



## **Submission by the Global Initiative for Economic, Social and Cultural Rights to the Working Group on Business and Human Rights**

*6 June 2023*

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) celebrates the decision of the Working Group on the issue of human rights and transnational corporations and other business enterprises (WGB&HR) to prepare a report on the human rights implications of the extractive sector in just transition processes.

Addressing inequalities and structural conditions of discrimination in the extractive sector is critical, considering the historical relationship between human rights abuses and the persistent reliance by relevant actors of the global economic system on extractive activities to produce essential goods and services, including those necessary to transition to zero-carbon societies.

In this regard, GI-ESCR will contribute to the call for inputs on this timely and critical issue with a submission focused on the risks and opportunities for women's rights posed by the mining of critical minerals necessary for energy transition processes. In this line, the submission will aim to answer the following key guiding questions:

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?

9. What roles should business enterprises in the extractive sector play in integrating human rights into ongoing energy transition plans and programs to address adverse human rights impacts?
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?

In addition to prohibiting all forms of discrimination, human rights treaties also recognise explicitly that women and men should enjoy rights equally and that States must take measures to ensure that all women can exercise all their rights. The International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the main instrument that sets out women's rights under international law.<sup>1</sup> It establishes the core principle of "substantive gender equality", which applies to all recognised human rights, including economic, social, cultural and environmental rights recognised in sister treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>2</sup> The principle acknowledges that formal equality (or equality in law) is not enough to ensure women are able to exercise their rights in practice.<sup>3</sup> To enjoy equality in practice, women and girls need substantive equality, which removes disadvantages in the outcome or result that women may face. Simply treating women and men equally might not address specific gendered disadvantages that obstruct women's access to fundamental rights. A substantive equality approach implies that States and societies need to set clear gender objectives, discard and avoid reproducing gender stereotypes, ban discriminatory social

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<sup>1</sup> Common article 2 of the ICCPR and ICESCR

<sup>2</sup> Goldblatt F., Goldblatt, B. (2015), 'Discussion Paper: Gender Equality and Human Rights', UN Women, No.4. See also: 'Montreal Principles on Women's Economic, Social and Cultural Rights (2004)', Human Rights Quarterly, Vol. 26, No. 3, p. 760-780.

<sup>3</sup>Ibid.

practices, and take account of gender differences.<sup>4</sup> Since substantive equality focuses on the outcomes of policies, laws, and other measures, not just their intentions and purpose, it may lead to the temporary adoption of special measures to rebalance gender hierarchies that produce inequitable outcomes.<sup>5</sup>

The principle of gender equality also requires States to adopt an intersectional lens. This approach recognises that women are not a homogeneous group. Many women experience multiple and overlapping forms of marginalisation and inequality that exacerbate the gender discrimination they face.<sup>6</sup> The CESCR discussed this in its General Comment No. 20: “Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example, women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.”<sup>7</sup>

In relation to the role of business and the corporate sector, the UN Guiding Principles on Business and Human Rights envisages the obligation of businesses to take into consideration gender-responsive perspectives in human rights due diligence processes, including by taking into account the rights, needs and interest of women and girls.<sup>8</sup>

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<sup>4</sup>GI-ESCR and ESCR-Net (2016), ‘The International Covenant on Economic, Social and Cultural Rights at 50: the Significance from a Women’s Perspective’, p. 9, last accessed 5 June 2023, available at: [https://www.escr-net.org/sites/default/files/attachments/the\\_icescr\\_at\\_50\\_en.pdf](https://www.escr-net.org/sites/default/files/attachments/the_icescr_at_50_en.pdf)

<sup>5</sup> CEDAW (2004), article 4 (1); CEDAW, ‘General Recommendation No. 24 on temporary special measures’, p. 18

<sup>6</sup> CESCR (2009), ‘General Comment No. 20 on non-discrimination on economic, social, and cultural rights’, E/C.12/GC/20, note 33.

<sup>7</sup> Ibid, p. 17.

<sup>8</sup> UN Working Group on Business and Human Rights, *Gender dimensions of the Guiding Principles on Business and Human Rights*, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 2019, A/HRC/41/43.



In the context of the escalating climate crisis, States, business and other enterprises must leave their dependency on fossil fuels and transition to green, clean, and efficient renewable energies to comply with international human rights obligations. Phasing out fossil fuels to achieve the goals of the Paris Agreement and keep the global average temperature at 1.5 °C and way below 2°C is now indispensable to ensure the conditions sustaining life in the planet and the possibilities to realise the rights of present and future generations. The decision and measures implemented today to decarbonise our societies will have far-reaching and decisive repercussions on the way we organise, finance, and manage our future societies. For these reasons, it should be ensured these processes not only contribute to limiting the climate emergency but are conducive to improving living conditions and the enjoyment of human rights.

The shift towards renewable energies and zero-carbon economies relies on the mining sector of minerals considered critical to develop the technological devices necessary to phase out fossil fuels. For instance, metals such as lithium, cobalt, copper, and rare earth minerals are all important elements of high-tech products and emerging innovations in the energy sector to produce, among other things, renewable energy technologies, electricity networks, electric vehicles, batteries and other energy storage and energy-efficient devices.<sup>9</sup> Across the world, combating the climate emergency will exponentially increase the demand for these minerals indispensable for climate mitigation. Some recent analyses predict that the demand for metals for the energy transition will increase fourfold and, in the next few decades spur a race for these scarce resources worldwide.<sup>10</sup> Ensuring that human rights are not side-lined but placed at the centre of global mining activities has thus never been more paramount.

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<sup>9</sup> International Energy Agency, *Critical Minerals: the Role of Critical Minerals in Clean Energy Transitions*, last accessed 29 May 2023, available at: <https://www.iea.org/topics/critical-minerals>

<sup>10</sup> Extractives Industries Transparency Initiative (EITI), *Making the Grade: Strengthening Governance of Critical Minerals, Policy Brief*, last accessed 20 May 2023, available at: [https://eiti.org/sites/default/files/2022-05/EN%20EITI%20Policy%20brief%20Strengthening%20governance%20of%20critical%20minerals\\_0.pdf](https://eiti.org/sites/default/files/2022-05/EN%20EITI%20Policy%20brief%20Strengthening%20governance%20of%20critical%20minerals_0.pdf)

Against these background, women’s rights and efforts to achieve substantive gender equality hang in the balance. Several studies show that women, especially indigenous women, are more susceptible to face a wide range of human rights abuses across the mining sector supply chain and are less likely to access the benefits of the energy transition.<sup>11</sup> The representation of women in the sector is also quite limited. Only an estimate of 8 to 7 per cent of the workforce in the extractive sector are female.<sup>12</sup> Furthermore, due to harmful gender social conventions, the mining sector continues to be perceived as more suitable for male workers, which often relegate women to lower-paid, informal, and hazardous activities within the sector.<sup>13</sup> In this context, men may have access to new jobs when mining projects are implemented in their communities, but women have less opportunity to find income earning activities and are more exposed to the risk associated with extractive industries.<sup>14</sup>

In addition, women tend to have limited access to and are frequently denied land tenure rights.<sup>15</sup> These conditions of structural inequality, in turn, restricts their participation in decision-making and policy formulation in a system of

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<sup>11</sup> Moses, Elizabeth, *Gender and Extractives: The Importance of Gender Transformative Policy Reforms*, National Resource Governance Institute and World Resource Institute, 2021, p. 1, last accessed 29 Mat 2023, available at:

[https://resourcegovernance.org/sites/default/files/documents/primer\\_gender\\_and\\_extractives.pdf](https://resourcegovernance.org/sites/default/files/documents/primer_gender_and_extractives.pdf)

<sup>12</sup> Ibid.

<sup>13</sup> Women-s Rights and Mining, *Retrospective Assessment Tool on Gender-Responsiveness of Mining Sector-Focused Knowledge and Information Events: Guidance and Participants Questions*, last accessed 29 May 2023, available at : <https://womenandmining.org/wp-content/uploads/2022/06/Retrospective-Assessment-Tool-on-Gender-Responsiveness-of-Mining-Sector.pdf>

<sup>14</sup> Macdonald, Catherine et al., “*The Role of Gender in the Extractive Industries*” in Addison, Tony, and Alan Roe (eds), *Extractive Industries: The Management of Resources as a Driver of Sustainable Development*, Oxford, 2018; online edn, Oxford Academic, <https://doi.org/10.1093/oso/9780198817369.001.0001>, last accessed 27 May 2023.

<sup>15</sup> Working Group on the issue of discrimination against women in law and in practice, *Insecure land rights for women threaten progress on gender equality and sustainable development*, 2017, last accessed 31 May 2023, available at: <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/insecure-land-rights-women-threat-progress-gender-equality-and-sustainable-development>

natural resource governance that is riddled with gender inequality.<sup>16</sup> As a result, women and girls are often not considered in compensation and relocation schemes derived from mining activities with significant impacts on a number of their rights, including their rights to housing, food, work, and adequate standard of living, as well as to have a say on their livelihoods and those of their families.

The ecological implications of mining activities for women's rights are also critical. Mining industries have a disproportionate effect on women and girls as environmental impacts, such biodiversity loss, pollution of water, and soil erosion can limit their access to natural resources. Women and girls are reliant on for the production of food and the ability to meet community and household needs.<sup>17</sup> The hardships that women and girls face while performing care and domestic work can be exacerbated in a degraded ecosystem that does not offer conditions for subsistence farming and collection of firewood, water, and other key natural resources. Widespread environmental contamination produced by the mining of critical minerals also has severe health impacts on local communities, including significant adverse consequences on sexual and reproductive health. For instance, in the Democratic Republic of Congo a recent study found that the pollution generated by the mining of cobalt and copper, two critical transition minerals, is associated with birth defects and serious malformations of new-born babies.<sup>18</sup>

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<sup>16</sup> Menard Aubrey and Moses, Elizabeth, *Gender and Extractive Governance: Lessons from Existing Legal and Policy Frameworks*, World Resources Institute and Natural Resource Governance Institute, 2021, last accessed 29 May 2023, available at: [https://resourcegovernance.org/sites/default/files/documents/ogp\\_gender\\_report\\_2021\\_nrgi-wri.pdf](https://resourcegovernance.org/sites/default/files/documents/ogp_gender_report_2021_nrgi-wri.pdf)

<sup>17</sup> Women's Rights and Mining, *Retrospective Assessment Tool on Gender-Responsiveness of Mining Sector-Focused Knowledge and Information Events: Guidance and Participants Questions*, last accessed 29 May 2023, available at: <https://womenandmining.org/wp-content/uploads/2022/06/Retrospective-Assessment-Tool-on-Gender-Responsiveness-of-Mining-Sector.pdf>

<sup>18</sup> Daan Van Brusselen, MD et al, *Metal mining and birth defects: a case-control study in Lubumbashi, Democratic Republic of the Congo*, *The Lancet: Planetary Health*, Volume 4, Issue 4, E158-E167, April, 2020, DOI:doi.org/10.1016/S2542-5196(20)30059-0, last accessed 30 May 2023.

Furthermore, mining projects may produce an influx of mostly male and transient workers that tend to be connected to raises in the indexes of sexual and gender-based violence towards women and girls.<sup>19</sup> In some localities the presence of foreign male workers may result in a greater demand for sex work and even raise the risks of human trafficking and sexually transmitted diseases.<sup>20</sup>

Despite these well-documented gender differentiated impacts, extractive industries and companies engaged in the mining of critical minerals continuously fail to implement due diligence processes to address and in any case remedy potential human rights violations related to their business activities.<sup>21</sup> If they do, they rarely incorporate a gender-responsive approach.

Advancing women's rights in the mining sector requires an intersectional and feminist approach to natural resource governance centred on the lived realities of women and frontline communities. To achieve these aims, we suggest the WGB&HR to consider the following recommendations in its upcoming report.

1. Previous to the approval of any mining project States are obliged to ensure that a gender context and power analysis is undertaken to identify inequalities and barriers faced by women, as well as to understand gender roles and relationships in every locality in which a mining project

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<sup>19</sup> Atim, Lucy, Mwangoka, Mesiya and Dr. Laura Martins, *Sexual and Gender-Based Violence in the Mining Sector in Africa Evidence and reflections from the DRC, South Africa, Tanzania & Uganda*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and Women's Rights & Mining, 2020, last accessed 29 May 2023, available at: <https://womenandmining.org/wp-content/uploads/2020/09/Sexual-Gender-based-Violence-in-the-Mining-Sector-in-Africa.pdf>

<sup>20</sup> Ibid.

<sup>21</sup> Business and Human Rights Resource Centre, *Transition Minerals Tracker: Regional analysis of human rights policies and practices*, 2021, last accessed 1 June 2023, available at: <https://www.business-humanrights.org/en/from-us/briefings/transition-minerals-tracker-regional-analysis-of-human-rights-policies-and-practices/>

is implemented. These impact assessments must incorporate an intersectional and human rights approach that guarantee broad representation of impacted women and girls and communities. This include considering the cumulative risks and impacts of a mining project on women, men, girls and boys, as well as on gender diverse groups. The result of these impact assessments should include key recommendations based on the no-harm principle and tailored to address any adverse human rights implication, as well as prevent any risk on exacerbating uneven gender relations.<sup>22</sup>

2. Corporations and other businesses should adopt mandatory human rights due diligence policies to prevent and remedy any human rights abuse related to its business activities across its value chain. This policy should specifically incorporate measures to address gender-based human rights violations.
3. States should guarantee that all barriers holding back women's participation should be carefully assessed and addressed to ensure their voices inform the decisions on land use, acquisition and lease destined to mining projects. These could include measures to engage wives of main land tenure holders in the process and ensuring informative and deliberation sessions are held at times and locations convenient for women, as well as identifying and considering women's land use in valuation and compensation processes regardless of whether women hold land tenure rights. Compensation should also not be focused only

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<sup>22</sup> Publish What You Pay, Natural Resource Governance Institute, Oxfam, World Resources Institute, FEMNET, Development Gateway: Solutions that Empower; Feminist Natural Resource Governance for a Just Transition: 18 Policy Imperatives, 2020, last accessed 1 June 2023, available at: [https://www.pwyp.org/wp-content/uploads/2022/03/2022\\_Feminist-Natural-Resource-Governance-Agenda.pdf](https://www.pwyp.org/wp-content/uploads/2022/03/2022_Feminist-Natural-Resource-Governance-Agenda.pdf)



on the head of households. Moreover, efforts should also be implemented to support women's access to formal land titles.

4. State authorities should respect, protect and realise the rights to free, prior and informed consent of indigenous peoples and communities through inclusive, culturally adequate, linguistically appropriate and gender-responsive processes. Communities' right to withhold consent should be respected and protected against any form of reprisal. Free, previous and informed consent obtained exclusively from men should not be accepted as consent from the whole community.
5. The benefits of the mining project should be more equally distributed with local communities by investing in public services on education, health, water, and sanitation, and sustainable energy, as well as ensuring better employment opportunities. This should be achieved by encouraging women's participation in determining the use of the revenues obtained from the mining industries.
6. State authorities and business should guarantee that all mining projects ensure formal employment opportunities for women and that gender equality principles are considered in working conditions, such as hiring policies, childcare benefits, parental leave, gender-responsive facilities and equipment. The right to non-discrimination should be respected and gender pay gaps addressed.
7. States must ensure that effective measures are in place to tackle sexual and gender-based violence , including actions to address the prevention of human trafficking and sexual exploitation in communities impacted by mining projects. Accessible and independent justice and grievance



mechanisms should also be available for women who have suffered from these abuses.

8. States should guarantee the sexual and reproductive rights of women, including by preventing environmental pollution and investing in good quality health systems able to prevent and address the risks in communities affected by mining projects.
9. Action should be implemented to ensure the security and protection of women human rights defenders by States and mining companies. All measures should be enacted to prevent women human rights defenders are criminalised and stigmatised and to ensure the prosecution of their attackers.
10. States should adopt progressive and adequate tax rates to mining activities to generate public revenues that can be reinvested in community development and country-wide allocation of resources towards priority areas for the realization of climate action and economic, social and cultural rights.

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