

Submission to the UN Working Group on Business and Human Rights on the extractive sector, just transition and human rights

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We, the Asia-Pacific Youth Advisory Group on Environmental and Climate Justice (YAG)¹, respectfully submit our inputs regarding the intersection of the extractive sector, just transition, and human rights. As an engaged stakeholder in the UN's business and human rights mandates, we would like to highlight several issues that are of utmost relevance to our members in this context.

We believe that it is imperative to consider the perspectives and experiences of youth in the Asia-Pacific region when addressing human rights concerns in the extractive sector. As young people who will bear the brunt of the negative impacts of environmental degradation and climate change, we are committed to promoting sustainable and equitable development that respects human rights. We welcome opportunities to collaborate with the Working Group and other stakeholders to advance these goals and ensure that the voices of youth are heard in these important discussions.

State duty to protect human rights

The transition to renewable energy is essential to address the challenges of climate change and achieve sustainable development. However, this shift also poses risks and challenges, particularly in terms of ensuring responsible business conduct and protecting human rights.

It is crucial for States to advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs. States must prioritize the proper and full implementation of laws and policies related to a just energy transition, particularly those that promote accountability and transparency in the conduct of businesses and the performance of duties by government agencies and units.

Neglecting to enforce these mechanisms increases the likelihood of human rights violations, which undermines the progress towards a sustainable and equitable energy transition. Therefore, it is essential to ensure that States take effective measures to uphold accountability and transparency in all aspects of energy transition programs.

To ensure that extractive sector operations, including the production and distribution of transition minerals, do not negatively impact human rights, there should be several mechanisms or processes in place at the State level.

¹ YAG was established by the UNEP, UN Human Rights Office, UNFCCC, and UNDP, anchored in the Youth Empowerment in Climate Action Platform (YECAP) and the presence of youth from across Asia and the Pacific. YAG is a youth led group which strives to have members from grassroots, community-based groups, and indigenous peoples' organizations operating in differing spaces and constituencies in climate justice.

Significant gaps in the development and implementation of existing frameworks

There are significant gaps in the implementation of these laws and policies, particularly in the extractive sector. In the Philippines, poor interagency coordination on the enforcement of laws and policies has increased the likelihood of abuses or harassment impacting communities and prevented them from exercising their rights. For instance, the recent oil spill caused by the sinking of the oil tanker MT Princess Empress in February 2023 has negatively affected over 26 thousand fisherfolk, with damages now estimated to be at PHP7 billion². Conflicting statements from different officials on aspects related to the incident have slowed down the response to the disaster and highlighted the lack of proper coordination and effective implementation of existing guidelines. Victims of the oil spill seeking compensation are also being discouraged suing the owner of MT Princess Empress to avoid delays in receiving their potential claims³. Addressing these gaps is essential to advance a just and human rights-based energy transition, where businesses operate in a responsible and sustainable way, and human rights are protected.

Adverse human rights impacts outside of their territory or jurisdiction

Energy transition policies and activities can have adverse human rights impacts outside of their territory or jurisdiction in various ways, including supply chain issues and sourcing. The production and distribution of renewable energy technologies, such as batteries, solar panels, and wind turbines, may involve the extraction of transition minerals in other countries, which can have negative human rights impacts on local communities. For example, the production of electric cars requires nickel, a mineral that is being mined in Palawan, known as the “last frontier of the Philippines”. However, the mining operations have increased environmental risks that threaten the water supply and health of nearby communities. It has also caused division among the indigenous peoples, with some supporting the expansion of the area being mined while others opposing it⁴.

To address the issues arising from potential adverse human rights impacts due to energy transition projects, there are some measures that may be reasonably implemented include:

1. Due diligence: States should require companies involved in the production and distribution of renewable energy technologies to conduct due diligence to identify and prevent potential human rights abuses in their supply chains. This may involve assessing the risks of human rights abuses, engaging with affected communities, and implementing measures to mitigate these risks.
2. International cooperation: States should cooperate with each other and with international organizations to address human rights impacts of renewable energy technologies. This may involve sharing best practices and technical assistance, as well as developing international

² Cariaso, B. (2023, April 28). Mindoro oil spill: Damage to environment hits P7 billion. *Philippine Star*. Retrieved from <https://www.philstar.com/nation/2023/04/28/2262165/mindoro-oil-spill-damage-environment-hits-p7-billion>

³ De Castro, I. (2023, March 28). Oil spill victims advised not to sue ship owner as claims office set up in Oriental Mindoro. *Rappler*. Retrieved from <https://www.rappler.com/nation/oil-spill-victims-advised-not-to-sue-ship-owner-insurance-claims-office-oriental-mindoro/>

⁴ Ilagan K., Lehren, A. W., Schecter, A., & Schapiro, R. (2021, December 7). How the rise of electric cars endangers the ‘last frontier’ of the Philippines. *NBC*. Retrieved from <https://www.nbcnews.com/specials/rise-of-electric-cars-endangers-last-frontier-philippines/index.html>

standards and guidelines for responsible sourcing of minerals and other materials used in renewable energy technologies.

3. **Transparency and accountability:** States should require companies to publicly disclose information about their supply chains, including the origin of minerals and other materials used in renewable energy technologies. This can help to increase transparency and accountability and enable affected communities to seek remedies for any human rights abuses.
4. **Capacity building:** States should invest in capacity building for affected communities and local stakeholders to empower them to participate in decision-making processes and to monitor and report on human rights impacts of renewable energy technologies.
5. **Inter-ministerial committees:** States should establish inter-ministerial committees comprising representatives from various ministries, including those responsible for energy and natural resources, human rights, labor, and the environment. These committees can ensure that extractive sector operations comply with human rights standards and carry out ex ante human rights impact and risk assessments.
6. **Ex ante human rights impact and risk assessment:** States must conduct ex ante human rights impact and risk assessments before granting licenses or permits for extractive sector operations. These assessments should be conducted with the involvement of affected communities and should consider the potential impacts on human rights, such as the right to water, health, and a healthy environment.
7. **Effective enforcement:** States should ensure that the measures put in place are effectively enforced. This may involve creating an independent regulatory body or strengthening existing regulatory bodies to monitor extractive sector operations and enforce compliance with human rights standards.

Harnessing the potential of energy transition to achieve human rights-related policy objectives

The current development and implementation of existing legislation and frameworks are often ineffective in protecting the rights of indigenous communities and ensuring meaningful participation. The Indigenous Pala'wan communities in Brooke's Point, Palawan, is one of the examples. Despite the existence of FPIC guidelines meant to protect the rights of indigenous peoples, the Pala'wan communities were unable to exercise their right to make an informed decision regarding the proposed mining activities due to alleged failures by the National Commission on Indigenous Peoples (NCIP) to provide clear and accessible information⁵. This suggests that current frameworks and guidelines may not be sufficient to ensure that the rights of indigenous peoples are protected in the context of extractive sector activities. It highlights the need for stronger enforcement mechanisms and greater accountability for non-compliance with existing frameworks and guidelines, as well as the need for more effective consultation processes that prioritize the perspectives and needs of affected indigenous communities. This underscores the

⁵ Ilagan, K. (2022, July 20). Palawan IPs seek to stop consent process for 2 nickel mines in Brooke's Point. *Philippine Center for Investigative Journalism*. Retrieved from <https://pcij.org/article/8903/palawan-ips-seek-to-stop-anomalous-consent-process-for-two-nickel-mines-in-brookes-point>

importance of continued efforts to strengthen the protection of the rights of indigenous peoples and other marginalized groups in the context of extractive sector activities.

To ensure a just energy transition, States must adopt an inclusive, cross-sectoral approach that prioritizes meaningful participation of potentially impacted and vulnerable populations through various engagement modes at the local level. Strengthening multi-stakeholder partnerships and collaborations across different levels has to be anchored on the principles of equity, respect, and recognition of human rights, while accounting for the gender and intergenerational lens. This approach would allow for enhanced knowledge-sharing, increased resource mobilization, and the identification of risks and opportunities for all stakeholders involved throughout the transition.

States must also conduct comprehensive impact assessments to avoid conflicts between pursuing energy-related goals and other development targets. Designing just energy transition pathways that account for potential impacts on various facets of development, and prevent human rights violations. Governments must ensure that people are not prohibited or hindered from exercising their rights related to pursuing a high quality of life, including food and water security, public health, and livelihoods.

Empowering citizens to become part of decision-making processes related to energy transition and human rights is also crucial. States must educate citizens about available energy options, promote responsible and efficient energy use, recognize with due respect social acceptability of said endeavors to local communities that would be directly affected by the operations of extractive industries⁶, and uphold citizens' rights to maximize co-benefits of a just energy transition relative to environmental protection, climate action, and attaining sustainable development. By adopting these measures, States can ensure a just energy transition that promotes human rights and sustainable development for all.

Corporate responsibility to respect human rights

Business enterprises in the extractive sector have a crucial role to play in integrating human rights into ongoing energy transition plans and programs to address adverse human rights impacts. They should prioritize the following actions:

1. **Conduct due diligence:** Business enterprises should conduct human rights due diligence to identify and prevent potential human rights abuses in their operations and supply chains. This may involve assessing the risks of human rights abuses, engaging with affected communities, and implementing measures to mitigate these risks.
2. **Implement human rights policies:** Business enterprises should develop and implement human rights policies that align with international human rights standards and guidelines like the UN Guiding Principles on Business and Human Rights. These policies must be communicated effectively to all stakeholders, including employees, contractors, and suppliers.
3. **Engage with stakeholders:** Business enterprises should engage with stakeholders, including impacted communities, civil society organizations, and human rights experts, to understand their

⁶ Catoto R. (2017, February 3). Dinagat village chiefs warn of bloodshed if mining enters their place. *MindaNews*. Retrieved from <https://www.mindanews.com/top-stories/2017/02/village-chiefs-warn-of-bloodshed-if-mining-enters-their-place/>

concerns and perspectives. They should also provide opportunities for stakeholders to participate in decision-making processes related to energy transition and human rights.

4. Provide remedy: Business enterprises should provide remedy for any adverse human rights impacts that may occur as a result of their operations or supply chains. This may involve providing compensation, restitution, or other forms of remedy to affected individuals or communities.

Strengthening human rights provisions in the extractive industry

Human rights provisions in existing concessions, contracts, and bilateral investment treaties are a step towards encouraging businesses in the extractive sector, including investors, to respect all internationally recognized human rights. However, they are not always effective in ensuring that businesses comply with these provisions, and there are several reasons for this.

There are various factors that can undermine the efficacy of human rights provisions in the extractive sector. These include vague or unclear provisions that make it difficult to enforce them effectively. In addition, some businesses may prioritize profits over human rights, leading to non-compliance with these provisions. Weak enforcement mechanisms or limited accountability for non-compliance can also contribute to the ineffectiveness of these provisions. Addressing these issues is crucial to promoting respect for internationally recognized human rights in the extractive sector.

To strengthen the efficacy of human rights provisions in concessions, contracts, and bilateral investment treaties, the following measures may be considered:

1. Ensure clarity and specificity: Human rights provisions should be clear, specific, and measurable to provide businesses with a clear understanding of their obligations.
2. Strengthen enforcement mechanisms: Governments should establish strong enforcement mechanisms to ensure compliance with human rights provisions. This may involve creating independent regulatory bodies or strengthening existing ones.
3. Promote transparency and accountability: Governments should require businesses to publicly disclose their operations and impacts on human rights, with said information verified by third-party sources through impact assessments and/or cost-benefit analysis whenever applicable, and establish mechanisms for affected communities to lodge complaints and seek remedies.
4. Encourage responsible investment: Governments should encourage responsible investment in the extractive sector by promoting responsible business conduct, such as through certification schemes, and by providing incentives for companies that prioritize human rights.
5. Strengthen international standards: Governments should work together to strengthen international standards on business and human rights, such as the UN Guiding Principles on Business and Human Rights, to provide a clear framework for businesses to respect human rights.

Access to remedy

Extractive sector legislation, bilateral investment treaties, concessions, and contracts should provide measures and mechanisms that allow individuals or communities affected by extractive activities to seek effective remedy for business-related human rights abuses. These measures and mechanisms may include:

1. **Access to justice:** Affected individuals or communities should have access to judicial or non-judicial mechanisms to seek remedy for human rights abuses. This may include access to courts, tribunals, or other dispute resolution mechanisms.
2. **Compensation:** Affected individuals or communities may be entitled to compensation for harm caused by human rights abuses. This may include compensation for physical or psychological harm, loss of property or livelihood, or other forms of harm.
3. **Restitution:** In some cases, affected individuals or communities may be entitled to the return of land or property that was taken from them as a result of human rights abuses.
4. **Rehabilitation:** Affected individuals or communities may be entitled to rehabilitation measures, such as medical treatment or environmental remediation, to address the harm caused by human rights abuses.

Effective remedies should be accessible, timely, and appropriate to the harm caused. They should also take into account the needs and perspectives of affected individuals or communities, and should be designed to prevent the recurrence of human rights abuses in the future.