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## **LAPFF Response to UN Working Group on Business and Human Rights Consultation on Extractive Industries, Just Transition, and Human Rights**

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The Local Authority Pension Fund Forum (LAPFF) is a voluntary association of 87 local authority pension funds and six LGPS pools, with combined assets of over £350 billion. It exists to promote the investment interests of member funds, and to maximise their influence as shareholders to promote high standards of corporate governance and corporate responsibility amongst the companies in which they invest.

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## Background

LAPFF has engaged with companies on both climate and human rights nearly from its inception over thirty years ago. It has been actively involved in developing the concept of a just transition, both through the London School of Economics Grantham Institute's just transition initiatives and of its own accord through the Local Government Pension Scheme All-Party Parliamentary Group.

Over the last five years, [LAPFF's work on human rights](#) has increased considerably, primarily at the request of its member funds. This work has centred around engaging both mining companies and communities affected by these companies' operations. In discussions with these companies around both climate and human rights, LAPFF continues to hear three worrying themes on a consistent basis. First, the companies tend to see climate considerations and human rights considerations as competing objectives. Second, and building on the first point, the companies then state that in order to achieve a 'green' energy transition, they must mine significantly more transition minerals, the implication being that human rights and other environmental considerations must be subjugated to these mining needs. Third, the companies continually state that they can only move as quickly on climate, and notably decarbonization, as they are allowed to by state regulation.

While LAPFF has attempted in its engagements with these companies, and other extractive companies, to explain why they must reconcile climate and human rights objectives through a just transition and why they must do this regardless of state action, LAPFF continues to hear predominantly 'greenwash' from these companies. Over the last few years, it has become manifestly clear that oil and gas companies in particular are not putting forth credible transition plans in line with an energy transition, let alone a just transition.

Consequently, LAPFF welcomes this consultation and greatly appreciates the opportunity to respond. LAPFF appreciates in particular the consultation's recognition that both State and business actors have imperatives to act effectively on these issues. At the State level, LAPFF views corporate reporting laws and legislation to ensure that companies are engaging with appropriate affected stakeholders and are responding to their concerns to be of paramount importance in this area. At the business level, LAPFF similarly views good faith stakeholder mapping and affected stakeholder engagement rooted in free prior and informed consent (FPIC) to be of paramount importance in this area. Detailed responses are provided below.

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### Detailed response

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)?

*Mandated reporting on climate transition plans should include just transition considerations which cover human rights impacts. This should include transparent stakeholder mapping and free prior and informed consent with affected workers, communities, and consumers as part of required human rights impact assessments for transition plans and projects. Companies should also include in their annual reports and climate change/TCFD an account of stakeholder concerns regarding their human rights and environmental practices and the company responses to them.*

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?

*Some labour and environmental law developments could be useful. There is a new [FPIC law in Sierra Leone](#) that appears to be promising. The [Financial Times](#) reported recently on a new Spanish law 'aimed to put a stop to the use of back-to-back temporary contracts and make new permanent jobs the rule rather than the exception.' [US laws on banning imports produced by forced labour](#) have reportedly been quite effective. The US has also just [proposed greenhouse gas emissions standards](#) for vehicles which has received a positive response from*

some quarters. The [Scottish Just Transition Commission](#) might provide a useful model for developing government policy in this area.

*The UK government-backed Transition Plan Taskforce has also been exploring how to integrate social factors into transition plans. National human rights and environmental due diligence laws, such as those passed in France and Germany and modern day slavery legislation being passed in a number of states, might also be helpful in due course.*

*LAPFF policy requests that company resolutions at annual general meetings put their transition plans to investor votes and that companies report on their performance against these plans on an annual basis. Where a significant number of investors vote against these plans and company performance, companies might be required to consult with their most relevant stakeholders to ensure that its transition plans and its performance to those plans improve to meet these stakeholder needs in a time-bound manner.*

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?

*There should be measures to ensure that States and companies do not engage in corruption and are not in a position to work too closely with one another so that there can be appropriate regulatory oversight and enforcement of mining practices in respect of coordinating positive corporate behaviours on climate, environment, and human rights.*

*Creating an enabling legislative and policy environment for extractive companies to implement decarbonisation plans and practices that meet 1.5 degrees so that companies do not continually tell investors that they are waiting for states to act in this regard before implementing such measures is critical.*

*Creating an enabling legislative and policy environment for extractive companies to implement both climate-friendly and human rights-friendly policies without the need or ability to cite trade offs as an excuse not to perform in one or both of these areas is critical.*

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?

*LAPFF notes that greenwash is a major obstacle to effective progress on both an energy transition and a just transition. Therefore, the reporting measures set out in the response to question one would be helpful.*

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?

*States should review any bilateral investment treaties and related contracts, public procurement, and privatisation agreements to ensure that, in line with international law, they have not outsourced their obligations to respect, protect, and fulfil human rights or any environmental obligations, or constrained their domestic regulatory space. A human rights and environmental underpin clause in these treaties and contracts might help to ensure that human rights and environmental considerations, including a just transition and other climate change impacts, are prioritised in these treaties and contracts.*

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?

*There need to be laws holding joint venture partners to account for the environmental, social, and governance impacts of their joint venture companies and/or projects.*

*Free prior and informed consent (FPIC) needs to be integrated into domestic law and must be more clearly defined for stakeholders. It also needs to extend beyond Indigenous People to a wider range of affected workers and communities.*

*Climate, environmental, and human rights law and policy must be developed in consideration of one another to be effective. For example, TCFD requirements include no reference to the social implications of the transition.*

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?

*Plans to decarbonise national energy systems could negatively impact the job prospects of workers in other countries who are involved in the oil, gas and coal sector or in generating energy using these energy sources. Government promotion or requirement for companies to shift to specific technologies reliant on transition minerals could have human rights impacts.*

*Apart from enabling legislation, these issues could be addressed by states having just transition commissions to assess likely impacts. Once identified, interventions could be made such as placing requirements on companies regarding their supply chains and the State regarding development support for workers, communities, consumers, and supply chains.*

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?

*The State has many levers apart from legislation and regulation to ensure the transition promotes human rights, including through fiscal incentives, social value/labour clauses, economic development programmes, skills and training provision, and requirements made of companies. States also have a role through providing consistent policy environments and through their convening powers which can bring together different stakeholders.*

### **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 within the extractive sector should engage extensively and meaningfully with their staff, including contract staff, and communities affected by their operations to ensure that their energy transition plans and programmes do not cause, contribute, or link to human rights violations. They must consult effectively with these stakeholder groups and undertake FPIC in good faith. This work should be carried out through independent human rights impact assessments, or at least independent environmental and social impact assessments.*

*Within companies, all multinationals should have staff who engage as above on a regular basis and report to board strategy meetings. Company boards should also be required to have sustainability committees with members who have legitimate sustainability qualifications and report on how sustainability factors, including climate and human rights, are integrated into corporate strategy and operations.*

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?

*In LAPFF's view, human rights provisions in these vehicles are not effective in encouraging companies to respect all internationally recognised human rights. It appears that these vehicles might actually allow, or at times even encourage, practices that violate human rights. Joint venture contracts are a particular concern for LAPFF based on its experience with global mining companies. Laws that require all joint venture partners – including non-operating joint venture partners - to ensure that human rights are respected should be enacted in relation to all joint ventures, including those related to the energy transition.*

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?

*There are two types of investors to consider. The first are shareholders in joint ventures, who are typically either state-owned or private extractive companies. In LAPFF's experience, they can exacerbate negative impacts of energy transition efforts on human rights more often than they prevent and mitigate them. The second are investors in the mining companies, such as institutional investors. In this case, LAPFF's experience is that too few are aware of how their investee companies are violating human rights, and they are consequently doing very little to hold them to account. Both types of investors appear to be exacerbating negative human rights impacts, including of energy transition efforts, either actively or passively.*

*In LAPFF's experience, rural-urban divides and gender issues are often overlooked. Therefore, in LAPFF's view, investors should be required to conduct human rights due diligence (HRDD) that includes gender responsiveness in meaningful consultation with local communities, civil society organizations, Indigenous Peoples, and human rights defenders.*

*Under existing law, it is unclear what investor remediation obligations should be. At present, the options include: engaging with offending companies, voting against board directors who should have responsibility for human rights and environmental impacts, and divesting from companies that show no improvement over a given period of time or no intention to improve. LAPFF's policy is to continue to engage with companies and does not to promote divestment.*

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?

*Because these entities are generally small-scale, they can theoretically be more adaptive to conditions that change rapidly as a result of the energy transition. The challenge is how their roles can be monitored and good practices can be enforced to ensure they are human rights-based given the informal nature of the entities.*

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?

*Yes, these vehicles should require HRDD at all levels of the supply chain, including gender-responsive HRDD and heightened HRDD for conflict-affected areas. Corporate reporting legislation requiring extractive companies to report on stakeholder mapping processes and discussions with affected communities critical of their operations, outcomes of these discussions, and companies' actions to investigate and respond to the concerns could help to ensure companies maintain appropriate engagement and oversight of their supplier and sub-contractor relationships.*

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)?

*These organisations could schedule regular meetings with affected workers and communities and arrange for them to present at various meetings and classes.*

### **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?

*There need to be laws on FPIC with a clear and enforceable definition of consent.*

*Corporate reporting legislation on FPIC should be passed and should require companies to report on measures they have taken to address legitimate concerns raised by affected workers and community members.*



*There should be legislation requiring companies to undergo independent assessments of their human rights and environmental practices when a discrepancy arises between the corporate and affected stakeholder accounts of these practices. Any assessment recommendations should be acted and reported on by the companies to demonstrate that they have remediated the issues or will do so within a given timeline (at which point their actions should again be assessed in line with the independent recommendations).*

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?

*The Australian government response to Juukan Gorge addressed climate change and human rights. In conjunction with other affected community and investor initiatives to work with Rio Tinto, in LAPFF's view, there has been some progress made to improve the company's engagement practices with affected communities. However, this improvement appears to be primarily in Australia where institutional investors have been active in pushing the company to improve.*

*It appears that many developing States are captured by extractive companies. Therefore, for effective redress mechanisms to be implemented in terms of both process and remedial outcomes, effective clampdowns on corruption appear to be necessary first.*

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?

*LAPFF is aware of litigation in relation to EDF in Mexico, Grupo Mexico in Mexico, Shell in the Netherlands, and BHP in the UK. All these cases have either direct or indirect implications for whether and how the companies involved are undertaking effective energy transitions.*

*It should be noted that LAPFF has consistently received information from community members around the world in relation to extractive companies ignoring legal rulings and continuing with their work in a manner that suits them.*

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?

*No. For example, LAPFF has heard that in Madagascar, a company-level grievance mechanism operates so that people have to report to the company allegedly committing abuses.*

*Ideally, if a government is not captured by an extractive company, there should be a government-based grievance mechanism whereby affected people can report to the government entity and have the government investigate the company. If companies are going to get involved, in joint ventures, the grievance mechanism should be with the non-operating joint venture partners who should then demonstrate that they respond appropriately to grievances. Alternatively, there should be an independent body established, possibly within the United Nations, to field complaints from affected stakeholders and have oversight of whether and how the companies act on the grievances.*

### **Good practices and other comments**

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.

*LAPFF has been engaging directly with communities affected by mining companies on human rights and environmental impacts. LAPFF Executive members then meet mining companies to discuss community complaints. Often, the companies cite the need for 'green' minerals as an excuse for not adhering to appropriate human rights standards and practices. LAPFF has explained to companies that in the context of a just transition, the social licence to operate is imperative to allow for profitable mineral extraction. This engagement is a work in progress. However, LAPFF's view is that this approach of investors engaging with affected stakeholders is good practice from an investor perspective.*

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?

*Renewable energy policies, practices and safeguards should be developed along with policies, practices and safeguards on job training and creation, city and regional planning, and international cooperation and development approaches to ensure that the social and environmental components of a just transition are aligned.*

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.

*Accountability for human rights issues within joint ventures, reporting on voices critical to companies, effective measures to ensure that states are not captured by big corporations, effective grievance mechanisms that do not allow for conflicts of interest, laws with extraterritorial application (such as the French due diligence law) so that extractive companies domiciled in the Global North can be held accountable for human rights violations in the Global South which they cause, to which they contribute, or to which they are linked are all needed.*

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