



20 YEARS OF

**Business & Human Rights
Resource Centre**



A just transition for all

**KEY TOOLS FOR A FAST AND FAIR
SHIFT TO RENEWABLE ENERGY**

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Foreword

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As humanity faces the triple planetary crisis of climate change, loss of biodiversity and pollution, the energy transition, from fossil fuels to renewable or clean energies, has become an urgent matter.

That is why the United Nations Working Group on Business and Human Rights presented its latest thematic report to the General Assembly in 2023 on this topic. In the report, called “Extractive Sector, Just Transition, and Human Rights”, we consider how States, businesses, investors and other stakeholders in the extractive sector can best design and implement just, inclusive and human rights-based energy transition programmes, in line with the UN Guiding Principles on Business and Human Rights.

The energy transition does not only imply moving from certain sources of energy to others, but it has human rights implications. We have observed that, more often than not, renewable energy projects tend to replicate the same harmful practices as other extractive projects. The lack of free, prior and informed consent and consultation with Indigenous Peoples and other local communities (communities of African descent; rural communities) is still prevalent, as well as poor human rights due diligence processes, threats to human rights defenders and gaps in access to remedy and justice.

Particularly in the Latin American region, which is rich in strategic transition minerals and sources of renewable energy, these challenges are very evident. Defending human rights continues to be a high-risk endeavour; meaningful participation by communities is usually lacking; there are many challenges in access to justice. That is why we observe that many communities and civil society groups are organising to demand better practices, both by industry actors and by State authorities.

The Working Group has stressed in the aforementioned report, as well as in several other occasions, the urgency of States fulfilling their human rights obligations in the context of the energy transition, including by revising their strategies, as well as trade and investment agreements, in order to make sure that all initiatives to accomplish energy transition targets are rights-respecting and just.

The Working Group has also set clear expectations for businesses, underscoring the importance of conducting human rights due diligence in all energy transition projects and making sure human rights are respected in their operations. We have also stressed the fact that businesses have an independent responsibility to respect human rights, regardless of the capacity or will of State actors to fulfill their obligations.

It is essential that the energy transition is just, rights-respecting and leaves no one behind. I therefore welcome this report: **A just transition for all: Key tools for a fast and fair shift to renewable energy**, which contributes to this debate and provides some important concrete suggestions for rights-holders and other civil society actors.

Introduction

Latin America, a region rich in resources for clean energy, will play a crucial role in the transition to a net-zero carbon economy. Increased demand for the transition minerals required for renewable technologies – which Latin America has in large supply – as well as the growth of renewable energy projects in the region present both economic opportunities and human rights challenges. This is despite increasing evidence that in order for the global energy transition to be fast, it must also be fair.

Research by the [Business & Human Rights Resource Centre](#) (the Resource Centre) reveals that while some progress has been made, companies at all stages of the renewable energy value chain must take greater action to ensure human rights are respected in their operations. The Resource Centre's [Transition Minerals Tracker](#) has identified allegations of human rights abuse linked to the extraction of transition minerals across the globe, including failure to obtain free, prior and informed consent (FPIC), attacks against human and environmental rights defenders, and environmental damage such as water pollution. At the other end of the value chain, the [2023 Renewable Energy Benchmark](#), which assesses the human rights policies of top users of transition minerals (solar and wind energy companies), identified a persistent gap between companies' human rights policies and practices, particularly on issues relating to land rights, Indigenous Peoples' rights and supply chain forced labour.

While examples of better corporate human rights practice are evident, significant improvement is needed across the value chain to ensure a rights-centred transition. In sum, a just transition to clean energy must centre on three [core principles](#):

- ➔ **Shared prosperity:** Effective business models driving fast transitions will build trust and stability and reduce systemic risk through shared prosperity models that build worker and community rights in companies' operations and supply chains.
- ➔ **Human rights and social protection:** Governments and companies have a duty of care to shield workers and communities from harm; to demonstrate due diligence to minimise human rights and environmental risks; and to ensure social protection, retraining and creating new decent work.
- ➔ **Fair negotiations:** Communities and workers need guarantees that negotiations will be fair throughout operational life-cycles and when accessing remediation for harm. There will be inclusive community consultation and robust implementation of the principles of Free, Prior, and Informed Consent (FPIC) for Indigenous Peoples; and guarantees that workers, Indigenous and community leaders will not be silenced through intimidation or violence.

This document aims to provide civil society and grassroots organisations (including Indigenous Peoples, Afro-descendant and peasant communities, among others) with tools to develop and strengthen their internal and international strategies to advocate for a just energy transition that rests, at minimum, on these core principles, developed in consultation with communities, CSOs, workers and other stakeholders.

This toolkit has four sections. The first presents the general context of the just energy transition in Latin America and challenges presented by the exploitation of transition minerals, in particular. The second section explores the key human rights issues related to the energy transition, as identified both by the Resource Centre through its research and monitoring work, and by our partner organisations in Chile, Mexico and Brazil. The third section proposes advocacy strategies to promote a just transition. Finally, the fourth section proposes additional concrete actions that civil society organisations and grassroots organisations can undertake at both national and international levels.

The guide proceeds from a core understanding: that civil society and grassroots organisations are critical stakeholders in bringing about structural change at both state and corporate levels to ensure a just energy transition. Evidence shows that such a transition is possible, and particularly where the voices and expertise of frontline communities, defenders, and workers are prioritised in the drive to ensure better corporate practice across the renewable energy value chain.

Methodology

From May to October 2022, the Resource Centre worked with the [Observatorio Ciudadano](#), the [Centro Mexicano de Derecho Ambiental](#) (CEMDA) and the [Federal University of Campina Grande](#) to identify the main actors and challenges in the renewable energy and transition mineral sectors in the region, the regulatory frameworks in Chile, Mexico and Brazil, and some emblematic cases linked to allegations of human rights abuses in both sectors. In 2023, the Resource Centre organised discussions with different actors in the region to understand the current obstacles faced by civil society organisations, communities and human rights defenders in advancing human rights in the energy transition.

This research revealed several possible strategies for civil society organisations and grassroots social organisations could apply to strengthen their advocacy on the just energy transition.

Context

Extractive industries have shaped Latin America's history for centuries. Mineral extraction and coal burning continue to be [subsidised by countries of the Global North](#), and [financial institutions](#) and development banks continue to support fossil fuel-based projects as energy solutions. Meanwhile, renewable energy installations are on the rise. While the value of renewable energy installations is indisputable, documented harms associated with these facilities mainly affect already vulnerable groups.

The energy transition involves moving away from fossil fuels and towards the use of renewable energies like wind, solar and hydropower.¹ This involves increasing the capacity to produce, use and store renewable energy, including through the production of [rechargeable batteries](#) that require the [exploitation of minerals](#) such as cobalt, copper, nickel and rare earths, among others.

¹ The Resource Centre recognises that many communities do not consider hydropower or biomass as renewable sources. We include them in our analysis because they are part of many government climate action plans and to get an overview of the most salient risks.

Latin America has a high concentration of renewable energy projects, with a significant number of hydroelectric, wind and solar projects. These sectors' infrastructure is [not exempt from direct links to human rights violations](#), including [extensive land use](#), sometimes on Indigenous Peoples' territories. The International Renewable Energy Agency (IRENA) [estimates](#) that “54% of transition minerals are located on or near Indigenous lands, and that more than 80% of lithium projects and more than half of nickel, copper and zinc projects are located on Indigenous territories.” Despite the clean face of renewable energy, the large-scale extraction of minerals needed for green technologies [has impacts on human rights and the environment](#). Allegations of human rights violations linked to renewable energy value chains include issues around access to water, various forms of discrimination (especially against [Indigenous Peoples](#), Afro-descendant communities and women), the [absence of FPIC, lack of access to information](#), and inadequate access to remedy for harms caused.

From 2010 to 2022, the Resource Centre's [Transition Minerals Tracker](#) (TMT) identified 510 allegations of human rights violations associated with the extraction of six minerals (nickel, copper, zinc, lithium, cobalt and manganese) that are essential for the energy transition. Of these, 329 cases of alleged abuse took place in Latin America: 84 in Chile, 32 in Mexico, and seven in Brazil. [Our research](#) on attacks against human rights defenders in the region further highlights the enormous challenges faced by people who raise concerns about abusive business practice linked to exploitation of transition minerals and reveals that the renewable energy sector has become one of the most dangerous sectors for human rights defenders in the region. Despite its significant contribution to the renewable energy and transition minerals sectors, the [Andean region in particular](#) continues to grapple with adverse impacts of the mining sector.

These findings show a transformative approach is needed to address the urgency of the transition. As one participant in the 2023 Latin American Civil Society Platform's Parallel Forum on Business and Human Rights explained:

“ *The analysis of the energy transition must include a global reading of the value chain, but also of the transformation of the sectors associated with the production of fossil energy [...] The transformations in the hydrocarbon sector must not lead to new scenarios of extractivism such as land grabbing and deforestation [...] All of this requires deep reflection and a clear identification of the so-called false solutions.*”

Participant of the Roundtable on “Extractives and Energy Transitions” at the Latin American Civil Society Platform Parallel Forum on Business and Human Rights, Santiago de Chile, 2023

In other words, in order to achieve a rapid and just transition, companies operating in the renewable energy and transition mineral sectors must put people and their rights at the centre of their operations in order to avoid repeating the mistakes of the past – and ultimately derailing the energy transition itself.

What are the main challenges linked to renewable energy and transition minerals projects in Latin America?

The most serious and frequent human rights issues in the renewable energy sector relate mainly to non-compliance with the [right to FPIC and consultation](#) of Indigenous Peoples, as well as violations of land rights in relation to [involuntary resettlement](#) and lack of adequate compensation for affected communities. Between 2010 and 2021, the Resource Centre made 303 [response requests](#) to 222 companies regarding 157 allegations of human rights abuse in connection with renewable energy projects in the wind, solar, hydropower, biomass and geothermal sectors worldwide. In the hydropower sector, 22% of all cases were related to land and territory rights. In the wind sector, 31% referred to issues related to consent and absence of prior consultation, while another 23% were related to land.

Inadequate community involvement and consultation:

“ In Brazil, [Quilombola communities](#) were not consulted. The government [hands over territories](#) to mining companies as if there were no people there, even ignoring local authorities. This adds to the difficulties in regularising the land tenure of the communities.”

Participant of the Roundtable on “Extractives and Energy Transitions” at the Latin American Civil Society Platform Parallel Forum on Business and Human Rights, Santiago de Chile 2023

Information on renewable energy companies operating in Mexico, Chile and Brazil is not always readily available, as revealed through a joint project between the Resource Centre and the [Observatorio Ciudadano, CEMDA](#) and the [Federal University of Campina Grande](#) in 2022. In addition, information on supply chains and investors is often not publicly available. Even where mechanisms for requesting public information are in place in Chile, Mexico and Brazil, organisations face obstacles such as delays in receiving information or the denial of requests for information by state institutions and companies.

In countries like **Mexico**, there is little information on the current status of renewable energy projects. Mexico’s [Mining Law](#) regulates the granting of concessions, but there is no list of concessions by mineral, which makes it difficult to identify all projects related to transition minerals. In **Brazil**, information on projects is constantly changing. Geographical barriers related to the size and scale of the projects in a large country like Brazil affect organisations’ ability to carry out comprehensive monitoring. Coupled with a lack of information on the impacts of projects, effective monitoring becomes an enormous challenge. In **Chile**, the large number of renewable energy projects makes comprehensive monitoring impossible, and the longevity of projects limits available information and exacerbates problems faced by local communities.

These are just a few examples of the obstacles that communities affected by renewable energy projects (solar, wind and hydropower) and related transition mineral mining operations face in terms of knowing the factual, legal and juridical circumstances linked to the implementation of these projects. A further challenge is the absence of efficient mechanisms for communities to be informed in a timely, free and full manner about potential environmental and social impacts.

“ **There are two dimensions to the issue of information. Access and understanding.** Access must involve a discussion on state information open to citizens, so that communities are able to understand the real problems... In the second case, the information should be able to be produced and counter-referenced by the communities, as it guarantees autonomy from state and corporate data. **There is also the need for the production of information, from the state and autonomous entities, which must be of high quality [...] [It is] essential to include the information produced by communities as legitimate and relevant sources of information.**”

Participant of the Roundtable on “Extractives and Energy Transitions” at the Latin American Civil Society Platform Parallel Forum on Business and Human Rights, Santiago de Chile 2023

Another major obstacle in the region relates to the [risks faced by human rights defenders](#) working to promote human rights in the renewable energy and transition minerals sector, [including Indigenous defenders](#). **Between January 2015 and December 2022, the Resource Centre recorded 306 attacks against defenders linked to the renewable energy sector in the region**, including lethal and non-lethal attacks; from 2010 to 2021, [148 attacks](#) were recorded which were directly linked to mining for six key minerals powering the energy transition globally. In view of the above, major transformations are needed to achieve effective environmental and human rights protections and to guarantee respect for local communities and Indigenous Peoples.



Which strategies can be used to address challenges?

Civil society organisations in Latin America – together with grassroots social organisations (led by Indigenous, Afro-descendant and peasant communities) – are key stakeholders who can bring about structural, political and normative changes based on their own experiences and expertise. Effective strategies to challenge harms related to renewable energy and transition minerals projects, including influencing for change and strategic litigation, and for promoting better practice by the private sector are integral to realising a just energy transition.

Influencing for change

Effective public policy changes can transform realities for communities. To achieve effective outcomes, those advocating for change can build a strong understanding of the political, economic and social context, the aspirations for change and strengthen their capacity to [solve problems and make decisions](#).²

The organisations [Movements for Peace](#) and the [Andean Change Alliance](#) have developed frameworks that can be adapted to support influencing efforts related to renewable energies. These frameworks include:

- ➔ **Clear identification of the problem or issue:** In cases related to renewable energy, the problem should be clearly and succinctly described: the company or companies involved, the economic sector, minerals, the type of project, the people directly or indirectly affected, the key demands to be addressed, the natural environments impacted or to be impacted, and the relevant state and social actors.
- ➔ **Research:**
 - ➔ The Resource Centre monitors reports on human rights issues linked to companies, collecting information on its [digital platform](#) and recording company responses through its [Company Response Mechanism](#) (CRM). These tools can provide valuable information about the identified case, as well as related cases that can be studied as comparative experiences. Other public information tracked by civil society organisations, reports by governments and Ombudsman Offices, as well as public information generated by the companies, whether specific to the extractive projects analysed (subsidiaries) or related to the general policy of the parent company, should not be disregarded. As part of its Just Energy Transition programme of work, the Resource Centre tracks and makes accessible details on specific allegations of human rights abuse in the transition mineral sector through the [Transition Minerals Tracker](#).
- ➔ **Stakeholder mapping:**
 - ➔ Identify state actors with decision-making power related to your problem.
 - ➔ Identify strategic allies (national and international) whose support will be in line with the objectives of the strategy and with whom alliances can be established.

² Manual de Incidencia Política. Comunicaci3n y Formaci3n de Coaliciones Ciudadanas. Edited by Karen Sirker, page 6.

- ➔ Identify economic actors (companies and financial institutions) that have, in one way or another, attempted to approach international standards of due diligence on business and human rights and that have been developing practices in this regard.
- ➔ **Identify opportunities for participation.** It is crucial to identify spaces which are safe for defenders and where they have real possibilities of being heard. The complexity of the renewable energy context makes it difficult to create these spaces.
- ➔ **Strategic communication:** Influencing efforts will not be successful without adequate communication. This includes both the communication developed between civil society organisations for the purpose of sharing experiences and strategies, as well as communication designed to promote or stimulate multi-stakeholder initiatives in which those affected and civil society organisations are not only informed and heard, but also have their opinions considered in decision-making.
- ➔ **Monitoring and follow-up of the influencing strategy:** The energy transition requires both national and international monitoring and follow-up with a multidisciplinary and coordinated perspective. Technical data must be considered not only from a legal perspective but also from other scientific disciplines, and civil society organisations must coordinate to work nationally and regionally, in collaboration with and support of victims of abuse.

An effective strategy can contribute to major changes:

- ➔ **Governmental:** by strengthening the performance of government institutions, promoting the construction of democratic, transparent and accountable governments towards a just energy transition. This is a challenging task, considering that the issue of minerals for the transition involves transnational investments, where companies and state entities with different dynamics and realities are involved.
- ➔ **Collateral:** by encouraging the international financial institutions, as well as international cooperation agencies not to contribute to the development of projects that do not focus on a just energy transition.
- ➔ **Participatory:** by bringing citizens closer to political participation in order to seek solutions to public problems and to demand the respect for and guarantee of human rights.
- ➔ **Communicative:** by creating networks that improve communication processes between various actors interested in the same issues.

Strategic litigation

Strategic litigation is *“a tool that uses the power of law to achieve structural transformations at the legal, institutional, political or social levels.”* This type of litigation identifies cases that seek to vindicate the rights of a victim or groups of victims and transform realities to prevent events of a similar nature from continuing.³ Strategies must be built between the plaintiffs, the victims, and the litigation team, which must be multidisciplinary.⁴

³ DPLF. Guía básica para el análisis y documentación de casos para el litigio estratégico ante el Sistema Interamericano de Derechos Humanos, page 9.

⁴ Fundación Myrna Mack. Directrices Básicas para la construcción de estrategias de litigio. Guatemala, 2008.

A study by [Lawyers Without Borders](#) identified five dimensions for strategic litigation in the field of renewable energy and the energy transition: a) legal, b) political advocacy, c) communicational, d) psychosocial, and e) security.

However, for the development of these two strategies (litigation and influencing) or a mixture of both, it is necessary to consider some common elements:

- ➔ **Cross-sector approach:** The mining of transition minerals, in particular, varies depending on what is being mined and the [type of renewable energy project being developed](#). The dynamics of the economic actors are diverse, as is the complexity of their supply chains, where impacts can also occur.
- ➔ **Intersectionality:** The impacts of the energy transition affect groups in different ways, depending on context and [specific vulnerabilities](#) – for example, Indigenous Peoples, peasant and Afro-descendant communities, as well as human rights defenders and those who have been criminalised for their work protecting their communities and lands. This diverse experience must be fairly and fully reflected in strategic litigation strategies.
- ➔ **Context:** The development of these projects goes hand in hand with the [political, social and economic context](#) at the national level. It is therefore important to understand the state's policy on just transition and the extent to which it includes respect for human rights and the environment. Funding from international financial institutions such as the International Finance Corporation (IFC) is also a potential pressure point because of the objectives that are being guided or supported by these organisations.
- ➔ **Environment:** Transition minerals and land ripe for renewable energy projects are found in different territories and impact diverse ecosystems and territories. These territorial particularities must be taken into consideration when developing strategies for a just transition with a focus on respect for human rights.



How is civil society taking action?

The following tactics and tools have been identified in our research to help overcome the obstacles faced by civil society seeking to promote a just energy transition in Latin America.

Systematically document rights abuses related to the transition minerals and renewable energy sectors

Documenting human rights violations plays a crucial role in advocating for legislative changes and informing policies on the prevention of abuse and protection of human rights. Documentation can inform international human rights bodies to help develop human rights standards for states and companies. The production of solid data allows us to understand the common characteristics of human rights violations in both sectors and to push for the adoption of measures that can prevent human rights abuses. To do this, it is important to:

- ➔ Document human rights abuses, including analysis of context, specific facts on violations, detail on affected people and actors responsible for abuse, as well as the construction of legal and extra-legal strategies to influence the prevention of abuses and the protection of affected people and territories. A guide to case documentation is available [here](#).
- ➔ Establish contact with organisations that compile and track attacks against human rights defenders and give them visibility through databases, case profiles and thematic reports. The Resource Centre has a [database](#) that collects attacks on defenders who raise concerns about business operations; [Front Line Defenders](#) monitors different forms of attacks on those who defend human rights around the world; [Global Witness](#) focuses on killings of environmental and land defenders, and [Amazon Watch](#) documents violations in the mining sector in the Amazon region.



Share knowledge and identify allies in national, regional and global coalitions

Working collectively through networks and coalitions is important to leverage collective pressure and amplify the impacts of harmful business practice. Some existing networks that could provide support in this regard are:

- ➔ The [Climate Action Network-International](#) (CAN): a global network of more than 1,800 civil society organisations from around 130 countries which drives collective and sustainable action to fight the climate crisis and achieve social and racial justice. The CAN convenes and coordinates civil society at UN climate talks and other international fora.
- ➔ The [Women's International Network for Land and Climate](#) (WECAN): a global women's movement for the protection and defence of the Earth's diverse ecosystems and communities.
- ➔ The [SIRGE Coalition](#): an alliance of Indigenous Peoples and leaders which seeks to defend a just transition to a low-carbon economy from the perspective of these peoples.
- ➔ [Earthworks](#): A US-based organisation focused on helping communities ensure their health, land, water and air are protected from extractive industries.
- ➔ The Strategic Litigation Network on Business and Human Rights in Latin America: facilitated by the Resource Centre, the network's purpose is to generate a space for discussion on legal and advocacy strategies to advance human rights within the framework of business activities.
- ➔ The [Zero Tolerance Initiative](#) (ZTI): a global coalition led by Indigenous Peoples, local community representatives and supporting NGOs, working collectively to address the underlying causes of killings and violence against human rights defenders linked to global supply chains.
- ➔ [Vuka!](#): A coalition coordinating efforts to fight against the closure of civic space around the world.
- ➔ The [Alliance for Defenders of Indigenous Peoples, Land and the Environment](#) (ALLIED): A coalition sharing information, building solidarity and joint messages, and sharing resources.
- ➔ The [International Land Coalition](#) (ILC): the ILC network mobilises members to monitor land-related goals through LANDex, a global land governance index that puts people at the centre of land data, democratising land monitoring, and building a data ecosystem where all voices can be heard.

Connect with investors to influence their funding strategies

Investors can play a key role in helping the clean energy transition avoid the problems of the past by committing to actively integrating human rights into their clean energy investment decisions. Investors have an opportunity to act to ensure that the companies in which they invest have effective human rights policies and, above all, practices. It is therefore important to engage with investors financing transition minerals and renewable energy projects in Latin America and demonstrate the impact of their investments on the region. Investors should be persuaded to evaluate their portfolio companies involved in the energy transition against human rights standards as outlined in the UN Guiding Principles on Business and Human Rights (UNGPs), including conducting human rights and environmental due diligence and committing to strategies that effectively consult with communities. Potential strategies include:

- ➔ **Encourage investors to ensure they and their portfolio companies meet their human rights responsibilities as outlined in the UNGPs.** The Resource Centre's 2022 [guide for investors in the renewable energy sector](#) details elements investors should implement to ensure human rights are centred within the energy transition investments.
- ➔ **Establish direct contact with investors to ask questions about specific projects they are linked to through their investments.** Investors should be encouraged to respond directly to communications sent by communities, and to factor such information into their investment decisions and engagement with investee companies.
- ➔ **Engage and encourage investors to speak out on the importance of protecting human rights and civic freedoms.** Investors and companies have [spoken out](#) on the importance of including effective and safe stakeholder participation in the European Union's Corporate Sustainability Due Diligence Directive (CSDDD).



Promote the ratification and implementation of the Escazú Agreement

The [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#), known as the “Escazú Agreement,”⁵ seeks to the rights of access to environmental information, enshrine public participation in decision-making processes on environmental matters, ensure access to environmental justice, and protect the human right to a healthy environment. Organisations can encourage its adoption and ratification through the following actions:

- ➔ Promote the agreement’s ratification by states across the region; for example, advocating on environmental issues with local authorities, through communication campaigns, bilateral meetings and public letters.
- ➔ Promote the adoption of the Plan of Action on Human Rights Defenders in Environmental Matters in accordance with [Decision I/6](#).
- ➔ Design and implement media campaigns, develop messaging, and disseminate on social networks and via traditional media including radio, television and print media.
- ➔ Raise awareness about the Agreement and its benefits in terms of human rights protection, in line with human rights standards developed by the Inter-American System of Human Rights.

Adoption of regulatory frameworks to ensure business respect for human rights

The adoption of national and regional policy, regulatory and legislative frameworks for the protection of human rights in the context of a just and fast transition is crucial to the protection of communities and their territories. Within these regulatory frameworks, there is transnational legislation on corporate responsibility for human rights and environmental abuses and [due diligence laws](#).

Human rights and environmental due diligence is an ongoing risk management process that companies must undertake as part of their responsibility to respect human rights and the environment. In line with the [UNGPs](#), the process should include assessing actual and potential impacts on human rights, integrating and implementing the results, monitoring responses, and communicating how to address the human rights harms associated with their operations, products and services. These aspects are also reflected in the [Due Diligence Guide for Responsible Business Conduct](#) of the Organization for Economic Co-operation and Development (OECD). Along these lines, the European Union (EU) has launched an initiative on sustainable corporate governance, which includes the [adoption of a directive](#) on mandatory due diligence on human rights and the environment: the Corporate Sustainability Due Diligence Directive (CSDDD). The [Council of the European Union adopted its negotiating position on the Directive in December 2023](#), and days later both the Council Presidency and the European Parliament reached a [provisional agreement on the Directive](#). This provisional agreement now requires ratification by both institutions, which is expected to take place in early 2024.

⁵ In September 2023, the following countries have ratified the Escazu Agreement: Antigua and Barbuda, Argentina, Belize, Bolivia, Chile, Ecuador, Granada, Guyana, Mexico, Nicaragua, Panama, San Vicente and Granadines, San Cristóbal y Nieves, Saint Lucía and Uruguay.

This represents an opportunity to prioritise environmental protection, human rights and long-term business sustainability, and – crucially – the safety and protection of human rights defenders, not only in Europe, but also in Latin America. The EU is home to some of the world’s largest multinational companies operating in the region. Within Latin America, civil society initiatives in Peru and legislative initiatives in Colombia⁶ and [Mexico](#), although yet to fully materialise, indicate progress in a similar direction. In Argentina, a [due diligence regulation has been adopted for all departments of the Ministry of Agriculture, Livestock and Fisheries](#). Colombia’s resolution [40796](#), approved in 2018, set out a Human Rights Policy for the Mining and Energy Sector, defining human rights guidelines for companies in this using a due diligence framework.

In this context, support for the adoption of due diligence legislation represents an area of opportunity to advance human rights in the renewable energy and transition mineral sectors. Relevant advocacy strategies to this end include:

- ➔ Raising awareness of the human rights harms caused by European companies in Latin America, for example through case documentation, reporting, transnational litigation and communication campaigns.
- ➔ Monitoring the implementation of the upcoming EU CSDDD, which is expected to be ratified in 2024. This monitoring can be done in conjunction with the [Resource Centre, European Coalition for Corporate Justice \(ECCJ\)](#), the EU-LAT coalition and other [Brussels-based organisations](#), together with civil society organisations and vulnerable groups in Latin America. Considering the text of the provisional agreement of the Directive, monitoring should focus on the following areas:
 - ➔ enforcement of the establishment of national supervisory bodies;
 - ➔ the amendment – in line with the Directive – of existing national due diligence laws in some European countries to bring them into line with the final text of the Directive;
 - ➔ the inclusion of financial activities in the Directive, which are currently excluded;
 - ➔ implementation by companies of climate change mitigation transition plans that take a holistic approach to respecting affected people, particularly vulnerable groups such as local communities and human rights defenders;
 - ➔ follow up on civil liability claims that may be filed in European countries by affected people in Latin America against European companies that fall within the scope of the Directive.
- ➔ Promoting [statements](#) by responsible companies and investors on the progress of the implementation of the Directive.

⁶ *Cfr.* Colombia. Bill 153, 2006: “Por la cual se reglamenta la Responsabilidad Social de las empresas y se dictan otras disposiciones.” Archived in 2007; Colombia. Bill 031, 2007: “Por la cual se definen normas sobre la Responsabilidad Social y Medio Ambiental de las Empresas y se dictan otras disposiciones.” (promoting voluntary measures); Colombia. Bills 058, 2009; and 070, 2010: “Por el cual se definen normas sobre la Responsabilidad Social Empresarial, la protección infantil y se dictan otras disposiciones.”

Application of the standards of the Inter-American Human Rights System

The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) have developed standards to guide the just energy transition and support the advocacy efforts of civil society organisations.

In 2019, the IACHR published the report [Business and Human Rights: Inter-American Standards](#), which highlights that a “policy of transition to renewable and clean energy sources” must be consistent with respect for human rights, and therefore be “fair, transparent, participatory” and non-violent. In addition, in 2022 the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the IACHR issued a resolution on [Climate Emergency: Scope of Inter-American Human Rights Obligations](#). This resolution is an important milestone for Latin America as it is the first document to recognise climate change as a human rights emergency that poses a grave threat to the enjoyment of rights of present and future generations and has serious impacts on ecosystems. The resolution contains a series of standards and recommendations addressed to the states of the region. These include an obligation to integrate a human rights approach into climate change instruments, policies, plans, programmes and standards, and recognises the importance of an energy transition that respects human rights. It also calls for action on environmental degradation and the adoption of practices to protect those who are most affected by the climate crisis and who have suffered historically.

The IACtHR has had opportunities to rule on the right to the environment in its [jurisprudence](#), recognising the right to the environment as an autonomous right, as well as in its advisory role. The court’s Advisory Opinion No. 23, entitled [Environment and Human Rights](#), recognises the adverse effects of climate change on the full enjoyment and realisation of individual and collective rights. Although it does not explicitly mention the just energy transition, it is expected that the next Advisory Opinion requested by Colombia and Chile on [Climate Emergency and Human Rights](#), requested by Colombia and Chile, will have a clear focus on the importance of ensuring that the energy transition has respect for human rights and natural resources at its core.

There is currently a case pending before the IACtHR that is expected to address the climate emergency and its relationship with human rights linked to extractivism: the case of [La Oroya vs. Peru](#). This case concerns the alleged international responsibility of the State for alleged health harms experienced by members of the La Oroya community as a result of acts of contamination carried out by a metallurgical complex in the local area.

The Inter-American System of Human Rights therefore provides important tools and standards to promote the protection of human rights in the context of business operations. To promote the implementation of these standards, civil society organisations and advocates can:

- ➔ Promote the adoption of laws compatible with the standards of international human rights standards, engaging directly with legislators and groups that have the capacity to influence the drafting of such laws.
- ➔ Seek the modification of laws that are contrary to the standards developed by the Inter-American System.
- ➔ Promote spaces for the dissemination of the guidelines established in the Inter-American standards with different social sectors, including civil society organisations, affected communities, public officials, legislative and justice authorities, companies and investors.
- ➔ Support the implementation of the Inter-American standards through strategic litigation on business, human rights and climate justice.

Using just transition strategic litigation

Although typically a tool of last resort, the use of strategic litigation is essential for cases linked to the energy transition where multiple communities and people in vulnerable situations are affected by the rapid expansion of the renewable energy industry. This type of litigation, unlike cases focused on the climate crisis, [*“seek to shape the manner in which the transition to renewable energy occurs, from the perspective of rights-holders.”*](#) They seek not to halt or slow the transition, but rather to ensure that it proceeds in just and equitable manner.

In the Latin American Civil Society Platform’s Parallel Forum on Business and Rights, held in October 2023 in Santiago de Chile, civil society actors and communities reported increasing use of just transition litigation. This strategy seeks to put people and the environment at the heart of the energy transition and address human rights violations caused by a rapid energy transition without due attention to human rights, such as forced relocation, poor consultation processes, failure to respect the Indigenous right to FPIC, and violations of the right to a healthy environment and clean water, as well as criminalisation of human rights defenders, barriers to access to justice, and insufficient understanding of the broad impacts of the energy transition by judicial bodies in the region.

This last element, regarding the lack of understanding on the part of justice operators and political officials of what a just energy transition based on respect for people and the environment entails, underscores the importance of a strategic approach to litigation – that is, litigation accompanied by advocacy at the political and social level, both nationally and internationally. This includes, where possible, direct dialogue with companies and their investors in order to tackle the problem at its root.

Some civil society organisations in the region are:

- ➔ Identifying emblematic cases of structural human rights violations related to the just transition by economic actors.
- ➔ Initiating judicial and extra-judicial actions against companies involved in the just transition, as well as against states, for their failure to fulfil their duty to respect and protect human rights, respectively.
- ➔ Including comprehensive reparation criteria in litigation, including a perspective that seeks not only to redress the violations that have occurred, but also to establish structural changes in state policies, plans and regulations that foresee the generation of new human rights violations derived from the advance towards the energy transition. Reparations should have a "transformative impact", that is, they should not only be carried out by public institutions and companies linked to the violations but should also reach all other companies in the sector involved in a potential human rights violation in order to achieve structural change.
- ➔ Working together with communities, civil society organisations and litigants to develop the most relevant and appropriate strategies socially, geographically and culturally, and exchange positive experiences and challenges of litigation in the areas of business, human rights and the just transition, per the aims of the Resource Centre-led Strategic Litigation Network on Business and Human Rights in Latin America.



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Business & Human Rights Resource Centre is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.

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