

# RENEWABLE ENERGY AND CIVIC SPACE

CIVIL SOCIETY'S ROLE IN A JUST TRANSITION



# RENEWABLE ENERGY AND CIVIC SPACE

---

Civil Society's Role in a Just Transition



**Author:** Julie Hunter, Legal Advisor, ICNL, [jhunter@icnl.org](mailto:jhunter@icnl.org)

**Cover photo:** Appolinary Kalashnikova

Published in June 2022 by the International Center for Not-for-Profit Law (ICNL)



# TABLE OF CONTENTS

---

I. INTRODUCTION	1
II. CHALLENGES TO CIVIC SPACE WITHIN CLIMATE AND TRANSITION EFFORTS	4
A. Civic Space Challenges Faced by Climate and Environmental Defenders	4
B. The Energy Transition: Background and Context	6
1. Social and Environmental Impacts of Renewable Installations Themselves	8
2. Impacts of Increased Mineral Extraction	12
3. Limited Public Participation, Consultation, and Harassment of Civic Actors	18
III. CENTERING INTERNATIONAL LAW STANDARDS AND CIVIL SOCIETY STRATEGIES IN THE TRANSITION	21
A. International Standards in Brief	21
B. Moving Forward: Strategies for a Civic-Space Friendly Transition	26
1. Mainstreaming civil society's ideas for reduced consumption and alternatives to extraction and heavy energy use	26
2. Protecting and supporting advocacy and legal actions by civil society	28
3. Expanding joint or community-owned and/or indigenous-led ventures	30
4. Broadening public participation opportunities in transition policymaking	32
5. Requiring consultation, due diligence, disclosure, and redress mechanisms	34
6. Developing internal corporate human rights and consultation/FPIC policies	35
IV. CONCLUSION	36
ADDENDUM DISCUSSION: Changing Geopolitics in the Energy Transition and Projected Impacts on Civic Space	38

# I. Introduction

With each passing year, the disasters wrought by climate change<sup>1</sup> increase the clarion call for effective action to address the climate crisis. An energy transition away from fossil fuels towards renewable energy is increasingly recognized as the most realistic solution to the urgent situation now at hand. Following the 2015 Paris Agreement negotiations, states seem to finally be coalescing around this transition, making unprecedented investments in renewable technologies.

While these developments are encouraging, the energy transition and renewable energies themselves are not without risk. To be sure, renewable energy technologies are an improvement over fossil fuels in many ways, both in terms of their shorter-term environmental and social impacts on air and water pollution, damage to public health, and water use, and their longer-term impacts through reduced contributions to global emissions and the resulting effects of climate change.<sup>2</sup> Still, renewable technologies have their own environmental and social impacts, which require careful assessment and input from civil society and local communities in order to mitigate potential harms. Likewise, the transition itself may pose risks if it is carried out using a top-down approach that excludes civil society and grassroots actors – particularly indigenous and local communities, as well as women and other marginalized groups.

Unfortunately, many governments and private actors do not have a good track record when it comes to including civil society in their deliberations around energy projects. Decades-long patterns of systemic abuse and marginalization of environmental defenders and climate activists have intensified in recent years. The exclusion of civil society has occurred regularly, from local projects to international policymaking, where civil society has been relegated to the fringe (oftentimes literally, ex-

1 Among them, superstorms, droughts, wildfires, rising sea levels, heatwaves, and floods; for more, see Climate Change 2022: Impacts, Adaptation, and Vulnerability, Intergovernmental Panel on Climate Change (IPCC) at SPM-8, [https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf) [hereinafter IPCC Report 2022].

2 See, e.g., Benefits of Renewable Energy Use, Union of Concerned Scientists, 20 Dec 2017, <https://www.ucsusa.org/resources/benefits-renewable-energy-use#:~:text=Using%20more%20renewable%20energy%20can,when%20fossil%20fuel%20prices%20spike>.



**"To achieve net zero emissions by 2050, we need an urgent transition from fossil fuels to renewable energy."**

United Nations (UN) Secretary-General António Guterres, addressing the virtual COP26 Roundtable on Clean Power Transition



**"Ensuring accelerated climate action and promotion of just transitions requires that all relevant processes be inclusive and that all actors in the climate justice movement be able to participate at every level."**

Clément Nyaletsossi Voule, UN Special Rapporteur on Rights to Freedom of Peaceful Assembly and of Association

cluded from physical decision-making spaces, in addition to encountering other barriers to access).<sup>3</sup>

The regular sidelining of civil society in climate change policymaking, combined with the inherent risks of resource and extractive projects, could lead to an exclusionary transition that ignores voices from civil society and the lived experiences of affected communities. Such an approach not only fails at inclusiveness but could prove ineffective as well, lacking the critical perspectives of those at the frontlines of the crisis.<sup>4</sup> As the Intergovernmental Panel on Climate Change (IPCC) noted in its recent 2022 report:

Inclusive governance that prioritises equity and justice in adaptation planning and implementation leads to more effective and sustainable adaptation outcomes... These approaches... focus on capacity-building, and meaningful participation of the most vulnerable and marginalised groups, and their access to key resources to adapt.<sup>5</sup>

The IPCC further notes that “Climate resilient development is facilitated by international cooperation and by governments at all levels working with *communities [and] civil society*... and by developing partnerships with *traditionally marginalised groups*, including women, youth, Indigenous Peoples, local communities and ethnic minorities.”<sup>6</sup>

Despite the IPCC’s recognition of multi-stakeholder and participatory adaptation policies to effectively address climate change, global trends appear to be headed in the opposite direction. The resurgence of authoritarianism coupled with crackdowns on civil society worldwide is well-documented.<sup>7</sup> COVID-19 has further accelerated non-participatory decision-making and the shrinking of global civic space.<sup>8</sup> As a result, the fast-tracking of large projects with significant social and environmental impacts has proliferated, along with the curtailment of public participation.<sup>9</sup>

3 See, e.g., Nina Lakhani, A continuation of colonialism': indigenous activists say their voices are missing at Cop26, THE GUARDIAN, <https://www.theguardian.com/environment/2021/nov/02/cop26-indigenous-activists-climate-crisis>.

4 See, e.g., IPCC Report 2022, SPM-28: “SPM.C.4.3 Maladaptation especially affects marginalised and vulnerable groups adversely (e.g., Indigenous Peoples, ethnic minorities, low-income households, informal settlements), reinforcing and entrenching existing inequities. Adaptation planning and implementation that do not consider adverse outcomes for different groups can lead to maladaptation, increasing exposure to risks, marginalising people from certain socio-economic or livelihood groups, and exacerbating inequity. Inclusive planning initiatives informed by cultural values, Indigenous knowledge, local knowledge, and scientific knowledge can help prevent Maladaptation.”

5 Id. at SPM-30 (emphases added). The IPCC further adds: “Vulnerabilities and climate risks are often reduced through carefully designed and implemented laws, policies, processes, and interventions that address context specific inequities such as [those] based on gender, ethnicity, disability, age, location and income... [these] include multi-stakeholder co-learning platforms, transboundary collaborations, community-based adaptation and participatory scenario planning.”

6 Id. at SPM-32 (emphases added).

7 Saskia Brechenmacher, Thomas Carothers, Defending Civic Space: Is the International Community Stuck?, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, 22 Oct 2019, <https://carnegieendowment.org/2019/10/22/defending-civic-space-is-international-community-stuck-pub-80110>.

8 For more, see ICNL & ECNL’s COVID-19 Civic Freedom Tracker: <https://www.icnl.org/covid19tracker/>; see also Top Trends: COVID-19 and Civic Space, ICNL, <https://www.icnl.org/post/analysis/top-trends-covid-19-and-civic-space>.

9 See, e.g., Nihar Gokhale, To kickstart the economy, India’s environment ministry is clearing projects in 10 minutes, QUARTZ INDIA, 5 May 2020, <https://qz.com/india/1851634/india-fast-tracks-green-clearance-to-spur-coronavirus-hit-economy/>.

An elitist energy transition that excludes civil society is likely to encounter greater opposition, and fail to provide comprehensive solutions grounded in the experience of frontline communities. Rather, recognition of the potential rights impacts of renewable technologies and the centering of civil society input could lead to a more effective energy transition.<sup>10</sup>

These issues are still nascent, as are discussions and efforts to develop a framework for an energy transition that promotes civic space. Recognizing the early stage of thinking on these topics, this paper aims to do the following. Section II focuses on existing civic space deficits in the climate and environmental sphere, and ways in which the transition and a shift to renewables might exacerbate these risks. It aims to:

1. Highlight the existing deficits of civic space in current climate policymaking, and general patterns around treatment of environmental defenders;
2. Identify some of the human rights risks of renewable technologies and documented impacts thus far, and note how many renewable projects are being undertaken without the consent, consultation, or participation of civil society and affected communities.

Section III aims to provide some practical solutions and alternative approaches to protect civic space and human rights in the upcoming transition, referring to international standards around public participation as a baseline. It aims to:

3. Summarize international standards around civic freedoms and public participation; and
4. Suggest alternative approaches and spotlight best practices that respect rights and center the participation of civic actors in the energy transition.

---

<sup>10</sup> See, e.g., Civil society plays key role in policymaking in a changing climate, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, 21 May 2012, <https://www.iied.org/civil-society-plays-key-role-policy-making-changing-climate>.



**An elitist energy transition that excludes civil society is likely to encounter greater opposition, and fail to provide comprehensive solutions grounded in the experience of frontline communities.**

The purpose of this discussion is not to discourage the growth of renewables or impede the transition<sup>11</sup> – but rather to ensure that civic space concerns are taken into account at the outset, for the best chance at a successful, just transition away from fossil fuels towards a sustainable model.

## II. Challenges to Civic Space within Climate and Transition Efforts

### A. CIVIC SPACE CHALLENGES FACED BY CLIMATE AND ENVIRONMENTAL DEFENDERS

Before delving into a discussion of renewables and their impact on civic actors, it is helpful to recognize some of the existing civic space challenges faced by climate and environmental defenders. ICNL has documented many such challenges, from harassment and outright violence towards defenders, to measures surveilling, censoring, and restricting foreign funding to environmental civil society organizations (CSOs).<sup>12</sup> Environmental defenders the world over are disproportionately subject to physical attacks and harassment, constituting the majority of human rights defenders killed in recent years.<sup>13</sup> Climate activism, as a subset of broader environmental work, has also been met with increasing repression.

From banning Extinction Rebellion strikes in London to instituting felony penalties for civil disobedience actions through critical infrastructure laws in North America, groups' right to peacefully assemble and engage in civic discourse on climate has been repeatedly challenged.<sup>14</sup> Civil society's freedom of association rights have also been limited, with governments requiring burdensome audits or foreign funding compliance measures, labeling environmental organizations as foreign agents, and in some cases terminating environmental or climate-focused CSOs altogether.<sup>15</sup> Governments

---

11 Indeed, we are well-aware of efforts, funded by fossil fuel lobbies, to discredit and challenge renewable energy projects, often through front 'citizen action,' consumer, dark money groups, or other types of alleged grassroots actors (see, e.g., How Fossil Fuel Lobbyists Used "Astroturf" Front Groups to Confuse the Public, UNION OF CONCERNED SCIENTISTS, 11 Oct 11, 2017, <https://www.ucsusa.org/resources/how-fossil-fuel-lobbyists-used-astroturf-front-groups-confuse-public>). This trend is concerning, particularly given the fossil fuel industry's long campaign to fund and promote climate denialism, which successfully spread misinformation for decades, further delaying effective mitigation (Shannon Hall, Exxon Knew about Climate Change almost 40 years ago, SCIENTIFIC AMERICAN, 26 Oct 2015, <https://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>). Our approach therefore is not merely to criticize renewables, but to point out areas where their rights impacts may have been understated, in part due to lack of collaboration with civil society – and to promote alternatives such as community-led renewable projects.

12 Closing Civic Space for Climate Activists, ICNL, June 2020, <https://www.icnl.org/wp-content/uploads/Climate-Change-and-Civic-Space-Briefer-vf.pdf> [ICNL Climate Briefer].

13 For many decades, environmental activism has been one of the most dangerous arenas for civil society. The majority of human rights defenders killed in 2018 were involved in work relating to land, indigenous and environmental issues. For more, see Front Line Defenders Global Analysis 2018, FRONT LINE DEFENDERS, 2019, [https://www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2018.pdf](https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf), and Enemies of the State, GLOBAL WITNESS, 30 July 2019, <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>.

14 See ICNL Climate Briefer, *supra* note 12.

15 *Id.* at 3.



have wiretapped climate activists, smeared them as domestic terrorists, and attempted to gag public discussion and media coverage of climate and environmental issues.<sup>16</sup> Environmental defenders are regularly sued, often by private companies, in strategic lawsuits against public participation (SLAPPs), draining non-profit resources and limiting civil society's ability to provide important watchdog and civic checks on industry activity.<sup>17</sup>

Civil society has also been marginalized in the overall policy discussions around how to address the climate crisis. States hosting the UN Climate Change Conference of Parties (COPs) have historically enacted far more barriers for civil society looking to participate in the UN Framework Convention on Climate Change (UNFCCC) process than for private sector actors (including fossil fuel companies, who have boasted about influencing climate agreements).<sup>18</sup> While fossil fuel companies may be impacted by climate regulations, civil society and marginalized groups are disproportionately impacted by climate change itself, and therefore would seemingly merit a seat at the table, perhaps determined in part by vulnerability to impacts. And yet, some COP host governments have denied visas for civil society actors, deported activists and defenders, and limited their access to decision-making processes.<sup>19</sup> Others have enforced blanket bans on demonstrations, placed key climate activists under house arrest, and enacted laws prohibiting spontaneous peaceful assemblies in advance of the COP.<sup>20</sup>

Around two-thirds of civil society organisations (particularly from the Global South) who usually send delegates to COPs were excluded from COP26 – popularly known as ‘the most exclusive COP ever’ – due to COVID-19 measures, visa restric-

<sup>16</sup> Id. at 4.

<sup>17</sup> Id. at 5.

<sup>18</sup> See, e.g., Kate Aronoff, Shell Oil Executive Boasts that his Company Influenced the Paris Agreement, *THE INTERCEPT*, 8 Dec 2018, <https://theintercept.com/2018/12/08/shell-oil-executive-boasts-that-his-company-influenced-the-paris-agreement/>.

<sup>19</sup> ICNL Climate Briefer, *supra* note 12, at 5-6.

<sup>20</sup> See, e.g., Arthur Neslen, Paris climate activists put under house arrest using emergency laws, *THE GUARDIAN*, 27 Nov 2015, <https://www.theguardian.com/environment/2015/nov/27/paris-climate-activists-put-under-house-arrest-using-emergency-laws>; and Katharina Rall, Polish Crackdown Ahead of Climate Talks Bill Will Limit Protests During COP24 Summit, *HUMAN RIGHTS WATCH*, 1 Feb 2018, <https://www.hrw.org/news/2018/02/01/polish-crackdown-ahead-climate-talks>.

# 2/3

Approximate proportion of civil society organisations who usually send delegates to COPs that were excluded from COP26 due to COVID-19 measures, visa restrictions, and other hurdles.

# 0.3%

Percentage of registered CSO observers who were allowed into the COP26 negotiating area on the first day (36 out of 11,700).

# 500

Number of lobbyists sent by fossil fuel companies to COP26, two dozen more than the largest country delegation at the summit.



tions, and other hurdles.<sup>21</sup> Civil society actors who did manage to reach Glasgow were faced with unexpected barriers to access the venue and even online spaces, with only 36 of 11,700 registered observers allowed into the negotiating area on the first day of negotiations.<sup>22</sup> Those who were not allowed to attend were invited to follow the negotiations on a virtual platform that experienced technical difficulties and failed to effectively transmit the talks.<sup>23</sup> Meanwhile, according to Global Witness, more than 100 fossil fuel companies sent over 500 lobbyists to COP26 – more than any single country at the summit (and double the event’s official indigenous representation).<sup>24</sup> COP27, to be held in Egypt in November 2022, is likely to face even higher barriers of access and pose risks to civil society wishing to participate, given Egypt’s closed civic space.<sup>25</sup>

For the most part, any tangential references to civil society (usually “non-governmental organizations” or occasionally “local communities” and “people in vulnerable situations”<sup>26</sup>) that have made it into climate agreement documents have yet to translate into concrete practice in terms of integrating civil society in the climate policymaking process. Global plans for the energy transition are likewise proceeding without much civil society input, while most mechanisms for renewable projects do not incorporate robust consultation and cooperation with civic actors.

We will explore these dynamics, and the challenges to civil society posed by the transition, in the following sections.

## B. THE ENERGY TRANSITION: BACKGROUND AND CONTEXT

The era in which renewable energy appeared as a distant pipe dream is long over. By 2025, renewables are forecast to supply one-third of the world’s electricity, with hydro-power making up about half that output, followed by wind and solar photovoltaics.<sup>27</sup> Falling costs and favorable government policies, including significant subsidies and investment, have further driven this shift. In 2020, during the first year of the COVID-19 pandemic, the growth rate of the world’s renewable energy capacity jumped 45%, in part due to a 90% rise in global wind capacity and 23% expansion in new solar pow-

21 Gina Cortés Valderrama, Twenty years too late – our review of COP26, WECF INTERNATIONAL, 2 Dec 2021, <https://www.wecf.org/twenty-years-too-late-our-review-of-cop26/>; see also Nina Lakhani, Cop26 legitimacy questioned as groups excluded from crucial talks, THE GUARDIAN, 8 Nov 2021, <https://www.theguardian.com/environment/2021/nov/08/cop26-legitimacy-questioned-as-groups-excluded-from-crucial-talks>.

22 Id.

23 Valderrama, *supra* note 21.

24 Angela Dewan, Fossil fuel companies have over 500 people at COP26, more than any single country, report says, CNN, 8 Nov 2021: The number of fossil fuel lobbyists also outnumbered “the event’s official Indigenous constituency by around two to one, as well as the number of delegates from the eight-worst affected countries by climate change over the last two decades -- Puerto Rico, Myanmar, Haiti, the Philippines, Mozambique, the Bahamas, Bangladesh and Pakistan.”

25 See, e.g., Egypt: Rampant Abuses Make for Poor Climate Host, HUMAN RIGHTS WATCH, 14 Nov 2021, <https://www.hrw.org/node/380404/printable/print>.

26 PARIS AGREEMENT TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Dec. 12, 2015, T.I.A.S. No. 16-1104, at Preamble, art. 7(5, 9c), & art. 16(8), [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

27 Rina Chandran, Indigenous people ‘under threat’ from Asia clean energy push, THOMSON REUTERS FOUNDATION 8 Feb 2021, <https://www.reuters.com/article/landrights-renewables-environment-idUKL8N2KE58R>.

er installations.<sup>28</sup> Prices of renewable technologies continue to decline, becoming cheaper in some cases than fossil fuels or nuclear power plants.<sup>29</sup> As a result of these developments, the International Renewable Energy Agency predicts that “renewables could supply four-fifths of the world’s electricity by 2050.”<sup>30</sup>

It is increasingly accepted that an energy transition reliant on renewables is integral to solving the climate crisis. However, civil society advocates caution that this transition will not be successful if it is dominated by “green extractivism,” in which mining and other extractive actors “greenwash” destructive activities in the name of “solving” climate change. On March 31, 2022, United Nations Secretary-General António Guterres established an expert panel led by Canada’s former environment minister to scrutinize whether companies’ efforts to curb climate change were credible or mere greenwashing, designed to make companies look good when they are actually fueling global warming.<sup>31</sup> Similarly, emphasizing ‘green growth’ to justify further industrial expansion could be counter-productive, as compared to reducing energy-intensive production and consumption overall.<sup>32</sup>

Moreover, the renewable sector is not impervious to human rights violations, nor has it appeared – on the whole – to adopt a different approach to civil society engagement. According to research by the Business and Human Rights Resource Centre (BHRRC), “renewable energy is now the sector with the third highest number of threats against human rights defenders — only behind mining and agribusiness.”<sup>33</sup> BHRRC, which has

28 Bill Chappell, Renewable Energy Growth Rate up 45% Worldwide in 2020; IEA Sees ‘New Normal,’ NPR, 11 May 2021, <https://www.npr.org/2021/05/11/995849954/renewable-energy-capacity-jumped-45-worldwide-in-2020-iea-sees-new-normal>.


29 Noah Long, Kevin Steinberger, Renewable Energy Is Key to Fighting Climate Change, NRDC, 26 July 2016, <https://www.nrdc.org/experts/noah-long/renewable-energy-key-fighting-climate-change>.

30 Renewable Energy: A key climate solution, INTERNATIONAL RENEWABLE ENERGY AGENCY, last accessed 25 Mar 2022, <https://www.irena.org/climatechange/Renewable-Energy-Key-climate-solution>.

31 Greenwashing? UN appoints panel to probe firms on climate efforts, AL JAZEERA, 31 Mar 2022, <https://www.aljazeera.com/economy/2022/3/31/un-climate>.

32 See, e.g. A Material Transition: Exploring Supply and Demand Solutions for Renewable Energy Materials, WAR ON WANT, March 2021, [https://waronwant.org/sites/default/files/2021-03/A%20Material%20Transition\\_report\\_War%20on%20Want.pdf](https://waronwant.org/sites/default/files/2021-03/A%20Material%20Transition_report_War%20on%20Want.pdf) [Transition Report].

33 Solina Kennedy, Renewable Energy Poses a Serious Threat to Human Rights — But It Doesn’t Have To, COLUMBIA CENTER ON SUSTAINABLE INVESTMENT, 5 Sept 2019, <https://news.climate.columbia.edu/2019/09/05/renewable-energy-human-rights/>.



**The renewable sector is not impervious to human rights violations, nor has it appeared – on the whole – to adopt a different approach to civil society engagement.**

developed the first human rights benchmark of the world's 16 largest publicly traded wind and solar energy companies, found that none of these companies had policies to respect land rights, or for the just and fair relocation of residents.<sup>34</sup> Furthermore, the average company score on the Benchmark was just 22%, indicating that “as a whole, the industry has a long way to go to demonstrate its respect for the human rights of communities and workers in their operations and supply chains.”<sup>35</sup>

Given that the energy transition is already underway, and that renewables will occupy an increasingly large portion, if not the majority, of energy production in the near future, it is vital to realistically assess the challenges and opportunities the transition presents for civil society.<sup>36</sup> Below we identify three key areas of concern for civil society around renewable technologies and the energy transition.

## 1. Social and Environmental Impacts of Renewable Installations Themselves

Renewable technologies have implications for civic actors and local communities that must be taken into account when designing a civic space-respecting transitional framework. According to BHRRC, serious human rights allegations, including killings, land grabs, dangerous working conditions, poverty wages, harm to indigenous peoples' lives and livelihoods, and lack of consultation have been made in every region and across the five sub-sectors of renewable energy development: wind, solar, bioenergy, geothermal, and hydropower.<sup>37</sup>

Renewable projects have in some cases been subject to less scrutiny than traditional fossil fuel projects (e.g., coal mining), and often receive government incentives and fast-tracking, as has been the case with large-scale solar projects in India and elsewhere.<sup>38</sup> Public hearings and environmental assessments for renewable projects may be insufficient or nonexistent. In many cases, affected communities are still not being adequately consulted, with few remedies or established grievance mechanisms provided to seek redress for human rights violations.<sup>39</sup> The following sections explore some of the specific civic space violations documented with respect to particular renewable technologies and companies.

---

<sup>34</sup> Chandran, *supra* note 27.

<sup>35</sup> Renewable Energy & Human Rights Benchmark, Briefing, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, 29 Jun 2020, <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>

<sup>36</sup> According to one source, “renewables are set to become the largest source of generation by 2025, overtaking coal — and ending the fossil-fuel domination of the last decades,” Leslie Hook and Henry Sanderson, How the race for renewable energy is reshaping global politics, FT MAGAZINE, 4 Feb 2021 <https://www.ft.com/content/a37d0ddf-8fb1-4b47-9fba-7ebde29fc510>.

<sup>37</sup> Transition Report, *supra* note 31.

<sup>38</sup> Chandran, *supra* note 27.

<sup>39</sup> May Thazin Aung, A just transition to renewables must recognize the rights of Indigenous Peoples, STOCKHOLM ENVIRONMENT INSTITUTE, 4 Jun 2020, <https://www.sei.org/perspectives/a-just-transition-to-renewables-must-recognize-the-rights-of-indigenous-peoples/>.





## Wind and Solar

Wind and solar generation may require at least 10 times as much land per unit of power produced than coal- or natural gas-fired power plants, and tend to be located where resource availability is best.<sup>40</sup> Consequently, land rights are often affected by investment in wind or solar projects,<sup>41</sup> with some rural communities uprooted, often without compensation or adequate relocation schemes. Instead, “land areas are being envisioned as empty spaces to accommodate these projects - including grasslands, forests and agricultural land.”<sup>42</sup>

For instance, alleged human rights violations affecting local indigenous communities in connection with wind farms in Oaxaca, Mexico, have received attention in recent years<sup>43</sup> - particularly the case of the Binnizá people, who demanded the cancellation of a mega-infrastructure wind farm and restoration of the land allocated to the project, alleging threats and aggression by actors carrying out the project.<sup>44</sup> Similarly, in India, there have been community protests against the installation of windmills allegedly harming sacred forestland,<sup>45</sup> as well as solar power plants, as in the case of Mikir Barmuni Grant village in the eastern state of Assam, where a 15 MW solar power plant was forcibly built on agricultural land, displacing hundreds of villagers and farmers.<sup>46</sup>

Moreover, solar panel manufacturing practices themselves have been criticized for exposing workers to hazardous chemicals, such as cadmium.<sup>47</sup> Additional controversy has stemmed from reports tying the solar industry to forced labor in China, particularly to human rights abuses of the ethnic Uyghur population in Xinjiang, with China’s polysilicon manufacturers said to be actively participating in the “resettlement” and forced labor of Uyghurs.<sup>48</sup> An estimated 50% of the global supply of polysilicon, a critical com-

---

40 Samantha Gross, Renewables, Land Use, and Local Opposition in the United States, Foreign Policy, BROOKINGS, Jan 2020, [https://www.brookings.edu/wp-content/uploads/2020/01/FP\\_20200113\\_renewables\\_land\\_use\\_local\\_opposition\\_gross.pdf](https://www.brookings.edu/wp-content/uploads/2020/01/FP_20200113_renewables_land_use_local_opposition_gross.pdf).

41 Nicholas Diamond, Adapting Human Rights Due Diligence for Renewable Energy—Key Points, BLOOMBERG LAW, 2 July 2021, <https://news.bloomberglaw.com/environment-and-energy/adapting-human-rights-due-diligence-for-renewable-energy-key-points>.

42 Chandran, *supra* note 27.

43 Diamond, *supra* note 41.

44 Mexico | What you didn't know about renewable energies: the struggle of the Binnizá people of Unión Hidalgo, INTERNATIONAL SERVICE FOR HUMAN RIGHTS, 17 Jun 2021, <https://ishr.ch/latest-updates/mexico-what-you-didnt-know-about-renewable-energies-the-struggle-of-the-binniza-people-of-union-hidalgo/> [hereinafter Hidalgo].

45 India: Community protests against installation of more windmills allegedly harming sacred forestland; company response included, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, 20 Aug 2021, <https://www.business-humanrights.org/en/latest-news/india-community-protests-against-installation-of-more-windmills-allegedly-harming-their-sacred-forestland-company-response-included/>.

46 Chandran, *supra* note 27; Ananya Singh, ‘Corporate Capture’ of Solar Power: Assam Project Illegally Took Fertile Land from Karbis and Adivasis, Report Finds, THE CITIZEN, 16 May 2021, <https://www.thecitizen.in/index.php/en/newsdetail/index/13/20357/corporate-capture-of-solar-power-assam-project-illegally-took-fertile-land-from-karbis-and-ativasis-report-finds>.

47 Diamond, *supra* note 41.

48 Matthew Hall, Who’s fixing up human rights issues in renewables supply chains?, POWER TECHNOLOGY, 7 Apr 2021, <https://www.power-technology.com/features/whos-fixing-up-human-rights-issues-in-renewables-supply-chains/>; see also Solar Energy Boom Could Worsen Forced Labor in China, Group Says, BLOOMBERG NEWS, 28 Mar 2022, <https://www.bnnbloomberg.ca/solar-energy-boom-could-worsen-forced-labor-in-china-group-says-1.1744322>.

ponent of solar modules, is produced in the Xinjiang region, where the polysilicon industry has quadrupled in size since January 2018.<sup>49</sup>

Despite these drawbacks, it is important to note that there are also significant attempts to integrate solar power and windfarm into different landscapes, and that many farmers and local communities welcome such projects as a potential source of revenue. Moreover, some renewable energy technology can be situated on degraded, contaminated, or otherwise unusable land—such as deserts—in order to reduce land use stress.<sup>50</sup> This is typically not the case for fossil fuel extraction, which is not as flexible. Renewables also have the potential for mixed land use, and synergies between renewables and other land uses, which is also not the case for polluting fossil fuel land use.<sup>51</sup>

In many cases, the more positive integrations of wind and solar power can come with the involvement of civil society and local communities in the development of such projects, as discussed in the best practices section below.



### Hydropower

Hydropower projects have often come under scrutiny for various environmental and social harms. Plentiful in southeast Asia, hydropower installations have been linked with drought and reduced fish catch in the Mekong River, which sustains fishing and farming for 60 million people.<sup>52</sup> Hydropower dams have also collapsed or failed, with severe consequences for surrounding communities, such as in 2018, when a dam under construction in

Laos broke, killing dozens and sweeping away homes.<sup>53</sup>

In Nepal, the 140 MW Tanahu hydropower project, funded by the Asian Development Bank, is expected to affect nearly 800 households of the Magar indigenous community along the river Seti.<sup>54</sup> The community will lose two temples and nine cremation sites, and 60% of residents will lose farmland.<sup>55</sup> The majority of Chinese Belt and Road Initiative (BRI) projects that have come under scrutiny for alleged human rights violations (out of 679 total, around 87 concern renewable energy) also relate to hydropower projects.<sup>56</sup>

---

49 Phred Dvorak and Matthew Dalton, Solar-Energy Supply Chain Depends on Region Where China Is Accused of Genocide, WALL STREET JOURNAL, 11 Apr 2021, <https://www.wsj.com/articles/solar-energy-supply-chain-depends-on-region-where-china-is-accused-of-genocide-11618147228>.

50 Jacqueline L. Waite, Land reuse in support of renewable energy development, 66 LAND USE POLICY 105-110: 105 (2017), <https://isiarticles.com/bundles/Article/pre/pdf/141602.pdf>; see also RE-Powering America's Land Potential Advantages of Reusing Potentially Contaminated Land for Renewable Energy, US EPA, July 2012, <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/ieed/pdf/idc1-021630.pdf>.

51 See, e.g., R.R. Hernandez, A. Armstrong, J. Burney, et al., Techno-ecological synergies of solar energy for global sustainability, 2 NAT SUSTAIN 560-568 (2019), <https://doi.org/10.1038/s41893-019-0309-z>.

52 Chandran, *supra* note 27.

53 *Id.*

54 *Id.*

55 *Id.*

56 Golda Benjamin, Human rights impact of China's 'Going Out' policy highlights challenges of a just transition, REUTERS EVENTS, 19 Aug 2021, <https://www.reutersevents.com/sustainability/human-rights-impact-chinas-going-out-policy-highlights-challenges-just-transition>.



## Biofuels

Biofuels are another area of renewable energy with substantial social and environmental impact, including on labor and land rights with respect to the palm oil industry in Malaysia, Indonesia, the Philippines, and Thailand.<sup>57</sup> Promotion of palm oil as a source of renewable energy has led to rampant expansion of oil palm plantations in these countries, mostly in rural areas populated by indigenous peoples, where land clearing has resulted in the killing and criminalization of environmental defenders as well as the displacement of indigenous peoples, loss of livelihoods, and use of forced and child labor.<sup>58</sup> Bioenergy projects require the largest land footprint of any renewable energy subsector, making land grabs a particular point of concern.<sup>59</sup> A 2020 study additionally suggested that the biofuels policies of the EU and other regions will massively increase deforestation over the next decade, leading to an estimated 11.5 billion tons in CO2 emissions.



## Grid Development

In order to balance the fluctuating electricity produced by wind and solar power plants and successfully transition to renewable energy, significant grid development in every part of the world will be required. In many countries, however, grid development is often exclusively managed by governments and large energy companies, with little public or civil society input, despite impacting local communities.<sup>60</sup> Without the input of civil society and local groups, grid expansion plans risk not sufficiently prioritizing environmental, social, and climate goals, thereby causing further direct and downstream harms.<sup>61</sup>

<sup>57</sup> Diamond, *supra* note 41.

<sup>58</sup> Aung, *supra* note 39.

<sup>59</sup> Hall, *supra* note 48.

<sup>60</sup> One Surprising Way Citizens Can Ensure the Energy Transition, REN21, 27 Oct 2020, <https://www.ren21.net/citizens-energy-transition/> [hereinafter REN21].

<sup>61</sup> *Id.*

**In many countries, grid development is often exclusively managed by governments and large energy companies, with little public or civil society input, despite impacting local communities.**





## Waste Disposal

Finally, the disposal of renewable technologies carries its own environmental and social implications. Solar panels, which often contain lead, cadmium, and other toxic metals, are one of the largest global contributors of electronic waste, in part due to their size. They are predicted to produce 78 million metric tons of waste by 2050 as current solar panels expire—some 80 percent more than the total annual waste from all combined technologies today.<sup>62</sup> Much of this waste is generated by the Global North and sent to countries in the Global South, where a small amount may be mined for reusable materials and sold back to world markets. The disposal and mining of e-waste has caused toxic pollution, fueling environmental and public health crises in recipient countries and waste sites.<sup>63</sup> For instance, in Agbogbloshie, one of the largest e-waste processing sites in Ghana, children are employed to help dismantle electronic goods, extract metals, and then burn the waste. This produces smoke that envelops the surrounding communities, contributing to high levels of lead and other contaminants in the blood of those living near the processing sites.<sup>64</sup>

Acknowledgment of the challenges raised by renewables, in terms of environmental, land use, labor, and social impacts, is helpful for understanding what early mitigation measures are possible. The challenges also raise the need for a different approach to renewable technology development – one that integrates civil society and local actors, in order to establish working methods that avoid the historical pitfalls of the fossil fuel and extractive sectors.

## 2. Impacts of Increased Mineral Extraction

The increased extraction of key minerals and expansion of mining activity worldwide to supply the energy transition is of great concern to many civil society groups and environmental defenders. For decades, these groups and individuals have fought to highlight massive human rights violations, environmental damage, and corruption perpetrated by the global mining sector.

Expanding renewable energy is currently a mineral intensive enterprise, requiring copper to conduct electricity flows; manganese, platinum and rare earth magnets for wind turbine gearboxes; and lithium, cobalt and nickel for electronic vehicle batteries. According to the International Energy Agency (IEA), a mid-century zero-carbon world will take a sixfold increase in the production of these and other transition minerals by 2030. The demand for lithium is expecting to grow by over 40 times by 2040, followed

---

62 Carl-Johan Karlsson and Katarina Zimmer, Green Energy's Dirty Side Effects, FOREIGN POLICY, 18 Jun 2020, <https://foreignpolicy.com/2020/06/18/green-energy-dirty-side-effects-renewable-transition-climate-change-cobalt-mining-human-rights-inequality/>.

63 Id.

64 Id.; Adam Minter, The Burning Truth Behind an E-Waste Dump in Africa, SMITHSONIAN MAGAZINE, 13 Jan 2016, <https://www.smithsonianmag.com/science-nature/burning-truth-behind-e-waste-dump-africa-180957597/>.

by graphite, cobalt and nickel (around 20-25 times). The expansion of electricity networks means that copper demand for grid lines could more than double over the same period.<sup>65</sup> The rapid growth of hydrogen as an energy carrier will also require significant increases in nickel, zirconium, and platinum-group metals for fuel cells.<sup>66</sup>

The expected supply from existing mines and projects under construction is estimated to meet only half of projected lithium and cobalt requirements and 80% of copper needs by 2030.<sup>67</sup> Such projections have led to already surging prices, exacerbated by the highly concentrated supply chains through which transition minerals flow and small groups of countries – for instance, the Democratic Republic of the Congo (cobalt), Indonesia and the Philippines (nickel), Australia and Chile (lithium and copper) – who dominate production, with China rapidly increasing investments.

While an exhaustive review of the impacts of increased mineral extraction are beyond this paper, common mining externalities include:

- loss of land and displacement of communities without adequate compensation;
- destruction of habitat and impacts on local biodiversity;
- food insecurity and loss of livelihoods;
- health impacts from water or air pollution;
- severe gender, youth, and indigenous impacts (including gender-based violence and forced/child labor, and the desecration of indigenous cultural sites and sacred spaces);
- violent conflict and the funding of long-running civil wars;
- bribery, corruption, and dependence on unsustainable resource economies; and
- gross human rights abuses, including killings (particularly targeted assassinations of leading environmental defenders and civil society activists), torture, forced labor and slavery.<sup>68</sup>

In short, the rap sheet of the global mining industry is long, and many of these abusive practices remain pervasive worldwide.

In the current environment, the renewable sector's heavy reliance on minerals does not seem likely to improve this state of affairs. This is particularly so given that the primary companies mining the key commodities vital to the clean energy transition—cobalt, cop-

---

<sup>65</sup> The Role of Critical Minerals in Clean Energy Transitions, IEA, 2021, <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary> [hereinafter IEA Report].

<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> Transition Report, *supra* note 31.

per, lithium, manganese, nickel and zinc—are beset with allegations of human rights abuse.<sup>69</sup> The risk to civil society and local communities is particularly great, given that the largest reserves of metals and minerals required for renewable technologies tend to be found in weak states with poor governance records.<sup>70</sup>

For instance, batteries for electric vehicles have driven cobalt consumption and production, accounting for 55% of total cobalt consumption in 2019.<sup>71</sup> More than 60% of the world’s cobalt supply originates in the Democratic Republic of the Congo (DRC), where cobalt mining has been linked to child labor, the financing of armed groups, corruption,<sup>72</sup> the subjugation of ethnic minorities, toxic pollution, biodiversity loss, and gender inequality.<sup>73</sup> An essential material for a transition to green energy and for battery manufacturers, cobalt’s problematic production has now led to the concept of “blood batteries.”<sup>74</sup>

Similarly, the increased demand for lithium for use in solar panels has triggered numerous concerns around extractive abuses. Examples abound, such as in the Atacama Desert in Chile, the world’s driest environment, where water-intensive lithium mining has triggered a wave of legal battles over water rights by indigenous communities against multinational mining companies.<sup>75</sup> BHRRC has recently profiled problematic lithium mining case studies in Serbia, Spain, and the US, where there are growing concerns of communities around consultation and consent in the licensing and exploration of transition mineral mining.<sup>76</sup>

69 BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, Transition Minerals Tracker: Global analysis of human rights in the energy transition, Briefing, 4 May 2022, <https://www.business-humanrights.org/en/from-us/briefings/tmt-2021/>.

70 A New World: The Geopolitics of the Energy Transformation, INTERNATIONAL RENEWABLE ENERGY AGENCY, 2019, [https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2019/Jan/Global\\_commission\\_geopolitics\\_new\\_world\\_2019.pdf](https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2019/Jan/Global_commission_geopolitics_new_world_2019.pdf) [hereinafter Energy Geopolitics].

71 Transition Report, supra note 31.


72 Kevin Watkins, Mining holds the key to a green future – no wonder human rights activists are worried, THE GUARDIAN, 27 Jun 2021, <https://www.theguardian.com/business/2021/jun/27/mining-holds-the-key-to-a-green-future-no-wonder-human-rights-activists-are-worried>.

73 Karlsson and Zimmer, supra note 62.

74 Transition Report, supra note 31.

75 Watkins, supra note 72.

76 BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, “You can’t eat lithium”: Community consent and access to information in transition mineral mining exploration, <https://www.business-humanrights.org/en/from-us/briefings/tmt-2021/you-cant-eat-lithium-community-consent-and-access-to-information-in-transition-mineral-mining-exploration-in-europe-and-north-america/> (last accessed 12 May 2022).



**The risk to civil society and local communities is particularly great, given that the largest reserves of metals and minerals required for renewable technologies tend to be found in weak states with poor governance records.**



In Indonesia, the Philippines, and Australia, meanwhile, nickel production – largely for use in electric vehicles – has led to battles over water and air pollution, health impacts, and other environmental concerns.<sup>77</sup>

With respect to socioenvironmental conflicts worldwide, the mining of mineral ores and building materials represents more than any other category listed in the Global Environmental Justice Atlas (646 of 3,303 cases of socioenvironmental conflict worldwide).<sup>78</sup> At least 273 of those conflicts relate to the extraction of transition minerals, nearly 10 percent of the total number of cases.<sup>79</sup> To provide just one example, armed groups in Colombia, site of the world’s longest-running internal armed conflict, control abundant supplies of illegal tin, tungsten, tantalum and gold.<sup>80</sup> The expected shortages of both lithium and cobalt supplies in the coming decades could fuel further competition and conflict.<sup>81</sup>

In addition, mineral extraction itself can be emissions-intensive. The increased demand for minerals has led to a rise from 11.6 billion tons of extracted minerals in 1970, to 53.1 billion tons in 2017, accounting for around 20% of climate impacts in this time period.<sup>82</sup> The World Bank points out that “the mining industry consumes up to 11% of global energy use, while 70% of mining projects from the six largest mining companies operate in water-stressed regions.”<sup>83</sup> As discussed in the below case study on deep sea mining, any increase in extractive activity, undertaken to supply the energy transition, that then results in a net increase in climate emissions is counter-productive.

The question of intensified mineral extraction to power the energy transition is thus not only a question of accounting for and mitigating externalities, including downstream environmental harms, human rights violations, and civic space impacts. It is a threshold question centered on whether increased reliance on an inherently unsustainable industry with a questionable-at-best human rights and environmental record can actually be a viable part of the solution to climate change. Fortunately, there are civil society-led alternatives to heavy reliance on traditional mining supply chains to power the energy transition and ‘solve’ climate change – as discussed in subsequent sections.

---

77 Max Opray, Nickel mining: the hidden environmental cost of electric cars, *THE GUARDIAN*, 24 Aug 2017, <https://www.theguardian.com/sustainable-business/2017/aug/24/nickel-mining-hidden-environmental-cost-electric-cars-batteries>.

78 As of 27 October 2020. Transition Report, *supra* note 31.

79 *Id.*

80 Energy Geopolitics, *supra* note 70.

81 Clare Church, Green Conflict Minerals: Investigating Renewable Energy Supply Chains in Fragile States, *NEW SECURITY BEAT*, 17 Sept. 2018, <https://www.newsecuritybeat.org/2018/09/green-conflict-minerals-investigating-renewable-energy-supply-chains-fragile-states/>.

82 Transition Report, *supra* note 31.

83 *Id.*

## CASE STUDY

### The Cost of Marginalizing Civil Society: Seabed Mining and ‘Cataclysmic’ Climate Events

In the Pacific region and elsewhere, deep sea minerals have been promoted by some industry and government actors as the solution to the increased demand for minerals needed to power the energy transition.<sup>1</sup> Unlike terrestrial mining, deep sea mining is purportedly ‘low-impact,’ with fewer expected social and environmental impacts – at least, according to seabed mining companies and investors.<sup>2</sup>

Many civil society groups in the Pacific have expressed the opposite view, opposing exploratory seabed mining in Papua New Guinea and elsewhere. They note a wide variety of serious impacts just in the exploratory phase of seabed mining, including fishery shocks, marine pollution, and threats to traditional livelihoods, indigenous cultures, and marginalized groups, including women and youth.<sup>3</sup> Nevertheless, governments in the region have fast-tracked seabed mining regulatory frameworks and licenses for exploratory mining, with little to no public consultation, as the scramble to carve up the ocean floor continues.<sup>4</sup>

In the midst of this race, marine scientists have produced new, ground-breaking research around poorly understood deep sea and hydrothermal vent ecosystems. These scientists caution that ‘doomsday’ climatic events could result from the release of sequestered methane and carbon as a result of mining such ecosystems – leading to exponential contributions to global carbon emissions.<sup>5</sup> This discovery has been followed by new revelations around the critical role of the ocean as a carbon sink—in which excess heat resulting from increased atmospheric greenhouse gas concentrations is absorbed by the deep ocean, significantly limiting climate change impacts on the ocean’s surface and on land.<sup>6</sup> The recent nature of such discoveries underlines how primitive our understanding of the ocean is, along with actual legal protections for marine environments.

With respect to deep sea mining, therefore, civil society has called for restraint and moratoria until these ecosystems are better understood – or, at the very least, baseline studied. Mean-

---

1 See, e.g. J. Aguon & J. Hunter, Second Wave Due Diligence: The Case for Incorporating Free, Prior, and Informed Consent into the Deep Sea Mining Regulatory Regime, 38 STAN. ENVTL. L.J. 3 (2019); see also Resource Roulette, PACIFIC NETWORK ON GLOBALISATION and BLUE OCEAN LAW, Jun 2016, <https://namati.org/wp-content/uploads/2016/06/Resource-Roulette-.pdf>; and J. Hunter, P. Singh, J. Aguon, Broadening Common Heritage: Addressing Gaps in the Deep Sea Mining Regulatory Regime, 16 Apr 2018, HARVARD ENV. LAW REV., <https://harvardelr.com/2018/04/16/broadening-common-heritage/>.

2 Id.

3 See Resource Roulette, *supra* note 84.

4 Id.

5 David Stauth, Hydrothermal Vents, Methane Seeps Play Enormous Role in Marine Life, GLOBAL CLIMATE, OR. ST. U. (May 27, 2016), <http://oregonstate.edu/ua/ncs/archives/2016/may/hydrothermal-vents-methane-seeps-play-enormous-role-marine-life-global-climate>.

6 J. Hunter, P. Singh, J. Aguon, Broadening Common Heritage: Addressing Gaps in the Deep Sea Mining Regulatory Regime, 16 Apr 2018, HARVARD ENV. LAW REV., <https://harvardelr.com/2018/04/16/broadening-common-heritage/>; see also Gerald A. Meehl, Model-Based Evidence of Deep-Ocean Heat Uptake During Surface-Temperature Hiatus Periods, 1 NATURE CLIMATE CHANGE 360, 360–62 (2011); Xiao-Hai Yan et al., The Global Warming Hiatus: Slowdown or Redistribution?, 4 EARTH’S FUTURE 472, 476–79 (2016); Genevieve Wanucha, How the Ocean Reins in Global Warming, MIT NEWS (Mar. 21, 2014), <https://perma.cc/HBC6-4DQ8>.

while, were mining companies to go forward and dig up seabed minerals to support the ‘green revolution,’ the climate crisis could be exponentially worsened by the release of sequestered methane or some other ill-understood ecosystem disturbance. In this case, civil society and local groups have been a leading voice advocating for the precautionary principle and restraint, in an area where ‘cowboy extractivism’ – hidden under a heavy layer of greenwashing – could lead to further irreversible environmental destruction.

### 3. Limited Public Participation, Consultation, and Harassment of Civic Actors

Historically, the lack of meaningful engagement with community stakeholders (particularly indigenous peoples, to whom special duties are owed under international law) has contributed to rights violations, adverse outcomes, and environmental disasters with respect to large-scale resource or infrastructure projects. Renewable projects have been no exception to this trend.

For instance, the aforementioned Binnizá people in Oaxaca, Mexico – an agrarian society with communitarian approaches to decisions about their territory, in which they have deep cultural and historical roots – claim that the wind farm project was carried out without any consultation and at the expense of their human rights. A Binnizá leader notes: “We are not against the wind project, we are against the way in which the consultation is being carried out. Our community is not informed. The consultation was reactivated with the same irregularities, aggressions, insults and threats from people paid to do it.”<sup>84</sup>

Similarly, in the case of the Tanahu hydropower project in Nepal, three-quarters of residents were reportedly not consulted about the project, and 80% did not receive any compensation or relocation assistance.<sup>85</sup>

Lack of consultation and free, prior, and informed consent (FPIC) are also rife in many biofuel projects and palm oil plantations. This is the case even in countries like Indonesia, which, since 1999, has required companies developing oil palm plantations to consult local communities at every stage of the project involving a series of government permits.<sup>86</sup> Despite these legal requirements, there are numerous examples of palm oil projects moving forward without any notification to – much less consultation or FPIC of – affected villagers and indigenous peoples, who are instead surprised to find bulldozers razing their lands and forests.<sup>87</sup>

<sup>84</sup> Hidalgo, *supra* note 44.

<sup>85</sup> Chandran, *supra* note 27.

<sup>86</sup> “When We Lost the Forest, We Lost Everything”: Oil Palm Plantations and Rights Violations in Indonesia, HUMAN RIGHTS WATCH, 22 Sept 2019, <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations#>.

<sup>87</sup> *Id.*



As mentioned, many power grid projects also suffer from a failure to consult civil society and affected communities.<sup>88</sup> In Germany, for example, there has been local opposition to new power lines and grid developments, leading to new measures to involve the public at an earlier stage in the planning of new power grids, and to ensure their compliance with environmental standards.<sup>89</sup>

Unfortunately, patterns of inadequate consultation and public participation in resource projects, including renewables, have generally been exacerbated by COVID-19. During the pandemic, many governments – including those in Europe and North America – fast-tracked infrastructure and resource projects, using the pandemic as an excuse to skirt public hearings and other critical public input processes.<sup>90</sup> Many governments also intensified their harassment of environmental defenders and CSOs bringing attention to the harms of large-scale projects impacting the environments – often stigmatizing them as being ‘anti-development’ or ‘anti-national.’<sup>91</sup>

In the Philippines, for example, environmental defenders and indigenous activists have been “red-tagged”<sup>92</sup> as communists or terrorists, leading to the arrest, harassment, and extra-judicial killings of many civil society representatives.<sup>93</sup> This occurred recently, when the government’s plan to build an “eco-friendly” metropolis called “New Clark City” that would use “green energy resources” to power its public utilities resulted in the bulldozing of forested areas and the displacement of the indigenous Aeta communities; the government subsequently ‘red-tagged’ members of the community (along with reporters, human rights lawyers, and a local government representative tasked to help the community), several of whom were then killed.<sup>94</sup> In another case, nine people from the Tumandok tribe were killed by security forces in separate raids after being tagged as “supporters” of communist rebels for protesting against a local dam project.<sup>95</sup>

In India, the government has proposed revisions to its environmental impact assessment process, exempting several large industries and projects from public consultation

---

88 REN21, *supra* note 60.

89 Katja Rottmann, Recommendations on Transparency and Public Participation in the Context of Electricity Transmission Lines, GERMANWATCH, Dec 2013, <https://germanwatch.org/sites/default/files/publication/8649.pdf>.

90 See, e.g., Green Voices: Public Participation for Climate Activists, ECNL, 2 Apr 2021, <https://ecnl.org/publications/green-voices-public-participation-climate-activists> [hereinafter Green Voices].

91 ICNL Climate Briefer, *supra* note 12, at 6-7.

92 The Philippines’ Commission on Human Rights defines red-tagging as “an act of state actors, particularly law enforcement agencies, to publicly brand individuals, groups, or institutions as affiliated to communist or leftist terrorists.” Pola Rubio, ‘Red-tagging’, its dangers, and the bodies proving its existence, YAHOO NEWS, 25 Mar 2022, <https://ph.news.yahoo.com/explainer-red-tagging-its-dangers-and-the-bodies-proving-its-existence-041830180.html>.

93 Bernice Beltran, Philippine environmental defenders in the crosshairs of red-taggers, EARTH JOURNALISM NETWORK, 15 Apr 2021, <https://earthjournalism.net/stories/philippine-environmental-defenders-in-the-crosshairs-of-red-taggers>; NTF-ELCAC says it welcomes junking of raps vs Aetas whom troops tagged as NPAs, PHILSTAR, 19 July 2021, <https://www.philstar.com/headlines/2021/07/19/2113599/ntf-eltac-says-it-welcomes-junking-raps-vs-aetas-whom-troops-tagged-npas>.

94 *Id.*

95 *Id.*

and allowing post-facto clearance for projects that began without obtaining the required permissions.<sup>96</sup> This dilution of public consultation promises to further undermine the rights of tribal communities already facing threats due to illegal forest clearances.<sup>97</sup> India has further limited the ability of environmental groups focused on clean renewables, like Greenpeace,<sup>98</sup> to operate and receive funding – and persecuted an Indian youth climate activist for merely distributing a toolkit on the Indian farmer’s protests which was later retweeted by Greta Thunberg.<sup>99</sup>

Such patterns restricting the civic freedoms and public participation of environmental groups and defenders are not restricted to the Global South. The European Center for Not-for-Profit Law recently examined case studies in Ireland and Slovenia, where the right to participation of local climate activists and environmental groups was hindered through legislative efforts by their governments, including by limiting access to consultation on actual bills that concern the climate; introducing new and stricter administrative requirements for participation (such as minimum number of members, prior involvement with a certain case, etc.); and making it difficult to appeal government decisions with a negative effect on climate and environment.<sup>100</sup> Such measures are reflective of an overall trend to persecute climate and environmental defenders and restrict their civic space, as detailed in ICNL’s ‘Threats to Climate Activism’ briefer.<sup>101</sup>

Unfortunately, these types of government restrictions reflect a broader trend limiting civil society input into climate discussions, including around renewable projects and the energy transition. It is critical that a just transition adopt a new modus

96 India, Events of 2020, HUMAN RIGHTS WATCH, last accessed 1 Apr 2022, <https://www.hrw.org/world-report/2021/country-chapters/india>.

97 Id.

98 Greenpeace India, Government crackdown forces Greenpeace India to cut back work on climate change, GREENPEACE, 20 Dec 2018, <https://www.greenpeace.org/india/en/press/3283/government-crackdown-forces-greenpeace-india-to-cut-back-work-on-climate-change/>.

99 Hannah Ellis-Petersen, Disha Ravi: the climate activist who became the face of India’s crackdown on dissent, THE GUARDIAN, 17 Feb 2021, <https://www.theguardian.com/world/2021/feb/18/disha-ravi-the-climate-activist-who-became-the-face-of-indias-crackdown-on-dissent>.

100 Green Voices, supra note 96.

101 ICNL Climate Briefer, supra note 12.



**It is critical  
that a just  
transition adopt  
a new modus  
operandi that  
prioritizes  
civil society  
involvement  
and local  
approaches.**

operandi that prioritizes civil society involvement and local approaches, including, at a minimum, public participation, consultation, and FPIC processes.

### III. Centering International Law Standards and Civil Society Strategies in the Transition

#### A. INTERNATIONAL STANDARDS IN BRIEF

This section outlines aspects of the international legal framework requiring the protection of civic freedoms and civil society input into energy development processes.

The rights to freedom of peaceful assembly and association are recognized and protected under article 20 of the Universal Declaration of Human Rights<sup>102</sup> and articles 21 and 22 of the International Covenant on Civil and Political Rights.<sup>103</sup> They are also articulated in article 8 of the International Covenant on Economic, Social and Cultural Rights and guaranteed by other international agreements protecting the rights of groups that are marginalized and discriminated against, including, for example, the Convention on the Rights of the Child (art. 15),<sup>104</sup> the Convention on the Elimination of All Forms of Discrimination against Women (art. 7),<sup>105</sup> the United Nations Declaration on the Rights of Indigenous Peoples (arts. 17 and 18)<sup>106</sup> and the Convention on the Rights of Persons with Disabilities (art. 29).<sup>107</sup> The freedom of expression is further protected by article 19 of the UDHR, article 19 of the ICCPR, and numerous other international treaties. These rights are exercised and enjoyed individually and collectively.

Public participation in law and policymaking is also guaranteed under international law, through various instruments:

- Article 25 of the International Covenant on Civil and Political Rights (ICCPR);<sup>108</sup>
- Article 8 of the UN Declaration on Human Rights Defenders;<sup>109</sup>

---

102 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

103 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 16 Dec 1966, UNTS 999 [hereinafter ICCPR].

104 CONVENTION ON THE RIGHTS OF THE CHILD, 20 Nov 1989, UNTS 1577.

105 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 18 Dec 1979, UNTS 1249.

106 United Nations Declaration on the Rights of Indigenous Peoples, UNGA resolution, 2 Oct 2007, A/RES/61/295.

107 CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 24 January 2007, A/RES/61/106.

108 ICCPR, *supra* note 109.

109 General Assembly Resolution A/RES/53/144 adopting the Declaration on human rights defenders, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

- UN HRC Resolutions A/HRC/RES/24/83 and A/HRC/RES/27/24 on equal political participation;<sup>110</sup> and
- UN Resolution 53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>111</sup>

Article 25 of the ICCPR stipulates that “Every citizen shall have the right and the opportunity...: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.” Article 2 of the ICCPR further provides an obligation to State Parties to respect and ensure Covenant rights to all individuals “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The OHCHR Guidelines on the effective implementation of the right to participate in public affairs emphasize state obligations to “protect civil society actors, including human rights defenders and journalists, in particular women human rights defenders and women journalists.”<sup>112</sup> The Guidelines also call for states to respect transparency, provide access to information, include marginalized groups,<sup>113</sup> and afford indigenous peoples “their right to free, prior and informed consent, when adopting or implementing measures that may affect them.”<sup>114</sup> States must also

provide redress mechanisms for adequate, effective and prompt remedies, including gender-sensitive, victim-centred and transformative reparations, for violations of the right to participate in public affairs.... Adequate and accessible information should be provided to rights holders regarding available processes and procedures for access to justice and redress mechanisms, including when the free, prior and informed consent of indigenous peoples has not been sought or obtained.<sup>115</sup>

**Certain international environmental treaties, such as the United Nations Framework Convention on Climate Change (article 6) and Stockholm Convention on persistent Or-**

110 UN Human Rights Council Resolution A/HRC/RES/24/8 on Equal political participation, <http://www.refworld.org/docid/53bcf9701a.html>; UN Human Rights Council Resolution A/HRC/RES/27/24 on Equal participation in political and public affairs, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/179/73/PDF/G1417973.pdf?OpenElement>.

111 UN resolution 53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>. World Bank guidelines also call for public input, see, e.g., World Bank, A Call for Participatory Decision-Making: Discussion Paper on World Bank-Civil Society Engagement, 2005.

112 OHCHR, Guidelines for States on the effective implementation of the right to participate in public affairs, (g) page 7, [https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs\\_web.pdf](https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf).

113 Id. at page 17.

114 Id. at page 8.

115 Id.



ganic Pollutants (article 10),<sup>116</sup> also guarantee the right to participate in policymaking related to climate change.

UNFCCC's guidelines specifically call for a just and inclusive transition that reduces inequality, and pays particular attention to historically disadvantaged groups such as women, youth, indigenous and tribal populations.<sup>117</sup> The Paris Agreement calls for States to “respect, promote and consider their respective obligations on human rights,” including the rights of indigenous peoples, as well as to take into account “the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities.”<sup>118</sup> Under the Paris Agreement, States parties also agree to take measures to enhance “public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement,”<sup>119</sup> and acknowledge that adaptation action should follow a “participatory and fully transparent approach.”<sup>120</sup>

A recent report on “Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice” by the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association notes responsibility on the part of business to protect fundamental freedoms. In particular, the U.N. Special Rapporteur states that

while States have primary responsibility for the realization of the rights to freedom of peaceful assembly and of association, businesses also have a responsibility to respect and protect these freedoms.... Multilateral entities also have positive responsibilities to actively protect peaceful assemblies and to establish and maintain an enabling environment for civil society.<sup>121</sup>

<sup>116</sup> The Stockholm Convention states “Each Party shall, within its capabilities, promote and facilitate:... Public participation in addressing persistent organic pollutants and their health and environmental effects and in developing adequate responses, including opportunities for providing input at the national level regarding implementation of this Convention,” among other awareness-raising, educational, and information-sharing activities.

<sup>117</sup> Realizing a just and equitable transition away from fossil fuels, STOCKHOLM ENVIRONMENTAL INSTITUTE, Jan 2019, <https://www.sei.org/wp-content/uploads/2019/01/realizing-a-just-and-equitable-transition-away-from-fossil-fuels.pdf>.

<sup>118</sup> Paris Agreement, *supra* note 26.

<sup>119</sup> *Id.* at art 12.

<sup>120</sup> *Id.* at art 7.

<sup>121</sup> Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule to the UNGA, 23 July 2021 UN Doc A/76/222, <https://www.undocs.org/en/A/76/222>.



**UNFCCC's  
guidelines  
call for a just  
and inclusive  
transition  
that reduces  
inequality, and  
pays particular  
attention to  
historically  
disadvantaged  
groups such as  
women, youth,  
indigenous  
and tribal  
populations.**

The Special Rapporteur's 2021 report recognizes the concerning trends around suppression of climate and environmental defenders. With respect to renewable energy specifically, the Special Rapporteur states that “many initiatives aimed at shifting to renewable energy have not been designed and managed so as to build resilience within affected communities, including workers and indigenous peoples, and to reduce inequality.”<sup>122</sup> He further notes that the requirement that businesses must “do no harm” and avoid causing or contributing to violations of civic freedoms “applies to all businesses, including those involved in mitigation projects and in the shift to renewable energy.”<sup>123</sup>

At the regional level, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“*Aarhus Convention*”)<sup>124</sup> guarantees the right to public participation, particularly with respect to government transparency, accountability, and responsiveness in decision-making for “plans, programmes and policies relating to the environment.” Ratified by 47 parties (46 European and Central Asian states, plus the European Union),<sup>125</sup> the Aarhus Convention states:

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. ... To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.<sup>126</sup>

The Convention further imposes obligations on Parties and public authorities regarding access to information and access to justice. Under the Convention, climate change activists have the right to participate in a broad array of decision-making procedures, including with respect to specific activities (article 6, paragraph 1(a)) related to production and processing of metals or activities in energy, mineral, chemical, and waste management industries.<sup>127</sup> Other regional instruments include the Escazú Agreement, which guarantees the right to participate in environmental decision-making in Latin America and the Caribbean.

---

<sup>122</sup> Id. at para 7.

<sup>123</sup> Id. at para 84.

<sup>124</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998, 2161 UNTS 447, 38 ILM 517 (1999), <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

<sup>125</sup> The Aarhus Convention is open for signature by “members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe...and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.” See UN Treaty Collection, Chapter XXVII Environment, 13. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVII/XXVII-13.en.pdf> (last accessed 19 Apr 2022).

<sup>126</sup> Id. at art 7.

<sup>127</sup> See annex 1 of the Convention for full overview of specific activities.

At the national level, some countries are finally beginning to pass mandatory corporate human rights due diligence laws, as in France and Germany, with actual enforcement mechanisms requiring implementation procedures, rather than mere reporting.<sup>128</sup> Of particular note, French law encourages stakeholder consultations while German law prohibits evicting or depriving people of the use of land, forest, or water for development projects when those resources are used for their livelihood.<sup>129</sup> Although means of remedy under both laws are limited, civil society and local community groups have used the French law to bring litigation actions against renewable energy entities accused of violating their rights (see below).

Other countries have incorporated important environmental input and public participation mechanisms into their regulatory frameworks. For instance, the United States' National Environmental Policy Act (NEPA, 1969) requires government agencies to provide meaningful opportunities for public participation on government 'actions' that could have environmental effects – and allows citizens to comment on Environmental Impact Statements.<sup>130</sup>

Despite some good-faith domestic efforts and an array of international principles aimed at protecting civic freedoms and public participation, many national governments still fail to respect these rights in the energy and extractive sectors.<sup>131</sup> Countries with weak governance, such as the DRC – where mining companies from all over the world operate – are less likely to comply with international treaties and practices, and further fail to effectively enforce domestic legislation governing the mining sector. For instance, while rules for environmental protection and social responsibilities exist in the DRC's mining code, they are inadequately enforced, leaving resource companies to self-regulate with the end result of violence, conflict, displacement, and pollution caused by unscrupulous industry actors.<sup>132</sup> Similarly, even where projects, such as palm oil, obtain a sustainable certification certifying that they comply with certain environmental and social criteria, the reality on the ground may be different for local com-

---

128 Christopher Ewell, *The Potential for Meaningful and Mandatory Corporate Due Diligence to Ensure Respect of Free, Prior and Informed Consent Rights in the Renewable Energy Transition*, 47 *YALE J OF INT'L LAW* (2022), forthcoming, <https://ssrn.com/abstract=4043116>.

129 Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Duty of Vigilance Law]; and Germany: New Law Obligates Companies to Establish Due Diligence Procedures in Global Supply Chains to Safeguard Human Rights and the Environment, LIBRARY OF CONGRESS (2021), <https://www.loc.gov/item/global-legal-monitor/2021-08-17/germany-new-law-obligates-companies-to-establish-due-diligence-procedures-in-global-supply-chains-to-safeguard-human-rights-and-the-environment/>; The New German Supply Chain Due Diligence Act (with a View Across the Border), *THE NATIONAL LAW REVIEW* (July 14, 2021), <https://www.natlawreview.com/article/new-german-supply-chain-due-diligence-act-view-across-border>. For the German text of the law, see Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten, *Bundesgesetzblatt* 2021, I, No. 46 (Jul. 22, 2021), [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl121s2959.pdf](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s2959.pdf)

130 See, e.g., How Citizens can Comment and Participate in the National Environmental Policy Act Process, *USEPA*, last accessed 1 April 2022, <https://www.epa.gov/nepa/how-citizens-can-comment-and-participate-national-environmental-policy-act-process/>.

131 Karlsson and Zimmer, *supra* note 62.

132 *Id.*

munities and indigenous peoples, who continue to experience inequitable outcomes.<sup>133</sup>

Addressing these shortfalls requires both the strengthening of international norms and laws, in areas like free, prior, and informed consent (FPIC) and indigenous rights, and domestic legislation – as well as improved implementation of laws. Public pressure must be levied to ensure that all companies and government actors working in renewables are engaged in a just transition, and adhere to these basic standards of international law and civic freedoms.

## B. MOVING FORWARD: STRATEGIES FOR A CIVIC-SPACE FRIENDLY TRANSITION

This section discusses best practices and arguments for incorporating civil society involvement in renewable energy projects. Although the renewable sector still has a long way to go in incorporating civic space protections, there are numerous examples of effective advocacy in this area by civil society, as well as participatory approaches involving local actors working in concert with responsible industry and government actors. Such examples demonstrate 1) how civil society and community actors can push back against projects that violate their rights, and 2) how the centering of civic actors may promote lower impact transition and mitigation projects. They may therefore serve as a starting point for developing a civil society-centered framework for an effective and just transition.

Below we outline a few examples of these approaches, along with some recommendations for expanding such initiatives.

### Mainstreaming civil society's ideas for reduced consumption and alternatives to extraction and heavy energy use



Civil society has been among the forefront in arguing that the energy transition will be more easily accomplished, with less environmental and human rights damage, if energy consumption overall decreases. Reduced consumption would require less renewable energy, thereby conserving

<sup>133</sup> Aug, supra note 39.



## Six Strategies for a Civic-Space Friendly Transition

### STRATEGY ONE

Mainstream civil society's ideas for reduced consumption and alternatives to extraction and heavy energy use

### STRATEGY TWO

Protect and support advocacy and legal actions by civil society

### STRATEGY THREE

Expand joint or community-owned and/or indigenous-led ventures

### STRATEGY FOUR

Broaden public participation opportunities in transition policymaking

### STRATEGY FIVE

Require consultation, due diligence, disclosure, and redress mechanisms

### STRATEGY SIX

Develop internal corporate human rights and consultation/FPIC policies

more land, mineral, and marine resources. Options like reuse, recycling, supply chain resilience, waste reduction, landfill mining and reclamation, cultural changes to reduce demand, and changes in transportation systems are regularly raised by non-profit actors,<sup>134</sup> often as important approaches to reduce the perceived scarcity of minerals, among other finite resources.<sup>135</sup>

Relatedly, many civil society groups working in the climate and environmental space have also called for a circular economy<sup>136</sup> approach, which decouples economic activity from the consumption of finite resources to create a resilient system that extends the life cycle of products and reduces waste.<sup>137</sup> Such actors have noted that the most effective solution to the climate crisis may require a more radical reduction of unsustainable consumption, “based on a fundamental change to Global North economies and lifestyles.”<sup>138</sup> At the forefront of such calls are indigenous groups, who have long noted alternative sustainable approaches to high energy consumption models, stemming from indigenous peoples’ traditional knowledge in areas such as agroforestry, traditional medicine, biodiversity conservation, customary resource management, and natural disaster preparedness and response.<sup>139</sup>

Meanwhile, civil society has led the charge on other sustainable alternatives to high energy consumption, such as decarbonized transport options, as in France, where green groups successfully pioneered mass cycling and walking schemes.<sup>140</sup> Civil society tends to focus on improving public transportation systems and decarbonized transport as more equitable solutions than relying extensively on mineral extraction for a large-scale transition to electric cars.<sup>141</sup> Top-down approaches, conversely, tend to focus on consumption and the assumed need to electrify all private vehicles, which is not a

---

134 IEA Report, *supra* note 65: recycled quantities of copper, lithium, nickel and cobalt from spent batteries could reduce combined primary supply requirements for these minerals by around 10%.

135 Energy Geopolitics, *supra* note 70.

136 Also defined as “a systems-focused approach” that “involves industrial processes and economic activities that are restorative or regenerative by design, enable resources used in such processes and activities to maintain their highest value for as long as possible, and aim for the elimination of waste through the superior design of materials, products, and systems (including business models).” See *What is a Circular Economy?*, US EPA, <https://www.epa.gov/recyclingstrategy/what-circular-economy#:~:text=A%20circular%20economy%2C%20as%20defined,their%20highest%20value%20for%20as> (last accessed 19 Apr 2022).

137 See, e.g. Circular economy introduction, ELLEN MACARTHUR FOUNDATION, <https://ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview> (last accessed 19 Apr 2022), and Circular economy: definition, importance and benefits, EUROPEAN PARLIAMENT, 3 Mar 2021, <https://www.europarl.europa.eu/news/en/headlines/economy/20151201STO05603/circular-economy-definition-importance-and-benefits>.

138 Transition Report, *supra* note 31.

139 Gleb Raygorodetsky, *Why Traditional Knowledge Holds the Key to Climate Change*, UN UNIVERSITY, 13 Dec 2011, <https://unu.edu/publications/articles/why-traditional-knowledge-holds-the-key-to-climate-change.html#:~:text=Indigenous%20responses%20to%20climate%20variation,buffer%20in%20uncertain%20weather%20environments>.

140 Carlton Reid, *Climate Change and Cycle Lanes Propel Greens Into Municipal Power Across France*, FORBES, 29 Jun 2020, <https://www.forbes.com/sites/carltonreid/2020/06/29/climate-change-and-cycle-lanes-propel-greens-into-municipal-power-across-france/?sh=3e8bb21e333e>.

141 See, e.g., Transition Report, *supra* note 31, as well as Dan Charles, *For the Climate and Fairness, Take Buses and Sidewalks Before Electric Cars*, NPR, 24 June 2021, <https://www.npr.org/2021/06/24/1006225485/for-the-climate-and-fairness-take-buses-and-sidewalks-before-electric-cars>.



workable solution in the long run.<sup>142</sup> Rather, developing public transportation systems would significantly reduce resource consumption, “particularly of rare earth minerals required for electrification, thereby alleviating the effects of extractivism in terms of pollution and biodiversity loss, as well as the harm caused to communities living in the vicinity of these resources.”<sup>143</sup> Yet, if governments listen only to the electric vehicle industry in this debate, they might fail to see the need and greater benefit of low-carbon public transport options.

A successful transition demands creative, alternative approaches – not exclusive reliance on renewable energy technologies that are input-intensive and entail exponential increases in mineral use. Many civil society actors, including academics and non-profit institutions, have presented resource reduction strategies – such as reusing landfill material to reduce the need for virgin materials in housing, or adopting regenerative agriculture to sequester carbon and provide alternatives to emissions-heavy concentrated animal feeding operations (CAFOs)<sup>144</sup> – suggestions which may be more sustainable but less profitable than those favored by industry actors.

Until there is a shift in global approaches to growth and industry, the most sustainable options seem likely to come from civil society, which needs space and support to bring its ideas to fruition. Governments must widen the space for civil society engagement and ensure public participation in climate and energy policy discussions, in order to mainstream sustainable, effective solutions to climate change.

## Protecting and supporting advocacy and legal actions by civil society



Civil society continues to challenge renewable projects that have not undertaken sufficient consultations or been responsive to local concerns, in some cases leading to the cancellation or postponement of such projects.<sup>145</sup> These efforts create pressure on private actors and governments to address and integrate the concerns of civil society before embarking on potentially controversial or high-impact projects.

For instance, the indigenous Sámi community has lodged complaints against Norway’s largest onshore wind project, whose wind turbines are projected to disturb 44% of the

---

<sup>142</sup> Id.

<sup>143</sup> India Burgess, We Can Save the World with Public Transportation and Not Electric Cars, EARTH.ORG, 3 Aug 2021, <https://earth.org/save-the-world-with-public-transportation-and-not-electric-cars/>.

<sup>144</sup> David McGinty, How to Build a Circular Economy, WORLD RESOURCES INSTITUTE, 6 Aug 2020, <https://www.wri.org/insights/how-build-circular-economy>; Circular Economy Strategies Can Cut Global Emissions by 39%, Circularity Gap Report, 26 Jan 2021, <https://www.circle-economy.com/news/circular-economy-strategies-can-cut-global-emissions-by-39>.

<sup>145</sup> It is important to note that in some of these cases, consultation attempts were made by the companies involved; however, these fell short of international FPIC standards, and were viewed as largely insufficient by local stakeholders, particularly as there were minimal benefits-sharing, compensation, or remedial mechanisms included in project plans.

winter pastures of the Southern Sámi reindeer-herding community.<sup>146</sup> The Southern Sámi community also filed legal complaints at the international level, including to the U.N. Committee on the Elimination of Racial Discrimination.<sup>147</sup> In October 2021, the Supreme Court of Norway invalidated the wind power developments, ruling that the wind park infringed reindeer grazing lands and therefore violated the right to culture of the Sámi indigenous people, under Art. 27 of the ICCPR.<sup>148</sup>

In Kenya, a wind farm was cancelled following disputes over land compensation by local farmers and landowners, protests, and a lawsuit filed to stop the project.<sup>149</sup> In Papua New Guinea, civil society groups advocated to cancel the Nautilus deep sea mining project, concerned over irreparable harm to fisheries and other environmental and social impacts; Nautilus eventually lost investors and went bankrupt, although not without cost to the PNG government, which had jointly invested tens of millions of taxpayer dollars in the project, over the protests of local communities.<sup>150</sup>

In 2020, the Unión Hidalgo indigenous community, in concert with Mexican and European advocacy groups, sued French energy company Électricité de France (EDF) in French civil court under France's 2017 Duty of Vigilance law, alleging that EDF failed to ensure that FPIC rights were upheld in the procedures for the wind park and negotiations with the Mexican government.<sup>151</sup> While receiving a mixed ruling, the case represents one of the first attempts to enforce corporate obligations to ensure FPIC rights under mandatory corporate human rights due diligence laws, opening up a potential new avenue for enforcing consent and consultation provisions in industry operations.<sup>152</sup>

These cases demonstrate legal defense strategies available to civil society groups to obtain redress for harms or to enforce consultation and consent principles in resource projects. Civic actors and local communities continue to be their own best advocates, pursuing multiple avenues of engagement, from protest to litigation, in their quest to have a voice in policies that affect them.

---

146 Norway: the construction of a wind power plant on the Sami winter pastures in Storheia, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, 31 Dec 2018, <https://www.business-humanrights.org/en/latest-news/norway-the-construction-of-a-wind-power-plant-on-the-sami-winter-pastures-in-storheia/>.

147 Norway to build wind farm despite UN calls to suspend project over concerns of impact on indigenous herders' livelihoods, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, 24 Dec 2018, <https://www.business-humanrights.org/en/latest-news/norway-to-build-wind-farm-despite-un-calls-to-suspend-project-over-concerns-of-impact-on-indigenous-herders-livelihoods-2/>; Weronika Strzyżyńska, Sámi reindeer herders file lawsuit against Norway windfarm, THE GUARDIAN, 18 Jan 2021, <https://www.theguardian.com/world/2021/jan/18/sami-reindeer-herders-file-lawsuit-against-oyfjellet-norway-windfarm-project>.

148 Carola Lingaas, Wind Farms in Indigenous Areas: The Fosen (Norway) and the Lake Turkana Wind Project (Kenya) Cases, *Opinio Juris* (Dec. 15, 2021), <http://opiniojuris.org/2021/12/15/wind-farms-in-indigenous-areas-the-fosen-norway-and-the-lake-turkana-wind-project-kenya-cases/>.

149 Kenya: Kinangop Wind Park impacts communities in Nyandarua, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, last accessed 1 Apr 2022, <https://old.business-humanrights.org/en/kenya-kinangop-wind-park-impacts-communities-in-nyandarua>.

150 David Hutt, After the loss of a ship, deep sea mining plans for PNG founder, MONGABAY, 26 Dec 2018, <https://news.mongabay.com/2018/12/after-the-loss-of-a-ship-deep-sea-mining-plans-for-png-founder/>.

151 Wind farm in Mexico: French energy firm EDF disregards indigenous rights, EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS (2020), [https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CASE\\_RESPORT\\_EDF\\_MEXICO\\_NOV2020.pdf](https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CASE_RESPORT_EDF_MEXICO_NOV2020.pdf).

152 Ewell, *supra* note 134.

Those working for a just transition – from governments and donors, to INGOs and environmental actors – should work to support civil society in these types of advocacy efforts, providing resources and capacity-building to assist with legal challenges, activism, and engagement directed at powerful corporate and government actors. The voices of civil society – particularly those representing disproportionately marginalized communities (indigenous peoples, women, youth, LGBTQI persons, and people with disabilities, among others) – should be amplified and provided a platform, so as to help even the playing field and raise awareness about the impacts of large-scale energy projects on local communities. Governments, donors, and the international community can help build civil society capacity to pursue effective legal and advocacy strategies, and support legal frameworks that promote access to justice by local actors and civil society.

### Expanding joint or community-owned and/or indigenous-led ventures



Companies that have pioneered joint ventures, benefits-sharing or co-ownership agreements with local communities – or at least included compensation/remedy agreements – have often seen more success, receiving a “social license” of sorts to proceed with projects in cooperation with civil society stakeholders.<sup>153</sup> While preferable to projects that sideline civic actors altogether, there is some risk that some community members may be ‘bought off,’ or that ‘shadow’ indigenous or other groups may spring up to negotiate such deals, as opposed to established indigenous and community associations. Thus, a preferred approach may be one where renewable projects are developed and led by indigenous or local communities themselves, eliminating much of the harm inherent in projects that do not account for the needs of the community. Workers’ groups and associations may also be well-suited to develop solutions and lead these ventures directly.

<sup>153</sup> See, e.g., Norah Kielland, *Supporting Aboriginal Participation in Resource Development: The Role of Impact and Benefit Agreements*, Publication No. 2015-29-E, Ottawa: Library of Parliament, 2015; Aboriginal Affairs and Northern Development Canada, *Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (Ottawa: Government of Canada, 2011); and Sandra Gogal, Richard Riegert & JoAnn Jamieson, *Aboriginal Impact and Benefit Agreements: Practical Considerations*, 43:1 ALBERTA L R (2005): 129 at 140.



**A preferred approach may be one where renewable projects are developed and led by indigenous or local communities themselves, eliminating much of the harm inherent in projects that do not account for the needs of the community.**

For instance, in Ixtepec, Oaxaca, Mexico, a socially motivated model is being developed for the indigenous community to collectively own and operate their own wind farm – the first large-scale community-owned indigenous wind power project in Latin America. The revenue from the project will be used for social ends, with half of the profits reinvested back into the Ixtepec community via a development trust and other mechanisms completely under their control.<sup>154</sup>

Similarly, in the UK, residents were involved in decision-making processes related to a new wind farm, leading to much greater levels of trust and confidence in the project.<sup>155</sup> In other areas, indigenous peoples' participation in micro-hydropower projects that combine watershed protections has empowered them on their ancestral land.<sup>156</sup> Some non-profit organizations – such as the SIBAT Center for Renewable Energy and Appropriate Technology in the Philippines – assist communities with the installation of community-based and off-grid renewable energy systems, such as micro-hydro, small wind-power installations, and solar water systems.<sup>157</sup>

Engaging women, and especially marginalized or indigenous women, is also crucial in promoting responsible renewable energy and environmental stewardship within local communities. As one indigenous senator from Malaysia notes, “in developing renewable energy projects, it is key to engage women’s groups to ensure greater buy in, better project planning and long-term sustainability of the project.”<sup>158</sup>

In many places, the centering of local communities, civil society, and indigenous peoples in renewable projects could be critical to their long-term success. Given their position on the frontline of climate disasters, indigenous groups have played an enormous role leading the charge to mitigate climate change and transition to low-carbon economies. However, because of the way renewable projects have been pushed forward without indigenous involvement or consent, there is now growing resistance to large renewable energy projects among some indigenous communities.<sup>159</sup> As noted previously, in some places, opposition to projects has led to community protests, lawsuits, and project cancellation. Longstanding patterns of displacement and resource exploitation have created situations where indigenous peoples lack formal land titles to the places they live or their traditional territories; these vulnerabilities contribute to ongoing ex-

---

154 Bea Hughes, Tom Wragg, Mexican winds and the need for community alternatives, OPENDEMOCRACY.NET, 22 July 2015, <https://www.opendemocracy.net/en/democraciaabierta/mexican-winds-and-need-of-community-alternatives/>.

155 B. Lennon, N.P. Dunphy, E. Sanvicente, Community acceptability and the energy transition: a citizens' perspective, 9 *Energy Sustain Soc* 35 (2019), <https://doi.org/10.1186/s13705-019-0218-z>.

156 Aung, *supra* note 39.

157 *Id.*

158 *Id.*

159 Radhika Shah & Phil Bloomer, Respecting the Rights of Indigenous Peoples as Renewable Energy Grows, *Stanford Social Innovation Review*, 23 Apr 2018, [https://ssir.org/articles/entry/respecting\\_the\\_rights\\_of\\_indigenous\\_peoples\\_as\\_renewable\\_energy\\_grows](https://ssir.org/articles/entry/respecting_the_rights_of_indigenous_peoples_as_renewable_energy_grows).

ploitation, whereby governments grant titles to renewable energy companies without consulting, compensating, or obtaining the consent of indigenous groups.<sup>160</sup>

Rather than continue to have their rights ignored and their resources exploited, indigenous and local communities should be empowered to make their own energy and resource decisions. If they choose to do so, these groups should be able to harness the renewable energy potential of their own lands through some of the collaborative or indigenous-led projects mentioned above.

Indigenous peoples have faced barriers in accessing climate finance and existing climate funds; these should be removed, and access facilitated.<sup>161</sup> Governments and international institutions such as the World Bank should provide additional capacity-building, public-private partnerships, and financial assistance to local communities for various sustainable energy projects. Companies can develop benefits-sharing and joint venture designs with legitimate representatives of local communities and/or established indigenous groups, which will aid in the development of effective installations and increase local buy-in for renewable projects. Mining companies can also be at least partially owned by locals and/or by their workers, either by including requirements for minimum local ownership in national mining laws or by incentivizing mining companies through tax cuts or other financial benefits.

## Broadening public participation opportunities in transition policymaking



Governments and international actors should create additional space to ensure civil society engagement on the actual questions of the transition and how to best adapt renewable technologies themselves. This extends to creating inclusive, meaningful spaces for civil actors at UN and COP fora, as well as national and local-level spaces for dialogue, input, and feedback.

The UN COP process in particular could be significantly improved in terms of access and public participation for civil society groups – especially during COVID-19, and with respect to the upcoming COPs in Egypt and the United Arab Emirates.

Particular attention should be paid to ensuring access for those historically excluded and marginalized from international and public spaces, including civil society from the Global South, as well as individuals from under-represented constituencies, such as women,

---

<sup>160</sup> Id. See also Report of the Special Rapporteur on the rights of indigenous peoples, Human Rights Council, 1 Nov 2017, UN Doc A/HRC/36/46 [UNSR Indigenous Peoples 2017 Report]. Error! Hyperlink reference not valid. For instance, in the Americas, indigenous peoples were displaced from valuable fertile plains to infertile areas, which have now been discovered to be well-suited for hydropower (steep, broken lands), good for wind (infertile uplands), and good for solar (arid areas) – as well as many desert areas where uranium mining has taken hold, Nuclear War: Uranium Mining and Nuclear Tests on Indigenous Lands, CULTURAL SURVIVAL QUARTERLY MAGAZINE, Sept 1993, Error! Hyperlink reference not valid. <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/nuclear-war-uranium-mining-and-nuclear-tests-indigenous>; see also Ivan Penn and Eric Lipton, The Lithium Gold Rush: Inside the Race to Power Electric Vehicles, NY TIMES, 6 May 2021, <https://www.nytimes.com/2021/05/06/business/lithium-mining-race.html>.

<sup>161</sup> UNSR Indigenous Peoples 2017 Report, supra note 166.



youth, LGBTQI persons, indigenous groups, people with disabilities, stateless persons, refugees and migrants. These groups are all disproportionately impacted by climate change.<sup>162</sup> Civil society provides crucial insight from the frontlines – including communities experiencing the daily impacts of climate change, from indigenous and vulnerable groups, to islanders impacted by sea level rise and climate-induced disasters, to groups wishing to convey their experiences and suggest solutions viable at the grassroots level.<sup>163</sup> The inclusion of women in climate-related decision-making is particularly critical. According to a UN study, 80% of people displaced by climate change are women,<sup>164</sup> while a host of socio-economic factors make women more vulnerable to the effects of climate change.<sup>165</sup>

In other contexts, some states have given some of their negotiating seats to representatives from civil society; similar approaches could be undertaken in the climate and transition context.<sup>166</sup> The UN and other bodies could institute more inclusive accreditation processes, not limiting engagement to registered or formal organizations, which has in the past excluded groups like women environmental defenders or indigenous communities.<sup>167</sup> Affected communities are integral stakeholders and should be primary voices in discussions around policies that impact them.

162 See, e.g., Balgis Osman-Elasha, Women...In The Shadow of Climate Change, UN CHRONICLE, last accessed 4 Apr 2022, <https://www.un.org/en/chronicle/article/womenin-shadow-climate-change>: “people who are already most vulnerable and marginalized will also experience the greatest impacts. The poor, primarily in developing countries, are expected to be disproportionately affected and consequently in the greatest need of adaptation strategies in the face of climate variability and change...Seventy per cent of the 1.3 billion people living in conditions of poverty are women” see also Climate change and inequality, OXFAM AMERICA, last accessed 4 Apr 2022, <https://www.oxfamamerica.org/explore/issues/climate-action/climate-change-and-inequality/>.

163 See, e.g., Crispino Lobo, Mainstreaming Climate Change Adaptation: The Need and Role of Civil Society Organisations, WORLD RESOURCES REPORT, WRI, last accessed 4 Apr 2022, <https://www.wri.org/our-work/project/world-resources-report/mainstreaming-climate-change-adaptation-need-and-role-civil>.

164 Mary Halton, Climate change ‘impacts women more than men,’ BBC News, 8 Mar 2018, <https://www.bbc.com/news/science-environment-43294221>.

165 Balgis Osman-Elasha, Women...in the Shadow of Climate Change, UN CHRONICLE, last accessed 25 Mar 2022, <https://www.un.org/en/chronicle/article/womenin-shadow-climate-change>.

166 For instance, in recent remarks at a CSW66 event about women environmental defenders and UN-muting civil society, the representative from Denmark noted that their delegation was represented by members of civil society at meetings of the Commission on the Status of Women (CSW). Notes on file with author, 1 Apr 2022.

167 See, e.g., UNFCCC standard admission process for non-governmental organizations (NGOs), EligibilityCriteria, UNFCCC, page 5, last accessed 1 Apr 2022, [https://unfccc.int/files/parties\\_and\\_observers/observer\\_organizations/application/pdf/unfccc\\_standard\\_admission\\_process\\_ngos.pdf](https://unfccc.int/files/parties_and_observers/observer_organizations/application/pdf/unfccc_standard_admission_process_ngos.pdf): “[A]pplicant organizations are required to furnish proof of their independent juridical personality and non-profit and/or tax-exempt status in a State Member of the United Nations.”



**Affected communities are integral stakeholders and should be primary voices in discussions around policies that impact them.**

The rights to peaceful assembly, freedom of association, and expression in all areas related to the energy transition must be protected, including civil society's right to conduct peaceful protests related to energy installations.

Other areas of the transition would benefit immeasurably from greater public participation and civil society input. Indeed, there are already good examples of such participatory approaches - for instance, in areas like grid expansions, where civil society has been included in grid planning, scenario development and environmental assessment and approval. For example, the European planning process (Ten Year Network Development Plan – TYNDP) involves civil society, academia, renewable energy players and the energy industry in power grid development. In other countries, such as Japan, grid expansion planning involves a small committee of around 20 people primarily from the grid companies itself, government representatives and academia.<sup>168</sup> Such committees could be expanded to include representatives from civil society and affected local communities.

Governments could work to encourage similar civil society committees in other areas of renewable energy development, to help ensure a continuous voice for civil society as the transition evolves.

## Requiring consultation, due diligence, disclosure, and redress mechanisms



Environmental and human rights disclosures and other accountability processes have often been optional for industry, and as a result have been plagued by superficiality or public relations-style greenwashing. Several actors are working towards a needed shift around mandatory human rights and environmental due diligence reporting, as articulated by the UN Working Group on Business and Human Rights.<sup>169</sup> The European Commission is also moving in this direction, in February 2022 adopting a proposal for a Directive on corporate sustainability due diligence. The Directive anchors human rights and environmental considerations in companies' operations and corporate governance. The US Securities and Exchange Commission is also planning to make certain climate, environmental, social, and governance disclosures mandatory.<sup>170</sup> And as noted above, France and Germany have now enacted mandatory due diligence laws for corporations, providing additional mechanisms for advocacy for groups and communities affected by industry projects.

Efforts to ensure that corporations adhere to basic international human rights law, conduct consultation and consent procedures, and provide effective compensation, redress, and grievance mechanisms are needed across all areas of resource governance.

---

<sup>168</sup> REN21, *supra* note 60.

<sup>169</sup> Watkins, *supra* note 72; see also Guiding Principles on Business and Human Rights at 10: taking stock of the first decade Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Human Rights Council, 22 Apr 2021, UN Doc A/HRC/47/39, para 33 [hereinafter UN Business & Human Rights Report]

<sup>170</sup> Watkins, *supra* note 72.

Renewable technologies should be subject to the same corporate accountability standards. Governments should implement mandatory due diligence laws and enforce human rights standards to ensure better compliance by industry actors, including renewable energy companies.

## Developing internal corporate human rights and consultation/FPIC policies



While mandatory due diligence laws will undoubtedly have more teeth, corporations can still be encouraged to develop robust human rights and civic space frameworks, incentivized by better community relations, public reputation, and shareholder concerns around social/environmental impact. Responding to these incentives, some companies have already developed human rights commitments and consultation policies, in line with best practices and the UN Guiding Principles on Business and Human Rights (UNGPs).

This includes some renewable project developers, often small and dynamic companies, who have spearheaded effective community engagement, consultation, and investment programs, including community ownership of projects. For example, one of the companies surveyed in BHRRC's survey of renewable companies, Statkraft, showed an explicit commitment to the UNGPs, OECD Guidelines, and International Finance Corporation (IFC) Performance Standards.<sup>171</sup> Other companies, such as Isagen, had consultation provisions establishing relationships with communities at the early stages of the project, prior to construction, taking a rights-based approach to identifying who would be affected and providing grievance mechanisms to communities and workers.<sup>172</sup> Some commentators note a trend of increasing attention to human rights by global energy players investing in renewables, for example through establishing human rights policies and increasingly integrating social and environmental considerations into investment decisions.<sup>173</sup>

Ignoring such considerations could increasingly lead to high costs or result in the outright cancellation of a project and loss of investment capital. For instance, contentious projects, such as the Dakota Access Pipeline, where corporations failed to act with due diligence to respect the rights of indigenous peoples, incurred no less than US\$7.5 billion in costs for firms with an ownership stake.<sup>174</sup> A 2020 study found that mining firms

171 Towards Responsible Renewable Energy, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, Nov 2016, [https://media.business-humanrights.org/media/documents/files/Towards\\_Responsible\\_Renewable\\_Energy\\_Briefing\\_-\\_Final\\_1.pdf](https://media.business-humanrights.org/media/documents/files/Towards_Responsible_Renewable_Energy_Briefing_-_Final_1.pdf).

172 Id.

173 Roberta Pinamonti, The Human Rights Implications of the Renewable Energy Transition, BSR, 21 Aug 2017, <https://www.bsr.org/en/our-insights/blog-view/human-rights-implications-of-the-renewable-energy-transition>.

174 Sara Blackwell, Paloma Muñoz Quick, Investor Toolkit on Human Rights, INVESTOR ALLIANCE FOR HUMAN RIGHTS, May 2020, 12, <https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020c.pdf>.

associated with the assassination of civil society activists “have large, negative abnormal returns following the event.”<sup>175</sup>

Suppliers and manufacturers must work with civil society, especially impacted communities, to ensure the effectiveness and legitimacy of corporate human rights initiatives. Home and host governments can assist by enforcing a level of mandatory compliance on such policies, as noted above, in order to lend them credibility and create effective and binding mechanisms to apply international legal norms, hold transnational corporations accountable for any abuses, and respect civic space.<sup>176</sup> At a minimum, all renewable energy companies should have strong, implementable human rights policies and consultation provisions, which governments help to enforce.

## IV. Conclusion

The energy transition poses many challenges, logistically and politically, as well as to civic space. The increased marginalization of civic actors in recent years threatens the success and legitimacy of such a transition. By devaluing the knowledge and wisdom of civil society, indigenous groups, and local communities – often the best, most responsible stewards of their environment – the world is at great risk of further, irreversible climate damage.

Approaches which integrate civil society are likely to prove more sustainable in the long run and present a better model as the transition accelerates. Such approaches include:

- mainstreaming civil society-led strategies towards reducing energy consumption through a circular economy and alternatives to extraction and heavy energy use;
- continued advocacy by and support of civil society groups;

<sup>175</sup> Taking stock of investor implementation 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, Human Rights Council, 17 Jun 2021, UN Doc A/HRC/47/39/Add.1, <https://undocs.org/A/HRC/47/39/Add.1>.

<sup>176</sup> Transition Report, supra note 31.



**At a minimum,  
all renewable  
energy  
companies  
should have  
strong,  
implementable  
human rights  
policies and  
consultation  
provisions,  
which  
governments  
help to enforce.**

- benefits-sharing and joint or community/indigenous-led ventures;
- public involvement and participation in transition policymaking and large-scale energy planning;
- mandatory consultation, due diligence, environmental and social disclosures, compensation, redress, and grievance mechanisms; and
- good-faith, corporate human rights and reporting policies.

Rather than continuing to marginalize civil society, governments and companies should fast-track these civic space approaches to the energy transition, elevating civil society-led projects and the voices of indigenous, marginalized, and local communities. Such an approach promises not only a more just transition, but an inclusive, successful one, driven by global civil society.



## Addendum Discussion

### CHANGING GEOPOLITICS IN THE ENERGY TRANSITION AND PROJECTED IMPACTS TO CIVIC SPACE

While speculative, it is interesting to assess what impact certain geopolitical changes resulting from the energy transition may have on civic space. Shifts in supply and demand for different energy sources are likely to impact geopolitics, elevating the position of certain new and old players while depressing others.

To begin, there is no doubt that China, as the world's largest domestic and outbound investor in renewable energy, will play a massive role in the energy transition. China is currently the world's largest producer of wind and solar energy. China also produces more than 70 per cent of all solar photovoltaic panels, half of the world's electric vehicles and a third of its wind power.<sup>177</sup> As of early 2017, China owned five of the world's six largest solar-module manufacturing companies and the world's largest wind turbine manufacturer.<sup>178</sup> According to the International Energy Agency, 36 and 40 percent of the world's growth in solar and wind energy (respectively) in the next five years will come from China.<sup>179</sup>

China is also the world's biggest battery producer and dominates supply chains for many of the raw materials crucial for 'clean-tech,' such as cobalt, rare-earth minerals and polysilicon, a key ingredient in solar panels.<sup>180</sup> Its companies control more than 85 percent of the world's refined cobalt chemical capacity, essential for most lithium-ion batteries. It also mines almost all of the world's rare earth minerals, which are used in electric motors and wind turbines; making an electric vehicle today without involving China is nearly impossible.<sup>181</sup>

Thus, China is likely to wield significant influence and power as a result of its dominance in renewable production and raw material supply chains. Many global players have responded to China's dominance in these areas with a mix of cooperative and adversarial approaches, along with efforts to shore up their own domestic access to materials like rare earth minerals, exploring deep sea mining, expanding domestic production, and/or diversifying supply chains, to attempt to reduce their vulnerability to

---

<sup>177</sup> Hook and Sanderson, *supra* note 36.

<sup>178</sup> Dominic Chiu, *The East Is Green: China's Global Leadership in Renewable Energy*, CENTER FOR INT'L & STRATEGIC STUDIES, last accessed 1 Apr 2022, <https://www.csis.org/east-green-chinas-global-leadership-renewable-energy>.

<sup>179</sup> *Id.*

<sup>180</sup> Hook and Sanderson, *supra* note 36.

<sup>181</sup> *Id.* China's largest state-owned company also aspires to create a global supergrid called the 'Global Energy Interconnection' (GEI) that will link every continent with undersea transmission cables to power the world with green electricity. See also Energy Geopolitics, *supra* note 70.

supply shocks.<sup>182</sup> Nevertheless, the US, EU, and other countries' climate goals will be heavily reliant on China, at least in the short term.<sup>183</sup>

That said, the US is well positioned in the clean energy race, with US companies holding strong positions in new technologies, including robotics, artificial intelligence, and electric vehicles.<sup>184</sup> In Europe, Germany is a frontrunner in renewable energy deployment, with almost 31,000 renewable energy patents,<sup>185</sup> while the UK is the largest producer of offshore wind power globally, with a plan to quadruple its offshore wind capacity by 2030.<sup>186</sup> Norway and France are also leaders in renewable development, and leading power exporters in Europe.<sup>187</sup>

India, the world's third-biggest greenhouse gas emitter, has set a renewable energy target of 175 gigawatts by 2022, including 100 GW from solar and 60 GW from wind.<sup>188</sup> As noted, it is currently fast-tracking large-scale projects – which make up the bulk of India's solar capacity – and exempting them from environmental assessments and public hearings.<sup>189</sup> Projected to have the world's largest population by 2024 and to overtake China as the world's largest energy growth market by the end of the 2020s, India has set ambitious renewables targets which remain unfulfilled.<sup>190</sup>

Significant changes will occur among other developing country actors, which provide the majority of raw materials for green energy.<sup>191</sup> Some oil-producing Middle Eastern countries could see their power decline while countries like Morocco and Lebanon could potentially gain from abundant solar resources.<sup>192</sup> Russia, the world's largest gas exporter and second largest oil exporter, is also vulnerable to economic disruption from the energy transition, with oil and gas rents accounting for around 40% of its fiscal revenues.<sup>193</sup>

While some countries in regions like sub-Saharan Africa and South Asia may have the opportunity to leapfrog fossil-fuel centered development in favor of more sustainable energy sources, large oil producers like Nigeria and Angola are at risk from their heavy

---

182 Mary Hui, Japan's global rare earths quest holds lessons for the US and Europe, QUARTZ, 23 Apr 2021, <https://qz.com/1998773/japans-rare-earths-strategy-has-lessons-for-us-europe/>; John Boyd, U.S. and Japan Seeking to Break China's Grip on Rare Earths Production, IEEE Spectrum, 23 July 2020, <https://spectrum.ieee.org/us-and-japan-seeking-to-break-chinas-grip-on-rare-earths#toggle-gdpr>.

183 Hook and Sanderson, *supra* note 36.

184 Energy Geopolitics, *supra* note 70.

185 *Id.*

186 *Id.*

187 <https://www.powerengineeringint.com/world-regions/europe/france-overtakes-norway-to-become-largest-net-power-exporter/>; <https://www.power-technology.com/features/how-norway-became-europes-biggest-power-exporter/>

188 Chandran, *supra* note 27.

189 *Id.*

190 Energy Geopolitics, *supra* note 70.

191 Karlsson and Zimmer, *supra* note 62.

192 Hook and Sanderson, *supra* note 36; Adam Muro, Solar 'boom' times as Lebanon's fossil fuels run dry, AL JAZEERA, 1 Sep 2021, <https://www.aljazeera.com/news/2021/9/1/is-lebanon-in-the-midst-of-a-solar-power-boom>.

193 Energy Geopolitics, *supra* note 70.

dependence on fossil fuel rents.<sup>194</sup> Some countries, such as Albania, Ethiopia, Lesotho, Paraguay and Tajikistan, already obtain all or almost all of their electricity from hydropower, while others, including Brazil, Costa Rica, and Kenya, have achieved similar results using a mix of renewables.<sup>195</sup>

What do all these changes portend for civic space? Some of the actors driving the energy revolution – such as China and India – have, especially in recent years, taken a more authoritarian approach to civil society and been widely criticized for violating human rights, including in relation to both traditional and renewable resource development. Depending on their influence on the world stage and, in particular, China's control of critical supply chains, authoritarian actors may attempt to limit civil society involvement in the energy transition, or bar them from attempts for justice or remedy in the case of violations. These governments' monopoly power over critical resources may deter other governments from speaking up with respect to violations of fundamental freedoms within these countries (for instance, with respect to forced labor in Xinjiang).

Meanwhile, big mineral producers such as the Democratic Republic of Congo, Australia, Canada, Russia, the United States, South Africa and others, will see heavy demand pressures for their mineral stocks, which, rather than necessarily being a boon, could lead to increased conflict and environmental degradation.<sup>196</sup> None of these countries have adequately addressed existing and past harms from mining, and all continue to violate the rights of those living in and near extractive sites, including indigenous peoples.

In many of these countries, civil society remains locked out of discussions between government and industry players around resource development, including renewables and the rush to develop national mineral supplies. Consultations, public participation, and free, prior, and informed consent (FPIC) processes remain weak globally, especially in some of the aforementioned resource economies.

In addition to direct impacts from environmental and social harms relating to extractive and renewable projects, civil society will also be impacted both by job losses in the fossil fuel sector as well as potential growth in sustainable energy jobs.

In light of the geopolitical shifts that are likely to occur from the energy transition, it is imperative that civil society – which has provided much of the impetus around the need to solve climate change – play a foundational role in shaping the transition, including by having access to and influence among the major government and industry power players who will drive the process. Such access will not only be integral to respect human rights, protect civic space, and ensure conformity with international law, but to the long-term success of the energy transition as a solution to the climate crisis.

---

<sup>194</sup> Id.

<sup>195</sup> Id. Brazil, Costa Rica, New Zealand and Kenya generate more than 80% of their electricity from a combination of hydro, geothermal, wind, biomass and solar power.

<sup>196</sup> In keeping with the resource curse, particularly for developing countries.

# ICNL

---

1126 16th Street NW, Suite 400  
Washington, DC 20036 USA

 [www.icnl.org](http://www.icnl.org)

 [facebook.com/ICNLAlliance](https://facebook.com/ICNLAlliance)  [twitter.com/ICNLAlliance](https://twitter.com/ICNLAlliance)