working description’ [Accelerating a just transition | Ipieca](#) encompassing frequently-used elements. Our aspiration is to support the oil and gas industry’s participation in international collaboration to transition to a lower-carbon world in a way that’s just and fair for workforces, communities and consumers.
- Apply existing human rights legislation and voluntary standards (such as UNGPs) to energy transition activities, rather than creating new or standalone ones. Any new laws should be clear, targeted and avoid unintended negative consequences for business (e.g. unmanageable administrative burden), for communities (e.g. a regulation that discourages companies from proposing and implementing lower- and no-carbon energy projects), for workforces and for other stakeholders.
- Governments should harmonise their respective legislation and enforcement activities on the just transition to: a) help create a level playing field for companies; b) reduce the effort of demonstrating compliance with differing legal requirements of multiple jurisdictions.
- Governments should fulfil their UNGPs-specified duty to protect human rights in their own energy transition activities and in their public procurement processes.
- National plans for a just transition should support affected workers, communities and economies. Governments should determine appropriate trade-offs for society and develop policies to create fundamental changes in the way society consumes energy.
- Support common standards and benchmarks to allow comparison of environmental social and governance (ESG) reporting metrics and to improve transparency. We welcome the creation of the International Sustainability Standards Board (ISSB) and support a single framework of globally accepted standards for sustainability reporting, including the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Support the development of sustainable finance taxonomies that balance transitional and low-carbon projects to advance the energy transition.
- High energy prices continue to increase the cost of living for many. There is a need to work towards net-zero emissions, while still providing a secure, equitable and affordable supply of energy. Governments need to take this into account when advancing their energy transition policies.
- It is important for government policy in this area to be informed by consultation with stakeholders, including with affected groups.
- Governments should note that not all aspects of the just transition are linked to human rights. Some aspects therefore go beyond implementing the UNGPs.

- In addition, just transition goes beyond the actions of energy companies themselves; for example, supply chains to energy companies are also relevant.

QUESTION 2 – Are you aware of any measures, both mandatory and voluntary, at national, regional, and international levels to foster business respect for human rights in the extractive sector, especially in the context of energy transition plans, programs and activities? If so, are these measures effectively enforced and do they provide the necessary coverage in light of evolving circumstances, including energy transition plans? Is greater clarity necessary in some areas of law and policy? What measures may reasonably correct this situation?

- Wherever possible, existing legislation/good practice on business & human rights should be applied to energy transition activities, rather than creating new legislation and standards. An example is employment standards, e.g., existing or proposed labour laws. These can increase human rights awareness and outcomes in lower- and no-carbon energy businesses as well as in other types of businesses.
- Governments can help by a) ensuring that their agencies (eg police, armed services, public procurement). implement prevailing laws, and b) enforcing legislation effectively, so that there is a level playing field for all domestic and international businesses. It is important for new energy projects that governments support the implementation of FPIC where Indigenous Peoples are present (Free, Prior and Informed Consent).

QUESTION 3 – What mechanisms or processes should exist at the State level (e.g., inter-ministerial committee, ex ante human rights impact and risk assessment) to assess and ensure that extractive sector operations, including the production and distribution of transition minerals, do not impact negatively human rights? Are these measures effectively enforced and do they provide the necessary coverage in light of energy transition plans, programs and activities?

QUESTION 4 – How do States encourage and regulate communication of energy transition efforts by business in the extractive sector, including State-owned enterprises (SOEs), to avoid the publication of misleading or unsubstantiated claims or reporting of an entity’s energy transition programs? Do these measures sufficiently ensure the adequacy, accessibility, reliability, and accuracy of information?

QUESTION 5 – Do current concessions, contracts, and bilateral investment treaties in the extractive sector aid or constrain domestic regulatory space available to States to meet their international human rights obligations in the context of the energy transition? What further changes in key provisions and licensing/procurement processes are desirable to advance energy transition in alignment with the UNGPs?

- Some existing concessions, contracts and bilateral investment treaties (e.g., those concluded a long time ago) omit obligations on all parties to protect human rights (for governments and their agents, such as police and armed forces), and respect human rights (for business), as stated in the UNGPs. Consistent wording in agreements for lower- and no-carbon energy projects would create a level playing field and bring clarity about respective obligations.

QUESTION 6 – What are the gaps in the development and implementation of existing National Action Plans, legislation, and domestic, regional, or international frameworks (e.g., the Paris Agreement or climate change laws) on business and human rights, particularly in relation to the extractive sector, which if addressed will advance a just and human rights-based energy transition?

- Governments should develop human rights NAPs, with clear goals and accountabilities. Governments' NAPs should incorporate the international human rights implications of their energy transition plans - i.e., including impacts both inside and outside their territory or jurisdiction.
- Governments should report on the progress of their NAPs, including just transition.
- Governments should enshrine their duty to protect human rights in existing legislation and in any new legislation to address standards in lower- and no-carbon energy projects, and fully implement their legislation.
- Governments should enable citizens to raise concerns and grievances about new energy developments and protect complainants from retaliation.

QUESTION 7 – How can energy transition policies, programs, plans and activities in one State have adverse human rights impacts outside of their territory or jurisdiction (including supply chain issues and sourcing)? What measures may reasonably correct this situation?

- Concerted action to promote lower- and no-carbon energy projects is positive, but it may increase demand for products – such as rare minerals – from other countries. If these countries do not have clear human rights legislation and/or do not enforce it, the increased demand could create labour and/or human rights infringements and other social and environmental impacts in the other countries.
- One country's energy transition activities could affect neighbouring countries. Examples could include conversion of forests or replacement of food crops with biofuels crops. Such changes could cause greater reliance on neighbouring countries for food, or in some cases increased use of fresh water from rivers, or greater pollution of watercourses, affecting countries further downstream, or to impacts on a neighbouring country's biodiversity.

QUESTION 8 – How can States harness the potential of energy transition to accomplish important policy objectives related to human rights, such as achieving local empowerment, gender equality, protection of the environment, mitigation of climate change and realising the Sustainable Development Goals?

- Governments should apply existing legislation to energy transition activities whenever possible, rather than creating new legislation.
- States should understand likely human rights risks in energy transition businesses. This knowledge can help them when engaging with companies and developing or adapting legislation. Example: child labour risks in rare minerals extraction for some lower-carbon energy production activities.
- States should enable and support public consultation on new energy developments, particularly with regard to rights holders who may be affected.
- States can support communities to develop relevant business and technical skills and resources. These could help them to obtain jobs in lower-carbon businesses.
- Governments should continue to implement the SDGs, which in themselves contain many elements of human rights and therefore support a just energy transition.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

QUESTION 9 – What roles should business enterprises in the extractive sector play to integrate human rights into ongoing energy transition plans and programs to address adverse human rights impacts? Please provide examples if possible.

- Apply existing good practice to energy transition activities when possible, rather than creating new processes. Companies should integrate human rights into their energy transition plans, activities and

decision-making, in line with their UNGPs responsibility to respect and to provide remedy where appropriate. Examples include: human rights due diligence, engaging with affected communities and stakeholders, and transitioning their portfolios in a manner that avoids harm to and/or marginalization of vulnerable groups.

- Companies can contribute to a just transition by striving for positive impacts in three key areas: workforces (including in their suppliers), communities and customers.
- Companies can provide training and education opportunities for existing workers and communities affected by the reduction in conventional oil and gas activities or who could benefit from the new businesses.
- Companies should be conscious that different countries may require tailored energy transition strategies that involve working closely with governments and stakeholders to meet local needs and consider potential environmental, social, and economic impacts (positive and negative) of the energy transition.
- Companies can support research, e.g., into social and environmental impacts of different energy sources, and best practices to promote social justice and equity in the transition. Such research can offer governments, communities and companies valuable insights.
- Companies could cooperate in particular geographies (on non-competitive matters) to promote respect for human rights in energy transition businesses. Collaboration on methods of assessing and educating relevant companies in the local supply chain is a possible example: local companies could then receive consistent messages about what their new customers expect of them regarding human rights, and they could provide similar data to all customers. There could also be opportunities for companies to approach governments as a group to suggest collaboration for everyone's benefit, for example on outreach to the local business community about what standards and expertise energy transition businesses expect from their supply chains.

QUESTION 10 – Are human rights provisions, for example in existing concessions, contracts, and bilateral investment treaties, effective in encouraging businesses in the extractive sector, including investors, to respect all internationally recognised human rights? If not, what should be done to strengthen their efficacy?

- Not all existing concessions, contracts and bilateral investment treaties (particularly those concluded a long time ago) contain an obligation on all parties to the agreement to protect human rights (in the case of governments and their agents, such as police and armed forces) and respect human rights (in the case of business). Consistent wording to this effect in all such agreements for lower- and no-carbon businesses would place all parties on a level playing field and improve clarity about their respective obligations.

QUESTION 11 – Have you seen extractive sector investors play a role in preventing and mitigating, or in exacerbating, negative impacts of energy transition efforts on human rights? Should investors be required to conduct gender responsive HRDD in meaningful consultation with local communities, civil society organizations, Indigenous Peoples, and human rights defenders? What remediation responsibility should investors have?

- Our impression is that many investors' due diligence systems focus on environmental, social and economic impacts of traditional oil and gas businesses. We do not know the extent to which investors now assess just transition aspects of lower-carbon projects.
- When investors integrate just transition aspects into their own pre-investment due diligence processes and during the whole business cycle, it is important that they adapt their existing ESG frameworks to do this, rather than creating new / standalone frameworks.
- If investors require responsible business conduct in lower-carbon businesses and ask for evidence of progress, this can influence the way that businesses implement their new projects and operations.

- Ipieca is willing to participate in further conversations with investors about how to promote the energy transition in a way that protects human rights (governments) and respects human rights (for businesses).

QUESTION 12 – 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?

QUESTION 13 – Should concessions, contracts, and legislation require all business enterprises producing, purchasing, processing, and distributing transition minerals to apply and implement human rights-based impact and risk assessments and due diligence standards, including gender-responsive HRDD and heightened HRDD for conflict-affected areas? If so, how could such processes ensure meaningful participation of impacted communities, particularly vulnerable and historically excluded groups?

QUESTION 14 – How could extractive sector associations, higher education institutions and other stakeholders promote awareness and encourage human rights-compatible business practices (e.g., addressing greenwashing and green scamming practices)?

- The energy sector can continue its outreach and collaboration - for example with OHCHR and other UN bodies, and with other sectors - to share its work on the just transition to date; share challenges and learnings from energy transition projects; and learn from other sectors.
- Internal training and engagement help companies communicate to their own employees the importance of human rights-compatible business practices for their lower- and no-carbon businesses.
- Promoting external independent verification of company sustainability reports helps to address issues of alleged greenwashing and green scamming.
- Ipieca supports its members with just transition guidance and implementation tools. Many of its existing tools, e.g., community and workforce grievance mechanisms, the role of community liaison officers, labour rights, the rights of Indigenous Peoples, security and human rights, revised indicators for external reporting, and human rights due diligence (including on supply chains), are relevant to lower- and no-carbon energy business activities.
- Ipieca helped its members to create a ‘working description’ of the Just Transition – see Accelerating a just transition | Ipieca. Ipieca also helps members to share learnings on operationalising the just transition and integrating respect for human rights into the provision of affordable, reliable and clean energy.

ACCESS TO REMEDY

QUESTION 15 – What measures and mechanisms should be provided by extractive sector legislation, bilateral investment treaties, concessions, and contracts to allow individuals or communities affected by extractive activities to seek effective remedy for business-related human rights abuses? What remedies are best suited for this sector?

- Apply existing good practice to energy transition activities when possible, rather than creating new ones.

- Clear and accessible internal grievance and remedy mechanisms should be available to rights holders, as per the UNGPs. They ought to be appropriate for lower- and no-carbon energy businesses as well as to conventional oil and gas.
- Companies should check their mechanisms' suitability for energy transition businesses such as biofuels, wind, solar and nature-based solutions, and make adaptations as appropriate.

QUESTION 16 – Please provide examples of steps taken by States to investigate, punish and redress business-related human rights abuses related to the extractive sector in the context of energy transition projects. Are the steps and redress mechanisms effective in terms of both process and remedial outcomes?

QUESTION 17 – Are you aware of any cases submitted to judicial and/or non-judicial instances (e.g., national human rights institutions, national contact points, mediation, etc.) regarding business-related human rights abuses in the extractive sector, particularly in the context of energy transition projects?

QUESTION 18 – Are current dispute resolution provisions and frameworks in the extractive sector “fit for purpose” to address complaints related to human rights abuses linked to extractive activities and energy transition projects? If not, what are the alternatives for a legitimate, transparent, and effective dispute resolution system to address such complaints?

- Many company frameworks are sufficiently generic to encompass energy transition businesses. However, companies should check that their grievance and remedy processes are appropriate for their lower- and no-carbon businesses and adapt them if necessary.
- It is important to adapt and apply existing good practice to dispute resolution mechanisms in lower- and no-carbon energy projects, rather than creating new frameworks.

GOOD PRACTICES AND OTHER COMMENTS

QUESTION 19 – Please provide examples of good practices regarding the integration of human rights issues in the extractive sector in the context of the energy transition.

- Companies may provide specific examples of their own actions. A general example would be new lower-carbon projects including in their impact assessments any aspects that are specific to the energy source, such as the consumption of fresh water in new biofuels projects.
- We believe that existing good practice can be adapted and applied to deal with most potential human rights risks in the context of the energy transition.
- Ipieca provides its member companies with a mutual learning space on promoting a just energy transition. Its guidance and implementation tools on topics such as community grievance mechanisms, the role of community liaison officers, labour rights, the rights of Indigenous Peoples, security and human rights, revised indicators for external reporting, and human rights due diligence (including supply chains) are all relevant to energy transition business activities.
- Ipieca helped its members create a ‘working description’ of the Just Transition – see [Accelerating a just transition | Ipieca](#) - and fosters shared learnings on integrating respect for human rights into the development of affordable, reliable and clean energy.

QUESTION 20 – What specific renewable energy policies, practices and safeguards should be adopted by states and business so that energy transition does not have adverse effects on human rights?

Existing good practice can be applied to most potential human rights threats in the context of the energy transition. However, here are some specific points for consideration.

States:

- Government requirements for human rights impact assessment and other aspects of HRDD cannot always keep pace with fast-evolving social and environmental challenges of lower- and no-carbon energy projects. The potential human rights implications of such projects may vary from oil and gas projects, so governments may need to provide further clarity on what they expect of energy transition businesses.
- Governments' NAPs should acknowledge and encompass the just transition. NAPs should be developed in consultation with business and civil society, so that all parties can plan for potential legislative changes.

Businesses:

- Ingraining just transition principles into company systems promotes consistent implementation in projects and operations, while allowing for geographical variations in social and cultural norms.
- Companies may need to include just transition activities and performance in future sustainability reporting.

Multilateral institutions:

- Some multilateral institutions are integrating just transition principles into their standards. This is valuable, but there is a limit to the number of parallel standards that companies, particularly SMEs, can follow and report on. Harmonisation of such standards is essential.
- Multilateral institutions should note that it may be beneficial to incorporate just transition principles into existing company environmental, social, health and safety requirements and processes, to promote a holistic, comprehensive, and efficient approach. Standalone just transition processes could cause duplication of work or less effective implementation.

QUESTION 21 – Are there any specific recommendations to States, businesses (including investors), civil society, UN bodies and National Human Rights Institutions that would help further advance a just and human rights-based energy transition in the extractive sector? Any other comments or suggestions about the forthcoming report are also welcome.

- Simple and fit-for-purpose reporting frameworks are important for informing the public about companies' performance in promoting a just transition.
- Internationally, multilateral organisations should continue to use their convening power to provide different stakeholders with incentives and platforms for information exchange and collaboration. Such collaboration is essential to reducing climate-changing emissions. These organisations can powerfully advocate for and support international progress in all geographies on protecting and respecting human rights in energy transition projects and operations. The UN and other multilateral institutions can help to foster trust between the various actors.
- Local collaboration and information exchange are also extremely important, for example between businesses, local councils, local labour forces and communities, to address specific local conditions, needs and concerns.
- Where human rights standards or requirements (e.g., legislation) for businesses are introduced to promote a just energy transition, they should align with the expectations on businesses in the UNGPs.
- Small and medium-sized companies have very limited resources. They are often in the supply chains for energy transition businesses. They may need support, both from governments and from their customers, to enable them to understand and implement measures to promote the just transition.

- It is important for the energy industry to be involved in conversations about how to further the energy transition in a way that protects human rights (governments) and respects human rights (for businesses). Ipieca is willing to participate in such dialogues.