

**Submission to Working Group on Business and Human Rights for report to 78th UNGA
concerning the extractive sector, just transition, and human rights**

**Solidarity Center
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Introduction

As states, businesses, and other stakeholders around the world understand the need to pursue energy transition plans—many of which involve the development or expansion of new sectors and industries, including the extractive industry, the centering of workers and their democratic unions is key to ensuring a rights-based transition.

The concept of a ‘just transition’ of the workforce was proposed by the trade union movement decades ago and was successfully embedded into the preamble of the Paris Agreement. The concept includes a call to shift away from unsustainable climate-harming industries while at the same time marshaling public resources to invest in clean energy industries which are built upon principles of decent work, including freedom of association and collective bargaining. It also recognizes that workers, particularly those in high greenhouse gas (GHG) emitting industries, cannot be forced to bear the economic and social costs of change and must have a meaningful say in designing the policies and practices necessary to transition to a low-emissions economy. Further, a just transition recognizes that climate-related impacts are certain to affect women and marginalized communities disproportionately, including migrant workers, and their specific needs and concerns must be front and center in the development and implementation of any set of laws, policies and practices. As extractive sectors expand to fulfill the need for minerals critical to new low-emissions technologies, workers’ abilities to exercise their human rights and worker rights must be part of a just transition in the extractive sector.

Workers in extractive sectors have often faced front line impacts in the workplace—through experiencing occupational safety and health (OSH) hazards which tend to be particularly severe in mining—and in their communities—through the environmental degradation and diminishing natural resources that mining can cause. When these workers are able to exercise their full human rights, including freedom of assembly and association and particularly through protected union activity, they can be part of ensuring that any transition is *just* through collective bargaining, advocacy, and full involvement in the development of transition plans. Fundamentally, workers seek decent work in sustainable industries. They have a vested interest in ensuring this sustainability, including through climate-safe practices. Without union protection, workers are vulnerable to retaliation for voicing concerns. However, with the enjoyment of their full human rights, workers can utilize their unions as vehicles, together with states, employers, and other stakeholders, for advancing climate solutions from the workplace to national policy.

State duty to protect human rights

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)?

Advancing human rights-compatible energy transition laws requires the recognition and protection of worker rights, without which a transition cannot be considered just. To ensure that a just transition is supported by laws and policies, states should include workers, through their trade unions, as critical social partners in designing these policies, which currently is not often the case. Full inclusion of independent, democratic trade unions means ongoing and sustained engagement and also removing barriers on access to information so that trade unions can provide meaningful input as equal partners. Although non-binding, the ILO [*Guidelines for a just transition towards environmentally sustainable economies and societies for all*](#), also referred to as the Just Transition Guidelines and negotiated through the ILO's tripartite structure, should be utilized in informing all transition laws and policies. As noted in the UN Special Rapporteur's report, [*Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*](#):

“States must remove all barriers to workers’ ability to organize trade unions, to conduct strikes and to engage in collective bargaining, including in support of just transitions towards low-emissions economies. In 2015, ILO constituents unanimously endorsed the Guidelines for a just transition towards environmentally sustainable economies and societies for all. The Guidelines note that one element of a basic framework for addressing the challenges of a just transition for all is the exercise of the right to freedom of association and the right to bargain collectively (pg. 18, para 74).”

Workers who are able to fully exercise their rights to freedom of association and collective bargaining are also best positioned to monitor business conduct, negotiate improvements, and report violations. States can ensure human rights-compatible energy transition laws and policies by ensuring that all workers are guaranteed these rights and publicly recognizing the importance of these rights to the advancement of just transitions at all levels (also noted in the UNSR report *Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*). As noted in this same UNSR report, “restrictions on workers’ rights to organize and bargain collectively, including through strikes, are particularly severe within the context of foreign investments,” so states should ensure full protection of worker rights throughout all parts of the economy.

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?

Launched at COP26 in Glasgow, Scotland in November 2021, the Just Energy Transition Partnership (JETP) is an initiative involving the governments of South Africa, the United States, France, Germany, the United Kingdom, and the European Union to support South Africa's transition away from coal and toward a low-emissions economy. The Partnership aims to make \$8.5 billion available to support the transition. Central to JETP is the recognition of the "necessity of a just, equitable and inclusive transition for workers and affected communities." The Partnership further recognizes the transition needs to be "based on the full involvement of organized labor...to ensure that workers are the major beneficiaries of our transition to a greener future." While this international initiative recognizes the importance of trade unions as partners in the energy transition, there have been numerous challenges, including access to complete and timely information and the full integration of trade unions in every step of the process by all partners. Similar JETPs have been initiated with other countries, including Indonesia, which currently lack the kinds of social dialogue mechanisms and tripartite structures that exist in South Africa, creating additional barriers for meaningful trade union engagement. While JETPs have the potential to support respect for worker rights in energy transitions, they cannot do so without establishing clear and sustained mechanisms for the full participation of organized labor.

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?

As states move to develop their own resources, provisions to secure minerals as matters of national importance can have negative impact on worker and human rights as workers and unions find their ability to ensure their safety and health and practice their rights severely restricted. In Indonesia, some mining companies are considered of vital national importance. In 2019, the National Police Regulation was revised to include private companies as vital national objects, limiting the ability of workers to exercise their rights by categorizing even basic associational or assembly acts as undermining the security of vital industries. Workers, including those in unions, have faced severe consequences for raising concerns or protesting unsafe practices, including environmental degradation. These consequences can include terminations and even criminalization. In industries categorized as national vital objects, workers are prohibited from conducting rallies or striking. In the nickel industry in Indonesia, after five workers died on the job in just one week in 2023, 21 workers were arrested for protesting unsafe working conditions.

Restrictions of any kind of the full exercise of worker rights—including freedom of association and collective bargaining, as well as the right to strike—negatively impact a wide array of other

human rights. For example, trade unions successfully reduce rates of child labor and gender-based violence and harassment in the workplace, but their ability to do so is compromised when basic freedom of association rights are undermined. Without full enjoyment of freedom of association and collective bargaining rights, including the right to strike, for all workers, meaningful and sustained enforcement and reporting of violations is impossible.

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?

While the Paris Agreement Preamble calls for States to take into account the “the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,” the development of fully-fledged national just transition plans that take democratic unions as full partners in development and implementation remains limited throughout the world. Further, while States increasingly recognize the need for a just transition, these plans still rarely recognize the role of workers (through their unions) in driving these plans.

For the full participation of unions and their civil society allies to drive the development of human rights-based transition plans, access to information is critical. As the UNSR *report “Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice”* notes, “A significant barrier to participation is the limited access to the information and opportunities for consultation provided relative to bills concerning the climate crisis and a just transition.” The adoption of the Escazu Agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean is an important step. In our view, the full ratification and implementation of the Agreement would aid in the meaningful participation of unions to ensure rights-based transitions, and could serve as a model throughout the world.

Corporate responsibility to respect human rights

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.

Business enterprises have a clear and direct role in preventing adverse human rights impacts by respecting and adhering to international labor standards. Extractive sector enterprises have contributed to the violations of human rights through extensive subcontracting and utilizing other methods for minimizing responsibility for compliance with labor and other human rights standards. As a result, the extractive sector is rife with gender-based violence and harassment, forced labor, and occupational safety and health violations, among many other rights violations, resulting in increased precarity for impacted workers and their communities. At minimum,

business enterprises must take direct responsibility for their supply chains, including through fully respecting workers' rights to freedom of association and collective bargaining. As further reinforced in the UN Special Rapporteur's report, *Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*:

"While States have primary responsibility for the realization of the rights to freedom of peaceful assembly and of association, businesses also have a responsibility to respect and protect these freedoms, including as laid out by the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Such responsibility extends to their employees as well as to communities affected by their activities. Multilateral entities also have positive responsibilities to actively protect peaceful assemblies and to establish and maintain an enabling environment for civil society (pg. 14, para 52)."

Even outside of direct employment relationships, businesses in the extractive sector must engage organized labor through social dialogue to ensure the advancement of policies and practices that respect worker rights while enabling accelerated energy transitions.

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?

Human rights provisions in concessions, contracts, and bilateral investment treaties should clearly invoke international labor standards, in particular the fundamental right to freedom of association, collective bargaining, and the right to strike for all workers irrespective of their employment status, immigration status, etc. All human rights provisions should invoke the ILO fundamental conventions, in particular ILO C87 and ILO C98, with clear language stating that respect, recognition and protection extends to all workers. Furthermore, there needs to be specific and clear language regarding access to justice for violations by businesses in the extractive sector of these rights, at all levels of the supply chain. In terms of access to justice, it needs to be a process that is inclusive and accessible—both in terms of the workers facing harms as well as the entirety of the decision making/supply chain involved in the harms. The redress has to be a concrete and actionable change with a role for unions and workers to report back and evaluate the progress towards that redress and the sustainability of the changes in business enterprises operations to ensure future violations do not occur.

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?

Concessions, contracts, and legislation should absolutely require business enterprises to apply and implement human-rights based impact assessments and due diligence standards. Beyond this, business enterprises should be required to respect workers' rights to freedom of association and collective bargaining, recognizing that these are fundamental rights enshrined in labor law and the ILO Declaration on Fundamental Principles and Rights at Work. Even when human rights-based impact assessments are conducted, they lack adequate and binding accountability mechanisms, and redress options can be limited for impacted populations. However, as legally-protected organizations of workers with the right to bargain over terms and conditions of work, trade unions have the ability to negotiate over potential impacts and hold businesses accountable for rights violations. Trade unions represent workers regardless of gender, ethnicity, nationality, ability, or any other identity, making democratic unions the most effective institutions for ensuring the meaningful participation of impacted and marginalized groups when they are allowed to operate freely and without repression or interference. Trade unions can often also play the role of/support government entities charged with enforcement and review, by ensuring that assessments conducted are independent, inclusive, and accurately reflect the issues in the workplace, and also in ensuring enforcement/redress of negotiated changes via CBAs, concessions, contracts, etc.

Access to remedy

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?

In seeking remedy for violations of human and labor rights by businesses in the extractive sector, the role of workers and their unions cannot be overstated. Workers and their unions are best suited to identify appropriate, concrete actions that must be undertaken by the business enterprises to effect meaningful and sustainable change. Furthermore, unions have the ability to monitor the progress of a remediation plan with direct input from its members as to what changes have been implemented, what has been the positive (or negative) impacts, and whether or not it is sustainable. It is clear that often the remediation may need to occur at one level of the supply chain, but the decision makers are at another, thus, having direct on-the-ground information allows for true and meaningful remediation. Access to justice will not occur without centering workers and their unions in these discussions, negotiations, and outcomes. These workers often live in the communities negatively affected by the business enterprises, and are the best suited to identify, evaluate, and report on what effective remedy will look like.

Good practices and other comments

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?

To not only prevent adverse effects on human rights, but to respect, protect, and advance human rights, energy transitions must be negotiated with impacted workers and their unions. Voluntary consultations are entirely insufficient to prevent adverse human rights impacts. Negotiated transitions are needed to enable impacted workers to articulate their needs and ensure policies and practices that allow them to transition with resilience. In most cases, energy transitions from fossil fuels to renewables will require fewer workers, and social safety nets and alternative decent work options must be identified and implemented.

In addition, the Solidarity Center reinforces the recommendations offered in the UN Special Rapporteur's report, *Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*, including:

- *States should ensure that the rights to freedom of peaceful assembly and of association in support of climate justice are fully and equitably enjoyed by all groups and communities, including indigenous peoples, youth, children, women, members of other minority and discriminated-against groups, workers and associations, including unregistered groups, including by eliminating existing barriers and adopting positive measures to ensure that marginalized communities are provided with specific, meaningful opportunities to exercise the full extent of these rights in the context of climate justice. (pg. 22, para 90(c))*
- *States should ensure that all workers are guaranteed the right to associate, including the right to strike, and to bargain collectively at all levels, including over matters related to climate change and just transitions (pg. 22, para 90(g)).*
- *States should ensure that civil society and communities can meaningfully participate in all climate and just transition policy development and implementation at all levels of decision-making. This means engaging workers and their representative organizations fully in the development of climate and just-transition policies; (pg. 22, para 90(i) & 90(i)(iv)).*
- *Businesses should engage fully with workers and their organizations at the workplace and at industry levels to advance a just transition throughout global value chains. (pg. 23, para 92(e))*

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.

It is critically important that all states immediately eliminate barriers to the exercise of the right to freedom of association in law and in practice. Importantly, this means extending this right well beyond those who are within a 'traditional' employer-employee relationship, which in many countries is a small or declining segment of the workforce. Rather, the right should extend to

any person that is engaged by another to provide labor, regardless of the modality, unless that person is genuinely operating a business on their own account. Further, such persons, through representative trade unions, must be able to bargain collectively, at the relevant level and with the relevant actor(s) over policies and practices which contribute to and workplace impacts resulting from climate change and environmental degradation. Both inside and outside of the bargaining context, workers must also be able to strike to attempt to compel private enterprise and the state to take the necessary measures to reduce GHG emissions necessary to meet the 1.5 degree target. In our view, ILO Convention 87 already supports these recommendations.

As States update their NDCs in accordance with the Paris Agreement and develop policies to implement increasingly ambitious emissions reduction plans, workers and their organizations must be meaningfully included in the process. NDCs and related climate policies must include just transition language, which centers the needs of workers and their communities and ensures their participation in designing the transition process. FOAA rights must be protected throughout the transition to a low-carbon economy to ensure that workers can participate fully in driving climate solutions, without fear of retaliation or loss of standards.

Businesses must also respect the right to freedom of association, not only of its employees, but throughout its supply chain. Businesses must also bargain in good faith with representative trade unions, whether at the level of the enterprise, industry or sector, over the measures necessary to reduce GHG emissions to meet NDCs. Business must also work with its subsidiaries, suppliers and other business relationships to do the same.